

SECURITIES INDUSTRY ACT, 2016 (ACT 929)

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THE NINE HUNDRED AND TWENTY-NINETH

ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA

ENTITLED

SECURITIES INDUSTRY ACT, 2016

AN ACT to revise and consolidate the Securities Industry Act, 1993 (P.N.D.C.L. 333) and to provide for related purposes.

DATE OF ASSENT: 14th September, 2016.

PASSED by Parliament and assented to by the President:

PART ONE—SECURITIES AND EXCHANGE COMMISSION

Establishment

Section 1—Establishment of the Commission

- (1) There is established by this Act a body corporate to be known as the Securities and Exchange Commission.
- (2) The Commission may for the performance of its functions acquire and hold movable and immovable property and may enter into a contract or any other transaction.
- (3) Where there is hindrance to the acquisition of property, the property may be acquired for the Commission under the State Lands Act, 1962 (Act 125) and the cost shall be borne by the Commission.

Section 2—Object of the Commission

The object of the Commission is to regulate and promote the growth and development of an efficient, fair and transparent securities market in which investors and the integrity of the market are protected.

Section 3—Functions of the Commission

To achieve the object the Commission shall—

- (a) advise the Minister on matters relating to the securities industry;
- (b) maintain surveillance over activities in securities to ensure orderly, fair and equitable dealings in securities;
- (c) register, license, authorise or regulate, in accordance with this Act or the Regulations—
 - (i) securities exchanges,
 - (ii) commodities and futures exchanges,
 - (iii) securities depositories,
 - (iv) clearing and settlement institutions,
 - (v) credit rating agencies,
 - (vi) fund managers,
 - (vii) investment advisers,
 - (viii) unit trusts,
 - (ix) mutual funds,
 - (x) hedge funds,
 - (xi) private equity funds,
 - (xii) venture capital funds,

- (xiii) nominees,
- (xiv) underwriters,
- (xv) issuing houses,
- (xvi) registrars,
- (xvii) custodians,
- (xviii) trustees,
- (xix) primary dealers,
- (xx) broker-dealers,
- (xxi) the representatives of the persons specified in subpara-graphs[sic] (i) to (xx); and
- (xxii) any other institution in the securities industry

to control and supervise their activities with a view to maintaining proper standards or conduct and acceptable practices in the securities business;

- (d) formulate principles for the guidance of the industry;
- (e) monitor the solvency of licence holders and take measures to protect the interest of customers where the solvency of a licence holder is in doubt;
- (f) protect the integrity of the securities market against any abuses arising from dealing in securities including insider trading;
- (g) adopt measures to minimise and resolve any conflict of interest that may arise for market operators;
- (h) review, approve and regulate takeovers, mergers, acquisitions and all forms of business combinations in accordance with any law or code of practice requiring it to do so;
- (i) create the necessary atmosphere for the orderly growth and development of the capital market;
- (j) perform the functions referred to in the Companies Act 1963 (Act 179);
- (k) examine and approve invitations to the public made by issuers other than the government;
- (l) authorise and regulate the issuing of securities in Ghana by foreign issuers; and
- (m) undertake activities that are necessary or expedient for giving full effect to the provisions of this Act.

Section 4—Governing body of the Commission

- (1) The governing body of the Commission is a Board consisting of—
 - (a) a chairperson;

- (b) the Director-General;
- (c) the two Deputy Directors-General;
- (d) one representative each from the following—
 - (i) Bank of Ghana not below the rank of a Director; and
 - (ii) Ministry of Finance not below the rank of a Director;
- (e) the Registrar-General or the representative of the Registrar-General; and
- (f) four other persons comprising—
 - (i) a lawyer qualified to be appointed a Justice of the Superior Court of Judicature nominated by the General Legal Council;
 - (ii) a chartered accountant nominated by the Institute of Chartered Accountants, Ghana;
 - (iii) an academic researcher in a relevant field; and
 - (iv) a woman.
- (2) The members of the Board shall be appointed by the President in accordance with article 70 of the Constitution.
- (3) The President shall in making appointments under section (1) (f) consider gender balance and have regard to the expertise, knowledge and experience of the persons in matters relating to securities or investment.
- (4) The Board shall monitor and oversee the operations of the Commission and ensure the effective implementation of the object and functions of the Commission.

Section 5—Tenure of office

- (1) A member of the Board shall hold office for a period not exceeding three years and is eligible for re-appointment but a member shall not be appointed for more than two terms.
- (2) Subsection (1) does not apply to the Director-General and the Deputy Directors-General.
- (3) A member of the Board may at any time resign from office in writing addressed to the President through the Minister.
- (4) A member of the Board other than the Director-General and two Deputy Directors-General who is absent from three consecutive meetings of the Board without sufficient cause ceases to be a member of the Board.
- (5) The President may by a letter addressed to a member revoke the appointment of that member.
- (6) Where a member of the Board is for a sufficient reason unable to act as a member, the Minister shall determine whether the inability would result in the declaration of a vacancy.
- (7) Where there is a vacancy—

- (a) under subsection (3) or (4),
- (b) as a result of a declaration under subsection (6), or
- (c) by reason of the death of a member,

the Minister shall notify the President of the vacancy and the President shall appoint a person to fill the vacancy.

Section 6—Meetings of the Board

- (1) The Board shall meet at least once every two months for the despatch of business at the times and in the places determined by the chairperson.
- (2) The chairperson shall at the request in writing of not less than four members of the Board, convene an extraordinary meeting of the Board at the place and time determined by the chairperson.
- (3) The quorum at a meeting of the Board is seven members of the Board and shall include the Director-General or in the absence of the Director-General, a Deputy Director-General.
- (4) The chairperson shall preside at meetings of the Board and in the absence of the chairperson, a member of the Board other than the Director-General or the Deputy Director-General elected by the members present from among their number shall preside.
- (5) Matters before the Board shall be decided by a majority of the members present and voting and in the event of an equality of votes the person presiding shall have a casting vote.
- (6) The Board may co-opt a person to attend a Board meeting but that person shall not vote on a matter for decision at the meeting.

Section 7—Disclosure of interest

- (1) A member of the Board who has an interest in a matter for consideration—
 - (a) shall disclose the nature of the interest and the disclosure shall form part of the record of the consideration of the matter; and
 - (b) shall not participate in the deliberations of the Board in respect of that matter.
- (2) A member ceases to be a member of the Board, if that member has an interest in a matter before the Board and—
 - (a) fails to disclose that interest, or
 - (b) participates in the deliberations of the matter.

Section 8—Establishment of committees

- (1) The Board may establish committees consisting of members of the Board or non-members or both to perform a function.
- (2) A committee of the Board may be chaired by a member of the Board.

(3) Section 7 applies to members of committees of the Board.

Section 9—Allowances

Members of the Board and members of a committee of the Board shall be paid the allowances approved by the Minister.

Administration

Section 10—Ministerial directives

The Minister may give directives of a general nature to the Board on matters of policy relating to the capital market and the Board shall give effect to the directives.

Section 11—Appointment of Director-General

(1) The President shall in accordance with article 195 of the Constitution appoint a Director-General of the Commission who shall be the chief executive of the Commission.

(2) The Director-General shall hold office on the terms and conditions specified in the letter of appointment.

(3) The Director-General is responsible for—

(a) the day-to-day administration of the affairs of the Commission and is answerable to the Board in the performance of functions under this Act; and

(b) the implementation of the decisions of the Board.

(4) The Director-General may delegate a function to an officer of the Commission but shall not be relieved of the ultimate responsibility for the performance of the delegated function.

Section 12—Appointment of Deputy Directors-General

(1) The President shall in accordance with article 195 of the Constitution, appoint two Deputy Directors-General for the Commission.

(2) A Deputy Director-General shall hold office on the terms and conditions specified in the letter of appointment.

(3) A Deputy Director-General shall assist the Director-General in the performance of functions of the Director-General and perform any other function determined by the Board.

Section 13—Appointment of other staff

(1) The President shall in accordance with article 195 of the Constitution appoint for the Commission, other staff that are necessary for the proper and effective performance of functions of the Commission.

(2) The President may in accordance with article 195 (2) of the Constitution delegate the power of appointment of public officers under subsection (1).

(3) Other public officers may on the request of the Commission be transferred or seconded to the Commission or may otherwise give assistance to the Commission.

(4) The Commission may engage the services of advisers and consultants on the recommendation of the Board.

Finances of the Commission

Section 14—Funds of the Commission

(1) The funds of the Commission include—

- (a) levies payable to the Commission under section 15;
- (b) moneys approved by Parliament;
- (c) grants to the Commission received from the Government or any other body or person for its activities;
- (d) fees and other moneys that accrue to the Commission in the course of the performance of its functions; and
- (e) interest and profits that accrue from the investments of the Commission.

(2) The moneys received by or on behalf of the Commission shall be deposited to the credit of the Commission in a bank approved by the Minister and used wholly for the discharge of the functions of the Commission.

Section 15—Levies payable to the Commission

(1) There is imposed by this Act a levy on a person issued with a market operator's licence under section 109.

(2) A person who holds a market operator's licence for a financial year shall pay a levy prescribed towards the expenses of the Commission for that financial year.

(3) The Commission may consult licensees in calculating the levy payable under subsection (2).

(4) The Commission shall provide in writing—

- (a) the formula for calculating the levy,
- (b) the time and method of payment, including installment payments,
- (c) the payment of interest on moneys overdue, and
- (d) penalties for non-payment.

(5) The Commission shall issue directives, guidelines or circulars on the imposition of the levy payable to the Commission—

- (a) by a buyer and a seller that carries out a transaction in securities,
- (b) by a collective investment scheme in respect of the net asset value of the scheme, and
- (c) on funds under the management of a fund manager other than funds of a collective investment scheme.

(6) The Commission may exempt the payment of the levy under subsection (5) (c) in respect of funds under a pensions scheme registered under the National Pensions Act, 2008 (Act 766) and the Commission may arrange with the pensions Regulator for part of the fees payable to the Pensions Regulator on such funds.

Section 16—Accounts and audit

(1) The Board shall keep books of accounts and proper records in relation to them in the form approved by the Auditor-General.

(2) The Board shall submit the accounts of the Commission to the Auditor-General for audit within three months after the end of the financial year.

(3) The Auditor-General shall not later than three months after the receipt of the accounts, audit the accounts and forward a copy of the audit report to the Minister.

Section 17—Annual report and other reports

(1) The Board shall within one month after receipt of the audit report submit an annual report to the Minister covering the activities and operations of the Commission for the year to which the report relates.

(2) The annual report includes—

(a) the report of the Auditor-General; and

(b) any other information that the Commission may consider necessary.

(3) The Minister shall within one month after the receipt of the annual report submit the report to Parliament with a statement that the Minister considers necessary.

(4) The Board shall also submit to the Minister any other reports which the Minister may require in writing.

Administrative Hearings Committee

Section 18—Establishment of Administrative Hearings Committee

(1) Without limiting section 8 there is established an Administrative Hearings Committee of the Board.

(2) The Hearings Committee consists of three members of the Board elected by the members, except that the chairperson of the Board, the Director-General and the two Deputy Directors-General shall not be members.

(3) The members of the Committee shall elect a chairperson from among the three members.

(4) The functions of the Hearings Committee are—

(a) to examine and determine complaints and disputes related to, in respect of, or arising out of a matter to which this Act applies; and

(b) to perform a duty related to the functions specified under paragraph (a) that may be referred to it by the Commission.

Section 19—Submission of complaints and examination of issues

(1) A complaint, dispute or a violation arising under this Act shall, before any redress is sought in the courts, be submitted to the Commission for hearing and determination in accordance with this Act.

(2) A person who intends to submit a complaint or matter to which subsection (1) applies shall submit it in writing to the Director-General.

(3) The Director-General shall cause the matter to be investigated and unless the Director-General can settle the disputed matter or complaint, refer the matter together with the findings of the investigations to the Hearings Committee within thirty days of the receipt of the written complaint, dispute or violation; and at the same time inform the complainant or persons concerned of the submission to the Hearings Committee.

(4) Subject to section 22, the Hearings Committee shall on receipt of a complaint or a matter under this section, examine and determine the complaint or matter.

(5) The Hearings Committee shall not determine a complaint or matter which is the subject matter of an action before a court.

Section 20—Representation before the Hearings Committee

A person appearing before the Hearings Committee may—

(a) make a representation;

(b) be represented by a lawyer or other expert of the person's choice; and

(c) produce the evidence which that person considers necessary for the adjudication of the complaint or matter.

Section 21—Proceedings of the Hearings Committee

(1) The Hearings Committee may exclude persons from its proceedings, other than parties to the proceedings and their lawyers or experts, where the Hearings Committee considers it necessary in the interest of public order, public morality or the protection of the private lives and interest of persons concerned in the proceedings.

(2) The Hearings Committee may call witnesses and request the production of documents which it considers necessary to determine the issue before it.

(3) Witnesses appearing before the Hearings Committee may be paid allowances determined by the Board in consultation with the Minister.

(4) The Hearings Committee shall give a fair hearing to the persons who appear before it and shall be guided by the rules of natural justice.

(5) Where a complaint is submitted to the Hearings Committee under section 19 (1), the Hearings Committee shall, within a period of sixty days from the date of receipt of the complaint or matter, examine and determine the complaint or matter unless there is a delay caused by the complainant or the representative or witness of the complainant.

(6) Except as otherwise provided in this Act, the Hearings Committee shall determine the procedure for its hearings.

Section 22—Referral of final decisions of Hearings Committee

(1) The final decision of the Hearings Committee on a matter submitted to it for determination shall be referred to the Board.

(2) The Board on receipt of the final decision may—

(a) approve of the decision;

(b) remit the matter to the Hearings Committee for further consideration; or

(c) modify the final decision.

Section 23—Appeals from decisions of the Board with reference to the Hearings Committee

A person dissatisfied with a decision of the Board may seek redress at the High Court.

Production of Books and Documents

Section 24—Power of Commission to require production of books

(1) The Commission may by notice in writing, where it considers that there is sufficient cause to do so, give directives to—

(a) a licensee or former licensee;

(b) a member of the governing body of a securities exchange;

(c) an issuer or a former issuer;

(d) a person who is controlled by any other person referred to in paragraph (a), (b) or (c) or jointly controlled by two or more persons at least one of whom is a person referred to in these paragraphs;

(e) a person who is or has been an officer or an employee of, or an agent, lawyer, auditor or other person acting in any capacity for or on behalf of, a person referred to in paragraph (a), (b), (c), or (d);

(f) any other person who is or has been a party to a dealing in securities; or

(g) any other person,

to produce to the Commission or a person authorised by the Commission the books, subject to subsection (2), specified in the directive.

(2) For the purposes of subsection (1), books in respect of which a request to produce may be made relate to—

(a) the business or affairs of an issuer, a securities exchange, a licensee or past licensee;

(b) a dealing in securities;

(c) a dealing in unit trusts and mutual funds;

(d) advice concerning securities or the issuing or publication of a report or analysis concerning securities;

(e) the character or financial position of, or any business carried on by, a person referred to in subsection (1) (c), (d), (e), or (f);

(f) an audit of, or any report of an auditor concerning a dealing in securities or the accounts or records of a broker-dealer or of a fund manager; or

(g) information relating to the business of a person or to the business administered or managed by that person for that person's clients.

(3) A directive to produce shall not be made to a person under subsection (1) (g) unless the Commission has reasonable cause to believe that the person has custody or control of books which relate to a matter specified under subsection (2).

(4) Books shall not be directed to be produced by a person under subsection (1) (g) at a time or place that may unduly interfere with the proper conduct of the normal daily business of that person.

(5) The Commission may, in writing authorise a person possessed of a qualification that the Commission considers adequate, to exercise the power to request for the production of books conferred on the Commission under this section.

(6) A reference in subsection (1) to dealing in securities or to a business carried on by a person, includes a reference to a dealing in securities by a person as a trustee.

(7) An authorisation from the Commission to a person under subsection (5), may be of general application or may be limited to making requirements of a specific nature.

(8) Where the Commission, or a person authorised by the Commission, requires the production of books under this section and a person has a lien on the books, the production of the books shall not prejudice the lien.

(9) An authorised person shall where required, to do so, produce evidence of authorisation.

(10) An action shall not lie against a person for complying with a directive or requirement made or given under this section to produce books.

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

(12) The Commission may publish and disseminate any information obtained under this section.

Section 25—Action on production or non-production of books

(1) Where the required books are produced under section 24, the person to whom they are produced—

- (a) may take possession of them, make copies of them, or take extracts from them;
- (b) 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;
- (c) may retain possession of the books for as long as the Commission considers necessary to enable the books to be inspected and copies of or extracts from the books to be made or taken by or on behalf of the Commission; and
- (d) shall permit the person who produced them, upon giving a reasonable notice and specification of the books, to have access to them.

(2) Where the books are not produced, the Commission or the authorised person may require the person who should have produced the books—

- (a) to state, to the best of the knowledge and belief of that person, where the books may be found;
- (b) to identify the person who, to the best of the knowledge and belief of that person, last had custody of the books and where the identified person may be found; or
- (c) to state the reasons why the books cannot be produced.

Section 26—Searches

(1) a person authorised by the Commission may—

- (a) enter any premises or property which the Commission has reason to believe is occupied or used by a person in contravention of this Act or any Regulations made under this Act;
- (b) search for a book, record, statement, document or any other item;
- (c) seize or make a copy of a book, record, statement, document or any other item;
- (d) question a person, auditor, director, member or a partner of a person conducting business in the premises;
- (e) direct that the premises or any part of it or anything on it be secured and left undisturbed for as long as necessary; and
- (f) close down the business as the Commission considers necessary.

(2) For the purposes of subsection (1), the Commission may request the assistance of the Police for a specific assignment.

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

Section 27—Non-disclosure of information from books

(1) An information obtained from a book that has been produced to a person authorised by the Commission under section 24, shall not be published or disclosed by that person without the prior consent in writing of the person who has custody or control of the books, except to the Commission and its officers and employees, unless the publication or disclosure is required—

- (a) with a view to the institution of, or for the purposes of criminal proceedings; or
- (b) for the purposes of proceedings under section 24, 25 or 26.

(2) A person who publishes or discloses information in contravention of subsection (1) commits an offence and is liable on summary conviction to a fine of not less than one hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than one year and not more than three years or to both.

Section 28—Incriminating statement

(1) It is not an excuse for a person to fail to provide a statement explaining a matter relating to the compilation of books or a matter requested of that person under section 24 on the grounds that the statement might tend to incriminate the person.

(2) Where the person claims before making a statement required of the person that the statement might tend to incriminate the person, the statement provided in answer to the request shall not be admissible in evidence against the person in any criminal proceedings other than proceedings under section 24, 25 or 26.

(3) Subject to subsection (2), a statement made by a person in compliance with a requirement under section 24 may be used in evidence in criminal or civil proceedings against the person.

Section 29—Penalties

A person who—

- (a) without reasonable excuse, refuses or fails to comply with a directive given under section 24, 25 or 26,
- (b) furnishes information or makes a statement that is false or misleading in a material particular for the purposes of section 24, 25 or 26, or
- (c) without reasonable excuse, obstructs or hinders the Commission or a person in the exercise of a power under section 24, 25 or 26,

commits an offence and is liable on summary conviction to a fine of not less than one hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than one year and not more than three years or to both.

Section 30—Period for keeping records and books

(1) Despite a provision in any other enactment, a book or record required to be kept under this Act shall be kept for a period of at least seven years after the completion of the transaction to which it relates.

(2) A person who contravenes subsection (1) is liable to pay to the Commission an administrative penalty of one thousand penalty units.

Section 31—Admission in evidence of copies or extracts of books

(1) Subject to this section and section 27, a copy of or extract from a book relating to a matter specified in section 24 (1) or (2) is admissible in evidence as if it were the original book.

(2) A copy of or extract from a book is not admissible in evidence under subsection (1) unless it is proved that, the copy or extract is a true copy of the book or of the relevant part of the book.

(3) For the purposes of subsection (2), evidence that a copy of or extract from a book is a true copy of the book or of a part of the book may be given by a person who has compared the copy or extract with the book or the relevant part of the book and may be given orally or by an affidavit or statutory declaration.

Section 32—Savings for lawyers

Section 24, 25 or 26 shall not compel a legal practitioner to produce a document that contains privileged communication made by or to that legal practitioner in a professional capacity or authorise the taking of possession of that document which is in the possession of the legal practitioner but if the legal practitioner refuses to produce the document, the legal practitioner shall nevertheless be obliged to give the name and address of the person to whom or by or on whose behalf the communication was made.

Disclosure of Information

Section 33—Disclosure of acquisition or disposal of securities to the Commission

(1) The Commission may, where it considers it necessary for the protection of investors, require a broker-dealer to disclose to the Commission, in relation to an acquisition or a disposal of securities, the name of the person from or through whom or on whose behalf the securities were acquired or disposed of and the nature of the instructions given to the broker-dealer in respect of the acquisition or disposal.

(2) The Commission may require a person who has acquired, held or disposed of securities to disclose to the Commission—

(a) whether the person acquired, held or disposed of securities as a trustee for or on behalf of another person or as a nominee;

(b) the name of that person; and

(c) the nature of the instruction given as trustee or nominee in respect of the acquisition, holding 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 that stock exchange, the names of the members of that stock exchange who acted in the acquisition or disposal.

Section 34—Suspicion regarding breach of specified provisions

(1) Where the Commission considers—

(a) that it may be necessary to prohibit trading in securities of, or made available by a body corporate pursuant to section 49, or

(b) that a person may have contravened the provisions of section 147 to 153 in relation to securities of, or made available by a body corporate, or

(c) that a person may have contravened provisions of Chapter Two of the Companies Act, 1963 (Act 179) in relation to securities in a body corporate,

it may require a director, secretary or executive officer of the body corporate referred to in paragraph (a), (b) or (c) to disclose to the Commission an information of which the director, secretary or executive officer is aware, being information that might have affected a dealing that has taken place, or that might affect a future dealing in securities of, or made available by, the body corporate.

(2) For the purposes of subsection (1) (a), (b) or (c), the Commission may require a person whom the Commission believes on reasonable grounds to be capable of giving information concerning—

(a) a dealing in relevant securities,

(b) an advice given by a broker-dealer, a fund manager, or an investment adviser or, a representative of a broker-dealer, of a fund manager, or of an investment adviser concerning securities,

(c) the issuing or publication of a report or analysis by a broker-dealer, a fund manager, an investment adviser, a representative of a broker-dealer, of a fund manager, or of an investment adviser concerning relevant securities,

(d) the financial position of a business carried on by a person who is or has been alone or together with other persons, a broker-dealer, a fund manager or an investment adviser and has dealt in, or given advice concerning relevant securities,

(e) the financial position of any business carried on by a nominee controlled by a person referred to in paragraph (c) or jointly controlled by two or more persons at least one of whom is a person referred to in that paragraph, or

(f) an audit of, or any report of an auditor concerning any accounts or records of a broker-dealer, a fund manager or of an investment adviser, being accounts or records relating to dealings in relevant securities,

to disclose to the Commission the information that the person has in relation to any of the matters specified in this subsection.

(3) For the purposes of subsection (2), "relevant securities" means securities of, or made available by, the body corporate referred to in subsection (1).

(4) A person is not excused from disclosing information to the Commission pursuant to a requirement made of that person under subsections (1) and (2), on the grounds that the disclosure of the information might tend to incriminate that person.

(5) Where a person claims, before making an oral statement disclosing information which that person is required to disclose under subsection (1) or (2), that the statement might tend to incriminate the person, that statement provided in answer to the request is not admissible in evidence against the person in criminal proceedings other than proceedings under this section.

(6) A person who or stock exchange which, without reasonable excuse, refuses or fails to comply with a requirement of the Commission under section 33 (1), (2), or (3) or subsection (1) or (2) of this section commits an offence and is liable on summary conviction to a fine of not less than one hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than one year and not more than three years or to both.

(7) A person who, for the purposes of section 33 (1), (2), or (3) or subsection (1) or (2) of this section, discloses information, or makes a statement, that is false or misleading in a material particular commits an offence and is liable on summary conviction to a fine of not less than one hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than one year and not more than three years or to both.

(8) It is a defence to a prosecution for an offence under subsection (7) for the defendant to prove belief on reasonable grounds that the information or statement was true and was not misleading.

(9) In this section a reference to disclosing information includes, in relation to information that is contained in a document, the furnishing of the document.

(10) A person shall not be subject to a liability for having complied with a requirement made or purported to have been made under this section.

Investigation and Inspection

Section 35—Investigation of certain matters

(1) Where the Commission—

(a) has reason to suspect that a person has—

(i) committed an offence under this Act or the Companies Act, 1963 (Act 179), or

(ii) been guilty of fraud or dishonesty in relation to dealing in securities and the business of an issuer; and

(b) is assisting other domestic and foreign regulatory authorities in their investigation,

it may make the investigation it considers proper in pursuance of this Act.

(2) The Commission may delegate its powers under subsection (1) to a person with the qualifications that it considers appropriate.

(3) The person under investigation shall afford the Commission or its appointed person access to the books, documents, records and files that may be required to conduct the investigation.

(4) For the purpose of any investigation, or any other proceeding under this Act, a member of the Board or an officer designated by the Board is empowered to administer oaths and affirmations, take evidence, and require the production of any book, paper, correspondence, memorandum, or other records which the Commission deems relevant or material to the inquiry.

Section 36—Inspection by Commission

- (1) The Commission may, inspect the books, accounts, documents and transactions of—
 - (a) a licensee or former licensee; or
 - (b) an issuer or former issuer.
- (2) The Commission may engage the services of a person who has the qualification that the Commission considers adequate to exercise the power of the Commission under subsection (1).
- (3) For the purposes of an inspection under this section, persons referred to in subsection (1), shall—
 - (a) afford the Commission access to;
 - (b) produce books, accounts and documents; and
 - (c) give the information and facilities that may be required to conduct the inspection.
- (4) A person engaged by the Commission may copy or take possession of the books, accounts and other documents of a licensee, former licensee, issuer or former issuer.
- (5) A licensee, former licensee, issuer or former issuer that fails, without reasonable excuse, to produce a book, account, document, information or facilities in accordance with subsection (3), is liable to pay to the Commission an administrative penalty of one thousand penalty units.

Orders of the Court and Statements of Principle

Section 37—Power to request bank account records

- (1) The Commission may, in writing, request the Bank of Ghana to provide banking records or information held by a bank or specialised deposit-taking institution on any transaction concerning a person under investigation where the Commission is of the opinion that the bank or specialised deposit-taking institution is a proper person to assist with the investigation.
- (2) Where the Bank of Ghana provides the records or information requested, the Commission may request an authorised person of the Bank or institution to provide an explanation on the contents of the records or information, where necessary.
- (3) When considering an application from the Commission pursuant to a request for assistance from a foreign securities regulatory authority, the Judge may only refuse the request if—
 - (a) the request is not made in accordance with the terms of the international agreement or memorandum of understanding between the Commission and the requesting securities regulatory authority; or

(b) criminal proceedings have already been instituted or final punitive sanctions issued in the country, in respect of the same facts and matters and against the same person as is the subject of the request for assistance.

(4) An application under subsection (1) made by the Commission and an appeal made by the Commission or the respondent institution shall be heard in camera.

(5) A provision of this Act shall not be construed to confer on the respondent institution in its capacity as appellant, a right to access the information contained within a request for international assistance.

Section 38—Power of court to make certain orders

(1) Where—

(a) on the application of the Commission, it appears to a court that a person has committed an offence under this Act, or has contravened the conditions or restrictions of a licence or the rules or listing rules of a stock exchange or is about to do an act with respect to dealing in securities that, if done, would be an offence or a contravention, or

(b) on the application of a securities exchange, it appears to the court that a person has contravened the rules of that securities exchange,

the court may, without prejudice to any other orders make an order as specified in subsection (2).

(2) For the purposes of subsection (1), the Court may make an order—

(a) in the case of persistent or continuing breaches of this Act, or of the conditions or restriction of a licence, or of the rules of a securities exchange restraining the person from carrying on a business for which the person has been licensed, or from posing as carrying on that business or so acting;

(b) restraining a person from acquiring, disposing of or otherwise dealing with the securities that are specified in the order;

(c) appointing a receiver of the property of a broker-dealer or of property that is held by a broker-dealer for or on behalf of another person whether on trust or otherwise;

(d) declaring a contract relating to securities to be void or voidable;

(e) for the purposes of securing compliance with any other order under subsection (1), directing a person to do or refrain from doing a specified act; or

(f) ancillary to any of the orders specified in paragraph (a) to (e) considered necessary.

(3) The Court may, before making an order under subsection (1) direct that notice of the application be given to a person who the court considers fit or direct that notice of the application be published in the manner that the court considers fit, or both.

(4) A person appointed by order of the Court under subsection (1) as a receiver of the property of a broker-dealer may—

- (a) require the broker-dealer to deliver to the receiver, property of which the latter has been appointed receiver or to give to the receiver the information concerning that property that may reasonably be required;
 - (b) acquire and take possession of property of which that person has been appointed receiver;
 - (c) deal with property that person has acquired or taken possession of in a manner in which the broker-dealer might lawfully have dealt with the property; and
 - (d) exercise any other powers in respect of the property specified in the order.
- (5) In subsections (1), (2) and (4), “property” in relation to a broker-dealer, includes moneys, securities and documents of title to securities or other property entrusted to or received on behalf of any other person by the broker-dealer or any other person in the course of or in connection with a business of dealing in securities carried on by the broker-dealer.
- (6) A person who, without reasonable excuse, contravenes or fails to comply with—
- (a) an order under subsection (1), or
 - (b) a requirement of a receiver appointed by order of the court under subsection (1),
- commits an offence and is liable on summary conviction to a fine of not less than one hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than one year and not more than three years or to both.
- (7) Subsection (6) does not affect the powers of the Court to punish for contempt of court.
- (8) The Court may on an application by the Commission compel a person to give a statement or testimony under oath in investigations and other matters relating to securities.
- (9) The Court may rescind, vary or discharge an order made under this section or suspend the operation of an order.

Section 39—Statements of principle

- (1) The Commission may issue statements of principle with respect to the conduct and financial standing expected of persons licensed under this Act.
- (2) The conduct expected may include compliance with—
- (a) a code or standard issued with the permission of the Commission by a person or body; or
 - (b) a code or standard acceptable to the Commission.
- (3) Failure to comply with a statement of principle under this section is a ground for the taking of disciplinary action or the exercise of powers of intervention, but does not constitute an offence or give rise to a right of action by investors or other persons affected or affect the validity of any transaction.
- (4) The exercise of disciplinary action under subsection (3) includes the exercise of power under section 118 or 122 and those sections shall be construed accordingly.

(5) Where a statement of principle issued by the Commission relates to compliance with a code or standard issued by a person or body other than the Commission, that statement of principle may provide—

(a) that failure to comply with the code or standard shall be a ground for taking disciplinary action or exercising a power under section 118 or 122 only in the cases and to the extent that may be specified; and

(b) that an action shall not be taken, or power exercised, except at the request of the person or authority by whom the code or standard in question was issued.

(6) The Commission shall exercise its power in the manner that appears to it appropriate to secure compliance with statements of principle under this section.

Exchange of Information and Co-operation

Section 40—Exchange of information and mutual assistance

(1) Where the Commission is satisfied that a foreign regulatory authority has the capacity to protect the confidentiality of information, the Commission may enter into an agreement or arrangement for the exchange of that information with that foreign regulatory authority with responsibility to regulate financial institutions and the conduct of financial markets and the provision of financial services.

(2) In addition to the exchange of information, an agreement or arrangement between the Commission and a foreign regulatory authority may require that the Commission provide mutual assistance to the foreign regulatory authority that may be required for the purposes of its regulatory functions.

Section 41—Co-operation in securities regulation

(1) On request made by a foreign regulatory authority, the Commission may provide the foreign regulatory authority with assistance in accordance with section 40 if that foreign regulatory authority states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate any law or rule relating to securities matters, irrespective of where the securities are issued or listed.

(2) Assistance may be provided without regard as to whether facts stated in the request may constitute a violation of the domestic laws of this country.

(3) In deciding whether to provide assistance, the Commission shall consider whether—

(a) the foreign regulatory authority has agreed to provide reciprocal assistance in securities matters to the Commission; and

(b) compliance with the request is likely to adversely affect the public interest of the country.

PART TWO—SECURITIES EXCHANGES AND SELF REGULATORY ORGANISATIONS

Securities Exchanges

Section 42—Establishment of securities exchanges

A person shall not establish or assist in establishing or maintaining or pose as providing or maintaining a securities exchange unless that person is authorised under this Act.

Section 43—Power of Commission to approve a securities exchange

(1) An application for approval as a securities exchange shall be made to the Commission in the prescribed form.

(2) An approval shall not be granted to a person to operate as a securities exchange other than a body corporate.

(3) The Commission may approve a body corporate as a securities exchange if the Commission is satisfied—

(a) that at least three members of the body corporate will carry on the business of dealing in securities independently of and in competition with each other;

(b) that the rules of the body corporate will make satisfactory provision—

(i) for the exclusion from membership of persons who are not of good character and high business integrity;

(ii) for the expulsion, suspension or discipline of members for conduct 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 securities exchange or a provision of this Act;

(iii) for the making of a report to the Commission by the body corporate where it rejects an application for membership or where it suspends or expels a member;

(iv) for the terms and conditions of the chief executive officer of the body corporate,

(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 dealing in securities by members;

(vii) with respect to the class of securities that may be dealt in by members;

(viii) with respect to a fair representation of persons in the selection of members of its governing body and administration of its affairs and provide that one or more members is or are representative of listed companies, investors, and the professions relevant to securities trading and not be associated with a stock broker, or dealer; and

(ix) generally, for the carrying on of the business of the securities exchange with due regard to the interest of the public; and

(c) that the interests of the public will be served by the granting of the approval.

(4) The grant by the Commission of approval as a securities exchange shall be within three months from the date of application for approval as a securities exchange.

(5) This section does not preclude the Commission from appointing not more than two persons who are knowledgeable in the securities industry and who are not associated with a broker-dealer, to be on the governing body of a securities exchange to represent the public interest.

(6) A person appointed under subsection (5)—

(a) shall have the same rights, powers, duties and obligations, liberties and privileges as any other member of the governing body of the securities exchange; and

(b) shall hold office for a period specified by the Commission which may at any time revoke the appointment.

(7) The Commission shall publish in the Gazette, notice of approval for the establishment of a securities exchange and every cancellation or suspension of an approval.

(8) Where the Commission is of the opinion that an approval granted to a securities exchange under subsection (3) should be withdrawn in the public interest, it may serve on the governing body of that securities exchange a written notice that it is considering the withdrawal of the approval for the reasons stated in the notice and after giving an opportunity to the governing body to be heard on the matter, it may cancel the approval granted under subsection (3).

(9) A cancellation under subsection (8) shall not take effect until after the expiration of three months from the date on which the cancellation is published in the Gazette.

(10) With effect from the date on which a notice of cancellation of approval under subsection (9) is published in the Gazette, the governing body shall ensure that trading on the securities exchange ceases.

(11) During the three months between the publication and the effective date of the cancellation, the governing body shall take steps to wind up the business of the securities exchange.

Section 44—Approval by Commission of amendments to rules

(1) Where an amendment is made, whether by way of rescission, alteration or addition, to the rules of a securities exchange, the governing body of the securities exchange shall forward a written notice of the amendment to the Commission for approval.

(2) The Commission shall within three months, give notice in writing to the securities exchange concerned that it approves the amendment or that it disapproves the whole or any specified part of the amendment in question and until the notice is given the amendment shall not have effect.

(3) This section does not preclude the Commission after consultation with the governing body of a securities exchange from amending the rules of a securities exchange by written notice specifying the amendments and the dates those amendments shall come into force.

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

Section 45—Provision of assistance by securities exchange to the Commission

(1) A securities exchange shall provide assistance to the Commission that the Commission reasonably requires for the performance of its functions and duties, including the furnishing of

returns and providing the information relating to the exchange's business or in respect of its dealing in securities or any other specified information that the Commission may require for the proper administration of this Act.

(2) Where a securities exchange reprimands, fines, suspends, expels or otherwise takes disciplinary action against a member of the exchange, it shall within seven days, give to the Commission written particulars of the name of the member, the reason for and nature of the action taken, the amount of the fine, if any, and the period of the suspension.

Section 46—Disciplinary power of the Commission

(1) The Commission may review a disciplinary action taken by a securities exchange under section 45 (2) and may affirm or set aside a decision of an exchange after giving the member and the exchange an opportunity to be heard.

(2) Subsection (1) does not preclude the Commission, in a case where a securities exchange fails to act against a member of the exchange, from suspending, expelling or otherwise disciplining a member of the exchange but before doing so the Commission shall give the member and the exchange an opportunity to be heard.

(3) A person who is aggrieved by the decision of the Commission under this section may, within one month after notification of the decision, appeal to the High Court.

Section 47—Observance or enforcement of rules of a securities exchange

(1) Where a person who is under an obligation to comply with, observe, enforce or give effect to the rules or regulations of a securities exchange fails in performing the duty, the Court, on the application of the Commission, that securities exchange or a person aggrieved by the failure, and after giving to the person against whom the order is sought an opportunity of being heard, may make an order giving directives to that person to perform the duty.

(2) For the purposes of subsection (1)—

(a) a body corporate which is admitted to any official list of a securities exchange and has not been removed from that official list; or

(b) a person associated with a body corporate which is admitted to an official list of a securities exchange and has not been removed from that official list,

is under an obligation to comply with, observe and give effect to the directives of that securities exchange to the extent to which those rules apply in relation to it or that person.

Section 48—Directives to a securities exchange

(1) The Commission may, where it appears to be in the public interest, issue a directive to a securities exchange—

(a) with respect to trading on or through the facilities of that securities exchange or with respect to a security traded on that securities exchange;

(b) with respect to the manner in which a securities exchange carries on its business, including the manner of reporting off-market trading; or

(c) with respect to any other matters which the Commission considers necessary for the effective administration of this Act,

and the securities exchange shall comply with the directives.

(2) A securities exchange which, without reasonable excuse, fails or refuses to comply with a directive given under subsection (1), is liable to pay to the Commission an administrative penalty of five hundred penalty units and to a further administrative penalty of fifty penalty units for each day that the default continues.

(3) Where the Commission is satisfied that an executive officer of a securities exchange—

(a) has wilfully contravened a provision of this Act or any Regulations made under it or the rules of a securities exchange; or

(b) has without reasonable justification or excuse, failed to enforce compliance with that provision by a member of the securities exchange or a person associated with that member,

the Commission may, in the public interest or for the protection of the investors, and after giving the executive officer an opportunity of being heard, direct by notice in writing the securities exchange to remove from office or employment the executive officer, and the securities exchange shall comply with the directive; or the Commission may instead censure the executive officer.

Section 49—Prohibition of trading in particular securities

(1) Without limiting section 48, where the Commission is of the opinion that it is necessary to prohibit trading in particular securities of, or made available by, a body corporate on a securities exchange in order to protect the interest of the public, the Board may give notice in writing to the exchange stating that it has formed that opinion and setting out its reasons.

(2) If, after the receipt of the notice, the exchange does not take action to prevent trading in the securities to which the notice relates, and the Commission is still of the opinion that it is necessary to prohibit trading in those securities on that exchange, the Commission may, by notice in writing to that exchange, prohibit trading in those securities on that exchange during the period, not more than fourteen days, that may be specified in the notice.

(3) Where the Commission gives a notice to a securities exchange under subsection (2), the Commission shall—

(a) at the same time send a copy of the notice to the body corporate together with a statement setting out the reasons for the giving of the notice; and

(b) as soon as practicable furnish to the Minister a written report setting out the reasons for giving the notice and send a copy of the report to the securities exchange.

(4) A securities exchange which permits trading in securities on the exchange in contravention of a notice under subsection (2) is liable to pay to the Commission an administrative penalty of

five hundred penalty units and to a further administrative penalty of twenty-five penalty units for each day that the defaults continues.

Self-regulatory Organisations

Section 50—Recognition of a self-regulatory organisation

(1) The Commission may, subject to the terms and conditions that the Commission considers fit, accord recognition to a company or organisation as a self-regulatory organisation in relation to a specified segment of the securities industry, where the Commission is satisfied that that company or organisation—

- (a) has a constitution and internal rules and policies which are consistent with this Act and any enactment applicable to the relevant sector or industry;
- (b) has the capacity and the financial and administrative resources required to carry out its functions to perform as a self-regulatory organisation including dealing with breaches of the law or of applicable standards or guidelines;
- (c) shall not discriminate against a person in offering access to its services or in carrying out its functions as a self-regulatory organisation;
- (d) is a fit and proper person;
- (e) is managed or controlled by competent officers; and
- (f) satisfies other criteria specified in the rules of the Commission.

(2) The Commission may, by written arrangement, delegate a power or function of the Commission to a self-regulatory organisation.

(3) An arrangement under subsection (2), shall provide for—

- (a) a power or function delegated to the self-regulatory organisation by the Commission;
- (b) the terms and conditions by which the power or function has been delegated and may be exercised by the self-regulatory organisation;
- (c) the person authorised to exercise the delegation on behalf of the self-regulatory organisation; and
- (d) the submission to the Commission of periodical reports in respect of the exercise of a delegated power or function by the self-regulatory organisation.

Section 51—Rules of a self-regulatory organisation

(1) A self-regulatory organisation may make rules, not inconsistent with this Act, the Regulations or rules of the Commission or any applicable enactment, with respect to the matters for which it has functions, including the functions delegated to it by the Commission.

(2) Rules made by a self-regulatory organisation under subsection (1), and amendments to the rules, shall be of no effect unless approved by the Commission.

(3) The Commission shall be deemed to have granted approval for the purposes of subsection (1) where it has not objected to the rules within three months after the rules have been submitted to the Commission for approval.

(4) The rules of a self-regulatory organisation may make provision with respect to shareholding and voting rights in a self-regulatory organisation, interests of the members of a self-regulatory organisation, the consumers, investors and the users of their services.

Section 52—Restriction on decision-making

A self-regulatory organisation shall not make a decision under its rules that is likely to adversely affect the rights of a person unless—

(a) that self-regulatory organisation has given that person an opportunity to make representations about the matter; or

(b) the self-regulatory organisation considers, on reasonable grounds, that any delay in making the decision will adversely affect a class of consumers, investors or members of the relevant sector or industry.

Section 53—Obligations of officers of a self-regulatory organisation

A self-regulatory organisation shall notify the Commission of the appointment of an officer in the manner specified in the rules of the Commission, at least fourteen days before that person is appointed as an officer of the self-regulatory organisation.

Section 54—Directives by Commission to self-regulatory organisation

(1) The Commission may, after giving a self-regulatory organisation reasonable opportunity to make representations about a matter, give a written directive to—

(a) suspend for the period specified in the directive, a specified provision of its constitution or its rules;

(b) require, subject to the Companies Act, 1963 (Act 179) or any other enactment, the amendment of its constitution as specified in the directive to bring it in conformity with this Act, the Regulations or any rules of the Commission;

(c) require the amendment of its rules as specified in the directive so as to bring them in conformity with the relevant Act; or

(d) for the implementation or enforcement of its constitution or its rules.

(2) Where the Commission has reasonable grounds to believe that—

(a) an officer of a self-regulatory organisation is not a fit and proper person; or

(b) a particular person's appointment or continuing in office as an officer of a self-regulatory organisation is likely to be detrimental to the self-regulatory organisation or to adversely affect the interest of investors and consumers of financial services or of members of the relevant sector or industry,

the Commission may, after giving the officer and the self-regulatory organisation reasonable opportunity to make representations, direct the self-regulatory organisation not to appoint the officer, or to remove the officer from office.

(3) Subsections (1) and (2) do not limit the directives that the Commission may give to a self-regulatory organisation.

Section 55—Termination of arrangements and revocation of recognition

(1) The Commission may revoke a recognition where—

(a) the self-regulatory organisation has failed to commence operations within three months after recognition;

(b) the Commission is not satisfied that the self-regulatory organisation is properly performing or is able to perform the functions or powers delegated to it, or its other functions;

(c) the Commission determines that the self-regulatory organisation has committed a material breach of this Act or other applicable enactment;

(d) it appears to the Commission that the self-regulatory organisation is involved in a financial crime; or

(e) the self-regulatory organisation fails to comply with a directive of the Commission.

(2) The Commission shall not revoke a recognition unless the Commission has—

(a) notified the self-regulatory organisation of its intention and the reasons for the Commission's action, and

(b) given the self-regulatory organisation a reasonable opportunity to make representations to the Commission.

(3) The Commission shall publish the notice of the revocation under subsection (1) in the Gazette.

Section 56—Amendments to the constitution of a self-regulatory organisation

Despite a provision in the Companies Act, 1963 (Act 179), an amendment to the constitution of a self-regulatory organisation is of no effect unless it is approved by the Commission.

Section 57—Protection of self-regulatory organisation

A self-regulatory organisation, an officer or employee of a self-regulatory organisation or a member of a committee of a self-regulatory organisation is not liable for any loss sustained or damage caused to a person as a result of anything done or omitted by that person in the performance of functions and the discharge of duties in connection with the functions of the self-regulatory organisation, including those delegated to it by the Commission.

Section 58—Annual report of self-regulatory organisation

(1) A self-regulatory organisation shall within ninety days from the end of its financial year, submit to the Commission, an annual report which includes—

- (a) a report on the corporate governance policy of the self-regulatory organisation and any other information required by the Commission;
 - (b) audited financial statements prepared in accordance with the accounting standards adopted by the Institute of Chartered Accountants (Ghana); and
 - (c) other requirements specified by the Commission.
- (2) The financial statements to be included in an annual report under subsection (1), shall—
- (a) be audited by an audit firm approved by the Commission, and
 - (b) be in accordance with the auditing standards by the Institute of Chartered Accountants (Ghana).
- (3) Where, in the course of audit, the auditor of a self-regulatory organisation has reason to believe that—
- (a) there has been a material adverse change in the risks inherent in the business of that self-regulatory organisation with the potential to adversely affect the ability of the self-regulatory organisation to continue as a going concern;
 - (b) the self-regulatory organisation may be in contravention of this Act, the Regulations or rules of the Commission;
 - (c) a financial crime has been, is being or is likely to be committed; or
 - (d) serious irregularities have occurred,
- that auditor shall report immediately in writing the matter to the Commission.
- (4) A report made under subsection (3) does not constitute a breach of the duties of the auditor.

PART THREE—UNIT TRUST AND MUTUAL FUND

Unit Trust

Section 59—Prohibition to operate unit trust without licence

- (1) A person shall not unless that person is licensed by the Commission—
- (a) establish or operate a unit trust;
 - (b) issue an invitation to the public to acquire units in a unit trust; or
 - (c) maintain or pose as carrying on the business of dealing in units of a unit trust.
- (2) A licence shall not be granted to a person to operate a unit trust unless that person is a company incorporated under the Companies Act, 1963 (Act 179).
- (3) A person who contravenes subsection (1) is liable to pay to the Commission an administrative penalty of four thousand five hundred penalty units.

Section 60—Manager and trustee

- (1) A company seeking to establish a unit trust shall be the manager of the unit trust.
- (2) The manager shall appoint a trustee for the unit trust but the manager and the trustee shall be independent of each other.

Section 61—Trust deed

- (1) A unit trust is constituted by a document made under seal between the manager of the unit trust and the trustee and the document is the trust deed.
- (2) The trust deed shall be in the prescribed form and contain the prescribed particulars.

Section 62—Application for licence to operate a unit trust

- (1) An application for a licence for a unit trust shall be made to the Commission in the form determined by the Commission.
- (2) The applying manager shall also submit to the Commission—
 - (a) the names and qualifications of the directors and other principal officers and that of the trustee;
 - (b) its certificate of incorporation;
 - (c) a copy of the trust deed; and
 - (d) the prescribed particulars.

Section 63—Licence to operate a unit trust

- (1) The Commission may license a unit trust if the Commission is satisfied that—
 - (a) the manager and trustee are qualified to act in that capacity;
 - (b) the manager is a company incorporated in the Republic;
 - (c) the trustee is a bank, an insurance company or a financial institution or a wholly owned subsidiary of any of them approved by the Commission;
 - (d) the trustee has the minimum paid up capital required by the Commission;
 - (e) the business of the manager in relation to the unit trust is administered independently of the trustee; and
 - (f) the trust deed complies with this Act and the Regulations.
- (2) The Commission shall within ninety days of receipt of an application for a licence communicate its decision on the application in writing to the applicant.
- (3) A licence granted under subsection (1) is subject to the conditions specified in the licence or in relation to the licence.
- (4) The Commission shall not refuse to grant or renew a licence without first giving the applicant or the holder of the licence an opportunity of being heard.

Section 64—Prohibition of activities in unlicensed unit trust

(1) A person shall not undertake an activity in or related to a unit trust directly or indirectly unless—

- (a) the units are those of a unit trust licensed by the Commission; and
- (b) the particulars of the unit trust have been approved by the Commission.

(2) A person who contravenes subsection (1) is liable to pay to the Commission an administrative penalty of four thousand five hundred penalty units.

Section 65—Section Interest of investors in unit trust and pricing of unit

(1) The interest of a unit holder in a unit trust consists of units including fractions of a unit.

(2) The calculation of prices at which units of a unit trust may be bought or sold shall be in accordance with provisions prescribed by the Commission.

Section 66—Scheme particulars

(1) A letter, notice, circular, document or prospectus prepared by a manager of a unit trust for the purpose of offering its units to the public shall be approved by the trustee of the scheme and the Commission before publication.

(2) A document of the kind referred to in subsection (1), shall include information in relation to the matters prescribed or specified by the Commission.

Section 67—Redemption of units

(1) The manager of a licensed unit trust shall, if requested by a holder of units of the unit trust, buy from the holder any number of units the holder may specify at the price at which the manager buys the units.

(2) Where the licence of a unit trust is revoked, the manager shall buy the units under the scheme at the last bid price at which the manager bought units of the unit trust before the revocation.

Section 68—Duties and powers of a manager of a unit trust

(1) The manager of a unit trust shall manage the assets of the unit trust on a day to day basis and shall select the investments to be made on behalf of the trust in the best interest of the unit holders.

(2) The manager shall act in accordance with the trust deed and comply with its investment objectives and policy under the directions given by the trustee.

(3) The manager shall provide information on the management and administration of the unit trust that the trustee may request.

(4) The manager of a unit trust shall maintain the minimum capital requirement determined by the Commission.

(5) The manager shall ensure that its directors or other persons concerned with the management of its business have the qualifications and experience that are specified by the Commission.

Section 69—Duties and powers of trustee

(1) The trustee of a unit trust shall comply with this Act, the Regulations, the trust deed and the prescribed particulars of the unit trust.

(2) The trustee shall take into the custody of the trustee or under the control of the trustee, the property of the unit trust and hold the property in trust for the investors in accordance with this Act, the Regulations, the trust deed and any other applicable enactment.

(3) The trustee shall ensure that an asset attributable to a particular unit trust is separately identified.

(4) The trustee shall—

(a) ensure that the method used by the manager in the calculation of prices at which interest is issued and redeemed is within the limits determined by the Commission; and

(b) maintain the minimum paid up capital determined by the Commission.

(5) The trustee may execute documents to secure acquisition, disposals and loans made by the manager in accordance with this Act or the Regulations and the trust deed.

(6) Subject to subsection (7), this Act or the Regulations and the terms of the trust deed, the trustee shall carry out the instructions of the manager in respect of investments which constitute the property of the scheme.

(7) The trustee may give notice to the manager that the trustee is unwilling to accept the transfer of a property which contravenes this Act or the Regulations or the trust deed.

(8) The manager may, with the approval of the trustee, determine that each unit shall be subdivided into two or more units or that two or more units shall be consolidated.

Section 70—Prohibited transactions by manager

(1) A company which is a manager of a unit trust or is a subsidiary or holding company of the manager shall not—

(a) borrow money on behalf of the unit trust for the purpose of acquiring securities or other property for the unit trust;

(b) lend money that is subject to the unit trust to a person to enable that person to purchase units of the unit trust;

(c) mortgage, charge or impose any other encumbrance on any securities or other property subject to the unit trust; or

(d) engage in a transaction which in the opinion of the Commission is not in the interest of the holders of the units of the unit trust.

(2) Paragraphs (a) and (c) do not apply to borrowings made on behalf of the trust solely for the purpose of meeting obligations to redeem units from the holders when requested.

(3) The borrowings under subsection (2) are subject to the conditions and restrictions determined by the Commission.

(4) A company that contravenes subsection (1) and every officer of the company who acted in breach of this section, is liable to pay to the Commission—

(a) in the case of the company, an administrative penalty of one thousand penalty units; and

(b) in the case of an officer, an administrative penalty of five hundred penalty units.

Mutual Fund

Section 71—Prohibition of operation of mutual fund without licence

(1) A person shall not unless the mutual fund is licensed by the Commission—

(a) establish or operate a mutual fund;

(b) issue an invitation to the public to acquire shares in a mutual fund; or

(c) maintain or pose as carrying on the business of dealing in a mutual fund.

(2) A person who contravenes subsection (1) is liable to pay to the Commission an administrative penalty of four thousand five hundred penalty units.

Section 72—Appointment of a manager and custodian

(1) The directors of a company applying to operate as a mutual fund shall appoint for the mutual fund—

(a) a company incorporated in the Republic, approved by the Commission and independent of the mutual fund company as manager; and

(b) a custodian which is independent of the mutual fund company and is a bank, an insurance company or any other financial institution approved by the Commission or a wholly owned subsidiary of any of them approved by the Commission.

(2) The custodian shall have and maintain the minimum capital requirement determined by the Commission.

Section 73—Application for a mutual fund licence

(1) The Commission may on an application made to the Commission by—

(a) a public company incorporated under the Companies Act, 1963 (Act 179); or

(b) an external company with a place of business in the Republic within the meaning of Chapter V of the Companies Act, 1963 (Act 179) license the company as a mutual fund company.

(2) The company referred to in subsection (1) must have been incorporated solely to hold and manage securities or other financial assets.

(3) The application shall be in the prescribed form and contain the particulars specified by or under this Act and as directed by the Commission.

(4) The Commission shall within ninety days of receipt of the application communicate its decision on the application in writing to the applicant.

Section 74—Licence for operation of mutual fund

(1) The Commission shall not grant a licence to a company to operate as a mutual fund company unless the Commission is satisfied that—

(a) if an invitation is made to the public to subscribe for its shares, the price at which the shares will be offered will be based on the net value of the company's assets at the time of the offer without an addition except for a reasonable service charge;

(b) the company will repurchase the shares from the holder at a price based on the net value of its assets at the time of the repurchase without a deduction other than a reasonable service charge but where the shares of the mutual fund company are to be listed on an approved stock exchange, the Commission may waive or modify the requirements of this paragraph;

(c) a manager and custodian for the scheme have been appointed by the directors;

(d) the manager is a company incorporated in the Republic and is separate from and independent of the custodian; and

(e) the custodian being a bank or an insurance company or a wholly owned subsidiary of either of them has and maintains the required minimum capital.

(2) The licence may be subject to other conditions that may specify.

(3) The Commission shall not refuse to grant or renew a licence without first giving the applicant or the holder of the licence an opportunity of being heard.

Section 75—Interest of an investor in a mutual fund

The interest of an investor in a mutual fund consists of shares in the company.

Section 76—Exemption from specific provisions of the Companies Act

The following provisions of the Companies Act, 1963 (Act 179) shall not affect the mutual fund company unless otherwise specified in writing by the Registrar of Companies acting in consultation with the Commission—

(a) section 59 on acquisition by a company of its own shares;

(b) section 60 on redemption of redeemable preference shares;

(c) section 61 on purchase by company of its own shares;

(d) section 62 on limit on number of shares acquired;

(e) section 63 on opening of share deals account;

(f) section 66 on stated capital;

- (g) section 67 on reduction of stated capital;
- (h) section 275 to 279 relating to invitation to the public and prospectus;
- (i) section 281 to 284 relating to waiting periods after publication of prospectus; withdrawal of application for shares; invitations in respect of securities to be dealt in on a stock exchange and minimum subscription; and
- (j) section 314 on control of public invitations relating to external companies.

Section 77—Regulations of a mutual fund

A mutual fund shall make regulations which shall be in the form and contain the matters that are prescribed by Regulations or as directed by the Commission.

Section 78—Directions by directors of a mutual fund

- (1) Subject to the Companies Act, 1963 (Act 179), the directors of a mutual fund shall determine the investment and general policies of the company and shall give directions to the manager.
- (2) A director shall not give a direction which is likely to make the manager act in contravention of this Act or of the Regulations and the directors shall act in accordance with the terms of the Regulations or the constitution of the mutual fund and any management agreement.
- (3) A director who contravenes subsection (2) is liable to pay to the Commission an administrative penalty of five hundred penalty units.

Section 79—Custodian of mutual fund and its duties

- (1) The custodian appointed under section 72 shall take into its custody or put under its control the property of the mutual fund which shall be held in accordance with this Act and any relevant agreement not inconsistent with this Act.
- (2) The custodian of a mutual fund shall have the minimum capital requirement determined by the Commission.
- (3) The custodian may give notice to the manager that it is not prepared to accept the transfer of assets in contravention of this Act and may require the manager to give security for the transfer of the assets.
- (4) Subject to subsection (3), the terms of its contract of appointment and this Act, the custodian shall carry out the instructions of the manager as regards investments which comprise the assets of the company.

Section 80—Duties of directors of a mutual fund

The directors of a mutual fund shall take reasonable care—

- (a) to ensure that the property of the mutual fund is managed by the manager in accordance with this Act, the Regulations and the constitution or regulations of that mutual fund;
- (b) that the manager performs functions and discharges duties under this Act and the Regulations; and

(c) that the methods used by the manager to calculate prices at which shares are issued and redeemed are legal; and shall carry out periodic checks to verify whether the manager has determined prices within those limits.

Section 81—Duties of a manager of a mutual fund company

- (1) A manager of a mutual fund shall manage that mutual fund on a day to day basis, select investments to be owned by the company and carry out any other functions assigned to the manager under contract from the mutual fund.
- (2) The manager is subject to the directions of the directors of the mutual fund and shall perform the normal functions performed by the managing director of a company.
- (3) Where the directions given to the manager by the directors of the mutual fund contravene this Act or any other enactment, the manager shall refer the matter to the Commission for guidance.
- (4) The manager of a mutual fund shall maintain the required minimum capital and have the amount and type of financial and material resources determined by the Commission.
- (5) The manager shall not allow the property of the company to be used or invested contrary to the investment restrictions under this Act or the Regulations.
- (6) The manager shall ensure that the directors or other persons concerned with the management of the business have the necessary qualifications and experience required by the Commission.
- (7) The manager shall act in accordance with investment policies laid down by the directors under this Act.

Spread of Investment and General Provisions on Unit Trust and Mutual Fund

Section 82— Spread of investments and restrictions

- (1) The value of a scheme's holding of securities issued by a single issuer shall not exceed twenty per cent at book value or twenty five per cent at market value.
- (2) A scheme shall not hold more than ten per cent of a class of securities issued by a single issuer.
- (3) The value of a scheme's holding of securities not listed or quoted on a stock exchange shall not exceed fifteen per cent of its total net asset value.
- (4) Up to thirty per cent of a scheme's total net assets value may be invested in government securities of the same issue.
- (5) A scheme shall not enter into a future financial contract or hold a physical commodity.
- (6) The value of a scheme's holding of units or shares in other collective investment schemes shall not in aggregate exceed ten per cent of its total net value.
- (7) A scheme shall not invest more than ten per cent of its net asset value in any type of real estate including buildings or interests in real estate except in the shares of real estate companies.

(8) Subsection (7) does not apply to a scheme set up as a real estate investment fund.

(9) The provisions on the level and spread of investments of a unit trust and a mutual fund and the prohibited investment of a unit trust and a mutual fund specified in this section may be waived or modified by the Commission in appropriate circumstances.

Section 83—Prohibition of increase in charges, fees and other costs

Except with the approval of the trustee of a unit trust or directors of a mutual fund and with the consent of the Commission, an increase in the total of initial charges, the manager's annual fee or any other cost and charges borne by the investors or by a scheme shall not be made.

Section 84—Unit Trust and mutual fund company annual fee for licence

There shall be paid in respect of a licence issued under sections 62 and 73 the application fee and annual licence fee determined by the Commission.

Section 85—Inconsistency with this Act and the Regulations

Where a provision in a trust deed establishing a unit trust or a provision in the regulations or constitution of a mutual fund is inconsistent with a provision of this Act or the Regulations, that provision is void to the extent of the inconsistency.

Section 86—Changes in unit trust and mutual fund

(1) A proposal for change in scheme particulars, regulations and any other documents used to operate a unit trust or mutual fund is subject to approval by a special resolution of holders of interests in the unit trust or mutual fund.

(2) The manager of a unit trust or mutual fund shall submit the proposal to the Commission for approval and the Commission shall acknowledge receipt in writing within seven days of receipt.

(3) Where the Commission does not make a decision on the proposal approved by holders of interest in the unit trust or mutual fund within sixty days after its submission, the manager may assume that it has been approved.

Section 87—Change and retirement of trustee or custodian

(1) The manager of a unit trust or the directors of a mutual fund shall give written notice to the Commission of a proposal to replace the trustee or custodian of a scheme and seek the approval of the Commission and the Commission shall acknowledge in writing the receipt of the proposal within seven days of receipt.

(2) A proposal for a change of a trustee or custodian is subject to approval by a special resolution of holders of interest in the scheme.

(3) Where the Commission does not indicate its decision on the proposal within a period of sixty days after the submission, it may be assumed that the proposal has been approved.

(4) A trustee or a custodian shall be replaced by a person who satisfies the requirements of this Act.

(5) A trustee or a custodian shall retire upon giving notice of not less than ninety days.

Section 88—Change of manager of unit trusts and mutual funds

(1) A trustee of a unit trust or directors of a mutual fund, shall give written notice to the Commission of any proposal to replace a manager of a scheme and seek the approval of the Commission and the Commission shall acknowledge receipt in writing within seven days of receipt.

(2) Where the Commission does not indicate its decision on the proposal within a period of sixty days after the submission, it may be assumed that there has been approval.

(3) The manager shall be replaced by a person who satisfies the requirements of this Act.

(4) The manager shall cease to hold office where—

(a) the manager goes into liquidation, except a voluntary liquidation to reconstruct or amalgamate on terms previously approved in writing by the trustee or directors;

(b) a receiver is appointed in respect of the unit trust or mutual fund;

(c) the unit holders or shareholders decide to remove the manager in terms of this Act; or

(d) the trustee of a unit trust or the directors of a mutual fund state in writing giving reasons that a change of manager is desirable in the interest of the investors and the Commission approves.

(5) Where the name of the scheme makes reference to the name of the former manager, the former manager may require the new manager to propose a change in the name of the scheme.

(6) Where the manager ceases to act as a manager, the trustee of a unit trust or the directors of the mutual fund shall appoint a person eligible under this Act to be the manager of the scheme subject to that person entering into an agreement with the trustee of the unit trust or the directors of the mutual fund to secure the due performance of its functions as manager.

Section 89—Retirement of manager

(1) The manager may retire in favour of another eligible person on the written approval of the trustee of a unit trust or the directors of the mutual fund where—

(a) in the case of a unit trust, the appointment is made under the seal of the retiring manager;

(b) the rights and duties of the retiring manager have been assigned to the new manager; and

(c) any other act required to be done for the assumption of duty as manager has been done.

(2) The retiring manager shall be absolved from an obligation on retirement but this is without prejudice to the rights of a person for an act or omission of the retiring manager before retirement.

(3) On assuming office as the new manager, the manager shall enjoy the rights and exercise the powers as manager and be subject to the duties and obligations of a manager.

Section 90—Liability of manager, director, trustee and custodian

The manager of a unit trust, the trustee of a unit trust or the director, the manager or custodian of a mutual fund is liable to an investor for any loss suffered by the investor by reason of failure to perform the functions of office under this Act or the Regulations.

Section 91—Prohibited transactions under mutual fund

(1) A manager or custodian of a mutual fund shall not—

(a) borrow money on behalf of the mutual fund for the purpose of acquiring securities or other property for the mutual fund;

(b) lend money that is subject to the mutual fund to a person to enable that person acquire an interest in the mutual fund or for any purpose;

(c) mortgage, charge or impose any other encumbrance on the securities or any other property subject to the mutual fund; or

(d) engage in a transaction which in the opinion of the Commission is not in the interest of the shareholders of the mutual fund.

(2) Subsection (1) (a) and (c) do not apply to borrowings made on behalf of the fund solely for the purpose of meeting obligations to redeem shares from the holders when requested.

(3) The borrowings are subject to the restrictions as prescribed by the Commission.

Section 92—Limitation on securities in which officers have interest

A scheme shall not invest in any securities of a class in a company or other body if an officer or collectively, officers of the manager own more than ten percent of the total nominal amount of the issued securities of that class.

Section 93—Limitation on nil-paid or partly paid securities

(1) The portfolio of a scheme shall not include any securities where a call is made for a sum unpaid on that security unless that call can be met in full out of cash by the scheme's portfolio.

(2) Subject to subsection (1), the portfolio of a scheme shall include a security where a call is to be made for a sum of money unpaid on that security if the issue has been allotted under the terms of a rights issue or an existing holding.

Section 94—Unlimited liability

A scheme shall not acquire an asset which involves the assumption of an unlimited liability.

Section 95—Register of investors

(1) The manager of a scheme shall keep at a prescribed place a register of persons who hold interest in the scheme containing the particulars prescribed by the Regulations.

(2) The Regulations shall provide for inspection of the registers of the licensed schemes.

Section 96—Rectification by court

The Court may on an application—

- (a) order the rectification of a register of investors if it is just to do so; or
- (b) order the manager to pay for a loss or damage if the Court is satisfied that a person has suffered loss or damage by an error or defect in the register of investors.

Section 97—Register of unit trust and mutual fund

- (1) The Commission shall keep a register of licensed unit trusts and mutual fund companies.
- (2) A person may inspect the register and on payment of a fee obtain a copy of or extract from the register.

Section 98—Appointment of temporary manager of a scheme

- (1) The Court may, on application, order the appointment of a person as a temporary manager of a scheme.
- (2) The application may be made by—
 - (a) the Commission;
 - (b) the manager;
 - (c) the directors of a mutual fund;
 - (d) the trustee or custodian; or
 - (e) an investor in the scheme.
- (3) The appointment shall not be for more than ninety days but the Court may, on application by the temporary scheme manager, extend the appointment.
- (4) A temporary scheme manager shall, before the end of the appointment, report to the Court recommending a course of action to be taken in relation to the scheme.
- (5) The Court may make the orders that are just, including orders to call an investors' meeting to consider a proposed resolution to nominate a replacement scheme manager or for the termination of the scheme.
- (6) A temporary scheme manager shall have the same powers and rights in respect of the property of the scheme as the manager of the scheme.

Section 99—Termination of scheme

- (1) A scheme is terminated when an event, date or state of affairs specified for the purpose in the constitution of the scheme occurs.
- (2) A provision in the constitution of a scheme, which provides or has the effect of providing that the scheme is terminated if the manager is removed as manager, is void.

Section 100—Termination by manager

(1) The manager of a scheme may, in writing and with the approval of the Commission, terminate the scheme on the grounds that the purpose of the scheme has been, or cannot be accomplished.

(2) A manager shall not terminate a scheme unless that manager has given notice as required under subsection (3) and a period of sixty days has passed.

(3) The notice shall include—

(a) an explanation of the proposal;

(b) a statement of the circumstances under which the purpose of the scheme has been, or cannot be accomplished; and

(c) a statement of the right of the investors to requisition a meeting of the investors.

Section 101—Termination by court

The Court may, on an application by the manager of a scheme or by—

(a) the Commission,

(b) an investor in the scheme;

(c) a director of the manager; or

(d) a temporary scheme manager,

make an order to terminate the scheme if it is just and equitable to do so or the scheme is insolvent.

Section 102—Winding up of a unit trust scheme

(1) The trustee shall after the termination of a scheme realise the assets and after the payment from that scheme of the liabilities and costs of the winding up, distribute the proceeds of the realisation to the manager and the investors on the production by the manager and investors of evidence as to the proportion of their entitlement or interest in the scheme.

(2) The trustee shall pay into court any unclaimed net proceeds or other cash held by the trustee after the expiration of twelve months after the day on which the net proceeds became payable.

(3) The trustee may deduct the reasonable expenses incurred by the trustee in making that payment into court from the unclaimed net proceeds.

(4) The trustee shall notify the Commission after the completion of the winding up.

Section 103—Revocation of licence of a scheme

(1) The Commission may, subject to this Act and on notification revoke the licence of a scheme where—

(a) in the opinion of the Commission the interests of the holders of the units or shares created or held under the scheme require that; or

(b) the Commission is satisfied that the scheme as operating no longer qualifies as provided under this Act.

(2) The Commission shall before revoking the licence notify the manager and trustee of the unit trust or the directors of the mutual fund of the intention to revoke the licence.

(3) The manager of the unit trust or the directors of the mutual fund may within thirty days of the notification make representations in writing in respect of the proposed revocation to the Commission.

(4) The Commission may revoke the licence of a scheme if—

(a) after the expiration of the period the scheme has not made representations; or

(b) it is not satisfied with representations made by the scheme.

(5) The Commission shall communicate its decision to revoke the licence of the scheme within thirty days after representations have been made or if none is made, within thirty days after the last day for making the representation.

Section 104—Suspension of licence of unit trusts and mutual funds

(1) This Part does not prevent the Commission from suspending the licence of any unit trust or mutual fund subject to the conditions that the Commission shall specify in writing.

(2) The Commission shall—

(a) before suspending a licence notify the unit trust or mutual fund of its intentions; and

(b) by the notice, invite the unit trust or mutual fund to make, within a period of not more than twenty-one days from the date of the service of the notice, the representations it may desire to make in respect of the suspension of the licence.

(3) The Commission may suspend the licence of the unit trust or mutual fund if—

(a) after the expiration of the period the unit trust or mutual fund has not made representations; or

(b) it is not satisfied with representations made by the unit trust or mutual fund.

(4) The Commission shall communicate its decision to suspend the licence of the unit trust or mutual fund within thirty days after the representations have been made or if none is made, within thirty days after the last day for making the representation.

Section 105—Winding up of a mutual fund company

A mutual fund shall be wound up in accordance with the provisions of the Companies Act, 1963 (Act 179) and any Regulations made under this Act.

Section 106—Cancellation of licence

The Commission shall cancel the licence of a scheme on the termination of the scheme in accordance with the law.

Section 107—Unauthorised schemes and use of words "mutual fund" or "unit trust"

- (1) A person shall not operate any form of collective investment scheme unless the person is licensed by the Commission.
- (2) A person other than a mutual fund or a unit trust approved by the Commission shall not describe itself, or use the words "mutual fund" or "unit trust" as part of its name.
- (3) A person who contravenes this section is liable to pay to the Commission an administrative penalty of four thousand five hundred penalty units.

Section 108—General penalty

A person who—

- (a) fails to comply with, observe and give effect to the directive of a securities exchange to the extent to which rules apply to the person, contrary to section 47;
- (b) being a self-regulatory organisation, fails to notify the Commission of the appointment of an officer, contrary to section 53;
- (c) being a self-regulatory organisation, fails to submit its annual report to the Commission within ninety days from the end of its financial year, contrary to section 58,

is liable to pay to the Commission an administrative penalty of five hundred penalty units.

PART FOUR—LICENCES OF MARKET OPERATORS

Market Operators' Licences

Section 109—Licences

- (1) A person shall not carry on business as a securities exchange, hedge fund, private equity fund, venture capital fund, nominee, credit rating agency, broker-dealer, primary dealer, investment adviser, fund manager, trustee, custodian, securities depository, clearing and settlement services, registrar, underwriter, issuing house or as any other operator required to hold a licence as the Minister by notice in the Gazette may prescribe, or pose as carrying on the business unless that person holds a valid licence issued under this Act.
- (2) A person shall not act as a representative for a person referred to in subsection (1) unless that person is the holder of a relevant representative's licence issued under this Act.
- (3) A person desirous of performing the functions of a market maker in the securities industry shall obtain a licence from the Commission and shall comply with the rules or guidelines issued by the Commission.

Section 110—Exemption from obtaining licence of a representative

The Commission may exempt representatives of a person indicated in section 109 who do not deal directly with clients on behalf of the person from holding a licence of a representative.

Section 111—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 shall be accompanied by the prescribed fee and, in the case of an application for renewal of a licence, shall be made at least three months before the expiry of the licence.

(2) The Commission may require an applicant to supply it with any further information that it considers necessary in relation to the application.

(3) The Commission shall not refuse to grant or renew a licence without first giving the applicant or the holder of the licence an opportunity of being heard.

(4) The fee paid for the processing of licensing of an application is not refundable.

Section 112—Grant or refusal of licence of a market operator

(1) Subject to subsection (3), where an applicant meets the requirements of section 111, the Commission shall grant that applicant a licence.

(2) A licence to a market operator other than an investment adviser shall only be granted to a body corporate, including an incorporated private partnership.

(3) A licence shall only be granted to a market operator if that market operator meets and continues to meet the minimum financial requirements determined by the Commission generally or specifically.

(4) A licence granted by the Commission is subject to conditions specified in the licence.

(5) Subject to section 111 (3) and the Regulations, where an application is made for the grant or renewal of a licence, the Commission shall refuse the application if in the case of an applicant who is an individual—

(a) the applicant has been adjudged bankrupt anywhere;

(b) the applicant has been convicted, either within the Republic or elsewhere, within the period of ten years immediately preceding the date on which the application is made, of an offence involving fraud or dishonesty punishable on conviction with imprisonment for a term of three months or more;

(c) the Commission is not satisfied as to the educational qualifications or experience of the applicant having regard to the nature of the duties of a holder of the licence;

(d) the Commission has reason to believe that the applicant is not of good reputation or character; or

(e) the Commission has reason to believe that the applicant will not perform the function of a holder of the relevant licence efficiently, honestly and fairly.

(6) Subject to section 111 (3) and the Regulations, where an application is made for the grant or renewal of a licence by a body corporate including an incorporated private partnership, the Commission shall refuse the application where—

- (a) the body corporate or the partnership is in the course of being wound up under the Companies Act, 1963 (Act 179) or the Incorporated Private Partnership Act, 1962 (Act 152);
- (b) the body corporate is one in respect of which a receiver, or a receiver and manager, has been appointed under the Companies Act, 1963 (Act 179);
- (c) the body corporate or partnership has, whether within or outside the country, entered into a compromise or scheme of arrangement with its creditors, which is still in operation;
- (d) the Commission is not satisfied as to the educational qualifications or experience of the officers of, or partners of the applicant who are to perform functions in connection with the licence of the market operator; or
- (e) the Commission has reason to believe that the applicant will not perform the functions of a market operator efficiently, honestly and fairly.

Section 113—Grant or renewal of licence to representatives of market operators

Subject to section 111 (3) and the Regulations, the Commission shall grant or renew a licence granted to the representative of a market operator if after consideration of the application it considers that the applicant will perform the functions efficiently, honestly and fairly.

Section 114—Banks and other financial institutions doing business in the capital market

A bank or other financial institution which intends to do business in the capital market other than the business of trustee, custodian, primary dealer, nominee, registrar, issuing house and underwriter, shall incorporate a subsidiary company under the Companies Act, 1963 (Act 179) and apply for the relevant licence.

Section 115—Changes by the Commission to licensing requirements

The Commission may, in consultation with the Minister by notice published in the Gazette, alter the capital requirements as well as any other pre-licensing requirements.

Section 116—False statements

A person who, in connection with an application for a licence or for the renewal of a licence—

- (a) wilfully and knowingly makes a statement which is false or misleading in a material particular; or
- (b) wilfully and knowingly omits to state a matter or thing without which the application is misleading in respect of a material particular,

commits an offence and is liable on summary conviction to a fine of not less than one hundred and fifty penalty units and not more than two hundred and fifty penalty units or to a term of imprisonment of not less than one year and not more than two years or to both.

Section 117—Enquiries into securities transactions

(1) In deciding whether a market operator or a representative of a market operator is required to hold a licence under this Act, the Commission may enquire into the transactions involving the

purchase or sale of securities entered into by that person, whether directly or indirectly, during a period of twelve months preceding the application for the licence or renewal of the licence to ascertain if that person has in a transaction or series of transactions used dishonest, unfair or unethical methods or trading practices, whether the method or trading practices constitute an offence under this Act or not.

(2) For the purpose of subsection (1), the Commission may, in the form and within the time it may specify by notice in writing, require a market operator or the representative of that market operator to submit detailed information of all or any transaction involving the purchase or sale of securities, whether the transactions were completed during the relevant period before or after the commencement of this Act.

(3) A person who, without reasonable excuse, 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 liable in addition to any other penalty that may be imposed under this Act, in the case of an application for renewal of a licence to have the licence revoked under section 122 and in the case of first application for a licence to have the application refused.

Section 118—Imposition of conditions or restrictions

(1) The Commission may grant or renew a licence subject to the conditions or restrictions as it considers fit and the Commission may, at any time by written notice to a licence holder, vary a condition or restriction in relation to the licence.

(2) Without limiting subsection (1), the Commission may in granting or renewing the licence of an investment adviser impose a condition or restriction as to the class of business that the investment adviser may carry on including a condition or restriction that the adviser—

(a) shall only carry on the class of business of advising others concerning securities; or

(b) shall only carry on the class of business of issuing or promulgating analyses in reports concerning securities.

(3) The Commission may by written notice to a licence holder suspend, cancel, restrict or impose terms and conditions on the right of the licence holder to—

(a) call at a residence; or

(b) telephone a residence in the country for the purpose of dealing in any securities.

(4) A person who contravenes or fails to comply with a condition of or restriction in the licence is liable to pay to the Commission an administrative penalty of five hundred penalty units.

(5) In this section, "residence" includes a building or part of a building where the occupant resides either permanently or temporarily.

Section 119—Period of licence

(1) Subject to subsection (2), a licence is valid for one year and is renewable on an annual basis.

(2) The Commission may specify the schedule of licence renewals that will permit for licences to be renewed on a calendar year basis.

Section 120—Notification of change of particulars

Where—

- (a) a market operator ceases to carry on the business to which a licence relates;
- (b) the holder of a representative's licence ceases to be a representative of the market operator in relation to whom the representative's licence was issued; or
- (c) a change occurs in any matter, particulars of which are required by section 121 to be entered in the register of licence holders in relation to the holder of a licence,

the market operator or the holder of the licence shall, not later than fourteen days after the occurrence of the event give to the Commission, in the prescribed form, particulars in writing of the event.

Section 121—Register of licence holders

(1) The Commission shall keep in the appropriate form a register of the holders of current licences, specifying—

(a) in relation to each holder of a licence—

- (i) the name of the holder;
- (ii) the names of the directors and principal officers of the holder;
- (iii) the address of the principal place of business at which the holder carries on the business; 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 the representative's licence of a market operator—

- (i) the name of the holder;
- (ii) the name of the market operator in relation to whom the licence was issued; and
- (iii) where the business of that market operator is carried on under a name or style other than the name of the market operator, the name or style under which that business is carried on.

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

Section 122—Revocation or suspension of licences

(1) A licence is revoked in the case of—

- (a) an individual, if the individual dies; or

- (b) a body corporate or incorporated private partnership, if it is wound up.
- (2) The Commission may revoke a licence—
 - (a) in the case of a licensed person who is an individual—
 - (i) if a levy of execution in respect of that individual has not been satisfied;
 - (ii) if the individual ceases to carry on business for which the licence was granted;
 - (iii) if the individual is adjudged bankrupt in any jurisdiction;
 - (iv) if in the case of a representative, the licence of the market operator, in relation to whom the licence was granted, is revoked;
 - (v) if the Commission has reason to believe that the licensed person has not performed the functions of that person efficiently, honestly or fairly; or that the person has furnished the Commission with false or untruthful information;
 - (vi) if the licensed person is convicted of an offence involving fraud or dishonesty punishable by a term of imprisonment of not less than four months;
 - (vii) if the licensed person contravenes or fails to comply with a condition or restriction applicable in respect of the licence or any other provision of this Act; or
 - (viii) if the licensed person wilfully furnishes information or makes a statement that is false or misleading to the Commission; or
 - (b) in the case of a body corporate or an incorporated private partnership—
 - (i) if it is being or will be wound up;
 - (ii) if a levy of execution in respect of it has not been satisfied;
 - (iii) if a receiver or a receiver and manager have been appointed whether by a Court or creditors in respect of its property;
 - (iv) if it has entered into a composition or arrangement with its creditors;
 - (v) if it ceases to carry on the business for which it was licensed;
 - (vi) if the Commission has reason to believe that the licensed body or any of its directors or employees, has not performed its functions or the functions of the directors efficiently, honestly or fairly; or
 - (vii) if the licensed body contravenes or fails to comply with a 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, instead of revoking a licence, suspend the licence for a specific period and may remove the suspension.
- (4) The Commission shall not revoke or suspend a licence under subsection (2) or (3) without first giving the licence holder an opportunity of being heard.

(5) A person whose licence is revoked under this section shall, for the purpose of this Act be deemed not to be licensed from the date that the Commission revokes the licence.

(6) A revocation or suspension of a licence of a person shall not operate so as to—

(a) avoid or affect an agreement, transaction or arrangement relating to the trading in securities entered into by that person, whether the agreement, transaction or arrangement was entered into before or after the revocation or suspension of the licence; or

(b) affect a right, obligation or liability arising under an agreement, transaction or arrangement.

(7) The Commission may revoke the licence of a person who fails to commence business within six months of being granted a licence.

Section 123—Power to reprimand or disqualify

(1) The Commission may with respect to a present or past licensee or a person who is a present or past officer, partner, shareholder, or controller of a licensee—

(a) issue a private warning;

(b) issue a public censure;

(c) disqualify a licensee from holding a licence or a licence of a specified kind for a specified period; or

(d) in the case of an officer of a licensee, disqualify the officer from a specified office or position as a licensee for a specified period.

(2) where the Commission is satisfied that a person has obtained moneys without a licence or contrary to the terms of the licence of the person, the Commission shall, in writing, instruct that person to—

(a) repay all the moneys obtained and the profits accruing to that person;

(b) return assets acquired as a result of the illegally obtained moneys or deposits; or

(c) pay any interest or other amounts which may be owed by that person in respect of those moneys, to the respective persons from whom the moneys were obtained.

Section 124—Operation pending renewal of licence

Where a person who holds a licence issued under this Act has before the expiration of the licence applied for a renewal of the licence and the licence has not been issued, that person shall not, until the licence is renewed or the application for the licence is refused or withdrawn, be held liable for not holding a licence.

PART FIVE—REGISTER OF INTERESTS IN SECURITIES AND CONDUCT OF SECURITIES BUSINESS

Register of Interests in Securities

Section 125—Application of this Part

- (1) This Part applies to a person who is—
 - (a) a broker-dealer;
 - (b) a representative of a broker dealer;
 - (c) a fund manager;
 - (d) a representative of a fund manager;
 - (e) an investment adviser;
 - (f) a representative of an investment adviser, or
 - (g) an independent financial analyst.

(2) In this Part—

- (a) “independent financial analyst” means a person who contributes advice concerning securities or prepares analysis or reports concerning securities for publication in a bona fide newspaper or periodical or any other media communication channel determined by the Commission; and
- (b) a reference to securities is a reference to securities of a body which is a public company within the meaning of the Companies Act, 1963 (Act 179) or securities which are quoted on a securities exchange in the Republic.

Section 126—Register of securities

- (1) A person to whom this Part applies shall maintain a register in the prescribed form of the securities in which that person has an interest.
- (2) Particulars of the securities in which a person to whom this Part applies has an interest and particulars of the interest in them shall be entered in the register within seven days of the acquisition of the interest.

Section 127—Notice of particulars to Commission

- (1) A person to whom this Part applies shall notify the Commission in the prescribed form of the particulars that are prescribed including the place at which that person will keep the register.
- (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 the 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 fourteen days after becoming such a person.
- (3) The notice shall be given despite the fact 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) Where a person ceases to be a person to whom this Part applies that person shall, within fourteen days after ceasing to be such a person, give notice of the fact to the Commission.

(5) A person who fails or neglects to give notice as required by this section is liable to pay to the Commission an administrative penalty of one hundred penalty units.

Section 128—Defence to prosecution

(1) It is a defence to a prosecution for failing to comply with section 126 or 127 if the defendant proves that the failure was due to ignorance of a fact or an occurrence the existence of which constitutes the offence and that the defendant—

- (a) was not aware of the date of the summons; or
- (b) became aware not less than fourteen days before the date of the summons and complied with the relevant section within fourteen days after becoming aware.

(2) For the purposes of subsection (1), a person shall, in the absence of proof to the contrary, be conclusively presumed to have been aware of a fact or occurrence at the same time when an employee or agent of that person who has duties or acts in relation to the interest of the employer or principal in the securities concerned, became aware.

Section 129—Production of register

(1) The Commission or a person authorised by the Commission may require a person to whom this Part applies to produce for inspection the register required to be kept under section 126 and the Commission or a person authorised may make extracts from the register.

(2) A person who fails to produce a register for inspection or fails to allow a person authorised under subsection (1) to make a copy or extracts from the register is liable to pay to the Commission an administrative penalty of—

- (a) ten penalty units for each day that the default subsists; and
- (b) twenty penalty units for each day that the default subsists, where the default exceeds thirty days.

Section 130—Particulars of independent financial analysts

(1) The Commission or a person authorised by the Commission may by notice in writing require an issuer of financial analysis or report concerning securities to supply—

- (a) the name and address of the independent financial analyst who has contributed an advice or prepared an analysis or report that has been issued; or
- (b) the names and addresses of all the independent financial analysts who have contributed advice or prepared an analysis or report within a period specified in the notice.

(2) An issuer of financial analysis or report concerning securities who, without reasonable excuse, fails to comply with a notice under subsection (1) is liable to pay to the Commission an administrative penalty of five hundred penalty units.

Section 131—Extract of register

The Commission may supply a copy of the extract of a register obtained under section 129, to a person who in the opinion of the Commission, would, in the public interest, be informed of the dealing in securities disclosed in the register.

Conduct of Securities Business

Section 132—Prohibited representations

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

(2) A statement that a person is the holder of a licence under this Act is not a contravention of subsection (1).

Section 133—Issue of contract notes

(1) A broker-dealer shall, in respect of a transaction of sale or purchase of securities, issue a contract note that complies with subsection (2)—

(a) to the person for whom the broker-dealer entered into the transaction where the transaction took place in the ordinary course of business at a stock exchange and the broker-dealer entered into the transaction otherwise than as a principal;

(b) to the person for whom the broker-dealer entered into the transaction and the person with whom the broker-dealer entered into the transaction where the transaction does not take place in the ordinary course of business at a stock exchange and the broker-dealer entered into the transaction otherwise than as a principal;

(c) to the person with whom the broker-dealer entered into the transaction where the transaction did not take place in the ordinary course of business at a stock exchange and the broker-dealer entered into the transaction as a principal.

(2) A contract note given by a broker-dealer under subsection (1) shall include—

(a) the name or style under which the broker-dealer carries on business as a broker-dealer and the address of the principal place at which the business is carried on;

(b) where the broker-dealer is dealing as a principal with a person who is not the holder of a licence of a broker-dealer, a statement that the broker-dealer is so acting;

(c) the name and address of the person to whom the broker-dealer gives the contract note;

(d) the day on which the transaction took place and if the transaction did not take place in the ordinary course of business at a stock exchange, a statement to that effect;

(e) the number, or amount and description, of the securities that are the subject of the contract;

(f) the price per unit of the securities;

(g) the amount of the consideration;

(h) the amounts of all stamp duties, or other duties, taxes and charges payable in connection with the contract; and

(i) if an amount is to be added or deducted from the settlement amount in respect of the right to a benefit purchased or sold together with the securities, the amount and the nature of the benefit.

(3) A broker-dealer shall not include in a contract note given under subsection (1), as the name of the person with or for whom the transaction was entered into, a name that the broker-dealer knows, or could reasonably be expected to know, is not the name by which that person is ordinarily known.

(4) A reference in this section to a broker-dealer dealing, or entering into transaction, as a principal includes a reference to a person—

(a) dealing or entering into a transaction on behalf of a person associated with that broker-dealer;

(b) dealing in securities on behalf of a body corporate in which the broker-dealer has a controlling interest; or

(c) where the broker-dealer carries on business as a broker-dealer on behalf of a body corporate in which the interest of the broker-dealer and the interest of the directors together constitute a controlling interest.

(5) For the purposes of this section—

(a) a broker-dealer who is a member of a stock exchange shall not be taken to have entered into a transaction as a principal by reason only that the transaction was entered into with another broker-dealer who is a member of a stock exchange; and

(b) a transaction takes place in the ordinary course of business at a stock exchange if it takes place in prescribed circumstances or is a transaction that is a prescribed transaction for the purposes of this section.

(6) Despite section 212, a person is not associated with any other person for the purposes of this section by reason only of that person being a director of a body corporate of which that other person is also a director, whether or not the body corporate carries on a business of dealing in securities.

Section 134—Disclosure of interests in securities

(1) Where a person who is—

(a) a broker-dealer, fund manager, investment adviser; or

(b) a representative of a broker-dealer, fund manager or an investment adviser,

sends circulars or other similar written communications in which that person makes a recommendation, whether expressly or by implication, with respect to securities or a class of securities, that person shall ensure that, there is included in each circular or communication, in

type, not less legible than that used in the remainder of the circular or communication, a concise statement of the nature of

(c) any interest in the securities or class of securities; or

(d) any interest in the acquisition or disposal of those securities or those securities included in that class,

that that broker-dealer, fund manager, investment adviser or their representatives or a person associated with that broker-dealer, fund manager, investment adviser or their representatives has, at the date on which the circular or Communication is sent.

(2) It is a defence to a prosecution for the contravention of subsection (1) in relation to a failure to include in a circular or other communication a statement of the nature of an interest as provided in subsection (1), for the defendant to establish that, at the time when the circular or communication was sent, the defendant was not aware and could not necessarily be expected to have been aware—

(a) that the defendant has an 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 the defendant had an interest in, or an interest in the acquisition or disposal of those securities or securities included in that class.

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

(a) an interest of a person in the disposal of securities includes a financial benefit or advantage that will, or is likely to, accrue directly or indirectly to that person on or arising out of the disposal of the securities;

(b) without limiting the generality of paragraph (a), 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) despite section 212 a person is not associated with another person by reason only of that person being 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 they are acting jointly or together 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.

(4) Where a person has subscribed for or purchased securities for sale and offers any of those securities for sale, that person shall not make a recommendation, whether orally or in writing and whether expressly or by implication, with respect to the securities offered for sale unless that person has informed each person to whom the recommendation is made of the acquisition of the securities for that purpose that that person 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 will or may be required to subscribe for or purchase, any of those securities under an underwriting or sub-underwriting "agreement", that person shall not, during the period of ninety days after the close of the offer—

(i) make an offer to sell those securities, otherwise than in the ordinary course of trading on a stock exchange; or

(ii) 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 which that person has acquired, or will or may be required to acquire, under an underwriting or sub-underwriting agreement because some or all of the securities have not been subscribed for or purchased.

(6) A person who is a broker-dealer, fund manager, investment adviser, representative of a broker-dealer, representative of a fund manager, or a representative of an investment adviser 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 communication or the offer or recommendation is signed by—

(a) that person if an individual;

(b) a director, executive officer or secretary of the body corporate if that person is a company; or

(c) a partner if that person is an incorporated private partnership.

(7) When a person who is a broker-dealer, fund manager, investment adviser, representative of a broker-dealer, representative of a fund manager, or representative of an investment adviser sends to any other person, a circular, communication, a written offer or recommendation to which subsection (1), (4) or (5) applies, that person shall preserve a copy of the circular, communication, the written offer or recommendation, duly signed as specified in subsection (6) for seven years from the date of signing.

(8) A reference in this section to an offer of securities shall be construed to include 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.

(9) For the purposes of this section, a circular, communication, a written offer or recommendation sent to a person is sent, if it is signed by a director, executive officer or secretary of a body corporate by the body corporate and if it is signed by a partner in an incorporated private partnership it shall be deemed to have been sent by the partnership.

(10) The Commission may in the public interest, exempt a security or any class of securities from the application of this section.

(11) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of not less than two hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than two years and not more than three years or to both.

Section 135—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 unless that adviser has 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, given consideration to, and conducted investigation on the subject matter of the recommendation as is reasonable in all the circumstances and having regard to the information possessed by the adviser concerning the investment objectives, financial situation and particular needs of that person; and

(b) the recommendation is based on that consideration and investigation.

(3) An adviser who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of not less than two hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than two years and not more than three years or to both.

(4) Where—

(a) an adviser contravenes subsection (1), by making a recommendation to a person;

(b) the person relying on the recommendation does a particular act or refrains from doing a particular act;

(c) it is reasonable, having regard to the recommendation and any other relevant circumstances for the person relying on the recommendation to have done that act or to have refrained from doing that act; and

(d) the person suffers loss or damage as a result of doing that act or refraining from doing that act,

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

(5) In this section—

(a) a reference to an adviser is a reference to a person who is a broker-dealer, fund manager, investment adviser, representative of a broker-dealer, representative of a fund manager or representative of an investment adviser; and

(b) a reference to the making of a recommendation may be express or by implication.

Section 136—Dealing as principal

(1) Subject to subsection (4), a broker-dealer shall not deal in any securities as principal with a person, who is not a broker-dealer, unless that broker-dealer first informs the person with whom the broker-dealer is dealing that the broker-dealer is acting in the transaction as a principal and not as an agent.

- (2) A reference in this section to a broker-dealer dealing or entering into a transaction, as a principal includes a reference to a person—
- (a) dealing or entering into a transaction on behalf of a person associated with the broker-dealer;
 - (b) dealing in securities on behalf of a body corporate in which the broker-dealer has a controlling interest; or
 - (c) where the broker-dealer carries on business as a broker-dealer on behalf of a body corporate in which the interest of the broker-dealer and the interests of the directors and the broker-dealer together constitute a controlling interest.
- (3) A broker-dealer who, as a principal, enters into a transaction of sale or purchase of securities with a person who is not a broker-dealer shall state in the contract note that that broker-dealer is acting in the transaction as a principal and not as an agent.
- (4) Subsection (1) does not apply in relation to a transaction entered into by a broker-dealer who is a member 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.
- (5) Where a broker-dealer fails to comply with subsection (1) or (3) in respect of a contract for the sale of securities by the broker-dealer, the purchaser of the securities may, if the security has not been disposed of, rescind the contract by a notice of rescission in writing given to the broker-dealer not later than thirty days after the receipt of the contract note.
- (6) Where a broker-dealer fails to comply with subsection (1) or (3) in respect of a contract for the purchase of securities by the dealer, the vendor of the securities may, in a like manner, rescind the contract.
- (7) Subsections (5) and (6) do not affect a right that a person has apart from that provided under the subsection.
- (8) A person who contravenes or fails to comply with any of the provisions of this section commits an offence and is liable on summary conviction to a fine of not less than one hundred penalty units and not more than one hundred and fifty penalty units or to a term of imprisonment of not less than six months and not more than one year or to both.

Section 137—Provision of unsecured credit

- (1) A broker-dealer, a fund manager or an investment adviser shall not give unsecured credit to a person where—
- (a) the unsecured credit is given for the purpose of enabling or assisting the person to whom the unsecured credit is given to purchase or subscribe for securities; or
 - (b) the person giving the unsecured credit knows or has reason to believe that the unsecured credit will be used to purchase or subscribe for securities.
- (2) Subsection (1) does not apply to margin trading.

(3) A person who contravenes or fails to comply with a provision of subsection (1) is liable to pay to the Commission an administrative penalty of one thousand penalty units.

Section 138—Prevention of money laundering, terrorism financing and other illegal activities

A broker-dealer, a fund manager and any other licensed person shall ensure that it operates in a manner that will ensure that it operates in a manner that will ensure compliance with the provisions of the Anti- Money Laundering Act, 2008 (Act 749), the Anti-Terrorism Act, 2008 (Act 762) and the Regulations made under these enactments.

Section 139—Broker-dealer to give priority to orders of clients

(1) A broker-dealer shall not, except as permitted by subsection (3), enter, as a principal or on behalf of a person associated with that broker-dealer, into a transaction of purchase or sale of securities that are permitted to be traded on a securities exchange if a client of the broker-dealer, who is not associated with the broker-dealer, has instructed the broker-dealer to purchase or sell, respectively, securities of the same class and the broker-dealer has not complied with the instruction.

(2) A broker-dealer who contravenes this section commits an offence and is liable on summary conviction to a fine of not less than one hundred penalty units and not more than one hundred and fifty penalty units or to a term of imprisonment of not less than six months and not more than one year or to both.

(3) Subsection (1) does not apply in relation to the entering into of a transaction by a broker-dealer as a principal or on behalf of a person associated with the broker-dealer where—

(a) the instructions from the client of the broker-dealer required the purchase or sale of securities on behalf of the client to be effected only on specified conditions at which the securities were to be purchased or sold and the broker-dealer has been unable to purchase or sell the securities because of those conditions; or

(b) the transaction is entered into in the prescribed circumstances.

Section 140—Handling of money of client by broker-dealers and other licensees

(1) Where a client deposits money with a broker-dealer or any other licensee, that broker-dealer or other licensee shall—

(a) deposit the money in a trust account in a bank, not later than the next day on which the bank is open for business after the receipt of the money and the account shall not contain any money other than money deposited with the licensee;

(b) furnish the client with a document, in the prescribed form, setting out the terms and conditions on which the deposit is made and accepted, including the purpose for which and the manner in which the money is to be used by the broker- dealer or licensee;

(c) retain the money in the bank account until the client gives the dealer a written statement acknowledging that the client has received the document referred to in paragraph (b); and

(d) use the money only—

(i) for the purpose and in the manner set out in the document referred to in paragraph (b); or
(ii) for a purpose or in a manner agreed to by the client in writing after the document referred to in paragraph (b) was furnished to the client.

(2) A person who contravenes subsection (1) is liable to pay to the Commission an administrative penalty of one thousand penalty units and shall in addition, refund the money together with interest at the prevailing commercial bank rate to the client.

(3) Where a broker-dealer or any other licensee becomes bankrupt, falls into liquidation or incurs a debt, a trust account operated by the broker-dealer or the licensee shall not be—

(a) subject to the bankruptcy or liquidation proceedings; or

(b) used as a payment for the debt.

Section 141—Right to vest securities through sale

(1) Subject to this section and any guidelines made by the Commission, a person shall not sell securities to a purchaser unless, at the time when the securities are sold that person—

(a) has or, where selling as an agent, the principal has; or

(b) believes on reasonable grounds as having or when selling as an agent, that the principal has, an existing exercisable and unconditional right to vest the securities in the purchaser.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of not less than one hundred penalty units and not more than one hundred and fifty penalty units or to a term of imprisonment of not less than six months and not more than one year or to both.

(3) For the purposes of this section, a person sells securities where that person—

(a) implies the sale of securities;

(b) offers to sell securities;

(c) poses as entitled to sell securities; or

(d) instructs a broker-dealer to sell securities.

Section 142— Securities lending and borrowing

(1) The Commission may issue guidelines in respect of securities lending or borrowing for the purpose of trading on an exchange or approved trading system.

(2) Subject to this section and the guidelines issued by the Commission, a person shall not engage in securities lending or borrowing for the purpose of trading on an exchange or approved trading system unless that person enters into an agreement with an intermediary approved by the exchange or trading system to perform the function on behalf of that intermediary.

(3) An agreement between a lender and an intermediary and a borrower and an intermediary shall provide for the following conditions—

- (a) the period of depositing or lending of securities;
- (b) charges or fees for depositing or lending and borrowing;
- (c) collateral securities for borrowing;
- (d) provisions for the return including the premature return of the securities deposited or lent;
and
- (e) the provision for the return of all benefits.

(4) A person shall not deposit a security with an intermediary for the purpose of lending unless that person is the bona fide owner of the security or is duly authorised by the person in whose name the security is registered.

(5) A person who contravenes a guideline in respect of securities lending and borrowing is liable to payment of penalties prescribed in the guidelines issued by the Commission.

Section 143—Margin trading and financing

- (1) The Commission may issue guidelines in respect of margin trading and financing.
- (2) Subject to this section and the guidelines issued by the Commission, a person shall not engage in margin trading or financing unless that person meets the capital requirements prescribed by the exchange of which that person is a member, and complies with the prescribed rules and procedures.
- (3) The Commission may prescribe, at any time additional guidelines for margin trading and financing.
- (4) A person who contravenes a guideline in respect of margin trading and financing is liable to the payment of penalties prescribed in the guidelines issued by the Commission.

Section 144—Advertisements and protection of consumers of financial services

- (1) A person, other than a person licensed, authorised or approved under this Act, shall not publish or cause to be published an advertisement in connection with the conduct of an activity or provision of a service which requires a licence, approval, authorisation or registration under this Act.
- (2) A person licensed, authorised or approved under this Act, shall not publish or cause to be published an advertisement in connection with the conduct of an activity or provision of a service which requires a licence, approval, authorisation or registration under this Act in a manner which is unclear, false or misleading in any material particular.
- (3) Where the Commission is satisfied that a person has contravened a provision of this section, the Commission may direct that person to immediately cease or modify the advertisement.
- (4) For the purposes of the performance of its functions under this Act, the Commission may develop and promote programmes and initiatives, where necessary in collaboration with financial institutions or bodies of the financial services industry, to inform and educate consumers or potential consumers of financial products and financial services.

(5) A consumer of a financial product or of a financial service regulated by the Commission who is aggrieved by an act or omission of a licensee may make a complaint in writing to the Commission.

Section 145—Registration of securities

(1) A public company, closed-end collective investment scheme, statutory body, local government authority and any other organisation that issues securities to the public shall register its securities with the Commission on terms and conditions prescribed by the Commission.

(2) Subsection (1) does not apply to the Central Government.

(3) The Commission shall issue a certificate of registration in respect of securities registered by the Commission.

(4) Securities referred to under subsection (1) shall not be listed on a securities exchange or transferred, sold or offered for sale to the public on any secondary market without the prior registration of the securities with the Commission.

(5) The issuer shall inform the Commission within twenty-one days of the cancellation or redemption of securities registered with the Commission.

(6) Securities of maturity of up to one year are exempted from registration with the Commission.

Section 146—Professional service providers

The Commission may issue guidelines in respect of capital market services provided by the following professional service providers—

(a) legal practitioners;

(b) accountants;

(c) auditors;

(d) engineers;

(e) valuers; and

(f) any other professional service provider that may be determined by the Commission.

Trading in Securities and Related Offences

Section 147—False trading and market rigging transactions

(1) A person shall not create or cause to be created, or do anything that is calculated to create a false or misleading appearance of active trading in securities on a stock exchange in the country or a false or misleading appearance with respect to the market for, or the price of the securities.

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

(3) Without limiting subsection (1), a person who—

(a) effects, takes part in, is concerned in or carries out, directly or indirectly, a transaction of sale or purchase of securities being a transaction that does not involve a change in the beneficial ownership of the securities; or

(b) makes or causes to be made an offer to sell or purchase securities at a specified price where that person has made or caused to be made or purports to make, or knows that a person associated with that person has made or caused to be made or purports to make, an offer to sell or purchase the same number, or substantially the same number of securities at a price that is substantially the same as the specified price,

has for the purposes of this section to section 153, created a false or misleading appearance of active trading in securities on a stock exchange.

(4) When prosecuting a person for an act referred to in subsection (3), it is a defence if the defendant establishes that the purpose for which the act was done was not, or did not include, the purpose of creating a false or misleading appearance of active trading in securities on the stock exchange.

(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 that person, acquired an interest in the securities after the purchase or sale.

(6) When prosecuting for an offence under 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 for which the defendant 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 subsection (3) 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.

Section 148—Stock market manipulation

(1) A person shall not effect, take part in, be concerned with or carry out, directly or indirectly, two or more transactions in securities of a body corporate which are transactions that have or are likely to have, the effect of raising, lowering, maintaining or stabilising the price of securities of the body corporate on a stock exchange in the country with intent to induce other persons to sell, purchase or subscribe for securities of the body corporate or of a related body corporate.

(2) A reference in subsection (1) to a transaction in relation to securities of a body corporate, includes—

(a) a reference to the making of an offer to sell or purchase the securities of the body corporate; 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 the securities of the body corporate.

Section 149—False or misleading statements

A person shall not make a statement or disseminate information that is false or misleading in a material particular, that is likely to induce the sale or purchase of securities by any other person or is likely to have the effect of raising, lowering, maintaining or stabilising the market price of securities.

Section 150— Fraudulently inducing persons to deal in securities

(1) A person shall not induce or attempt to induce any other person to deal in securities—

(a) by making or publishing a statement, promise or forecast that that person knows to be misleading, false or deceptive;

(b) by a dishonest concealment of material facts;

(c) by the reckless making or publishing, dishonestly or otherwise, of a 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 any other device, information which that person knows to be false or misleading in a material particular.

(2) It is a defence to a prosecution for an offence under subsection (1) (d) to establish that, at the time when the defendant recorded or stored information the defendant had no reasonable grounds for expecting that the information would be available to any other person.

Section 151—Dissemination of information about illegal transactions

A person shall not circulate or disseminate or authorise or be concerned in the circulation or dissemination of a statement or information to the effect that, the price of any securities of a body corporate will or is likely to rise or fall or be maintained by reason of a transaction entered into or other act or thing done in relation to securities of that body corporate, or of a body corporate that is related to that body corporate, in contravention of a provision of section 147 to section 153 where—

(a) that person, or a person associated with that person, has entered into that transaction or done an act or thing; or

(b) that person has received, or expects to receive directly or indirectly, a consideration or benefit for circulating or disseminating, or authorising or being concerned in the circulation or dissemination of the statement or information.

Section 152—Employment of manipulative and deceptive devices

A person shall not directly or indirectly in connection with the purchase or sale of securities—

(a) employ a device, scheme or artifice to defraud;

(b) engage in an act, practice or course of business which operates or would operate as fraud or deceit on any other person; or

(c) make an untrue statement of a material fact or omit to state a material fact necessary with the result that the statements made in the light of the circumstances under which they were made, appear truthful.

Section 153—Prohibition of dealings in securities by insiders

(1) A person who is, or has during the six months immediately before a dealing in the securities of a body corporate been connected with that body corporate shall not deal in securities of that body corporate if by reason of the association that person is in possession of information that is not generally available but, if it were, might materially affect the price of those securities.

(2) A person who is, or has during the six months immediately before a dealing in the securities of a body corporate been connected with that body corporate shall not deal in the securities of any other body corporate if by reason of being, or having been connected with the first-mentioned body corporate that person is in possession of information that—

(a) is not generally available but, if it were, would be likely to affect materially the price of those securities; and

(b) relates to a transaction actual or expected involving both those bodies corporate or involving one of them and the securities of the other.

(3) Where a person in possession of information as provided in subsection (1) or (2), is not precluded by either of those subsections from dealing in those securities, that person shall not deal in those securities if—

(a) that person has obtained the information directly from any other person and is aware, or ought reasonably to be aware of facts or circumstances by virtue of which that other person is precluded by subsection (1) or (2) from dealing in those securities; or

(b) when the information was obtained, that person was associated with that other person or had with that person an arrangement for the communication of information of a kind to which those subsections apply with a view to dealing in securities by that person or with that other person.

(4) A person shall not when precluded by subsection (1), (2) or (3) from dealing in securities—

(a) cause or procure any other person to deal in those securities; or

(b) communicate that information to any other person if—

(i) trading in those securities is permitted on a stock exchange whether within or outside the country; and

(ii) that person knows, or ought reasonably to know, that that other person will make use of the information for the purpose of dealing or causing or procuring another person to deal in those securities.

(5) Without limiting subsection (3) but subject to subsections (6) and (7), a body corporate shall not deal in securities where an officer of that body corporate is precluded by subsection (1), (2) or (3) from dealing in those securities.

(6) A body corporate is not precluded by subsection (5) from entering into a transaction by reason only of information in the possession of an officer of that body corporate if—

(a) the decision to enter into the transaction was taken on its behalf by a person other than that officer;

(b) it had in operation at that time arrangements to ensure that the information was not communicated to any person and that an advice in respect of the transaction was given to that person by a person in possession of the information; and

(c) the information was not communicated and the advice was not so given.

(7) A body corporate is not precluded by subsection (5) from dealing in securities of any other body corporate by reason only of information in possession of its officer which was obtained by the officer in the course of duties as its officer but relates to proposed dealings by the first-mentioned body corporate in securities of the other body corporate.

(8) For the purposes of this section, a person is connected with a body corporate if, being an individual, that person—

(a) is an officer of that body corporate or of a related body corporate;

(b) is a substantial shareholder in that body corporate or a related body corporate; or

(c) occupies a position that may reasonably be expected to give that person access to information of a kind which subsections (1) and (2) apply by virtue of—

(i) a professional or business relationship existing between that person or the employer of that person or a body corporate of which that person is an officer and that body corporate or a related body corporate; or

(ii) that person being an officer of a substantial share-holder in that body corporate or in a related body corporate.

(9) This section does not preclude the holder of the licence of a broker-dealer from dealing in securities or rights or interests in securities of a body corporate, where the securities, rights or interests are permitted by a stock exchange to be traded on the stock exchange, if—

(a) the holder of the licence enters into the transaction concerned as an agent for any other person in accordance with a specific instruction to effect that transaction;

(b) the holder of the licence has not given an advice to the other person in relation to dealing in securities, or rights or interests in securities, of that body corporate that are included in the same class as the first-mentioned securities; and

(c) the other person is not associated with the holder of the licence.

(10) Where prosecution is instituted against a person for entering into a transaction whilst in possession of certain information contrary to this section, it is a defence if the person satisfies the Court that the other party to the transaction knew, or ought reasonably to have known, of the information before entering into the transaction.

(11) For the purposes of subsection (7), “officer”, in relation to a body corporate, includes—

- (a) a director, secretary, executive officer or employee of the body corporate;
- (b) a receiver or receiver and manager of property of the body corporate;
- (c) an official manager or a deputy official manager of that body corporate;
- (d) a liquidator of that body corporate; and
- (e) a trustee or other person administering a composition or arrangement made between that body corporate and any other person.

Section 154—Penalties

A person who contravenes a provision of section 147 to section 153 commits an offence and is liable on summary conviction to a fine of not less than one thousand penalty units and not more than two thousand five hundred penalty units or to a term of imprisonment of not less than four years and not more than five years or to both.

Section 155—Convicted persons liable to pay compensation

(1) A person convicted of an offence under section 147 to section 153 is liable to pay compensation to a person who, in a transaction for the purchase or sale of securities entered into with the first mentioned person or with a person acting for or on behalf of that first mentioned person, suffers loss because of the difference between the price at which the securities were dealt in and the price at which they might have been dealt in at the time when the transaction took place if the contravention had not occurred.

(2) The amount of compensation for which a person is liable under subsection (1) is the amount of the loss sustained by the person claiming the compensation.

(3) Despite the Limitations Act, 1972 (N.R.C.D. 54) a person shall not commence an action under this section for the recovery of a loss after the expiration of two years after the date of completion of the transaction in which the loss occurred.

(4) Subsection (1) does not affect any other liability that a person may incur under any other law.

PART SIX—ACCOUNTS AND AUDIT

Section 156—Application of this Part

(1) This Part applies to—

- (a) the holder of the licence of a broker-dealer or a fund manager; and

(b) the business of dealing in securities carried on by the holder of the licence of a broker-dealer or a fund manager, whether in the country or elsewhere.

(2) In this Part, unless the contrary intention appears, a reference to a broker-dealer is a reference to a fund manager.

(3) In this Part, unless the contrary intention appears, a reference to a book, security, trust account or business or in relation to a broker-dealer who carries on business in partnership is a reference to a book, security, trust account or business in relation to the partnership.

Section 157—Accounts to be kept by broker-dealers

(1) A broker-dealer shall—

(a) keep the accounting records that will correctly record and explain the transactions and financial position of the business of dealing in securities carried on by that broker-dealer;

(b) keep the accounting records in a manner that will enable a true and fair income statement and statement of financial position to be prepared from time to time; and

(c) keep the accounting records in a manner that will enable the income statement and statement of financial position of the business of dealing in securities carried on by the broker-dealer to be conveniently and properly audited.

(2) A broker-dealer who contravenes subsection (1) is liable to pay to the Commission an administrative penalty of two hundred and fifty penalty units.

(3) A broker-dealer has not complied with subsection (1) in relation to the records unless those records—

(a) are kept in writing in the English language or in a manner that will enable them to be readily accessible and readily converted into writing in the English language;

(b) are kept in sufficient detail to show particulars of—

(i) the moneys received or paid by that broker-dealer, including moneys paid to or disbursed from a trust account;

(ii) the purchases and sales of securities made by the broker-dealer, the charges and credits arising from them and the names of the buyer and seller, respectively, of each of those securities;

(iii) the incomes received from commissions, fees, interests, and other sources and expenses, commissions and interest paid, by the broker-dealer;

(iv) the assets and liabilities, including contingent liabilities, of the broker-dealer;

(v) the securities that are the property of the broker-dealer, showing by whom the securities, or the documents of title to the securities, are held and, where they are held by any other person, whether or not they are held as security against loans or advances;

(vi) the securities that are not the property of the broker-dealer and for which the broker-dealer or any person controlled by the broker-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 broker-dealer; and

(vii) underwriting transactions entered into by the broker-dealer;

(c) are kept in sufficient detail to show separately particulars of every transaction by the broker-dealer;

(d) specify the day on which or the period during which each transaction by the broker-dealer took place; and

(e) contain copies of acknowledgements of the receipt of securities or of documents of title to securities received by the broker-dealer from clients for sale or safe custody clearly showing the name or names in which the particular securities are registered.

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

(a) the clients of the broker-dealer excluding, where the broker-dealer carries on business in partnership, the partners of the firm;

(b) the broker-dealer personally or where the broker-dealer carries on business in partnership, the partners of the firm;

(c) other broker-dealers carrying on business within the country;

(d) broker-dealers outside the country; and

(e) employees of the broker-dealers.

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

(6) Where a record required by this section to be kept is not kept in writing in the English language, the broker-dealer shall, if required to convert the record into writing in the English language by a person who is entitled to examine the record, comply with the requirement within a reasonable time.

(7) Despite any other provision of this section, a broker-dealer shall not be deemed to have failed to keep a record referred to in subsection (1) if the record is kept as a part of, or in conjunction with records that relate to a business other than dealing in securities that is carried on by that broker-dealer.

(8) Where accounting or other records are kept by a broker-dealer at a place outside the country, the broker-dealer shall cause to be sent to and kept at a place in the country the particulars with respect to the business dealt with in those records that will enable true and fair income statement and statement of financial position to be prepared.

Section 158—Securities documents in custody of broker-dealer

(1) Where a broker-dealer receives for safe custody documents that are securities or are documents of title to securities of a client and for which the broker-dealer or a person controlled by the broker-dealer is accountable, the broker-dealer shall—

(a) if the documents are not registered in the name of the client by the body corporate by whom the securities were issued, or made available and the client does not make a request as mentioned in paragraph (b) or (c), register the documents;

(b) if the client requests that the registration of the documents by the body corporate by whom the securities were issued or made available in the name of a person controlled by the broker-dealer, register the documents; or

(c) if the client requests the deposit of the documents in safe custody with the bankers of the broker-dealer, deposit the documents.

(2) A broker-dealer shall not deposit as security for a loan or advance, documents that are securities or are documents of title to securities of a client and for which the broker-dealer or a person controlled by the broker-dealer is accountable, unless an amount is owed to the broker-dealer by the client in connection with a transaction entered into on behalf of the client and the broker-dealer—

(a) gives a written notice to the client identifying the documents and stating that the broker-dealer intends to deposit the documents as security for a loan or advance made by the broker-dealer; and

(b) deposits the documents as security for a loan or advance that does not exceed the amount owed to the broker-dealer on the day of the deposit by the client, in connection with a transaction entered into on behalf of the client by the broker-dealer.

(3) Where—

(a) a broker-dealer has given notice to a person mentioned in subsection (2) and has deposited the documents referred to in the notice as a security for a loan or advance; and

(b) the person pays the amount owed to the broker-dealer,

the broker-dealer shall withdraw the documents from deposit as soon as practicable after the broker-dealer receives the amount owed to the broker-dealer.

(4) Where a broker-dealer deposits, as security for a loan or advance made to the broker-dealer documents that are securities, or are documents of title of another person, and for which the broker-dealer or a person controlled by the broker-dealer is accountable, the broker-dealer shall, at the expiration of six months after the date on which the documents were deposited, and at the expiration of each subsequent period of six months, if the documents are still maintained on deposit, send to the other person written notice to that effect.

(5) A broker-dealer who fails to comply with subsection (4) is liable to pay to the Commission an administrative penalty of four hundred penalty units.

Section 159—Trust account of broker-dealer

- (1) A broker-dealer shall open and maintain with a bank in the country an account designated as a trust account.
- (2) A broker-dealer shall pay into the account the moneys held by the broker-dealer in trust for a client not later than the next day on which the bank is open for business following the day on which the moneys are received by the broker-dealer.
- (3) Despite subsection (1), where moneys that are required by this section to be paid into a trust account are received by a broker-dealer in a place outside the country, the broker-dealer shall pay those moneys into a trust account maintained by the broker-dealer in that place.
- (4) For the purposes of subsection (2), all moneys received by a broker-dealer from a client are moneys held in trust for that client and shall be deemed to be held in trust for that client.
- (5) Subsection (4) does not apply to—
 - (a) moneys received in respect of brokerage and other proper charges; or
 - (b) moneys received in payment or part payment for securities delivered to the broker-dealer before the moneys are received.
- (6) Subsection (2) does not apply to a cheque, bank draft, money order or postal order made payable to or to the order of a specified person or bearer which is not a cheque, bank draft, money order or postal order in which the payee is the broker-dealer, a partner of the broker-dealer or the firm in which the broker-dealer is a partner received from or on behalf of a client with instructions, express or implied, that the cheque, bank draft, money order or postal order is to be delivered to the person to whom it is payable.
- (7) A person who contravenes a provision of this section is liable to pay to the Commission an administrative penalty of five hundred penalty units.
- (8) A person who, with intent to defraud, contravenes this section, commits an offence and is liable on summary conviction to a fine of not less than two hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than two years and not more than three years or to both and is liable to refund the money of the client at the prevailing commercial bank rate of interest.

Section 160—Purposes for which money may be withdrawn from a trust account

- (1) A broker-dealer who withdraws moneys from a trust account except for the purpose of—
 - (a) making a payment to a person entitled to the moneys or in accordance with the written directions of a person entitled to the moneys;
 - (b) defraying brokerage and other proper charges;
 - (c) paying moneys to the broker-dealer to which the broker-dealer is entitled, being moneys that were not required to be paid; or
 - (d) making a payment that is otherwise authorised by law,

commits an offence and is liable on summary conviction to a fine of not less than two hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than two years and not more than three years or to both.

(2) A broker-dealer who, with intent to defraud, withdraws moneys from a trust account commits an offence and is liable on summary conviction to a fine of not less than two hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than two years and not more than three years or to both.

(3) Except as otherwise provided in this Part, moneys held in a trust account are not available for payment of the debts of a broker-dealer or liable to be paid or taken in execution under the order or process of a Court.

(4) This Part does not take away or affect a lawful claim or lien that a person has against or on the moneys for a trust account or the moneys received for the purchase of securities or from the sale of securities before those moneys are paid into a trust account.

(5) A broker-dealer does not commit an offence under subsection (1) where the broker-dealer withdraws from a trust account an amount of money that is the whole or a part of the amount of a cheque that has been deposited into the account but that has not been paid and has not been refused payment by the banker on whom it is drawn.

(6) Where a broker-dealer withdraws from a trust account an amount that is the whole or any part of the amount of a cheque that has been deposited into the account but that has not been paid by the banker on whom it is drawn and the banker on whom it is drawn refuses payment of the cheque, the broker-dealer shall immediately pay into the trust account by cash or bank cheque an amount equal to the amount withdrawn from the trust account.

(7) A broker-dealer commits an offence where that broker-dealer fails to comply with subsection (6) and where the broker-dealer is a member of a stock exchange the failure shall for the purposes of Part Seven be deemed to be a misappropriation of money by the broker-dealer.

(8) A person who contravenes subsection (7) commits an offence and is liable on summary conviction to a fine of not less than two hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than two years and not more than three years or to both.

Section 161—Appointment and qualification of auditor

(1) Within one month after a person becomes the holder of a licence of a broker-dealer that person shall appoint an auditor to audit the account of that person.

(2) A person shall not consent to be appointed as an auditor of a broker-dealer, act as an auditor of a broker-dealer or prepare a report required to be prepared under this Act by an auditor of a broker-dealer—

(a) if in the case of an individual that person—

(i) is not a qualified company auditor; or

(ii) is indebted to the broker-dealer or holds investments with the broker-dealer; or

- (iii) is a partner or employee of the broker-dealer; or
- (b) in the case of a body corporate unless—
 - (i) at least one partner of the body corporate is ordinarily resident in the country;
 - (ii) the partners of the body corporate ordinarily resident in the country are qualified company auditors;
 - (iii) a partner of the body corporate is not indebted to the broker-dealer or holds investments with the broker-dealer; or
 - (iv) a partner of the body corporate is not a partner or employee of the broker-dealer.
- (3) The appointment of a firm as an auditor of a broker-dealer is an appointment of the persons who are members of the firm, whether resident in the country or not, at the date of the appointment.
- (4) Where a person contravenes this section—
 - (a) in the case of a body corporate, each member of the firm is liable to pay to the Commission an administrative penalty of one thousand penalty units; and
 - (b) in the case of an individual, that individual is liable to pay to the Commission an administrative penalty of one thousand penalty units.
- (5) An auditor of a broker-dealer shall hold office until removed or the auditor resigns from office in accordance with section 162 unless the auditor ceases to qualify as an auditor under subsection (2).
- (6) Within thirty days after a vacancy occurs in the office of an auditor of a broker-dealer, if there is no surviving or continuing auditor of the broker-dealer, the broker-dealer shall appoint any other auditor to fill the vacancy.
- (7) While a vacancy in the office of an auditor continues, the surviving or continuing auditor may act.
- (8) A broker-dealer shall not appoint a person as an auditor unless that person has, before the appointment, consented by notice in writing given to the broker-dealer, to act as an auditor and has not withdrawn the consent by notice in writing given to the broker-dealer.
- (9) Where a person is appointed as an auditor under subsection (1), which is not an appointment made by virtue of subsection (7), the broker-dealer shall within fourteen days after the appointment lodge with the Commission a notice in writing stating that the appointment has been made and specifying the name of the person or firm.
- (10) The provisions of this Part, relating to an auditor, apply in addition to the provisions applicable to an auditor under the Companies Act, 1963 (Act 179).

Section 162—Removal and resignation of auditors

- (1) A broker-dealer may, with the consent of the Commission, remove an auditor of the broker-dealer from office.
- (2) An auditor of a broker-dealer may, by notice in writing given to the broker-dealer, resign as an auditor of the broker-dealer if the auditor—
 - (a) has, by notice in writing given to the Commission, applied for consent to resign and has, at or about the same time that the notice was given to the Commission, notified the broker-dealer in writing of the application to the Commission; and
 - (b) has received the consent of the Commission.
- (3) The Commission shall, as soon as practicable, after receipt of the notice from an auditor under subsection (2), notify the auditor and the broker-dealer whether it consents to the resignation of the auditor.
- (4) A statement made by an auditor in an application to the Commission under subsection (2) or in answer to an inquiry by the Commission relating to the reasons for the application—
 - (a) is not admissible in evidence in any civil or criminal proceedings against the auditor other than proceedings for an offence under section 116; and
 - (b) may not be made the ground of a prosecution other than a prosecution for an offence under section 116, or for an action or suit against the auditor, and a certificate of the Commission that the statement was made in the application or in answer to an inquiry by the Commission is conclusive evidence that the statement was so made.
- (5) Subject to subsection (6) and to an order of a court under subsection (8), the resignation of an auditor takes effect—
 - (a) on the date, specified for the purpose in the notice of resignation;
 - (b) on the date on which the Commission consents to the resignation; or
 - (c) on the date, fixed by the Commission for the purpose.
- (6) Where, on the retirement or withdrawal from a firm of a member, the body corporate will no longer be capable, because of the provisions of section 161 (2) (b) (i) of acting as an auditor of a broker-dealer, the member retiring or withdrawing shall, if not disqualified from acting as auditor of the broker-dealer, be deemed to be the auditor of the broker-dealer until the consent of the Commission is obtained for the retirement or withdrawal.
- (7) Within fourteen days after the receipt of a notice of resignation from an auditor or a broker-dealer or, where an auditor of a broker-dealer is removed, the broker-dealer shall lodge a notice of the resignation or removal in accordance with the prescribed form with the Commission.
- (8) A person aggrieved by the refusal of consent by the Commission to the removal or resignation of an auditor of a broker-dealer may, within one month after the date of refusal, appeal to the Court against the refusal and the Court may confirm or reverse the refusal and may make any further order in the matter as it considers proper.

Section 163—Fees and expenses of auditors

Reasonable fees and expenses of an auditor of a broker-dealer are payable by the broker-dealer.

Section 164—Accounts and reporting requirements of broker-dealer

(1) A broker-dealer shall, in respect of each financial year, other than a financial year that ended before the date of commencement of this Act or ended on or after that date but before the date on which the broker-dealer commenced to carry on business as a broker-dealer prepare a true and fair financial statement on the basis of internationally acceptable accounting standards and containing the information and matters that are prescribed, and lodge them with the Commission before the prescribed day for that financial year, together with an auditor's report containing the prescribed information and matters.

(2) The Commission may, on an application made by a broker-dealer before the expiration of the period of two months or as the case requires, the period of three months referred to in the definition as "prescribed day" in subsection (4) or, if that period has been extended pursuant to an approval previously given under this subsection, before the expiration of the extended period, approve an extension or further extension of the period, and the approval may be given subject to the conditions that the Commission may impose.

(3) Where an approval under subsection (2) in relation to a broker-dealer is given subject to conditions, the broker-dealer shall comply with those conditions.

(4) For the purposes of this section—

"financial year", in relation to a broker-dealer being a body corporate, means the financial year of the body corporate within the meaning of the Companies Act, 1963 (Act 179); and

"prescribed day", in relation to a financial year of a broker-dealer, which is a body corporate, means the day that is three months after the end of that financial year, or where time is approved under subsection (2), the day on which the extended time expires.

Section 165—Auditor to report to Commission in prescribed matters

(1) Where an auditor, in the performance of functions as an auditor of a broker-dealer, becomes aware of a prescribed matter, the auditor shall, within seven days after becoming aware of that matter, lodge with the Commission a written report on the matter and send a copy of the report to the broker-dealer and to each stock exchange of which the broker-dealer is a licensed dealer.

(2) For the purposes of this section, "prescribed matter" means a matter which, in the opinion of the auditor—

(a) has adversely affected, is adversely affecting or may adversely affect the ability of the broker-dealer to meet an obligation as a broker-dealer;

(b) constitutes or may constitute a contravention of section 157, 158, 159 or 160 or Part Seven; or

(c) constitutes or may constitute a breach of a condition of a licence issued to the broker-dealer under this Act.

Section 166—Certain matters to be reported to Commission

- (1) Where, in relation to a licensed broker-dealer of a stock exchange, the stock exchange becomes aware of a prescribed matter, the stock exchange shall, as soon as practicable after becoming aware of the matter, lodge with the Commission a written report on the matter and send a copy of the report to the broker-dealer.
- (2) For the purposes of this section, “prescribed matter”, in relation to a broker-dealer, means a matter which, in the opinion of the stock exchange concerned—
 - (a) has adversely affected, is adversely affecting or may adversely affect the ability of the broker-dealer to meet an obligation as a broker-dealer;
 - (b) constitutes or may constitute a breach of section 157, 158, 159 or 160 or Part Seven; or
 - (c) constitutes or may constitute a breach of a condition of a licence issued to the broker-dealer under this Act.

Section 167—Defamation

- (1) An auditor is not liable, in the absence of malice to an action for defamation in respect of a statement, whether oral or written, made or issued by that auditor in the course of duties as an auditor.
- (2) A person is not liable, in the absence of malice for defamation in respect of the publication of a document prepared by an auditor in the course of duties as an auditor and required by or under this Act to be lodged with the Commission, whether or not the document has been lodged.
- (3) This section does not limit or affect any other right, privilege or immunity that an auditor or other person has as a defendant in an action for defamation.

Section 168—Imposition of obligation on members not affected by this Part

This Part does not prevent a stock exchange from imposing on licensed broker-dealers of that stock exchange obligations or requirements, not inconsistent with this Act, that the stock exchange considers fit with respect to—

- (a) the audit or accounts including the audit of accounts by an auditor appointed by the stock exchange;
- (b) the information to be furnished in reports from auditors; or
- (c) the keeping of books.

Section 169—Power of Court to restrain the operation of a trust account

Where the Commission shows to the satisfaction of the Court—

- (a) that there are reasonable grounds for believing that there is a deficiency in a trust account, whether kept within or outside the country, of a person who is or has been a broker-dealer or in an account kept by virtue of section 140 (1) (a) whether within or outside the country, by a person who is or has been a broker-dealer;

- (b) that there has been undue delay, or unreasonable refusal, on the part of a person who is or has been a broker-dealer, in paying, applying or accounting for trust moneys as required by this Act;
- (c) that a person who is or has been a broker-dealer has not paid moneys into a trust account as provided by section 159 or into an account as provided by the section;
- (d) that a business of dealing in securities is carried on or was carried on by a person not in partnership;
- (e) that the broker-dealer's licence of that person under Part Four has been revoked or suspended;
- (f) that a person is incapable, by reason of physical or mental infirmity, of managing the affairs of that person;
- (g) that a person has ceased to carry on a business of dealing in securities; or
- (h) that a person has died,

the Court may make an order to restrain the operation of all or any of the bank accounts of that person, subject to terms and conditions that the Court may impose.

Section 170—Duty of bank to make full disclosure

Where an order made under section 169 is directed to a bank, the bank shall—

- (a) disclose to the Commission every account kept at the bank in the name of the person to whom the order relates, and an account that the bank reasonably suspects is held or kept at the bank for the benefit of that person; and
- (b) permit the Commission to make a copy of, or to take an extract from, an account of the person to whom the order relates or any of the books of the bank relating to that person.

Section 171—Power of Court to make further orders and give directions

Where an order is made under section 169, the Court may, on the application of the Commission or of a person affected by the order, make further orders—

- (a) dealing with the ancillary matters that the Court considers necessary;
- (b) directing that all or any of the moneys in an account affected by an order made shall be paid by the bank to the Commission or to a person nominated by the Commission, on the appropriate terms and conditions; or
- (c) discharging or varying an earlier order.

Section 172—Power of Court to make order relating to payment of moneys

(1) An order made under section 171 may include directives to the person to whom the money is paid directing that person—

- (a) to pay the money into a separate trust account; or

(b) to prepare a scheme for distributing the money during a period of six months after the receipt of the money, to persons who claim to be entitled to the money and to the satisfaction of the Commission that they are entitled,

and where the money received is not sufficient to pay all proved claims, to apportion the money among the claimants in proportion to their proven claims shown in the scheme.

(2) A person preparing a scheme for a distribution of moneys under subsection (1), shall apply to the Court for approval of the scheme and for directions in respect of the scheme.

(3) The Court may give directions regarding—

(a) the money held in a separate trust account under subsection (1),

(b) the persons to whom and in what amounts the whole or any portion of that money shall be paid, and

(c) the payment of the balance of the money.

Section 173—Commission to apply for hearings in camera

The Commission may apply to the Court—

(a) for proceedings to be held in camera on notice; or

(b) for proceedings to be initiated ex-parte for an order in respect of a matter relating to its functions under sections 169, 170, 171 and 172.

PART SEVEN—FIDELITY FUND

Section 174—Establishment of fidelity fund

(1) A stock exchange shall establish and keep a fidelity fund which shall be administered by its governing body on behalf of that stock exchange.

(2) The assets of a fidelity fund shall be—

(a) the property of the stock exchange;

(b) kept separate from all other properties; and

(c) held in trust for the purposes set out in this Part.

(3) The Commission may require any other exchange to establish a fidelity fund and provide regulations, rules or guidelines for its operation.

Section 175—Moneys constituting fidelity fund

The fidelity fund of a stock exchange consists of—

(a) the moneys paid to the stock exchange by licensed broker-dealers of the stock exchange in accordance with the provisions of this Part;

(b) the interest and profits accruing from the investment of the fidelity fund;

- (c) the moneys paid to the fidelity fund by the stock exchange;
- (d) the moneys recovered by or on behalf of the stock exchange in the exercise of any right of action conferred by this Part;
- (e) the moneys paid by an insurer under a contract of insurance or indemnity entered into by the stock exchange under section 194; and
- (f) any other moneys lawfully paid into the fidelity fund.

Section 176—Fund to be kept in separate bank account

The moneys forming part of a fidelity fund shall, pending the investment or application of the moneys in accordance with this Part be paid or transferred into a bank account in the country.

Section 177—Payments out of fidelity fund

Subject to this Part, there shall be paid out of a fidelity fund of a stock exchange as required and in the order as the governing body of the stock exchange considers proper—

- (a) the amount of the claims, including costs allowed by the governing body or established against the stock exchange under this Part;
- (b) the legal and other expenses incurred in investigating or defending claims made under this Part or incurred in relation to the fidelity fund or in the exercise by the governing body of the rights, powers and authorities vested in the governing body under this Part in relation to the fund;
- (c) the premiums payable in respect of contracts of insurance or indemnity entered into by the governing body under section 194;
- (d) the expenses incurred or involved in the administration of the fund including the salaries and wages of persons employed by the governing body in relation to the fund; and
- (e) any other moneys payable out of the fund in accordance with this Act.

Section 178—Accounts of fidelity fund

- (1) A stock exchange shall establish and keep proper accounts of its fidelity fund.
- (2) The governing body of the stock exchange shall appoint an auditor to audit the financial statements of the fidelity fund.
- (3) The auditor appointed by the governing body shall—
 - (a) regularly and fully audit the financial statements of the fidelity fund, and
 - (b) present the financial statements to the governing body not later than three months after the end of the financial year.

Section 179—Management Committee of the fidelity fund

- (1) The governing body of a stock exchange may appoint a management committee for the management of the fidelity fund.

- (2) The management committee shall consist of not less than three and not more than five persons, of whom at least one is a member of the governing body.
- (3) The governing body of a stock exchange may by resolution delegate to the management committee all or any of its functions under this Part other than those under this section and sections 182, 185 (4), (5), (6) and (7).
- (4) A power, an authority or a discretion delegated may be exercised by a majority of the management committee.
- (5) The delegation may in a like manner be rescinded or varied.
- (6) The governing body of a stock exchange may—
 - (a) remove a member of the management committee appointed by it under this section, and
 - (b) fill a vacancy in the committee.

Section 180—Minimum amount in the fidelity fund

- (1) The fidelity fund of a stock exchange shall consist of a minimum amount that the Commission, in consultation with the stock exchange may prescribe to be paid by the stock exchange to the credit of the fund.
- (2) The governing body of the stock exchange shall, subject to the approval of the Commission, determine the amount or minimum amount to be contributed by each licensed broker-dealer of the stock exchange to the fund.

Section 181—Protection of the fidelity fund in the event of any reduction

Where the fidelity fund is reduced below the minimum amount approved for a stock exchange, the governing body of the stock exchange shall take steps to make up the deficiency—

- (a) by transferring an amount that is equal to the deficiency from other funds of the stock exchange to the fidelity fund; or
- (b) in the event that there are insufficient funds to transfer under paragraph (a), by determining the amount which each licensed broker-dealer of the stock exchange shall contribute to the fund.

Section 182—Levy of liabilities

- (1) Where a fidelity fund is not sufficient to satisfy the liabilities that are ascertained to relate to the stock exchange, the governing body may impose on every licensed broker-dealer of the stock exchange a levy of an amount that it considers appropriate or, if directed by the Commission, the governing body shall impose a levy of the sum which shall in the aggregate be equivalent to the amount so directed.
- (2) The amount of the levy shall be paid within the time and in the manner specified by the governing body generally or in relation to any particular case.

Section 183—Advances to fidelity fund

- (1) A stock exchange may from its general funds give or advance on the terms that the governing body considers appropriate a sum of money to its fidelity fund.
- (2) Any money advanced under subsection (1) may be repaid from the fidelity fund to the general funds of the stock exchange.
- (3) For the purposes of this section, the advance made under subsection (1) is not in contravention of a banking or money lending law.

Section 184—Investment of fidelity fund

The moneys in a fidelity fund that are not immediately required for its purposes may be invested by the governing body in a manner in which trustees are authorised by law to invest trust funds.

Section 185—Application of fidelity fund

- (1) Subject to this Part, a fidelity fund shall be held and applied for the purpose of compensating persons who suffer pecuniary loss from a misappropriation of moneys committed by a licensed broker-dealer of the stock exchange or a director or partner or by an employee of the licensed broker-dealer of the stock exchange in relation to money or other property which in the course of or in connection with the business of that licensed broker-dealer—
 - (a) was entrusted to or received by a licensed broker-dealer of the stock exchange or a director or partner or employee for or on behalf of any other person; or
 - (b) was entrusted to or received by the licensed broker-dealer of the stock exchange entrusted to or received by the licensed broker-dealer or an employee of the licensed broker-dealer as trustee or for or on behalf of the trustees of that money or property.
- (2) Except as otherwise provided in this section, the total amount that may be paid under this Part to a person who suffers pecuniary loss through misappropriation of moneys by a licensed broker-dealer of the stock exchange or a director or partner or through misappropriation of moneys by an employee of the licensed broker-dealer shall not, exceed in respect of that licensed broker-dealer an amount determined by the Commission.
- (3) For the purposes of subsection (2), an amount paid from a fidelity fund shall to the extent to which the fund is subsequently reimbursed be disregarded.
- (4) Where, after taking into account all ascertained or contingent liabilities of a fidelity fund, the governing body considers that the assets of the fund so permit, the governing body may decide to increase the total amount which may be applied from that fund under subsection (2) and shall inform the Commission accordingly.
- (5) The Commission shall publish a notice of the decision in the Gazette and from the date of the publication until the notice is revoked or varied, the amount specified in the notice shall be the total amount which may be applied for compensation for pecuniary loss.
- (6) Where the governing body decides to revoke or vary the contents of the notice under subsection (5), the governing body shall inform the Commission which shall then cause notice of the revocation or variation to be published in the Gazette.

(7) Where in a particular case after taking into account all ascertained or contingent liabilities of a fidelity fund, the governing body considers that the assets of the fund so permit, the governing body may apply out of the fund a sum of money in excess of the total amount limited by or under this section as the governing body considers appropriate towards the compensation of persons who have suffered pecuniary loss as provided in subsection (1).

(8) Despite subsections (2), (3), (4) (5) and (7), the Commission may, direct the governing body to increase the total amount of moneys which shall be applied from a fidelity fund of a particular licensed broker-dealer of the stock exchange in payment to persons who suffer pecuniary loss through misappropriations of moneys by that particular licensed broker-dealer or by a director or partner or by an employee of that licensed broker-dealer.

(9) For the purposes of this Part, "director of a licensed broker-dealer of the stock exchange" or "partner of a licensed broker-dealer of the stock exchange" includes a person who has been, but at the time of the misappropriation of the moneys has ceased to be a director or partner if, at the time of the misappropriation of the moneys, the person claiming compensation has reasonable grounds for believing that person to be a director or a partner of the licensed broker-dealer of the stock exchange.

Section 186—Claims against fidelity fund

(1) Subject to this Part, a person who suffers pecuniary loss as provided in subsection (1) of section 185 is entitled to claim compensation from the fidelity fund and to take proceedings in a court against the stock exchange.

(2) Subject to subsection (3), a person shall not have a claim against the fidelity fund in respect of a misappropriation of the moneys, in respect of money or other property which before the commission of the misappropriation had in the course of the administration of a trust ceased to be under the sole control of the director of the licensed broker- dealer concerned or the partner of the licensed broker-dealer concerned.

(3) Subject to this Part, the amount which any claimant is entitled to claim as compensation from a fidelity fund shall be the amount of the actual pecuniary loss suffered by the claimant, including the reasonable costs of the disbursements incidental to the making of proof of claim, less the amount or value of the moneys or any other benefits received or receivable by the claimant from sources other than the fund in reduction of the pecuniary loss.

(4) In addition to the compensation payable under this Part, interest shall be paid out of the fidelity fund concerned on the amount of compensation, less any amount of money attributable to costs and disbursements, at the percentage rate per annum determined by the Commission and calculated from the day on which the misappropriation of the moneys was committed and continuing until the day on which the claim is satisfied.

Section 187—Notice calling for claims against fidelity fund

(1) The governing body of a stock exchange may publish in a daily newspaper of national circulation a notice, in or to the effect of the form prescribed, specifying a date, not being earlier than three months after the publication, on or before which claims for compensation from the fidelity fund, in relation to the person specified in the notice, may be made.

(2) A claim for compensation from a fidelity fund in respect of a misappropriation of moneys shall be made in writing to the governing body—

(a) where a notice under subsection (1) has been published on or before the date specified in the notice; or

(b) where a notice has been published within six months after the claimant becomes aware of the misappropriation,

and any claim which is not so made shall be barred unless the governing body otherwise determines.

(3) An action for damages shall not lie against a stock exchange or against a member or employee of a stock exchange or of a governing body or management committee as a result of a notice published in good faith and without malice for the purposes of this section.

Section 188—Power of governing body to settle claims

(1) The governing body of a fidelity fund of a stock exchange may, subject to this Part, allow and settle any proper claim for compensation from a fidelity fund at any time after the commission of the misappropriation in respect of which the claim arose.

(2) Subject to subsection (3), a person shall not commence legal proceedings under this Part against a stock exchange without leave of the governing body unless—

(a) the governing body has disallowed the claim; and

(b) the claimant has exhausted the relevant rights of action and other legal remedies for recovery of the money or other property, in respect of which the misappropriation was committed, available against the licensed broker-dealer of the stock exchange in relation to which the claim arose and against any other persons liable in respect of the pecuniary loss suffered by the claimant.

(3) A person who has been refused leave by a governing body may apply for leave to a judge of the High Court who may make an appropriate order.

(4) A governing body after disallowing, whether wholly or partly, a claim for compensation from a fund shall serve notice of the disallowance in the prescribed form on the claimant or the lawyer of the claimant.

(5) Despite the Limitations Act, 1972 (N.R.C.D. 54), a person may commence proceedings against a stock exchange in respect of a claim which has been disallowed by the governing body after the expiration of three months after service of notice of disallowance under subsection (4).

(6) In proceedings brought to establish a claim, evidence of any admission or confession by, or other evidence which would be admissible against, the licensed broker-dealer of the stock exchange, or any other person by whom it is alleged a misappropriation of moneys was committed is admissible to prove the commission of the misappropriation although the licensed broker-dealer of the stock exchange or any other person is not the defendant in or a party to those proceedings, and the defences[sic] which would have been available to that licensed broker-dealer or any other person shall be available to the stock exchange.

(7) The governing body or, where proceedings are brought to establish a claim, the Court, if satisfied that the misappropriation of moneys on which the claim is founded was actually committed, may allow the claim and act accordingly, despite the fact that—

(a) the person who committed the misappropriation has not been convicted or prosecuted for the act; or

(b) the evidence on which the governing body or the Court acts may not be sufficient to establish the guilt of the person on a criminal trial in respect of the misappropriation.

Section 189—Orders of court on establishment of claim

Where in proceedings brought to establish a claim, the Court is satisfied that the misappropriation of moneys on which the claim is founded was actually committed and that the claimant has a valid claim, the Court shall by order—

(a) declare the fact and the date of the misappropriation and the amount of the claim; and

(b) direct that the governing body concerned allows the claim as declared and deal with the claim in accordance with the provisions of this Part.

Section 190—Power of governing body to require production of securities

(1) The governing body of a fidelity fund of a stock exchange may require a person to produce and deliver the securities, documents or statements of evidence necessary—

(a) to support a claim made by that person;

(b) for the purpose of exercising the rights of that person against a licensed broker-dealer of the stock exchange or the director or partners of the stock exchange or any other person concerned; or

(c) to enable criminal proceedings to be taken against a person in respect of a misappropriation of moneys.

(2) Where a person fails to deliver the securities, documents or statements of evidence, the governing body may disallow any claim by that person under this Part.

Section 191—Rights of claimant on payment from fidelity fund

On payment out of a fidelity fund of moneys in respect of a claim under this Part, the stock exchange is entitled to the extent of the payment to all the rights and remedies of the claimant in relation to the pecuniary loss suffered by the misappropriation of moneys.

Section 192—Payment of claims only from fidelity fund

Moneys or other property belonging to a stock exchange, other than the fidelity fund, shall not be available for the payment of a claim under this Part whether the claim is—

(a) allowed by the governing body; or

(b) made the subject of an order of the Court.

Section 193—Provision where fund is insufficient to meet claims or where claims exceed total amount payable

(1) Where the amount at credit in a fidelity fund is insufficient to pay the amount of the claims against the fund which have been allowed or in respect of which orders of the Court have been made, the amount of credit in the fund shall, subject to subsection (2) be apportioned between the claimants in a manner that the Commission considers equitable, and a claim that remains unpaid shall be charged against future receipts of the fund and paid out of the fund when moneys are available.

(2) Where the aggregate of the claims made in relation to misappropriation of moneys by or in connection with a licensed broker-dealer of the stock exchange exceeds the total amount which may, under section 185 (2) be paid in respect of that licensed broker-dealer, the total amount shall be apportioned between the claimants in the manner that the governing body considers equitable.

(3) On payment out of the fund of all the claims and all other claims against the fund which may later arise or be made in respect of misappropriation of moneys by or in connection with the licensed broker-dealer of the stock exchange, the licensed broker-dealer is absolutely discharged.

Section 194—Power of governing body to enter into contracts of insurance

(1) A stock exchange may enter into a contract with an insurer in the country to be insured or indemnified against liability in respect of claims under this Part.

(2) The contract may be entered into in relation to licensed broker-dealers of the stock exchange generally, or in relation to a particular licensed broker-dealer generally with the exclusion of a particular licensed broker-dealer named in the agreement.

(3) An action shall not lie against a stock exchange or against a member or servant of a stock exchange or its governing body or against a member of a management committee for injury alleged to have been suffered by a licensed broker-dealer of the stock exchange by reason of publication in good faith of a statement that a contract entered into under this section does or does not apply with respect to it.

Section 195—Application of insurance moneys

A claimant for money from a fidelity fund does not have a right of action against an insurer with whom a contract of insurance or indemnity is made under this Part or have a right or claim on moneys paid by the insurer under the contract.

Section 196—Interpretation

In this Part, unless the context otherwise requires—

"fund" means a fidelity fund established under section 174;

"governing body" in relation to a fidelity fund of a stock exchange, means the governing body of that stock exchange; and

"stock exchange" in relation to a fidelity fund, means the stock exchange which established that fidelity fund.

PART EIGHT—MISCELLANEOUS PROVISIONS

Section 197—Accounts and audit of issuers and licensees

- (1) A person who is an issuer of public securities and a person licensed under this Act shall prepare accounts in accordance with—
 - (a) internationally accepted accounting standards adopted by the institute of Chartered Accountants, Ghana; and
 - (b) additional accounting rules and standards prescribed by the Commission.
- (2) Accounts prepared under subsection (1) shall be audited in accordance with auditing standards adopted by the Institute of Chartered Accountants (Ghana).
- (3) A person shall not audit the accounts of a person who is an issuer of public securities and a person licensed under this Act unless the appointment of that person as the auditor is approved in writing by the Commission.
- (4) An auditor of an issuer of public securities and a person licensed under this Act shall hold office for a term of not more than six years and is eligible for re-appointment after a cooling-off period of not less than five years.
- (5) The cooling-off period referred to in subsection (4) may be varied by the Commission as it considers necessary.
- (6) A person who contravenes a provision of this section is liable to pay to the Commission an administrative penalty of one thousand penalty units.

Section 198—Restriction on use of name "stock exchange" or "securities exchange"

A person other than a stock exchange or securities exchange approved by the Commission shall not use or by inference adopt the name of stock exchange or securities exchange or exhibit at any place a name, title or description implying or tending to create the belief that that person is a stock exchange or securities exchange.

Section 199—Offences by directors and executive officers

- (1) A director or an executive officer of a market operator, a securities exchange or an issuer who—
 - (a) fails to take reasonable steps to ensure compliance with the Act; or
 - (b) fails to take reasonable steps to ensure the accuracy and correctness of a statement submitted by that person under this Act,commits an offence and is liable on summary conviction to a fine of not less than one hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than one year and not more than three years or to both.

(2) In proceedings against a person under subsection (1), it is a defence for the accused to prove that the accused has reasonable grounds to believe that—

(a) another person was charged with the duty to—

(i) ensure compliance with the requirements of this Act, or

(ii) ensure that those statements made under subsection (1) (b) were accurate, and

(b) that person was competent and is in a position to discharge that duty.

(3) A person shall not be convicted for an offence under subsection (1) unless, in the opinion of the Court, the offence was committed wilfully.

Section 200—Falsification of records by directors, employees and agents

A director, officer, auditor, employee or agent of a market operator, a securities exchange or an issuer, who—

(a) wilfully makes, or causes to be made, a false entry;

(b) wilfully omits to make an entry or causes the entry to be omitted; or

(c) wilfully alters, abstracts, conceals or destroys an entry or wilfully causes the entry to be altered, abstracted, concealed or destroyed,

in any book or report, slip, document or statement of the business affairs, transactions, conditions, assets or accounts of that stock exchange or market operator, commits an offence and is liable on summary conviction to a fine of not less than one hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than one year and not more than three years or to both.

Section 201—False reports to Commission or securities exchange

A person who, with intent to deceive makes or furnishes, or wilfully authorises or permits the making or furnishing of any false or misleading statement or report to the Commission, a securities exchange or an officer of the Commission relating to—

(a) dealing in securities;

(b) the management of the business of an issuer;

(c) a matter or thing required by the Commission for the proper implementation of this Act; or

(d) the enforcement of the rules of a securities exchange,

commits an offence and is liable on summary conviction to a fine of not less than one hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than one year and not more than three years or to both.

Section 202—Oath and confidentiality

(1) A member of the Board and an officer or an employee of the Commission shall—

(a) take an oath of confidentiality in the form set out by the Commission, before performing a duty; and

(b) maintain the confidentiality of a matter in relation to that duty which comes to the knowledge of that Board member, officer or employee during and not more than seven years after the relationship with the Commission.

(2) A person referred to in subsection (1) shall not communicate to any unauthorised person a confidential matter relating to duties of that person except—

(a) for the purposes of this Act or any other law; or

(b) where authorised to do so by the Commission.

(3) The Commission shall treat as confidential all non-public information obtained by the Commission in the performance of its duties.

(4) The Commission shall only disclose non-public information to fulfil an obligation imposed by law or in accordance with international securities regulatory practices.

(5) Where the Commission is required to disclose non-public information to fulfil an obligation imposed by law, the Commission shall use its available privileges of an application for a variation, review or appeal against the order to resist disclosure before the Court to keep the information confidential.

(6) Where the non-public information required to be disclosed was provided by a foreign regulatory authority, the Commission shall notify that foreign regulatory authority before disclosing information under subsection (4) to the relevant authority.

(7) Where non-public information is to be disclosed by the Commission on the orders of a court, the disclosure shall be made in camera.

(8) A person who contravenes subsections (1) and (2) commits an offence and is liable on summary conviction to a fine of not less than one hundred and fifty penalty units and not more than two hundred and fifty penalty units or to a term of imprisonment of not less than one year and not more than two years or to both.

Section 203—Power of court to prohibit payment or transfer of money, securities or other property

(1) Where—

(a) an investigation in relation to an act or omission by a person which constitutes or may constitute an offence under this Act is being carried out;

(b) prosecution has been instituted against a person for an offence under this Act; or

(c) civil proceedings have been instituted against a person under this Act,

and the Court considers it necessary or desirable for the purpose of protecting the interest of a person to whom a person referred to in paragraph (a), (b) or (c), is liable or may become liable to pay any moneys, whether in respect of a debt or by way of damages or compensation or

otherwise account for the securities or any other property, the Court may, on application by the Commission, make an order specified in subsection (2).

(2) The Court may make—

(a) an order prohibiting either absolutely or subject to conditions a person who is indebted to the relevant person or to any person associated with the relevant person, from making a payment in total or partial discharge of the debt;

(b) an order prohibiting, either absolutely or subject to conditions, a person holding money or securities or other property on behalf of the relevant person or on behalf of a person associated with the relevant person, from paying all or any of the money or transferring or otherwise parting with possession of the securities or any other property to any person;

(c) an order prohibiting, either absolutely or subject to conditions, the taking or sending out of the country of moneys of the relevant person or of a person associated, with the relevant person;

(d) an order prohibiting absolutely or subject to conditions, the taking, sending or transfer of securities or any other property of the relevant person or of a person associated with the relevant person from a place in the country to a place outside the country including the transfer of securities from a register in the country to a register outside the country;

(e) an order appointing a receiver or receiver and manager with the powers that the Court may order of the property or part of the property of the relevant person;

(f) an order where the relevant person is an individual;

(g) an order requiring the relevant person to deliver up to the Court the passport and any other document of the relevant person that the Court considers fit; or

(h) an order prohibiting the relevant person from leaving the country without the consent of the Court.

(3) Where an application is made to the Court for an order under subsection (1), the Court may, before considering the application, on a further application by the Commission grant an interim order pending the determination of the original application.

(4) Where the Commission makes an application to the Court for an order under subsection (1), the Court shall not require the Commission or any other person, as a condition of granting an interim order under subsection (3) to give an undertaking as to damages.

(5) Where the Court has made an order under this section, the Court may, on application by the Commission or by a person affected by the order, make a further order rescinding or varying the earlier order.

(6) An order made under this section may be expressed to operate for a period specified in the order or until the order is rescinded by a further order under subsection (5).

(7) A person who contravenes or fails to comply with an order by the Court under this section applicable to that person commits an offence and is liable on summary conviction to a fine of not

less than one hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than one year and not more than three years or to both.

Section 204—Freezing of assets

(1) Where, on an application by the Commission, the Court in camera is satisfied that the Commission has reasonable grounds to suspect that a person has committed or is committing an offence under this Act or has been involved in a crime in the securities market the Court may order—

(a) the prohibition of that person or any other person acting on behalf of that person or a person holding assets on behalf of that person from disposing, transferring or pledging an asset or making a withdrawal from an account or deposit at a bank or financial institution;

(b) the attachment in the hands of the person named in the order of moneys and other property due or owing, or belonging to, or held on behalf of that person;

(c) that person to make a full disclosure within the time that may be specified in the order, of all possessions, and the nature and source of the possessions;

(d) the person named in the order to make a full disclosure of moneys and property held on behalf of that person; or

(e) the opening, in the presence of a person authorised by the Commission, of a safe deposit box held on behalf of the person named in the order.

(2) An order under subsection (1) shall be served on the person and on each person named in the order.

(3) Where an order is made under subsections (1) (a) and (b), the Commission may—

(a) give notice of the order, unless the Commission reasonably believes that the notice is likely to obstruct the conduct of an investigation under this Act; and

(b) give notice of the order to all persons who may hold or be vested with property belonging to or held on behalf of the person named in the order.

(4) Where a notice is published under subsection (3), a person who allows, procures or facilitates the disposal of money or property belonging to the person named in the order commits an offence.

(5) An order under subsection (1) (a) and (b) shall remain in force—

(a) where an investigation is being carried out by the Commission—

(i) until the completion of the investigation;

(ii) until the time that the Commission decides not to proceed with the investigation; or

(iii) recommends that the order be lifted; or

(b) where the person has been charged with an offence, until—

- (i) the final determination of that charge by a court of law; or
- (ii) the time that the Attorney-General decides not to proceed with the charge.

Section 205—Enforceable undertakings

(1) Where a person is unable to comply with the requirements of a directive under this Act, the Commission may accept a written undertaking from that person in connection with a matter relating to the functions of the Commission under this Act.

(2) Where a person revokes or varies an undertaking under subsection (1), the revocation or variation, is of no effect unless the prior approval of the Commission is obtained.

(3) Without limiting the directives that the Commission may issue, where the Commission considers that the person has breached the undertaking, the Commission may apply to the Court for an order under this section.

(4) The Court may make—

(a) an order directing the person to comply with the undertaking;

(b) an order directing the person to do a specified act, or refrain from doing a specified act, for the purposes of—

(i) remedying the effects of the breach;

(ii) compensating persons who have suffered loss because of the breach; or

(iii) ensuring that the person does not commit further breaches of the undertaking or of this Act; and

(c) any other order that the Court considers appropriate.

(5) The Commission shall publish in the Gazette, or make available to the public a copy of the undertaking on payment of a prescribed fee.

(6) The Commission shall delete from the copy of the undertaking any information that the person giving the undertaking has requested not to be released, where the Commission is satisfied that the information—

(a) is confidential and has a commercial value that would be diminished if it were to be released generally;

(b) should not be disclosed on grounds that it would be against the interest of the public; or

(c) consists of personal details of an individual.

(7) Where information has been deleted from a copy of an undertaking under this section, the Commission shall insert a note on the copy stating that certain information has been deleted.

Section 206—Penalties

(1) A person that carries on a business as an operator specified in section 109 (1) without a licence issued under this Act is liable to pay to the Commission an administrative penalty of four thousand five hundred penalty units.

(2) A person that—

(a) being a bank or other financial institution that intends to do business in the capital market other than the business of a trustee, custodian, primary dealer, nominee, registrar and underwriter, fails to incorporate a subsidiary company under the Companies Act, 1963 (Act 179) and to apply for the relevant licence, contrary to section 114;

(b) being a public company, closed-end collective investment scheme, statutory body, local government authority and any other organisation that issues securities to the public, fails to register with the Commission on terms and conditions prescribed by the Commission, contrary to section 145;

(c) being a broker-dealer, fails to comply with the reporting requirements, contrary to section 164;

(d) being an auditor in the performance of functions as an auditor of a broker-dealer, fails to report a prescribed matter to the Commission, contrary to section 165; or

(e) being a bank, fails to make a full disclosure to the Commission, contrary to section 170, is liable to pay to the Commission an administrative penalty of one thousand penalty units.

(3) A person who—

(a) engages in false trading and market rigging transactions, contrary to section 147;

(b) engages in stock market manipulation, contrary to section 148;

(c) makes a false or misleading statement in a material particular that is likely to induce the sale or purchase of securities by any other person or is likely to have the effect of raising, maintaining or stabilising the market price of securities, contrary to section 149;

(d) fraudulently induces a person to deal in securities, contrary to section 150;

(e) disseminates information about illegal transactions, contrary to section 151;

(f) employs manipulative and deceptive devices in connection with the purchase or sale of securities, contrary to section 152; or

(g) engages in insider trading of securities, contrary to section 153,

commits an offence and is liable on summary conviction to a fine of not less than one thousand penalty units and not more than two thousand five hundred penalty units or to a term of imprisonment of not less than four years and not more than five years or to both.

(4) A person who is convicted of an offence under this Act for which no specific penalty is provided is liable on summary conviction to a fine of not less than one hundred and fifty penalty

units and not more than five hundred penalty units or to a term of imprisonment of not less than one year and not more than three years or to both.

(5) The Commission may impose an administrative penalty of three hundred penalty units for a breach of a non-criminal nature under this Act for which a specific penalty is not provided.

Section 207—Prosecution of offences

(1) The prosecution of an offence against the provisions of this Act shall be by the Attorney-General.

(2) The Attorney-General may authorise the Commission to prosecute offences under this Act in accordance with article 88 (4) of the Constitution and section 56 of the Criminal and other Offences (Procedure) Act, 1960 (Act 30).

Section 208—Publication

The Commission may publish at intervals that it considers fit for the purpose of giving public notice of—

(a) a decision, punitive or otherwise, or determination by the Commission under the Act;

(b) a statistical report or analysis; and

(c) any other information the Commission considers relevant.

Section 209—Codes, directives, guidelines and circulars of the Commission

(1) The Commission may in respect of this Act issue codes, directives, guidelines and circulars that the Commission considers necessary.

(2) The Commission may revoke, vary, revise or amend the codes, directives, guidelines and circulars issued under this section.

(3) Subject to this Act, a person to whom a code, directive, guideline or circular referred to in subsection (1) applies, shall give effect to the code, directive, guideline or circular within the period specified by the Commission.

(4) Where a person fails to comply with a code, directive, guideline or circular issued by the Commission, the Commission may—

(a) take an action set out in section 118 or 122; or

(b) impose an administrative penalty of five hundred penalty units.

Section 210—Power to grant exemptions and waivers

The Commission may in relation to a case or class of cases, for good cause, grant exemption or partial exemption or waiver from compliance with any code, directive, guideline or circular issued by the Commission under this Act subject to the conditions that it may impose.

Section 211—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 that person has an interest, that person shall be deemed to have an interest in those securities.
- (2) A right does not constitute an interest in a security where—
 - (a) the right was issued or offered to the public for subscription or purchase;
 - (b) the public was invited to subscribe for or purchase the right, and the right was subscribed for or purchased; or
 - (c) the right is held by the management company and was issued for the purpose of an offer to the public within the meaning of section 266 of the Companies Act, 1963 (Act 179).
- (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 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 is, or the associates of that person or all are entitled to exercise or control the exercise of not less than thirty percent of the votes attached to the voting shares in the body corporate.
- (4) For the purposes of subsection (3) (c), a person is an associate of another person if the person is—
 - (a) a body corporate which, by virtue of section 3 of the Companies Act, 1963 (Act 179) is an associated company in relation to the other person;
 - (b) a person in accordance with whose directions, instructions or wishes that other person is accustomed to or is under an obligation, whether formal or informal, to act in relation to the security referred to in subsection (3);
 - (c) 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
 - (d) a body corporate in accordance with the directions, instructions or wishes of which, or 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 where that person—
 - (a) has entered into a contract to purchase a security;
 - (b) has a right, otherwise than by reason of having an interest under a trust, to have security transferred to or to the order of that person, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;

- (c) has the right to acquire a security or an interest in a security, under an option; or
 - (d) is entitled, otherwise than by reason of having been appointed a proxy or representative to vote at a meeting of members of a body corporate or of a class of its members, to exercise or control the exercise of a right attached to a security, which is not a security of which that person is the registered holder.
- (6) A person shall be deemed to have an interest in a security if that security is held jointly with another person.
- (7) For the purpose of determining whether a person has an interest in a security, it is immaterial that the interest cannot be related to a particular security.
- (8) There shall be disregarded—
- (a) an interest in a security if the interest is that of a person who holds the security as a bare trustee;
 - (b) an interest in a security of a person whose ordinary business includes the lending of money if that person 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 which is an interest held by that person by reason of holding a prescribed office; and
 - (d) any other interest in securities that may be 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.

Section 212—Associated person

- (1) A reference in this Act to a person associated with another person shall be construed—
- (a) where the other person is a body corporate—
 - (i) as director or secretary of the body corporate;
 - (ii) as body corporate that is related to the other person; or
 - (iii) as director or secretary of the related body corporate;
 - (b) where the matter to which the reference relates is the extent of 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 either, directly or indirectly, control the exercise of or substantially influence the exercise of a 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 each other shares in the body corporate or may be required to dispose of shares in accordance with the directions of the other body corporate;
- (c) as 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 power to exercise or to control the exercise of the voting power attached to voting shares in a body corporate—
- (i) subject to subsection (2), as a person who is a director of a body corporate that carried on a business of dealing in securities and of which the other person is also a director;
 - (ii) subject to subsection (2), as a person who is a director of a body corporate of which the other person is a director, which is not a body corporate that carried on a business of dealing in securities; or
 - (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;
- (e) a person with whom the other person is, by virtue of a regulation that may be introduced, 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 paragraph (a), (b), (c), (d), (e) or (f).
- (2) Where, in proceedings under this Act, it is alleged that a person referred to in subsections (1) (d) (i) and (ii) was associated with any other person at a particular time, that person shall be deemed not to have been 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 subsection (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 the proper performance of functions that relate to professional capacity or to the business relationship with the other person.

Section 213—Stock Exchange to refer to other exchanges

In this Act, unless otherwise specified, a provision relating to a stock exchange shall, where applicable, refer to other exchanges approved or licensed under the Act.

Section 214—Mandatory trade through commodity exchange

The Commission may require as part of its function, that certain types of commodities based on volume and frequency of trade, be traded through a commodity exchange.

Section 215—Regulations

- (1) The Minister may, on the recommendation of the Commission by legislative instrument make Regulations prescribing the matters required or permitted by this Act to be prescribed, and for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the Regulations may provide for—
 - (a) the forms to be used for the purposes of this Act;
 - (b) the financial information required by this Act to be prepared by market operators;
 - (c) the furnishing to the Commission of information in addition to, or in variation of, the information contained in a prescribed form lodged with the Commission;
 - (d) the times within which information required is to be furnished to the Commission;
 - (e) matters relating to the licensing, management and operation of unit trust and mutual funds;
 - (f) matters relating to the licensing and operation of collective investment schemes other than unit trusts and mutual funds;
 - (g) matters relating to the content of invitations to the public and the examination and approval of invitations;
 - (h) matters relating to the continuing disclosure of information and forms, content, frequency and standards of financial reporting by issuers of securities;
 - (i) the establishment of an independent committee to oversee the audit of public companies and other persons subject to the securities laws;
 - (j) the establishment of an investor education and protection fund; and
 - (k) matters relating to stock exchanges, commodity exchanges and other exchanges.

Section 216—Interpretation

In this Act, unless the context otherwise requires—

"advertising" includes every form of advertising, whether in a publication or by the display of notices or by means of circulars or other documents or by an exhibition of photographs or films or videos or by way of sound broadcasting or television or on computer screens or in any other manner;

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

"arbitrage" means profiting from differences in price of the same security traded on two or more markets;

"assets of the scheme" means the capital and income of the scheme;

"auditor" means a company auditor qualified as such under the Companies Act, 1963 (Act 179);

"body corporate" includes an incorporated body under the Incorporated Private Partnerships Act, 1962 (Act 152);

"book" includes document in any form including information stored in an electronic form;

"broker-dealer" means a person who carries on a business of dealing in securities as principal or as an agent, whether that person carries on any other business approved by the Commission or does not carry out any additional business;

"broker-dealer's representative" means a person, in the direct employment of, or acting for, or by arrangement with a broker-dealer, who performs for that broker-dealer any of the functions of a broker-dealer, other than work ordinarily performed by accountants, clerks or cashiers, whether the remuneration of the person is by way of salary, wages, commission or otherwise; and where the broker-dealer is a body corporate or a director or officer of the body corporate who performs for the body corporate any of the functions mentioned;

"capital market services" means the provision of advice, guidance, opinion or recommendation to a person subject to the securities laws;

"chairperson" means the chairperson of the Commission;

"collective investment scheme" means an arrangement by which—

(a) contributions to a scheme by persons taking part in that scheme are pooled;

(b) the contributions to the scheme are invested in eligible assets by the manager of the scheme on behalf of the contributors;

(c) persons making contributions to a scheme become shareholders or unit holders in that scheme but do not have day to day control over the management of the assets;

(d) shareholders or unit holders, as contributors to a scheme participate in or receive profits or income or sums paid out of the profits or income arising from the acquisition, holding, management and disposal of assets or any part of the assets by the manager;

"Commission" means the Securities and Exchange Commission established by section 1;

"commodity exchange" means an exchange or a facility where various commodities and derivative products are traded;

"company" has the same meaning as is assigned to it in the Companies Act, 1963 (Act 179);

"constitution of a scheme" in the case of a unit trust means the trust deed and in the case of mutual fund means the regulations of the mutual fund;

"court" means court of competent jurisdiction;

"credit rating agency" means a company that assesses the financial strength of issuers of debt securities, particularly their ability to meet the interest and principal payments and assign ratings to them;

"custodian" means a person who takes responsibility for safe-guarding a firm's or individual's financial assets and holds the assets in safekeeping on behalf of the firm or individual;

"dealing in securities" means, whether as principal or agent making or offering to make with a person, or inducing or attempting to induce a person to enter into or to offer to enter into—

(a) an agreement for or with a view to acquiring, disposing of, subscribing for or underwriting securities; or

(b) an agreement the purpose or intended 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 price of securities;

"derivative" means a financial instrument whose characteristics and value are dependent on or derived from one or more underlying assets, such as a commodity, bond, equity or currency;

"derivatives exchange" means a facility for the trading of derivatives;

"director" has the same meaning as is assigned to that expression in section 179 of the Companies Act, 1963 (Act 179);

"exchange" means a facility for the trading of securities, commodities or derivatives;

"executive officer" in relation to a body corporate, means a person by whatever name called who is concerned or takes part in the management of the body corporate whether or not the officer is a director of the body corporate;

"fidelity fund" means the fidelity fund established under section 174;

"foreign issuer" means an issuer which is a foreign government or a corporation or other organisation incorporated or organised under the laws of any foreign country;

"foreign regulatory authority" means an organisation in any foreign country which has the responsibility for the regulation or supervision of that country's financial market;

"former issuer" means a person who has previously been an issuer but no longer has any shares;

"former licensee" means a person who has previously been a licensee;

"fund manager" means a person other than a person specified in paragraph (a) and (b) who, pursuant to a contract or arrangement with a client, undertakes on behalf of the client the management of a portfolio of securities for the purpose of investment, and also advises on investments—

(a) a lawyer, accountant or any other professional in practice who in the carrying on of that business is solely incidental to the practice of the profession;

(b) a broker-dealer or the employee or a broker-dealer's representative whose carrying on of that business is solely incidental to the conduct of the broker-dealer's business of dealing in securities;

"futures" means a contract to buy specific quantities of a commodity or financial instrument at a specified price with delivery set at a specified time in the future;

"futures exchange" means a central financial exchange where standardised future contracts can be traded;

"governing body" in relation to a fidelity fund of a stock exchange means the entity responsible for the administration of that stock exchange;

"government securities" means securities which are direct obligations of and guaranteed as to principal and interest repayment by the Government of Ghana;

"hearing committee" means the Administrative Hearings Committee established under section 18;

"hedge fund" means a fund with a portfolio that uses any of the following investment strategies—

(a) leverage;

(b) short positions; or

(c) derivative positions for the purposes of enhancing returns or to protect the assets against market exposures;

"independent" in relation to the trustee and manager of a unit trust or the mutual fund company and the manager or custodian of a mutual fund means—

(a) in the case of a unit trust, that the manager is not a substantial shareholder of the trustee and that the trustee is not a substantial shareholder of the manager; and

(b) in the case of a mutual fund, that the mutual fund company is not a substantial shareholder of the manager or custodian;

"independent financial analyst" means a person who, as part of a regular business, issues analysis or reports concerning securities;

"insider trading" means the buying or selling of securities by a person who has access to material non-public information about the security;

"interest" in the case of a—

(a) unit trust means the beneficial interest held under the trust;

(b) mutual fund, means the shares in the mutual fund;

"investment adviser" includes—

(a) a person who carries on a business of advising others concerning securities; and

(b) a person who as part of a regular business issues analysis or reports concerning securities but does not include—

(i) a bank as defined in section 90 of the Banking Act, 2004(Act 673);

(ii) a company registered to undertake insurance business under the Insurance Act, 2006 (Act 724);

(iii) a lawyer, accountant or any other professional in practice who in the carrying on of that business is solely incidental to the practice of the profession of the lawyer, accountant or that professional;

(iv) a broker-dealer or the employee or representative of that broker-dealer whose carrying on of that business is solely incidental to the conduct of the business of dealing in securities by the broker- dealer; and

(c) a person who is the proprietor of a newspaper where—

(i) in so far as the newspaper is distributed generally to the public, it is distributed only to subscribers to, and purchasers of, the newspaper for value;

(ii) the advice is given or the analysis or reports are issued or published only through that newspaper;

(iii) that person receives no commission or other consideration for giving the advice or for issuing or publishing the analysis or reports; and

(iv) the advice is given and the analysis and reports are issued or published solely as incidental to the conduct of that person's business as a newspaper proprietor;

"investment adviser representative" includes a person, in the direct employment of or acting for or by arrangement with an investment adviser, who performs for the investment adviser any of the functions of an investment adviser other than work ordinarily performed by accountants, clerks or cashiers, whether the remuneration of that person is by way of salary, wages, commission or otherwise, a director or officer of a body corporate who performs for the body corporate any of the functions;

"investor" includes—

(a) a unit holder in respect of a unit trust; and

(b) a shareholder in respect of a mutual fund;

"invitation to the public" has the meaning assigned to it in the Companies Act, 1963 (Act 179);

"issuer" means a person or any other entity that issues, has issued or is going to issue securities;

"issuing house" means a bank as defined in section 90 of the Banking Act, 2004 (Act 673) or other licensed market operator which undertakes the business of arranging or underwriting the issue of securities by a company;

"licence" includes—

- (a) a licence issued to a market operator;
- (b) a licence issued to a market operator's representative;

"licensee" means a person who is granted a licence by the Commission under section 112;

"listing rules" in relation to a body corporate that maintains a securities exchange, means rules made by its governing body in respect of—

(a) the admission to the official list of the body corporate, of bodies corporate, governments, unincorporated bodies or other persons for the purpose of the quotation on the exchange or made available by bodies corporate, governments, unincorporated bodies or other persons or the removal from that official list and for other purposes; or

(b) the activities or conduct of bodies corporate, governments, unincorporated bodies and other persons 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;

"manager" in the case of a—

(a) unit trust means the manager referred to in section 60; and

(b) mutual fund means a company appointed by the board of directors of the mutual fund company to manage the mutual fund;

"margin trading" refers to an arrangement between a broker-dealer and the client of that broker-dealer in which the broker-dealer provides the client with part of the funds to meet the full cost of the securities to be purchased by the client;

"market maker" means a body corporate that stands ready to buy and sell a particular security on a regular and continuous basis at publicly quoted prices in order to facilitate trading in that security;

"market making" refers to the obligation of a broker-dealer, based on a commitment, to continuously submit binding bids and offers for securities which are subject to the commitment;

"market operator" means a person duly licensed by the Commission to perform specific functions in the securities market;

"Minister" means the Minister responsible for Finance;

"mutual fund" means a public or external company incorporated to operate as a collective investment scheme;

"net assets" means total assets minus total liabilities;

"nominee" means a person in whose name a security is registered though the ownership is held by another person;

"non public information" means confidential information in the custody of the Commission;

"officers of a company" includes the directors and a person acting as a director;

"pre-licensing requirement" means a condition that an applicant for a licence under the Act must meet before approval is granted for that licence;

"prescribed interest" means a right to participate or an interest, whether enforceable or not and whether actual, prospective or contingent—

(a) in the profits, assets or realisation of a financial or business undertaking or scheme whether in the country or elsewhere;

(b) in any common enterprise, whether in the country or elsewhere, in relation to which the holder of the right or interest is led to expect profits, rent or interest from the efforts of the promoter of the enterprise or a third party;

(c) in a class or kind of rights or interest, declared by the regulations to be an exempt right or interest; or

(d) in any investment contract, whether or not the right or interest is evidenced by a formal document and whether or not the right or interest relates to a physical asset, but does not include—

(i) a share in, or debenture of a Corporation;

(ii) any interest in, or arising out of a policy of life insurance; or

(iii) an interest in a partnership agreement, unless the agreement or proposed agreement—

(aa) relates to an undertaking, scheme, enterprise or investment contract promoted by or on behalf of a person whose ordinary business is or includes the promotion of similar undertakings, schemes, enterprises or investment contracts, whether or not that person is, or is to become, a party to the agreement or proposed agreement; or

(bb) is or would be an agreement, within a class of agreements, prescribed by the Regulations for the purposes of this paragraph;

"primary dealer" means a body corporate which buys government securities directly from the government with the intention of reselling them to any other person;

"principal officer"—

(a) in relation to a company, means any director or a person acting as director, secretary or employee of that company in senior management and a receiver and manager of a part of the undertaking of that company appointed under a power contained in an instrument, and a liquidator of a company appointed in a voluntary winding up; and

(b) in relation to a partnership, means any partner including a sole surviving or continuing member of a firm or a person acting as such, a secretary or employee of that firm in senior management and a receiver and manager of a part of the undertaking of that firm appointed

under a power contained in an instrument, and a liquidator of that firm appointed in a voluntary winding up;

"private equity fund" means an investment company which pools money to invest in private companies for the purpose of generating or making returns on their growth;

"redemption" in relation to an interest in a scheme, means the purchase of interest from an investor by the manager as a principal;

"registrar" means a firm which keeps records of a company's share or bond holders, handles share or bond certificates and acts as an intermediary for the company in the payment of dividend or interest;

"Regulations" means the Regulations made under this Act;

"Republic" means the Republic of Ghana;

"relevant authority"—

(a) in relation to licensed broker-dealer of the exchange, means the stock exchange by which a company is recognised; and

(b) in relation to any other person, means the Commission;

"rules", in relation to a stock exchange, includes the rules governing the conduct of the stock exchange or its members and regulations made by the council of a stock exchange for the purpose;

"scheme" means a unit trust or mutual fund;

"scheme particulars" means particulars of a unit trust or mutual fund prepared and published in accordance with the Regulations;

"secondary market" means the financial market in which previously issued securities are bought and sold;

"securities" include—

(a) shares or debentures within the meaning of the Companies Act, 1963 (Act 179);

(b) loan instruments of a company;

(c) bonds or other loan instruments of the Government or the Government of any other country;

(d) bonds or other loan instruments of a corporation established under an enactment;

(e) rights or interest whether described as units or otherwise under any unit trust;

(f) warehouse receipts;

(g) a right or option in respect of any shares, debentures, bonds or notes;

(h) commodities futures, contracts, options or other derivatives;

(i) derivatives as defined under this Act; and

(j) any other instruments as the Minister may by notice in the Gazette prescribe upon the recommendation of the Commission;

"securities business" includes dealings conducted by broker-dealers, fund managers, securities exchanges, underwriters issuing houses and credit rating agencies;

"securities exchange" means an exchange or approved trading facility such as a stock exchange, commodity exchange, metal exchange, petroleum exchange, options exchange, futures exchange, over the counter market and other derivatives exchanges that use instruments for trading;

"securities lending" means the temporary exchange of securities which requires collateral generally in cash or other securities of at least an equivalent value, with an obligation to redeliver a like quantity of the same securities on a future date and is in the nature of a securities loan, a repurchase agreement and a self-buy back agreement;

"self-regulatory organisation" means a registered securities exchange or an organisation of intermediaries which represents a particular segment of the securities market and is recognised by the Commission under this Act;

"share" means the interest of a member of a body corporate who is entitled to share in the capital or income of the body corporate;

"stock exchange" means a market, exchange, a facility or any other place at which or on which securities are offered for sale, purchase or exchange;

"substantial shareholder" means a shareholder entitled to exercise or control the exercise of thirty percent or more of the voting power at a general meeting of the company or a person who is in a position to control the composition of a majority of the board of directors of a company;

"trust account" means an account opened and maintained under section 159;

"trust deed" has the meaning assigned to it in section 61;

"trustee" means a corporate body in which the property subject to a trust created is or may be vested in accordance with the terms of the trust deed;

"underwriter" means a corporate body which buys securities outright from an issuer and sells them to open-market investors;

"units" means a portion or division of a unit trust fund, whether described as units or otherwise into which are divided the beneficial interest in the assets subject to a trust created under the scheme;

"unit trust" includes—

(a) a collective investment scheme established under a trust deed; and

(b) a unit trust scheme;

"unit trust scheme" means an arrangement by which securities or any other charge other than a charge to secure the debentures of one body corporate, are vested in trustees and the beneficial interest in it is divided into units, sub-units or other interests by whatever name called with a view to an invitation being made to the public to acquire the units or any of them;

"venture capital fund" means an investment company which pools money to provide funding to early-stage, high potential, growth companies for the purpose of generating or making returns on their growth;

"warehouse operator" means a person who for reward engages in the business of operating a warehouse for receiving, storing, handling of goods for compensation or an agent or employee of that person; and

"warehouse receipt" means an acknowledgement, in writing or electronic form, issued by a warehouse operator or the authorised representative of the warehouse operator of the receipt for storage of goods that are not owned by the warehouse operator.

Section 217—Repeals and savings

(1) The following enactments are hereby repealed—

- (a) the Securities Industry Act, 1993 (P.N.D.C.L. 333); and
- (b) the Securities Industry (Amendment) Act, 2000 (Act 590).

(2) Despite the repeal of P.N.D.C.L. 333 and Act 590, the Regulations, notices, orders, directions, appointments or any other act lawfully made or done under the repealed enactments and in force immediately before the commencement of this Act shall, with such modifications as are made by this Act, be considered to have been made or done under this Act and shall continue to have effect until reviewed, cancelled or terminated.

(3) A register in use immediately before the commencement of this Act and a document prepared or issued under P.N.D.C.L. 333 or Act 590 shall continue in force as if kept, prepared or issued under the corresponding provisions of this Act.

(4) Despite the repeal of P.N.D.C.L. 333, any stock exchange authorised under section 25 of that Act shall be deemed to have been approved by the Commission under section 42 and this Act shall apply accordingly in relation to the stock exchange.

(5) The regulations and rules governing the conduct of any stock exchange, referred to in subsection (4), which are in force immediately before the commencement of this Act shall, after the commencement of this Act, be deemed to be the regulations and rules of the stock exchange and this Act shall apply accordingly in relation to those rules and regulations.

Section 218—Modification of application of sections 147 and 148 to a stock market outside the country

A thing done for the purpose of stabilising the price of securities on a stock market outside the country in compliance with the applicable regulations does not contravene sections 147 and 148.

Section 219—Transitional provisions

(1) The rights, assets and liabilities accrued in respect of the properties vested in the Commission established under the Securities Industry Act, 1993 (P.N.D.C.L. 333) immediately before the commencement of this Act and the persons employed by the Commission are transferred to the Commission established under this Act and accordingly proceedings taken by or against the former Commission may be continued by or against the Commission.

(2) A contract subsisting between the former Commission established under the Securities Industry Act, 1993 (P.N.D.C.L. 333) and another person and in effect immediately before the commencement of this Act shall subsist between the Commission established under this Act and that other person.

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