

No. S 31

**CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83(3))**

SECURITIES ORDER, 2001

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**CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83(3))**

SECURITIES ORDER, 2001

In exercise of the power conferred by subsection (3) of section 83 of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

PART I

PRELIMINARY

Citation, commencement and long title.

1. (1) This Order may be cited as the Securities Order, 2001 and shall commence on a date to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification in the *Gazette*.

(2) The long title of this Order is "An Order to make provision with respect to financial exchanges, dealers and other persons providing advice in respect of, managing or dealing in securities, for certain offences relating to securities, and for other purposes connected therewith".

Interpretation.

2. (1) In this Order, unless the context otherwise requires —

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

"auditor" means an approved auditor within the meaning of the International Business Companies Order, 2000 (S 56/2000);

"Authority" means such person or persons as is appointed to be the Authority by His Majesty the Sultan and Yang Di-Pertuan for the purposes of this Order;

"body corporate" means a body corporate wherever incorporated, registered or established;

"business", in relation to a dealer, means the business of dealing in securities;

"committee", in relation to an exchange, means the persons in whom the management of an exchange is vested;

"communication" includes electronic or similar communication or messages;

"dealer" includes a person who carries on the business of dealing in securities conducted between a buyer and a seller in a market, or who makes a market, on his own account and as an agent, or as an agent only, whether or not he carries on any other business, but does not include an exempt dealer;

"dealer's representative" means a person, by whatever name described, in the direct employment of, or acting for, or by arrangement with, a dealer, not being an exempt dealer, who performs for that dealer any of the functions of a dealer, other than work ordinarily performed by an accountant, clerk or cashier, whether his remuneration is by way of salary, wages, commission or otherwise; and, where the dealer is a body corporate, includes any director, member or officer of the body corporate who performs for the dealer any of these functions, whether or not his remuneration is as aforesaid;

"dealing in securities" means, whether as principal or agent, making or offering to make to any person, or inducing or attempting to induce any person to enter into or to offer to enter into —

- (a) any agreement for or with a view to acquiring, disposing of, subscribing for, or underwriting securities; or
- (b) any agreement the purpose or avowed purpose of which is to secure a profit or avoid a loss to any of the parties from the yield of securities or by reference to fluctuations in the value of securities;

"director" has the same meaning as in the International Business Companies Order, 2000 (S 56/2000);

"exchange" means, where the context so admits, an exchange licensed or established by the Minister pursuant to section 6;

"executive officer" means an officer who takes part in the management of a company;

"exempt dealer" means —

- (a) a person who carries on the business of dealing in securities only for his own account;
- (b) insofar as a mutual fund is concerned, any person holding an operator's authorisation within the meaning of section 6(2) of the Mutual Funds Order, 2001 dealing in securities associated with a mutual fund approved under the Mutual Funds Order, 2001;
- (c) any public corporation or other public person or body constituted in Brunei Darussalam under any written law; or

- (d) such other person or class of persons as the Minister may declare to be an exempt dealer if the main business carried on by such person or class of persons is a business other than the dealing in securities, and if the dealing in securities is effected —
 - (i) by way of making or offering to make with any person an agreement for or with a view to the underwriting of securities;
 - (ii) by way of making an invitation to persons to subscribe for securities or to purchase securities on the first sale thereof;
 - (iii) by way of issuing any document which is or is deemed to be a prospectus within the meaning of the Companies Act, (Chapter 39), the International Business Companies Order, 2000 (S 56/2000), the International Limited Partnerships Order, 2000 (S 45/2000) or the Mutual Funds Order, 2001; or
 - (iv) by such other way as the Minister may from time to time provide in writing;

"investment adviser" includes a person who in or from within Brunei Darussalam carries on the business of advising others concerning securities or of investment or portfolio management or who as part of a regular business issues or promulgates analyses or reports concerning securities, but the expression does not include —

- (a) a licensed bank as defined in the Banking Act (Chapter 95);
- (b) an Islamic bank as defined in the Islamic Banking Act, (Chapter 168);
- (c) a bank appropriately licensed under the International Banking Order, 2000 (S 53/2000);
- (d) a company or society registered or licensed under any written law relating to the regulation of insurance;
- (e) a company appropriately licensed under the Registered Agents and Trustees Licensing Order, 2000 (S 54/2000);
- (f) a dealer or exempt dealer whose carrying on of that business is solely incidental to the conduct of his business of dealing in securities;
- (g) a person who is the proprietor of a local newspaper registered under the Local Newspapers Act (Chapter 105) or the holder of a broadcasting licence granted under the Broadcasting Act (Chapter 180) where —
 - (i) that person receives no commission or other consideration for issuing or promulgating analyses or reports; and

- (ii) the advice is given and the analyses and reports are issued or promulgated solely as incidental to the conduct of that person's business aforesaid;

"investment representative" means a person, by whatever name described, in the direct employment of, or acting for, or by arrangement with, an investment adviser, not being a dealer or exempt dealer, who performs for that investment adviser any of the functions of an investment adviser, other than work ordinarily performed by an accountant, clerk or cashier, whether his remuneration is by way of salary, wages, commission or otherwise; and, where the investment adviser is a body corporate, includes any director, member or officer of the body corporate who is not the holder of an investment adviser's licence and who performs for such body corporate any of those functions, whether or not his remuneration is as aforesaid;

"licence" means —

- (a) a dealer's licence;
- (b) an investment adviser's licence; or
- (c) a representative's licence,

under Part III;

"listing requirements", in relation to a person or body which maintains or provides, or proposes to maintain or provide, an exchange, means the rules governing or relating to —

- (a) the admission to the official list of any such person or body corporate, government, unincorporated body or any other person for the purpose of the quotation (whether price-driven, order-driven or otherwise) or information to be made available in relation to securities on or by the exchange, or made available by a body corporate, government, unincorporated body or any other person or the removal from that official list and for other purposes; or
- (b) the constitution, activities or conduct of any body corporate, government, unincorporated body and any other person 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; or
- (ii) are made by another person and adopted by the body corporate;

"market" means any financial market or other place at which, or a facility by means of which —

- (a) offers to sell, purchases or exchanges of securities are regularly made or accepted;
- (b) offers or invitations that are intended, or may reasonably be expected, to result, whether directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange securities, are regularly made;
- (c) information concerning the prices at which or the consideration for which, particular persons, or particular class of persons, propose, or may reasonably be expected to sell, purchase or exchange securities is regularly provided;

"member" means a person who carries on the business of dealing in securities and is recognised as a member by an exchange;

"Minister" means the Minister of Finance;

"mutual funds" shall have the same meaning as is ascribed thereto in the Mutual Funds Order, 2001;

"officer", in relation to a body corporate includes —

- (a) any director, secretary or employee of the body corporate;
- (b) a receiver and manager of any part of the undertaking of the body corporate appointed under a power contained in any instrument; and
- (c) any liquidator of a company appointed in a voluntary winding-up, but does not include —
 - (i) any receiver who is not also a manager;
 - (ii) any receiver and manager appointed by the Court; and
 - (iii) any liquidator appointed by the Court or by the creditors;

"Registrar" means the Registrar of Companies appointed under the Companies Act (Chapter 39) and, where the context so requires, means the Registrar of International Business Companies or the Registrar of International Limited Partnerships, and includes any other officer who has been authorised to act on behalf of the Registrar, the Registrar of International Business Companies or the Registrar of International Limited Partnerships;

"relevant authority" means —

- (a) in relation to a member which is a body corporate, the exchange by which the body corporate is recognised; and
- (b) in relation to any other person, (or in the absence of such an exchange), the Authority;

"representative" means a dealer's representative or an investment adviser's representative;

"rules", in relation to a market, means the rules governing the conduct of that market or the members thereof by whatever name called and wherever contained and includes rules contained in constituent documents of the market;

"securities" includes debentures, stocks and shares in a public company or corporation, bonds, depositary receipts, financial instruments, loan stock, bills, notes or other debt instrument of any government or of any body, whether corporate or unincorporate, and includes any right or option in respect thereof and any interest in mutual funds, futures contracts and any medium of investment in a market and without limitation includes instruments derived from direct dealings in securities, currencies and commodities, and any renewal or variation of any securities;

"trust account" means a trust account established under section 47.

(2) The Minister may, subject to any terms and conditions he sees fit to impose in any particular case, make written provision that all or any of the provisions of this Order —

- (a) shall not have effect in relation to any specified person or to any person who is a member of a specified class of persons;
- (b) shall not have effect in relation to the representative of any persons referred to in paragraph (a); or
- (c) shall have effect in relation to any person referred to in paragraph (a) or (b) to such extent and subject to such terms and conditions as are determined by the Minister pursuant to this subsection.

Associated persons.

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

- (a) where that other person is a body corporate —
 - (i) a director or secretary of the body corporate;
 - (ii) a body corporate that is related to that other person; and

- (iii) a director or secretary of such a related body corporate;
- (b) where the matter to which the reference relates is the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a body corporate, a person with whom the other person has, or proposes to enter into, an agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied —
 - (i) by reason of which either of those persons may exercise, directly or indirectly, control the exercise of, or substantially influence the exercise of, any voting power attached to a share in that body corporate;
 - (ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the body corporate; or
 - (iii) under which either of those persons may acquire from the other of them shares in the body corporate or may be required to dispose of such shares in accordance with the directions of the other of them;
- (c) any person in concert with whom the other person is acting, or proposes to act, in relation to the matter to which the reference relates;
- (d) where the matter to which the reference relates is a matter other than the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a body corporate —
 - (i) a 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;
 - (ii) a person who is a director of a body corporate that carries on a business of dealing in securities and of which the other person is also a director; or
 - (iii) subject to subsection (2), a person who is a director of a body corporate of which the other person is a director, not being a body corporate that carries on a business of dealing in securities;
- (e) a person with whom that other person is, by virtue of any regulation that may be introduced, to be regarded as associated in respect of the matter to which the reference relates;
- (f) a person with whom that 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 that 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 any person mentioned in any of the preceding paragraphs, that last-mentioned person.

(2) Where, in proceedings under this Order, it is alleged that a person referred to in sub-paragraph (iii) of paragraph (d) of subsection (1) was associated with another person at a particular time, that person shall be deemed not to have been so associated in relation to a matter to which the proceedings relate unless the person alleging the association proves that the first-mentioned person at that time knew or ought reasonably to have known the material particulars of that matter.

(3) A person shall not be taken to be associated with another person by virtue of paragraph (b), (c), (e) or (f) of subsection (1) by reason only that one of those persons furnishes advice to, or acts on behalf of, the other person in a professional capacity.

(4) For the purposes of sub-paragraph (ii) of paragraph (a) of subsection (1), a body corporate is related to another person, being a body corporate, if that first-mentioned body corporate is controlled by or is a subsidiary of —

- (a) that other body corporate;
- (b) that other body corporate and one or more bodies corporate each of which is controlled by or is a subsidiary of that other body corporate; or
- (c) 2 or more bodies corporate each of which is controlled by or is a subsidiary of that other body corporate.

Interest in securities.

4. (1) Where any property held in trust consists of or includes securities in which a person knows or has reasonable grounds for believing that he has an interest, he shall be deemed for the purposes of this Order to have an interest in those securities.

(2) A right does not constitute an interest in a security where —

- (a) a right, being a right or an interest of the nature of ownership or a share in ownership, was issued or offered to the public for subscription or purchase;
- (b) the public was invited to subscribe for or purchase such a right, and the right was so subscribed for or purchased; or
- (c) such a right is held by a management or underwriting company and was issued for the purpose of an offer to the public within the meaning of the Companies Act (Chapter 39) or the International Business Companies Order, 2000 (S 56/2000).

(3) A person shall be deemed to have an interest in a security where a body corporate has an interest in a security and —

- (a) the body corporate is, or its directors are accustomed or 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, or the associates of that person, or that person and the associates of that person hold not less than 25% of the votes attached to the voting shares in the body corporate.

(4) For the purposes of paragraph (c) of subsection (3), a person is an associate of another person if that first-mentioned person is —

- (a) a body corporate which, by virtue of any written law is deemed to be related to that other person, or a parent, subsidiary, related or associated company;
- (b) a person in accordance with whose directions, instructions or wishes that other person is accustomed or is under an obligation, whether formal or informal, to act in relation to the security;
- (c) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to the security;
- (d) a body corporate which is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to the security; or
- (e) 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 the security.

(5) A person shall be deemed to have an interest in any one or more of the following circumstances where he —

- (a) has entered into a contract to purchase a security;
- (b) has the right, otherwise than by reason of having an interest under a trust, to have a security transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on the fulfilment of any condition or not;

- (c) has the right to acquire a security or an interest in a security, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of any condition or not; or
- (d) is entitled, otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a body corporate or of a class of its members, to exercise or to control the exercise of a right attached to a security, not being a security of which he is the registered holder.

(6) A person shall be deemed to have an interest in a security if that security is held jointly with another person.

(7) For the purpose of determining whether a person has an interest in a security, it is immaterial that the interest cannot be related to a particular security.

(8) Subject to subsection (9) there shall be disregarded —

- (a) an interest in a security if the interest is that of a person who holds the security as bare trustee;
- (b) an interest in a security of a person whose ordinary business includes the lending of money, if he holds the interest only by way of security for the purpose of a transaction entered into in the ordinary course of business in connection with the lending of money;
- (c) an interest of a person in a security being an interest held by him by reason of his holding a prescribed office; and
- (d) a prescribed interest in a security being an interest of such person, or of the persons included in such class of persons, as is prescribed.

(9) An interest in a security shall not be disregarded by reason 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 any restraint or restriction.

PART II

EXCHANGES

Licensing, establishment etc. of markets.

5. (1) A person shall not, except as permitted pursuant to this Order or any other written law, establish or maintain, or assist in establishing or maintaining or hold himself out as providing or maintaining a market that is not the market of an exchange.

(2) A person who contravenes or fails to comply with the provisions of subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000, imprisonment for a term not exceeding 10 years or both.

Power of Minister to establish exchanges.

6. (1) The Minister may licence, establish or cause to be established within Brunei Darussalam a body or bodies corporate to be exchanges.

(2) An application for a licence or for the renewal of a licence to establish or maintain an exchange shall be made to the Minister in the prescribed form and manner and shall be accompanied by such fee as may be prescribed.

By-laws of an exchange.

7. The Authority may, with the approval of the Minister, prescribe a code of conduct as may be expedient or necessary for the purpose of carrying out the provisions and matters connected with an exchange.

Rules of an exchange.

8. An exchange shall, with the approval of the Authority, make rules which provide for —

- (a) the conditions of entry and admission into membership and for the regulation generally of the conduct of trading members in connection with the business of an exchange;
- (b) the financial, accounting, record-keeping, disclosure and capital adequacy requirements applicable to trading members;
- (c) the conditions under which securities may be listed for trading in a securities market to be operated by an exchange;
- (d) the conditions governing dealings in securities by members;
- (e) the class or classes of securities that may be dealt in by members or listed;

- (f) confidentiality with respect to information relating to the affairs of an exchange and of any member in connection with the business of an exchange;
- (g) the resolution of disputes arising out of or in connection with any exchange;
- (h) the suspension of trading in and the de-listing of any security;
- (i) the establishment and maintenance of a fidelity fund to be administered by a committee on behalf of an exchange and for the levying of contributions by members in order to meet such costs, claims and expenses as the committee may consider appropriate;
- (j) the carrying on of the business of an exchange with due regard to the interests of the public;
- (k) a fair and independent market for the listing and trading of securities;
- (l) such other matters as an exchange considers necessary or desirable for its proper and efficient regulation, management and control.

Committee of an exchange.

9. The affairs of an exchange shall be managed by a committee consisting of not less than 5 individuals who possess relevant experience in financial, commercial or legal matters, of whom the chairman and one other person (who may in either case be public officers) shall be appointed by the Minister and the other members shall be appointed by the Authority or in such other manner as the Minister may direct.

Dealing in securities.

10. (1) No person other than a member of an exchange shall engage in or hold himself out as engaging in the business of dealing in securities on an exchange.

(2) Any person who contravenes this section is guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000, imprisonment for a term not exceeding 5 years or both.

Register of members.

11. (1) The secretary shall keep a register of the trading members and shall enter therein the names and addresses of the trading members and the date upon which each was admitted and ceased to be a trading member.

(2) The register of trading members shall be made available for inspection at the registered office of an exchange during business hours.

(3) Any person may require a copy of the register or any part thereof on payment of such fee as may be prescribed.

(4) Any payment under subsection (3) shall be made to the exchange.

Minister and Authority to be notified of amendment to rules and power of Authority to amend rules.

12. (1) Where an amendment is made to the rules of an exchange, the committee of that exchange shall give written notice thereof to the Minister and the Authority.

(2) If a notice in accordance with the provisions of subsection (1) is not given within 21 days after an amendment has been made, that amendment shall cease to have force and effect.

(3) The Authority may, after consultation with the Minister within 21 days after receipt of the notice under subsection (1), give notice to the exchange that it disallows the whole or part of the amendment, and thereupon such whole or part shall cease to have force and effect.

(4) Notwithstanding the provisions of any other written law, the Authority may at any time, after consultation with the Minister, amend the rules of an exchange by written notice specifying the amendments and the dates such amendments shall have force and effect.

(5) Any notices under this section may be served personally or by post.

Exchange to provide assistance to the Authority.

13. (1) An exchange shall provide such assistance to the Authority as the Authority reasonably requires for the performance of the Authority's functions and duties.

(2) Where an exchange reprimands, fines, suspends, expels or otherwise takes disciplinary action against a member, it shall within 7 days inform the Authority in writing of the name of the member, the reasons for and the nature of the action taken, the amount of any fine and the period of any suspension.

(3) The Authority may review any disciplinary action taken by an exchange and may affirm or set aside the decision after giving the member and the exchange an opportunity to be heard.

(4) Nothing in this section shall preclude the Authority, in any case where an exchange fails to act against a member from suspending, expelling or otherwise disciplining him, but before doing so the Authority shall consult the Minister and give the member and the exchange an opportunity to be heard.

(5) The Authority is entitled at all reasonable times to full and free access for any of the purpose of this Order to the trading floor.

(6) Any person who refuses or fails, without lawful excuse, to allow the Authority or any agent appointed in writing access in accordance with subsection (5) to the trading floor of the market of an exchange is guilty of an offence and liable on conviction to a fine not exceeding \$100,000, imprisonment for a term not exceeding 3 years or both.

(7) In this section, "trading floor", in relation to an exchange, means any place or facility (including an electronic facility or internet or medium) where the records thereof are maintained or provided by an exchange for the sale, purchase or exchange of securities by members of that exchange, or by members and other persons.

Power to give directions concerning the observance or enforcement of rules or listing requirements of an exchange.

14. (1) Where any person who is under an obligation to comply with, observe, enforce or give effect to any rule or listing requirement of an exchange fails to do so, the exchange may, after giving to that person an opportunity of being heard, give directions to that person concerning the compliance with, observance or enforcement of, or the giving effect to, that rule or listing requirement, and may further impose a penalty not exceeding \$100,000 in addition to or in lieu of the penalties provided in the listing requirements.

(2) Where securities of, or made available by, a body corporate are listed for quotation on the market of an exchange, that body corporate shall, for the purposes of subsection (1), be under an obligation to comply with, observe and give effect to the listing requirements of that exchange.

Power of the Authority to issue directives to an exchange.

15. (1) The Authority may, where it appears to be in the interests of Brunei Darussalam, issue directives to an exchange —

- (a) with respect to trading on or through the facilities of that exchange or with respect to any security listed on that exchange;
- (b) with respect to the manner in which that exchange carries on its business, including the manner of reporting off-market purchases; and
- (c) with respect to any other matter which the Authority considers necessary for the effective administration of this Order,

and such exchange shall forthwith comply with that directive.

(2) An exchange which, without reasonable excuse, fails or refuses to comply with a directive issued under subsection (1), is guilty of an offence and liable on conviction to a fine not exceeding \$100,000 and to a further fine not exceeding \$10,000 for every day during which such non-compliance continues after conviction.

(3) An exchange aggrieved by any directive of the Authority under subsection (1) may appeal to the Minister within 30 days of the date of the Authority's directive.

(4) In any appeal under subsection (3), the decision of the Minister shall be final.

PART III

LICENCES

Dealer's licence.

16. (1) Except as permitted pursuant to this Order, a person shall not carry on the business of a dealer or hold himself out as carrying on such a business unless he is the holder of a dealer's licence granted under this Part.

(2) Subsection (1) does not apply to an exempt dealer.

Dealer's representative's licence.

17. A person shall not act as a dealer's representative, who in this Part is referred to as the "representative", unless he is the holder of a dealer's representative's licence granted under this Part.

Investment adviser's licence.

18. (1) Except as permitted pursuant to this Order, a person shall not act as an investment adviser or hold himself out to be an investment adviser unless he is the holder of an investment adviser's licence granted under this Part.

(2) Subsection (1) does not apply to the holder of a dealer's licence.

Investment representative's licence.

19. A person shall not act as an investment representative, who in this Part is referred to as the "representative", unless he is the holder of an investment representative's licence under this Part.

Application for licence or renewal.

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

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

(3) The Authority may require an applicant to supply him with such further information as it considers necessary in relation to the application.

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

Authority to grant and renew dealer's licence in certain circumstances.

21. The Authority shall only grant or renew a dealer's licence to a body corporate if —

- (a) after consideration of the character of the directors and the secretary and of the financial position of the body corporate; and
- (b) after consideration of the interests of Brunei Darussalam,

the Authority is of the opinion that the body corporate is a fit and proper person to hold the licence applied for.

Authority to grant or renew investment adviser's licence in certain circumstances.

22. The Authority shall only grant or renew an investment adviser's licence if —

- (a) after consideration —
 - (i) where the applicant is an individual, of the character and financial position of the applicant; or
 - (ii) where the applicant is a body corporate, of the character of the directors and the secretary and of the financial position of the body corporate; and
- (b) after consideration of the interests of Brunei Darussalam,

the Authority is of the opinion that the applicant is a fit and proper person to hold the licence applied for.

Authority to grant or renew representative's licence in certain circumstances.

23. (1) The Authority shall only grant or renew a representative's licence if after consideration of the matters mentioned in the application it is of the opinion that the applicant is a fit and proper person to hold the licence applied for.

(2) The holder of a representative's licence may make application to the Authority in the prescribed form and manner for a variation of the name or address of the holder of a dealer's licence or of an investment adviser's licence on whose behalf he may act.

(3) Where an application is duly made under subsection (2), the Authority may, if it is of the opinion that the applicant is a fit and proper person to act on behalf of the holder of a dealer's licence or an investment adviser's licence, named in the application, vary the licence by varying the name or address mentioned in the licence.

Power of Authority to enquire into share transactions.

24. (1) In deciding whether an applicant for a licence or for the renewal thereof is a fit and proper person to hold a licence under this Order, the Authority may enquire into any transaction involving the purchase or sale of securities entered into by that person, whether directly or indirectly, during the period of 12 months immediately preceding the application for the licence or renewal, referred to in this section as the "relevant period", to ascertain if that person has in any such transaction used dishonest, unfair or unethical devices or trading practices, whether or not such devices or trading practices constitute an offence under this Order.

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

(3) Any person who fails or refuses to submit information to the Authority within the time specified in the notice referred to in subsection (2) or who gives false or misleading information is, in addition to any other penalty that may be imposed under this Order, liable in the case of an application for renewal of a licence to have his licence revoked under section 26, and in the case of a first application for a licence, liable to have his application rejected.

Power of Authority to impose conditions or restrictions.

25. (1) The Authority may grant or renew a licence subject to such terms and conditions as it thinks fit.

(2) Any person who fails to comply with any term and condition of his licence is guilty of an offence.

False statements.

26. Any person who in connection with an application for a licence or for the renewal of a licence wilfully makes a statement that is false or misleading in a material particular knowing it to be false or misleading, or who wilfully omits to state any matter or thing without which the application is misleading in a material respect, is guilty of an offence and liable on

conviction to a fine not exceeding \$1,000,000, imprisonment for a term not exceeding 5 years or both.

Deposit to be lodged in respect of dealer's licence.

27. (1) Except in the case of a dealer who is a member, the Authority shall not grant or renew a dealer's licence unless there is lodged with the Authority a deposit in the sum of not less than \$100,000 or such greater sum as the Authority may direct to be lodged in respect of any particular licence.

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

(3) The money deposited by virtue of subsection (2) shall be available to pay any penalty imposed under this Order or any other written law or provided for by the rules of an exchange, and shall also be available to pay any damages that may be awarded against the dealer in respect of any matter governed by this Order.

(4) After the expiration of one year from the expiry or other termination of the dealers licence, or of his becoming a member of an exchange, the Authority shall repay such balance to the dealer or other person entitled:

Provided that the Authority may, in any particular case, at its discretion retain such amount as may be required to satisfy the provisions of subsection (3).

Period of licence.

28. (1) Subject to subsection (2), a licence shall expire one year after the date of issue thereof.

(2) A licence that has been renewed in accordance with the provisions of this Part shall continue in force for a period of one year next succeeding the date upon which but for its renewal it would have expired.

Notification of change in particulars.

29. Where —

- (a) the holder of a dealer's licence ceases to carry on the business or to hold himself out as carrying on the business to which the licence relates;
- (b) the holder of an investment adviser's licence ceases to act as, or to hold himself out to be, an investment adviser;

- (c) the holder of a representative's licence ceases to be a representative of the dealer or investment adviser in relation to whom the representative's licence was granted, and the licence has not been varied under section 18(3); or
- (d) a change occurs in any material particulars of which are required by section 25 to be entered in the register of licence holders in relation to the holder of a licence,

the holder of the licence shall, not later than 14 days after the occurrence of that event give to the Authority in the prescribed form particulars in writing of that event.

Register of licence holders.

30. The Authority shall keep a register of licence holders specifying in relation to each holder of a dealer's or investment adviser's licence —

- (a) his name;
- (b) where the holder is a body corporate, the names of the directors and the secretary;
- (c) the address of the principal place of business at which he carries on the business in respect of which the licence is held; and
- (d) 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.

Power of Authority to revoke or suspend licence etc.

31. (1) A licence shall be deemed to be revoked, in the case of —

- (a) an individual, if he dies;
- (b) a body corporate, if it has been wound up.

(2) The Authority may revoke a licence —

- (a) in the case of a licensee being an individual —
 - (i) if a levy of execution in respect of him has not been satisfied;
 - (ii) if he ceases to carry on the business for which he was licensed;
 - (iii) if he has been adjudged bankrupt in Brunei Darussalam or elsewhere;
 - (iv) if in the case of a representative, the licence of the dealer or investment adviser, in relation to whom the licence was granted, is revoked;

- (v) if the Authority has reason to believe that the licensed individual has not performed his duties efficiently, honestly or fairly;
 - (vi) if he is convicted of an offence involving fraud or dishonesty punishable by imprisonment for a term of not less than 3 months; or
 - (vii) if he contravenes or fails to comply with any term or condition applicable in respect of the licence or with any other provision of this Order;
- (b) in the case of a licensee being a body corporate —
- (i) if it is being wound up;
 - (ii) if a levy of execution in respect of it has not been satisfied;
 - (iii) if a receiver, or receiver and manager, has been appointed, whether by the Court or creditors, in respect of its property;
 - (iv) if it has entered into any composition or arrangement with its creditors;
 - (v) if it ceases to carry on the business for which it was licensed;
 - (vi) if the Authority has reason to believe that any of its directors or employees has not performed his duties efficiently, honestly or fairly; or
 - (vii) if it contravenes or fails to comply with any term or condition applicable in respect of the licence or with any other provision of this Order.

Appeals.

32. (1) A person aggrieved by any decision of the Authority under this Part, other than section 31, may appeal to the Minister, and a person aggrieved by any decision of the Authority under section 31 may appeal to the High Court, so long as the appeal is made within 30 days of the Authority's decision.

(2) In any appeal under this section the decision of the Minister or the High Court, as the case may be, shall be final and shall be given effect to by the Authority.

PART IV
RECORDS

Application of this Part.

33. (1) This Part applies to a person who is —

- (a) a dealer;
- (b) a dealer's representative;
- (c) an investment adviser;
- (d) an investment representative;
- (e) a person in the direct employment of, or acting for or on arrangement with, a dealer and who performs for that dealer any of the functions of a dealer or investment adviser, other than work ordinarily performed by an accountant, clerk or cashier, whether his remuneration is by way of salary, wages or commission or otherwise;
- (f) a financial journalist; or
- (g) an authorised depository agent approved by the Authority.

(2) In paragraph (f) of subsection (1), "financial journalist" means a person who contributes advice concerning securities or prepares analyses or reports concerning securities for publication in a newspaper or periodical, or by other medium including without limitation broadcasting and electronic media.

(3) In this Part, a reference to securities is a reference to securities of a public company and to securities which are quoted or dealt on an exchange.

Register of securities.

34. (1) A person to whom this Part applies shall maintain a register in the prescribed form of the securities in which he has an interest.

(2) The register required to be kept under this Part shall be kept at such place in Brunei Darussalam as he nominates in his application for a licence.

(3) Particulars of the securities in which a person to whom this Part applies has an interest and particulars of his interest in those securities shall be entered in the register within 7 days of the acquisition of the interest.

(4) Where there is a change, not being a prescribed change, in the interest or interests of a person to whom this Part applies in any securities, he shall enter in the register full particulars of that change including the date of the change and the circumstances by reason of which it has occurred. The entry shall be made within 7 days after the date of the change.

(5) For the purposes of this subsection, where a person acquires or disposes of securities there shall be deemed to be a change in the interest or interests of that person.

(6) Any person who contravenes any provision of this section is guilty of an offence.

Notice of particulars to Authority.

35. (1) A person to whom this Part applies shall give notice to the Authority in the prescribed form containing such particulars as the Authority may require.

(2) The notice shall be given —

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

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

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

(5) Any person who fails or neglects to give any notice as required by this section is guilty of an offence.

Defence to prosecution.

36. (1) It is a defence to a prosecution for contravening or failing to comply with any provisions of section 29 or 30, if the defendant proves that his failure was due to his not being aware of any fact or occurrence, the existence of which was necessary to constitute the offence, and that —

- (a) he was not so aware on the date of the summons;
- (b) he became so aware less than 14 days before the date of the summons; or
- (c) he became so aware not less than 14 days before the date of the summons and complied with the relevant section within 14 days after becoming so aware.

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

Production of register.

37. (1) The Authority may require any person to whom this Part applies to produce for inspection the register required to be kept pursuant to section 34 and the Authority may make copies of or make extracts from the register.

(2) A person who fails to produce a register for inspection or fails to allow the Authority to make copies of or to make extracts from the register is guilty of an offence.

Particulars of financial journalists.

38. (1) The Authority may by notice in writing require the proprietor or publisher of a newspaper or periodical and the holder of a broadcasting licence granted under the Broadcasting Act (Chapter 180) to supply the Authority with the name and address of the financial journalist (as defined in subsection (2) of section 28) who has contributed any advice or prepared any analysis or report that has been published in a newspaper or periodical owned or published by that proprietor or publisher, or with the names and addresses of all the financial journalists (as so defined) who have contributed any such advice or prepared any such analysis or report, within the period specified in the notice.

(2) Any person who wilfully fails to comply with a notice under subsection (1) is guilty of an offence.

Authority may supply copy of the extract of register.

39. The Authority may upon payment of the prescribed fee supply to any person who can demonstrate to the Authority a cogent reason for acquiring the same copy of the extract of the register obtained pursuant to subsection (1) of section 32.

PART V

CONDUCT OF SECURITIES BUSINESS

Certain representations prohibited.

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

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

Issue of contract notes.

41. (1) A dealer shall, in respect of a transaction of sale or purchase of securities, as soon as is practicable, give a contract note however concluded and recorded in any manner permitted pursuant to this Order that complies with subsection (2) to —

- (a) where the transaction took place in the ordinary course of business at an exchange and the dealer entered into the transaction otherwise than as principal, the person for whom the dealer entered into the transaction;
- (b) where the transaction did not take place in the ordinary course of business at an exchange and the dealer entered into the transaction otherwise than as principal, the person for whom the dealer entered into the transaction and the person with whom the dealer entered into the transaction;
- (c) where the transaction did not take place in the ordinary course of business at an exchange and the dealer entered into the transaction as principal, the person with whom the dealer entered into the transaction.

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

- (a) the name or style under which the dealer carries on his business as a dealer and the address of the principal place at which he so carries on that business;
- (b) where the dealer is dealing as principal with a person who is not the holder of a dealer's licence, a statement that he is so dealing;
- (c) the name and address of the person to whom the 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 an 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 rate and amount of commission and other fee (if any) charged;

- (i) the amounts of and levies or imposts payable in connection with the contract; and
- (j) if an amount is to be added to or deducted from the settlement amount in respect of the right to a benefit purchased or sold together with the securities, the first-mentioned amount and the nature of the benefit.

(3) A dealer shall not include in a contract note given under subsection (1) as the name of the person with or for whom he has entered into the transaction, a name that he 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 dealer dealing, or entering into a transaction, as principal includes a reference to a person —

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

(5) For the purposes of this section —

- (a) a dealer who is a member of an exchange shall not be taken to have entered into a transaction as principal by reason only that the transaction was entered into with another dealer who is a member of an exchange; and
- (b) a transaction takes place in the ordinary course of business at a stock market if it takes place in prescribed circumstances or is a transaction that is a prescribed transaction for the purposes of this section.

(6) Notwithstanding the provisions of section 3, a person is not associated with another person for the purposes of this section by reason only that he is a director of a body corporate of which that other person is also a director, whether or not the body corporate carries on the business of dealing in securities.

Certain persons to disclose certain interests in securities.

42. (1) Where a person who is a dealer, investment adviser, dealer's representative or investment representative sends circulars or other similar written communications in which he makes a recommendation, whether expressly or by implication, with respect to securities or a class of securities, that person shall cause to be included in each circular or other communication, in type not less legible than that used in the remainder of the circular or other

communication, a concise statement of the nature of any relevant interest in, or any interest in the acquisition or disposal of, those securities or securities included in that class that he or any person associated with him has at the date on which he last sends the circular or other communication. Any person who contravenes this subsection is guilty of an offence.

(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes that, at the time at which the circular or other communication was sent, he was not aware and could not reasonably be expected to have been aware —

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

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

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

(4) Where —

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

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 purchase unless he has informed each person to whom the recommendation is made that he acquired the securities for that purpose.

(5) Where —

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

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

(6) A person who is a dealer, investment adviser, dealer's representative or investment representative shall not send to any person a circular or other communication or written offer or recommendation to which subsection (1), (4) or (5) apply unless the circular or other communication or the offer or recommendation —

- (a) where that person is an individual, is signed by him;
- (b) where that person is an individual who carries on business in partnership, is signed by a partner in the partnership in his own name or in the name of the partnership;
- (c) where that person is an individual and is a dealer who carries on business in a body corporate, is signed by a director, an executive officer or the secretary of the body corporate; or
- (d) where that person is a body corporate, is signed by a director, an executive officer or the secretary of the body corporate.

(7) When a person who is a dealer, investment adviser, dealer's representative or investment representative sends to any person a circular or other communication or a written offer or recommendation to which subsection (1), (4) or (5) apply, that first-mentioned person shall —

- (a) where he is a member, or an employee of a body corporate that is a member, or a body corporate that is a member, of an exchange, thereupon serve a copy of the circular or other communication or of the offer or recommendation on that exchange; or
- (b) in any other case, thereupon lodge a copy of the circular or other communication or of the offer or recommendation on the Authority.

(8) The Authority or an exchange on which a copy of a circular or other communication or of a written offer or recommendation is served under subsection (7) shall preserve that copy for the period of 7 years next after the day on which it receives the copy.

(9) A copy or recommendation served by a person on an exchange or on the Authority in accordance with subsection (7) shall be a copy that is signed —

- (a) where that person is an individual, by that person;
- (b) where that person is an individual who carries on business in partnership, by a partner in the partnership in his own name or in the name of the partnership;
- (c) where that person is an individual and is a dealer who carries on business in a body corporate, by a director, an executive officer or the secretary of the body corporate; or
- (d) where that person is a body corporate, by a director, an executive officer or the secretary of the body corporate.

(10) A reference in this section to an offer of securities shall be construed as including a reference to a statement, however expressed, that is not an offer but which expressly or impliedly invites the person to whom it is made to offer to acquire securities.

(11) For the purposes of this section, a circular or other communication or a written offer or recommendation sent to a person shall —

- (a) where it is signed by a person in partnership, be deemed to have been sent by each of the partners in the partnership;
- (b) where it is signed by a director, an executive officer or the secretary of a body corporate, be deemed to have been sent by the body corporate.

(12) Any person who contravenes or fails to comply with any provisions of this section is guilty of an offence and liable on conviction to a fine not exceeding \$500,000, imprisonment for a term not exceeding 5 years or both.

Dealings as principal.

43. (1) Subject to subsection (4), a dealer shall not, as principal, deal in any securities with a person who is not a dealer unless he first informs that person with whom that he is entering into the transaction as principal and not as agent.

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

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

(3) A dealer who, as principal, enters into a transaction of the sale or purchase of securities with a person who is not a dealer shall state in the contract note that he is acting in the transaction as principal and not as agent.

(4) Subsection (1) does not apply in relation to a transaction entered into by a dealer who is a member of an exchange and who 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 dealer fails to comply with subsection (1) or (3) in respect of a contract for the sale of securities by him, the purchaser of the securities may, if he has not disposed of them, rescind the contract by a notice of rescission in writing given to the dealer not later than 14 days after the receipt of the contract note and, where the dealer fails to comply with subsection (1) or (3) in respect of a contract for the purchase of securities by him, the seller of the securities may, in like manner, rescind the contract.

(6) Nothing in subsection (5) affects any right that any person has apart from that subsection.

(7) A person who contravenes or fails to comply with the provisions of this section is guilty of an offence and liable on conviction to a fine not exceeding \$500,000, or to imprisonment for a term not exceeding 5 years or both.

Short selling.

44. The Minister may prescribe and an exchange shall make provision in the rules provided for in section 8, such provisions as in either case may be considered necessary to govern the practice known as short selling, including the penalties which may be imposed in case of the breach of any such regulation or rule, and in the case of prescribed penalties, up to a fine not exceeding \$500,000, imprisonment for a term not exceeding 5 years or both.

PART VI

ACCOUNTS AND AUDIT

Application of this Part.

45. This Part applies to and in relation to the business of a dealer within the meaning of this Order, whether or not that business is carried on in or from within Brunei Darussalam.

Accounts to be kept by dealers.

46. (1) A dealer shall keep or cause to be kept such records as will sufficiently explain the transactions and financial position of his business and enable true and fair profit and loss accounts and balance-sheets to be prepared and shall cause those records to be kept in such a manner as to enable them to be conveniently and properly audited in accordance with generally accepted accounting principles.

(2) If accounting and other records are kept by a dealer at a place outside Brunei Darussalam, the dealer shall cause to be sent to and kept at a place in Brunei Darussalam such statements and returns with respect to the business dealt with in those records as will enable true and fair profit and loss accounts and balance-sheets to be prepared.

(3) Without affecting the generality of subsection (1), a dealer shall keep or cause to be kept in manner acceptable to the Authority the following accounts and records —

- (a) a Bought and Sold Book recording the name of the buyer and the seller of every security bought or sold by the dealer in the course of his business;
- (b) a Scrip Receipt Book containing copies of acknowledgements of receipt of securities received by the dealer from clients for sale or safe custody and clearly showing the name or names in which the particular securities are registered;
- (c) a Cash Book containing entries of all amounts paid or received by the dealer in the course of his business;
- (d) a journal;
- (e) a ledger or ledgers showing all transactions —
 - (i) with clients of the dealer;
 - (ii) with other dealers; and
 - (iii) in respect of national or private accounts;

- (f) a General Scrip Register recording the receipt and disposal by the dealer of all securities other than those dealt with in the Safe Custody Scrip Register;
- (g) a Safe Custody Scrip Register recording all securities held by the dealer for safe custody; and
- (h) an Underwriting Register recording all underwriting and sub-underwriting transactions entered into by the dealer.

(4) Every entry in the Safe Custody Scrip Register and in the Underwriting Register kept by a dealer shall be dated and initialled by the person making the entry.

(5) For the purposes of this section any account or record required to be kept by a dealer may be kept either by making entries in a bound book or by recording it in such other manner as may be approved by the Authority.

(6) Where any account or record required by this section to be kept is not kept by making entries in a bound book but by some other means, the dealer shall take reasonable precautions for guarding against falsification and for facilitating discovery of any falsification.

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

47. (1) A dealer shall establish and keep in a bank or banks in Brunei Darussalam one or more trust accounts designated and evidenced as such, into which he shall pay —

- (a) all amounts, less any brokerage and other proper charges, that are received from or on account of any person, other than a dealer, for the purchase of securities and that are not attributable to securities delivered to the dealer before or within 5 bank trading days after receipt of those amounts; and
- (b) all amounts, less any brokerage and other proper charges, that are received for or on account of any person, other than a dealer, from the sale of securities and that are not paid to that person or as that person directs within 5 bank trading days after receipt of such amounts.

(2) For the purpose of paragraph (b) of subsection (1), any cheque issued for the purpose of payment to a person which is not collected by that person or as directed by that person within 5 bank trading days after the date such cheque is issued shall be credited into the trust account.

(3) A dealer who —

- (a) contravenes or fails to comply with any provision of this section is guilty of an offence and liable on conviction to a fine not exceeding \$200,000, imprisonment for a term not exceeding 2 years or both; or

- (b) with intent to defraud, contravenes or fails to comply with any provision of this section is guilty of an offence and liable on conviction to a fine not exceeding \$500,000, imprisonment for a term not exceeding 5 years or both.

Purposes for which monies may be withdrawn from trust account.

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

- (a) to the person entitled thereto;
- (b) to an exchange in accordance with the provisions of any regulations that may be made under subsection (2) of section 93; or
- (c) that is otherwise authorised by law.

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

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

Claims and liens not affected.

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

Dealer to appoint auditor.

51. A dealer shall appoint an auditor to audit his accounts, and where for any reason the auditor ceases to hold that office the dealer shall within 14 days thereafter appoint another auditor.

Dealer to lodge auditor's report.

52. (1) A dealer shall within 6 months of the end of his financial year lodge with the exchange an auditor's report containing such information as the Authority may reasonably require.

(2) If a dealer fails to comply with the provisions of subsection (1), the exchange shall forthwith report the matter to the Authority.

(3) Notwithstanding subsection (1), the Authority may, on application by the dealer, for any special reason, extend the period of 6 months referred to in that subsection.

Auditor to send report to exchange in certain cases.

53. (1) Where in the performance of his duties as auditor for a dealer, an auditor becomes aware of any matter which in his opinion may adversely affect the financial position of the dealer to a material extent or which constitutes a breach of section 46, 47 or 48, he shall within 7 days thereof send a report in writing on such matter to the exchange and a copy thereof to the dealer.

(2) A copy of the report referred to in subsection (1) shall, if the member is a body corporate, also be sent to the Registrar.

Reports of auditor to be forwarded to exchange in certain cases.

54. (1) If after consideration of an auditor's report furnished under section 53, the exchange is not satisfied —

- (a) that the financial position of the dealer in respect of whom the report is made is such as to enable him to meet all his commitments as a dealer; and
- (b) that the dealer has complied with the requirements of this Order,

the exchange shall, and for any other reason which it thinks proper it may, forward the report to the Authority with any further report thereon which it thinks proper to make.

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

Power of Authority to appoint independent auditor etc.

55. (1) Where the Authority has received —

- (a) a report under subsection (2) of section 52 from the exchange; or
- (b) a report forwarded to the Authority pursuant to subsection (1) of section 54 by the exchange,

the Authority may, if the Authority is satisfied that it is in the interests of the dealer concerned, the dealer's clients or the general public to do so, appoint in writing an independent auditor or such other person or body of persons as the Authority may decide to examine, audit and report either generally or in relation to any particular matter, on the books, accounts and records of and the securities held by that dealer.

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

(3) Where a dealer or the relevant authority has failed to comply with an order of the Authority under subsection (2), the amount specified in the order may be sued for and recovered by the Authority as a debt due to the Authority.

Power of Authority to appoint independent auditor etc. upon application of client.

56. (1) Upon receipt of an application in writing from a person who alleges that a dealer has failed to account to him in respect of any monies or securities held or received by that dealer for or on his behalf, the Authority may appoint in writing an independent auditor or such other person or body of persons as the Authority may decide to examine, audit and report, either generally or in relation to any particular matter, on the books, accounts and records of and the securities held by that dealer.

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

- (a) particulars of the circumstances under which the dealer received the monies or securities in respect of which he is alleged to have failed to account;
- (b) particulars of those monies or securities and of the transactions of the applicant and the dealer relating thereto; and
- (c) such other particulars as the Authority may require.

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

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

- (a) that the applicant has good reason for making the application; and
- (b) that it is expedient in the interests of the dealer, the applicant or of the public that the books, accounts and records of and the securities held by the dealer should be examined, audited and reported upon.

Independent auditor etc. to report to Authority.

57. An independent auditor, person or body of persons appointed under section 50 or 51 shall, upon the conclusion of the examination and audit in respect of which such auditor, person or body was appointed, make a report thereon to the Authority.

Powers of independent auditor etc.

58. An independent auditor, person or body of persons appointed under section 50 or 51 to examine and audit the books accounts and records of and the securities held by a dealer may, for the purpose of carrying out such examination and audit —

- (a) examine on oath any director, executive officer or the secretary of the dealer and any of the dealer's employees and agents and any other auditor appointed under this Order, in relation to those books, accounts, records of whatsoever nature relating to those securities;
- (b) employ such persons as he or they consider necessary; and
- (c) in writing authorise any person employed by him or them to do, in relation to such examination and audit, any act or thing that he or they could do in the capacity as auditor, except to examine any person on oath and to exercise the powers conferred by this paragraph.

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

59. Except for the purpose of carrying into effect the provisions of this Order, or so far as may be required for the purpose of any proceedings, civil or criminal, an independent auditor, person or body of persons, or an individual member of that body of persons, appointed by the Authority under section 50 or 51 and any employee of any such independent auditor, person or body of persons shall not communicate any matter, which may come to his or their knowledge in the performance of his or their duties as such independent auditor, person, body of persons or employee to any person other than the Authority or to any other person specified by the Authority and, in the case of an employee, to any person other than the auditor by whom he is employed.

Books, accounts and records to be produced upon demand.

60. (1) Upon request by an independent auditor, person or body of persons appointed by the Authority under section 55 or 56 or by a person who produces written authority given under paragraph (c) of section 58 —

- (a) a dealer and any of its directors, executive officers or secretary, employees or agents shall produce any books, accounts and records of and any securities held by the dealer relating to his business; and
- (b) an auditor appointed by a dealer shall produce any books, accounts and records held by him relating to the business of the dealer.

(2) A dealer and any of its directors, executive officers, secretary, employees or agents and any auditor appointed by the dealer shall answer all questions relevant to an examination and audit which are put to him by the independent auditor, person or body of

persons or by a person who produces written authority given under paragraph (c) of section 58.

(3) Any person who contravenes or fails to comply with the provisions of subsection (1) or (2) is guilty of an offence and liable on conviction to a fine not exceeding \$500,000, imprisonment for a term not exceeding 5 years or both.

Penalty for destroying, concealing or altering records or sending records or other property out of Brunei Darussalam.

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

- (a) destroys, conceals or alters any book, account, record including any electronic or other permitted record or document relating to the business of a dealer; or
- (b) sends or attempts to send or conspires with any other person to send out of Brunei Darussalam any such book, account, record, including any electronic or other permitted record or document, or any property of any description belonging to or in the possession of or under the control of a dealer,

is guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000, imprisonment for a term not exceeding 10 years or both.

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

- (a) destroyed, concealed or altered any book, account, record or document referred to in subsection (1); or
- (b) sent or attempted to send or conspired to send out of Brunei Darussalam any such book, account, record or document or any property referred to in subsection (1),

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

Rights of committee to impose obligations etc. on members not affected by this Part.

62. The provisions of this Part shall not prevent the committee of an exchange imposing on the members of that exchange any further obligations or requirements which the committee thinks fit with respect to —

- (a) the audit of accounts;

- (b) the information to be furnished in reports from auditors; and
- (c) the keeping of accounts, books and records.

PART VII

FIDELITY FUNDS

Establishment of fidelity fund.

63. (1) The Minister may by order published in the *Gazette* require that an exchange shall establish and keep such fidelity fund as he may determine to be administered by the committee on behalf of that exchange.

(2) The assets of a fidelity fund shall be the property of the exchange but shall be separate from all other property and shall be held in trust for the purposes set out in this Part.

Power of committee to enter into contract of insurance.

64. (1) An exchange may enter into any contract with any person or body of persons, corporate or unincorporated, carrying on fidelity insurance business in Brunei Darussalam whereby the stock exchange will be insured or indemnified to the extent and in the manner provided by such contract against liability in respect of claims under this Part.

(2) Any such contract may be entered into in relation to members of the exchange generally, or in relation to any particular member or members of an exchange named therein, or in relation to members of an exchange generally with the exclusion of any particular member of the exchange or members named therein.

(3) An action shall not lie against an exchange or against any member or employee of an exchange, or the committee, or against any member of a management sub-committee for injury alleged to have been suffered by any member of the exchange by reason of the publication in good faith of a statement that any contract entered into under this section does or does not apply to him.

Application of insurance monies.

65. A claimant against a fidelity fund established and kept under section 63 shall not have any right of action against any person or body or persons with whom a contract of insurance or indemnity is made under this Part in respect of such contract, or have any right or claim with respect to any monies paid by the insurer in accordance with any such contract.

PART VIII

TRADING IN SECURITIES

False trading and market-rigging transactions.

66. (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 any securities on a stock market in Brunei Darussalam or a false or misleading appearance with respect to the market for, or the price of, any such securities.

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

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

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

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

(4) In a prosecution of a person for an act referred to in subsection (3), it is a defence if the defendant establishes that the purpose or purposes for which he did the act was not, or did not include, the purpose of creating a false or misleading appearance of active trading in securities on a market.

(5) A purchase or sale of securities does not involve a change in the beneficial ownership for the purposes of this section if a person who had an interest in the securities

before the purchase or sale, or a person associated with the first-mentioned person in relation to those securities, has an interest in the securities after the purchase or sale.

(6) In a prosecution for a contravention against subsection (2) in relation to a purchase or sale of securities that did not involve a change in the beneficial ownership of those securities, it is a defence if the defendant establishes that the purpose or purposes for which he purchased or sold the securities was not, or did not include, the purpose of creating a false or misleading appearance with respect to the market for, or the price of, those securities.

(7) The reference in paragraph (a) of 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.

Stock market manipulations.

67. (1) A person shall not effect, take part in, be concerned in or carry out, either directly or indirectly, 2 or more transactions in any securities, being transactions that have, or are likely to have, the effect of raising the price of those securities on a stock market in Brunei Darussalam, with intent to induce other persons to purchase or subscribe for securities of that or of a related body corporate.

(2) A person shall not effect, take part in, be concerned in or carry out, either directly or indirectly, 2 or more transactions in any securities, being transactions that have, or are likely to have, the effect of lowering the price of those securities on a market in Brunei Darussalam, with intent to induce other persons to sell securities of that or of a related body corporate.

(3) A person shall not effect, take part in, be concerned in or carry out, either directly or indirectly, 2 or more transactions in securities of a corporation, being transactions that have or are likely to have, the effect of maintaining or stabilising the price of those securities on a market in Brunei Darussalam with intent to induce other persons to sell, purchase or subscribe for securities of that or of a related body corporate.

(4) A reference in this section 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 such 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 such securities.

False or misleading statements etc.

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

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

Fraudulently inducing persons to deal in securities.

69. A person shall not —

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

induce or attempt to induce a person to buy, sell or otherwise deal in any securities.

Use of manipulative and deceptive devices.

70. No person shall directly or indirectly in connection with the purchase or sale of any securities —

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

Dissemination of information about illegal transactions.

71. No person shall circulate or disseminate, or authorise or be concerned in the circulation or dissemination of, any statement or information to the effect that the price of any securities of a body corporate will or is likely to rise or fall or be maintained by reason of any transaction entered into or other act or thing done in relation to those securities of that body corporate, or of a body corporate that is related to it in contravention of section 66, 67, 68, 69 or 70 if —

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

Dealings by officers in securities.

72. (1) Any officer, agent or employee of a body corporate and any officer of an exchange who, or in relation to a dealing in securities of that body corporate by himself or any other person, makes improper use to gain, directly or indirectly, any advantage for himself or any other person of specific confidential information acquired by virtue of his position as such officer, agent or employee or officer of the exchange which, if generally known, might reasonably be expected to materially affect the price of the subject-matter of the dealing on an exchange shall, in addition to any penalty imposed under section 74, be liable to any person for the loss suffered by that person by reason of the payment to him of a consideration in respect of the securities greater or lesser, as the case may be, than the consideration that would have been reasonable if the information had been generally known at the time of the dealing.

(2) An officer, agent or employee of a body corporate and an officer of an exchange shall not be liable under subsection (1) to any person for any loss suffered by that person if that person knew or ought reasonably to have known of the information referred to in subsection (1) before entering into the transaction relating to the dealing in the securities.

(3) An action for the recovery of any loss referred to in subsection (1) shall not be commenced after the expiration of 2 years after the date of the completion of the dealing in securities in respect of which the loss was suffered.

(4) In this section —

"agent" includes a banker, advocate and solicitor, auditor, accountant or stockbroker and any person who is or at any time in the preceeding 6 months has been knowingly connected with a body corporate and has information which —

- (a) he holds by virtue of being connected with it;

- (b) it would be reasonable to expect a person so connected and in the position by virtue of which he is so connected not to disclose except for the proper performance of the functions attaching to that position; and
- (c) he knows is unpublished price-sensitive information in relation to the securities of the corporation;

"officer" includes a person who at any time within the preceding 12 months was an officer of the body corporate.

(5) This section shall be extended to apply to an officer, agent or employee of a body corporate and any officer of an exchange who makes improper use to gain, directly or indirectly, an advantage for himself or any other person, by means of specific confidential information acquired by virtue of his position as such officer, agent or employee of the body corporate or officer of the exchange, regarding —

- (a) the possibility of a take-over offer or bid being made to another body corporate by the body corporate to which he belongs; or
- (b) the possibility of the body corporate entering into a substantial commercial transaction with another body corporate,

to deal in the securities of that body corporate in the expectation that, if this information becomes generally known, the price of the securities of that other body corporate on an exchange might be materially affected.

Prohibition on abuse of information obtained in official capacity.

73. Any person, who, in relation to dealing in securities of a body corporate, has any information which if generally known might reasonably be expected to materially affect the price of the subject-matter of the dealing on an exchange and which —

- (a) he holds by virtue of his official capacity or former official capacity;
- (b) it would be reasonable to expect a person in his official capacity or former official capacity not to disclose, except for the proper performance of the functions attaching to that official capacity; and
- (c) he knows is unpublished price-sensitive information in relation to those securities,

shall not make improper use of such information to gain, directly or indirectly, an advantage for himself or for any other person and any person who contravenes or fails to comply with the provisions of this section is guilty of an offence.

Penalty.

74. A person who contravenes or fails to comply with section 66, 67, 68, 69, 70, 71, 72 or 73 is guilty of an offence and liable on conviction to a fine of not less than \$200,000 and to imprisonment for a term not exceeding 5 years.

Dealer to give priority to client's order.

75. (1) A dealer shall not, except as permitted by subsection (2), enter into, as principal or on behalf of any person associated with him, any transaction for the purchase or sale of securities that are permitted to be traded on the stock market of an exchange if a client of the dealer who is not associated with him has instructed him to purchase or sell, respectively, securities of the same class and the dealer has not complied with the instruction.

(2) Subsection (1) does not apply in relation to the entering into a transaction by a dealer as principal or on behalf of a person associated with him if —

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

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

(3) Any person who contravenes or fails to comply with this section is guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000 and to imprisonment for a term not exceeding 5 years.

Dealings by employees of holders of licences.

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

(2) A dealer or an investment adviser shall not give credit to any such employee or to any person who, to his knowledge, is associated with such employee if —

(a) credit is given for the purpose of enabling or assisting the person to whom it is given to purchase or subscribe for any securities; or

(b) the person giving the credit knows or has reason to believe that it will be used for the purpose of purchasing or subscribing for securities.

(3) A person who is an employee of a body corporate that is a member shall not, as principal, purchase or agree to purchase any securities or rights or interests in securities unless the body corporate acts as his agent in respect of the transaction.

(4) A person who contravenes or fails to comply with this section is guilty of an offence and liable on conviction to a fine not exceeding \$200,000, imprisonment for a term not exceeding 3 years or both.

PART IX

ENFORCEMENT AND INVESTIGATION

Interpretation and application of this Part.

77. (1) This Part does not authorise any investigation into the business of a bank licensed under the Banking Act (Chapter 95) or the International Banking Order, 2000 (S 53/2000) or of a finance company as defined in the Finance Companies Act (Chapter 89), unless specifically provided for in this Part.

(2) In this Part, "books" includes any register or other record of information and any accounts or accounting records, however compiled, recorded or stored, and also includes any document.

Inspection of books and records of licensee and others.

78. (1) For the purpose of ascertaining whether the holder of a licence has complied with the provisions of this Order and any conditions or restrictions subject to which the licence was granted or renewed, the Authority may inspect and make copies of or take extracts from —

- (a) any document, record or matter required by or under this Order or the conditions of the licence to be kept by the holder of that licence; and
- (b) the books of a dealer, insofar as they relate to the business of the holder of that licence.

(2) The holder of a licence under this Order, and any of the servants or agents of that person, shall on being required by the Authority so to do, produce any document, record or matter referred to in subsection (1).

Power of Authority to require production of books.

79. (1) The Authority may in writing —

- (a) give a direction to —
 - (i) an exchange;
 - (ii) any member of the committee of an exchange;

- (iii) any person who is or has been, either alone or together with another person or any other persons, a dealer or an investment adviser, or is or has been a dealer's representative or an investment representative;
- (iv) any nominee controlled by a person referred to in sub-paragraph (iii), or jointly controlled by two or more persons at least one of whom is a person referred to in that sub-paragraph; or
- (v) any person who is or has been an officer or employee of, or an agent, advocate and solicitor, auditor or other person acting in any capacity for or on behalf of, an exchange or a person referred to in sub-paragraph (ii), (iii) or (iv),

requiring the production, to the Authority of any books as is specified, being a book relating to —

- (A) the business or affairs of an exchange;
 - (B) any dealing in securities;
 - (C) any advice concerning securities of the issuing or publication of a report or analysis concerning securities;
 - (D) the character or financial position of, or any business carried on by, a person referred to in sub-paragraph (iii) or (iv); or
 - (E) an audit of, or any report of an auditor concerning, a dealing in securities or any accounts or records of a dealer or of an investment adviser; or
- (b) give a direction to any person requiring the production to the Registrar of any book relating to matters mentioned in any of sub-paragraph (A) to (E) of paragraph (a) that are in the custody or under the control of that person:

Provided that the book shall not be required to be produced at any time or place as interferes with the proper conduct of the normal business of that person.

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

(3) Where the Authority requires the production of any book under this section and a person has a lien on that book, the production of the book does not prejudice the lien.

(4) Where the Authority exercises a power under this section to require another person to produce any book —

- (a) if the book is produced, the Authority —

- (i) may take possession of the book and make copies of, or take extracts from, the book;
 - (ii) may require that other person or any person who was a party to the compilation of the book to make a statement providing an explanation of any matter in the book;
 - (iii) may retain possession of the book for as long as the Authority may consider necessary; and
 - (iv) shall permit that other person, upon giving reasonable notice and specifications of the book, to have access to such any which is in the possession of the Registrar; or
- (b) if the book is not produced, the Authority may require that other person —
- (i) to state, to the best of his knowledge and belief, where the book may be found; and
 - (ii) to identify the person who, to the best of his knowledge and belief, last had custody of the book and to state, to the best of his knowledge and belief, where that last-mentioned person may be found.

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

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

- (a) to search the premises and to break open and search any cupboard, drawer, chest, trunk, box, package or other receptacle, whether a fixture or not, in those premises; and
- (b) to take possession of, or secure against interference, any book that appear to be a book the production of which was so required.

(7) The powers conferred under subsection (6) are in addition to, and not in derogation of, any other powers conferred by any other written law.

(8) In this section, "premises" includes any structure, building, aircraft, vehicle, vessel and place.

Offences.

80. (1) A person who refuses or fails to comply with any requirement made under section 78 or 79 is guilty of an offence and liable on conviction to a fine not exceeding \$500,000, imprisonment for a term not exceeding 5 years or both.

(2) A person who, in purported compliance with a requirement made under section 78 or 79, furnishes information or makes a statement that is false or misleading in any material particular is guilty of an offence and liable on conviction to a fine not exceeding \$500,000, imprisonment for a term not exceeding 5 years or both.

(3) Any person who obstructs or hinders the Authority or any other person in the exercise of any power under section 78 or 79 is guilty of an offence and is liable on conviction to a fine not exceeding \$500,000, imprisonment for a term not exceeding 5 years or both.

Privileges.

81. (1) Where —

(a) the Authority makes a requirement under section 79 of an advocate and solicitor in respect of any book; and

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

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

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$500,000, imprisonment for a term not exceeding 5 years or both.

Disclosure to the Authority.

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

(2) The Authority may require any person who has acquired or disposed of securities to disclose to him whether he acquired or disposed of those securities, as the case may be, as

trustee for or on behalf of another person, and if he acquired or disposed of those securities as trustee for or on behalf of another person, to disclose the name of that other person and the nature of any instructions given to that first-mentioned person in respect of the acquisition or disposal.

(3) The Authority may require an exchange to disclose, in relation to any acquisition or disposal of securities on the stock market of that exchange, the names of the members of that exchange who acted in that acquisition or disposal.

(4) A person who refuses or fails to comply with a requirement of the Authority under subsection (1), (2) or (3) is guilty of an offence and liable on conviction to a fine not exceeding \$500,000, imprisonment for a term not exceeding 5 years or both.

Investigation of certain matters, assistance to designated supervisory authority.

83. (1) Where the Authority has reason to suspect that a person has committed an offence under any provision of this Order or has been guilty of fraud or of any offence against any other written law relating to the dealing in securities, the Authority may make such investigation considered expedient for the due administration of this Order.

(2) The Authority may exercise any of the powers conferred by this Part for the purpose of assisting a designated supervisory authority in the performance of any its material supervisory function.

(3) Any reference in this Part is a designated supervisory authority is a reference to that authority which, in a country or territory designated by the Minister for the purposes of this Order, exercises in that country or territory functions corresponding to those of the Authority under this Order and, in relation to such an authority, "material supervisory functions" means functions which so correspond.

(4) The Minister shall not designate any country or territory for the purposes of this Order unless he is satisfied that the supervisory authority there is subject to provisions of confidentiality which are at least equivalent to those which apply to the Authority, whether under this Order or otherwise.

(5) Any reference in this Part to a person, dealer or an exchange, which is a body corporate, includes a reference to —

- (a) any institution which has been a licensee under Part III;
- (b) any person who is or was an associate, director, manager, officer or a controller of a licensee or former licensee;
- (c) any undertaking which is a parent or subsidiary undertaking of a licensee or former licensee; and
- (d) any undertaking with which a licensee or former licensee is closely linked.

Power of court to make certain orders.

84. (1) Where —

- (a) on the application of the Authority, it appears to the High Court that a person has committed an offence under this Order or under any other written law of Brunei Darussalam relating to the dealing in securities, or has contravened the conditions or restrictions of a licence or the rules or listing requirements of an exchange or is about to do an act with respect to dealing in securities that, if done, would be such an offence or contravention; or
- (b) on the application of an exchange, it appears to the High Court that a person has contravened the rules or listing requirements of an exchange,

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

- (i) in the case of persistent or continuing breaches of this Order or of any other written law relating to the dealing in securities, of the conditions or restrictions of a licence, or of the rules or listing requirements of an exchange, an order restraining a person from carrying on the business of dealing in securities, acting as an investment adviser or as a dealer's representative or investment representative, or from holding himself out as so carrying on business or so acting;
- (ii) an order restraining any person from acquiring, disposing of or otherwise dealing with any securities that are specified in the order;
- (iii) an order appointing a receiver of the property of a dealer or of property that is held by a dealer for or on behalf of another person, whether on trust or otherwise;
- (iv) an order declaring a contract relating to securities to be void or voidable;
- (v) for the purpose of securing compliance with any other order under this section, an order directing any person to do or refrain from doing any specified act;
- (vi) any ancillary order in consequence of the making of an order under any of the preceding provisions of this subsection.

(2) The High Court may, before making an order under subsection (1), direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(3) A person appointed by order under subsection (1) as the receiver of the property of a dealer —

- (a) may require that dealer to deliver to him any property of which he has been appointed receiver or to give to him all information concerning that property that may reasonably be required;
- (b) may acquire and take possession of any property of which he has been appointed receiver;
- (c) may deal with any property that he has acquired or of which he has taken possession in any manner in which the dealer might lawfully have dealt with the property; and
- (d) has such other powers in respect of the property as the High Court specifies in the order.

(4) In sub-paragraph (iii) of subsection (1) and in subsection (3), "property", in relation to a dealer, includes monies, securities, and documents of title to securities or other property entrusted to or received on behalf of any other person by the dealer or another person in the course of or in connection with the business of dealing in securities carried on by the dealer.

(5) A person who contravenes or fails to comply with —

- (a) any order under subsection (1) that is applicable to him; or
- (b) any requirement of a receiver appointed by order of the High Court under subsection (1),

is guilty of an offence and liable on conviction to a fine not exceeding \$500,000, imprisonment for a term not exceeding 5 years or both.

(6) Subsection (5) does not affect the powers of the High Court in relation to the punishment of contempt of court.

(7) The High Court may rescind, vary or discharge an order made under this section or suspend the operation of such an order.

PART X

GENERAL

Restrictions on use of title "broker", "stockbroker" or "dealer".

85. A person who is not a dealer within the meaning of this Order shall not take or use or by inference adopt the name or title of broker, stockbroker or dealer or take or use or have attached to or exhibited at any place any name, title or description implying or tending to the belief that he is a dealer.

Copy of an entry in the dealer's record as *prima facie* evidence of such entry.

86. (1) Subject to this Order, a copy of an entry in the accounting or other records of a dealer shall in all legal proceedings be received as *prima facie* evidence of such entry and of the matters, transactions and accounts therein recorded.

(2) A copy of an entry in the accounting or other records of a dealer shall not be received in evidence under this Order unless it is first proved that those records were, at the time of the making of the entry, the ordinary records of the dealer and that the entry was made in the usual course of business and that the records are in the custody or control of the dealer.

(3) Such proof as is required under subsection (2) may be given by the dealer or any employee of the dealer and may be given orally or by an affidavit or statutory declaration.

(4) A copy of an entry in the accounting or other records of a dealer shall not be received in evidence under this Order unless it is further proved that the copy has been examined with the original entry and is correct.

(5) Such proof as is required under subsection (4) may be given by any person who has examined the copy with the original entry, and may be given orally or by an affidavit or statutory declaration.

Offences by bodies of persons and by employees and agents.

87. (1) Where an offence against this Order or any regulations made thereunder has been committed by a body corporate, any person who at the time of the commission of the offence was a director, an executive officer or the secretary of the body corporate or was purporting to act in any such capacity, is deemed to have also committed that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

(2) Where any person is liable under this Order to any punishment for any act, omission, neglect or default, he shall be liable to the same punishment for every such act, omission, neglect or default of any employee or agent, or of the employee of such agent, provided that such act, omission, neglect or default was committed by such employee in the course of his employment, or by such agent when acting on behalf of such person or by the employee of such agent when acting in the course of his employment in such circumstances that had such act, omission, neglect or default been committed by the agent, his principal would be liable under this section.

General penalty.

88. Any person who contravenes or fails to comply with any provision of the Order or any regulations made thereunder is guilty of an offence and, where no penalty is expressly

provided, shall be liable on conviction to a fine not exceeding \$500,000, imprisonment for a term not exceeding 5 years or both.

Compounding of offences.

89. (1) The Authority may compound any offence committed by any person under Part II, III, IV or VI by making a written offer to such person to compound the offence if he pays to the Authority such sum of money within such period as may be specified in the offer.

(2) An offer under subsection (1) may be made at any time after the offence has been committed but before any prosecution for it has been instituted, and where the sum of money specified in the offer has not been paid within the period specified in the offer or any extension of it which the Authority may grant, prosecution for the offence may be instituted at any time thereafter against the person to whom the offer is made.

(3) Where an offence has been compounded under subsection (1), no prosecution shall thereafter be instituted in respect of such offence against the person to whom the offer to compound is made.

Convicted persons liable to pay compensation.

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

Prosecution of offences.

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

Indemnity.

92. No person shall be liable to be sued in any court for any act or matter done or ordered to be done or omitted to be done by him in good faith and in the intended exercise of any power or performance of any duty, conferred or imposed on him by or under this Order or any regulations made thereunder.

Regulations.

93. (1) The Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, may make regulations for the purpose of carrying out and giving full effect to the provisions of this Order and for its due application and administration.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may make provision for —

- (a) prescribing forms to be used for the purposes of this Order;
- (b) prescribing fees to be paid in respect of any matter or thing required for the purposes of this Order;
- (c) regulating the publication of advertisements offering the services of dealers in securities or offering securities for purchase or sale and the form and content of such advertisements;
- (d) the preparation by dealers of balance-sheets and profit and loss accounts, and the form and content thereof;
- (e) the issue, retention and content of a contract note or electronic dealing;
- (f) the dealing in securities for his own account directly or indirectly by a member or by any person who provides information relating to securities to members of the public or who may have access to information relating to such securities which is not publicised;
- (g) regulating or prohibiting the sale of any security by a person who does not own that security;
- (h) prohibiting the use of any manipulative or deceptive devices and contrivances in connection with the purchase or sale of securities;
- (i) permitting any person, or any person licensed as a bank under any written law, to make a secondary market in securities of a nature or class prescribed by the Minister and issued by the Government or any statutory corporation constituted under any written law;
- (j) all matters and things relating to the issue of securities or the valuation of assets by persons listed on an exchange;
- (k) all matters and things required or authorised by this Order to be prescribed or provided or which are necessary or convenient to be prescribed or provided; and
- (l) all matters and things relating to a fidelity fund established and kept under section 63, including the imposition of any levies or charges.

Saving.

94. Notwithstanding anything in this Order, any person who immediately before the date of commencement of this Order was lawfully carrying on any business or activity for which a

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licence would be required under Part III shall be entitled to continue to do so without a licence under this Order for a period of 6 months beginning with that date.

Made this 5th. day of Zulhijah, 1421 Hijriah corresponding to the 1st. day of March, 2001 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM