

No. S 59

CONSTITUTION OF BRUNEI DARUSSALAM
(Order made under Article 83(3))

SECURITIES MARKETS ORDER, 2013

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SCHEDULE – SECURITIES AND INVESTMENT BUSINESS

CONSTITUTION OF BRUNEI DARUSSALAM
(Order made under Article 83(3))

SECURITIES MARKETS ORDER, 2013

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

PART I

PRELIMINARY

Citation.

1. This Order may be cited as the Securities Markets Order, 2013.

Interpretation.

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

“accounting records” means, in relation to a corporation, invoices, receipts, orders for payment of money, bills of exchange, cheques, promissory notes, vouchers and other primary documentation and includes such working papers as are necessary to explain the methods and calculations by which accounts are made up and however compiled, recorded or stored;

“advertisement” means any advertisement —

- (a) inviting persons to enter or offer to enter an investment agreement or to exercise any rights conferred by an investment to acquire, dispose of, underwrite, or convert an investment; or
- (b) containing information calculated to lead directly or indirectly to persons doing so and,

for the purposes of this Order, an advertisement or other information issued outside Brunei Darussalam shall be treated as issued in Brunei Darussalam if it is directed to persons in Brunei Darussalam;

“assets”, in relation to a holder of a capital markets services licence, means all the assets of the holder, whether or not used in connection with the carrying on of the regulated activity by the holder;

“auditor” means an auditor authorised to perform the duties of the auditor under the Companies Act [Chapter 39];

“Authority” means the Autoriti Monetari Brunei Darussalam established by the Autoriti Monetari Brunei Darussalam Order, 2010 (S 103/2010);

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

“books” includes —

- (a) any register;
- (b) any document or other record of information; and
- (c) any accounts or accounting records,

however compiled, recorded or stored, whether in written or printed form or on microfilm or in any other electronic form or otherwise;

“borrower”, in relation to a debenture, means the corporation that is or will be liable to repay money under the debenture;

“broker” means a person engaged in the business of buying and selling securities for the account of others;

“capital markets services licence” means a licence that is granted by the Authority under section 157(5) to a person to carry on a business in any regulated activity;

“central securities depository” means a market operator who has been licensed by the Authority —

- (a) to establish and operate a system for the central handling of securities, whether or not listed on any licensed, recognised or designated securities exchange —
 - (i) whereby all such securities are deposited with and held in custody by, or registered in the name of, the company or its nominee company for the depositors and dealings in respect of these securities are effected by means of entries in securities accounts without the physical delivery of certificates; or
 - (ii) which permits or facilitates the settlement of securities transactions or dealings in securities without the physical delivery of certificates; and

- (b) to provide other facilities and services incidental thereto;

“clearing facility” means a licensed or recognised market operator who provides —

- (a) a facility for the clearing or settlement of transactions in securities as defined by this Order which are traded on a securities exchange;
- (b) a facility for the guarantee of settlement of transactions referred to in paragraph (a); or
- (c) such other clearing or settlement facility or class of clearing or settlement facilities as the Authority may allow;

“clearing house” means a market operator whose activities or objects include the provision of clearing facilities;

“client”, in relation to a holder of a capital markets services licence, means —

- (a) a person on whose behalf the holder carries on or will carry on any regulated activity; or
- (b) any other person with whom the holder, as principal, enters or will enter into transactions —
 - (i) for the purposes of dealing in securities; or
 - (ii) for the purposes of trading in futures contracts, but does not include such person or class of persons as may be prescribed;

“company” has the meaning assigned to it in the Companies Act (Chapter 39);

“contract note” means the document issued by a holder of a capital markets services licence as prescribed by the Authority under section 198(2);

“corporation” has the meaning assigned to it in the Companies Act (Chapter 39);

“credit institution” means an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account; or an electronic money institution namely an institution which has the facility to create an electronic store of monetary value on a technical device that may be widely used for making payments to undertakings other than the issuer without necessarily involving bank accounts in the transaction, but which acts as a prepaid general purpose instrument;

“credit rating” means an opinion regarding the creditworthiness —

- (a) of an entity, a debt or financial obligation, debt security, preferred share or other security; or
- (b) of an issuer of such a debt or financial obligation, debt security, preferred share or other security,

issued using an established and defined ranking system of rating categories;

“credit rating activities” means data and information analysis and the evaluation, approval, issuing and review of credit ratings;

“credit rating agency” means a person whose occupation includes the issuing of credit ratings on a professional basis;

“custodian” means a person who, by way of business, is entrusted with safekeeping the property of another person and “custodian” in relation to a client of a holder of a capital markets services licence, means a bank which holds a licence from the appropriate regulatory authority or such other organisation as may be prescribed by regulations made by the Authority;

“dealer” means a person who buys or sells securities on his behalf and for his account;

“director” has the meaning assigned to it in the Companies Act (Chapter 39);

“discontinuance” means a discontinuance of listing;

“distribution channels” means a channel through which information is, or is likely to become publicly available and “likely to become publicly available information” shall mean information to which a large number of persons of the public have access;

“durable medium” means any instrument which enables a client to store information addressed personally to that client in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

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

- (a) for a particular price; or

(b) for a price to be calculated in a particular manner, whether or not —

- (i) the subject matter of the agreement is in existence; or
- (ii) the agreement is capable of being varied or discharged before that future time, and in respect of which it appears likely at the relevant time, having regard to all relevant circumstances, that —
 - (A) the obligation of the person in the short position to make delivery will be discharged except by the person making the delivery;
 - (B) the obligation of the person in the long position to accept delivery will be discharged except by the person accepting the delivery; or
 - (C) the person in the short position or long position will assume an offsetting long position or offsetting short position, as the case may be, under another agreement of the same kind;

“financial analyst” means a relevant person who produces the substance of investment research;

“financial institution” means any bank, merchant bank, or finance company licensed under any written laws of Brunei Darussalam;

“fund management” has the same meaning as investment business in the Schedule;

“group”, in relation to an investment firm, means the group of which that firm forms a part consisting of the parent undertaking, its subsidiaries and the entities in which the parent undertaking holds an interest;

“guarantor”, in relation to a debenture, means a person who guarantees or has agreed to guarantee the repayment of any money secured or payable under the debenture;

“holding company” has the meaning assigned to it in the Companies Act (Chapter 39);

“*Hukum Syara*” has the same meaning as in the Syariah Financial Supervisory Board Order, 2006 (S 5/2006);

“information service” means —

- (a) a broadcasting service;
- (b) an interactive or broadcast videotext or teletext service or other similar service;
- (c) an online database service or other similar service; or
- (d) any other service as may be prescribed by the Authority but does not include bond pricing facilities;

“insider” of an issuer means —

- (a) an officer, member of the Board of directors, and other senior management of the issuer or of an affiliated issuer;
- (b) a controlling shareholder in the issuer or in an affiliated issuer;
- (c) an individual who, because of a position in, or because of a relationship of trust and confidence with an issuer or insider that provides him access to inside information of that issuer or an affiliated issuer, has information that he knows or should know to be inside information; or
- (d) an individual who within the last 6 months has had a position or an affiliation referred to in paragraphs (a) to (c);

“insider information” means information that would likely affect the price of securities or information that a reasonable investor would consider important under the circumstances in determining whether to buy, sell or hold a security, when such information is disclosed to the public within a reasonable time for the market to absorb the information;

“investment advice” has the same meaning as in the Schedule;

“investment business” has the same meaning as defined in the Schedule;

“issuer” means —

- (a) in the case of shares or debentures, the corporation whose shares or debentures are being issued, offered for subscription or purchase or in respect of which an invitation to subscribe or purchase has been made;
- (b) in the case of units of a unit trust scheme or a collective investment scheme, the management company or the custodian; and
- (c) in the case of any other securities, the person making available, issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, such securities;

“listed”, in relation to a security or a company, means such security or company whose securities or any class of its securities having gained admission to be quoted on a market operator;

“management company” means a company by which or on whose behalf a unit of a unit trust scheme or collective investment scheme —

- (a) has been or is proposed to be issued or offered for subscription or purchase; or
- (b) in respect of which an invitation to subscribe or purchase has been made,

and includes any person for the time being exercising the functions of the management company;

“market maker” means a person who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling securities against his proprietary capital at prices defined by him;

“market operator” means a person who manages or operates the business of a regulated market. The market operator may be the regulated market himself;

“material information” means information which a person considering acquiring securities of the kind in question would be likely to need, in order not to be misled about any facts essential for him to know in making a decision to purchase, to sell or to hold a security;

“member” means a regulated person who, under the membership regulations of a licensed, recognised or designated market operator, may participate in one or more of the services provided by that institution;

“Minister” means the Minister of Finance;

“nominee” means a person who holds securities on his behalf at the request of another person (security owner or another nominee) but who is not the owner of the security;

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

- (a) any director, secretary of the corporation;
- (b) a receiver and manager, appointed under a power contained in any instrument, of any part of the undertaking or property of the corporation; and

(c) any liquidator of a corporation 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; or

(iii) any liquidator appointed by the Court or by the creditors;

“official list”, in relation to a securities market of a securities exchange, means a list specifying all securities which have been admitted for quotation on a licensed or recognised securities exchange;

“outsourcing” means an arrangement of any form between a regulated person and a service provider by which that service provider performs a process, a service or an activity which would otherwise be undertaken by the regulated person himself;

“Panel” means the Financial Markets Services Panel established under section 254;

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

“prescribed” means prescribed under this Order or any regulations made under this Order;

“private offering” is any offer to sell securities to a group of investors who are not accredited investors within the meaning of this Order totalling less than fifty during a 12-month period;

“prospectus” is the document prepared by or on behalf of an issuer to sell or offer its securities for sale to the public through a registration statement filed with the Authority;

“proxy” is a written authorisation issued by a shareholder to another person granting the right to vote on behalf of the shareholder;

“public offering” is any offer to sell a security which has been made to at least more than fifty who are not accredited investors for the purposes of this Order;

“publically tradable company” means a company that is required by this Order to file periodic reports due to the fact that —

(a) it has a class of securities listed for trading on a securities exchange;
or

- (b) it has sold a class of its securities pursuant to registration under this Order; and
- (c) such securities are owned by fifty or more persons who are not accredited investors for the purposes of this Order;

“rated entity” means a person whose creditworthiness is explicitly or implicitly rated in the credit rating, whether or not it has solicited that credit rating and whether or not it has provided information for that credit rating;

“recommendation” means research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several securities or the issuers of securities, including any opinion as to the present or future value or price of such securities, intended for distribution channels or for the public;

“regulated activity” includes any of the types of activities constituting investment business specified in Part II of the Schedule;

“regulated person” means persons regulated under this Order;

“regulatory functions” means the functions of issuing regulations, making statements of principle, codes of practice or guidance by the Authority and monitoring and enforcing compliance with these;

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

- (a) the provisions of any agreement;
- (b) the regulations and practices of any market; and
- (c) the manner in which the respective obligation of persons in the short positions and persons in the long positions under agreements of the same kind as the agreement concerned are generally discharged, but does not include the respective intention of the persons in the short positions and the persons in the long positions under the agreement concerned;

“relevant time”, in relation to an eligible delivery agreement, means the time —

- (a) when the agreement concerned is entered into; or
- (b) if the agreement concerned is not a delivery agreement at the time when it is entered into, becomes a delivery agreement;

“representative” means a person, by whatever name called, in the direct employment of, or acting for, or by arrangement with, a person who carries on business in any regulated activity, who carries out for that person any such regulated activity;

“research or other information recommending or suggesting investment strategy” means —

- (a) information produced by an independent financial analyst, an investment person, a credit institution, any other person whose main business is to produce recommendations or a firm working for them under a contract of employment or otherwise, that, directly or indirectly, expresses a particular investment recommendation in respect of a security or an issuer of securities; and
- (b) information produced by a person other than the persons referred to in paragraph (a) which directly recommends a particular investment decision in respect of a security;

“securities” includes any of the types of investment instruments specified in Part I of the Schedule;

“securities exchange” means a market operator that is licensed, recognised or designated as such by the Authority under Part III;

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

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

“self-regulatory organisation” means an organisation that is licensed or recognised by the Authority as such under Part IV;

“senior management” means the person or persons who effectively direct the business of the regulated person or the market operator and includes the member or members of his Board;

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

“significant” means significant for the purpose of an investor making an informed assessment of the securities being admitted to listing;

“specify”, where no mode is mentioned, means specify in writing, and a power to specify includes the power to specify differently for different persons, or types of investment transactions;

“subsidiary” has the meaning assigned to it in the Companies Act [Chapter 39];

“suspension” means a suspension of listing;

“trust account” means a trust account established under section 194;

“underwriter” is any person, who acquires securities from an issuer with a view to distribute them, or offers or sells for an issuer in connection with the distribution of any security, or participates in any agreement or contract with respect to such underwriting, with the exceptions that may be defined by the decision of the Authority;

“unit”, in relation to a unit trust scheme or a collective investment scheme, means any right or interest therein by whatever name called and includes any subunit thereof;

“unit holder” means the unit holder of a unit trust scheme or a collective investment scheme;

(2) Any reference to this Order shall, unless otherwise expressly stated, include a reference to any regulations or other subsidiary legislation made under this Order.

(3) For the avoidance of doubt, any reference in this Order to delivery or service of documents shall include delivery and receipt by electronic means.

Controlling interest over regulated persons.

3. (1) If a step which a person proposes to take would result in his acquiring —

(a) control over a regulated person;

(b) an additional kind of control over a regulated person; or

(c) an increase in a relevant kind of control which he already has over a regulated person,

he must notify the Authority of his proposal.

(2) A person who, without himself taking any such step, acquires any such control, or additional or increased control must notify the Authority before the end of the period of 14 days beginning with the day on which he first becomes aware that he has acquired it.

(3) A person who is under the duty to notify the Authority imposed by subsection (1) must also give notice to the Authority on acquiring, or increasing such control.

(4) A notice under subsection (1) or (2) is referred to in this Part as a notice of control.

Acquiring control.

4. (1) For the purposes of this Part, a person acquires control over a regulated person (acquirer) if he —

(a) holds 10 percent or more of the shares in the regulated person;

(b) is able to exercise significant influence over the management of the regulated person by virtue of his shareholding in the regulated person;

(c) holds 10 percent or more of the shares in a parent undertaking of the regulated person;

(d) is able to exercise significant influence over the senior management of the parent undertaking by virtue of his shareholding in that parent undertaking;

(e) is entitled to exercise, or control the exercise of, 10 percent or more of the voting power in the regulated person;

(f) is able to exercise significant influence over the management of the regulated person by virtue of his voting power in the regulated person;

(g) is entitled to exercise, or control the exercise of, 10 percent or more of the voting power in the parent undertaking; or

(h) is able to exercise significant influence over the senior management of the parent undertaking by virtue of his voting power in the parent undertaking.

(2) In subsection (1), “acquirer” means —

(a) the acquirer;

(b) any of the acquirer’s associates; or

(c) the acquirer and any of his associates.

(3) For the purposes of this Part, each of the following is to be regarded as a kind of control —

(a) control arising as a result of the holding of shares in the regulated person;

(b) control arising as a result of the holding of shares in the parent undertaking;

(c) control arising as a result of the entitlement to exercise, or control the exercise of, voting power in the regulated person;

(d) control arising as a result of the entitlement to exercise, or control the exercise of, voting power in the parent undertaking.

(4) For the purposes of this Part, “associate”, “shares” and “voting power” have the same meaning as defined in section 19.

Increasing control.

5. (1) For the purposes of this Part, a controller of a regulated person increases his control over the regulated person if —

(a) the percentage of shares held by the controller in the regulated person increases by any of the steps mentioned in subsection (2);

(b) the percentage of shares held by the controller in a parent undertaking of a regulated person increases by any of the steps mentioned in subsection (2);

(c) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in the regulated person increases by any of the steps mentioned in subsection (2);

(d) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in the parent undertaking increases by any of the steps mentioned in subsection (2); or

(e) the controller becomes a parent undertaking of a regulated person.

(2) The steps are —

(a) from below 10 percent to 10 percent or more but less than 20 percent;

(b) from below 20 percent to 20 percent or more but less than 33 percent;

(c) from below 33 percent to 33 percent or more but less than 50;

(d) from below 50 percent to 50 percent or more.

(3) In paragraphs (a) to (d) of subsection (1), “controller” means —

(a) the controller;

(b) any of the controller’s associates; or

(c) the controller and any of his associates.

(4) In this Part, “acquiring control” or “having control” includes —

(a) acquiring or having an additional kind of control; or

(b) acquiring an increase in a relevant kind of control, or having increased control of a relevant kind.

Reducing control.

6. (1) For the purposes of this Part, a controller of a regulated person reduces his control over the regulated person if —

(a) the percentage of shares held by the controller in the regulated person decreases by any of the steps mentioned in subsection (2);

(b) the percentage of shares held by the controller in a parent undertaking of the regulated person decreases by any of the steps mentioned in subsection (2);

(c) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in the regulated person decreases by any of the steps mentioned in subsection (2);

(d) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in the parent undertaking decreases by any of the steps mentioned in subsection (2); or

(e) the controller ceases to be a parent undertaking of the holder of a capital markets services licence unless the controller ceases to have the kind of control concerned over the regulated person as a result.

(2) The steps are —

(a) from 50 percent or more to 33 percent or more but less than 50 percent;

(b) from 33 percent or more to 20 percent or more but less than 33 percent;

(c) from 20 percent or more to 10 percent or more but less than 20 percent;

(d) from 10 percent or more to less than 10 percent.

(3) In subsection (1)(a) to (d), “controller” means —

(a) the controller;

(b) any of the controller’s associates; or

(c) the controller and any of his associates.

Acquiring or increasing control notification procedure.

7. (1) A notice of control must —

(a) be given to the Authority in writing; and

(b) include such information and be accompanied by such documents as the Authority may reasonably require.

(2) The Authority may require the person giving a notice of control to provide such additional information or documents as it reasonably thinks necessary in order to enable it to determine what action it is to take in response to the notice.

(3) The Authority may impose different requirements in different circumstances.

Duty of Authority in relation to notice of control.

8. (1) The Authority must, before the end of the period of 3 months beginning with the date on which it receives a notice of control in relation to the period for consideration, determine whether —

(a) to approve of the person having the control to which the notice relates; or

(b) to serve a warning notice under this Part.

(2) If the Authority proposes to give the person having the control a notice of objection of acquisition of control, it must give him a warning notice.

Approval of acquisition of control.

9. (1) If the Authority decides to approve of the person having the control to which the notice relates, it must notify that person of its approval of the acquisition in writing without delay.

(2) If the Authority fails to comply with section 8(1), it is to be treated as having given its approval and notified the person concerned at the end of the period fixed by that subsection.

(3) The Authority's approval remains effective only if the person to whom it relates acquires the control in question —

(a) before the end of such period as may be specified in the notice; or

(b) if no period is specified, before the end of the period of 12 months beginning with the date —

(i) of the notice of approval;

(ii) on which the Authority is treated as having given approval under subsection (2); or

(iii) of a decision on a reference to the Panel which results in the person concerned receiving approval.

Conditions attached to approval.

10. (1) The Authority's approval under section 9 may be given unconditionally or subject to such conditions as the Authority thinks fit.

(2) In imposing any conditions, the Authority must have regard to its regulatory objectives under this Order.

(3) If the Authority proposes to impose conditions on a person, it must give him a warning notice.

(4) If the Authority decides to impose conditions on a person, it must give him a decision notice.

(5) A person who is subject to a condition imposed under this section may apply to the Authority for the condition to be varied or for the condition to be cancelled.

(6) The Authority may, on its own initiative, cancel a condition imposed under this section.

(7) If the Authority has given its approval to a person subject to a condition, he may refer to the Panel —

(a) the imposition of the condition; or

(b) the Authority's decision to refuse an application made by him under subsection (5).

Objection to acquisition of control.

11. (1) In considering a notice of control, the Authority may give a decision notice of objection to the acquirer unless it is satisfied that the approval requirements are met.

(2) The approval requirements are that —

(a) the acquirer is a fit and proper person to have the control over the regulated person that he has or would have if he acquired the control in question; and

(b) the interests of investors would not be threatened by the acquirer's control or by his acquiring that control.

(3) In deciding whether the approval requirements are met, the Authority must have regard, in relation to the control that the acquirer —

(a) has over the regulated person; or

(b) will have over the regulated person if the proposal to which the notice of control relates is carried into effect,

to its regulatory objectives under this Order.

(4) If the Authority gives a decision notice under subsection (1) but considers that the approval requirements would be met if the person to whom a notice is given were to take, or refrain from taking, a particular step, the notice must identify that step.

(5) A person to whom a decision notice under subsection (1) is given may refer the matter to the Panel.

Objection to existing control.

12. (1) If the Authority is not satisfied that the approval requirements are met, it may give a decision notice of objection to a person who has failed to comply with a duty to notify the Authority imposed by section 3.

(2) If the failure relates to section 3(1) or 3(2), the Authority may (instead of giving a notice under subsection (1)) approve the acquisition of the control in question by the person concerned as if he had given it a notice of control.

(3) The Authority may also give a decision notice under subsection (1) to a person who is a controller of a regulated person if the Authority becomes aware of matters as a result of which it is satisfied that —

(a) the approval requirements are not met with respect to the controller; or

(b) a condition imposed under section 10 which required that person to do (or refrain from doing) a particular thing and the condition has been breached as a result of his failing to do (or doing) that thing.

(4) A person to whom a decision notice under subsection (1) is given may refer the matter to the Panel.

Procedure for notices of objection under section 12.

13. (1) If the Authority proposes to give a decision notice of objection to a person under section 12, it must give him a warning notice.

(2) If the Authority decides to give a warning notice under subsection (1), it must do so before the end of the period of 3 months beginning —

(a) in the case of a notice to be given under section 12(1), with the date on which it became aware of the failure to comply with the duty in question;

(b) in the case of a notice to be given under section 12(3), with the date on which it became aware of the matters in question.

(3) The Authority may require the person concerned to provide such additional information or documents as it thinks reasonable.

(4) The Authority may impose different requirements for different circumstances.

Improperly acquired shares.

14. (1) The powers conferred by this section are exercisable if a person has acquired, or has continued to hold, any shares in contravention of —

(a) a notice of objection; or

(b) a condition imposed on the Authority's approval.

(2) The Authority may by notice in writing served on the person concerned (a restriction notice) direct that any such shares that are specified in the notice are, until further notice, subject to one or more of the following restrictions —

(a) a transfer of (or agreement to transfer) those shares, or in the case of unissued shares any transfer of (or agreement to transfer) the right to be issued with them, is void;

(b) no voting rights are to be exercisable in respect of the shares;

(c) no further shares are to be issued in right of them or in pursuance of any offer made to their holder;

(d) except in a liquidation, no payment is to be made of any sums due from the person on the shares, whether in respect of capital or otherwise.

(3) The Court may, on the application of the Authority, order the sale of any shares to which this section applies and, if they are for the time being subject to any restriction under subsection (2), that they are to cease to be subject to that restriction.

(4) No order may be made under subsection (3) —

(a) until the end of the period within which a reference may be made to the Panel in respect of the notice of objection; and

(b) if a reference is made, until the matter has been determined or until the reference is withdrawn.

(5) If an order has been made under subsection (3), the Court may, on the application of the Authority, make such further order relating to the sale or transfer of the shares as it thinks fit.

(6) If shares are sold in pursuance of an order under this section, the proceeds of sale, less the costs of the sale, must be paid into Court for the benefit of the persons beneficially interested in them, and any such person may apply to the Court for the whole or part of the proceeds to be paid to him.

(7) This section applies —

(a) in the case of an acquirer falling within section 3(1), to all the shares —

- (i) in the regulated person which the acquirer has acquired;
- (ii) that are held by him or his associate; and
- (iii) that were not so held immediately before he became a person with control over the regulated person;

(b) in the case of an acquirer falling within section 3(2), to all the shares held by him or his associate at the time when he first became aware that he had acquired control over the regulated person; and

(c) to all the shares in an undertaking —

- (i) that are held by the acquirer or his associate; and
- (ii) that were not so held before the acquirer became a person with control in relation to the regulated person,

where the undertaking is the undertaking in which shares were acquired by the acquirer or his associate and, as a result, he became a person with control in relation to that regulated person.

(8) A copy of the restriction notice must be served on —

(a) the regulated person on to whose shares it relates; and

(b) if it relates to shares held by an associate of that regulated person, on that associate.

Reducing control procedure.

15. (1) If a step which a controller of a regulated person proposes to take would result in his —

(a) ceasing to have control of a relevant kind over the regulated person; or

(b) reducing a relevant kind of control over that person,

he must notify the Authority of his proposal.

(2) A controller of a regulated person who, without himself taking any such step, ceases to have that control or reduces that control, must notify the Authority before the end of the period of 14 days beginning with the day on which he first becomes aware that —

(a) he has ceased to have the control in question; or

(b) he has reduced that control.

(3) A person who is under the duty to notify the Authority imposed by subsection (1) must also give a notice to the Authority —

(a) on ceasing to have the control in question; or

(b) on reducing that control.

(4) A notice under this section must —

(a) be given to the Authority in writing; and

(b) include details of the extent of the control (if any) which the person concerned will retain or still retains over the regulated person concerned.

Offences.

16. (1) A person who fails to comply with the duty to notify the Authority imposed on him by section 3(1) or 15(1) is guilty of an offence.

(2) A person who fails to comply with the duty to notify the Authority imposed on him by section 3(2) or 15(2) is guilty of an offence.

(3) If a person who has given a notice of control to the Authority carries out the proposal to which the notice relates, he is guilty of an offence if —

(a) the period of 3 months beginning with the date on which the Authority received the notice is still running; and

(b) the Authority has not responded to the notice by either giving its approval or giving him a warning notice under section 8(2) or section 13(1).

(4) A person to whom the Authority has given a warning notice under section 8(2) is guilty of an offence if he carries out the proposal to which the notice relates before the Authority has decided whether to give him a notice of objection.

(5) A person to whom a notice of objection has been given is guilty of an offence if he acquires the control to which the notice applies at a time when the notice is still in force.

(6) A person guilty of an offence under subsection (1), (2), (3) or (4) is liable on conviction to a fine not exceeding \$100,000, and, in the case of a continuing offence, with a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

(7) A person guilty of an offence under subsection (5) is liable on conviction to a fine not exceeding \$150,000, and, in the case of a continuing offence, with a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(8) It is a defence for a person charged with an offence under subsection (1) to show that he had, at the time of the alleged offence, no knowledge of the act or circumstances by virtue of which the duty to notify the Authority arose.

(9) If a person —

(a) was under the duty to notify the Authority imposed by section 3(1) or 15(1) but had no knowledge of the act or circumstances by virtue of which that duty arose; but

(b) subsequently becomes aware of that act or those circumstances,

he must notify the Authority before the end of the period of 14 days beginning with the day on which he first became so aware.

(10) A person who fails to comply with the duty to notify the Authority imposed by subsection (9) is guilty of an offence and liable on conviction to a fine not exceeding \$100,000.

Parent and subsidiary undertaking.

17. In this Part —

(a) “parent undertaking” includes an individual who would be a parent undertaking for the purposes of this Order, if he were taken to be an undertaking (and “subsidiary undertaking” is to be read accordingly);

(b) “subsidiary undertaking” includes, in relation to a body incorporated in or formed under the written law of a country or territory other than Brunei Darussalam, an undertaking which is a subsidiary undertaking within the meaning of any written law in force in that country or territory.

Group.

18. (1) In this Part, “group”, in relation to a regulated person, means any person who is —

(a) a parent undertaking of the regulated person;

(b) a subsidiary undertaking of the regulated person;

(c) a subsidiary undertaking of a parent undertaking of the regulated person;

(d) a parent undertaking of a subsidiary undertaking of the regulated person;

(e) an undertaking in which the regulated person or an undertaking mentioned in paragraph (a), (b), (c) or (d) has a participating interest.

(2) “Participating interest” includes an interest held by a person who would be a participating interest for the purposes of this Order, if he were taken to be an undertaking.

Controller.

19. (1) In this Part, “controller” means, in relation to a regulated person, a person who falls within any of the cases in subsection (2).

(2) The cases are where the person —

(a) holds 10 percent or more of the shares in the regulated person;

(b) is able to exercise significant influence over the management of the regulated person by virtue of his shareholding in the regulated person;

(c) holds 10 percent or more of the shares in a parent undertaking of the regulated person;

(d) is able to exercise significant influence over the management of the parent undertaking by virtue of his shareholding in the parent undertaking;

(e) is entitled to exercise, or control the exercise of, 10 percent or more of the voting power in the regulated person;

(f) is able to exercise significant influence over the management of the regulated person by virtue of his voting power in the regulated person;

(g) is entitled to exercise, or control the exercise of, 10 percent or more of the voting power in the parent undertaking; or

(h) is able to exercise significant influence over the management of the parent undertaking by virtue of his voting power in the parent undertaking.

(3) In subsection (2), “person” means —

(a) the person;

(b) any of the person’s associates; or

(c) the person and any of his associates.

(4) “Associate”, in relation to a person holding shares in an undertaking, or entitled to exercise or control the exercise of voting power in relation to another undertaking, means —

(a) the spouse of the person holding shares in an undertaking;

(b) a child or stepchild of the person holding shares in the undertaking (if he is under 18 years old);

(c) the trustee of any settlement under which the person holding shares in the undertaking has a life interest in possession;

(d) an undertaking of which the person holding shares in the undertaking is a director;

(e) a person who is an employee or partner of the person holding shares in the undertaking;

(f) where the person holding share in the undertaking is —

(i) a director of that undertaking;

(ii) a subsidiary undertaking of that undertaking; or

(iii) a director or employee of such a subsidiary undertaking; and

(g) if that undertaking has an agreement or arrangement with any other person with respect to the acquisition, holding or disposal of shares or other interests in an undertaking or a person who is entitled to exercise or control the exercise of voting power in relation to another undertaking or under which they agree to act together in exercising their voting power in relation to such respective undertaking, that other person.

(5) “Settlement”, in subsection (4)(c), includes any disposition or arrangement under which property is held on trust (or subject to a comparable obligation).

(6) “Shares” —

(a) in relation to an undertaking with a share capital, means allotted shares;

(b) in relation to an undertaking with capital but no share capital means rights to share in the capital of the undertaking;

(c) in relation to an undertaking without capital, means interests —

(i) conferring any right to share in the profits, or liability to contribute to the losses, of the undertaking; or

(ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding up.

(7) “Voting power”, in relation to an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights, means the right under the constitution of the undertaking to direct the overall policy of the undertaking or alter the terms of its constitution.

Specific classes of investors.

20. (1) Subject to subsection (2), unless the context otherwise requires —

(a) “accredited investor” means —

(i) an individual —

(A) whose net personal assets exceed in value \$2,000,000 (or its equivalent in a foreign currency) or such other amount as the Authority may prescribe in place of the first amount; or

- (B) whose income in the preceding 12 months is not less than \$300,000 (or its equivalent in a foreign currency) or such other amount as the Authority may prescribe in place of the first amount;
 - (ii) a corporation with net assets exceeding \$10,000,000 in value (or its equivalent in a foreign currency) or such other amount as the Authority may prescribe, in place of the first amount, as determined by —
 - (A) the most recent audited balance-sheet of the corporation; or
 - (B) where the corporation is not required to prepare audited accounts regularly, a balance-sheet of the corporation certified by the corporation as giving a true and fair view of the state of affairs of the corporation as of the date of the balance-sheet, which date shall be within the preceding 12 months;
 - (iii) the trustee of such trust as the Authority may prescribe, when acting in that capacity; or
 - (iv) such other person as the Authority may prescribe;
- (b) “expert investor” means —
- (i) a person whose business involves the acquisition and disposal, or the holding, of securities, whether as principal or agent;
 - (ii) the trustee of such trust as the Authority may prescribe, when acting in that capacity; or
 - (iii) such other person as the Authority may prescribe;
- (c) “institutional investor” means —
- (i) a bank licensed under the Banking Order, 2006 (S 45/2006) or Islamic Banking Order, 2008 (S 96/2008);
 - (ii) a finance company that is licensed under the Finance Companies Act (Chapter 189);
 - (iii) a person registered under the Insurance Order, 2006 (S 48/2006) or Takaful Order, 2008 (S 100/2008);

- (iv) a company licensed under the International Trusts Order, 2000 (S 55/2000);
- (v) the Perbadanan Tabung Amanah Islam Brunei established under section 3(1) of the Perbadanan Tabung Amanah Islam Brunei Act (Chapter 163);
- (vi) the Government of His Majesty the Sultan and Yang Di-Pertuan;
- (vii) a statutory authority established under any written law;
- (viii) a pension fund or a collective investment scheme;
- (ix) the holder of a capital markets services licence granted under this Order;
- (x) the trustee of such trust as the Authority may prescribe, when acting in that capacity; or
- (xi) such other person as the Authority may consider as an institutional investor based on the knowledge and experience of that person in securities including his ability to hire specialists with corresponding knowledge and experience, volume of his net assets or net assets under his management or other similar criteria.

(2) The interpretation in subsection (1) may be subject to such modifications as the Authority may determine for any specified provision of this Order.

PART II

GENERAL APPLICATION

Application.

21. (1) This Order shall apply to all regulated activities within the meaning of this Order and shall apply to all persons conducting such regulated activities in or from Brunei Darussalam.

(2) In the case where any international convention is signed or participated in by the Government of His Majesty the Sultan and Yang Di-Pertuan conflicts with the provisions of this Order, this Order shall prevail.

(3) An agreement made in contravention of this Order by a person in the course of carrying on a regulated activity, is unenforceable against the other party and any provision that purports to vary any obligation imposed by this Order shall be void.

(4) Where an agreement is made in contravention of this Order, the other party to such agreement is entitled to recover —

(a) any money paid or any property transferred by him under the agreement; and

(b) compensation for any loss sustained by him as a result of having parted with any money or property.

(5) In this section, “agreement” means an agreement —

(a) made after the commencement of this Order; and

(b) the making or performance of which constitutes, or is part of, the regulated activity in question.

(6) The amount of compensation recoverable under subsection (4)(b) is —

(a) the amount agreed by the parties; or

(b) on the application of either party, the amount determined by the Court.

(7) If the Court is satisfied that it is just and equitable in the circumstances of the case, it may allow —

(a) the agreement to be enforced; or

(b) any money paid or any property transferred under the agreement to be retained.

General prohibition.

22. (1) No person may carry or hold himself out as carrying on or purporting to carry on a regulated activity in Brunei Darussalam unless he is —

(a) licensed;

(b) recognised;

(c) designated; or

(d) exempted,

by the Authority.

(2) The prohibition is referred to in this Order as the general prohibition.

(3) The contravention does not —

(a) make any transaction void or unenforceable; or

(b) subject to subsection (4), give rise to any right of action for breach of statutory duty.

(4) In prescribed cases, the contravention is actionable at the suit of a person who suffers loss as a result of the contravention, subject to the defence under subsection (6).

(5) Any person who contravenes the general prohibition is guilty of an offence and liable on conviction to a fine not exceeding \$10,000,000, imprisonment for a term not exceeding 10 years or both.

(6) In proceedings for contravention of the general prohibition, it is a defence for the accused to show that he has taken all reasonable precautions and has exercised all due diligence to avoid committing the offence.

Islamic investment business.

23. (1) No person may hold himself out as carrying on or purporting to carry on Islamic investment business in Brunei Darussalam unless he has an endorsement granted by the Authority to his licence or recognition permitting it to conduct Islamic investment business or is exempt from this Order either —

(a) as an Islamic investment institution; or

(b) by operating an Islamic window.

(2) A holder of a capital markets services licence or a market operator who has an endorsed licence permitting it to conduct Islamic investment business shall —

(a) appoint a syariah advisory body; and

(b) obtain the prior approval of the Syariah Financial Supervisory Board pursuant to the Syariah Financial Supervisory Board Order, 2006 (S 5/2006) for the conduct of the regulated activities that it proposes to provide to investors.

(3) The Authority may make regulations prescribing the appointment, establishment, conduct and operation of a syariah advisory body.

(4) The Authority may make regulations prescribing circumstances in which a person may be taken to hold himself out as conducting Islamic investment business.

(5) In this section —

(a) “conducting Islamic investment business” means carrying on one or more of the regulated activities in the Schedule in accordance with *Hukum Syara'*;

(b) “Islamic investment institution” means a holder of a capital markets services licence or a market operator whose entire business operations are conducted in accordance with *Hukum Syara'*; and

(c) “Islamic window” means where a holder of a capital markets services licence or a market operator, other than an Islamic investment institution, conducts Islamic investment business as part of his overall business operations.

(6) An application for an endorsement to permit a holder of a capital markets services licence or a market operator to conduct Islamic investment business may be made to the Authority when applying for a licence under this Order to conduct any regulated activities by any —

(a) body corporate;

(b) partnership; or

(c) unincorporated association,

as appropriate in relation to the person providing the service.

(7) An application for an endorsement to permit a holder of a capital markets services licence or a market operator to conduct Islamic investment business shall be accompanied by a document evidencing the approval of the Syariah Financial Supervisory Board for every regulated activity to which the application for an endorsement relates.

(8) A regulated person or a market operator may apply to the Authority for an endorsement to conduct Islamic investment business or to vary an endorsement already granted.

(9) The Authority may make regulations providing that certain persons or class of persons may not be granted an endorsement in relation to Islamic investment business.

(10) The Authority may make regulations prescribing —

(a) the requirements that an applicant applying for an endorsement must meet before an endorsement can be granted by the Authority which may include requirements relating to the legal form an applicant must adopt;

(b) that the person or the market operator is able to demonstrate to the Authority that approval for the investment has been granted by the Syariah Financial Supervisory Board;

(c) the requirements referred to in paragraph (a) may be varied in cases where an application is made by a person or market operator who is, at the time of application, regulated in a jurisdiction other than the Authority;

(d) certain persons, or market operators or class of persons may be exempted from the requirements referred to in paragraph (a); and

(e) for any such exemptions to be —

(i) limited to certain Islamic investment business activities or specified circumstances; or

(ii) subject to certain conditions and restrictions.

(11) The Authority may endorse the licence of a capital markets services holder or a market operator permitting it to conduct Islamic investment business as an Islamic financial institution or by operating an Islamic window.

(12) The Authority may refuse to grant an application for an endorsement or for a variation to an endorsement.

(13) Upon refusing to grant an endorsement or a variation to an endorsement, the Authority shall, without undue delay, inform the applicant in writing of such refusal and, if requested by the applicant, the reasons for such refusal.

(14) The Panel has jurisdiction to hear and determine any appeal in relation to a decision to refuse an application for an endorsement or a variation to an endorsement.

(15) The Authority may, on its own initiative at any time, by a notice in writing to a holder of a capital markets services licence or a market operator —

(a) impose conditions and restrictions or additional conditions and restrictions in relation to an endorsement; or

(b) vary or withdraw conditions and restrictions imposed in relation to an endorsement.

(16) Where the Authority proposes to impose conditions and restrictions or additional conditions and restrictions or vary or withdraw conditions and restrictions in relation to an endorsement, the Authority must give the relevant regulated person or market operator an opportunity to make representations in writing to the Authority in relation to the proposed changes.

(17) The requirement imposed on the Authority under subsection (15) shall not apply —

(a) in relation to the imposition of conditions and restrictions when a licence is first endorsed;

(b) where the relevant regulated person or the market operator has requested the imposition, variation or withdrawal of conditions and restrictions under subsection (15); or

(c) where the Authority concludes that any delay likely to arise as a result of such requirement is prejudicial to the interests of the Authority.

(18) Where pursuant to subsection 17(c), the Authority imposes, varies or withdraws a condition or restriction, without giving the relevant regulated person or market operator an opportunity to make representations, the Authority shall —

(a) provide the relevant regulated person or market operator an opportunity to make representations in writing to the Authority within a period of 14 days, or such further period as may be agreed, from the date on which such condition or restriction is imposed, varied or withdrawn; and

(b) provide a response to any such submission, and make any consequential imposition, variation or withdrawal of the condition or restriction, without undue delay.

{19} The Panel has jurisdiction to hear and determine any appeal in relation to a decision to impose, vary or withdraw a condition or restriction.

Discharge of functions.

24. (1) The Authority has the duty to regulate the securities markets so that securities can be offered and traded in a fair and transparent manner in order to protect the interests of investors and the public, subject to any limitations included in this Order.

(2) In discharging its functions the Authority must, so far as is reasonably possible, act in a way —

(a) which is compatible with the regulatory objectives of the Authority;
and

(b) which the Authority thinks fit for the purpose of meeting those objectives.

(3) The regulatory objectives of the Authority include —

(a) market confidence;

(b) public awareness;

(c) the protection of investors; and

(d) the reduction of financial crime.

(4) In discharging its functions under this Order, the Authority must have regard to —

(a) the need to use its resources in the most efficient and economic way;

(b) the responsibilities of those who manage the affairs of regulated persons;

(c) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;

(d) the desirability of facilitating innovation in connection with regulated activities;

(e) the international character of financial services and markets and the desirability of maintaining the competitive position of Brunei Darussalam;

(f) the need to minimise the adverse effects on competition that may arise from anything done in the discharge of those functions; and

(g) the desirability of facilitating competition between those who are subject to any regulations made by the Authority.

(5) In managing its affairs, the Authority must follow generally accepted principles of good corporate governance as applicable to it.

(6) The Authority must make and maintain effective arrangements for consulting practitioners and investors on the extent to which its general policies and practices are consistent with its general functions under this section.

(7) The Authority shall, at least once a year, publish a report on the discharge of its functions under this Order and the extent to which, in its opinion, the regulatory objectives have been met.

Statement of principle and code of practice.

25. (1) The Authority may issue statements of principle with respect to the conduct expected of regulated persons and those persons exercising control over the regulated persons.

(2) If the Authority issues a statement of principle under subsection (1), it may also issue a code of practice for the purpose of helping to determine whether or not a person's conduct complies with the statement of principle.

(3) A code of practice issued under subsection (2) may specify —

(a) descriptions of conduct which, in the opinion of the Authority, comply with a statement of principle;

(b) descriptions of conduct which, in the opinion of the Authority, do not comply with a statement of principle; and

(c) factors which, in the opinion of the Authority, are to be taken into account in determining whether or not a person's conduct complies with a statement of principle.

(4) The Authority may at any time alter or replace a statement of principle or a code of practice issued under this section.

(5) If a statement of principle or a code of practice is altered or replaced, the altered or replacement statement of principle or code of practice must be issued by the Authority.

(6) A statement of principle or a code of practice issued under this section must be published by the Authority in the manner that appears to the Authority to be best calculated to bring it to the attention of the public.

(7) A code of practice published under this section and in force at the time when any particular conduct takes place may be relied on so far as it tends to establish whether or not that conduct complies with a statement of principle.

(8) Failure to comply with a statement of principle under this section does not of itself give rise to any right of action by persons affected or affect the validity of any transaction.

(9) A person is not to be taken to have failed to comply with a statement of principle if he shows that, at the time of the alleged failure, the statement of principle or its associated code of practice has not been published.

(10) The Authority may charge a reasonable fee for providing a person with a copy of a statement of principle or a copy of a code of practice published under this section.

(11) Before issuing a statement of principle or a code of practice under subsection (2), the Authority must publish a draft statement of principle or a draft code of practice in the manner that appears to the Authority to be best calculated to bring it to the attention of the public.

(12) The draft must be accompanied by —

(a) a cost benefit analysis; and

(b) a notice that representations about the proposal may be made to the Authority within a specified time.

(13) Before issuing the proposed statement of principle or code of practice, the Authority must have regard to any representations made to it.

(14) Subsections (11) to (13) do not apply if the Authority considers that the delay involved in complying with them would prejudice the interests of investors.

Conduct of investment business regulations.

26. (1) The Authority may make regulations regulating the conduct of investment business by a regulated person.

(2) Without prejudice to the generality of subsection (1), the Authority may make regulations —

(a) promoting high standards of integrity and fair dealing in the conduct of investment business;

(b) requiring a regulated person to act with due skill, care and diligence in providing any service which he provides or holds himself out as willing to provide;

(c) requiring a regulated person to subordinate his own interests to those of his clients and to act fairly between his clients;

(d) requiring a regulated person to ensure that, in anything done by him for the persons with whom he deals, due regard is had to their particular circumstances;

(e) providing for the disclosure by a regulated person of interests in, and facts material to, transactions which are entered into by him in the course of carrying on investment business or in respect of which he gives advice in the course of carrying on such business, including information as to any commissions or other inducements received or receivable from a third party in connection with any such transaction;

(f) providing for the disclosure by a regulated person of the capacity in which and the terms on which he enters into any such transaction;

(g) providing for requiring a regulated person who in the course of carrying on investment business, enters or offers to enter into a transaction in respect of an investment with any person, or gives any person advice about such a transaction, to give that person such information as to the nature of the investment and the financial implications of the transaction that will enable him to make an informed decision;

(h) ensuring that where any action is or is to be taken in conformity with arrangements for the purposes of stabilising prices that adequate arrangements exist for making known that the price of the investments in respect of which the action is or is to be taken;

(i) providing for the protection of client's money and assets for which a holder of a capital markets services licence is liable to account to another person;

(j) making the best provision that can reasonably be made for the compensation of investors;

(k) requiring the keeping of proper records and providing for their inspection in appropriate cases; or

(l) providing for the conduct of business and the other provisions made for the purposes of conduct of business must take proper account of the fact that provisions that are appropriate for regulating the conduct of business in relation to some classes of investors may not (by reason of their knowledge, experience or otherwise) be appropriate in relation to others.

Modification of conduct of investment business regulations.

27. The Authority may, on the application of any regulated person, to whom any regulations for conduct of investment business under section 26 apply, modify the requirements of the regulations so as to adapt them to the circumstances of that regulated person or to any particular kind of investment business carried on or to be carried on by him.

Enforcement.

28. The Authority shall maintain arrangements for enforcing this Order.

Arrangements for investigation of complaints.

29. (1) The Authority must —

(a) make arrangements (the complaints scheme) for the investigation of complaints arising in connection with the exercise of, or failure to exercise, any of its functions other than its power to issue principles, regulations or codes and guidelines under this Order; and

(b) appoint an independent body to be responsible for the conduct of investigations in accordance with the complaints scheme.

(2) The complaints scheme must be designed so that, as far as reasonably practicable, complaints are investigated quickly.

(3) The terms and conditions on which the investigator is appointed must be such as, in the opinion of the Authority, are reasonably designed to secure —

(a) that he will be free at all times to act independently of the Authority; and

(b) that complaints will be investigated under the complaints scheme without favouring the Authority.

(4) Before making the complaints scheme, the Authority must publish a draft of the proposed complaints scheme in the manner that appears to the Authority to be best calculated to bring it to the attention of the public.

(5) The draft must be accompanied by notice that representations about it may be made to the Authority within a specified time.

(6) Before making the proposed complaints scheme, the Authority must have regard to any representations made to it in accordance with subsection (5).

Investigation of complaints.

30. (1) The Authority is not obliged to investigate a complaint in accordance with the complaints scheme which it reasonably thinks would be more appropriately dealt with by referring the matter to the Panel, or by the institution of legal proceedings, as the case may be.

(2) The complaints scheme must provide —

(a) for reference to the investigator of any complaint which the Authority is investigating; and

(b) for the investigator —

(i) to have the means to conduct a full investigation of the complaint;

(ii) to report on the result of his investigation to the Authority and the complainant; and

(iii) to be able to publish his report (or any part of it) if he considers that it (or the part) ought to be brought to the attention of the public.

(3) If the Authority decides not to investigate a complaint, it must notify the investigator of that decision.

(4) If the investigator thinks that a complaint of which he has been notified under subsection (3) ought to be investigated, he may proceed as if the complaint had been referred to him under the complaints scheme.

(5) The complaints scheme must confer on the investigator the power to recommend if he thinks fit, that the Authority —

(a) makes a compensatory payment to the complainant; or

(b) remedies the matter complained of,

or takes both of the steps under paragraphs (a) and (b).

(6) The complaints scheme must require the Authority, in a case where the investigator —

(a) has reported that a complaint is well-founded; or

(b) has criticised the Authority in his report,

to inform the investigator and the complainant of the steps which it proposes to take in response to the report.

(7) The investigator may require the Authority to publish the whole or a specified part of the response.

(8) The investigator may appoint a person to conduct the investigation on his behalf but subject to his direction.

(9) Neither an officer nor an employee of the Authority may be appointed under subsection (8).

(10) Subsection (2) does not prevent the Authority from making arrangements for the initial investigation of a complaint to be conducted by the Authority.

Record keeping.

31. The Authority must maintain satisfactory arrangements for —

(a) recording decisions made in the exercise of its functions; and

(b) the safe-keeping of those records which it thinks ought to be preserved.

Financial penalties.

32. (1) In determining its policy with respect to the amounts of penalties to be imposed by it under this Order, the Authority must not take into account the expenses which it incurs, or expects to incur, in discharging its functions.

(2) The Authority must prepare and operate a scheme for ensuring that the amounts paid to the Authority by way of penalties imposed under this Order are applied for the benefit of the financial services industry in Brunei Darussalam.

Fees.

33. (1) The Authority may make regulations providing for the payment to it of such fees, in connection with the discharge of any of its functions under or as a result of this Order as it considers will (taking account of its expected income from fees and charges provided for by any other provision of this Order) enable it —

(a) to meet expenses incurred in carrying out its functions or for any incidental purposes;

(b) to repay the principal of, and pay any interest on, any money which it has borrowed and which has been used for the purpose of meeting expenses incurred in relation to its functions under this Order; or

(c) to maintain adequate reserves.

(2) In fixing the amount of any fee which is to be payable to the Authority, no account is to be taken of any sums which the Authority receives, or expects to receive, by way of penalties imposed by it under this Order.

(3) Any fee that is owed to the Authority under this Order may be recovered as a debt due to the Authority.

Exemption from liability.

34. No action, suit or other legal proceedings shall be brought against the Authority or any officer in respect of any act or thing done or omitted to be done by any of them in good faith in the exercise, performance or purported exercise or performance of any duty or function under this Order.

Power of Authority to issue prohibition order.

35. (1) If it appears to the Authority that a person is not a fit and proper person to perform functions in relation to a regulated activity carried on by a regulated person, the Authority may make an order (a prohibition order) prohibiting him from performing a specified function, any function falling within a specified description or any function.

(2) A prohibition order may relate to —

(a) a specified regulated activity, any regulated activity falling within a specified description or all regulated activities; or

(b) regulated persons generally or any person within a specified class of licence.

(3) A person who performs or agrees to perform a function in breach of a prohibition order is guilty of an offence and liable on conviction to a fine not exceeding \$150,000, and, in the case of a continuing offence, with a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(4) In proceedings for an offence under subsection (3), it is a defence for the accused to show that he has taken all reasonable precautions and has exercised all due diligence to avoid committing the offence.

(5) A regulated person must take reasonable care to ensure that a person, who is prohibited from performing his function by a prohibition order, performs no function of his, in relation to the carrying on of a regulated activity.

(6) The Authority may, on the application of the person named in a prohibition order, vary or revoke it.

(7) When the Authority proposes to make a prohibition order, it must give the person concerned a warning notice.

(8) The warning notice must set out the terms of the prohibition.

(9) When the Authority decides to make a prohibition order, it must give the person concerned a decision notice.

(10) The decision notice must —

(a) name the person to whom the prohibition order applies;

(b) set out the terms of the order; and

(c) be given to the person named in the order.

(11) The Panel has jurisdiction to hear and determine any appeal in relation to a decision to impose, vary or withdraw a condition or restriction.

Variation or revocation of prohibition order.

36. (1) This section applies to an application for the variation or revocation of a prohibition order.

(2) If the Authority decides to grant the application, it must give the applicant notice in writing of its decision.

(3) If the Authority proposes to refuse the application, it must give the applicant a warning notice.

(4) If the Authority decides to refuse the application, it must give the applicant a decision notice.

(5) If the Authority gives the applicant a decision notice, he may refer the matter to the Panel.

Approval for particular controlled function.

37. (1) A regulated person must take reasonable care to ensure that no person performs a controlled function under a particular arrangement entered into —

(a) by a regulated person; or

(b) by a representative of a regulated person,

in relation to the carrying on of any regulated activity, unless the Authority approves the performance by that person of the controlled function to which the arrangement relates.

(2) In this section —

“arrangement” —

(a) means any kind of arrangement for the performance of a function of a regulated person which is entered into by the regulated person or any contractor of his with another person; and

(b) includes, in particular, that other person's appointment to an office (including that of a senior management position), his becoming a partner or his employment (whether under a contract of service or otherwise).

“client”, in relation to a regulated person, means a person who is using, or who is or may be contemplating of using, any of the services provided by the regulated person;

“controlled function” means a function of a description specified in the regulations.

(3) The Authority may specify a description of function under subsection (2) only if, in relation to the carrying on of a regulated activity by a regulated person, it is satisfied that one of the following conditions are met —

(a) that the function is likely to enable the person responsible for his performance to exercise a significant influence on the conduct of the affairs of the regulated person so far as relating to the regulated activity;

(b) that the function will involve the person performing it in dealing with clients of the regulated person in a manner substantially connected with the carrying on of the regulated activity;

(c) that the function will involve the person performing it in dealing with property of clients of the regulated person in a manner substantially connected with the carrying on of the regulated activity.

Application for approval to exercise controlled function.

38. (1) The application to exercise controlled function must be made by the regulated person concerned.

(2) The application must —

(a) be made in such manner as the Authority may direct; and

(b) contain, or be accompanied by, such information as the Authority may reasonably require.

(3) At any time after receiving the application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably thinks necessary to enable it to determine the application.

(4) The Authority may require an applicant to present information that he is required to give under this section in such form, or to verify it in such a way, as the Authority may direct.

(5) The Authority may grant an application if it is satisfied that the person in respect of whom the application is made (the candidate) is a fit and proper person to perform the function to which the application relates.

(6) In deciding that question, the Authority may have regard (among other things) to whether the candidate, or any person who may perform a function on his behalf —

- (a) has obtained a qualification;
- (b) has undergone, or is undergoing training; or
- (c) possesses a level of competence,

required by regulations in relation to persons performing functions of the kind to which the application relates.

(7) The Authority must, within 4 months from the date on which it receives an application made under this section, determine whether —

- (a) to grant the application; or
- (b) to give a warning notice that it proposes to refuse the application.

(8) A person who makes an application under this section may withdraw his application by giving notice in writing to the Authority at any time before the Authority determines it, but only with the consent of —

- (a) the candidate; and
- (b) the person by whom the candidate is to be retained to perform the function concerned, if not the applicant.

(9) (a) If the Authority decides to grant an application for approval to exercise a controlled function it must give a notice in writing of its decision to each of the interested parties;

(b) if the Authority proposes to refuse an application, it must give a warning notice to each of the interested parties;

(c) if the Authority decides to refuse an application, it must give a decision notice to each of the interested parties;

(d) if the Authority decides to refuse an application, each of the interested parties may refer the matter to the Panel;

(e) “interested parties”, in relation to an application are —

- (i) the applicant;
- (ii) the person in respect of whom the application is made; and
- (iii) the person by whom the services are to be retained, if not the applicant.

(10) (a) The Authority may withdraw an approval given under this section if it thinks that the person in respect of whom it was given is not a fit and proper person to perform the function to which the approval relates;

(b) if the Authority proposes to withdraw its approval, it must give each of the interested parties a warning notice;

(c) if the Authority decides to withdraw its approval, it must give each of the interested parties a decision notice;

(d) if the Authority decides to withdraw its approval, each of the interested parties may refer the matter to the Panel;

(e) “interested parties”, in relation to an approval are —

- (i) the applicant;
- (ii) the person in respect of whom the application is made; and
- (iii) the person by whom the services are to be retained, if not the applicant.

Misconduct.

39. (1) The Authority may take action against a person under this section if —

(a) it appears to the Authority that he is guilty of misconduct; and

(b) the Authority is satisfied that it is appropriate in all the circumstances to take action against him.

(2) A person is guilty of misconduct if —

(a) he has failed to comply with a statement of principle issued under this Order; or

(b) he has been knowingly concerned in a contravention by the relevant regulated person of a requirement imposed on that regulated person by or under this Order.

(3) If the Authority is entitled to take action under this section against a person, it may —

(a) impose a penalty on him of such amount as it thinks fit; or

(b) publish a statement of his misconduct.

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

(a) the Authority is deemed to know of the misconduct if it has information from which the misconduct can reasonably be inferred; and

(b) proceedings against a person in respect of misconduct are to be treated as begun when a warning notice is given.

(5) When the Authority proposes to take action against a person under this section, it must give him —

(a) a warning notice about a proposal to impose a penalty which must state the amount of the penalty; or

(b) a warning notice about a proposal to publish a statement which must set out the terms of the statement.

(6) When the Authority decides to take action against a person under this section, it must give him —

(a) a decision notice about the imposition of a penalty which must state the amount of the penalty; or

(b) a decision notice about the publication of a statement which must set out the terms of the statement.

(7) If the Authority decides to take action against a person under this section, that person may refer the matter to the Panel.

Publication.

40. After a statement is published under section 39(3)(b), the Authority must send a copy of the statement to the person concerned and to any person to whom a copy of the decision notice was given.

Statement of policy.

41. (1) The Authority must prepare and issue a statement of its policy with respect to —

(a) the imposition of penalties under section 39; and

(b) the amount of penalties under this section.

(2) The Authority's policy in determining the amount of a penalty must have regard to —

(a) the seriousness of the misconduct in question in relation to the nature of the principle or requirement concerned;

(b) the extent to which that misconduct was deliberate or reckless; and

(c) whether the person on whom the penalty is to be imposed is an individual.

(3) The Authority may at any time alter or replace a statement issued under this section.

(4) If a statement issued under this section is altered or replaced, the Authority must issue the altered or replaced statement.

(5) The Authority must publish a statement issued under this section in the manner that appears to the Authority to be best calculated to bring it to the attention of the public.

(6) The Authority may charge a reasonable fee for providing a person with a copy of the statement.

(7) In exercising or deciding whether to exercise its power under section 39 in the case of any particular misconduct, the Authority must have regard to any statement of policy published under this section and in force at the time when the misconduct in question occurred.

Investigation : power to call for information.

42. (1) The Authority may by notice in writing require a person who is licensed to carry on any regulated activities under this Order to furnish such information as it may reasonably require for the exercise of its functions under this Order.

(2) The Authority may by notice in writing require a licensed market operator, a central securities depository, a self-regulating organisation or any other regulated person to furnish such information as it may reasonably require for the exercise of its functions under this Order.

(3) The powers conferred by subsections (1) and (2) may also be exercised to impose requirements on any person who is or has been connected with or related to the regulated person.

(4) The Authority may require any information to be furnished within such reasonable time and verified in such manner as it may specify.

Investigation powers

43. (1) The powers of the Authority under this section shall be exercisable in any case if it appears to it that there is good reason to do so for the purpose of investigating the affairs, or any aspect of the affairs, of any person in relation to any regulated activities which he was carrying on, or appears to the Authority to be or to have been carrying on, or appears to be about to carry on.

(2) The Authority may require the person whose affairs are to be investigated (the person under investigation) or any other person to appear before the Authority at a specified time and place and answer questions or otherwise provide information howsoever held with respect to any matter relevant to the investigation.

(3) The Authority may require the person under investigation or any other person to produce at a specified time and place any specified documents, including any bank or brokerage records howsoever held, which appear to the Authority to relate to any matter relevant to the investigation and —

(a) if any such documents are produced, the Authority may take copies from them or require the person producing them or any other person to provide an explanation of them; and

(b) if any such documents are not produced, the Authority may require the person or any other person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(4) A statement by a person or any other person in compliance with a requirement under this section may be used in evidence against him.

(5) In this section —

“any other person” includes but is not limited to —

- (a) any person who is or was that other person's partner, employee, agent, appointed representative, banker, auditor or solicitor;
- (b) where the other person is a body corporate, any person who is or was a director, secretary or controller of that body corporate or of another body corporate of which it is or was a subsidiary;
- (c) where the other person is an unincorporated association, any person who is or was a member of the governing body or an officer or controller of the association;
- (d) where the other person is representative of a person, any person who is or was his principal; and
- (e) where the other person is the person under investigation (being a body corporate), any related company of that body corporate and any person who is a connected person in relation to that company;

"documents" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, and the power to require its production includes power to require the production of a copy of the information in legible form;

"person" includes but is not limited to —

- (a) a body corporate;
- (b) an unincorporated association of persons;
- (c) a partnership,

constituted under any written law of Brunei Darussalam or under the law of any territory or country outside Brunei Darussalam; or

- (d) an individual;

"related company", in relation to a person under investigation (being a body corporate), means any other body corporate which is or at any material time was —

- (a) a holding company or subsidiary of that person;
- (b) a subsidiary of a holding company of that person; or
- (c) a holding company of a subsidiary of that person,

and whose affairs it is in the Authority's opinion necessary to investigate for the purpose of investigating the affairs of that person.

Exercise of investigation powers by officer.

44. (1) The Authority may appoint any officer or any other person to exercise on its behalf, all or any of the investigation powers and such power to investigate shall specify the affairs, or any aspects of the affairs, of the person to be investigated in the investigation notice.

(2) No person shall be bound to comply with any requirement imposed by a person exercising powers by virtue of an investigation notice granted under this section unless the investigator has, if required to do so, produced evidence of his appointment by the Authority.

(3) A person shall not, by virtue of an investigation notice, be required to disclose any information or produce any documents in respect of which he owes an obligation of confidence unless —

(a) he is the person under investigation or a related company;

(b) the person to whom the obligation of confidence is owed is the person under investigation or a related company;

(c) the person to whom the obligation of confidence is owed consents to the disclosure or production; or

(d) the Authority has specifically required the information or documents.

(4) Where the Authority appoints a person other than one of his officers to exercise any investigation powers, that person shall make a report to the Authority on the exercise of those powers and the results of exercising them.

Powers of entry.

45. (1) The Authority may apply to the Court for a warrant if the Court is satisfied that on information on oath given by or on behalf of the Authority that there are reasonable grounds for believing that an offence has been committed under this Order and that there are on the premises specified in the warrant, documents relevant to the question whether that offence has been committed.

(2) The Authority may apply to the Court for a warrant if the Court is satisfied that on information on oath given by or on behalf of the Authority or a

person appointed to exercise investigation powers for the Authority under this Order that there are reasonable grounds for believing that there are on the premises specified in the warrant, documents whose production have been required under the investigation powers and which have not been produced in compliance with the requirement.

(3) A warrant issued under this section shall authorise any officer of the Authority or any other authorised person to —

(a) enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;

(b) search the premises and take possession of any documents appearing to be such documents as are mentioned in subsection (1) or (2) or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;

(c) make copies of any such documents; and

(d) require any person named in the warrant to provide an explanation of them or to state where they may be found.

(4) A warrant issued under this section shall continue in force within one month beginning from the day on which it is issued.

(5) Any document of which possession is taken under this section may be retained —

(a) for so long as is necessary —

(i) for the purposes of exercising a power conferred by this Order;

(ii) for a decision to be made about whether or not any proceedings to which the books concerned would be relevant should be instituted; or

(iii) for such proceedings to be instituted and carried on; or

(b) if, proceedings to which the documents are relevant are commenced against any person for any criminal offence, until the conclusion of those proceedings.

(6) In this section, “documents” include information recorded in any form.

Failure to comply with investigation powers.

46. (1) Any person who without reasonable excuse fails to comply with a requirement imposed on him under the investigation powers of the Authority is guilty of an offence and liable on conviction to a fine not exceeding \$100,000, and, in the case of a continuing offence, with a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

(2) A person who is convicted on a prosecution instituted as a result of an investigation under this section may in the same proceedings be ordered to pay the expenses of the investigation.

(3) Any person who intentionally obstructs the exercise of any rights conferred by a warrant or fails without reasonable excuse to comply with any requirement to disclose the whereabouts of documents requested is guilty of an offence and liable on conviction to a fine not exceeding \$500,000, imprisonment for a term not exceeding one year or both.

Confidential information.

47. (1) Subject to section 49, confidential information shall not be disclosed by a primary recipient or any person obtaining the information directly or indirectly from a primary recipient without the consent of —

(a) the person from whom the primary recipient obtained the information; and

(b) if different, the person to whom the information relates.

(2) Subject to subsection (4), “confidential information” means information which —

(a) relates to the business or other affairs of any person; or

(b) was obtained by the primary recipient for the purposes of, or in the discharge of his functions, under this Order or any regulations made under this Order.

(3) For the purposes of this section, the following is a primary recipient —

(a) the Authority;

(b) any body administering an investor compensation scheme;

(c) any member of the Panel;

(d) any person appointed or authorised to exercise any powers of investigation;

(e) any officer or employee of any such person as is mentioned in paragraphs *(a)* to *(d)*.

(4) Information shall not be treated as confidential information for the purposes of this section if it has been made available to the public by virtue of being disclosed in any circumstances that are not precluded by this section.

(5) This section shall not preclude the disclosure of information for the purpose of enabling or assisting any public or other body to discharge its functions as may be further specified by the Authority in regulations.

(6) Any person who knowingly discloses restricted information under this Order 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.

Exemption for disclosure of confidential information.

48. Restrictions on disclosure of information under section 47 shall not preclude disclosure of the following —

(a) with a view to the institution of or otherwise for the purposes of criminal proceedings;

(b) with a view to the institution of or otherwise for the purposes of any civil or disciplinary proceedings or proceedings before the Panel;

(c) for the purpose of enabling or assisting the Authority to exercise any powers conferred on it by this Order;

(d) for the purpose of enabling or assisting the Authority appointed under the Banking Order, 2006 [S 45/2006] or the Islamic Banking Order, 2008 [S 96/2008] to discharge its functions;

(e) for the purpose of enabling or assisting a market operator, a central securities depository or a self-regulating organisation to discharge its functions under this Order or enabling or assisting the body administering an investor compensation scheme under this Order to discharge its functions under the scheme;

(f) for the purpose of enabling or assisting any other authority which exercises functions similar to those exercisable by the Authority under this Order;

(g) for the purpose of enabling or assisting an official receiver to discharge his functions under any written law relating to insolvency;

(h) for the purpose of enabling or assisting any person appointed to exercise any investigation powers or any auditor appointed under this Order to discharge his functions;

(i) for the purpose of enabling or assisting a foreign regulatory authority which exercises functions similar to those exercisable by the Authority under this Order to exercise its regulatory functions.

Co-operation.

49. The Authority may take such steps as it thinks fit to cooperate with a foreign regulatory authority —

(a) which is a signatory to the Multilateral Memorandum of Understanding Concerning Consultation and Co-operation and the Exchange of Information adopted by the International Organisation of Securities Commissions;

(b) which exercises functions which correspond to those exercisable by the Authority under this Order; or

(c) which has powers relating to the detection of financial crime.

Investigations in support of foreign regulatory authority.

50. (1) At the request of a foreign regulatory authority, as set out under section 49(a) to (c) the Authority may —

(a) exercise the power conferred by section 43; or

(b) appoint one or more competent persons to investigate any matter.

(2) An investigator appointed under section (1)(b) has the same powers as an investigator appointed under section 44.

(3) In deciding whether or not to exercise its investigation power, the Authority may take into account in particular —

(a) whether in the country or territory of the foreign regulatory authority concerned, corresponding assistance would be given to the Authority;

(b) whether the case concerns the breach of a law, or other regulatory requirement, which has no close parallel in Brunei Darussalam or involves the assertion of a jurisdiction not recognised by Brunei Darussalam;

(c) the seriousness of the case and its importance to persons in Brunei Darussalam; or

(d) whether it is otherwise appropriate in the public interest to give the assistance sought.

(4) An order under subsection (1)(a) or (b) shall have effect notwithstanding any obligations as to secrecy or other restrictions upon the disclosure of information imposed by any —

(a) written laws in Brunei Darussalam or any requirement imposed or regulations made thereunder;

(b) contractual obligations; or

(c) rules of professional conduct.

(5) The Authority may decide that it will not exercise its investigative powers unless the foreign regulatory authority undertakes to make such contribution towards the cost of its exercise as the Authority thinks fit.

(6) If the Authority has appointed an investigator in response to a request from a foreign regulatory authority, it may direct the investigator to permit a representative of that foreign regulatory authority to attend, and take part in, any interview conducted for the purposes of the investigation.

(7) A direction under subsection (5) is not to be given unless the Authority is satisfied that any information obtained by a foreign regulatory authority as a result of the interview will be subject to safeguards equivalent to those contained in sections 48 and 49.

PART III

MARKET OPERATORS AND MARKET INFRASTRUCTURE

Regulated market.

51. A regulated market is an exchange or trading system (electronic or otherwise) whose operator is licensed or recognised under this Order and which offers multilateral trading in securities as defined in Part I of the Schedule.

General requirements for market operators.

52. (1) No person shall establish or operate a regulated market, or maintain or assist in establishing operating or maintaining, or hold himself out as providing, operating or maintaining a regulated market, unless the person is —

- (a) a licensed, recognised or designated securities exchange;
- (b) a licensed, recognised or designated clearing house; or
- (c) a licensed, recognised or designated trading system.

(2) Except with the written approval of the Authority, no person other than a licensed, recognised or designated market operator shall take or use, or have attached to or exhibited at any place —

- (a) a title or description such as “stock exchange”, “securities exchange”, “clearing house” or “commodities exchange” in any language; or
- (b) any title or description which resembles a title or description referred to in paragraph (a).

(3) The Authority may, by order published by the Authority recognise an operator of foreign securities exchange, clearing house or trading system as recognised securities exchange, clearing house or trading system where it is satisfied that the market operator complies with this Part.

(4) Any person who contravenes subsection (1) or (2) is guilty of an offence and liable on conviction to a fine not exceeding \$10,000,000, imprisonment for a term not exceeding 10 years or both, and in the case of a continuing offence, to a further fine not exceeding \$1,000,000 for every day or part thereof during which the offence continues after conviction.

Application for licence to operate securities exchange.

53. (1) Any person may apply to the Authority for a licence to operate a securities exchange for the purposes of this Order.

(2) The application must be made in such manner as the Authority may direct and must be accompanied by —

- (a) a copy of the applicant's regulations which must make provision for its constitution, membership, financial resources, safeguards for investors, monitoring and enforcement, expulsion, investigation of complaints, promotion and maintenance of standards, settlement of disputes, default regulations and appeals;

(b) a copy of any guidance issued by the applicant which is intended to have continuing effect and is issued in writing or other durable medium;

(c) the required particulars;

(d) such other information as the Authority may reasonably require for the purpose of determining the application; and

(e) a non-refundable prescribed application fee, which shall be paid in the manner specified by the Authority.

(3) The required particulars are —

(a) details of any arrangements which the applicant has made, or proposes to make, for the provision of clearing services in respect of transactions effected on the securities exchange; and

(b) if the applicant proposes to provide clearing services in respect of transactions other than those effected on the securities exchange he will provide those services.

(4) A securities exchange which is granted a licence under this Order is subject to the continuous supervision of the Authority and is required to ensure it complies at all times with the conditions for initial licensing and any other continuing obligations under this Order.

(5) The Authority shall grant a licence to the operator of a securities exchange only where it is satisfied that both the operator and his systems comply with the requirements of this Order and where it is in the interests of Brunei Darussalam to grant such a licence.

Application for licence to operate clearing house.

54. (1) Any person may apply to the Authority for a licence to operate a clearing house for the purposes of this Order.

(2) The application must be made in such manner as the Authority may direct and must be accompanied by —

(a) a copy of the applicant's regulations which must make provision for its constitution, membership, financial resources, safeguards for investors, monitoring and enforcement, expulsion, investigation of complaints, promotion and maintenance of standards, settlement of disputes, default regulations and appeals;

(b) a copy of any guidelines issued by the applicant which is intended to have continuing effect and is issued in writing or other durable medium;

(c) the required particulars;

(d) such other information as the Authority may reasonably require for the purpose of determining the application; and

(e) a non-refundable prescribed application fee, which shall be paid in the manner specified by the Authority.

(3) The required particulars under subsection 2(c) are details of any arrangements which the applicant has made, or proposes to make, for the provision of clearing services in respect of transactions effected on the securities exchange.

(4) If the applicant proposes to provide clearing services for persons other than an operator of a licensed or recognised securities exchange, particulars of the criteria which he will apply when determining to whom he will provide those services.

(5) The operator of a clearing house who is granted a licence under this Order is subject to the continuous supervision of the Authority and is required to ensure that he complies at all times with the conditions for initial licensing and any other continuing obligations under this Order.

(6) The Authority shall grant a licence to the operator of a clearing house only if it is satisfied that both the operator and his systems comply with the requirements of this Order and where it is in the interests of Brunei Darussalam to grant such a licence.

Supplemental information requirements.

55. (1) At any time after receiving an application and before determining it, the Authority may require the applicant to provide such supplementary further information as it reasonably considers necessary to enable it to determine the application.

(2) The information which the Authority requires in connection with an application must be provided in such form, or verified in such manner, as the Authority may direct.

(3) Different directions may be given, or requirements imposed, by the Authority with respect to different applications.

Grant of licence to securities exchange and clearing house.

56. (1) If it appears to the Authority that the applicant satisfies the licensing requirements applicable in its case, the Authority may make an order declaring the applicant to be an operator of —

(a) a licensed securities exchange; or

(b) a licensed clearing house.

(2) The licence must specify a date on which it is to take effect.

General requirements for operator of licensed securities exchange and licensed clearing house.

57. (1) The Authority shall require any person who effectively direct the business and the operations of a licensed securities exchange or a licensed clearing house to be of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management and operation of the services they provide.

(2) The Authority shall require an operator of a licensed securities exchange or a licensed clearing house to inform the Authority of the identity and any other subsequent changes of the person who effectively direct the business and their operations before such changes are implemented.

(3) The Authority shall refuse to approve proposed changes where it appears to the Authority that there are grounds for believing that the person or persons proposed to direct the business and their operations pose a material threat to the sound and prudent management and operation of the licensed securities exchange or the licensed clearing house.

(4) The operator of a licensed securities exchange or a licensed clearing house is required to have the following organisational arrangements in place —

(a) to identify clearly and manage the potential adverse consequences of any conflict of interest;

(b) to be adequately equipped to manage the risks to which he is exposed, to implement appropriate arrangements and systems to identify all significant risks to his operation, and to put in place effective measures to mitigate those risks;

(c) for the sound management of the technical operations of its systems, including the establishment of effective contingency arrangements to cope with risks of systems disruptions;

(d) transparent and non-discretionary regulations and procedures that provide for fair and orderly provision of the services to his members;

(e) effective arrangements to facilitate the efficient and timely completion of the transactions cleared and settled under his systems;

(f) at the time of licensing and on an ongoing basis, sufficient financial resources to facilitate his orderly functioning, having regard to the nature and extent of the services provided and the range and degree of the risks to which he is exposed.

Admission of securities to trading by operator of licensed securities exchange or licensed clearing house.

58. An operator of a licensed securities exchange or a licensed clearing house must —

(a) have clear and transparent regulations regarding the admission of securities to trading. Such regulations shall ensure that any securities admitted to trading in a regulated market are capable of being traded in a fair, orderly and efficient manner and are freely negotiable;

(b) establish and maintain effective arrangements to verify that issuers of securities that are admitted to trading on the regulated market comply with their obligations under this Order in respect of initial, ongoing or *ad hoc* disclosure obligations and that there are arrangements in place which facilitate its members or market participants in obtaining access to information which has been made public; and

(c) establish the necessary arrangements to review regularly the compliance with the admission requirements of the securities which they admit to trading.

General requirements as to outsourcing.

59. An operator of a licensed securities exchange or a licensed clearing house is required to ensure that any outsourcing of important operational functions shall not be undertaken in such a way as to impair materially the quality of its internal control and the ability of the Authority to supervise its compliance with its obligations under this Order or any principles, regulations and codes made thereunder.

Supervision and notification requirements.

60. (1) The Authority may make regulations requiring the operator of a licensed securities exchange or a licensed clearing house, to give it —

(a) notice of such events relating to the operator as may be specified;
and

(b) such information in respect of those events as may be specified.

(2) The regulations may require the operator of a licensed securities exchange or a licensed clearing house to give the Authority such information relating to those events at such times or in respect of such periods as may be specified.

(3) An obligation imposed by the regulations extends only to a notice or information that the Authority may reasonably require for the exercise of its functions under this Order.

(4) The regulations may require the information to be given in a specified form and to be verified in a specified manner.

(5) If the operator of a licensed securities exchange or a licensed clearing house —

(a) alters or revokes any of his regulations or guidelines; or

(b) makes new regulations or issues new guidance,

he must give a notice in writing to the Authority without delay.

(6) If the operator of a licensed securities exchange makes a change —

(a) in the arrangements he makes for the provision of clearing services in respect of transactions effected on the exchange; or

(b) in the criteria which he applies when determining to whom he will provide clearing services,

he must give a notice in writing to the Authority without delay.

(7) If the operator of a licensed clearing house makes a change —

(a) to the licensed securities exchange for whom he provides clearing services; or

(b) in the criteria which he applies when determining to whom (other than to members of a licensed securities exchange) he will provide clearing services,

he must give a notice in writing to the Authority without delay.

(8) Subsections (5) to (7) do not apply to a recognised foreign securities exchange or a recognised foreign clearing house.

(9) In this section, “specified” means specified in the Authority’s regulations.

Modification of Authority’s regulations.

61. (1) The Authority may, on the application or with the consent of a licensed securities exchange or a licensed clearing house, direct that regulations made under section 60 —

(a) do not apply to the licensed securities exchange or the licensed clearing house; or

(b) apply to the licensed securities exchange or the licensed clearing house with such modifications as may be specified in the direction.

(2) An application must be made in such manner as the Authority may direct.

(3) Subsections (4) to (6) apply to a direction given under subsection (1).

(4) The Authority may not give a direction unless it is satisfied that —

(a) compliance by the licensed securities exchange or the licensed clearing house with the regulations, or with the regulations as unmodified, would be unduly burdensome or would not achieve the purpose for which the regulations were made; and

(b) the direction would not result in undue risk to persons whose interests the regulations are intended to protect.

(5) A direction may be given subject to conditions.

(6) The Authority may —

(a) revoke a direction; or

(b) vary it, on the application or with the consent, of the licensed securities exchange or the licensed clearing house to which it relates.

Directions to operator of licensed securities exchange or licensed clearing house.

62. (1) The Authority may, by notice in writing, direct an operator of a licensed securities exchange or a licensed clearing house to do or not do specified things that the Authority considers are necessary or desirable to comply with this Order or ensure the integrity of the regulated market including but not limited to directions —

(a) requiring compliance with any duty, requirement, prohibition, obligation or responsibility applicable to the operator of a licensed securities exchange or a licensed clearing house;

(b) requiring the operator of a licensed securities exchange or a licensed clearing house to act in a specified manner in relation to transactions conducted on or through the facilities operated by him, or in relation to a specified class of transactions; or

(c) requiring the operator of a licensed securities exchange or a licensed clearing house to act in a specified manner or to exercise its powers under any regulations that it has made.

(2) The Authority may, by notice in writing, direct the operator of a licensed securities exchange or a licensed clearing house to —

(a) close the market or facilities operated by him in a particular manner or for a specified period;

(b) suspend transactions on the market or through the facilities operated by him;

(c) suspend transactions in any type of investments as set out in the Schedule to this Order conducted on the market or through the facilities operated by him;

(d) prohibit trading in any type of investments conducted on the market or through the facilities operated by him for a period of not more than 10 days;

(e) defer for a specified period the completion date of transactions conducted on the market or through the facilities operated by it; or

(f) do any act or thing, or not do any act or thing, in order to ensure an orderly market, or reduce risk to the Authority's regulatory objectives under this Order.

(3) The Panel has jurisdiction to hear and determine any appeal in relation to a decision to issue a direction under this section.

(4) Where the Authority exercises its power under subsection (2), it shall make this information public except where it appears to the Authority that such publicity would be likely to cause significant damage to the investors' interests or the orderly functioning of the market.

(5) The operator of a licensed securities exchange may suspend or remove a security that no longer complies with the regulations of the market operator from trading unless such a step would be likely to cause significant damage to the investors' interests or the orderly functioning of the market.

(6) Where the operator of a licensed securities exchange suspends or removes from trading a security, he is required to notify the Authority forthwith and make public this information.

Recognition of foreign securities exchanges or foreign clearing houses.

63. (1) An application for recognition by the operator of a foreign securities exchange or a foreign clearing house must contain the address for service in Brunei Darussalam.

(2) If it appears to the Authority that the operator of a foreign securities exchange or a foreign clearing house satisfies the requirements of subsection (3), it may make a recognition order declaring the applicant to be the operator of —

(a) a recognised securities exchange; or

(b) a recognised clearing house.

(3) The requirements are that —

(a) investors are afforded protection equivalent to that which they would be afforded if the operator concerned were required to comply with licensing requirements for securities exchanges or clearing houses under this Part;

(b) there are adequate procedures for dealing with a member of the operator who is unable or likely to become unable, to meet his obligations in respect of one or more market contracts connected with the securities exchange or clearing house;

(c) the applicant is able and willing to co-operate with the Authority by the sharing of information and in other ways; and

(d) adequate arrangements exist for co-operation between the Authority and those responsible for the supervision of the applicant in the country or territory in which the applicant's head office is situated.

(4) In considering whether it is satisfied as to the requirements mentioned in subsections (3)(a) and (b), the Authority is to have regard to —

(a) the relevant law and practice of the country or territory in which the applicant's head office is situated; and

(b) the regulations and practices of the applicant.

(5) The Authority shall grant recognition as an operator of a foreign securities exchange or clearing house only where it is satisfied that both the operator and his systems comply with requirements of this Order and where it is in the interests of Brunei Darussalam to grant such recognition.

Reporting requirements for operators of recognised securities exchanges or recognised clearing houses.

64. (1) At least once a year, every recognised foreign securities exchange and recognised foreign clearing house shall provide the Authority with a report.

(2) The report shall contain a statement as to whether any events have occurred which are likely —

(a) to affect the Authority's assessment of whether it is satisfied as to the requirements for recognition set out in section 64; or

(b) to have any effect on competition.

(3) The report shall also contain such information as may be specified in regulations made by the Authority.

Designation of operators of foreign securities exchanges or foreign clearing houses.

65. (1) The Authority may by order designate such operators of foreign securities exchanges or foreign clearing houses as appear to it to offer similar protection to that set out by section 63(3).

(2) The Authority may at its discretion revoke any designation if it is satisfied that the operator of a foreign securities exchange or a foreign clearing house no longer complies with the requirements in section 63(3) or have breached the requirements in section 66.

Power to give directions in case of non-compliance.

66. (1) This section applies if it appears to the Authority that the operator of a licensed, recognised or designated securities exchange or a licensed, recognised or designated clearing house —

(a) has failed, or is likely to fail, to satisfy the licensing, recognition or designation requirements; or

(b) has failed to comply with any other obligation imposed on him by or under this Order.

(2) The Authority may direct the operator of the licensed, recognised or designated securities exchange or the licensed, recognised or designated clearing house to take specified steps for the purpose of securing his compliance with —

(a) the licensing, recognition or designation requirements; or

(b) any obligation of the kind in question.

(3) A direction under this section is enforceable, on the application of the Authority, by an injunction.

(4) The fact that a regulation made by an operator of the licensed, recognised or designated securities exchange or a licensed, recognised or designated clearing house has been altered in response to a direction given by the Authority does not prevent it from being subsequently altered or revoked by the operator in question.

Revocation of licence, recognition or designation.

67. (1) The licence, recognition order or designation order granted to the operator of a licensed, recognised or designated securities exchange or a licensed, recognised or designated clearing house may be revoked by an order made by the Authority on the application or with the consent, of the operator of the licensed, recognised or designated securities exchange or the licensed, recognised or designated clearing house.

(2) If it appears to the Authority that an operator of the licensed, recognised or designated securities exchange or the licensed, recognised or designated clearing house —

(a) does not make use of the licence, recognition or designation within 12 months, expressly renounces the licence, recognition or designation or has not provided the services in the market for the preceding 6 months;

(b) has obtained the licence, recognition or designation by making false statements or by any other irregular means;

(c) is failing, or has failed, to satisfy the licence, recognition or designation requirements;

(d) is failing, or has failed, to comply with any other obligation imposed on him by or under this Order; or

(e) that he is not a fit and proper person to be licensed or recognised as providing the services in question,

it may make an order revoking the licence, recognition order or designation order for that market operator even though the market operator in question does not wish the order to be made.

(3) A revocation order under subsection (2) must specify the date on which it is to take effect and the specified date must not be earlier than the end of the period of 3 months beginning with the date on which the order is made.

(4) A revocation order may contain such transitional provisions as the Authority thinks necessary or expedient.

Directions and revocation procedure.

68. (1) Before giving a direction under section 66 or making a revocation order under section 67, the Authority must —

(a) give a notice in writing of its intention to do so to the operator of the licensed, recognised or designated securities exchange or the licensed, recognised or designated clearing house;

(b) take such steps as it thinks reasonably practicable to bring the notice to the attention of the members (if any) of that operator of the licensed, recognised or designated securities exchange or the licensed, recognised or designated clearing house; and

(c) publish the notice in such manner as it thinks fit for bringing it to the attention of other persons who are, in its opinion, likely to be affected.

(2) A notice under subsection (1) must —

(a) state why the Authority intends to give the direction or make the order; and

(b) draw attention to the right to make representations conferred by subsection (3).

(3) Before the end of the period for making representations —

(a) the operator of a licensed, recognised or designated securities exchange or a licensed, recognised or designated clearing house;

(b) any member of the licensed, recognised or designated securities exchange or the licensed, recognised or designated clearing house; and

(c) any other person who is likely to be affected by the proposed direction or revocation order,

may make representations to the Authority.

(4) The period for making representations is —

(a) 2 months beginning —

(i) with the date on which the notice is served on the operator of the licensed or recognised securities exchange or the licensed or recognised clearing house; or

(ii) if later, with the date on which the notice is published; or

(b) such longer period as the Authority may allow in the particular case.

(5) In deciding whether to —

(a) give a direction; or

(b) make a revocation order,

the Authority must have regard to any representations made in accordance with subsection (3).

(6) When the Authority has decided whether to give a direction under section 67 or to make the proposed revocation order under section 66, it must —

(a) give the operator of the licensed, recognised or designated securities exchange or the licensed, recognised or designated clearing house a notice in writing of its decision; and

(b) take such steps as it thinks reasonably practicable for bringing its decision to the attention of members of the operator of the licensed or recognised securities exchange or the licensed or recognised clearing house or of other persons who are, in the Authority's opinion, likely to be affected.

(7) If the Authority thinks it necessary to do so, it may give a direction under section 66 —

(a) without following the procedure set out in this section; or

(b) if the Authority has begun to follow that procedure, regardless of whether the period for making representations has expired.

(8) If the Authority has, in relation to a particular matter, followed the procedure set out in subsections (1) to (5), it need not follow it again if, in relation to that matter, it decides to take action other than that specified in its notice under subsection (1).

Investigation of relevant complaints about operator of licensed, recognised or designated securities exchange or licensed, recognised or designated clearing house.

69. (1) The Authority must make arrangements for the investigation of any relevant complaint about the operator of a licensed, recognised or designated securities exchange or a licensed, recognised or designated clearing house.

(2) In this section, “relevant complaint” means a complaint that the Authority thinks is relevant to the question of whether the operator concerned should remain licensed, recognised or designated.

Trading facility.

70. (1) A trading facility is an electronic system that brings together multiple parties such as retail investors, other regulated persons or market operators for the purpose of buying and selling securities and enables them so to do.

(2) A trading facility can be crossing networks or matching engines that are operated by a regulated person or a market operator.

(3) Securities that may be traded on a trading facility are those as set out in the Schedule.

(4) For a trading facility, an operator includes an applicant who is a regulated person and the operator of a licensed or recognised securities exchange or a licensed or recognised clearing house.

Application for licence to operate trading facility.

71. (1) The Authority shall grant a licence to the operator of a trading facility or endorse the licence of a regulated person or a market operator only if it is satisfied that the regulated person or the market operator and the systems of the trading facility it proposes to operate comply with the requirements of this Order.

(2) The operator of the trading facility shall provide all such information as may be required by the Authority as to his proposed operations including the types of systems he provides to enable the Authority to satisfy itself that the trading facility ensures so far as is reasonably practicable that —

(a) there is an orderly and fair market in relation to all transactions which are carried out by means of or through the facility;

(b) any person authorised by the Authority may enter at any reasonable time the premises on which the facility is provided and to inspect the facility by means of which the services are provided; and

(c) at the time of licensing and on an ongoing basis, there are sufficient financial resources to facilitate its orderly functioning, having regard to the nature and extent of the services it provides and the range and degree of the risks to which it is exposed.

(3) Every application for a licence or an endorsement on an existing licence as an operator of a trading facility made under this Order shall be accompanied by —

(a) particulars of any arrangements which the operator has made or proposes to make for the provision of his services;

(b) particulars of any arrangements to manage the risks to which he is exposed, to implement appropriate arrangements and systems to identify all significant risks to his operation, and to put in place effective measures to mitigate those risks; and

(c) particulars of any arrangements for the sound management of the technical operations of his systems, including the establishment of effective contingency arrangements to cope with risks of systems disruptions.

(4) An operator of a trading facility who is granted a licence or an endorsement to a licence under this Order is subject to the continuous

supervision of the Authority and is required to ensure it complies at all times with the requirements of this Order.

(5) The Authority may withdraw the licence or endorsement to a licence granted to an operator of a trading facility if he contravenes subsection (1).

Supplemental information requirements.

72. (1) At any time after receiving an application and before determining it, the Authority may require the applicant to provide such supplementary further information as it reasonably thinks necessary to enable it to determine the application.

(2) The information, which the Authority requires in relation to an application, must be provided in such form, or verified in such manner, as the Authority may direct.

(3) Different directions may be given, or requirements imposed, by the Authority with respect to different applications.

Grant of licence to operator of licensed trading facility.

73. (1) If it appears to the Authority that the applicant satisfies the licensing requirements applicable in his case, the Authority may make an order declaring the applicant to be an operator of a licensed trading facility.

(2) The licence must specify a date on which it is to take effect.

General requirements for operator of licensed trading facility.

74. (1) The Authority shall require the person who effectively directs the business and the operations of a licensed trading facility to be of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management and operation of the services he provides.

(2) The Authority shall require the operator of a licensed trading facility to inform the Authority of the identity and any other subsequent changes of the persons who effectively direct the business and his operations before such changes are implemented.

(3) The Authority shall refuse to approve proposed changes where it appears to the Authority that there are grounds for believing that the person or persons proposed to direct the business and his operations pose a material threat to the sound and prudent management and operation of the licensed trading facility.

(4) The operator of a licensed trading facility is required to have the following organisational arrangements in place —

(a) to identify clearly and manage the potential adverse consequences of any conflict of interest;

(b) to be adequately equipped to manage the risks to which he is exposed, to implement appropriate arrangements and systems to identify all significant risks to his operation, and to put in place effective measures to mitigate those risks;

(c) for the sound management of the technical operations of his systems, including the establishment of effective contingency arrangements to cope with risks of systems disruptions;

(d) transparent and non-discretionary regulations and procedures that provide for fair and orderly provision of the services to his members;

(e) effective arrangements to facilitate the efficient and timely finalisation of the transactions cleared and settled under his systems;

(f) at the time of licensing and on an ongoing basis, sufficient financial resources to facilitate his orderly functioning, having regard to the nature and extent of the services provided and the range and degree of the risks to which he is exposed.

General requirement as to outsourcing.

75. An operator of a licensed trading facility shall ensure that any outsourcing of important operational functions shall not be undertaken in such a way as to impair materially the quality of his internal control and the ability of the Authority to supervise his compliance with his obligations under this Order, or any principles, regulations and codes made thereunder.

Supervision and notification requirements.

76. (1) The Authority may make regulations requiring the operator of a licensed trading facility to give it —

(a) notice of such events relating to the operator as may be specified; and

(b) such information in respect of those events as may be specified.

(2) The regulations may also require the operator of a licensed trading facility to give the Authority, such information relating to those events at such times or in respect of such periods as may be specified.

(3) An obligation imposed by the regulations extends only to a notice or information which the Authority may reasonably require for the exercise of its functions under this Order.

(4) The regulations may require the information to be given in a specified form and to be verified in a specified manner.

(5) If the operator of a licensed trading facility —

(a) alters or revokes any of his regulations or guidelines; or

(b) makes new regulations or issues new guidance,

he must give a notice in writing to the Authority without delay.

(6) If the operator of a licensed trading facility makes a change —

(a) in the arrangements he makes for the provision of clearing services in respect of transactions effected on the facility; or

(b) in the criteria which he applies when determining to whom he will provide clearing services,

he must give a notice in writing to the Authority without delay.

(7) Subsections (5) to (6) do not apply to a recognised foreign trading facility.

(8) In this section, “specified” means specified in the Authority’s regulations.

Modification of Authority’s regulations for trading facility.

77. (1) The Authority may, on the application or with the consent of a licensed trading facility direct that regulations made under section 76 —

(a) do not apply to the licensed trading facility; or

(b) apply to the licensed trading facility with such modifications as may be specified in the direction.

(2) An application must be made in such manner as the Authority may direct.

(3) Subsections (4) to (6) apply to a direction given under subsection (1).

(4) The Authority may not give a direction unless it is satisfied that —

(a) compliance by the licensed trading facility with the regulations, or with the regulations as unmodified, would be unduly burdensome or would not achieve the purpose for which the regulations were made; and

(b) the direction would not result in undue risk to persons whose interests the regulations are intended to protect.

(5) A direction may be given subject to conditions.

(6) The Authority may —

(a) revoke a direction; or

(b) vary a direction, on the application or with the consent, of the licensed trading facility to which it relates.

Directions to operator of licensed trading facility.

78. (1) The Authority may, by notice in writing, direct an operator of a licensed trading facility to do or not do specified things that the Authority thinks are necessary or desirable to comply with this Order or ensure the integrity of the regulated market including but not limited to directions —

(a) requiring compliance with any duty, requirement, prohibition, obligation or responsibility applicable to the operator of a licensed trading facility;

(b) requiring the operator of a licensed trading facility to act in a specified manner in relation to transactions conducted on or through the facilities operated by him, or in relation to a specified class of transactions; or

(c) requiring the operator of a licensed trading facility to act in a specified manner or to exercise his powers under any regulations that he has made.

(2) The Authority may by notice in writing direct the operator of a licensed trading facility to —

(a) close the facilities operated by him in a particular manner or for a specified period;

(b) suspend transactions on or through the facilities operated by him;

(c) suspend transactions in any type of investments as set out in the Schedule to this Order conducted on or through the facilities operated by him;

(d) prohibit trading in any type of investments conducted on or through the facilities operated by him for a period of not more than 10 days;

(e) defer for a specified period the completion date of transactions conducted on or through the facilities operated by him; or

(f) do any act or thing, or not do any act or thing, in order to ensure an orderly market, or reduce risk to the Authority's regulatory objectives under this Order.

(3) The Panel has jurisdiction to hear and determine any appeal in relation to a decision to issue a direction under this section.

(4) Where the Authority exercises this power, it shall make this information public except where it appears to the Authority that such publicity would be likely to cause significant damage to the investors' interests or the orderly functioning of the market.

(5) The operator of a licensed trading facility may suspend or remove from trading a security that no longer complies with the regulations of the trading facility unless such a step would be likely to cause significant damage to the investors' interests or the orderly functioning of the market.

(6) Where the operator of a licensed trading facility suspends or removes from trading a security, he is required to notify the Authority and make this information public.

Recognition of operator of foreign trading facility.

79. (1) An application for recognition by the operator of a foreign trading facility must contain the address for service in Brunei Darussalam.

(2) If it appears to the Authority that the operator of a foreign trading facility satisfies the requirements of subsection (3), it may make a recognition order declaring the applicant to be the operator of a recognised foreign trading facility.

(3) The requirements are that —

(a) investors are afforded protection equivalent to that which they would be afforded if the operator concerned were required to comply with licensing requirements for trading facilities under this Part;

(b) there are adequate procedures for dealing with a member of the operator who is unable or likely to become unable, to meet his obligations in respect of one or more market contracts connected with the trading facility;

(c) the applicant is able and willing to co-operate with the Authority by the sharing of information and in other ways; and

(d) adequate arrangements exist for co-operation between the Authority and those responsible for the supervision of the applicant in the country or territory in which the applicant's head office is situated.

(4) In considering whether it is satisfied as to the requirements mentioned in subsection (3)(a) and (b), the Authority is to have regard to —

(a) the relevant law and practice of the country or territory in which the applicant's head office is situated; and

(b) the regulations and practices of the applicant.

(5) The Authority shall grant recognition as an operator of a foreign trading facility only where it is satisfied that both the operator and his systems comply with requirements of this Order and where it is in the interests of Brunei Darussalam to grant such recognition.

Reporting requirements for recognised trading facility.

80. (1) At least once a year, every recognised trading facility shall provide the Authority with a report.

(2) The report shall contain a statement as to whether any events have occurred which are likely —

(a) to affect the Authority's assessment of whether it is satisfied as to the requirements for recognition set out in section 79; or

(b) to have any effect on competition.

(3) The report shall also contain such information as may be specified in regulations made by the Authority.

Designation of operator of foreign trading facility.

81. (1) The Authority may by order designate such operator of foreign trading facility as appear to it to offer similar protection to that set out by section 79(3).

(2) The Authority may at its discretion withdraw designation where it is satisfied that the operator of a foreign trading facility no longer complies with the requirements in section 80(3) or have breached the requirements in section 82.

Power to give directions in case of non-compliance.

82. (1) This section applies if it appears to the Authority that the operator of a licensed, recognised or designated trading facility —

(a) has failed, or is likely to fail, to satisfy the licensing, recognition or designation requirements; or

(b) has failed to comply with any other obligation imposed on him by or under this Order.

(2) The Authority may direct the operator of the licensed, recognised or designated trading facility to take specified steps for the purpose of securing its compliance with —

(a) the licensing, recognition or designation requirements; or

(b) any obligation of the kind in question.

(3) A direction under this section is enforceable, on the application of the Authority, by an injunction.

(4) The fact that a regulation made by an operator of the licensed, recognised or designated trading facility has been altered in response to a direction given by the Authority does not prevent it from being subsequently altered or revoked by the operator in question.

Revocation of licence, recognition or designation.

83. (1) The licence, recognition order or designation order granted to the operator of a licensed, recognised or designated trading facility may be revoked by an order made by the Authority on the application or with the consent, of the operator of the licensed, recognised or designated trading facility.

(2) If it appears to the Authority that an operator of the licensed, recognised or designated trading facility —

(a) does not make use of the licence, recognition or designation within 12 months, expressly renounces the licence, recognition or designation or has not provided the services in the market for the preceding 6 months;

(b) has obtained the licence, recognition or designation by making false statements or by any other irregular means;

(c) is failing, or has failed, to satisfy the licence, recognition or designation requirements;

(d) is failing, or has failed, to comply with any other obligation imposed on him by or under this Order; or

(e) that he is not a fit and proper person to be licensed, recognised or designated as providing the services in question,

it may make an order revoking the licence, recognition order or designation order for the operator of that trading facility even though he does not wish the order to be made.

(3) A revocation order under subsection (2) must specify the date on which it is to take effect and the specified date must not be earlier than the end of the period of 3 months beginning with the date on which the order is made.

(4) A revocation order may contain such transitional provisions as the Authority thinks necessary or expedient.

Directions and revocation procedure.

84. (1) Before giving a direction under section 82 or making a revocation order under section 83, the Authority must —

(a) give a notice in writing of its intention to do so to the operator of the licensed, recognised or designated trading facility concerned;

(b) take such steps as it thinks reasonably practicable to bring the notice to the attention of members (if any) of the operator of the licensed, recognised or designated trading facility; and

(c) publish the notice in such manner as it thinks fit for bringing it to the attention of other persons who are, in its opinion, likely to be affected.

{2} A notice under subsection {1} must —

(a) state why the Authority intends to give the direction or make the revocation order; and

(b) draw attention to the right to make representations conferred by subsection (3).

{3} Before the end of the period for making representations —

(a) the operator of a licensed, recognised or designated trading facility;

(b) any member of the operator of a licensed, recognised or designated trading facility; and

(c) any other person who is likely to be affected by the proposed direction or revocation order,

may make representations to the Authority.

{4} The period for making representations is —

(a) 2 months beginning —

(i) with the date on which the notice is served on the operator of the licensed, recognised or designated trading facility; or

(ii) if later, with the date on which the notice is published; or

(b) such longer period as the Authority may allow in the particular case.

{5} In deciding whether to —

(a) give a direction; or

(b) make a revocation order,

the Authority must have regard to any representations made in accordance with subsection (3).

{6} When the Authority has decided whether to give a direction under section 82 or to make the proposed revocation order under section 83, it must —

(a) give the operator of the licensed, recognised or designated trading facility a notice in writing of its decision; and

(b) if it has decided to give a direction or make an order, take such steps as it thinks reasonably practicable for bringing its decision to the attention of members of the operator of the licensed, recognised or designated trading facility or of other persons who are, in the Authority's opinion, likely to be affected.

(7) If the Authority thinks it necessary to do so, it may give a direction under section 82 —

(a) without following the procedure set out in this section; or

(b) if the Authority has begun to follow that procedure, regardless of whether the period for making representations has expired.

(8) If the Authority has, in relation to a particular matter, followed the procedure as set out in subsections (1) to (5), it need not follow it again if, in relation to that matter, it decides to take action other than that specified in its notice under subsection (1).

Complaints arrangements.

85. (1) The Authority must make arrangements for the investigation of any relevant complaint about the operator of a licensed, recognised or designated trading facility.

(2) In this section, “relevant complaint” means a complaint that the Authority thinks is relevant to the question of whether the operator concerned should remain licensed, recognised or designated.

General requirements for credit rating agency.

86. (1) No person shall establish, operate or maintain, or assist in establishing, operating or maintaining, or hold himself out as providing, operating or maintaining, a credit rating agency that is not —

(a) licensed by the Authority;

(b) recognised by the Authority as being a foreign credit rating agency;
or

(c) designated by the Authority as being a foreign credit rating agency.

(2) For the purposes of this Order, subsection (1) applies to credit ratings issued by credit rating agencies which are disclosed to the public and distributed to the public by subscription.

(3) For the purposes of this Order, subsection (1) does not apply to —

(a) private credit ratings produced pursuant to an individual order and provided exclusively to the person who placed the order and which are not intended for public disclosure or distribution by subscription;

(b) credit scores, credit scoring systems or similar assessments related to obligations arising from investor, commercial or industrial relationships;

(c) credit ratings produced by export credit agencies; or

(d) credit ratings produced by the banks and which —

(i) are not paid for by the rated entity;

(ii) are not disclosed to the public;

(iii) are issued in accordance with the principles, standards and procedures which ensure the adequate integrity and independence of credit rating activities as provided for by this Order; and

(iv) do not relate to securities issued by the Government of His Majesty the Sultan and Yang Di-Pertuan or other central banks in foreign countries or territories.

(4) For the purposes of this Order, the following shall not be considered to be credit ratings —

(a) recommendations which comprise research or other information recommending or suggesting an investment strategy, whether explicitly or implicitly, concerning one or several securities or the issuers of securities, including any opinion as to the present or future value or price of such securities, intended for distribution channels or for the public;

(b) investment research as regards organisational requirements and operating conditions for investment firms;

(c) other forms of general recommendation, such as 'buy', 'sell' or 'hold', relating to transactions in securities or to financial obligations;

(d) opinions about the value of a security or a financial obligation.

General requirements for licensing of credit rating agency.

87. (1) The Authority shall grant a licence to the operator of a credit rating agency if it is satisfied that the operator of the credit rating agency and his systems comply with the requirements of this Order and where it is in the interests of Brunei Darussalam to grant such a licence.

(2) The operator of the credit rating agency shall provide all such information as may be required by the Authority as to his proposed operations including the types of businesses envisaged and the organisational structure necessary to enable the Authority to satisfy itself that the operator of the credit rating agency has established, at the time of licensing, recognition or designation, all the necessary arrangements to meet his obligations under this Order.

(3) Every application for a licence as an operator of a credit rating agency made under this Order shall be accompanied by —

(a) particulars of any arrangements which the operator has made or proposes to make for the provision of his services; and

(b) details of his organisational arrangements as set out in section 91.

(4) An operator of a credit rating agency who is granted a licence under this Order is subject to the continuous supervision of the Authority and must ensure that he complies at all times with the requirements under this Order.

Supplemental information requirements.

88. (1) At any time after receiving an application and before determining it, the Authority may require the applicant to provide such supplementary further information as it reasonably thinks necessary to enable it to determine the application.

(2) The information, which the Authority requires in relation to an application must be provided in such form, or verified in such manner, as the Authority may direct.

(3) Different directions may be given, or requirements imposed, by the Authority with respect to different applications.

Grant or renewal of licence to credit rating agency.

89. (1) Subject to subsections (2) and (3), the Authority may grant or renew a credit rating agency licence if it appears to the Authority that the applicant

satisfies the licensing requirements applicable in his case, and that the Authority may make an order declaring the applicant to be an operator of a credit rating agency.

(2) A licence is valid until 31st December of the year in which it was granted and is renewable on payment of the annual licence fee as determined by the Authority.

(3) When a licence is first granted for a period of less than 6 months prior to 31st day of December, the annual licence fee shall abate *pro rata* on a monthly basis.

General requirements for operator of credit rating agency.

90. (1) The Authority shall require the person who effectively direct the business and the operations of a credit rating agency to be of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management and operation of the agency.

(2) The Authority shall require the operator of a credit rating agency to inform the Authority of the identity and any other subsequent changes of the persons who effectively direct the business and the operations of the credit rating agency before such changes are implemented.

(3) The Authority shall refuse to approve proposed changes where it appears to the Authority that there are grounds for believing that the person or persons proposed to direct the business operations of the operator of the credit rating agency pose a material threat to the sound and prudent management and operation of the credit rating agency.

Regulations for operator of credit rating agency.

91. The Authority may make regulations that require that the operator of a credit rating agency to have the following organisational arrangements in place —

(a) to identify clearly and manage the potential adverse consequences in his day to day operations and for his clients of any conflict of interest between the interest of his owners or his operator and the sound functioning of the business;

(b) to be adequately equipped to manage the risks to which he is exposed, to implement appropriate arrangements and systems to identify all significant risks to his operation, and to put in place effective measures to mitigate those risks;

(c) for the sound management of the technical operations of his systems, including outsourcing and the establishment of effective contingency arrangements to cope with risks of systems disruptions;

(d) for ensuring the verification of the sufficiency and quality of the information upon which the agency bases their ratings;

(e) for ensuring the disclosure of the models, methodologies and key assumptions on which the credit rating agency bases their ratings;

(f) to publish an annual transparency report;

(g) for establishing an internal function to review the quality of their ratings;

(h) at the time of authorisation and on an ongoing basis, sufficient financial resources to facilitate his orderly operations having regard to the nature and extent of his business and the range and degree of the risks to which he is exposed.

Recognition of operator of foreign credit rating agency.

92. (1) An application for recognition by the operator of a foreign credit rating agency must contain the address for service in Brunei Darussalam.

(2) If it appears to the Authority that the operator of a foreign credit rating agency satisfies the requirements of subsection (3), it may make a recognition order declaring the applicant to be the operator of a recognised credit rating agency.

(3) The requirements are that —

(a) investors are afforded protection equivalent to that which they would be afforded if the operator concerned were required to comply with licensing requirements for credit rating agency under this Part;

(b) the applicant is able and willing to co-operate with the Authority by the sharing of information and in other ways; and

(c) adequate arrangements exist for co-operation between the Authority and those responsible for the supervision of the applicant in the country or territory in which the applicant's head office is situated.

(4) In considering whether it is satisfied as to the requirements mentioned in subsection (3)(a) and (b), the Authority is to have regard to —

(a) the relevant law and practice of the country or territory in which the applicant's head office is situated; and

(b) the regulations and practices of the applicant.

(5) The Authority shall grant recognition as an operator of a foreign credit rating agency only where it is satisfied that both the operator and his systems comply with requirements of this Order and where it is in the interests of Brunei Darussalam to grant such recognition.

Reporting requirements for recognised credit rating agency.

93. (1) At least once a year, every recognised credit rating agency shall provide the Authority with a report.

(2) The report shall contain a statement as to whether any events have occurred which are likely —

(a) to affect the Authority's assessment of whether it is satisfied as to the requirements for recognition set out in section 92(3); or

(b) to have any effect on competition.

(3) The report shall also contain such information as may be specified in regulations made by the Authority.

Designation of operator of foreign credit rating agency.

94. (1) The Authority may by order designate such operator of a foreign credit rating agency as appear to it to offer similar protection to that set out by section 92(3).

(2) The Authority may at its discretion withdraw designation where it is satisfied that the operator of a foreign credit rating agency no longer complies with the requirements in section 92(3) or have breached the requirements in section 95.

Power to give directions in case of non-compliance.

95. (1) This section applies if it appears to the Authority that the operator of a licensed, recognised or designated credit rating agency —

(a) has failed, or is likely to fail, to satisfy the licensing, recognition or designation requirements; or

(b) has failed to comply with any other obligation imposed on him by or under this Order.

(2) The Authority may direct the operator of the licensed, recognised or designated credit rating agency to take specified steps for the purpose of securing its compliance with —

(a) the licensing, recognition or designation requirements; or

(b) any obligation of the kind in question.

(3) A direction under this section is enforceable, on the application of the Authority, by an injunction.

(4) The fact that a regulation made by a operator of the licensed, recognised or designated credit rating agency has been altered in response to a direction given by the Authority does not prevent it from being subsequently altered or revoked by the operator in question.

Revocation of licence, recognition or designation.

96. (1) The licence, recognition order or designation order granted to the operator of a licensed, recognised or designated credit rating agency may be revoked by an order made by the Authority at the request, or with the consent, of the operator of the licensed, recognised or designated credit rating agency concerned.

(2) If it appears to the Authority that the operator of the licensed, recognised or designated credit rating agency —

(a) does not make use of the licence, recognition or designation within 12 months, expressly renounces the licence, recognition or designation or has not provided the services in the market for the preceding 6 months;

(b) has obtained the licence, recognition or designation by making false statements or by any other irregular means;

(c) is failing, or has failed, to satisfy the licence, recognition or designation requirements;

(d) is failing, or has failed, to comply with any other obligation imposed on it by or under this Order; or

(e) that he is not a fit and proper person to be licensed, recognised or designated as providing the services in question,

it may make an order revoking the licence, recognition order or designation order for that operator even though the operator in question does not wish for the order to be made.

(3) A revocation order under subsection (2) must specify the date on which it is to take effect and the specified date must not be earlier than the end of the period of 3 months beginning with the date on which the order is made.

(4) A revocation order may contain such transitional provisions as the Authority thinks necessary or expedient.

Directions and revocation procedure.

97. (1) Before giving a direction under section 95 or making a revocation order under section 96, the Authority must —

(a) give a notice in writing of its intention to do so to the operator of the licensed, recognised or designated credit rating agency concerned; and

(b) publish the notice in such manner as it thinks fit for bringing it to the attention of other persons who are, in its opinion, likely to be affected.

(2) A notice under subsection (1) must —

(a) state why the Authority intends to give the direction or make the revocation order; and

(b) draw attention to the right to make representations conferred by subsection (3).

(3) Before the end of the period for making representations —

(a) the operator of a licensed, recognised or designated credit rating agency; and

(b) any other person who is likely to be affected by the proposed direction or revocation order,

may make representations to the Authority.

(4) The period for making representations is —

(a) 2 months beginning —

- (i) with the date on which the notice is served on the operator of the licensed, recognised or designated credit rating agency; or
- (ii) if later, with the date on which the notice is published; or
- (b) such longer period as the Authority may allow in the particular case.

(5) In deciding whether to —

- (a) give a direction; or
- (b) make a revocation order,

the Authority must have regard to any representations made in accordance with subsection (3).

(6) When the Authority has decided whether to give a direction under section 95 or to make a revocation order under section 96, it must —

- (a) give the operator of the licensed, recognised or designated credit rating agency notice in writing of its decision; and
- (b) if it has decided to give a direction or make an order, take such steps as it considers reasonably practicable for bringing its decision to the attention of the operator of the licensed, recognised or designated credit rating agency or of other persons who are, in the Authority's opinion, likely to be affected.

(7) If the Authority considers it essential to do so, it may give a direction under section 95 —

- (a) without following the procedure set out in this section; or
- (b) if the Authority has begun to follow that procedure, regardless of whether the period for making representations has expired.

(8) If the Authority has, in relation to a particular matter, followed the procedure set out in subsections (1) to (5), it need not follow it again if, in relation to that matter, it decides to take action other than that specified in its notice under subsection (1).

Complaints arrangements.

98. (1) The Authority must make arrangements for the investigation of any relevant complaint about the operator of a licensed, recognised or designated credit rating agency.

(2) In this section, “relevant complaint” means a complaint that the Authority thinks is relevant to the question of whether the operator concerned should remain licensed, recognised or designated.

PART IV

SELF-REGULATING ORGANISATIONS

Self-regulating organisation.

99. (1) In this Order, “self-regulating organisation” means a corporate body which regulates the carrying on of investment business of any kind by enforcing regulations which are binding on persons carrying on business of that kind either because they are members of that body or because they are otherwise subject to its control.

(2) In this Order, references to the members of a self-regulating organisation are references to the persons who are members of the organisation and are subject to its regulations in carrying on the business in question.

(3) In this Order, references to the regulations of a self-regulating organisation are references to the regulations (whether or not laid down by the organisation itself) which the organisation has power to enforce in relation to the carrying on of the business in question or which relate to the admission and expulsion of members of the organisation or otherwise to its constitution.

(4) In this Order, references to guidance issued by a self-regulating organisation are references to guidance issued or any recommendation made by it to all or any class of its members or persons seeking to become members which would, if it were a regulation, falls within subsection (3).

Application for recognition.

100. (1) Any person may apply to the Authority for an order declaring him to be a recognised self-regulating organisation for the purposes of this Order.

(2) The application must be made in such manner as the Authority may direct and must be accompanied by —

(a) a copy of the applicant's regulations which must make provision for its constitution, membership, financial resources, safeguards for investors, monitoring and enforcement, expulsion, investigation of complaints, promotion and maintenance of standards, settlement of disputes, default regulations and appeals;

(b) a copy of any guidance issued by the applicant which is intended to have continuing effect and is issued in writing or other durable medium;

(c) such other information as the Authority may reasonably require for the purpose of determining the application; and

(d) a non-refundable application fee, which shall be paid in the manner as specified by the Authority.

(3) A self-regulating organisation which is granted recognition under this Order is subject to the continuous supervision of the Authority and must ensure that it complies at all times with the requirements for initial recognition and any other continuing obligations under this Order.

(4) The Authority shall grant recognition to a self-regulating organisation only if it is satisfied that both the organisation and its systems comply with the requirements of this Order and where it is in the interests of Brunei Darussalam to grant such a licence.

Supplemental information requirements.

101. (1) At any time after receiving an application and before determining it, the Authority may require the applicant to provide such supplementary further information as it reasonably thinks necessary to enable it to determine the application.

(2) Information which the Authority requires in relation to an application must be provided in such form, or verified in such manner, as the Authority may direct.

(3) Different directions may be given, or requirements imposed, by the Authority with respect to different applications.

Central securities depository institution.

102. (1) Any person may apply for recognition as a self-regulating organisation in respect of the provision of central securities depository services provided it complies with the requirements for recognition under this Part.

(2) Any holder of a capital markets services licence may be entitled by regulations prescribed by the Authority to become a member of a central securities depository and be permitted access to all services offered by a central securities depository.

(3) The Authority may prescribe by regulations such other persons who may be members, participants in or users of or shareholders of the central securities depository.

(4) A central securities depository is prohibited from distributing dividends.

(5) The activities to be undertaken by a central securities depository are —

(a) custodial services;

(b) maintenance of registry books for issuers; and

(c) such other related functions as the Authority may determine.

Trust status of property of central securities depository members.

103. Any securities or other property held by a central securities depository for one of its members including securities that are in dematerialised form, shall be the property of the member and shall not be part of the assets of the central securities depository and deemed to be member's assets and as such are held on trust for the ultimate beneficiary.

Central securities depository requirements relating to dematerialised securities.

104. (1) The Authority may require that a central securities depository may hold securities only in dematerialised form or may permit a central securities depository to both hold certificated securities and securities in dematerialised form and the central securities depository is required to have systems and procedures to ensure that the number of dematerialised securities recorded as held in the central securities depository is equal to the number of securities actually deposited in the central securities depository.

(2) Entries in central securities depository accounting documents reducing the account of the transferor and increasing the account of a transferee are the only effective method to transfer ownership rights in the securities if the securities are either held by the central securities depository or are evidenced in dematerialised form through accounts of the central securities depository.

(3) All securities indicated in the records of a central securities depository are transferable without regard to specific shares or certificate numbers. Pledges

or security interests shall be legally valid when indicated on the records of a central securities depository.

(4) The owners of securities indicated on the records of a central securities depository or its members are entitled to all rights of ownership with respect to such securities without limitation.

Indemnity insurance.

105. (1) The senior management of the central securities depository must act in a prudent manner in the interest of members' accounts and the central securities depository is liable for any loss caused as a result of negligence or non-compliance with this Order or regulations made thereunder.

(2) A central securities depository must maintain adequate professional indemnity insurance at all times covering and indemnifying against liability for negligence by the senior management in respect of the loss of cash, securities or other assets of the central securities depository.

Establishment of default fund.

106. (1) The Authority may by regulations require the establishment by the central securities depository of a fund known as the default fund to guarantee the prompt and accurate clearance and settlement of transactions executed on a securities exchange.

(2) The Authority may require that the central securities depository provide by regulations for the contribution of its members to the establishment and operation of such fund.

Nominee accounts regulations.

107. (1) The Authority may by regulations provide that —

(a) transfers of securities, including dematerialised securities, may be validly made by appropriate entries in the accounts maintained by a holder of a capital markets services licence or in the records of the issuer or his registrar and such entries shall be evidence of the transfer;

(b) transfers of dematerialised shares shall only be evidence so far as the issuer is concerned, when a transfer is recorded in the books of the issuer of the names of the parties to the transfer and the number of shares transferred;

(c) the official records and book entries of a central securities depository shall constitute the best evidence of such transactions between the central securities depository and its participants and members, without prejudice to the right of members' clients to prove their rights, title and entitlement with respect to the book-entry security holdings of the members held on behalf of the clients; and

(d) the issuer may be bound by paragraph (c) where the company secretary, is duly notified of the transaction in such manner as the Authority may provide.

(2) The Authority may by regulations provide that securities held by a nominee as nominee owned securities may not be used in insolvency or otherwise in satisfaction of the debts of the nominee.

(3) The Authority may provide regulations for the protection of investors which —

(a) validate the transfer of securities by book-entries rather than the delivery of physical certificates;

(b) establish when a person acquires a security or an interest therein and when delivery of a security to a purchaser occurs;

(c) establish which records constitute the best evidence of a person's interests in a security and the effect of any errors in electronic records of ownership;

(d) establish the rights of investors who choose to hold their securities indirectly through a central securities depository, other intermediaries or both;

(e) establish the duties of such intermediaries who hold securities on behalf of investors; and

(f) establish first priority to any claims of the central securities depository against a participant arising from a failure by the member to meet his obligations under the regulations of the central securities depository.

Grant of recognition to self-regulating organisation.

108. (1) If it appears to the Authority that the applicant satisfies the recognition requirements applicable in his case, the Authority may make an order declaring the applicant to be a self-regulating organisation.

(2) The recognition must specify a date on which it is to take effect.

General requirements for self-regulating organisation.

109. (1) The Authority shall require the person who effectively direct the business and the operations of the self-regulating organisation to be of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management and operation of the services it provides.

(2) The Authority shall require the operator of a self-regulating organisation to inform the Authority of the identity and any other subsequent changes of the persons who effectively direct the business and his operations before such changes are implemented.

(3) The Authority shall refuse to approve any proposed changes if it appears to the Authority that there are grounds for believing that the person or persons proposed to direct the business and his operations pose a material threat to the sound and prudent management and operation of the self-regulating organisation.

(4) The operator of a self-regulating organisation must have the following organisational arrangements in place —

(a) to identify clearly and manage the potential adverse consequences of any conflict of interest;

(b) to be adequately equipped to manage the risks to which he is exposed, to implement appropriate arrangements and systems to identify all significant risks to his operation, and to put in place effective measures to mitigate those risks;

(c) for the sound management of the technical operations of his systems, including the establishment of effective contingency arrangements to cope with risks of systems disruptions;

(d) transparent and non-discretionary regulations and procedures that provide for fair and orderly provision of the services to his members;

(e) at the time of recognition and on an ongoing basis, sufficient financial resources to facilitate his orderly functioning, having regard to the nature and extent of the services provided and the range and degree of the risks to which he is exposed.

Grant and refusal of recognition.

110. (1) The Authority may, on an application duly made in accordance with section 100 or 102 and after being furnished with all such information as it may

require, make or refuse to make an order (a recognition order) declaring the applicant to be a recognised self-regulating organisation.

(2) The Authority may refuse to make a recognition order in respect of a self-regulating organisation if it thinks that its recognition is unnecessary having regard to the existence of one or more other organisations which are concerned with investment business of a kind with which the applicant is concerned and which have been or are likely to be recognised under this section.

(3) Where the Authority refuses an application for a recognition order, it shall give the applicant a notice in writing to that effect specifying a requirement which in the opinion of the Authority is not satisfied.

Revocation of recognition.

111. (1) If, at any time, it appears to the Authority —

(a) that the recognised self-regulating organisation does not make use of the recognition within 12 months, expressly renounces the recognition or has not provided the services in the market for the preceding 6 months;

(b) that the recognised self-regulating organisation has obtained the recognition by making false statements or by any other irregular means;

(c) that the recognised self-regulating organisation is failing, or has failed, to satisfy the recognition requirements;

(d) that the recognised self-regulating organisation is failing, or has failed, to comply with any other obligation imposed on it by or under this Order;

(e) that the recognised self-regulating organisation is not a fit and proper organisation to be recognised as providing the services in question; or

(f) that the continued recognition of the organisation is undesirable having regard to the existence of one or more other organisations which have been or are to be recognised or the interests of Brunei Darussalam,

it may make a further order revoking the recognition order for that self-regulatory organisation even though that organisation does not wish the order to be made.

(2) An order under this section must specify the date on which it is to take effect.

(3) Before revoking a recognition order, the Authority shall give notice in writing of its intention to do so to the recognised self-regulating organisation, and

take such steps as it thinks reasonably practicable for bringing the notice to the attention of members of the organisation and publish it in such manner as it thinks fit for bringing it to the attention of any other persons who are in its opinion likely to be affected.

(4) A notice under subsection (3) shall state the reasons for which the Authority proposes to revoke the recognition order and give particulars of the rights conferred by subsection (5).

(5) An organisation on which a notice is served under subsection (3), any member of the organisation and any other person who appears to the Authority to be affected may within 3 months after the date of service or publication, or within such longer time as the Authority may allow, make written representations to the Authority and the Authority shall have regard to any representations made in accordance with this subsection in determining whether to revoke the recognition order.

(6) If in any case the Authority considers it necessary to do so in the interests of investors, it may revoke a recognition order notwithstanding that no notice has been given or published under subsection (3) or that the time for making representations in pursuance of such a notice has not expired.

(7) A recognition order may be revoked at the request or with the consent of the recognised self-regulating organisation and any such revocation shall not be subject to the restrictions imposed by subsection (1) or the requirements of subsections (3) to (5).

(8) On making an order revoking a recognition order, the Authority shall give the self-regulating organisation a notice in writing of the making of the order, take such steps as it thinks reasonably practicable for bringing the making of the order to the attention of the members of the organisation and publish a notice of the making of the order in such manner as it thinks fit for bringing it to the attention of any other persons who are in its opinion likely to be affected.

Directions.

112. (1) If at any time it appears to the Authority —

(a) that any requirement of recognition is not satisfied in the case of a recognised self-regulating organisation; or

(b) that a recognised self-regulating organisation has failed to comply with any obligation to which it is subject by virtue of this Order,

it may, instead of revoking the recognition, make an application to the Court under this section.

(2) If on any such application the Court decides that the recognition requirement in question is not satisfied or that the self-regulating organisation has failed to comply with the obligation in question, it may order the organisation to take such steps as the Court directs for securing that that requirement is satisfied or that that obligation is complied with.

(3) The jurisdiction conferred by this section shall be exercisable by the High Court.

Notification requirements.

113. (1) The Authority may make regulations requiring a recognised self-regulating organisation to give it notice of the occurrence of such events relating to the organisation or its members as are specified in the regulations and such information in respect of those events as is so specified.

(2) The Authority may make regulations requiring a recognised self-regulating organisation to furnish it at such times or in respect of such periods as are specified in the regulations with such information relating to the organisation or its members as is so specified.

(3) The notices and information required to be given or furnished under subsections (1) and (2) shall be such as the Authority may reasonably require for the exercise of its functions under this Order.

(4) Regulations under subsections (1) and (2) may require information to be given in a specified form and to be verified in a specified manner.

(5) Any notice or information required to be given or furnished under subsections (1) and (2) shall be given in writing or in such other manner as the Authority may determine.

(6) Where a recognised self-regulating organisation amends, revokes or adds to its regulations or guidelines, it shall within 7 days give the Authority a notice in writing of the amendment, revocation or addition.

(7) Contravention of, or of regulations under, this section is not an offence.

Complaints arrangements.

114. (1) The Authority must make arrangements for the investigation of any relevant complaint about a recognised self-regulating organisation.

(2) In this section, “relevant complaint” means a complaint that the Authority thinks is relevant to the question of whether the self-regulating organisation should remain recognised.

PART V

PUBLIC OFFERING

Interpretation.

115. In this Part —

“borrowing entity” means an entity that is or will be under a current or future liability to repay any money received by it in response to an offer to subscribe for or purchase debentures of the entity;

“debenture” means a written acknowledgement of indebtedness, issued by a company in respect of a loan made or to be made to it or to any other person, or of money deposited or to be deposited with the company or any other person, or of the existing indebtedness of the company or any other person, whether constituting a charge on any of the assets of the company or not, and includes —

- (a) a debenture stock;
- (b) a convertible debenture;
- (c) a bond or an obligation;
- (d) a loan stock;
- (e) an unsecured note; or
- (f) any other instrument executed, authenticated, issued or created in consideration of such a loan or existing indebtedness.

but does not include —

- (a) a bill of exchange;
- (b) a promissory note;
- (c) a letter of credit;

- (d) an acknowledgement of indebtedness issued in the ordinary course of business for goods or services supplied;
- (e) a policy of insurance; or
- (f) a deposit certificate, pass book or other similar document issued in connection with a deposit or current account at a financial institution.

“debenture issuance programme” means any scheme or arrangement by an entity for the issue of debentures or units of debentures where only part of the maximum amount or aggregate number of debentures or units of debentures under the programme is offered initially and a further tranche or tranches may be offered subsequently;

“excluded issue” means an issue which is specified in this Order or which is prescribed by the Authority to be an excluded issue under this Part;

“excluded invitation” or “excluded offer” means an invitation or offer which is specified as such in this Order or prescribed by the Authority to be an excluded invitation or excluded offer under this Part;

“guarantor entity”, in relation to a borrowing entity, means an entity that has guaranteed or has agreed to guarantee the repayment of any money received or to be received by the borrowing entity in response to an invitation to subscribe for or purchase debentures of the borrowing entity;

“preliminary prospectus” means any document which is designed to assist an issuer in setting a price in respect of a proposed issue of, an offer for subscription or purchase of, or an invitation to subscribe for or purchase, securities or to determine the final contents of a prospectus;

“promoter” means —

- (a) in relation to a prospectus issued by or in connection with a corporation, a promoter of the corporation;
- (b) in relation to a prospectus in respect of a collective investment scheme, a promoter of the scheme; or
- (c) in relation to a prospectus in any other case, a promoter who is a party to the preparation of the prospectus or any relevant portion thereof, but does not include any person by reason only of his acting in a professional capacity;

“prospectus” means any publication or document inviting applications or offers to subscribe for or purchase securities, or offering any securities for

subscription or purchase and, unless expressly specified, includes a supplementary prospectus, replacement prospectus, shelf prospectus, short form prospectus, supplementary shelf prospectus and abridged prospectus;

“shelf registration scheme” means a scheme applicable for the purpose of any issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities by an issuer based on a shelf prospectus and a supplementary shelf prospectus;

“supplementary shelf prospectus” means a document which provides material information necessary to update the information in a shelf prospectus subsequent to the registration of such shelf prospectus;

“underlying entity” in relation to an offer of units of shares or debentures, means the entity the shares or debentures of which are the subject of the offer.

Public offering registration requirement.

116. (1) No person shall make an offer to sell or sell securities in Brunei Darussalam through a public offering unless a dated registration statement and form of prospectus for the public offering —

- (a) are filed with the Authority;
- (b) declared effective by the Authority pursuant to section 122; and
- (c) comply with the requirements of this Order.

(2) Only an issuer may make a public offering of its securities.

(3) When considering a registration statement and form of prospectus for a public offering, the Authority will notify the applicant in writing within 40 days of the receipt of the application filed with the required documents under section 118 and by virtue of section 122 will become effective after the expiration of the 40 day period.

Exempt securities and transactions.

117. The requirements of section 116 do not apply to the following group of exempt securities and transactions —

- (a) exempt securities —

- (i) any security issued and guaranteed by the Government of His Majesty the Sultan and Yang Di-Pertuan;
 - (ii) any security issued by a bank except its own securities;
 - (iii) commercial paper, promissory notes and debentures with not more than 270 days to maturity from the date issued;
 - (iv) a class of securities that the Authority may by regulation determine as exempt;
- (b) exempt transactions —
- (i) broker's transactions executed upon client's orders on any licensed, recognised or designated securities exchange;
 - (ii) the sale of securities by an issuer to fewer than 50 persons in Brunei Darussalam during a 12 month period may be considered a private offering in respect of which no public advertisement for the offer to sell such securities is permitted and such securities sold to these investors must be held for investment for a period of at least 2 years;
 - (iii) the sale of securities to any number of the specific classes of investors defined in section 20 and such other persons as the Authority may by regulations determine as qualified buyers;
 - (iv) at any sale by order of the Court or by an officer of the Court in respect of insolvency proceedings;
 - (v) any other transaction that the Authority may by regulations determine as exempt.

General duty of disclosure in registration statement.

118. (1) In order to make a public offering, the issuer must submit its registration statement on a form prescribed by the Authority that sets out the information required from the issuer including a form of prospectus, and comply with the general duty of disclosure under this Part and any regulations issued by the Authority.

(2) A registration statement shall contain all such necessary information as investors and their professional advisers would reasonably require, and reasonably expect to find there, for the purpose of making an informed assessment of —

(a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the securities; and

(b) the rights attaching to the securities,

and “necessary information” means information which a person considering acquiring the securities of the kind in question would be likely to need in order not to be misled about any material facts which it is essential for him to know to make an informed assessment.

(3) The Authority may by regulations prescribe that the registration statement contains such other information or documents as may be necessary in respect of —

(a) the terms of the offering including, the identity of any underwriter and the method of the offering;

(b) information about the business and operations of the issuer;

(c) the identity of directors, senior management, promoters and auditors;

(d) capitalisation and indebtedness of the issuer;

(e) risk factors;

(f) securities market data regarding any trading history of the issuer's shares;

(g) use of the proceeds of the offering;

(h) pending litigation;

(i) management discussion and analysis of the financial condition and results of the issuer's business operations;

(j) forecast of estimated profit or loss for the year ending immediately before the date of the prospectus and the year ending immediately after the date of the prospectus;

(k) a certificate from the issuer's auditor stating any changes in directors and auditors during the last 3 years, indicating the reasons for any changes; and

(l) audited financial statements for the years and periods as required by the Authority's regulations.

(4) The Authority may issue regulations in respect of the content of the advertisements and the public announcements in connection with the public offerings.

(5) The issuer's senior management or persons performing similar functions must sign the registration statement which must be accompanied by a duly verified resolution of the board of directors of the issuer corporation. Any written consent of an expert named as having certified any part of the registration statement or any document used in that connection must also be filed with the Authority.

(6) Where the registration statement includes shares to be sold by selling shareholders, a written certification by such selling shareholders as to the accuracy of any part of the registration statement contributed to by such selling shareholders must also be filed with the Authority.

(7) The Authority may request additional information and changes in the registration statement. The registration statement shall not become effective until the additional information or changes are received and they fulfil the requirements provided for by the Authority.

(8) The Authority may audit the financial statements, assets and other information of an issuer applying for registration of its securities whenever it thinks fit and it is in the interests of investor protection.

(9) The Authority shall not approve, disapprove or otherwise express views on the merits or otherwise of particular securities.

(10) Any person is prohibited from stating, directly or indirectly, that the Authority has approved, authorised, certified or conducted research on the various merits or otherwise of a security or offering.

Debentures.

119. In addition to the general requirements under section 118, the registration statement for the sale of debentures shall contain the following information —

- (a) rights and restrictions related to the transfer of the debentures;
- (b) return on the debentures;
- (c) property or other collateral used as security for repayment, if any;
- (d) debenture holder's representative if any;

(e) encumbrances on the property of the company which issues securities in case of unsecured securities;

(f) outstanding debt from previous issues of debentures;

(g) procedure, time, and place of repayment;

(h) procedures for the conversion of rights, if any;

(i) such other information as the Authority may specify by regulations.

Rights to purchase shares or debentures.

120. In addition to the information to be provided in accordance with section 118, a registration statement for the sale of certificates representing the rights to purchase shares, or certificates representing the rights to purchase debentures shall contain the following information —

(a) rights and conditions under the certificates;

(b) shareholders' resolution authorising the issue of shares or debentures;

(c) amount of shares or debentures to be issued under the certificates;

(d) procedures for the conversion of rights;

(e) other information as specified by the Authority in regulations.

Written consent requirement for certain statements.

121. (1) A form of prospectus that includes a statement, other than a statement which is an extract of an official statement or any other statement as may be specified by the Authority, purporting to be made by any person or to be based on a statement made by such person, shall not be issued unless —

(a) the person has given his written consent to the issue of the form of prospectus with the statement made in the form and the context in which it is included and has not, before the date of issue of the form of prospectus, withdrawn such consent; and

(b) there appears in the form of prospectus a statement that the person has given and has not withdrawn his consent.

(2) Any person who knowingly is a party to the issue of any form of prospectus in contravention of subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$100,000, and, in the case of a continuing offence, with a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Post effective date requirements for registration statement.

122. (1) The registration statement shall become effective on the 40th day after receipt of the registration statement meeting the requirements in this Part, or on an earlier day if declared effective by the Authority.

(2) After the registration statement becomes effective, the issuer shall state under oath in every prospectus that all registration requirements have been met and that all information is true and correct as represented by the issuer or by the person making the statement.

(3) No person shall sell securities in a public offering unless the purchaser has received a prospectus with respect to such securities in the form included in the effective offering statement, prior to or at the time of subscription.

Amendments to registration statement.

123. (1) An issuer must submit an amendment to a registration statement at any time before or after the registration statement is effective if the issuer discovers that the registration statement omits information required to be included or updated, contains an untrue statement of material fact or omits to state a material fact necessary to make statements made therein not misleading.

(2) In the event an issuer submits changes or additional information prior to the time the registration statement is effective, the offering statement is deemed to have been resubmitted on the date the changes or additional information are received.

(3) The Authority may, at any time after the effective date —

(a) require an issuer to make amendments to the registration statement if it determines that the registration statement contains an untrue statement of material fact or omits to state a material fact necessary to make statements made therein not misleading; or

(b) require the issuer to suspend offers and sales of securities —

- (i) before an issuer has submitted amendments to the public offering statement requested by the Authority; and
- (ii) until 15 days following submission of the latest amendment.

Suspension of offering.

124. (1) If, at any time, the information contained in the filed registration statement is or has become misleading, incorrect, inadequate or incomplete in any material respect, or the sale or offering for sale of the registered security will result in a fraud on investors, the Authority may require from the issuer, information which it thinks is necessary to enable the Authority to determine whether the registration statement should be revoked prior to becoming effective.

(2) The Authority may also suspend the right to sell and offer for sale such security pending an investigation in the exercise of its powers contained in Part X.

(3) Where the Authority decides to suspend the issuance, it must give the issuer a warning notice and give the issuer the opportunity of making representations to the Authority.

(4) If the Authority decides to refuse to cancel the suspension of the issuance, the issuer may refer the matter to the Panel.

Offering proceeds held in trust in separate bank account.

125. (1) All proceeds of the application and other moneys paid prior to allotment by any applicant in respect of securities offered to him shall, until the allotment of the securities, be held by the person making the offer of the securities upon trust for the applicant in a separate bank account that is established and kept by the person solely for the purpose of depositing the application and other moneys that are paid by applicants for those securities.

(2) There shall be no obligation or duty on any bank with which any such moneys have been deposited to enquire into or see to the proper application of those moneys, provided that the bank acts in good faith.

(3) Any person who contravenes subsection (1) 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 and, in the case of a continuing offence, to a further fine for \$20,000 every day or part thereof during which the offence continues after conviction.

Minimum subscription requirements.

126. (1) No allotment shall be made of any securities of a company unless —

(a) the minimum subscription has been subscribed; and

(b) the sum payable on application for the securities so subscribed has been received by the company, but if a cheque for the sum payable has been received by the company, the sum shall be deemed not to have been received by the company until the cheque is paid by the bank on which it is drawn.

(2) The minimum subscription shall —

(a) be calculated based on the price at which each share or debenture, or each unit of share or debenture, is or will be offered; and

(b) be considered exclusively of any amount payable otherwise than in cash.

(3) If the conditions referred to in subsection (1)(a) and (b) have not been satisfied on the expiration of 4 months after the first issue of the prospectus, all moneys received from applicants for securities shall be immediately repaid to them without interest.

(4) If any money referred to in subsection (3) is not repaid within 5 months after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at a rate to be determined by the Authority from the expiration of the period of 5 months, but a director shall not be so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5) An allotment made by a company to an applicant in contravention of this section shall be voidable at the option of the applicant which option may be exercised by notice in writing served on the company —

(a) within one month after the holding of the statutory meeting of the company and not later; or

(b) in any case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment and not later, and the allotment shall be so voidable notwithstanding that the company is in the course of liquidation proceedings.

(6) Every director of a company who knowingly contravenes or permits or authorises the contravention of any of the provisions 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, and liable to compensate the company and the allottee respectively for any loss, damages or costs that the company or the allottee has sustained or incurred as a result.

(7) No proceedings for the recovery of any compensation under subsection (6) shall be commenced after the expiration of 2 years from the date of the allotment.

(8) Any condition requiring or binding any applicant for securities to waive compliance with any requirement of this section shall be void.

Regulations for shelf registration and form of shelf prospectus.

127. (1) Notwithstanding section 116, a person may issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase, securities where at the time of the issue, offer or invitation there is in force —

(a) a shelf registration statement as updated by a form of supplementary shelf prospectus; and

(b) additional forms and information,

relating to all matters which the Authority shall require by way of regulations made under this Order with respect to a shelf registration and form of supplementary shelf prospectus, additional forms and information.

(2) The regulations referred to under subsection (1) may provide for, but shall not be limited to, the following matters —

(a) a shelf prospectus, including a form of supplementary shelf prospectus;

(b) additional forms and information;

(c) the period during which a person may be permitted to issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase, securities on the basis of a form of supplementary shelf prospectus;

(d) the form and content of a form of supplementary shelf prospectus and additional forms referred to in paragraph (a), (b) or (c);

(e) the persons or classes of persons to which any form or document referred to in paragraph (a), (b) or (c) may apply;

(f) the securities or classes of securities to which any form of supplementary prospectus referred to in paragraph (a), (b) or (c) may apply.

(3) Where the Authority makes regulations under subsection (1) with respect to documents and forms under subsection (1)(a) and (b), the provisions of this Order and any other written law relating to liability in respect of statements in or omissions from prospectuses or otherwise relating to prospectuses shall apply to the shelf registration statement and the form of supplementary shelf prospectus, and additional forms and shall have effect accordingly.

Misleading statements and practices in relation to prospectuses.

128. (1) Any person who —

(a) makes a statement (which includes registration statements, prospectuses or supplementary prospectuses), promise or forecast which he knows to be misleading, false or deceptive or dishonestly conceals any material facts; or

(b) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive,

is guilty of an offence —

(i) if he makes the statement, promise or forecast or conceals the facts for the purpose of inducing; or

(ii) he is reckless as to whether it may induce,

another person (whether or not the person to whom the statement, promise or forecast is made or from whom the facts are concealed) to enter or offer to enter into, or to refrain from entering or offering to enter into, an investment agreement or to exercise, or refrain from exercising, any rights conferred by a security.

(2) Any person who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any securities is guilty of an offence if he does so for the purpose of creating that impression and of thereby inducing another person to acquire, dispose of, subscribe for or underwrite those securities or to refrain from doing so or to exercise, or refrain from exercising, any rights conferred by those securities.

(3) In proceedings brought against any person for an offence under subsection (1) or (2), it shall be a defence for him to prove that he reasonably believed that his act or conduct would not create an impression that was false or misleading as to the matters mentioned in those subsections.

(4) Subsection (1) shall not apply unless —

(a) the statement, promise or forecast is made in or from, or the facts are concealed in or from Brunei Darussalam;

(b) the person on whom the inducement is intended to or may have effect is in Brunei Darussalam; or

(c) the agreement is or would be entered into or the rights are or would be exercised in Brunei Darussalam.

(5) Subsection (2) shall not apply unless —

(a) the act is done or the course of conduct is engaged in Brunei Darussalam; or

(b) the false or misleading impression is created in Brunei Darussalam.

(6) A person guilty of an offence under this section is liable on conviction to a fine not exceeding \$200,000, imprisonment for a term not exceeding 2 years or both, and, in the case of a continuing offence, with a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

Failure to comply with content or requirement of prospectus.

129. An issuer and each director of the issuer at the time of the issue of the prospectus who fails to comply with the content or requirement of a prospectus, is guilty of an offence and liable on conviction to a fine not exceeding \$100,000, imprisonment for a term not exceeding one year or both.

Damages for false or misleading statements in prospectus.

130. (1) A person who acquires, subscribes for or purchases securities and suffers loss or damage as a result of any statement or information contained in a form of prospectus that is false or misleading, or any statement or information contained in a form of prospectus from which there is a material omission, may recover the amount of loss or damage from all or any of the persons set out in paragraphs (a), (b), (c), (d), (e) and (f) and to the extent provided for —

(a) the issuer and each director of the issuer at the time of the issue of the form of prospectus, for any loss or damage;

(b) a person who consented or caused himself to be named and is named in the form of prospectus as a director or as having agreed to become a director, either immediately or after an interval of time, for any loss or damage;

(c) a promoter, for any loss or damage arising from the form of prospectus or any relevant portion of the form of prospectus in respect of which he was a party to the preparation thereof;

(d) a principal adviser, for any loss or damage;

(e) a person named in the form of prospectus with his consent as having made a statement that is included in the form of prospectus or on which a statement made in the form of prospectus is based, for any loss or damage caused by the inclusion of the statement in the form of prospectus;

(f) a person named in the form of prospectus with his consent as a securities broker, underwriter, auditor, banker or advocate or solicitor of the issuer in relation to the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities, and who has made a statement that is included in the form of prospectus or on which a statement made in the form of prospectus is based, for any loss or damage caused by the inclusion of the statement in the form of prospectus.

(2) A director referred to in subsection (1)(a) and (b) shall include any person by whom the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities is made.

Due diligence defence.

131. In proceedings brought against a person for an offence under section 130(1) it shall be a defence for him to prove that —

(a) he had made all enquiries as were reasonable in the circumstances; and

(b) after making such enquiries, he had reasonable grounds to believe and did believe until the time of the making of the statement or the provision of the information that —

(i) the statement or information was true and not misleading; or

(ii) there was no material omission.

PART VI

PUBLIC COMPANY STATEMENTS AND REPORTING REQUIREMENTS

Initial statements by public company.

132. (1) A public company which has become listed in accordance with a declaration made by the Authority under section 122 or a public company which is a publicly tradable company and which —

(a) falls within the definition of the Companies Act (Chapter 39); and

(b) has such minimum capital as may be prescribed by regulations issued by the Authority, is required to submit such additional information as may be requested by the Authority within the time periods set out in the regulations.

(2) An issuer that has sold a class of its securities pursuant to a registration statement and declaration by the Authority under section 122 and every public company that falls within section 132(1) must —

(a) submit reports to the Authority and to the public periodically in the volume, manner and within time periods specified by the Authority but not less frequently than 6 months; and

(b) submit information to the Authority and to the public regarding significant developments that may reasonably be expected to have a significant effect on the market price of the securities no later than the close of the second business day following such development, or sooner to protect investors or the market.

(3) Every issuer of a security listed for trading on a securities exchange must file with the securities exchange a copy of any report filed with the Authority under the requirements of this section.

Financial reporting requirements.

133. (1) The Authority shall establish requirements and procedures for the content and form of financial reports of reporting of public companies and publicly tradable companies.

(2) The Authority may adopt international standards for the auditing of the financial reports of a reporting company, and requirements for auditors who conduct auditing of reporting issuers.

(3) All reports, including financial statements, required to be filed with the Authority pursuant to this section must be in the form, contain such information and be filed at such times as the Authority prescribes, and must be in addition to any periodic or current reports or financial statements otherwise required to be filed under the Companies Act (Chapter 39).

Periodic financial reporting requirements.

134. (1) Every listed company and publicly tradable company shall disclose in a prescribed timely manner to the public an annual report which shall include its financial statements, the auditor's report and the directors' report.

(2) The annual report required in subsection (1) shall contain all material information relating to the financial condition and operating performance of the company in the period to which it relates as well as its future development and prospects including but not limited to —

(a) the financial and operating results of the company;

(b) company objectives;

(c) major share ownership and a description of voting rights;

(d) remuneration policy for members of the board and key executives, and information about members of board, including their qualifications, the selection process, other company directorships and whether they are regarded as independent by the board;

(e) related party transactions;

(f) foreseeable risk factors;

(g) issues regarding employees and other stakeholders; and

(h) governance structures and policies, in particular, the content of any corporate governance code or policy and the policy and the process by which it is implemented.

(3) The company shall ensure that its annual financial statements give a true and fair view of its financial position as at the end of its financial year.

(4) The company shall ensure that its financial statements are audited by an auditor that is independent of the company and who may be designated as providing audit services by way of a list published by the Authority.

(5) The company shall ensure —

(a) that the company's financial statements shall contain a statement as to whether the company's financial statements are in accordance with International Financial Reporting Standards; and

(b) that International Financial Reporting Standards are applied consistently in the preparation of the company's financial statements except where there are reasonable grounds for a change in which case the reasons for such change shall be disclosed in the financial statements.

(6) The company shall keep such accounting records and documents as are necessary in order that the financial statements comply with the regulations made by the Authority.

(7) The company shall disclose to the public an interim report in a timely manner which shall contain all material information relating to the financial condition and operating performance of the company in the period to which it relates as well as its future development and prospects in accordance with subsection (2)(a) to (h).

Disclosure of price sensitive information.

135. (1) Except as provided in subsection (4), a listed company or a publicly tradable company shall disclose to the public any price sensitive information or inside information relating to the company or its subsidiaries that has come to the company's knowledge that would be material to an investor's investment decision, including that —

(a) is necessary to enable the public to appraise the position of the company and its subsidiaries;

(b) is necessary to avoid the creation or continuation of a false market in the securities of the company namely a market which is based on incomplete or inaccurate information; or

(c) might reasonably be expected materially to affect market activity in and the price of its securities.

(2) A company shall ensure that when disclosing information pursuant to subsection (1)(a) to (c) that the means it uses for disseminating information can be reasonably expected to provide for equal, timely and effective access to such information by the holders of the securities of the company and investors.

(3) A company meets the requirements of subsection (1) when information that affects the market or a sector of the market generally is made public in a manner that would be likely to bring it to the attention of investors who

commonly invest in securities of a kind whose price or value might be affected by the information.

(4) A company may, under its own responsibility, delay the public disclosure of price sensitive information or inside information such as not to prejudice its legitimate interests provided that —

(a) such omission would not be likely to mislead public investors;

(b) any person receiving the information owes the company a duty of confidentiality, regardless of whether such duty is based on any written law, articles of association or contract; and

(c) the company is able to ensure the confidentiality of that information.

(5) In the event that a company is also traded or listed on a foreign securities exchange, the company shall ensure that where information is released to those markets the same information is released in Brunei Darussalam simultaneously or as soon as practicable.

(6) Without limiting the generality of this section, a listed company or a publicly tradable company shall also comply with such further obligations and requirements as may be prescribed by the Authority.

Required disclosure following unusual trading price or volume.

136. (1) A company shall respond promptly and in no circumstances shall exceed 24 hours upon being informed by the Authority or a securities exchange that there are unusual movements in the price or volume of its traded securities by disclosing to the public —

(a) details of any matter or development of which it is aware that is or may be relevant to the unusual movements; or

(b) a statement of the fact if it is not aware of any such matter or development.

(2) Without limiting the generality of this Part, a listed company or a publicly tradable company shall also comply with such further reporting obligations and requirements as may be prescribed by the Authority.

Authority to require production of records and documents.

137. (1) Where —

(a) it appears to the Authority that there are circumstances suggesting that the business of a listed company or a publicly tradable company has been or is being conducted —

- (i) with intent to defraud its creditors or the creditors of another person;
- (ii) for a fraudulent or unlawful purpose; or
- (iii) in a manner that adversely affects any of its shareholders;

(b) it appears to the Authority that there are circumstances suggesting that a company was formed for a fraudulent or unlawful purpose;

(c) it appears to the Authority that there are circumstances suggesting that the persons concerned with the formation of a company or the management of its affairs have, in relation to the formation of the company or management of its affairs, been guilty of fraud, misfeasance or other misconduct towards the company members; or

(d) it appears to the Authority that there are circumstances suggesting that the officers of a company have not been given all the information with respect to its affairs that they might reasonably expect,

the Authority may give directions —

- (i) to the directors or senior management of the company;
- (ii) to a subsidiary or an associated company of the company; or
- (iii) to a company or companies that own or control either individually or collectively a majority shareholding of the company or have the power to place a majority of directors on the board of the company,

requiring it, at the time and place specified in the directions, to produce the records and documents specified in the directions.

(2) The Authority may, when acting under subsection (1), require a company referred to in subsection (1) to produce records and documents specified by it under the powers vested in it in Part X.

Remedy in cases of unfair prejudice by companies.

138. (1) If it appears to the Authority from any information, record or other document obtained under this Order or regulations made thereunder that the affairs of a listed company or a publicly tradable company is being or has been conducted in a manner unfairly prejudicial to the interests of some or all of its shareholders, the Authority may make an application to the Court for an order under this section.

(2) If, on an application under this section, the Court is of the opinion that the company's affairs are being or have been conducted in a manner unfairly prejudicial to the interests of its members generally or of some part of the members, whether or not the conduct consists of an isolated act or a series of acts, the Court may —

(a) make an order restraining the carrying out of the provisions of this Order or conduct;

(b) order that the company shall bring in its name the proceedings against the persons, on the terms, as the Court thinks fit;

(c) appoint a liquidator of the whole or a part of the company's property or business and may specify the powers and duties of the receiver or manager and fix his remuneration; or

(d) make any other order as it thinks fit, whether for regulating the conduct of the company's affairs in future, or for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of a purchase by the company, for the reduction accordingly of the company's capital, or otherwise.

(3) Where an order under this section makes an alteration in or an addition to the memorandum and articles of association of a company, the company shall not have power without the leave of the Court to make any further alteration in or addition to the memorandum and articles of association that are inconsistent with the order.

Power of Authority to issue directions to companies.

139. Where it appears to the Authority that —

(a) it is desirable for the protection of holders or prospective holders of securities or in the public interest;

(b) the listed company is in breach of its listing agreement; or

(c) the listed company or publicly tradable company is contravening, has contravened or is about to contravene, or has failed to comply with any provision of or requirement under this Order or regulations made thereunder, or, in purported compliance with any such provision or requirement has furnished the Authority with information that is false, inaccurate or misleading,

the Authority may issue directions to the listed company or publicly tradable company —

- (i) to refrain from carrying out the provisions of the Order or conduct to do or not to do any matter as specified; or
- (ii) with regard to or for any other matter that the Authority considers necessary,

and the listed company or the publicly tradable company shall comply with the direction.

Duty of directors to disclose shareholdings.

140. (1) A person who becomes a director of a listed company or a publicly tradable company and at the time when he does so is interested in the securities of the company or any other company being the company's subsidiary or holding company or a subsidiary of the company's holding company, shall give notice in writing to the company —

(a) of the subsistence of his interests at that time; and

(b) of the amount and description of securities of, the company or other such company in which his interest subsists at that time.

(2) A director of a listed company or a publicly tradable company shall give notice in writing to the company of any of the following events —

(a) any event in consequence of whose occurrence he becomes, or ceases to be, interested in the securities of the company, or any other company being the company's subsidiary or holding company or a subsidiary of the company's holding company;

(b) the entering into by him of a contract to sell any such securities;

(c) the assignment by him of a right granted to him by the company to subscribe for securities of the company;

(d) the grant to him by another company, being the company's subsidiary or holding company or a subsidiary of the company's holding company, of a right to subscribe for securities of that other company, the exercise of such a right granted to him and the assignment by him of such a right so granted;

(e) the sale of securities beneficially owned by him and any gain by the sale of such securities,

and the notification to the company shall state the number, amount, and description of securities involved.

(3) A director of a listed company or a publicly tradable company shall submit a statement of beneficial ownership of the listed securities to the Authority in such form as may be prescribed by the Authority.

(4) The obligation imposed by subsections (1), (2) and (3) is required to be undertaken before the expiration of a period of 5 days beginning with the date on which the obligation first arises.

(5) This section applies to —

(a) the spouse of a director of a company (not being a director); and

(b) the minor son or daughter of a director (not being a director), as it applies to the directors.

(6) For the purposes of this section —

(a) “son” includes step-son and “daughter” includes step-daughter; and

(b) “minor” means a person under the age of 18 years.

Register of directors' interests.

141. (1) Every listed company or a publicly tradable company shall keep a register of directors' interests in a form approved by the Authority.

(2) Whenever a company receives notification from a director pursuant to section 142, the company shall enter in the register, against the director's name, the information received and the date of the entry.

(3) The Authority may make the register available to the public.

Notification to Authority and securities exchange of directors' interests.

142. (1) Whenever a listed company is notified of any matter by a director in consequence of an obligation imposed by section 141, the company shall notify the Authority and the securities exchange, in writing, of that matter.

(2) Whenever a director notifies a publicly tradable company of any matter in consequence of an obligation imposed by section 141, the company shall notify the Authority in writing, of that matter.

(3) The obligation imposed by subsections (1) and (2) must be undertaken before the close of business at the end of the day following the day on which the matter arises.

(4) The securities exchange shall publish the information received under subsection (1) in such manner as it may determine.

Duty of substantial shareholder to disclose shareholding.

143. (1) A person who is a substantial shareholder or is in a position to exert significant control within the meaning of section 19 in a listed company or publicly tradable company, shall give notice in writing to the company stating his name and address and giving full particulars of the shares held by him or his nominee (naming the nominee) by virtue of which he is a substantial shareholder.

(2) The obligation imposed by subsection (1) must be undertaken before close of business of the next day on which the matter arises.

Subsequent disclosures by substantial shareholders.

144. A substantial shareholder under section 143 shall give further notice in writing to the company where his shareholding increases or decreases in accordance with the provisions on controlling interest in Part I.

Register of substantial shareholders.

145. (1) Every listed company and publicly tradable company shall keep a register of substantial shareholders in a form approved by the Authority.

(2) Whenever a company receives notification from a substantial shareholder given under the obligation imposed on him by section 143, the company shall enter in the register the information received and the date of the entry.

- (3) The Authority may make the register available to the public.

Substantial shareholders notification requirement.

146. (1) Whenever a listed company or publicly tradable company is notified of any matter by a substantial shareholder in consequence of an obligation imposed by section 143, the company shall notify the Authority and the securities exchange, in writing, of that matter.

(2) The obligation imposed by subsection (1) is required to be undertaken before close of business of the next day on which it arises.

(3) The securities exchange shall publish, in such manner as it may determine, the information received under subsection (1).

Internal record keeping and accounting controls requirement.

147. (1) Every listed and publicly tradable company shall compile and maintain complete and accurate accounting and record books which fairly represent the assets of the issuer.

(2) Every listed and publicly tradable company shall devise and maintain a system of internal accounting that is in accordance with International Financial Reporting Standards or such other accounting standards as the Authority may prescribe by regulations.

Required reports by certain holders of equity securities.

148. (1) Any person who, acting alone or with others, acquires in excess of 5 percent of the ownership of the outstanding voting securities of a listed or publicly traded company must, within 2 days after such acquisition, submit to the Authority and to the appropriate securities exchange, notice in such form as may be determined by the Authority.

(2) Any changes in beneficial ownership of such a person exceeding one percent of the outstanding voting securities must be reported within 2 days of such change.

Proxy solicitations.

149. (1) Proxies must be issued and proxy solicitation must be made in accordance with any regulations made by the Authority.

(2) Proxies —

(a) must be in writing, signed by the capital markets services licence holder or his duly authorised representative and filed in hard copy or electronic format before the scheduled meeting with the corporate secretary; and

(b) unless otherwise provided in the proxy or by regulations made by the Authority shall be valid except for the meeting for which it is intended.

Right of shareholder's action to recover certain trading profits.

150. (1) For the purpose of preventing the unfair use of information which may have been obtained by an owner, a director, an officer or other senior management by reason of his relationship to an issuer, any profit realised by him from any purchase and sale, or any sale and purchase, or any equity securities of such issuer within any period of less than 6 months, shall be recoverable by the issuer, irrespective of any intention of holding the securities purchased or of not repurchasing the securities sold for a period exceeding 6 months.

(2) An action to recover such profit may be instituted before the Court by the issuer, or by the owner of any securities of the issuer in the name and on behalf of the issuer if the issuer fails or refuses to bring such action within 60 days after request or fails to diligently prosecute the matter, but no such action shall be brought more than 2 years after the date such profit was realised.

(3) This section shall not be construed as covering any transaction where the owner was not a beneficial owner, both at the time of the purchase and sale, or the sale and purchase, of the securities involved, or any transaction or transactions which the Authority by regulations may exempt as not contemplated for the purpose of this section.

Publicly tradable company requirements to minority shareholders.

151. (1) A publicly tradable company shall —

(a) require issued securities to be fully paid up on a timely basis;

(b) provide holders of securities that have voting rights with the right to vote by proxy; and

(c) give to every holder of equity securities the pre-emptive right to subscribe to any newly offered equity securities or securities that can be converted into equity securities on a proportionate basis in the manner established by the Authority.

(2) The Authority shall have the power to publish such regulations as it thinks fit to supplement these requirements in order to protect the interests of the minority shareholders.

(3) Members of the board of directors of a publicly tradable company have a duty to act in the interest of the company, for the benefit of all holders of securities.

Tender offer.

152. (1) No person (including issuers making offers for their own shares and affiliated persons) shall make a tender offer except in accordance with this Order and regulations made by the Authority.

(2) The Authority may, by regulations, include in the definition of a tender offer in Brunei Darussalam the following —

(a) active, widespread and persistent solicitations of purchase of common securities of a certain issuer;

(b) a person who makes an offer intends to purchase a considerable portion of common securities of an issuer as defined by the Authority;

(c) a person who makes an offer declares the purchase price of securities which exceeds their average market price over an appropriate period determined by the Authority and such additional considerations as may be determined by the Authority;

(d) terms on which an offer is made are permanent and do not vary depending on wishes of a holder of securities;

(e) a person who makes an offer intends to purchase a known number of securities;

(f) an offer is valid only within time periods established beforehand;

(g) a person to whom an offer is addressed is pressed to sell securities he owns;

(h) an offer is followed or preceded by the appropriate public advertisement;

(i) any other matters as may be determined by the Authority.

Requirements for tender offer statement.

153. (1) A person who intends to make a tender offer shall file a tender offer statement with the Authority in a form and within the time limit as determined by the Authority.

(2) The Authority shall not permit any public announcements or offers to purchase to be made or securities accepted except as in accordance with any regulations made by the Authority.

(3) A tender offer must remain open for at least 30 days from the date when the written tender offer statement is sent to the holders of securities or from the date when they are notified in such manner as determined by the Authority.

(4) A bidder must within 20 days —

(a) pay the consideration offered for redeemed securities to persons who accepted an offer upon termination of an offer; and

(b) from the date of withdrawal of a tender offer by a bidder or declaration of an offer to be invalid due to non-fulfilment of terms determined by the Authority, return securities deposited in accordance with the terms of the offer.

(5) Any person who has deposited securities pursuant to a tender offer has the right to withdraw the securities at any time during the offer period.

(6) If a bidder makes a tender offer for less than all of the outstanding equity securities of a class, and if a greater number of securities are deposited than the person has agreed to purchase, the securities shall be purchased as nearly as possible on a *pro rata* basis, disregarding fractions, according to the number of securities deposited by each depositor during the offer period.

Prohibited activity during tender offer.

154. (1) During a tender offer period, the bidder and persons acting with the bidder shall not —

(a) directly or indirectly, purchase or make any arrangement to purchase any securities of the issuer that is subject to the tender offer (or any security which is immediately convertible into or exchangeable for that security) outside of the tender offer; and

(b) shall not sell any securities of that issuer.

(2) At any time an issuer has been informed of a pending tender offer for any of its securities or has reason to believe that an offer is pending, it must not take any action identified by the Authority's regulations. The Authority may make regulations to specify particular actions that are not permitted during or in connection with a tender offer.

(3) Any tender offer shall be open to all holders of securities of the class of securities subject to the tender offer. All holders of securities of the same class of an issuer must be given similar treatment by the bidder. The consideration paid to any holder of securities pursuant to the tender offer must be the same paid to any other holder of securities under the tender offer.

(4) Within the period of validity of the tender offer, a bidder or persons acting with it may not make any arrangements or enter into agreements —

(a) with holders of securities or separate groups of holders of securities;

(b) to deal in securities of the issuer;

(c) if there are favourable conditions attached which are not being extended to all holders of securities.

(5) During a tender offer period or when a tender offer is in contemplation, neither a bidder nor an issuer whose securities are the subject of a tender offer nor any of their respective advisers may furnish information to some holders of securities that is not made available to all holders of securities, except that information may be furnished in confidence by an issuer to a *bona fide* potential bidder, but the potential bidder thereby becomes an insider with respect to the issuer and subject to the penalty imposed by section 129.

(6) Any information provided by an issuer to one bidder is subject to immediate disclosure in the same form to other potential bidders.

Authority's tender offer regulations.

155. The Authority may make regulations —

(a) that require persons bidding for or holding in excess of a specified percentage of the equity securities of a public company established by the corresponding regulations to make an offer to purchase such equity securities of the public company;

(b) that require equal treatment of security holders in connection with a tender offer;

(c) that ensure tender offers made are not less favourable than prior offers;

(d) that certain tender offers must be made in cash or provide a cash alternative; and

(e) that require issuers to furnish shareholder lists to potential bidders.

PART VII

CAPITAL MARKETS SERVICES LICENCE AND REPRESENTATIVE'S LICENCE

Application of general prohibition to this Part.

156. Section 22 applies to this Part and no person shall carry on or purport to carry on any regulated activity or activities or hold himself out as doing by way of business unless he is licensed to do so by the Authority.

Application for capital markets services licence or representative's licence.

157. (1) A person may make an application for a capital markets services licence or representative's licence to be endorsed to carry on business in one or more regulated activities.

(2) The application must be made in such manner as the Authority may direct and must be accompanied by —

(a) the required particulars as prescribed by regulations made by the Authority;

(b) such other information as the Authority may reasonably require for the purpose of determining the application; and

(c) a non-refundable application fee, which shall be paid in the manner specified by the Authority.

(3) In granting a capital markets services licence or a representative's licence, the Authority shall specify the regulated activity or activities which relate to the licence in such a manner as the Authority thinks fit.

(4) An applicant who is granted a capital markets services licence or representative's licence under this Order is subject to the continuous supervision of the Authority and must ensure that he complies at all times with the requirements for initial licensing including capital requirements and any other continuing obligations under this Order.

(5) The Authority shall grant a licence only if it is satisfied that the applicant is a fit and proper person and complies with the requirements of this Order and any regulations made thereunder and where it is in the interests of Brunei Darussalam to grant such a licence.

Requirements for capital markets services representative's licence.

158. (1) No person shall act as a representative of any holder of capital markets services licence in respect of any regulated activity or activities or hold himself out as doing so unless he is the holder of a capital markets services representative's licence for that activity or activities.

(2) Subsection (1) shall not apply —

(a) to any person who acts as a representative of a holder of a capital markets services licence, in so far as —

(i) the type and scope of regulated activity carried out by the first-mentioned person are within the type and scope of, or are the same as, those conducted by the holder of a capital markets services licence; or

(ii) the way in which the first-mentioned person conducts the regulated activity referred to in subsection (1) is the same as the manner in which the holder of a capital markets services licence conducts the regulated activity; and

(b) to any person or class of persons whom the Authority may exempt from holding a representative's licence in respect of any regulated activity.

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

Exemption from requirement to hold capital markets services licence.

159. (1) The following persons shall be exempted in respect of the following regulated activities from the requirement to hold a capital markets services licence to carry on business in such regulated activities —

(a) persons who conduct regulated activities exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;

(b) persons who conduct a regulated activity where that activity is conducted in an incidental manner in the course of a professional activity

and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that activity;

(c) persons who do not conduct any regulated activity or activities other than dealing on own account unless they are market makers or deal on own account outside a regulated market;

(d) persons who conduct regulated activities consisting exclusively in the administration of employee participation schemes;

(e) persons who conduct regulated activities which only involve both administration of employee participation schemes and the conduct of regulated activities exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;

(f) such other person or class of persons in respect of any regulated activity as may be exempted by the Authority.

(2) The Authority may, by regulations or by notice in writing, impose such conditions or restrictions on a holder of a capital markets services licence or his representative in relation to the conduct of the regulated activity or any related matter as it thinks fit and the holder of a capital markets services licence or his representative shall comply with such conditions or restrictions.

(3) Any holder of a capital markets services licence or his representative who contravenes any condition or restriction imposed under subsection (2) is guilty of an offence and liable on conviction to a fine not exceeding \$5,000,000, imprisonment for a term not exceeding 5 years or both.

(4) The Authority may give notice that it intends to withdraw an exemption granted to a person under this section —

(a) if that person contravenes any provision of this Order which is applicable to him or any condition or restriction imposed under subsection (2);

(b) if that person contravenes any direction issued to him; or

(c) if the Authority considers that person is carrying on business in a manner that is contrary to the public interest of Brunei Darussalam.

(5) A withdrawal under subsection (4) of an exemption granted to any person shall not operate so as to —

(a) avoid or affect any agreement, transaction or arrangement relating to the regulated activities entered into by the person, whether the agreement, transaction or arrangement was entered into before or after withdrawal of the exemption; or

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

(6) Any person who is aggrieved by a decision made under subsection (4) may, within 30 days after he is notified of the decision, make representations to the Authority.

(7) Where the Authority intends to withdraw the exemption from the person, that person shall have the right to refer the matter to the Panel.

(8) Every holder of a capital markets services licence and every representative shall pay to the Authority an annual fee with respect to each regulated activity as may be prescribed and in such manner as may be specified by the Authority.

Grant or renewal of capital markets services licence or representative's licence.

160. (1) Subject to subsections (2) and (3), the Authority may grant or renew a capital markets service holder's licence or a representative's licence if it appears to the Authority that the applicant satisfies the licensing requirements applicable in his case under this Part and the Authority may make an order declaring the applicant to be the —

(a) holder of a capital markets services licence; or

(b) holder of a capital markets services representative's licence.

(2) A licence is valid until 31st December of the year in which it was granted and is renewable on payment of the annual licence fee as determined by the Authority.

(3) When a licence is first granted for a period of less than 6 months prior to 31st day of December, the annual licence fee shall abate *pro rata* on a monthly basis.

(4) In granting or renewing a licence, the Authority may —

(a) specify and describe the regulated activity to which the licence relates;

(b) specify the licence to be subject to such conditions or restrictions as the Authority thinks fit; or

(c) in the case of a representative's licence, relate the licence to the holder of a capital markets services licence which supported that application for the licence.

(5) When a person would otherwise be guilty of an offence for not being the holder of a capital markets services licence or a representative's licence, no proceedings shall be instituted against him for the offence for the period from the expiration of that licence until the licence is renewed or his application for renewal is withdrawn or refused, if before the expiration of that licence, he has applied for renewal of that licence and he complies with the requirements of this Order as though he was the holder of that licence.

(6) Any person who contravenes any condition or restriction may be subject to such intervention action as the Authority thinks fit under its powers in Parts II and X.

General requirements for holder of capital markets services licence.

161. (1) The Authority shall require the holder of a capital markets services licence to be of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management and operation of the services he provides.

(2) The Authority shall require the holder of a capital markets services licence to inform the Authority of the identity and any other subsequent changes of the persons who effectively direct the business and its operations before such changes are implemented.

(3) The Authority shall refuse to approve proposed changes where it appears to the Authority that there are grounds for believing that the person or persons proposed to direct the business and its operations pose a material threat to the sound and prudent management and operation of the holder of a capital markets services licence.

(4) A holder of a capital markets services licence is required to have the following organisational arrangements in place —

(a) to identify clearly and manage the potential adverse consequences of any conflict of interest;

(b) to be adequately equipped to manage the risks to which he is exposed, to implement appropriate arrangements and systems to identify all

significant risks to his operation, and to put in place effective measures to mitigate those risks;

(c) to ensure that any outsourcing of important operational functions shall not be undertaken in such a way as to impair materially the quality of its internal control and the ability of the Authority to supervise his compliance with its obligations under this Order or and any principles, regulations and codes made thereunder;

(d) at the time of licensing and on an ongoing basis, sufficient financial resources to facilitate his orderly functioning, having regard to the nature and extent of the services provided and the range and degree of the risks to which he is exposed.

Power of Authority to impose conditions or restrictions on holder of capital markets services licence or representative's licence.

162. (1) The Authority may, by notice in writing, direct the holder of a capital markets services licence or representative's licence to do or not to do specified things that the Authority thinks are necessary or desirable to comply with this Order or ensure the integrity of the regulated market including, but not limited to, directions —

(a) requiring compliance with any duty, requirement, prohibition, obligation or responsibility applicable to the holder of the capital markets services licence; or

(b) requiring the holder of the capital markets services licence to act in a specified manner in relation to transactions conducted on or through him, or in relation to a specified class of transactions.

(2) The Panel has jurisdiction to hear and determine any appeal in relation to a decision to issue a direction under this section.

(3) Where the Authority exercises this power, it may make this information public except where it appears to the Authority that such publicity would be likely to cause significant damage to the investors' interests or interests of the holders of capital markets services licences or representative's licences, or the orderly functioning of the market.

Variation of licence.

163. (1) The Authority may, on the application of —

(a) a holder of a capital markets services licence, vary his licence by adding or removing a regulated activity to or from those already specified in the licence; or

(b) a holder of a representative's licence, vary the name of his principal, on whose behalf he may act and the regulated activity to which the licence relates.

(2) The Authority may require an applicant to supply the Authority with such information or documents as it thinks necessary in relation to the application.

(3) An application under subsection (1) shall be accompanied by a prescribed application fee which shall be paid in such manner as may be specified by the Authority.

(4) The Authority may —

(a) approve the application subject to such conditions or restrictions as it thinks fit; or

(b) refuse the application on any of the grounds set out in section 165(2).

(5) The Authority shall not refuse an application under subsection (1) without giving the applicant an opportunity to be heard and such hearing shall be heard by the Panel.

Power to give directions and suspend licence.

164. (1) This section applies if it appears to the Authority that a holder of a capital markets services licence —

(a) has failed, or is likely to fail, to satisfy the licensing requirements; or

(b) has failed to comply with any other obligation imposed on him under this Order.

(2) The Authority may direct the holder of the capital markets services licence or the representative's licence to take specified steps for the purpose of securing his compliance with —

(a) the licensing requirements; or

(b) any obligation imposed under this Order.

(3) A direction under this section is enforceable, on the application of the Authority, by an injunction.

(4) Where section (1) applies, the Authority may, if it thinks fit to do so —

(a) suspend a licence for a specific period; and

(b) at any time extend or revoke the suspension.

(5) The Authority may revoke or suspend a licence without giving the holder of a capital markets services licence an opportunity to make representations where —

(a) in the case of a holder of a capital markets services licence, on any of the following grounds —

(i) the holder is in the course of being wound up or otherwise dissolved, whether within or outside Brunei Darussalam;

(ii) a receiver, a receiver and manager or an equivalent person has been appointed, whether within or outside Brunei Darussalam in respect of any property of the holder;

(iii) the holder or any of his directors, chief executive, senior managers or controller has been convicted of any offence involving dishonesty or moral turpitude; and

(b) in the case of a holder of a representative's licence, on any of the following grounds —

(i) the holder is an undischarged bankrupt, whether within or outside Brunei Darussalam;

(ii) the holder has been convicted of any offence involving dishonesty or moral turpitude.

(6) Where the Authority has revoked or suspended a licence or imposed restrictions on a holder of a capital markets services licence, such holder shall immediately inform all its representatives by notice in writing of such revocation, suspension or imposition of a restriction.

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

(8) A person who —

- (a) carries on a regulated activity after his licence has been revoked;
- (b) carries on a regulated activity while his licence has been suspended; or
- (c) is in breach of a restriction imposed under this section,

is guilty of an offence and liable on conviction to a fine not exceeding \$5,000,000, imprisonment for a term not exceeding 5 years or both and, in the case of a continuing offence, to a further fine not exceeding \$500,000 for every day or part thereof during which the offence continues after conviction.

Revocation of capital markets services licence or representative's licence.

165. (1) A licence granted under section 160 may be revoked by an order made by the Authority at the request, or with the consent, of the holder of the capital markets services licence.

(2) If it appears to the Authority that a holder of a capital markets services licence or representative's licence —

- (a) does not make use of the licence within 12 months, expressly renounces the licence or has not provided the services in the market for the preceding 6 months;
- (b) has obtained the licence by making false statements or by any other irregular means;
- (c) is failing, or has failed, to satisfy the licence requirements;
- (d) is failing, or has failed, to comply with any other obligation imposed on him by or under this Order; or
- (e) is not a fit and proper person to be licensed as providing the services in question,

it may make an order revoking the licence of that holder even though the holder in question does not wish for the order to be made.

(3) An order under subsection (2) must specify the date on which it is to take effect.

(4) In the case of a revocation order made under subsection (2), the specified date must not be earlier than the end of the period of 3 months beginning with the date on which the order is made.

(5) A revocation order may contain such transitional provisions as the Authority thinks necessary or expedient.

Directions and revocation procedure.

166. (1) Before giving a direction under section 164 or making a revocation order under section 165(2), the Authority must —

(a) give a notice in writing of its intention to do so to the holder of a capital markets services licence or a representative's licence; and

(b) take such steps as it thinks reasonably practicable to bring the notice to the attention of other persons who are, in its opinion, likely to be affected.

(2) A notice under subsection (1) must —

(a) state why the Authority intends to give the direction or make the revocation order; and

(b) draw attention to the right to make representations conferred by subsection (3).

(3) Before the end of the period for making representations —

(a) the holder of a capital markets services licence or a representative's licence; and

(b) any other person who is likely to be affected by the proposed direction or revocation order,

may make representations to the Authority.

(4) The period for making representations is —

(a) 2 months beginning —

(i) with the date on which the notice is served on the holder of a capital markets services licence or representative's licence; or

(ii) if later, with the date on which the notice may be published;
or

(b) such longer period as the Authority may allow in the particular case.

(5) In deciding whether to —

(a) give a direction; or

(b) make a revocation order,

the Authority must have regard to any representations made in accordance with subsection (3).

(6) When the Authority has decided to give a direction under section 164 or to make a revocation order under section 165(2), it must —

(a) give a notice in writing to the holder of a capital markets services licence or a representative's licence of its decision; and

(b) take such steps as it thinks reasonably practicable for bringing its decision to the attention of persons who are, in the Authority's opinion, likely to be affected.

(7) If the Authority thinks it essential to do so, it may give a direction under section 164 —

(a) without following the procedure set out in subsections (1) to (5); or

(b) if the Authority has begun to follow that procedure, regardless of whether the period for making representations has expired.

(8) If the Authority has, in relation to a particular matter, followed the procedure set out in subsections (1) to (5), it need not follow it again if, in relation to that matter, it decides to take action other than that specified in its notice under subsection (1).

Complaints arrangements.

167. (1) The Authority must make arrangements for the investigation of any relevant complaint about any holder of a capital markets services licence or a representative's licence.

(2) In this section, "relevant complaint" means a complaint that the Authority thinks is relevant to the question of whether the holder of a capital markets services licence or a representative's licence should remain licensed.

False statements regarding licence application.

168. A person who, in connection with an application for the grant, renewal or variation of a licence, makes a statement that is false or misleading in a material particular knowing it to be false or misleading or wilfully omits to state any matter or thing without which the application is misleading in a material respect, 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.

Effect of revocation, suspension or expiration of licence.

169. (1) A revocation, suspension or expiration of a licence or the imposition of a restriction on a licence shall not operate so as to —

(a) make voidable or affect any agreement, transaction or arrangement relating to the regulated activities entered into by such person, whether the agreement, transaction or arrangement was entered into before or after the revocation, suspension or expiration of the licence or the imposition of restriction on the licence; or

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

(2) Where any licence is revoked or suspended or has expired under this Part, the Authority may by notice in writing permit the holder of a licence to —

(a) in the case of a revocation, carry on business operations for the purpose of closing down the business connected with the revocation;

(b) in the case of a suspension, carry on only essential business operations for the protection of interests of clients of the regulated firm during the period of suspension; or

(c) in the case of an expiration, carry on such business activity as the Authority may approve for the protection of the interest of clients of the holder of the licence before such expiry, subject to such conditions as the Authority may specify in the notice.

Notification of change of holder of capital markets services licence's business activity.

170. In the event that —

(a) a holder of a capital markets services licence ceases to conduct business in any of the regulated activities to which the licence was granted;

(b) a holder of representative's licence ceases to act as a representative of the principal in relation to whom the representative's licence was granted; or

(c) a change occurs in any matters, details of which are required by section 171 to be entered in the register of holders of capital markets services licences in relation to the holder of a capital markets services licence,

the holder of a capital markets services licence shall furnish details of the event to the Authority in the prescribed form and manner not later than 14 days after the occurrence of the event.

Public register of holders of capital markets services licences.

171. The Authority shall maintain and make available to the public a continuously updated register of holders of capital markets services licences and representative's licences in such form as it thinks fit, including electronic register, that specifies —

(a) for the holder of a capital markets services licence —

- (i) his name;
- (ii) the address of the principal place of business at which he carries on the business in respect of which the licence is held;
- (iii) the regulated activity or activities to which the licence relates;
- (iv) where the business is carried on under a name or style other than the name of the holder of the capital markets services licence, the name or style under which the business is carried on and the location of the business; and
- (v) such other information as may be determined by the Authority;

(b) for the holder of a representative's licence —

- (i) his name;
- (ii) the name of his principal in relation to whom the licence was granted;
- (iii) the regulated activity or activities to which the licence relates;

- (iv) where the business of his principal is carried on under a name or style other than the name of the principal, the name or style under which the business is carried on and the location of the business; and
- (v) such other information as may be determined by the Authority.

Publication of names and addresses.

172. (1) The Authority may cause to be published in such form and manner as the Authority thinks fit in the interest of the capital markets and investors, a list of the names and addresses of all holders of capital markets services licences and representative's licences.

(2) If the Authority, at any time, amends the register kept by it under section 171, by adding or removing the name of a holder of a licence, the Authority shall cause that information of the amendments to be published.

Appeal to Panel.

173. (1) Where the Authority —

- (a) refuses to grant or renew a licence;
- (b) refuses to vary a licence; or
- (c) revokes or suspends a licence,

the person who is aggrieved by the decision of the Authority, may, within 14 days after the person has been notified of the decision of the Authority, appeal to the Panel.

(2) Where an appeal is made to the Panel under subsection (1), the decision of the Authority shall not take effect until the appeal is disposed.

(3) On an appeal against the decision of the Authority under subsection (1), the Panel may —

- (a) affirm the decision of the Authority;
- (b) set aside the decision of the Authority; or
- (c) make a decision as it thinks fit.

(4) Any person who is aggrieved by any decision of the Panel may, within 14 days after the person has been notified of the decision of the Panel, appeal to the Minister whose decision shall be final.

PART VIII

BOOKS, AUDIT AND CLIENT'S ASSETS

Maintaining books and records and furnishing returns.

174. (1) A holder of a capital markets services licence or representative's licence shall —

(a) maintain, or cause to be maintained, such books, accounting records and data that sufficiently explain the transactions and financial position of its business and enable true and fair profit and loss accounts and balance sheets to be prepared from time to time; and

(b) maintain, or cause to be maintained, such books, accounting records and other data in such a manner that enable them to be conveniently and properly audited.

(2) An entry in the books, accounting records and data of a holder of a capital markets services licence or representative's licence required to be maintained in accordance with this section shall be deemed to have been made by, or with the authority of, the holder of a capital markets services licence or representative's licence.

(3) A holder of a capital markets services licence or representative's licence shall retain such books, accounting records and data as may be required to be maintained and preserved under this Order for a period of not less than 7 years.

(4) A holder of a capital markets services licence or representative's licence shall —

(a) furnish such returns, books, accounting records and data in such form and manner as prescribed or as directed by the Authority; and

(b) provide such information relating to his business as the Authority may require.

(5) The Authority may make regulations as to the maintaining of books, accounting records and data by a holder of a capital markets services licence or representative's licence, in such manner as the Authority may determine.

(6) A holder of a capital markets services licence or representative's licence shall take reasonable steps —

(a) to prevent falsification of the books, accounting records and data required to be kept by it under this Order; and

(b) to facilitate the detection of any falsification of any such book, accounting records and data.

(7) Any holder of a capital markets services licence or representative's licence who contravenes this section is guilty of an offence and liable on conviction to a fine not exceeding \$200,000, and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

Appointment of auditor.

175. (1) A holder of a capital markets services licence or representative's licence shall appoint an independent auditor to audit its accounts and when, for any reason, the auditor ceases to act for that person, he may as soon as practicable, appoint another auditor.

(2) A holder of a capital markets services licence or representative's licence is required to —

(a) remove an auditor who becomes ineligible by virtue of any reason; and

(b) may, in any other case, with a notice in writing to the Authority, remove an auditor from the audit duties.

(3) An auditor of a holder of a capital markets services licence or representative's licence under subsection (1) may resign from his office by giving a notice in writing to that effect to the Authority provided that such notice shall be accompanied by —

(a) a statement of any circumstances connected with his ceasing to continue as auditor that he thinks should be brought to the attention of the Authority; or

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

(4) Notwithstanding any other provisions of this Order, the Authority may, at any time, determine that the performance of duties by an auditor appointed by a holder of a capital markets services licence or representative's licence does not

meet professional standards or that the auditor is not independent and direct the holder of a capital markets services licence or representative's licence —

(a) to remove the auditor; and

(b) as soon as practicable appoint another auditor,

and the holder of a capital markets services licence or representative's licence shall comply with such directions.

Required audited reports.

176. (1) A holder of a capital markets services licence under section 175(1) shall, within 3 months after the close of each financial year, or such further period as the Authority may permit under subsection (2), file with the Authority an audited report containing a profit and loss statement, a balance sheet and information on material events and matters as may be specified by the Authority.

(2) Where an application for an extension of the period of 3 months referred to in subsection (1) has been made by a holder of a capital markets services licence and if the Authority is satisfied that there are special reasons for requiring the extension, the Authority may extend that period not exceeding 3 months subject to such conditions and restrictions as the Authority thinks fit to impose.

(3) A holder of a capital markets services licence who contravenes the requirements under subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, and in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(4) A holder of a capital markets services licence who contravenes the requirements under subsection (2) is guilty of an offence and liable on conviction to a fine not exceeding \$100,000, and, in the case of a continuing offence, with a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

(5) In this section, "financial year", in relation to a holder of a capital markets services licence, means the financial year of the holder within the meaning of the Companies Act (Chapter 39).

Responsibilities of auditor in certain situations.

177. (1) Where, in the performance of his duties as auditor for a holder of a capital markets services licence, an auditor becomes aware —

(a) of any matter which in his opinion may constitute a contravention of any provision of this Order, or an offence involving fraud or dishonesty;

(b) of any irregularity that may have a material effect upon the accounts or position of the holder of a capital markets services licence, including any irregularity that put at risk or may put at risk the moneys or other assets of any client of the holder of a capital markets services licence;

(c) that losses have been incurred by the holder of a capital markets services licence which renders him to be unable to meet the minimum financial requirements as may be prescribed in the regulations made under this Order;

(d) that the auditor is unable to confirm that claims of clients or creditors of the holder of a capital markets services licence are covered by the assets of that holder;

(e) that a breach in connection with the business of the holder of a capital markets services licence has been committed; or

(f) in the case of a holder of a capital markets services licence, that there has been a possible breach of the regulations of a licensed, recognised or designated securities exchange, a licensed, recognised or designated clearing house or a central securities depository,

the auditor shall immediately report the matter to the Authority and where relevant the licensed, recognised or designated securities exchange, the licensed, recognised or designated clearing house or the central securities depository.

(2) No auditor shall be liable to be sued in any Court in respect of any statement made by the auditor in good faith in the discharge of his duties under this section.

Additional powers of Authority with respect to auditors.

178. (1) The Authority may require the auditor of a holder of a capital markets services licence to carry out any of the following duties in the public interest as the Authority thinks fit —

(a) to submit such additional information in relation to his audit as the Authority may specify;

(b) enlarge or extend the scope of his audit of the business of the holder of a capital markets services licence in such manner or to such extent as the Authority may specify;

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

(d) to submit a report on any of the matters referred to in paragraphs (a) to (c) within the time specified by the Authority and for the remuneration specified by the auditor, which the holder of a capital markets services licence shall pay to the auditor in respect thereof.

(2) The auditor shall comply with any requirement of the Authority under subsection (1).

(3) For the purposes of subsection (1), the holder of a capital markets services licence and any director or senior manager shall provide such accurate and truthful information and access to such information as the auditor shall require in respect of the discharge by him of all or any of the additional duties under this section and shall pay the remuneration imposed by the auditor for such additional duties performed by him.

(4) It shall be a defence to any suit 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 in good faith and without malice.

Power of Authority to appoint independent auditor.

179. (1) Where —

(a) a holder of a capital markets services licence fails to submit the auditor's report in accordance with section 176; or

(b) the Authority receives a report under section 177 or 178,

the Authority may, if the Authority is satisfied that it is in the interests of the holder of a capital markets services licence concerned, or the members or the clients of that holder of a capital markets services licence to do so, appoint in writing an independent auditor to examine, audit and report on, either generally or in relation to any particular matter, the books, accounts and records of, and assets held by the holder of a capital markets services licence.

(2) An independent auditor appointed by the Authority under subsection (1) shall, upon the conclusion of the examination and audit in respect of which such auditor was appointed, make a report to the Authority.

(3) Where the Authority is of the opinion that the whole or any part of the costs and expenses of an independent auditor appointed by the Authority under subsection (1) should be paid by the holder of a capital markets services licence,

the Authority may, by order in writing, direct such holder to pay a specified amount, being the whole or part of such costs and expenses, within the time and in the manner as may be specified in the direction.

(4) Where a holder of a capital markets services licence fails to comply with an order of the Authority under subsection (3), the Authority may recover the amount specified in the order as a civil debt.

Powers of independent auditor appointed by Authority.

180. (1) An independent auditor appointed by the Authority under section 179 to examine and audit the books, accounts and records of, and assets held by a holder of a capital markets services licence may, for the purpose of carrying out an examination and audit of the books, accounting records and assets —

(a) examine on oath and affirmation any director, officer, employee or agent of the holder of a capital markets services licence and any other auditor appointed under this Order in relation to those books, accounts, records and assets;

(b) employ such persons as he considers necessary;

(c) authorise in writing any person employed by him to do, in relation to the examination and audit, any act or thing that he could himself do in his capacity as auditor, other than the examination of any person on oath or to exercise the power conferred by this paragraph;

(d) require a licensed, recognised or designated securities exchange or a licensed, recognised or designated clearing house to produce any of the books kept by it, or any information in its possession, relating to the business of the holder of a capital markets services licence; and

(e) require any director, officer, employee or agent of the holder of a capital markets services licence or an auditor appointed by the holder of a capital markets services licence, or any other auditor appointed under this Order to produce any of the books, accounts, records and assets held by or on behalf of that holder relating to his business, and, if requested, to make copies of or take extracts from, or retain possession of, such books for such period as is necessary to enable them to be inspected.

(2) Any holder of a capital markets services licence who, without reasonable excuse, refuses or fails to answer any relevant question put to him, or fails to comply with any request made to him, by an independent auditor appointed under section 179, is guilty of an offence and liable on conviction to a

fine not exceeding \$500,000, imprisonment for a term not exceeding one year or both.

Communications restrictions for auditors and employees.

181. (1) Except as may be necessary for the carrying into effect of the provisions of this Order or so far as may be required for the purpose of any civil or criminal proceeding, an auditor or his employee or any other person shall not disclose any matter, which may come to his knowledge or possession in the course of performing his duties —

(a) to any person other than the Authority;

(b) to any other person specified by the Authority; and

(c) in the case of an employee of such auditor, to any person other than the auditor.

(2) Any person who contravenes subsection (1) 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.

Destroying, concealing etc of books, accounts etc.

182. Any person who, with intent to prevent, delay or obstruct the carrying out of any examination and audit under this Order —

(a) destroys, conceals or alters any books, accounts, assets or records relating to the business of a holder of a capital markets services licence; or

(b) sends or attempts to send or conspires with any other person to send out of Brunei Darussalam, any books, accounts, assets or records of any description belonging to, or in the possession of, or under the control of a holder of a capital markets services licence, is guilty of an offence and liable on conviction to a fine not exceeding \$5,000,000, imprisonment for a term not exceeding 5 years or both.

Rights of securities exchange to impose obligations.

183. The provisions relating to these sections shall not prevent a licensed, recognised or designated securities exchange from imposing on any participating member of that organisation any further obligation or requirements it thinks fit with respect to —

(a) the audit of accounts;

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

Defamation.

184. (1) No auditor or employee of such auditor shall, in the absence of malice on his part, be liable in any action for defamation in the action or suit of any person with respect to —

- (a) any statement made orally or in writing in the discharge of his duties under this Part; or
- (b) the submission of any report to the Authority under section 177(1), 178(1) or 179(2).

(2) Subsection (1) shall not restrict or otherwise affect any right, privilege or immunity that, apart from this section, the auditor or his employee has as a defendant in an action for defamation.

Certain representations prohibited.

185. (1) The holder of a capital markets services licence shall not represent or imply or knowingly permit to be represented or implied in any manner to any person that the Authority has in any way approved the holder's abilities or qualifications.

- (2) Any person who contravenes subsection (1) is guilty of an offence.

Clients' recommendations by holder of capital markets services licence.

186. (1) A holder of a capital markets services licence shall not make a recommendation with respect to any securities to a client who may reasonably be expected to rely on the recommendation without having a reasonable basis for making the recommendation to the client.

(2) For the purposes of subsection (1), a holder of a capital markets services licence does not have a reasonable basis for making a recommendation to a client unless —

- (a) the holder of a capital markets services licence has, for the purposes of ascertaining that the recommendation is appropriate, taken all practicable measures to ascertain that the information he possessed and relied upon concerning the investment objectives, financial situation and particular needs of the client is accurate and complete;

(b) the holder of a capital markets services licence has given such consideration to, and conducted such investigation of, the subject matter of the recommendation as may be reasonable in all the circumstances; and

(c) the recommendation is based on such consideration and investigation.

(3) Where the holder of a capital markets services licence contravenes subsection (2) by making a recommendation to a person and —

(a) the person, in reliance on the recommendation, does a particular act or refrains from doing a particular act;

(b) it is reasonable, having regard to the recommendation and all other relevant circumstances, for the person to do that act or to refrain from doing that act in reliance on the recommendation; and

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

the holder of a capital markets services licence is liable to pay damages to the person in respect of that loss or damage.

Liability.

187. (1) A holder of a capital markets services licence is not liable under section 186(3) if it is proved that a reasonable person under the circumstances could be expected to have done or omitted to do that act in reliance on the recommendation even if the holder of a capital markets services licence had complied with section 186(1) in relation to the recommendation.

(2) A holder of a capital markets services licence is not liable under section 186(3) if it is proved that the recommendation was, in all circumstances, appropriate having regard to the information that he had, about the client investment objectives, financial situation and particular needs.

(3) For the purposes of section 186, a reference to the making of a recommendation is a reference to the making of a recommendation whether expressly or by implication.

Priority given to client's order.

188. (1) Except as permitted by subsection (2) —

(a) the holder of a capital markets services licence who carries on the business of dealing in securities or fund management when acting as principal or on behalf of a person associated with or connected to the holder; or

(b) a representative of a holder of a capital markets services licence, when acting for his own account or on behalf of a person associated with or connected to the representative,

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

(2) Subsection (1) shall not apply in relation to the entering into of a transaction —

(a) by the holder of a capital markets services licence who carries on the business of dealing in securities or fund management as principal or on behalf of a person associated with or connected to the holder; or

(b) by a representative of that holder for his own account or on behalf of a person associated with or connected to the representative, if —

the instructions from the client of that holder required the purchase or sale of securities on behalf of the client to be effected only on specified conditions relating to the price at which the securities were to be purchased or sold and the holder or a representative of the holder has been unable to purchase or sell the securities by reason of those conditions or the transaction is entered into in prescribed circumstances.

(3) Any person who contravenes this section is guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000, imprisonment for a term not exceeding 7 years or both.

Dealings by certain employees.

189. (1) A holder of a capital markets services licence and his employee shall not, as principal, jointly purchase or subscribe for, or agree to purchase or subscribe for, any securities.

(2) A holder of a capital markets services licence shall not give any credit to his employee or to any person who, to the knowledge of that holder, is associated with that employee if —

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

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

(3) Any person who is an employee of a participating organisation shall not, as principal, purchase or agree to purchase any securities or rights or interests in securities unless the participating organisation acts as the agent of the person in respect of the transaction.

(4) A person who contravenes this section is guilty of an offence and liable on conviction to a fine not exceeding \$500,000, imprisonment for a term not exceeding 3 years or both.

Additional disclosure obligations on holder of capital markets services licence.

190. (1) In addition to the requirements imposed on holders of capital markets services licence under this Order or any regulations made thereunder, the Authority may require —

(a) any class of holders of capital markets services licences; or

(b) any particular holder of a capital markets services licence,

by written direction given to the person or persons, any further requirements that the Authority thinks fit with respect to the conduct or any business affairs of such holders of capital markets services licences.

(2) A holder of a capital markets services licence shall comply with any requirement under subsection (1).

(3) A holder of a capital markets services licence who contravenes this section is guilty of an offence and liable on conviction to a fine not exceeding \$500,000, imprisonment for a term not exceeding one year or both, and, in the case of a continuing offence, with a further fine not exceeding \$50,000 for every day or part thereof during which the offence continues after conviction.

Disclosure of interests with respect to underwriting agreement.

191. (1) Where —

(a) securities have been offered for subscription or purchase; and

(b) a holder of a capital markets services licence has subscribed to purchase or has purchased, or is or will or may be required to subscribe to purchase, any of the offered securities in an underwriting or sub-underwriting agreement by reason that some or all of the securities have not been subscribed for or purchased, the holder of a capital markets services licence shall not, during the period of 90 days after the close of the offer referred to in paragraph (a) —

- (i) make an offer to sell those securities otherwise than in the ordinary course of trading on a securities exchange or any other market operator; or
- (ii) make a recommendation, whether orally or in writing and whether expressly or by implication, 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 the holder has acquired, or is or will or may be required to acquire, under an underwriting or sub-underwriting agreement by reason that some or all of the securities have not been subscribed for or purchased.

(2) For the purpose of subsection (1), any reference to an offer shall be construed as including a reference to a statement, however expressed, that expressly or impliedly invites a person to whom it is made to offer to acquire securities.

(3) Where the holder of a capital markets services licence sends to any person a written offer, written recommendation or written statement to which subsection (1) applies, the holder shall retain a copy of the written offer, recommendation or statement for a period of 7 years after the written offer, recommendation or statement is made.

(4) The Authority may, if it is in the public interest, exempt any person or class of persons, or any securities or class of securities, from the application of this section.

(5) The holder of a capital markets services licence who contravenes this section is guilty of an offence and liable on conviction to a fine not exceeding \$100,000.

Handling of client's money and other assets.

192. (1) A holder of a capital markets services licence shall, to the extent that he receives money or other assets from or on account of a client —

(a) do so on the basis that the money or other assets shall be applied solely for such purpose as may be agreed to by the client, when or before he receives the money or other assets;

(b) pending such application, pay or deposit the money or other assets in such manner as may be prescribed; and

(c) record and maintain a separate book entry for each client in accordance with the provisions of this Order in relation to that client's money or other assets.

(2) The Authority may, without prejudice to any other provision in this Order, make regulations in respect of all or any of the matters in this Part, including the handling of money or other assets by a holder of a capital markets services licence.

(3) Any holder of a capital markets services licence that, without reasonable excuse, contravenes subsection (1) or any regulations made under subsection (2) is guilty of an offence and liable on conviction —

(a) where he is found to have committed the offence with intent to defraud, to a fine not exceeding \$500,000, imprisonment for a term not exceeding 5 years or both and, in the case of a continuing offence, to a further fine not exceeding \$50,000 for every day or part thereof during which the offence continues after conviction; or

(b) in any other case, to a fine not exceeding \$200,000, imprisonment for a term not exceeding 2 years or both and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues.

Safeguarding of client's money and other assets.

193. All money or other assets received from or on account of clients or deposited in the manner prescribed under section 192(1)(b) —

(a) shall not be available for payment of the debts of the holder of a capital markets services licence; and

(b) shall not be liable to be paid or taken in execution under an order or a process of any court.

Safekeeping of client's money and other assets.

194. (1) A holder of a capital markets services licence shall establish and keep in a licensed financial institution one or more trust accounts designated or 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 holder of a capital markets services licence, for the purchase of securities and that are not attributable to securities delivered to a holder of a capital markets services licence not later than the next banking business day or such other date as may be specified by the Authority on which they were received by that holder; and

(b) all amounts, less any brokerage and other proper charges, that are received for or on account of any person, other than a holder of a capital markets services licence, from the sale of securities and that are not paid to that person or as that person directs not later than the next banking business day or such other date as may be specified by the Authority on which they were received by that person.

(2) For the purposes 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 business days or such other date as may be specified by the Authority, after the date such cheque is issued, shall be credited into the trust account.

(3) A holder of a capital markets services licence who —

(a) contravenes 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 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.

Client's assets other than moneys received by holder of capital markets services licence.

195. (1) A holder of a capital markets services licence shall deal with any client's assets other than moneys, received, held or deposited with him in the course of his business, and for which he is liable to account to his client, in such manner as may be prescribed in regulations made under this Order.

(2) A holder of a capital markets services licence who contravenes 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.

Moneys withdrawn from trust account.

196. (1) A holder of a capital markets services licence shall not withdraw any moneys from a trust account except for the purpose of making a payment —

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

(b) defraying brokerage and any other proper charges; or

(c) that is otherwise authorised by any written law.

(2) Except as provided in subsection (1), moneys held in a trust account shall not be available for payment of the debts of the holder of a capital markets services licence or be liable to be paid or taken in execution under an order or process of any court.

(3) A holder of a capital markets services licence who contravenes this section is guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000, imprisonment for a term not exceeding 7 years or both.

Claims and *liens* not affected.

197. Nothing in this Part shall be construed as taking away or affecting any lawful claim or lien which any holder of a capital markets services licence has against or upon any moneys —

(a) held in a trust account; or

(b) received for the purchase of securities or from the sale of securities before such moneys are paid into a trust account.

Right to copy book entries and inspection of contract notes.

198. (1) A holder of a capital markets services licence shall supply, on demand, to his client or any person authorised by the client, copies of all entries in his books relating to the client's transactions.

(2) A person referred to in subsection (1) shall be entitled to inspect any contract note or document relating to client's transactions free of charge.

Authority's actions to protect client's assets.

199. (1) Without prejudice to any other provisions of this Order, where —

(a) any holder of a capital markets services licence has contravened this Order, or any regulations made, or guidelines issued under this Order;

(b) the interests of the clients of the holder of a capital markets services licence or the interests of debenture holders or unit holders are likely to be jeopardised, or are jeopardised;

(c) any of the grounds exist for which the licence may not be granted or renewed, or in respect of which an approval may not be granted; or

(d) any of the grounds exist for which the licence may be revoked or suspended or any action which may be taken under any relevant provision, the Authority may take any one or more of the following actions, where relevant —

(i) direct —

(A) the holder of a capital markets services licence not to deal with moneys and assets of his clients in such manner as the Authority thinks fit;

(B) the holder of a capital markets services licence to whom a direction under sub-subparagraph (A) applies, to transfer the moneys and assets of his clients or any records or documents in relation to such moneys or assets to any other person as may be specified by the Authority; or

(C) a licence to transfer any records or documents in relation to moneys or assets to any other person as may be specified by the Authority;

(ii) prohibit the holder of a capital markets services licence from —

(A) entering into transactions of a specified description, in specified circumstances or to a specified extent;

(B) soliciting business from persons of a specified description;

(C) carrying on business in a specified manner; or

- (iii) require the holder of a capital markets services licence to carry on business in a specified manner.

(2) Where any action is taken under subsection (1) in respect of a holder of a capital markets services licence, the Authority may by notice in writing require that holder to maintain property within Brunei Darussalam and in any specified place outside Brunei Darussalam such that —

- (a) the asset maintained is of the value and of the description that appear to the Authority to be necessary to ensure that the holder of a capital markets services licence will be able to meet his liabilities in relation to the regulated activity for which he is licensed; and

- (b) the asset is maintained in a manner that will enable the holder of a capital markets services licence at any time freely to transfer or otherwise dispose of the asset.

(3) Where a direction, condition, prohibition or requirement imposed under subsection (1) or (2) is in force, the Authority may, if it thinks fit to do so by notice in writing given to the holder of a capital markets services licence on whom the direction, condition, prohibition or requirement is imposed —

- (a) withdraw the direction, condition, prohibition or requirement; or

- (b) substitute another direction, condition, prohibition or requirement for or vary the direction, condition, prohibition or requirement,

and such direction, condition, prohibition or requirement so withdrawn or substituted shall remain in force in accordance with the terms thereof until it is —

- (i) withdrawn; or

- (ii) substituted by another direction, condition, prohibition or requirement or varied,

by the Authority under this section.

(4) Nothing contained in this Order, regulations made thereunder, terms of any contract or any other written law shall invalidate any action taken by the Authority under this section.

(5) The Panel has jurisdiction to hear and determine any appeal in relation to a decision made under this section.

(6) Subsection (5) shall not apply if the Authority considers that any delay in taking an action under this section by giving an opportunity to be heard would be prejudicial to the public interest or the interest of the clients of the holder of a capital markets services licence.

Indemnity insurance.

200. (1) A holder of a capital markets services licence must maintain adequate professional indemnity insurance at all times as determined by the Authority.

(2) The insurance must cover and indemnify the holder of a capital markets services licence against liability for negligence, errors, omissions or misstatements by the holder of a capital markets services licence or his officers and employees, civil liability, statutory warranties and indemnities and the loss of cash, securities or other assets held on behalf of the clients.

Liability to clients for activities.

201. A holder of a capital markets services licence shall be liable to clients and other third parties that have contracted with him for any act of negligence, recklessness or fraud committed by his officer, employee or authorised agent as if he had carried out the act.

Reporting requirement.

202. A holder of a capital markets services licence must notify the Authority of a breach of his licence as soon as possible after it occurs and, in any event, within 2 days of the event occurring.

PART IX

COLLECTIVE INVESTMENT SCHEME

Collective investment scheme.

203. (1) In this Part, “collective investment scheme” means any investment arrangements with respect to assets of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.

(2) The arrangements must be such that —

(a) the persons who are to participate (“participants”) do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions;

(b) the arrangements must also have either or both of the following characteristics —

(i) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;

(ii) the property is managed as a whole, by or on behalf of the operator of the collective investment scheme; and

(c) the arrangements must satisfy the condition set out in subsection (3).

(3) The condition referred to in subsection (2)(b) is that the property belongs beneficially to, and is managed by or on behalf of, a company, the trustee of a trust or some other entity or arrangement having as its purpose the investment of its funds with the aim of spreading the investment risk and giving its members the benefit of the results of the management of those funds for or on behalf of that company, trust, entity or arrangement.

(4) If the arrangements referred to in subsection (2)(b)(i) provide for such pooling in relation to separate parts of the property, and each part is maintained in a portfolio segregated in the book of the scheme from the other assets of the scheme, the arrangements shall be regarded as constituting a single umbrella collective investment scheme provided that the participants are entitled to exchange rights in one part for rights in another.

Operating without licence.

204. Any person who establishes, manages or operates any form of collective investment scheme without a licence is in contravention of section 22 relating to the general prohibition under Part II.

Types of collective investment schemes.

205. (1) In this Part, a collective investment scheme shall be formed as —

(a) a unit trust scheme;

(b) an investment company with fixed or variable capital; or

(c) a partnership.

(2) Without prejudice to subsection (1), the Authority may, specify arrangements other than those set out in subsection (1) by which collective investment scheme may be formed.

(3) A collective investment scheme may be formed as —

(a) an open-ended scheme which is obliged to redeem participants holdings upon their request at a price related to the net asset value of the property of the scheme at no less a frequency than twice a month at regular intervals;

(b) a closed-ended scheme which is not obliged to redeem participants holdings at their request; or

(c) an interval undertaking which is obliged to redeem participants holdings at a price related to the net asset value of the property of the scheme on a regular periodic basis which is no less than twice a year.

(4) Where a collective investment scheme is formed as a partnership, the operator of the collective investment scheme must be the general partner and hold or be eligible to hold a capital markets services licence under this Order.

Arrangements not constituting collective investment scheme.

206. The following arrangements do not constitute a collective investment scheme —

(a) an arrangement operated by a person other than by way of business;

(b) an arrangement where each of the participants carries on a business other than a business concerned with dealing in, arranging deals, managing or advising on securities or investments and enters into the arrangement for commercial purposes related to that business;

(c) an arrangement where each of the participants is a company in the same group as the management company of the undertaking;

(d) an arrangement where —

- (i) each of the participants is a *bona fide* employee or former employee, or the wife, husband, widow, widower, child or step child under 18 years of such an employee or former

employee, of a company in the same group as the management company; and

- (ii) the property to which the arrangement relates consists of shares or stock, debentures, loan stock, or any other instrument creating or acknowledging indebtedness or warrants or certificates conferring rights in relation to any such investment, in each case being an investment in or in a member of that group;

(e) a franchise arrangement, namely an arrangement under which a person earns profits or income by exploiting a right conferred by the arrangements to use a trade mark or design or other intellectual property or the goodwill attached to it;

(f) an arrangement the predominant purpose of which is to enable persons participating in it to share in the use or enjoyment of a particular property or to make its use or enjoyment available gratuitously to other persons;

(g) an arrangement under which the rights or interests of the participants consist of the benefit of certificates or other instruments conferring rights in relation to securities other than shares in an investment company;

(h) a contract of insurance;

(i) a pension scheme;

(j) a closed-ended investment company which is established by the operator of another collective investment undertaking —

- (i) for the purposes of holding investments, directly or indirectly, on behalf of that undertaking, or a series of collective investment undertakings established by a single sponsor to invest in parallel one with another (the owning undertakings); and

- (ii) the shares of which are not marketed to or otherwise available to any participant other than the owning undertakings;

(k) a building society;

(l) a co-operative society including funeral societies;

(m) a credit union.

Interpretation.

207. In this Part, unless the context otherwise requires —

“communicate” includes causing a communication to be made;

“custodian”, in relation to any form of collective investment scheme, means any person to whom the property subject to the collective investment scheme is entrusted for safekeeping;

“operator”, of a collective investment scheme, which is an investment company, means —

- (a) the licensed corporate director of that company which is the management company;
- (b) in relation to a unit trust, the management company; and
- (c) in relation to a partnership, the general partner.

“participate”, in relation to a collective investment scheme, means becoming a participant in the collective investment scheme by reason of having invested in a collective investment scheme;

“promotion otherwise than to the general public” includes promotion in a way designed to reduce, so far as possible, the risk of participation by persons for whom participation would be unsuitable;

“trustee”, in relation to a collective investment scheme, means the person holding the property in question on trust for the participants;

“unit trust” means a collective investment scheme whose constitution document is a trust deed between the management company and the trustee;

“unit of a unit trust” means one of the equal proportionate participation into which the beneficial interests in the trust assets are divided.

Restrictions on promotion of collective investment scheme.

208. (1) A holder of a capital markets services licence must not communicate an invitation or inducement to participate in a collective investment scheme.

(2) In the case of a communication originating outside Brunei Darussalam, subsection (1) applies only if the communication is capable of having an effect in Brunei Darussalam.

(3) Subsection (1) shall not apply in relation to —

(a) a licensed collective investment scheme; or

(b) a recognised collective investment scheme.

(4) Subsection (1) shall not apply to anything done in accordance with regulations made by the Authority for the purpose of exempting from that subsection the promotion otherwise than to the general public of collective investment schemes of specified descriptions.

Application for collective investment scheme licence.

209. (1) Any application for an order declaring a collective investment scheme to be a licensed collective investment scheme must be made to the Authority by the operator and custodian, or proposed operator and custodian, as the case may be, of the collective investment scheme.

(2) The application —

(a) must be made in such manner as the Authority may direct;

(b) must contain or be accompanied by such information as the Authority may reasonably require for the purpose of determining the application; and

(c) must be accompanied by a non-refundable prescribed application fee, which shall be paid in the manner specified by the Authority.

(3) At any time after receiving an application and before determining it, the Authority may require the applicants to provide it with such further information, as it reasonably thinks necessary to enable it to determine the application.

(4) The Authority may give different directions, and impose different requirements in relation to different applications.

(5) The Authority may require applicants to present information which they are required to give under this section in such form, or to verify it in such a way, as the Authority may direct.

Grant of collective investment scheme licence.

210. (1) Where on an application for a collective investment scheme licence, the Authority —

(a) is satisfied that the collective investment scheme complies with the requirements set out in this section;

(b) is satisfied that the collective investment scheme complies with the requirements of the collective investment scheme regulations; and

(c) has been provided with a copy of the trust deed and a certificate signed by an advocate or solicitor to the effect that it complies with the requirements of this section or those regulations as relate to its contents, or the constitution of the collective investment scheme,

the Authority may make an order declaring the collective investment scheme to be a licensed collective investment scheme. .

(2) If the Authority makes an order under subsection (1), it must give notice in writing of the order to the applicant.

(3) The operator and the custodian must be different persons who are independent of each other.

(4) The operator and the custodian must each —

(a) be a body corporate incorporated in Brunei Darussalam; and

(b) have a place of business in Brunei Darussalam,

and the affairs of each must be administered in the country or territory in which it is incorporated.

(5) The name of the collective investment scheme must not be undesirable or misleading.

(6) The purposes of the collective investment scheme must be reasonably capable of being successfully carried into effect.

Time limits for determination of collective investment scheme licence.

211. (1) An application for a licence under section 209 must be determined by the Authority before the end of the period of 4 months beginning with the date on which it receives the completed application.

(2) The Authority may determine an incomplete application if it thinks fit to do so, and it must in any event determine such an application within 12 months beginning with the date on which it first receives the application.

(3) The applicant may withdraw his application, by giving the Authority a notice in writing, at any time before the Authority determines it.

Refusal of application for licence.

212. (1) If the Authority proposes to refuse an application for a licence, it must give each of the applicant a warning notice.

(2) If the Authority decides to refuse the application for a licence, it must give each of the applicant a decision notice.

(3) The Panel has jurisdiction to hear and determine any appeal in relation to a decision made under this section.

Collective investment scheme regulations.

213. (1) The Authority may make regulations (collective investment scheme regulations) as to —

(a) the constitution, management and operation of a licensed collective investment scheme;

(b) the powers, duties, rights and liabilities of the operator and custodian of any such scheme;

(c) the rights and duties of the participants in any such scheme; and

(d) the winding up of any such scheme.

(2) The collective investment scheme regulations may, in particular, make provision —

(a) as to the issue and redemption of the units under the collective investment scheme, the valuation and pricing of the property of the scheme and units in the scheme;

(b) as to the expenses of the collective investment scheme and the means of meeting them;

(c) for the appointment, removal, powers and duties of an auditor for the collective investment scheme;

(d) for restricting or regulating the investment and borrowing powers exercisable in relation to the collective investment scheme;

(e) for restricting or regulating conflicts of interest or related party transaction;

(f) requiring the keeping of records with respect to the transactions and financial position of the collective investment scheme and for the inspection of those records;

(g) requiring the preparation of periodical reports with respect to the collective investment scheme and the provision of those reports to the participants and to the Authority; and

(h) with respect to the amendment of the collective investment scheme.

(3) The collective investment scheme regulations may make provision as to the contents of the trust deed or the constitution of the scheme.

(4) The collective investment scheme regulations are binding on the operator, custodian and participants independently of the contents of the trust deed or the constitution of the scheme.

Scheme particulars regulations.

214. (1) The Authority may make regulations (scheme particulars regulations) requiring the operator of a licensed collective investment scheme —

(a) to submit scheme particulars to the Authority; and

(b) to publish scheme particulars or make them available to the public on request.

(2) In this section, “scheme particulars” means particulars in such form, containing such information about the scheme and complying with such requirements, as are specified in the scheme particulars regulations.

(3) The scheme particulars regulations may require the operator of a licensed collective investment scheme to submit, and to publish or make available, revised or further scheme particulars if there is a significant change affecting any matter —

(a) which is contained in scheme particulars previously published or made available; and

(b) whose inclusion in those scheme particulars was required by the regulations.

(4) The scheme particulars regulations may require the operator of a licensed collective investment scheme to submit, and to publish or make available, revised or further scheme particulars if —

(a) a significant new matter arises; and

(b) the inclusion of information in respect of that matter would have been required in previous scheme particulars if it had arisen when those scheme particulars were prepared.

(5) The scheme particulars regulations may provide for the payment, by the person or persons who in accordance with the regulations are treated as responsible for any scheme particulars, of compensation to any qualifying person who has suffered loss as a result of —

(a) any untrue or misleading statement in the scheme particulars; or

(b) the omission of any matter required by the regulations to be included.

(6) In this section, “qualifying person” means a person who —

(a) has become or agreed to become a participant in the collective investment scheme; or

(b) although not being a participant, has a beneficial interest in units in the collective investment scheme.

Disqualification of auditor.

215. If it appears to the Authority that an auditor has failed to comply with a duty imposed on him by any regulations in relation to collective investment schemes, it may disqualify him from being the auditor for any licensed collective investment scheme.

Modification or waiver of regulations.

216. (1) In this section, “regulations” means any regulations made by the Authority under this Part in relation to collective investment schemes.

(2) The Authority may, on the application or with the consent of any person to whom any regulations apply, direct that all or any of the regulations —

(a) are not applicable to him as respects a particular collective investment scheme; or

(b) are applicable to him, as respects a particular collective investment scheme, with such modifications as may be specified in the direction.

Alteration of collective investment scheme.

217. (1) If a licensed collective investment scheme proposes to alter its constitution or to replace its operator or custodian, it must give a notice in writing to the Authority.

(2) Any notice given in respect of a proposal under subsection (1) shall not take effect unless —

(a) the Authority, by notice in writing, has given its approval to the proposal; or

(b) one month, beginning with the date on which the notice was given, has expired without the collective investment scheme receiving from the Authority a warning notice under section 218 in respect of the proposal.

(3) The Authority must not approve a proposal to replace the operator or the custodian of a licensed collective investment scheme unless it is satisfied that, if the proposed replacement is made, the scheme will continue to comply with the requirements of its licence.

Refusal of proposed changes to collective investment scheme.

218. (1) If the Authority proposes to refuse approval of a proposal to replace the operator or the custodian of a licensed collective investment scheme, it must give a warning notice to the person to whom notice of the proposal was given, within one month beginning with the date on which notice of the proposal was given.

(2) If, having given a warning notice to a person, the Authority decides to refuse approval, it must give the collective investment scheme a decision notice.

(3) The Panel has jurisdiction to hear and determine any appeal in relation to a decision made under this section.

Exclusion clauses.

219. Any provision of the trust deed or any constitution of a collective investment scheme is void if it has the effect of exempting the operator or the custodian from

liability for any failure to exercise due care and diligence in the discharge of his functions in respect of the collective investment scheme.

Revocation of collective investment scheme licence.

220. (1) A collective investment scheme licence may be revoked by an order made by the Authority if it appears to the Authority that —

(a) one or more of the requirements for the making of the order are no longer satisfied;

(b) the operator or the custodian of the collective investment scheme concerned has contravened a requirement imposed on him by or under this Order;

(c) the operator or the custodian of the collective investment scheme has, in purported compliance with any such requirement, knowingly or recklessly given the Authority information which is false or misleading in a material particular;

(d) no regulated activity is being carried on in relation to the collective investment scheme and the period of that inactivity began at least 12 months earlier; or

(e) none of paragraphs (a) to (d) applies, but it is desirable to revoke the licence in order to protect the interests of participants or potential participants in the collective investment scheme.

(2) For the purposes of subsection (1)(e), the Authority may take into account any matter relating to —

(a) the collective investment scheme;

(b) the operator or the custodian;

(c) any person employed by or associated with the operator or the custodian in connection with the collective investment scheme;

(d) any director of the operator or the custodian;

(e) any person exercising influence over the operator or the custodian;

(f) any body corporate in the same group as the operator or the custodian;

(g) any director of any such body corporate;

(h) any person exercising influence over any such body corporate.

Procedure for revocation of collective investment scheme licence.

221. (1) If the Authority proposes to make an order revoking a collective investment scheme licence, it must give separate warning notices to the operator and the custodian of the collective investment scheme.

(2) If the Authority decides to make a revocation order, it must without delay give each of them a decision notice.

(3) The Panel has jurisdiction to hear and determine any appeal in relation to a decision made under this section.

Requests for revocation or withdrawal of collective investment scheme licence.

222. (1) A collective investment scheme licence may be revoked by an order made by the Authority at the request of the operator or the custodian of the collective investment scheme.

(2) If the Authority makes an order under subsection (1), it must give a notice in writing of the order to the manager, operator and the custodian of the collective investment scheme.

(3) The Authority may refuse a request to make an order under this section if it thinks that —

(a) the public interest requires that any matter concerning the collective investment scheme should be investigated before a decision is taken as to whether the licence should be revoked; or

(b) revocation would not be in the interests of the participants.

(4) If the Authority proposes to refuse a request under this section, it must give separate warning notices to the manager, operator and the custodian of the collective investment scheme.

(5) If the Authority decides to refuse the request, it must without delay give each of them a decision notice.

(6) The Panel has jurisdiction to hear and determine any appeal in relation to a decision made under this section.

Recognised collective investment scheme.

223. (1) A collective investment scheme which is not a licensed collective investment scheme in Brunei Darussalam but is managed in, and licensed under the law of, a country or territory outside Brunei Darussalam is a recognised collective investment scheme if —

(a) that country or territory is designated for the purposes of this section by an order made by the Authority;

(b) the operator and the custodian of the collective investment scheme have given notice in writing to the Authority that he wishes it to be recognised.

(2) The Authority may not make an order designating any country for the purposes of this section unless it is satisfied —

(a) that the law and practice under which the relevant collective investment schemes are authorised and supervised in that country or territory affords to investors in Brunei Darussalam at least equivalent to that provided for them by or under this Part in the case of comparable licensed collective investment schemes; and

(b) that adequate arrangements exist, or will exist, for co-operation between the authorities of the country or territory responsible for the licensing and supervision of comparable licensed collective investment schemes.

(3) The notice to be given by the operator and the custodian under subsection (1)(b) —

(a) must contain the address for service in Brunei Darussalam; and

(b) must contain or be accompanied by such information and documents as may be specified by the Authority.

Regulations for recognised collective investment scheme.

224. The Authority may make regulations imposing duties or liabilities on the operator and the custodian of a collective investment scheme recognised under section 223.

Revocation of recognition.

225. The Authority may direct that a collective investment scheme is to cease to be recognised or revoke a recognition order under section 223 if it appears to the Authority —

(a) that the operator or the custodian of the collective investment scheme has contravened a requirement imposed on him by or under this Order;

(b) that the operator or the custodian of the collective investment scheme has, in purported compliance with any such requirement, knowingly or recklessly given the Authority information which is false or misleading in a material particular;

(c) in the case of a recognition order, that one or more of the requirements for the making of the order are no longer satisfied; or

(d) that none of paragraphs (a) to (c) applies, but it is undesirable in the interests of the participants or potential participants that the collective investment scheme should continue to be recognised.

Procedure for refusal of recognition.

226. (1) If the Authority proposes to refuse recognition it must give the operator or the custodian of the collective investment scheme a warning notice.

(2) If, having given a warning notice, the Authority decides to refuse approval it must give the operator or the custodian of the collective investment scheme a decision notice.

(3) The Panel has jurisdiction to hear and determine any appeal in relation to a decision made under this section.

Powers of intervention for collective investment scheme.

227. (1) The Authority may give a direction under this section if it appears to the Authority that —

(a) one or more of the requirements for the granting of a licence or recognition are no longer satisfied;

(b) the operator or the custodian of a licensed or recognised collective investment scheme has contravened, or is likely to contravene, a requirement imposed on him by or under this Order;

(c) the operator or the custodian of such a collective investment scheme has, in purported compliance with any such requirement, knowingly or recklessly given the Authority information which is false or misleading in a material particular; or

(d) none of paragraphs (a) to (c) applies, but it is desirable to give a direction in order to protect the interests of participants or potential participants in such a scheme.

(2) A direction under this section may —

(a) require the operator or the custodian of the collective investment scheme to cease the issue or redemption, or both the issue and redemption, of units under the scheme;

(b) require the operator or the custodian and trustee of the collective investment scheme to wind it up.

(3) If the licence is revoked, the revocation does not affect any direction made under this section that is in force.

(4) A direction may be given under this section in relation to a collective investment scheme whose licence has been revoked, even if a prior direction under this section was already in force at the time of the revocation of the direction.

(5) The Authority may, either on its own initiative or on the application of the operator or the custodian of the collective investment scheme, revoke or vary a direction given under this section if it appears to the Authority —

(a) in the case of revocation, that it is no longer necessary for the direction to take effect or continue in force; or

(b) in the case of variation, that the direction should take effect or continue in force in a different form.

Application to Court.

228. (1) Where the Authority may give a direction under section 227, it may also apply to the Court for an order —

(a) removing the operator or the custodian or both of them, of the collective investment scheme; and

(b) replacing the operator or the custodian removed with a suitable person or persons nominated by the Authority.

(2) The Authority may nominate a person for the purposes of subsection (1)(b) only if it is satisfied that, if the order was made, the requirements of the grant of the licence would be complied with.

(3) If it appears to the Authority that there is no person it can nominate for the purposes of subsection (1)(b), it may apply to the Court for an order appointing a holder of a capital markets services licence to wind up the collective investment scheme.

(4) On an application under this section, the Court may make such order as it thinks fit.

(5) The Authority must give notice in writing of the making of an application under this section to the operator or the custodian of the collective investment scheme concerned.

(6) The jurisdiction conferred by this section may be exercised by the High Court.

Procedure for directions.

229. (1) A direction made under this Part takes effect —

(a) immediately, if the notice given states that that is the case; or

(b) on such date as may be specified in the notice.

(2) A direction may be expressed to take effect immediately (or on a specified date) only if the Authority, having regard to the ground on which it is exercising its powers, thinks that it is necessary for the direction to take effect immediately (or on a specified date).

(3) If the Authority proposes to give a direction or gives such a direction with immediate effect, it must give a separate notice in writing to the operator and the custodian, as the case may be, of the collective investment scheme.

(4) The notice must —

(a) give details of the direction;

(b) inform the person to whom it is given of when the direction takes effect;

(c) state the Authority's reasons for giving the direction and for its determination as to when the direction takes effect;

(d) inform the person to whom it is given that he may make representations to the Authority within such period as may be specified in it (whether or not he has referred the matter to the Panel); and

(e) inform that person of the right to refer the matter to the Panel.

(5) If, having considered any representations made by a person to whom the notice was given, the Authority decides —

(a) to give the direction in the way proposed; or

(b) if it has been given, not to revoke the direction, it must give separate notice in writing to the operator and the custodian, as the case may be, of the collective investment scheme.

(6) If, having considered any representations made by a person to whom the notice was given, the Authority decides —

(a) not to give the direction in the way proposed;

(b) to give the direction in a way other than that proposed; or

(c) to revoke a direction which has effect,

it must give separate notice in writing to the operator and the custodian, as the case may be, of the collective investment scheme.

(7) The Panel has jurisdiction to hear and determine any appeal in relation to a decision made under this section.

PART X

INTERVENTION POWERS OF AUTHORITY

Scope of powers of Authority.

230. The powers conferred on the Authority shall be exercisable in relation to any regulated person if it appears to the Authority —

(a) that the exercise of the powers is desirable for the protection of investors;

(b) that the regulated person is not fit to carry on regulated activities of a particular kind or which he is carrying on or proposing to carry on; or

(c) that the regulated person has contravened any provision of this Order, principles or any regulations or codes made under it or, in purported compliance with any such provision, principle, regulation or code has furnished the Authority with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Order.

Employment of prohibited persons.

231. (1) If it appears to the Authority that any person is not a fit and proper person to be employed in connection with any particular type of regulated activities, it may direct that he shall not, without the written consent of the Authority, be employed in connection with any regulated activities by the regulated person.

(2) The Authority may revoke a disqualification direction.

Public statement of misconduct.

232. If it appears to the Authority that a person who is, or was a regulated person or any other person has contravened any provision of this Order, principles, regulations or codes made by the Authority or employed a disqualified person, it may publish a statement to that effect.

Restriction of business.

233. (1) The Authority may, in the interests of investors, prohibit any regulated person from —

(a) entering into transactions of any kind;

(b) soliciting business from persons of any kind anywhere; or

(c) carrying on business of any kind.

(2) A prohibition under this section may relate to transactions entered into in connection with, or for the purposes, of regulated activities or to other ancillary activities that are carried on.

Restriction on dealing with assets.

234. (1) The Authority may prohibit a regulated person from disposing of or otherwise dealing with any assets, or any specified assets.

(2) A prohibition under this section may relate to assets outside Brunei Darussalam.

Vesting of assets in third party.

235. (1) The Authority may impose a requirement that all assets, which, at any time while the requirement is in force —

(a) belong to a regulated person; or

(b) belong to investors and are held by or to the order of a regulated person,

to be transferred to and held by a third party approved by the Authority.

(2) A requirement under this section may relate to assets outside Brunei Darussalam.

Maintenance of assets.

236. The Authority may require a regulated person to maintain in Brunei Darussalam assets of such value as appears to the Authority to be desirable with a view to ensuring that the regulated person will be able to meet his liabilities in respect of investment business carried on by him in Brunei Darussalam.

Injunction.

237. (1) If, on the application of the Authority, the Court is satisfied —

(a) that there is a reasonable likelihood that a person will conduct regulated activities without a licence; or

(b) that any person has conducted regulated activities without a licence and that there is a reasonable likelihood that the contravention will continue or be repeated,

the Court may grant an injunction restraining the contravention.

(2) If, on the application of the Authority, the Court is satisfied —

(a) that there is a reasonable likelihood that any person has or is likely to contravene any provision of the regulations made by the Authority;

(b) that any person has employed or is likely to employ a disqualified person and has made or is likely to make any misleading statements and practices;

(c) that there is a reasonable likelihood that any person has contravened or is likely to contravene the regulations of a licensed securities exchange, a licensed clearing house or a central securities depository to which that person is subject and which regulate the carrying on by him of regulated activities; or

(d) that any person has contravened any such provisions and that there is a reasonable likelihood that the contravention will continue or be repeated,

the Court may grant an injunction restraining the contravention or make an order requiring that person and any other person who appears to the Court to have been knowingly concerned in the contravention, to take such steps as the Court may direct to remedy such contravention.

Liquidation orders.

238. (1) On a petition presented by the Authority by virtue of this section, the Court may wind up a regulated person to whom this section applies if —

(a) the regulated person is unable to pay his debts; or

(b) the Court is of the opinion that it is just and equitable that the regulated person should be wound up.

(2) Subsection (1) applies to any regulated person including collective investment schemes and any person whose licence has been suspended by the Authority.

(3) For the purposes of a petition under subsection (1), a person who defaults in an obligation to pay any sum due and payable under any investment agreement shall be deemed to be unable to pay his debts.

Notices.

239. (1) The power to impose, rescind or vary a prohibition or requirement under this Order shall be exercisable by a notice in writing given by the Authority

to the regulated person, and any such notice shall take effect on the date specified in the notice.

(2) If the Authority refuses to rescind or vary a prohibition or requirement on the application of the person to whom it applies, it shall give that person a notice in writing of the refusal not later than 30 days after the decision to refuse was made.

(3) A notice imposing a prohibition or requirement, or varying a prohibition or requirement otherwise than on the application of the person to whom it applies, and a notice under subsection (2) shall state the reasons for which the prohibition or requirement was imposed or varied or why the application was refused.

(4) Where the reasons stated in a notice to which subsection (3) applies relate specifically to matters which —

(a) refer to a person identified in the notice other than the person to whom the prohibition or requirement applies; and

(b) are in the opinion of the Authority prejudicial to that person in any office or employment,

the Authority shall, unless it considers it impracticable to do so, give a copy of the notice on that person.

(5) A notice to which subsection (3) applies, shall give particulars of the right to have the case referred to the Panel not later than 15 days after receipt of the notice.

(6) The Authority may give public notice of any prohibition or requirement imposed by it under this Order and of the rescission and variation of any such prohibition or requirement, and any such notice may, if the Authority thinks fit, include a statement of the reasons for which the prohibition or requirement was imposed, rescinded or varied.

Rescission and variation of notices.

240. The Authority may, either of its own motion or on the application of a person on whom a prohibition or requirement has been imposed under this Part, rescind or vary the prohibition or requirement if it appears to the Authority —

(a) that it is no longer necessary for the prohibition or requirement to take effect or continue in force; or

(b) that the prohibition or requirement should take effect or continue in force in a different form.

Market abuse.

241. (1) For the purposes of this Order, market abuse is behaviour (whether by one person alone or by 2 or more persons jointly or in concert) —

(a) which occurs in relation to qualifying securities traded on a market to which this section applies;

(b) which satisfies any one or more of the conditions set out in subsection (2); and

(c) which is likely to be regarded by a regular user of that market who is aware of the behaviour as a failure on the part of the person or persons concerned to observe the standard of behaviour reasonably expected of a person in his or their position in relation to the market.

(2) The conditions are that —

(a) the behaviour is based on information which is not generally available to those using the market but which, if available to a regular user of the market, would or would be likely to be regarded by him as relevant when deciding the terms on which transactions in investments of the kind in question should be effected;

(b) the behaviour is likely to give a regular user of the market a false or misleading impression as to the supply of, or demand for, or as to the price or value of, investments of the kind in question; and

(c) a regular user of the market would, or would be likely to, regard the behaviour as behaviour which would, or would be likely to, distort the market in investments of the kind in question.

(3) The Authority may by order prescribe (whether by name or by description) —

(a) the markets to which this section applies; and

(b) the securities which are qualifying securities in relation to those markets.

(4) The order may prescribe different securities or descriptions of securities in relation to different markets or descriptions of market.

(5) The behaviour referred to in subsection (1) is to be disregarded unless it occurs —

(a) in Brunei Darussalam; or

(b) in relation to qualifying securities traded on a market to which this section applies, which is situated in Brunei Darussalam or which is accessible electronically in Brunei Darussalam.

(6) For the purposes of this section, the behaviour which is to be regarded as occurring in relation to qualifying securities includes behaviour which —

(a) occurs in relation to anything which is the subject matter, or whose price or value is expressed by reference to the price or value, of those qualifying securities; or

(b) occurs in relation to securities (whether qualifying or not) whose subject matter is those qualifying securities.

(7) Information that can be obtained by research or analysis conducted by, or on behalf of, users of a market is to be regarded for the purposes of this section as being generally available to them.

(8) The behaviour does not amount to market abuse if it conforms with a rule which includes a provision to the effect that behaviour conforming with the rule does not amount to market abuse.

(9) Any reference in this Order to a person engaged in market abuse is a reference to a person engaged in market abuse whether alone or with one or more other persons.

(10) In this section —

“behaviour” includes action or inaction;

“regular user”, in relation to a particular market, means a reasonable person who regularly deals on that market in investments of the kind in question.

(11) Any person who —

(a) is or has engaged in market abuse, or of market abuse; or

(b) by taking or refraining from taking any action, has required or encouraged another person or persons to engage in behaviour which, if engaged in by that person would amount to market abuse,

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

Application of insider dealing.

242. This Part shall apply to —

- (a) acts occurring within Brunei Darussalam, in relation to —
 - (i) securities of any corporation, whether formed or carrying on business in Brunei Darussalam or elsewhere;
 - (ii) securities of any business trust;
 - (iii) securities listed for quotation or quoted on a securities market in Brunei Darussalam or elsewhere; or
 - (iv) securities traded on a futures market in Brunei Darussalam or elsewhere; and
- (b) acts occurring outside Brunei Darussalam, in relation to —
 - (i) securities of a corporation that is formed or carries on business in Brunei Darussalam;
 - (ii) securities of a business trust, the trustee of which is formed in Brunei Darussalam or carries on business on behalf of the business trust in Brunei Darussalam;
 - (iii) securities listed for quotation or quoted on a securities market in Brunei Darussalam; or
 - (iv) securities traded on a futures market in Brunei Darussalam.

Insider dealing.

243. (1) In this section, “insider dealing” includes —

- (a) an insider person transacting any deal, directly or indirectly, using inside information involving securities to which the inside information pertains, or using others to transact such deals;
- (b) the disclosing or passing of inside information by an insider person to others;

(c) an insider person suggesting or recommending to another person to engage in dealing in any security to which the inside information pertains; and

(d) the conduct of any person as specified in subsections (1)(a) to (c) who knows, or ought to have known under normal and reasonable circumstances, that the information possessed is inside information.

(2) The following shall not be deemed as insider dealing —

(a) any transaction performed under an agreement that was concluded before the time of gaining access to inside information; or

(b) the disclosure of inside information by an insider person as part of his job or when discharging his duties in an official capacity.

(3) Any person who commits insider dealing is guilty of an offence and liable on conviction to a fine not exceeding \$10,000,000, imprisonment for a term not exceeding 10 years or both.

(4) No contract shall be void or unenforceable by reason only of an offence under this section.

Insider information.

244. In this section, “insider information” includes —

(a) information which has not been made public, relating, directly or indirectly, to one or more issuers of securities or to one or more securities and which, if it were made public, would be likely to have a significant effect on the prices of those securities instruments or on the price of related securities;

(b) in relation to derivatives on commodities, information which has not been made public, relating, directly or indirectly, to one or more such derivatives and which are traded in accordance with accepted market practices on those markets;

(c) in relation to persons responsible for the execution of orders concerning securities, information which is conveyed by a client to such person and related to the client's pending orders.

Insiders.

245. In this section, “insiders” include —

(a) executive officers, directors and board members of an issuer of securities;

(b) any executive officer, director or board member of a legal firm or unincorporated business association, in which the issuer holds a share or voting rights, directly or indirectly, of 25 percent or more;

(c) any executive officer, director or board member of a legal firm or unincorporated business association who holds, directly or indirectly, a share or voting rights of 10 percent or more in an issuer of securities;

(d) any executive officer, director or board member of an organisation that has been engaged in the placement of securities or the public offer of securities, as well as any employee of the issuer or an organisation participating in the issuing and marketing who has had access to insider information during his employment, for a period of one year after being placed on the market;

(e) any individual holding a share, directly or indirectly, of 10 percent or more in the capital of an issuer of securities;

(f) any executive officer, director or board member of a credit institution in which the issuer of securities has an account;

(g) any person obtaining inside information as part of his employment or when discharging his usual duties in an official capacity, or in any other way relating to work performed under contract of employment or otherwise;

(h) any person obtaining inside information through criminal activities;
and

(i) any husband, wife, child, step-child, parents or nominee of a person referred to in paragraphs (a) to (h).

Conduct not amounting to insider dealing.

246. (1) An individual is not conducting insider dealing if he shows —

(a) that he did not, at the time expect the dealing to result in a profit attributable to the fact that the information in question was price sensitive information in relation to the securities;

(b) that at the time he believed on reasonable grounds that the information had been disclosed widely enough to ensure that none of those taking part in the dealing would be prejudiced by not having the information; or

(c) that he would have done what he did even if he had not had the information.

(2) An individual is not conducting insider dealing by virtue of encouraging another person to deal in securities if he shows —

(a) that he did not at the time expect the dealing to result in a profit attributable to the fact that the information in question was inside information in relation to the securities;

(b) that at the time he believed on reasonable grounds that the information had been or would be disclosed widely enough to ensure that none of those taking part in the dealing would be prejudiced by not having the information; or

(c) that he would have done what he did even if he had not had the information.

(3) An individual is not conducting insider dealing by virtue of a disclosure of information if he shows —

(a) that he did not at the time expect any person, because of the disclosure, to deal in the investments; or

(b) that, although he had such an expectation at the time, he did not expect the dealing to result in a profit attributable to the fact that the information was price sensitive information in relation to the investments.

(4) In this Order, references to a profit include references to the avoidance of a loss.

Limits on insider dealing.

247. (1) Insider dealing does not apply to anything done by an individual acting on behalf of a public body in pursuit of monetary policies or policies with respect to exchange rates or the management of public debt or foreign exchange reserves.

(2) No contract shall be void or unenforceable by reason only of by its having come about in consequence or as a result of insider dealing.

Companies disclosure responsibilities of insider information.

248. (1) Listed companies and publicly tradable companies having issued securities shall inform the public, in the manner specified by the Authority, as

soon as possible, of any insider information which directly concerns the issued securities.

(2) Companies may delay the public disclosure of inside information, as referred to in subsection (1) in order not to prejudice their legitimate interests, provided that such delay will not mislead the public and provided that the company is able to ensure the confidentiality of the information.

(3) The company shall inform the Authority of the decision to delay the public disclosure of inside information.

(4) Whenever a listed company or publicly tradable company, or a person acting on their behalf, discloses any insider information to any third party in the normal exercise of employment, profession or duties, complete and effective public disclosure of that information must be made simultaneously.

(5) Subsections (1) to (4) shall not apply if the person receiving the information owes a duty of confidentiality, regardless of whether such duty is based on any written laws, any regulations, any articles of association or any contract.

Responsibility to maintain list of persons.

249. (1) Listed companies and publicly tradable companies, or persons acting on their behalf, must maintain a list of persons employed, under contract or otherwise (in the prescribed manner), who have access to inside information. These companies and persons acting on their behalf shall regularly update this list and send it to the Authority whenever the Authority requests it.

(2) Listed companies and publicly tradable companies shall, in the list of persons that have access to insider information, state that the persons listed have acknowledged the requirements of this Part related to the prohibition to conclude transactions with the use of insider information (and to advise the persons to whom they provide insider information).

(3) Persons discharging managerial responsibilities within a listed company or a publicly tradable company which is an issuer of securities and, where applicable, persons closely associated with them, shall notify the Authority of transactions conducted on their own account relating to the securities of the listed company or publicly tradable company.

(4) Listed companies and publicly tradable companies must ensure that access to information concerning transactions in securities is available to the public as soon as possible.

(5) Without prejudice to the provisions of section 248, the Authority may make regulations to regulate —

(a) persons who produce or disseminate research concerning securities or issuers of securities; and

(b) persons who produce or disseminate other information recommending or suggesting investment strategy,

intended for distribution channels or for the general public.

(6) The regulated market shall adopt structural provisions, operating procedures, and surveillance techniques to detect and prevent insider trading and market abuse practices according to the regulations made hereunder.

Supplying auditors with false or misleading information.

250. Any person who knowingly or recklessly furnishes an auditor appointed under this Order with information which the auditor is entitled to require and which is false or misleading in a material particular 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.

Claiming falsely to be licensed and misleading statements

251. (1) A person is guilty of an offence if —

(a) for the purposes of or in connection with any application under this Order; or

(b) in purported compliance with any requirement imposed on him by or under this Order,

he furnishes information which he knows to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular.

(2) A person is guilty of an offence if, not being a regulated person, he —

(a) describes himself as such; or

(b) so holds himself out as to indicate or be reasonably understood to indicate that he is such.

(3) A person guilty of an offence under subsection (1) or (2) is liable on conviction to a fine not exceeding \$10,000,000, imprisonment for a term not exceeding 10 years or both.

(4) In proceedings brought against any person for an offence under subsection (1) or (2), it shall be a defence for him to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

PART XI

COMPLAINTS COMMITTEE AND INVESTOR COMPENSATION SCHEME

Complaints committee.

252. (1) The Authority shall establish a complaints committee to investigate the complaints in respect of —

(a) any person who is a regulated person under this Order; and

(b) any complaints regarding the Authority.

(2) The arrangements must make provision for the investigation of such complaints to be carried out in appropriate cases independently of the Authority and those persons complained of.

(3) On the completion of the investigation of the complaint, if the complaints committee finds that the complaint is frivolous, vexatious, misconceived or without merits, or that the information is unsubstantiated, it shall recommend for the complaint to be dismissed.

Investor Compensation Scheme.

253. (1) The Authority may establish for the purposes of this Order a body to be called the Investor Compensation Scheme.

(2) The principal objects of the Investor Compensation Scheme are to set up and manage a scheme to provide compensation for eligible investors where a regulated person is in financial distress.

(3) The Authority may make such regulations as it thinks fit for the Investor Compensation Scheme.

PART XII

FINANCIAL MARKETS SERVICES PANEL

Panel.

254. (1) The Authority may establish for the purposes of this Order a Panel to be called the Financial Markets Services Panel (referred to in this Order as the Panel).

(2) The Panel is to have the functions conferred on it by or under this Order.

(3) Any references in this Order as to the right to make representations shall be construed as a right to refer the matter to the Panel.

PART XIII

GENERAL

Licence fees.

255. (1) Every person to whom a licence is first granted, shall, on the date of such grant, pay to the Authority the annual licence fee as determined by the Authority.

(2) Every licensee shall on or before 31st January in every year following the year in which the licence was granted pay the annual licence fee as determined by the Authority.

(3) Every licensee shall pay such periodical fees or administrative charges to the Authority as it may determine.

(4) A licensee who fails to pay the annual licence fee by the date specified in subsection (2) or any periodical fees by any date determined shall, in addition thereto, pay a late payment penalty in an amount not exceeding \$5,000,000, and in the case of a continuing offence, to a further fine not exceeding \$500,000 for every day after or part thereof during which the offence continues after conviction.

Fees collected to be paid into funds of Authority.

256. All fees collected by the Authority under this Order or any other written law shall be paid into the funds of the Authority.

Notification of changes and events.

257. (1) This section applies to regulated persons who are licensed under this Order.

(2) Licensees referred to in subsection (1) shall pay administrative charges to the Authority as it may determine.

(3) A licensee who fails to notify the Authority by the period specified in each relevant section or by any period determined shall, in addition thereto, pay a late payment penalty in an amount not exceeding \$50,000, and in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day after or part thereof during which the offence continues after conviction.

Copy of entry in the regulated person's record as *prima facie* evidence of such entry.

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

(3) Such proof as is required under subsection (2) may be given by the regulated person or any employee of the regulated person 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 regulated person 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.

Criminal jurisdiction of Intermediate Court.

259. Notwithstanding any provision to the contrary in the Criminal Procedure Code (Chapter 7), an Intermediate Court shall have jurisdiction to try any offence

under this Order and shall have power to impose the full penalty or punishment in respect of any offence under this Order.

Offences by bodies corporate etc.

260. (1) Where an offence under this Order which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or of any person who was purporting to act in such capacity, he, as well as the body corporate, is guilty of that offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of that body corporate.

General penalty.

261. Any person who contravenes or fails to comply with any provisions of the Order or any regulations made thereunder is guilty of an offence and, where no penalty is expressly provided, is liable on conviction to a fine not exceeding \$10,000,000, imprisonment for a term not exceeding 10 years or both.

Abetment of offences.

262. Any person who abets, within the meaning of the Penal Code (Chapter 22) —

(a) the commission of an offence under this Order; or

(b) the commission outside Brunei Darussalam of any act, in relation to the affairs or business or on behalf of a principal residing in Brunei Darussalam, which if committed in Brunei Darussalam would be an offence under this Order,

shall be deemed to have committed the offence and is liable on conviction to be punished with the punishment provided for such offence.

Attempts.

263. Any person who attempts to commit an offence punishable under this Order shall be deemed to have committed the offence and is liable on conviction to be punished with the punishment provided for such offence.

Conspiracy.

264. Any person who is a party to a criminal conspiracy, within the meaning of the Penal Code (Chapter 22), to commit an offence punishable under this Order shall be deemed to have committed the offence and is liable on conviction to be punished with the punishment provided for such offence.

Compounding of offences.

265. (1) The Authority may, in its discretion, compound any offence under this Order which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding one half of the maximum fine prescribed for that offence.

(2) On payment of such sum of money, no further proceedings shall be taken against that person in respect of the offence.

(3) The Authority may make regulations to prescribe the offences that may be compounded.

(4) All sums collected under this section shall be paid to the Authority.

Convicted persons liable to pay compensation.

266. A person convicted of an offence under this Order 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.

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

Power to make regulations.

268. (1) The Authority may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make such regulations as it considers necessary or expedient for giving effect to and carrying out the provisions of this Order, including the prescription of any fees or other things required to be or which may be prescribed.

(2) Such regulations may include such incidental, consequential and supplementary provisions as the Authority considers necessary or expedient.

Tax and filing exemptions.

269. (1) No income tax, tax on capital gains or other tax shall be levied, withheld or collected in respect of any collective investment scheme or the holder of a capital markets services licence conducting the management of securities, in respect of such a collective investment scheme, or in respect of any dividends or earnings attributable to any unit share, partnership interest, debt or securities; or in the case of such a licensee on any fees or other earnings received in that capacity.

(2) No estate, inheritance, succession or similar tax shall be levied in respect of a collective investment scheme or collective investment scheme interest or in respect of the transfer of any collective investment scheme interest.

(3) Notwithstanding anything in the Stamp Act (Chapter 34), duty shall not be chargeable on any of the following —

(a) instruments relating to transfers of any property to or by any collective investment scheme;

(b) instruments relating to transactions in respect of any collective investment scheme interest;

(c) instruments relating in any way to the assets, or activities of a collective investment scheme.

(4) Expressions used in subsection (3) have the same meaning as in the Stamp Act (Chapter 34).

(5) No filing, return or financial information shall be required from any collective investment scheme in relation to any taxation, duty or other levy in respect of which relief is granted under this section.

Repeal of S 31/2001, S 18/2001.

270. Subject to this section, the Securities Order, 2001 (S 31/2001) and the Mutual Funds Order, 2001 (S 18/2001) are repealed.

Transitional and saving provisions.

271. (1) Any subsidiary legislation, declaration or appointment made and any thing done under the repealed Orders and in force immediately prior to the

commencement of this Order shall, so far as it is not inconsistent with the provisions of this Order, continue to be in force as if made or done under this Order until it is amended, revoked or repealed under this Order.

(2) Any permission, approval, endorsement, decision, notice, warrant, order, guidelines or other document prepared, made, granted, issued and any act or thing done or given under or pursuant to the repealed Orders and valid immediately prior to the commencement of this Order shall be deemed to have been prepared, made, granted, issued, done or given under or pursuant to the corresponding provisions of this Order and shall continue to have effect accordingly.

(3) Any breach, contravention or non-compliance of the repealed Orders shall be deemed to be a breach, contravention or non-compliance of the corresponding provisions of this Order and the powers conferred on the Authority by this Order may be exercised in respect of any such breach, contravention or non-compliance.

(4) Any enforcement process or proceedings commenced or pending immediately prior to the commencement of this Order in connection with any breach, contravention or non-compliance of or under the repealed Orders may be continued and disposed of under the repealed Order as if this Order has not been made.

(5) Any reference in any written law to the repealed Order or any provision thereof shall, as from the commencement of this Order, be a reference to this Order or the corresponding provision of this Order.

(6) Every regulated person under the repealed Orders shall comply with the provisions of this Order, within a period of one year of the commencement of this Order or until such later date as the Authority may determine.

SCHEDULE – SECURITIES AND INVESTMENT BUSINESS

Part I

Securities

Shares.

1. Shares and stock in the share capital of a public company —

Note: In this Schedule, “company” includes any body corporate and any unincorporated body constituted under the law of a country or territory outside Brunei Darussalam, but does not include an open-ended investment company or any body incorporated under the written laws of Brunei Darussalam relating to building societies, industrial and provident societies or credit unions.

Debentures.

2. “Debenture” includes debenture securities, bonds, notes and any other evidence of indebtedness of a company for borrowed moneys, whether or not constituting a charge on the assets of the company, but shall not be construed as applying to any of the following —

(a) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray the consideration payable under, a contract for sale or supply of goods, property or services or any contract of hire in the ordinary course of business;

(b) a cheque, banker’s draft or any other bill of exchange or a letter of credit;

(c) a banknote, guarantee or an insurance policy;

(d) a statement, passbook or other document showing any balance in a current, deposit or savings account;

(e) any agreement for a loan where the lender and borrower are signatories to the agreement and where the lending of money is in the ordinary course of business of the lender, and any promissory note issued under the terms of such an agreement;

(f) any instrument or product or class of instruments or products as the Authority may, on the recommendations of the Authority, prescribe by order published in the *Gazette*.

Government and public securities.

3. Loan stock, bonds and other instruments creating or acknowledging indebtedness issued by or on behalf of the government, local authority or public authority.

Note: In this Schedule, “government, local authority or public authority” means —

(a) the Government of His Majesty the Sultan and Yang Di-Pertuan or of any country or territory outside Brunei Darussalam;

(b) a local authority or a state-owned corporation in Brunei Darussalam or elsewhere; or

(c) any international organisation the members of which include Brunei Darussalam.

Instruments creating entitlements to shares or securities.

4. (1) Warrants or other instruments which entitle the holder to subscribe for any securities.

(2) It is immaterial whether the securities are for the time being in existence or identifiable.

Note: Securities falling within this paragraph shall not be regarded as falling within paragraph 7, 8 or 9.

Certificates representing securities.

5. Certificates or other instruments which confer contractual or property rights —

(a) in respect of any securities held by someone other than the person on whom the rights are conferred by the certificate or instrument; and

(b) the transfer of which may be effected without requiring the consent of that person.

Note: This paragraph does not apply to any instrument that confers rights in respect of two or more securities issued by different persons or in respect of two

or more different securities falling within paragraph 3 and issued by the same person.

Units in collective investment scheme.

6. Shares in or securities in a collective investment scheme, including shares in or securities of an investment company scheme and any right to participate in a collective investment scheme.

Options.

7. Options to acquire or dispose of —

(a) securities falling within any other paragraph of this Part of this Schedule;

(b) currency of Brunei Darussalam or of any other country or territory;

(c) gold, palladium, platinum or silver; or

(d) an option to acquire or dispose of securities falling within this paragraph by virtue of (a), (b) or (c).

Futures.

8. Rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date.

Note:

(1) This paragraph does not apply if the contract is made for commercial and not investment purposes.

(2) A contract shall be regarded as made for investment purposes if it is made or traded on a recognised securities exchange or made otherwise than on a recognised securities exchange but expressed to be as traded on such an exchange or on the same terms as those on which an equivalent contract would be made on such an exchange.

(3) A contract not falling within Note (2) shall be regarded as made for commercial purposes if under the terms of the contract delivery is to be made within 7 days.

(4) The following are indications that any other contract is made for a commercial purpose and the absence of any of them is an indication that it is made for investment purposes —

(a) either or each of the parties is a producer of the commodity or other property or uses it in his business;

(b) the seller delivers or intends to deliver the property or the purchaser takes or intends to take delivery of it.

(5) It is an indication that a contract is made for commercial purposes that the price, the lot, the delivery date or the other terms are determined by the parties for the purposes of the particular contract and not by reference to regularly published prices, to standard lots or delivery dates or to standard terms.

(6) The following are indications that a contract is made for investment purposes —

(a) it is expressed to be as traded on a market or on a securities exchange;

(b) performance of the contract is ensured by a securities exchange or a clearing house;

(c) there are arrangements for the payment or provision of margin.

(7) A price shall be taken to have been agreed upon when a contract is made —

(a) notwithstanding that it is left to be determined by reference to the price at which a contract is to be entered into on a market or a securities exchange or could be entered into at a time and place specified in the contract; or

(b) in a case where the contract is expressed to be by reference to a standard lot and quality, notwithstanding that provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.

Contracts for differences.

9. Rights —

(a) under a contract for differences; or

(b) under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or in an index or other factor designated for that purpose in the contract.

Notes: This paragraph does not apply where the parties intend that the profit is to be obtained or the loss avoided by taking delivery of any property to which the contract relates.

Investment-linked insurance contracts.

10. Rights under a contract the effecting and carrying out of which constitutes investment-linked insurance business within the meaning of the Insurance Order, 2006 (S 45/2006).

Rights and interests in investments.

11. Any rights or interest in anything which is an investment falling within any other paragraph of this Part of this Schedule.

Notes:

(1) This paragraph does not apply to interests under the trusts of an occupational pension scheme.

(2) This paragraph does not apply to rights or interests that are investments by virtue of any other paragraph of this Part of this Schedule.

Part II

Activities Constituting Investment business

Dealing in investments.

12. Buying, selling, subscribing for or underwriting investments or offering or agreeing to do so, either as principal or as an agent.

Notes:

(1) This paragraph does not apply to a person by reason of his accepting, or offering or agreeing to accept, whether as principal or as agent, an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee

or other similar financial accommodation or assurance which he or his principal has made, granted or provided or which he or his principal has offered or agreed to make, grant or provide.

(2) The references in (1) above to a person accepting, or offering or agreeing to accept, an instrument includes references to a person becoming, or offering or agreeing to become, a party to an instrument otherwise than as a debtor or a surety.

Arranging deals in investments.

13. Making, or offering or agreeing to make arrangements —

(a) with a view to another person buying, selling, subscribing for or underwriting a particular investment; or

(b) with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments.

Notes:

(1) This paragraph does not apply to a person by reason of his making, or offering or agreeing to make, arrangements with a view to a transaction to which he will himself be a party as principal or which will be entered into by him as agent for one of the parties.

(2) The arrangements in (a) are arrangements which bring about or would bring about the transaction in question.

Safekeeping and administration of assets.

14. (1) Safeguarding and administering assets belonging to another which consist of or include investments or offering or agreeing to do so.

(2) Arranging for the safeguarding and administration of assets belonging to another, or offering or agreeing to do so.

Managing securities.

15. Managing, or offering or agreeing to manage, assets belonging to another person where —

(a) the assets consist of or include investments; or

(b) the arrangements for their management are such that the assets may consist of or include investments at the discretion of the person managing or offering or agreeing to manage them.

Investment advice.

16. Giving, or offering or agreeing to give, advice to persons on the merits of buying, selling, subscribing for or underwriting an investment, or exercising any right conferred by a investment to acquire, dispose of, underwrite or convert an investment.

Establishing collective investment schemes.

17. Establishing, operating or winding up a collective investment scheme, including, acting as a trustee of a unit trust scheme, and an operator of an investment company or other arrangement.

Using computer-based systems for giving investment instructions.

18. (1) Sending on behalf of another firm instructions relating to an investment by means of a computer-based system which enables investments to be transferred without a written instrument.

(2) Offering or agreeing to send such instructions by such means on behalf of another person.

(3) Causing such instructions to be sent by such means on behalf of another person.

(4) Offering or agreeing to cause such instructions to be sent by such means on behalf of another person.

Made this 16th. day of Syaaban, 1434 Hijriah corresponding to the 25th. day of June, 2013 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM