International Securities Regulation
Pacific Rim

Dr. Gordon R. Walker—General Editor, Pacific Rim
Robert C. Rosen—General Editor
Sharan S. Ramchandani—Associate Editor
Annabelle Walker—Associate Editor

Volume 2
2026-1 Edition
Issued in August 2026

Summary of Contents

Volume 2 Table of Contents
Chapter ID. Indonesia
Chapter JP. Japan
Chapter KR. Korea
Chapter MY. Malaysia
Chapter MX. Mexico

Thomson Reuters™

For Customer Assistance Call 1-800-328-4880

Mat #43392918

© 2026 Thomson Reuters

This publication was created to provide you with accurate and authoritative information concerning the subject matter covered; however, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

ISBN: 979-8-350-25959-9

Introduction to the July 2026-1 Edition of International Securities Regulation: Pacific Rim

This five-volume set focuses exclusively on jurisdictions around the Pacific Rim and is the perfect solution for practitioners and executives who need securities information for this rapidly expanding market of the world. In-depth analysis and expert commentary in the field of securities law are complemented by exact translations of all important regulations and law, to ensure that you receive the vital information required for effective decisions and actions. Commentary for each jurisdiction is written and updated by expert practitioners who have first-hand experience with the regulations in their own jurisdiction. Unique to this title is full coverage of jurisdictions with difficult-to-source or impossible-to-find English translations of primary source materials.

- **REMOVE and RECYCLE** current Volumes 2 and 3 from your library
- **PLACE** the new 2026-1 Volumes 2 and 3 in your library.

The 2026-1 Edition contains the following updates:

This Release contains the updated **Chapter MX, Securities Regulation in Mexico**, and **Chapter PH, Securities Regulation in Philippines**. Highlights include the following:

- Revised § **MX:5, Interrelationship between Various Organizations of Government—The Executive Power**, regarding the 2024 political elections, wherein the ruling party emerged victorious, further reinforcing its legislative control.
- Updated § **MX:43, Registration and continuing disclosure requirements of public companies—Proxy solicitation**, discussing the political reforms following the 2024 constitutional amendments that emphasized greater public engagement in governance.
- Completely updated § **PH:10, Public offerings and exempt offerings—Registration Statement**, providing extensive information and updates regarding the regulatory approach to digital assets in the Philippines, which continues to develop with innovations in financial technology and evolving market practices.

THOMSON REUTERS

WESTLAW™

MOST PREFERRED ONLINE LEGAL RESEARCH SERVICE

Thomson Reuters Westlaw has been voted the #1 Best Online Legal Research vendor year-after-year by industry professionals. That's because we continually invest more than any other online legal research provider in our people and technology where it matters most. As a result, you find exactly what you need quickly and confidently.

- Build the strongest argument with the most comprehensive collection of legal content
- Deliver better results confidently with WestSearch®, the only search engine designed specifically for the law
- Rely on the most current version of the law with proprietary editorial enhancements
- Access your legal research anytime, anywhere with the free Westlaw apps

LEARN MORE: legal.thomsonreuters.com
SIGN ON: westlaw.com
24/7 REFERENCE ATTORNEYS: 1-800-REF-ATTY (733-2889)

Summary of Contents

Chapter ID. Securities Regulation in Indonesia

- Appendix ID-1. The Capital Market Law Number 8 Year 1995
- Appendix ID-2. Capital Market Organization Number 45 Year 1995
- Appendix ID-3. Capital Market Formal Investigative Procedures Number 46 Year 1995
- Appendix ID-4. Revocation of Capital Market Decree No. 1548/KMK.013/1990 of the Minister of Finance As Last Amended by Decree No. 284/KMK.010/1995
- Appendix ID-5. Foreign Ownership of Investment Funds Number 646/KMK.010/1995

Chapter JP. Securities Regulations in Japan

- Appendix JP-1. Financial Instruments and Exchange Act
- Appendix JP-2. Order for the Enforcement of the Financial Instruments and Exchange Act

Chapter KR. Securities Regulation in Korea

- Appendix KR-1. Commercial Act (Republic of Korea)
- Appendix KR-2. Securities and Exchange Act

Chapter MY. Securities Regulation in Malaysia

- Appendix MY-1. Laws of Malaysia Act 671 Capital Markets and Services Act 2007
- Appendix MY-2. Securities Industry (Central Depositories) Act, 1991 (Act 453) as amended
- Appendix MY-3. Securities Commission Act, 1993 (Act 498) as amended

Chapter MX. Securities Regulation in Mexico

- Appendix MX-1. Securities Market Law
- Appendix MX-2. General Regulations Applicable to Issuers of Securities and Other Participants in the Securities Market
- Appendix MX-3. Foreign Investment Law

Table of Contents

CHAPTER ID. SECURITIES REGULATION IN INDONESIA

§ ID:1 Introduction
§ ID:2 History of Indonesia's capital market
§ ID:3 The Capital Market Regulator
§ ID:4 The Indonesia Stock Exchange
§ ID:5 Purchase of shares by foreign investors
§ ID:6 Going public in Indonesia
§ ID:7 —Definition of securities
§ ID:8 —Prospectus
§ ID:9 —Registration Statement
§ ID:10 —Full disclosure
§ ID:11 —Liability for false statements on a registration statement
§ ID:12 —Liability of other professionals
§ ID:13 Rights issues
§ ID:14 —Affiliated transactions and conflicts of interest
§ ID:15 —Increase in capital without pre-emptive rights to securities
§ ID:16 —Material transactions and changes to business activities
§ ID:17 —Tender offers, mergers or consolidations, acquisitions
§ ID:18 Full disclosure requirements
§ ID:19 Insider trading
§ ID:20 Taxation of securities transactions—Taxation of shares
§ ID:21 —Taxation of bonds
§ ID:22 Sanctions
§ ID:23 Investor Protection Fund
§ ID:24 Electronic filing of reports
§ ID:25 OJK levy
§ ID:26 Alternative dispute resolution in the financial services sector
§ ID:27 Consumer protection regulations
§ ID:28 New Developments
§ ID:29 Going private
§ ID:30 Conclusion

Appendix ID-1. The Capital Market Law Number 8 Year 1995

Appendix ID-2. Capital Market Organization Number 45 Year 1995

Appendix ID-3. Capital Market Formal Investigative Procedures Number 46 Year 1995

Appendix ID-4. Revocation of Capital Market Decree No. 1548/

KMK.013/1990 of the Minister of Finance As Last Amended by Decree No. 284/KMK.010/1995

Appendix ID-5. Foreign Ownership of Investment Funds Number 646/KMK.010/1995

CHAPTER JP. SECURITIES REGULATIONS IN JAPAN

I. JAPANESE LEGAL SYSTEM

§ JP:1 Authority
§ JP:2 Nature of Japanese Laws

II. SECURITIES AND EXCHANGE ACT (SEA)

§ JP:3 Establishment of and amendment to the Securities and Exchange Act
§ JP:4 SEA Amendments between 1952 and 1955
§ JP:5 SEA Amendments in 1965
§ JP:6 SEA Amendments in 1971
§ JP:7 SEA Amendments in 1988
§ JP:8 SEA Amendments in 1990
§ JP:9 SEA Amendments in 1991 and 1992
§ JP:10 SEA Amendment in 1997
§ JP:11 SEA Amendment in 2000
§ JP:12 SEA Amendment in 2003
§ JP:13 SEA Amendment in 2004
§ JP:14 SEA Amendment in 2005

III. THE FINANCIAL INSTRUMENTS AND EXCHANGE ACT (FIEA)

§ JP:15 FIEA Amendment in 2006
§ JP:16 Disclosure Regulations
§ JP:17 Business Regulation
§ JP:18 Disciplinary Regulations
§ JP:19 FIEA Amendments in 2008 and 2009

IV. SOURCES OF SECURITIES REGULATION

§ JP:20 Overview

V. REGULATORY AUTHORITIES FOR SECURITIES REGULATIONS

§ JP:21 Generally
§ JP:22 Self Regulated Organizations
§ JP:23 Investors Protection Funds
§ JP:24 Corporate Accounting Council

VI. DISCUSSION OF REGULATIONS REGARDING SECURITIES MATTERS

A. DEFINITIONS

§ JP:25 "Securities" defined
§ JP:26 "Financial Instruments Business" defined
§ JP:27 "Type I Financial Instruments Business" defined
§ JP:28 "Type II Financial Instruments Business" defined
§ JP:29 "Investment Advisory and Agency Business" defined
§ JP:30 "Investment Management Business" defined
§ JP:31 "Specially Permitted Business for Qualified Institutional Investors, etc." defined

VII. PUBLIC OFFERING, SECONDARY DISTRIBUTION AND PRIVATE PLACEMENT OF SECURITIES

A. IN GENERAL

§ JP:32 Overview

B. HIGH LIQUIDITY FINANCIAL INSTRUMENTS

§ JP:33 Public Offering/Private Placement
§ JP:34 Solicitations Only for Qualified Institutional Investors
§ JP:35 Solicitations Only for Professional Investors
§ JP:36 Solicitations for a Small Number of Investors
§ JP:37 Secondary Distribution of Securities

C. LOW LIQUIDITY FINANCIAL INSTRUMENTS

§ JP:38 Public Offering of Securities
§ JP:39 Secondary Distribution of Securities

VIII. DISCLOSURE REQUIREMENT IN THE PRIMARY MARKET

§ JP:40 Registration Requirement
§ JP:41 Filing of Securities Registration Statements
§ JP:42 Public Inspection of SRS
§ JP:43 Shelf Registration
§ JP:44 Acquisition of Securities and Use of Prospectus

IX. CRIMINAL AND CIVIL LIABILITY

§ JP:45 SRS and Shelf Registration Statement
§ JP:46 Prospectus and Other Materials
§ JP:47 Liability under Article 16 of the FIEA
§ JP:48 Administrative Monetary Penalty

X. CONTINUOUS DISCLOSURE REQUIREMENT

§ JP:49 Securities Report

§ JP:50 Quarterly Report and Semi-annual Report
§ JP:51 Extraordinary Report
§ JP:52 Internal Control Report and Certification Letter
§ JP:53 Share Buyback Report
§ JP:54 Parent Company Status Report
§ JP:55 Public Inspection, Amendment Report, Liability

XI. PARTICIPANTS OF THE SECURITIES MARKET

§ JP:56 Financial Instruments Business Operator and Foreign Securities Company
§ JP:57 Other Financial Institutions
§ JP:58 Financial Instruments Intermediary Service Operator
§ JP:59 Financial Instruments Exchange
§ JP:60 Financial Instruments Firms Association
§ JP:61 Investors Protection Fund
§ JP:62 Financial Instruments Clearing Organization

XII. REGULATION IN THE SECONDARY MARKET

§ JP:63 Dealing and Brokerage Transactions
§ JP:64 Large Volume Holding Report
§ JP:65 Tender Offer
§ JP:66 Regulation on Insider Trading
§ JP:67 Regulation on Short Swing Transactions
§ JP:68 Regulation on Manipulation and Other Unfair Acts
§ JP:69 Stabilization

XIII. SECURITIES INVESTMENT TRUST AND INVESTMENT CORPORATION

§ JP:70 Securities Investment Trust
§ JP:71 Investment Corporation

Appendix JP-1. Financial Instruments and Exchange Act

Appendix JP-2. Order for the Enforcement of the Financial Instruments and Exchange Act

CHAPTER KR. SECURITIES REGULATION IN KOREA

I. OVERVIEW OF LEGAL SYSTEM AND SECURITIES REGULATORY SYSTEM

§ KR:1 Korea's Civil Law System
§ KR:2 History and Development of Korea's Securities Regulatory System
§ KR:3 Intra-National Securities Regulation by States, Provinces, etc.
§ KR:4 Financial Regulatory Reform After Asian Financial Crisis

of 1997; Consolidation of Financial Regulators into the Financial Services Commission (FSC) in 1998
§ KR:5 Securities and Exchange Act (KSEA) was Consolidated into the Financial Investment Services and Capital Market Act in 2007
§ KR:6 Presidential Decrees and FSC/FSS Regulations
§ KR:7 Commercial Act 1962
§ KR:8 Capital Market Promotion Law of 1968 (CMPL)
§ KR:9 Securities Investment Trust Business Act (KSITBA)—Integrated into Capital Market Act
§ KR:10 Foreign Exchange Transactions Act (FOREX Act) and Foreign Investment Promotion Act (FIPA)

II. ORGANIZATIONS INVOLVED IN SECURITIES REGULATION

A. OVERVIEW

§ KR:11 National Securities Regulators and Self-Regulatory Organizations

B. PUBLIC SECURITIES MARKET

§ KR:12 Market Climate
§ KR:13 Primary Market; Issuer Transactions—Equity Market
§ KR:14 —Bond Market
§ KR:15 Secondary Market; Trading Transactions

C. KOREA STOCK EXCHANGE (KSE)

§ KR:16 Overview
§ KR:17 Features
§ KR:18 Trading Hours
§ KR:19 Trading Procedure
§ KR:20 Order Handling and Execution
§ KR:21 Margin Transaction
§ KR:22 Clearing and Settlement

D. OTC MARKET—KOSDAQ SYSTEM

§ KR:23 Overview
§ KR:24 KOSDAQ Listed Securities; Listing Criteria

E. INVESTORS AND MARKET PROFESSIONALS

§ KR:25 Overview
§ KR:26 Individual Investors
§ KR:27 Financial Institutions and Corporate Investors
§ KR:28 Foreign Investors

III. REGULATIONS REGARDING SUBSTANTIVE SECURITIES MATTERS

A. ESTABLISHMENT, REGULATION AND ORGANIZATION OF SECURITIES REGULATORY ORGANIZATIONS

1. Ministry of Finance and Economy (MOFE), the Securities and Exchange Commission (KSEC) and the Securities Supervisory Board (KSSB) before 1998

§ KR:29 Establishment of the Korea Stock Exchange (KSEC) and the Korea Securities Supervisory Board (KSSB)
§ KR:30 Organizational Structure and Functions of the KSEC and the KSSB
§ KR:31 Relationship Between the Ministry of Finance and Economy (MOFE) and the Korea Stock Exchange (KSEC)
§ KR:32 Political Culture of the MOFE and KSEC in Regulating the Stock Market

2. Regulatory Reform

§ KR:33 Creation of the Financial Supervisory Commission (FSC), Financial Supervisory Service (FSS) and the Securities and Futures Commission (SFC)
§ KR:34 Self-Regulatory Organizations (SROs)
§ KR:35 Korean Exchange (KRX)
§ KR:36 Korea Financial Investment Association (KOFIA)
§ KR:37 Korea Securities Depository (KSD)

B. DEFINITION OF SECURITIES

§ KR:38 KSEA Definition of Securities (Prior to Capital Market Act)
§ KR:39 Definition Under the Capital Market Act

C. PUBLIC OFFERINGS AND EXEMPTED OFFERINGS IN THE PRE-CAPITAL-MARKET-ACT ERA

1. Public Offerings

§ KR:40 Registration Requirements for Public Offering
§ KR:41 Basic Information Package
§ KR:42 Definition and Procedure of Public Offering
§ KR:43 Pre-Filing Period
§ KR:44 Pre-Effective Period
§ KR:45 Post-Effective Period
§ KR:46 Timing and Other Considerations of a Public Offering
§ KR:47 Reviewing of the Public Offering Application
§ KR:48 Underwriting

§ KR:49 Exemptions from Registration

2. Public Offering Regulation under the Capital Market Act

§ KR:50 Registration Requirement
§ KR:51 Investment Prospectus
§ KR:52 Liability for Fraudulent Documents
§ KR:53 —Measurement of Damages
§ KR:54 —Statute of Limitations

D. CONTINUING DISCLOSURE REQUIREMENTS OF PUBLIC COMPANIES

§ KR:55 Periodical Business Reports
§ KR:56 Material Facts Report
§ KR:57 Civil liabilities for Damages Caused by Misrepresentation or Omission of Business Report or Material Facts Report

E. FRAUD, MANIPULATION AND INSIDER TRADING

§ KR:58 General
§ KR:59 Market Manipulation
§ KR:60 Misleading Others About Market Booming or Making Wrong Judgment
§ KR:61 Disseminating Rumors or Misleading Information
§ KR:62 Price Fixing or Stabilization
§ KR:63 Other Market Manipulation Conduct
§ KR:64 Liabilities for Damages Caused by Market Price Manipulation
§ KR:65 Insider Trading
§ KR:66 Reporting of Shareholding by Executives and Significant Shareholders
§ KR:67 Short-Swing Trading
§ KR:68 Insider Trading While in Possession of Nonpublic Material Information
§ KR:69 Liabilities for Damages Arising from Insider Trading

F. TENDER OFFERS, TAKEOVERS AND OTHER CORPORATE COMBINATIONS

§ KR:70 General
§ KR:71 Tender Offers

IV. REFORM OF FINANCIAL MARKET REGULATION IN KOREA: THE FINANCIAL INVESTMENT SERVICES AND CAPITAL MARKETS ACT

§ KR:72 Overview
§ KR:73 Accounting and Auditing
§ KR:74 Commercial Code

§ KR:75 Capital Market Act
§ KR:76 Audit

V. INTERNATIONAL SECURITIES TRANSACTIONS

§ KR:77 Foreign Investment in Korea
§ KR:78 Foreign Securities Companies in Korea
§ KR:79 Foreign Companies Listed on the KRX
§ KR:80 Korean Companies Listed on Foreign Stock Exchanges
§ KR:81 Korean Investors Investing in Foreign Securities
§ KR:82 Participation in International Securities Organizations

VI. INVESTMENT COMPANIES AND INVESTMENT ADVISERS

§ KR:83 Historical Development of Investment Companies
§ KR:84 Collective Investment Business Under the Capital Market Act
§ KR:85 Investment Advisory Business Under the Capital Market Act

VII. BROKERAGE AND DEALING BUSINESSES

§ KR:86 Historical Development
§ KR:87 Investment Brokerage Business Under the Capital Market Act
§ KR:88 Investment Trading Business Under the Capital Market Act

VIII. RECENT TRENDS AND DEVELOPMENTS

§ KR:89 Financial Regulatory Reform
§ KR:90 Financial Crisis and Foreign Investment
§ KR:91 Disclosure Requirements
§ KR:92 Establishment and Supervision of Financial Holding Companies
§ KR:93 Financial Industry Reform

Appendix KR-1. Commercial Act (Republic of Korea)

Appendix KR-2. Securities and Exchange Act

CHAPTER MY. SECURITIES REGULATION IN MALAYSIA

I. LEGAL SYSTEM

§ MY:1 In general

II. SECURITIES REGULATORY SCHEME

§ MY:2 In general
§ MY:3 Securities laws

§ MY:4 Organisations involved in securities regulation

III. PUBLIC SECURITIES MARKET

§ MY:5 In general
§ MY:6 Islamic Capital Market (ICM)
§ MY:7 Listed securities
§ MY:8 Private debt securities
§ MY:9 Derivatives and Futures

IV. REGULATIONS REGARDING SUBSTANTIVE SECURITIES MATTERS

A. ESTABLISHMENT, REGULATION AND ORGANISATION OF SECURITIES REGULATORY ORGANISATIONS

§ MY:10 Securities Commission
§ MY:11 Powers of the Securities Commission
§ MY:12 Enforcement and investigation
§ MY:13 Companies Commission of Malaysia (CCM)
§ MY:14 Bursa Securities
§ MY:15 Malaysian Exchange of Securities Dealing & Automated Quotation Bhd (MESDAQ) known as the ACE market since August 3, 2009
§ MY:16 Definition of securities

B. REGULATION OF PUBLIC OFFERINGS

§ MY:17 Public offerings and exempted offerings
§ MY:18 Approval by the Securities Commission
§ MY:19 Approval by the Central Bank (Bank Negara Malaysia) for issue of debt securities not required
§ MY:20 Approval, registration and lodgment of prospectuses
§ MY:21 Exempt offerings under the CMSA 2007
§ MY:22 Excluded Offers and Invitations under the SCMA 1993
§ MY:23 Excluded Issues under the CMSA 2007
§ MY:24 Prospectuses under the CMSA 2007
§ MY:25 Share hawking
§ MY:26 Advertising restrictions for offerings
§ MY:27 Special rules for offers of debentures

C. MANDATORY DISCLOSURE REQUIREMENTS OF PUBLIC COMPANIES

§ MY:28 Accounts and reports—Generally
§ MY:29 —Borrowing corporations
§ MY:30 Section 84 interests
§ MY:31 Bursa Malaysia requirements—Periodic reports
§ MY:32 Continuous disclosure by listed companies
§ MY:33 Proxy solicitation

§ MY:34 Disclosure of interest in shares

D. FRAUD, MANIPULATION AND INSIDER TRADING

§ MY:35 Overview
§ MY:36 Prohibited Conduct under the CMSA 2007
§ MY:37 Insider trading
§ MY:38 Short selling

E. TENDER OFFERS, TAKEOVERS AND OTHER CORPORATE COMBINATIONS

§ MY:39 Tender offers
§ MY:40 Take-over offers
§ MY:41 SC's powers takeovers and mergers
§ MY:42 Arrangements and reconstructions
§ MY:43 Share buy backs
§ MY:44 Accounting and auditing

V. INTERNATIONAL SECURITIES TRANSACTIONS

§ MY:45 Registration requirement for foreign companies
§ MY:46 Exchange control
§ MY:47 Investment companies and investment advisers

VI. BROKER-DEALERS OR ENTITIES AUTHORIZED TO TRADE IN SECURITIES

§ MY:48 In general
§ MY:49 Licensing
§ MY:50 Restrictions on dealers and advisers
§ MY:51 Revocation and suspension of licence
§ MY:52 Register of interest
§ MY:53 Accounts and audit
§ MY:54 Court powers relating to dealer's bank accounts

VII. OTHER SECURITIES REGULATIONS

§ MY:55 Intra-national securities regulation by States
§ MY:56 Civil and criminal liability
§ MY:57 Central Depositories

VIII. NEW DEVELOPMENTS

§ MY:58 Equity Crowd Funding and Peer-to Peer Lending (P2PL) in Malaysia
§ MY:59 New Developments in Financial Technologies ("FinTech")

Appendix MY-1. Laws of Malaysia Act 671 Capital Markets and Services Act 2007

Appendix MY-2. Securities Industry (Central Depositories) Act, 1991 (Act 453) as amended

Appendix MY-3. Securities Commission Act, 1993 (Act 498) as amended

CHAPTER MX. SECURITIES REGULATION IN MEXICO

I. LEGAL SYSTEM

§ MX:1 Generally
§ MX:2 Mexico, a civil law country
§ MX:3 Interrelationship between various organizations of government
§ MX:4 —Legislative Branch
§ MX:5 Interrelationship between Various Organizations of Government—The Executive Power
§ MX:6 —Judiciary Branch
§ MX:7 Role of courts and administrative agencies in interpretation of laws—Binding effect
§ MX:8 —Suits for *Amparo*
§ MX:9 —Administrative agencies

II. SECURITIES REGULATORY FRAMEWORK

§ MX:10 History and Development: the New Securities Market Law
§ MX:11 Regulatory scheme; identification and creation of main legal bodies
§ MX:12 Regulation under the General Law of Business Organizations (GLBO)
§ MX:13 Regulation under the Foreign Investment Law (FIL)
§ MX:14 Negotiable Instruments and Credit Transactions Law (NICTL)
§ MX:15 New Securities Market Law

III. PUBLIC SECURITIES MARKET

§ MX:16 Relevant institutions and organizations
§ MX:17 Basic Statistical Information—Brokerage Firms
§ MX:18 Basic statistical information—Investment funds
§ MX:19 —Banks
§ MX:20 —Other financial institutions

IV. DISCUSSION OF REGULATIONS REGARDING SUBSTANTIVE SECURITIES MATTERS

§ MX:21 Creation, Regulation and Organization of Securities Regulatory Organizations
§ MX:22 Creation, regulation and organization of securities regulatory organizations—Governmental agencies
§ MX:23 —Ministry of the Treasury and Public Credit
§ MX:24 —National Banking and Securities Commission (CNBV)

§ MX:25 —Banco de México
§ MX:26 —National Insurance and Bonding Commission (CNSF)
§ MX:27 —National Pension Fund System Commission (CONSAR)
§ MX:28 —Mexican Stock Exchange
§ MX:29 —Securities deposit institutions
§ MX:30 —Derivatives exchanges
§ MX:31 Definition of security
§ MX:32 Public Offerings and exempted offerings—Definitions of public offering
§ MX:33 —Regulatory scheme
§ MX:34 —Transactions subject to a special treatment
§ MX:35 —Exempted offerings
§ MX:36 Registration and continuing disclosure requirements of public companies
§ MX:37 —Required documents for registration under *Circular Única de Emisoras*
§ MX:38 —Disclosure Requirements
§ MX:39 —Expedited registration and exempt securities
§ MX:40 — —Registration without public offering
§ MX:41 —Preventive registration
§ MX:42 —Suspension of trading or delisting
§ MX:43 —Proxy solicitation
§ MX:44 Fraud, manipulation and insider trading—Legal provisions
§ MX:45 —Definition of privileged information
§ MX:46 — —First Element: Knowledge of Relevant Events
§ MX:47 — —Second element: not available to the public through the exchange
§ MX:48 — —Third element: influence on the stock quote and prices of securities
§ MX:49 — —Special restrictions—Increase in participation
§ MX:50 — —Insiders/blackout periods
§ MX:51 —Exemptions
§ MX:52 —Enforcement
§ MX:53 Tender offers and compulsory offers—Jurisdictional basis for regulation of tender offers by the Commission
§ MX:54 —Compulsory offers
§ MX:55 Accounting and auditing
§ MX:56 —Certain requirements with respect to issuers
§ MX:57 —Developments in the accounting requirements applicable to brokerage firms
§ MX:58 International securities transactions
§ MX:59 —Provisions of Mexican Law applicable to transactions by foreigners involving securities issued by Mexican corporations—In general
§ MX:60 —Restrictions on foreign investment
§ MX:61 —Special rules for investments in the forbidden zone
§ MX:62 —Purchases of foreign securities by Mexican persons
§ MX:63 Mutual funds and mutual fund operating companies

§ MX:64 —General provisions applicable to mutual funds
§ MX:65 Particular types of mutual funds
§ MX:66 —Variable income mutual funds
§ MX:67 —Debt instrument mutual funds
§ MX:68 —Capital mutual funds
§ MX:69 —Limited purpose mutual funds
§ MX:70 —Pension funds
§ MX:71 Entities authorized to trade in securities
§ MX:72 Definition of Intermediation under the SML
§ MX:73 Types of Intermediation Activities
§ MX:74 —Intermediation of registered securities
§ MX:75 —Intermediation of unregistered securities; unlisted shares representing capital stock of legal entities
§ MX:76 —Other unregistered securities
§ MX:77 —Intermediation with securities issued abroad
§ MX:78 —Other Intermediation Activities
§ MX:79 Intermediaries of the securities market
§ MX:80 Authorized from the Commission to trade securities; brokerage firms
§ MX:81 —Branch offices
§ MX:82 —Affiliates
§ MX:83 —Ownership structure; brokerage firms
§ MX:84 —Affiliates
§ MX:85 —Permissible activities
§ MX:86 Operating requirements for brokerage firms
§ MX:87 —Affiliates
§ MX:88 Oversight and regulation by Commission—Brokerage firms and affiliates
§ MX:89 —Credit organizations
§ MX:90 —Operating companies of mutual funds and of pension funds
§ MX:91 Oversight and regulation by the Commission—Operating companies of mutual funds and of pension funds—Authorized services
§ MX:92 Oversight and regulation by Commission—Afores; operating company of pension funds
§ MX:93 Distribution companies

V. RECENT TRENDS AND DEVELOPMENTS

§ MX:94 Generally

Appendix MX-1. Securities Market Law

Appendix MX-2. General Regulations Applicable to Issuers of Securities and Other Participants in the Securities Market

Appendix MX-3. Foreign Investment Law

Chapter ID

Securities Regulation in Indonesia

Priyatna Yoopie[*] *Putri Natalia*[**] *and Dr. Gordon R. Walker*[***]

§ ID:1 Introduction
§ ID:2 History of Indonesia's capital market
§ ID:3 The Capital Market Regulator
§ ID:4 The Indonesia Stock Exchange
§ ID:5 Purchase of shares by foreign investors
§ ID:6 Going public in Indonesia
§ ID:7 —Definition of securities
§ ID:8 —Prospectus
§ ID:9 —Registration Statement
§ ID:10 —Full disclosure
§ ID:11 —Liability for false statements on a registration statement
§ ID:12 —Liability of other professionals
§ ID:13 Rights issues
§ ID:14 —Affiliated transactions and conflicts of interest
§ ID:15 —Increase in capital without pre-emptive rights to securities
§ ID:16 —Material transactions and changes to business activities
§ ID:17 —Tender offers, mergers or consolidations, acquisitions
§ ID:18 Full disclosure requirements
§ ID:19 Insider trading
§ ID:20 Taxation of securities transactions—Taxation of shares
§ ID:21 —Taxation of bonds
§ ID:22 Sanctions
§ ID:23 Investor Protection Fund
§ ID:24 Electronic filing of reports
§ ID:25 OJK levy
§ ID:26 Alternative dispute resolution in the financial services sector
§ ID:27 Consumer protection regulations

---

[*]Priyatna Yoopie is a partner at Sagita Ridjab Syah & Partners. Priyatna specializes in capital markets. Financial services, corporate and M&A works. EMAIL: priyatna.yoopie@srsp.co.id.

[**]Putri Natalia is an associate at Sagita Ridjab Syah & Partners. Putri specializes in capital markets, corporate, foreign direct investment, employment and IT works. EMAIL: putri.natalia@srsp.co.id.

[***]Dr. Gordon R. Walker is the General Editor of this treatise. See the About the Authors section at the front of the treatise for his biographical information and e-mail address.

§ ID:28 New Developments
§ ID:29 Going private
§ ID:30 Conclusion

Appendix ID-1. The Capital Market Law Number 8 Year 1995

Appendix ID-2. Capital Market Organization Number 45 Year 1995

Appendix ID-3. Capital Market Formal Investigative Procedures Number 46 Year 1995

Appendix ID-4. Revocation of Capital Market Decree No. 1548/KMK.013/1990 of the Minister of Finance As Last Amended by Decree No. 284/KMK.010/1995

Appendix ID-5. Foreign Ownership of Investment Funds Number 646/KMK.010/1995

§ ID:1 Introduction

Indonesia continues its trajectory as a growing democracy with the October 2014 election of Joko Widodo (affectionately known as "Jokowi") as President amidst an intensely contested campaign. Jokowi has a strong reformist and civil service accountability background, having served as the Mayor of the Central Java city of Solo and, up until his Presidency, as the Governor of Jakarta. Whilst Jokowi inevitably faces bureaucratic and structural headwinds during his presidency, his focused and progressive attitude has steered Indonesia along the path of ongoing economic development (including a more grass roots approach to living conditions).

Being elected for the second time in a democracy is a clear indication that Jokowi has demonstrated his leadership in directing Indonesia to an advanced economic development path. This is evidenced by the large number of infrastructure developments, as well as the increase of foreign investment in Indonesia. Foreign investment in 2021 has increased by 14.0% compared to 2020 from Rp 98.0 trillion to Rp 111.7 trillion. The realization of foreign direct investment reached 50.8% of the realization in 2021.[1]

Having recovered from the Asian downturn of the late 1990s and largely spared from the global financial crisis (due mainly to large internal markets and relative insulation from "toxic loans"), Indonesia has become increasingly attractive as a destination for foreign investment due to its vast natural resources, developing consumer economy and its potential as a low-cost manufacturing centre. In 2009 (a year in which most countries were still in economic stagnation and recovery), Indonesia boasted a 4.5% GDP growth rate transforming it into one of the most important economies in Asia. This positive growth

---

[Section ID:1]

[1] https://www.bkpm.go.id/id/publikasi/siaran-pers/readmore/2420901/71101#:~:text=Investasi%20PMA%20pada%20Triwulan%20I,realisasi%20triwulan%20I%20tahun%202021.

rate continued in 2017, when GDP growth in Indonesia was 5,1%. Indonesia's GDP growth in 2019 was 5.02 percent, slightly lower than the 2018 achievement of 5.17 percent. Furthermore, Moody's, Fitch and Standard and Poors (S&P) have upgraded Indonesia's sovereign credit rating to investment grade. On 21 December 2017, Fitch Rating affirmed Indonesia's sovereign credit rating at BBB, and Moodys sovereign credit rating for Indonesia was upgraded to Baa2 on 13 April 2018. As 5 June 2018, S&P affirmed Indonesia's sovereign credit rating at the investment grade of BBB-. Standard and Poor's (S&P) upgraded the Sovereign Credit Rating of the Republic of Indonesia from BBB-/ Stable Outlook to BBB/Stable Outlook, as announced on May 31st, 2019.[2]

In recent years (coupled with the downturn in the resources cycle), Indonesia's growth has slightly dropped from 6% to 5.02%.

Recent years have seen various governmental efforts to modernize Indonesia's regulatory environment to assist in Indonesia's economic recovery. Updated intellectual property laws, competition laws, anti-corruption measures, banking and capital market laws, and the introduction of the "single investment window" for foreign direct investment are all examples of the ongoing reform effort. Due to its recent economic and political stability, Indonesia now represents one of Asia's best potential growth opportunities in the eyes of many investors.

This Country Commentary focuses on the Indonesian capital market. This is because the capital market constitutes the main securities market in Indonesia.

Presently, capital market regulation in Indonesia is based on a number of legislative instruments, the principal one being the Capital Market Law 1995 (*Undang-Undang Pasar Modal*, Law No. 8 of 1995). This legislation came into effect on 1 January 1996. It revoked the Stock Exchange Law (*Undang-Undang Bursa*, Law No. 15 of 1952).

The scope of the Capital Market Law 1995 is wide. It enumerates the powers of the main regulatory body, until recently known as the Capital Market and Financial Institutions Supervisory Agency (*Badan Pengawas Pasar Modal dan Lembaga Keuangan* or Bapepam), market institutions such as the Indonesia Stock Exchange (IDX), the role of market participants such as brokers, and the conduct of market transactions.

The present legal framework of the Indonesian capital market is shaped by the Capital Market Law 1995 as the principal legislation. Most of the pre-1996 regulations have been revoked and replaced by regulations issued by Bapepam from 1996 up to 2013 and now OJK (defined below) from 1 January 2013.

Since 2002, the Indonesian authorities have been working on proposals to amend the Capital Market Law 1995. In mid-2003,

[2] https://www.bi.go.id/en/iru/economic-market-data/Pages/SnP-Upgrades-Indonesias-Sovereign-Credit-Rating-to-BBB-Stable-Outlook-Investment-Grade.aspx.

proposed amendments were submitted to the Indonesian parliament to transfer the role of Bapepam to a new Financial Services Authority (*Otoritas Jasa Keuangan or* "OJK").

In 2004, Law No. 23 of 1999 on Bank Indonesia was amended by Law No. 3 of 2004 (and more recently by Law No. 6 of 2009) to provide for the establishment of the OJK by 31 December 2010 as a "super regulator" across the banking, capital markets and non-bank financial institutions space in Indonesia.

The process of establishing the OJK formally commenced in July 2010 with a draft bill put before the Indonesian parliament for discussion.

On 22 November 2011, Law No. 21 of 2011 on the Financial Services Authority (**OJK Law**) came into effect, to establish the OJK as the primary licensing, investigative and supervisory body across the entire financial services sector with a good deal of implementation powers delegated to its (Presidentially appointed) Board of Commissioners.

On 31 December 2012, the functions and authorities of the Ministry of Finance that were performed by Bapepam were transferred to the OJK. Bank Indonesia's authority over the regulation of the banking industry (other than macroeconomic and treasury legislation) was also transferred to the OJK on 31 December 2013. The OJK Law does not repeal and replace previous legislation in the banking and/or financial sector provided the legislation does not conflict with the Bill or has not been replaced by the OJK.

§ ID:2 History of Indonesia's capital market

The concept of a capital market was introduced in Indonesia during the era of Dutch colonization, when the *Vereniging voor de Effecten Handel* was established in Batavia (now Jakarta). The securities traded at that time were the shares and bonds of Dutch companies operating in Indonesia. In 1925, two more stock exchanges were established in Semarang and Surabaya. However, with the arrival of World War II, the Dutch Indies Government restricted capital market activities to Batavia. During the Japanese occupation, all activities on the stock exchange halted.

The Indonesian authorities re-activated capital market activities after Indonesia's independence. A new Stock Exchange Law was ratified on September 26, 1952. Coordination of capital market activities was given to the Union of Money and Securities Traders (*Perserikatan Pedagang Uang dan Efek-Efek* or PPUE), which consisted of three government banks and several securities dealers.

There was modest stock exchange activity from 1954 to 1956, when the Government issued Bank Industri Negara bonds. However, during the next ten years, due to inflation, massive currency devaluations (for example, Rp. 1,000 became Rp. 1 during this time), and an unstable economy, capital market activities were virtually non-existent.

On 26 July 1968, Bank Indonesia, the Indonesian central bank, formed a Preparatory Team to consider reinvigorating and establishing the money market and capital market. The purpose of the Preparatory Team was to collect data and provide recommendations to the Governor of Bank Indonesia on how best to develop a capital market in Indonesia and on how best to reactivate the stock exchange.

The next major step occurred in 1976 with the issuing of a Presidential Decree creating the Capital Market Executive Board (*Badan Pelaksana Pasar Modal,* also Bapepam in its acronym). The Presidential Decree gave tax facilities to encourage public companies to go public. Bapepam was formed as a unit within the Department of Finance. Its duties were to assist the Minister of Finance in supervising the development of both the money market and the capital market. Its original purposes included training in the operation of national and international money markets and capital markets, the evaluation of companies wishing to sell shares to the public, the operation of an effective and efficient stock exchange, and the monitoring of the development of companies which sell shares through capital markets.

On 10 August 1977, concurrently with the initial public offering of PT Semen Cibinong, President Soeharto officially re-opened the Jakarta Stock Exchange. In 1977, 13 foreign-owned companies listed on the Jakarta Stock Exchange, however, it was not until the late 1980's that the capital market in Indonesia began to grow in earnest, marked by the establishment of the Surabaya Stock Exchange (SSX), located in Indonesia's second largest city, Surabaya, in 1989. At that time, Bapepam had a dual function. It operated the Jakarta Stock Exchange and supervised the capital markets.

By Presidential Decree No. 53 of 1990, Concerning Capital Markets, Bapepam was reconstituted to become the Capital Market Supervisory Board (*Badan Pengawas Pasar Modal,* also abbreviated to Bapepam). Its dual function of operating the JSX and supervising the capital market was reduced to the single function of supervising the capital market. Subsequently, Bapepam transferred operation of all activities pertaining to the Jakarta Stock Exchange, including all its assets, to PT Bursa Efek Jakarta, a new limited liability company licensed to operate the Jakarta Stock Exchange (JSX). This step marked the successful privatization of the JSX.

A significant milestone in Indonesia's capital market's history occurred in 2007 when the shareholders of the SSX and JSX agreed to consolidate SSX into JSX, which later become the Indonesia Stock Exchange and PT Bursa Efek Jakarta was re-named PT Bursa Efek Indonesia.

Whilst there have been high level comments about the prospect of a regional stock exchange off the back of the ASEAN economic community integration starting from 2015, the likelihood of a pan-regional bourse still looks a long way off.

§ ID:3 The Capital Market Regulator

Articles 3-5 of the Capital Market Law 1995 list the following func-

tions and responsibilities of the Capital Market Regulator (at that time known as Badan Pengawas Pasar Modal, shortened as Bapepam):

(i) the granting of:

(a) business licenses to stock exchanges, clearing and underwriting institutions, depository and settlement institutions, investment funds, securities companies, investment advisors and securities administration bureaus;

(b) individual licenses to representatives of underwriters, representatives of securities broker-dealers and representatives of investment managers; and

(c) approvals to custodian banks;

(ii) the registration of capital market supporting professionals and trust agents;

(iii) the determination of the requirements and procedures for selecting commissioners and/or directors of stock exchanges, clearing and underwriting institutions and depository and settlement institutions, as well as the procedures for suspending such officials and for appointing interim management until the appointment of new commissioners and/or directors;

(iv) the determination of the requirements and procedures for a Registration Statement (which typically includes a prospectus) and the declaration, postponement, or cancellation of the effectiveness of such Registration Statement;

(v) the inspection and investigation of any party believed to be in alleged violation of the Capital Market Law 1995 and/or its implementing regulations;

(vi) the conditions necessary for any party to:

(a) terminate or correct advertisements or promotions related to capital market activities; or

(b) take stipulated measures to remedy consequences arising from such advertisements or promotions;

(vii) the inspection of:

(a) public companies or issuers which have submitted or are obliged to submit a Registration Statement to Bapepam; or

(b) parties obliged to have business licenses, individual licenses, approvals or professional registrations pursuant to the Capital Market Law 1995;

(viii) the appointment of a party to conduct certain inspections under the authority granted to Bapepam in point (vii);

(ix) the publication of inspection findings;

(x) the suspension or cancellation of listed securities on a stock exchange or the suspension of any trading of specific securities for a certain period to protect the interests of investors;

(xi) the cessation of stock exchange trading activity for a certain period in the case of an emergency;

(xii) the examination of an appeal submitted by a party upon whom sanctions have been imposed by a stock exchange, clearing and underwriting institution, or depository and settlement Institution and the determination as to the revocation or confirmation of such sanctions;

(xiii) the stipulation of fees for the granting of licenses, approvals, registrations, inspections and examinations, and other fees related to capital market activities;

(xiv) the implementation of measures to prevent loss to the public arising from capital market violations;

(xv) the provision of additional technical interpretations regarding the Capital Market Law 1995 or its implementing regulations;

(xvi) the determination of other instruments as securities where these are not otherwise covered by the Capital Market Law 1995; and

(xvii) any other act required by the Capital Market Law 1995.

As preparation for the establishment of the OJK, in 2005 Bapepam was merged with the Ministry of Finance's Directorate General of Financial Institutions (in charge of non-bank financial institutions like insurance, pension funds, venture capital companies and finance companies), and it was renamed as Bapepam-LK (Badan Pengawas Pasar Modal & Lembaga Keuangan, i.e. the Capital Market & Financial Institutions Supervisory Agency).

In view of the establishment of the OJK, Bapepam-LK has ceased to exist and ceded these powers and responsibilities to the OJK on and from 31 December 2012.

§ ID:4 The Indonesia Stock Exchange

The transfer of the management, operations and assets of the JSX from Bapepam to PT Bursa Efek Jakarta saw the beginning of a spectacular rise in share trading and prices from the early 1990s to the end of 1995. In 1995, the volume of trading activity reached 10.1 billion shares (91% up on 1994) worth $14.4 billion (22% up on 1994).[1] The increased volume of share trading overwhelmed the JSXs manual trading system. On 22 May 1995 the JSX adopted an automated trading system (JATS) capable of settling anywhere from 50,000 to 500,000 transactions daily.

By mid-1997, just prior to the start of the Asian financial crisis, 325 companies had shares and bonds listed on the two stock exchanges the JSX and the SSX and the Indonesian capital market was firmly linked to the global capital market.[2] Also in 1997, Bapepam issued rules permitting the JSX to offer margin trading.

The Asian financial crisis, which began in mid-1997, had a dramatic impact on Indonesia. In the nine months after July 1997, the rupiah lost 76% of its value against the U.S. dollar. In U.S. dollar terms, by

---

[Section ID:4]

[1]Source: 1996 Indonesian Capital Market Directory.

[2]Source: Indonesian Securities and Capital Market Services Directory 1998.

March 1998 the JSX capitalization had shrunk to $19.2 billion from $95 billion the year before.[3]

To overcome the tumultuous conditions, the government, Bapepam and the stock exchanges took major steps to strengthen the capital market sector. These steps include a removal of the 49% cap on foreign investor ownership of public-listed shares; a host of state-owned companies being privatized and slated for privatization or partial-privatization through the stock exchanges; and the JSX continuing to develop its regulations to improve its performance as the leading stock exchange in Indonesia.

In July 2000, the JSX introduced scripless trading. This was aimed at improving market liquidity and also to minimize fraud and other misdemeanors involving the handling of physical share certificates. It has also enabled JSX to shorten the transaction and settlement period for trades. Subsequently, in 2002, JSX introduced remote trading to enable market participants to undertake transactions without having to be physically present on the trading floor. This initiative will improve market access, efficiency and the speed of trading transactions.

In 2005 a Disaster Recovery Center was put in place whilst a year later in 2006, a Business Contingency Plan procedure was implemented. Both developments improved the perception and credibility of Indonesia's capital market as well as introducing desirable risk management mechanisms.

To help investors assess securities, a rating agency PT Peringkat Efek Indonesia (Pefindo) was established in 1994. Issuers, especially of bonds, obtain a Pefindo rating to increase liquidity and marketability. In 1997, another rating agency PT Kasnic Duff & Phelps Credit Rating Indonesia was established. Its role was also to assess securities, conduct investment research and other activities pursuant to the Capital Market Law 1995. In 1999, this company was acquired by Moody's, and currently known as PT Moody's Indonesia.

Indonesia escaped relatively unscathed from the global financial turmoil that affected markets in 2008 and 2009. In January 2008 the Jakarta Composite Index (JCI) posted a new record high of 2,830.263 and although it dipped below 1,300 towards the end of 2008 and at the start of 2009, it had recovered to a healthy 2,534.356 on 30 December 2009. From 2010 to 2017, the JCI has grown from 3703.51 to 6,355.65. In 2020, there is a slight decrease, such that the number decreased to 6,325.406.[4]

Since 2009 the IDX has been one of the stand-out regional stock exchanges as shown in the table below.

---

[3]Source: Indonesian Securities and Capital Market Services Directory 1998.

[4]https://www.idx.co.id/media/9628/idx_annually-statistic_2020.pdf.

Comparative Performance of Select Stock Indices: 2009-2017

Country Stock Exchange Index	31-Dec-9	31-Dec-17	% Rise
31 December 2009 to 31 December 2017			
Thailand	734.54	1,753.71	138.65%
Indonesia	2,534.4	6,355.65	150.775%
Hong Kong	21,872.5	29,919.15	36.788%
Singapore	2,897.62	3.703,512	17.458%
Japan	10,546.44	22,764.94	115.854%
Malaysia	1,272.78	1,796.81	41,17%

Source: Hong Kong Exchanges and Clearing Limited and Indonesian Stock Exchange.

Key indicators reflected healthy gains. IDX's End of Year Press Release issued on 30 December 2013 reported that market capitalization increased from Rp 4,127 trillion[5] in December 2012 to Rp. 7,033 trillion on 27 December 2013, resulting in a gain of 0.87%. The average volume of daily transactions on the IDX increased from Rp 4.54 trillion in 2012 to Rp 6.25 trillion in 2013 with the average daily stock trading value increasing by 37.68% during the same period. Since 2003, the number of investment funds (*reksa dana*) has increased from 182 to 916 by the end of 2013 while their net assets increased from Rp 72.8 trillion to Rp 221.2 trillion during the same period.

Running parallel with the main capital market on the IDX is the gradual growth of the *syariah* capital market (*pasar modal syariah*). Operating Islamic law principles including the prohibition of interest—the *syariah* capital market has seen steady growth in the number of issuers increasing from 6 in 2003 to 33 in 2013 and 426 as per January 2021. The separate stock index which tracks the *syariah* capital market, the Jakarta Islamic Index, has risen from 118.9 points at the close of 2003 to 585.6 points at the close of 2013.

Trading at the IDX is conducted under several broad categories. The first is regular automated trading through the JATS (Jakarta Automated Trading System) involving the continuous auction of shares, bonds and rights certificates. JATS-NextG was implemented in March 2009 which significantly improved the capability of the previous trading system (which, since June 2009, has the capacity to handle

[5]Based on an exchange rate of USD 1: Rp. 11,400, Rp. 1 trillion is equivalent to approximately USD 81 million.

500,000 transactions and 1,000,000 orders per day[6]). IDX has further upgraded the system on May 2018, increasing the capacity to handle 15,000,000 transactions and 7,500,000 orders per day. There is also a cash market and a negotiated market. Clearing and settlement are undertaken through the dedicated clearing and settlement institutions, PT Kliring Penjaminan Efek Indonesia (KPEI) and PT Kustodian Sentral Efek Indonesia (KSEI), respectively. Since 2019, the IDX settles transactions on a T+2 settlement period for the regular market.

Generally, investors pay a negotiated brokers commission of up to a maximum of 1% of the value of the transaction. Brokers in turn pay a transaction fee of 0.018% to the IDX in respect of such regular and cash market transactions. Brokers must deposit 0.009% of the value of each transaction guaranteed by KPEI (which is every regular and cash market transaction).

§ ID:5 Purchase of shares by foreign investors

Until August 1997, there were restrictions in place which limited the extent to which foreign parties can purchase shares through the JSX. Where these applied, generally, a foreign party could not own more than 49% of the total listed shares of a company.

In September 1997, after the onset of the Asian financial crisis, the Minister of Finance issued a decree (Minister of Finance Decree No. 467/KMK.010/1997) and Bapepam issued a regulation (Bapepam Regulation No. S-213/PM/1997) which effectively removed these limits except in the case of banking companies.

In May 1999, a new Government Regulation No. 29 of 1999 was enacted which implemented the provisions of the 1998 amendments to the Banking Law 1992 (*Undang-Undang Perbankan,* Law No. 7 of 1992). Pursuant to this new regulation, foreign ownership of banking shares is generally regulated as follows:

- A foreign party through direct placement or through stock exchange transactions is permitted to own up to a maximum of 99% of the total number of a banks issued shares.
- A foreign party is permitted to own through stock exchange transactions up to 100% of a bank's shares listed on the stock exchange.
- A bank can list on a stock exchange up to 99% of its issued shares.
- At least 1% of a bank's issued shares which are not listed on a stock exchange must be owned by an Indonesian citizen or company.

Indonesia's foreign direct investment regime is governed by Law No. 25 of 2007 on Capital Investment (the Investment Law). Under

[6]PT Bursa Efek Indonesia 2009 Annual Report.

Article 12 of the Investment Law the President may specify fields of business which are open to foreign investment, closed to foreign investment or open subject to certain conditions. The Presidential Regulation in which this is done is generally known as the "Negative List" and is updated from time to time as policies change.

Historically, the Negative List has never applied to foreign investment in listed companies. The most recent Negative List issued in February 2021 states that it is not applicable to "indirect investments" or "portfolio investments made on a domestic capital market". The view of the Indonesian Capital Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* or BKPM, now has just very recently converted into the Ministry of Investment), which is the authority responsible for reviewing and accepting direct foreign investment applications (outside of the financial sector) and granting approval, is that "indirect investments" or "portfolio investments made on a domestic capital market" are those that do not pass "control" in the listed company to the acquirer. This does not specifically address the uncertainty and still leaves open the possibility that controlling investments made into listed companies may be subject to the Negative List. Despite some follow-up regulations from the BKPM, the issue is not completely closed and ideally, a formal clarification from both OJK and the BKPM would put this issue to rest.

On the whole, the IDX continues to welcome foreign investors participating in the Indonesian stock market. It is generally believed that approximately 70% of market transactions on the IDX involve one or more foreign individual investors or institutions.

§ ID:6 Going public in Indonesia

Pursuant to Article 70 of the Capital Market Law 1995, a public offering of securities can only be made by an issuer, pursuant to an effective Registration Statement submitted to Bapepam. Exemptions from registration are provided for:

(i) an offer of securities taking the form of debt with a maturity date not more than one year after issuance;

(ii) the issuance of time deposit certificates;

(iii) the issuance of insurance policies;

(iv) the offer of securities issued and guaranteed by the Indonesian Government; or

(v) the offer of other securities stipulated by Bapepam.

Article 1(15) of the Capital Market Law 1995 defines a "public offering" as "an offering of securities by an issuer for the purpose of selling Securities to the public in accordance with the procedure stipulated under the Capital Market Law 1995 and its implementing regulations".

The enactment to Article 1(15) (which is the officially-sanctioned

explanation of the law published in conjunction with that law) states that a public offering covers an offering of securities by an issuer that is made:

(i) in the territory of the Republic of Indonesia; or

(ii) to Indonesian citizens,

and which:

(i) is made by using mass media;[1] or

(ii) is offered to more than 100 parties[2]; or

(iii) is sold to more than 50 parties,

within 12 months and of a value of at least Rp. 1,000,000,000.

An offering of securities in the territory of the Republic of Indonesia includes an offering of Securities by a domestic or a foreign Issuer, to either Indonesian or foreign investors, where the offering is made in the territory of the Republic of Indonesia (and these must comply with the Disclosure Principle).[3]

The public offering of foreign securities can only occur by way of issuing Indonesian Depository Receipts[4] in accordance with the procedure specifically prescribed by Bapepam for offering Indonesian Depository Receipts. Indonesian Depository Receipts are Indonesian based securities which give holders equivalent rights to the underlying foreign securities that are collectively deposited in a Custodian Bank which has been approved by Bapepam.

The Indonesian Stock Exchange published a decision effective 1 November 2014 which outlined a set of simplified rules to attract mining (mineral and coal) companies to list on the exchange. The rules cover mining companies that are not in production, are in production but sales have not commenced or, have reached sales stage but have

---

[Section ID:6]

[1]"Mass media" means newspapers, magazines, films, television, radio and other electronic media, as well as letters, brochures and other printed material distributed to more than 100 parties.

[2]Party(ies) is defined in the Capital Market Law as an individual, company, joint business, association, or organized group. The parties to whom securities are offered need not all be Indonesian residents or Indonesian citizens residing outside the Republic of Indonesia, for the provisions of the Capital Market Law to apply.

[3]Disclosure Principle is defined in the Capital Market Law as the general guideline which requires an issuer (being a Person who makes a public offering) and other Parties subject to the Capital Market Law, to disclose to the public within a certain time all material information with respect to their business or securities, which information may influence the decision of investors in those securities and/or the price of such securities.

[4]Indonesian Depository Receipt is defined in Bapepam Rule No. IX.A.10 as Securities which gives the holder the rights of the underlying foreign securities that are deposited in a collective manner in a Custodian Bank which has been approved by Bapepam.

not had the opportunity to raise (substantive) capital. The rules cover both mining companies and mining company holding companies (provided the holding company receives more than 50% of its revenue from the mining operations).

§ ID:7 Going public in Indonesia—Definition of securities

"Securities" is defined by Article 1(5) of the Capital Market Law 1995 to mean promissory notes, commercial paper, shares, bonds, debentures, participation units in collective investment contracts, futures contracts related to securities and any derivatives of securities. Derivatives of securities are securities taking the form of debt or equity, such as options and warrants.

§ ID:8 Going public in Indonesia—Prospectus

Article 71 of the Capital Market Law 1995 provides that no party may offer or sell securities in a public offering unless the buyers or offerees state in the securities order forms that they have received or have had an opportunity to read the prospectus related to the securities offered prior to or at the time of placing their orders.

The underwriters for a public offering are appointed by the issuer (Article 72(1) Capital Market Law 1995). If there is more than one underwriter, the underwriters are responsible either jointly or severally for the conduct of the public offering.

Both the underwriter and the issuer are responsible for the truth and accuracy of the Registration Statement submitted to Bapepam. A draft of the prospectus must be attached to the Registration Statement when filing.

§ ID:9 Going public in Indonesia—Registration Statement

A Registration Statement becomes effective on the 45th day after receipt of a completed Registration Statement by Bapepam, or earlier if declared effective by Bapepam (Article 74(1) Capital Market Law 1995). During the 45-day period, Bapepam may ask for amendments and additional information from the issuer or public company.[1]

§ ID:10 Going public in Indonesia—Full disclosure

Bapepam must consider the adequacy, objectivity, comprehensiveness and clarity of the Registration Statement to ensure that the Registration Statement fulfills the basic principle of full disclosure (Article 75(1) Capital Market Law 1995). However, Bapepam does not evaluate the advantages and weaknesses of any particular Securities.

[Section ID:9]

[1]The terms "Issuer" and "Public Company" are used here to distinguish an issuer of securities in an initial public offering (Issuer) from an existing listed company that offers additional securities ("Public Company").

A draft of the prospectus must be attached when the Registration Statement is filed. The prospectus must not contain false information on any material fact, or fail to publish truthful information on any material fact, the disclosure of which is required to prevent the prospectus being misleading (Article 78(1) Capital Market Law 1995).

In the prospectus, all parties are prohibited from declaring, either directly or indirectly, that Bapepam has approved, permitted or validated the securities being offered, or that Bapepam has examined the advantages or weaknesses of such securities (Article 78(2) Capital Market Law 1995).

§ ID:11 Going public in Indonesia—Liability for false statements on a registration statement

The issuer or public company must also make an announcement in the mass media concerning the public offering and should not publish false information or fail to publish information on any material fact required to prevent the information in such announcement being misleading (Article 79 Capital Market Law 1995).

If a Registration Statement for a public offering contains false information about material facts or fails to state information on material facts that makes the Registration Statement misleading, then:

(i) all parties who sign the Registration Statement;

(ii) all directors and commissioners of the issuer at the time the Registration Statement becomes effective;

(iii) the underwriters; and

(iv) capital markets supporting professionals (such as auditors and legal consultants) or other parties who provide opinions or information published in the Registration Statement with their consent,

are either jointly or severally liable for losses incurred as a consequence of such actions (Article 80(1) Capital Market Law 1995).

§ ID:12 Going public in Indonesia—Liability of other professionals

The supporting professionals (such as auditors and legal consultants) are liable for opinions or information rendered by them. However, if the underwriters or supporting professionals can prove that they have acted professionally and have taken sufficient steps to ensure that:

(i) the statement or information published in the Registration Statement is true; and

(ii) there were no material facts to their knowledge that were omitted and which should have been included in the Registration Statement to prevent it from being misleading;

then they will not be liable for errors made in the Registration Statement (Article 80(3) Capital Market Law 1995).

All parties who offer or sell securities using a prospectus or other

means, either written or orally, which contain false information on material facts or which fail to disclose information on material facts when such parties are aware or should have been aware of such matters, shall be liable for losses incurred as a consequence of such actions (Article 81(1) Capital Market Law 1995). However, buyers of securities who are aware that such information is false and misleading before purchasing such securities but who still purchase the securities cannot file claims for losses incurred as a result of such securities transactions (Article 81(2) Capital Market Law 1995).

§ ID:13 Rights issues

Pre-emptive rights are rights which are inseparable from the shares and make it possible for existing shareholders to purchase new securities (including shares and securities which can be converted into shares and warrants) before they are offered to other parties ("Rights"). These Rights can be transferred (OJK Regulation No. 32/POJK.04/2015 dated 22 December 2015 as amended by OJK Regulation No. 14 /POJK.04/2019, promulgated in Jakarta on April 30, 2019 on Increase of Capital of Public Companies by Providing Pre-emptive Rights ("OJK Regulation No. 14/2019").

If a company has already conducted a public offering of shares or if a public company intends to increase its equity capital, including through the issuance of warrants or convertible securities, each of the shareholders must be given Rights on the new securities in proportion to the percentage of their ownership in each type of share. The company must then convene a general meeting of shareholders to consider and approve the concerned offering plan. Currently, the provisions concerning Rights are stipulated under OJK Regulation No. 14/2019.

§ ID:14 Rights issues—Affiliated transactions and conflicts of interest

OJK Regulation No. 42/POJK.04/2020 dated 20 April 2020 on Affiliated Transaction and Conflict of Interest Transaction requires an Issuer or Public to:

(a) have an adequate procedure (e.g. a procedure that compares the terms and conditions of a transaction between Affiliated parties with a transaction conducted between non-Affiliated parties) to ensure that Affiliated Transaction are conducted in accordance with generally accepted business practices (defined by PJK as 'a transaction conducted by complying with the principle of fairness transaction (i.e. the arm's length principle)) (the "Affiliated Transaction Procedure") and Public Company must keep the documents related to the execution of this Affiliated Transaction Procedure. The execution of an Affiliated Transaction will require the Public Company to (i) engage an appraiser registered with OJK ("Appraiser") to determine the fair value of the Affiliated Transaction or the

fairness of the Affiliated Transaction and (ii) conduct a public information disclosure and submit a report on the Affiliated Transaction to OJK (attaching the Appraiser's report, evidence of the public information disclosure and other relevant supporting documents) within two business days from the date of the Affiliated Transaction, or at the date of announcement of the Public Company's General Meeting of Shareholders ("GMS"), if the Affiliated Transaction is required to be approved by the GMS. Notable exceptions include transactions with value not exceeding (a) 0.5% of the Public Company's paid-up capital or (b) Rp5,000,000,000 (whichever is less) or a transaction between (i) the Public Company and a Controlled Company whose paid-up capital is owned at least 99% by the Public Company, or (ii) Controlled Companies whereas the paid-up capital of both Controlled Companies are owned at least 99% by the same Public Company, or (iii) a Controlled Company and a company whose paid-up capital is owned at least 99% by the said Controlled Company.

(b) obtain the prior consent of the majority of independent shareholders if the issuer or public company concerned wishes to engage in transactions in which the economic interests of such issuer or public company conflict with the personal economic interests of the directors, commissioners, or major shareholders or Controller of such issuer or public company which can be detrimental to the the Issuer or Public Company. Such consent is to be obtained at a general meeting of independent shareholders and must be evidenced by a notarial deed. Similar to affiliated transactions, exceptions to this rule include transaction with value not exceeding (a) 0.5% of the Public Company's paid-up capital or (b) Rp5,000,000,000 (whichever the lesser) or transaction between (i) the Public Company and a Controlled Company whose paid-up capital is owned at least 99% by the Public Company, or (ii) Controlled Companies whereas the paid-up capital of both Controlled Companies are owned at least 99% by the same Public Company, or (iii) a Controlled Company and a company whose paid-up capital is owned at least 99% by the said Controlled Company.

§ ID:15 Rights issues—Increase in capital without pre-emptive rights to securities

OJK Regulation No. 38/POJK.04/2014 Concerning Increasing Capital Without Preemptive Rights dated 30 December 2014 enables public companies to increase their issued and paid-up capital without granting pre-emptive rights to securities to existing shareholders. A public company may increase its subscribed and paidup capital without the rights issue procedure as long as one of the following conditions has been fulfilled:

a. over a period of 2 (two) years, the maximum increase in capital is 10% (five percent) of the paid-up capital; or

b. the main objective of the increase in capital is to improve the financial status of a company where the company is:

1. a bank receiving a loan from Bank Indonesia or from other governmental institutions amounting to more than 100% of its paid-up capital, or other conditions which may result in the bank being restructured by the authorized governmental institution;

2. a non-bank company having negative net working capital and liabilities of more than 80% of the company's assets at the time a general meeting of shareholders approves such increase in capital; or

3. a company which fails in, or is in default to avoid the failure of, its obligations to non-affiliated creditors, where the non-affiliated creditors or investors agree to acquire shares or convertible bonds of the company in order to settle the loans.

The increase in issued and paid-up capital under the above conditions shall be approved by a general meeting of shareholders.

§ ID:16 Rights issues—Material transactions and changes to business activities

OJK Regulation No. 17/POJK.04/2020 dated 20 April 2020 on Material Transaction and Change of Business Activities ("POJK No. 17/2020") requires that a public company that conducts a "Material Transaction" (being any transaction that amounts to 20% or more of the equity of the company) ("General Materiality Threshold") or transactions that meet the Specific Materiality Threshold detailed below which amounts to:

a. between 20% and 50% of the General Materiality Threshold and the Specific Material Threshold and 10%-25% of the total assets of Public Company with negative equity, must: (i) engage an Appraiser to determine the fair value of the Material Transaction, and (ii) conduct a public information disclosure and submit a report on the Material Transaction to OJK (attaching the Appraiser's report, evidence of the public information disclosure and other relevant supporting documents) within two business days from the date of the Material Transaction; or

b. more than 50% of the General Materiality Threshold and the Specific Material Threshold and more than 25% of the total assets of Public Company with negative equity or deemed as unfair by the Appraiser, will require the Public Company to: (i) engage an Appraiser to determine the fair value of the Material Transaction, (ii) obtain approval from its shareholders in a GMS, and (iii) conduct a public information disclosure and submit a report on the Material Transaction to OJK (attaching the Appraiser's report, evidence of the public information disclosure, and other relevant supporting documents) on the date of the announcement of the GMS to approve the Material Transaction, which must obtain the prior approval of the shareholders.

POJK No. 17/2020 applies a specific materiality threshold for:

1) acquisition and disposal of companies or operating segment;
   a) the transaction value is at least 20% of the Public Company's equity;
   b) the total value of the assets that are the object of the transaction is at least 20% of the Public Company's total assets;
   c) the net profit generated from the object of the transaction is at least 20% of the Public Company's net profit; or
   d) the operating revenue derived from the object of the transaction is at least 20% of the Public Company's operating revenue.
2) For the dilution of a Publicly Company's ownership in its Controlled Company due to the increase of the Controlled Company's capital, and causing the financial statements of the Controlled Company no longer being consolidated with the Public Company, the dilution is deemed as a Material Transaction if the value of total assets, net profit, or operating revenue of the Controlled Company is at least 20% of the Public Company's total assets, net profit, or operating revenue.
3) A transaction conducted by a Public Company that has negative equity will be deemed as a Material Transaction if the transaction value is at least 10% of the Public Company's total assets.

Any company that changes its business activity (e.g. Addition of Business Activities to the line of business set out in the AOA of the Public Company, Commencement of Business Activities stipulated in the AOA of the Public Company but not previously conducted by the Public Company, Reduction of the Business Activities currently conducted by the Public Company and Replacement of all Business Activities that have been conducted by the Public Company with new Business Activities) must appoint an Appraiser to conduct a feasibility study on the proposed Change of Business Activities, obtain the consent of the shareholder, conduct a public information disclosure, and submit a report on the change of Business Activities to OJK unless the change is to eliminate an activity that has been suffering losses for three consecutive years and its elimination will not affect the company's sustainability.

§ ID:17 Rights issues—Tender offers, mergers or consolidations, acquisitions

Any party which makes a tender offer to purchase securities of issuers or public companies must comply with the disclosure and reporting rules stipulated by Bapepam in OJK Regulation No. 54 /POJK.04/ 2015 on Voluntary Tender Offer, which was promulgated on 29 December 2015.

An issuer or public company which merges or consolidates with an-

other company must comply with OJK Regulation No. 74/POJK.04/2016 on Mergers or Consolidations by Public Companies or Issuers, issued on 23 December 2016. An acquisition of an issuer or public company must comply with OJK Regulation No. 9/POJK.04/2018 dated 25 July 2018.

Under OJK Regulation No. 9/POJK.04/2018, the ownership threshold before a party must make a tender offer is 50%. Additionally, it requires parties that end up owning more than 80% of the listed company post takeover must sell their excess shares within two years to ensure that at least 20% of the shares are publicly owned.

Such procedures must also comply with other relevant laws and regulations relating to mergers, consolidations and acquisitions, including the provisions on disclosure, fairness and reporting contained in the Company Law 2007 (Undang-Undang Perseroan Terbatas, Law No. 40 of 2007).

§ ID:18 Full disclosure requirements

The Government is aware that in order to attract investors, especially foreign investors, to invest through stock exchanges in Indonesia, the transparency of public companies and the full disclosure of information on public companies are critically important factors. In preparing the Capital Market Law 1995 and its implementing regulations, the Government gave special attention to this matter.

Chapter X of the Capital Market Law 1995 is devoted to reporting requirements and disclosure of information. Stock exchanges, clearing and underwriting institutions, depository and settlement institutions, investment funds, securities companies, investment advisors, securities administration bureaus, custodian banks, trust agents, issuers, public companies and other parties having obtained their licenses, approvals or registrations from Bapepam, are required to submit regular reports to Bapepam. This requirement is further implemented by various Bapepam regulations issued pursuant to specific authority granted to Bapepam under the Capital Market Law 1995.

Issuers with effective Registration Statements or public companies are required to submit periodical reports to Bapepam, the IDX and announce such reports to the public. They are also required to submit reports to Bapepam, the IDX and announce to the public material events which may potentially impact their securities prices not later that the second working day after such events occur.

The requirement to submit a report on material events is further regulated by OJK Regulation 31/POJK.04/2015 concerning Disclosure of Information or Material Facts by Emitents or Public Companies, issued on 16 December 2015. The following is a list of material events which are deemed by this regulation to affect securities prices or decisions of investors:

(a) a merger, purchase of shares, consolidation, or formation of joint ventures;

(b) submission of an offer for the purchase of securities of another company;

(c) purchase or sell shares of company with material value;
(d) a share split or merger of share;
(e) distribution of interim dividends;
(f) delisting and relisting of shares in the Stock Exchange;
(g) income in the form of extraordinary dividends;
(h) the acquisition or loss of important contracts;
(i) new inventions or new products that add value to the company;
(j) the sale of additional Securities to the public or by way of private placement with amount deemed as material;
(k) changes in the control either directly or indirectly to the Issuer or the Company Public;
(l) changes to members of the Board of Directors and / or members of the Board of Commissioners
(m) repurchase or payment of Debt Securities and / or Sukuk;
(n) purchase or sale of important assets;
(o) labor disputes that may disrupt company operations;
(p) legal proceedings against Issuers or Public Companies and / or members of the Board of Directors and Board members Commissioner of Issuers or Public Companies with material impact;
(q) replacement of an Accountant being tasked with auditing the Issuer or Public Company;
(r) replacement of Trustee;
(s) replacement of the Securities Administration Bureau;
(t) change of the Issuer's or Public Company's financial year;
(u) changes in the use of reporting currency in the financial statements;
(v) Issuers or Public Companies are under the special control of relevant regulators which can effect the business continuity of Issuers or Public Companies;
(w) restrictions on the business activities of Issuers or Public Companies by relevant regulators;
(x) material changes or non-achievement of published financial projections;
(y) the occurrence of an event that will cause a material increase in financial liabilities or causing material decline to Issuer's or Public Company's revenue;
(z) debt restructuring;
(aa) termination or closing of some or all of the business segments;
(ab) a material effect on an Issuer or a Public Company due to a force majeure event;
(ac) Other Material Information or Facts.

Other than the above reporting requirements, all parties who own at least five percent of the shares of an issuer or a public company shall be required to report their ownership of such company's shares and any change in such ownership to Bapepam.

The Decision of the Board of Directors of the Jakarta Stock Exchange concerning Rule I-E on the Obligation of Information Submission dated 29 January 2021 mandates that every material

event, information or fact related to the public company and/or its subsidiary/holding company (whose financial statements are consolidated with the listed company) that might influence the price of the company's securities and/or an investor's decision must be disclosed to the Exchange as soon as possible. This reporting includes but is not limited to any incidental reporting under OJK Regulation No. 31 /POJK.04/2015 concerning Disclosure of Material Information or Facts by Issuers or Public Companies and several other events.

There are also regulations governing the standard of disclosure relating to financial statements. In particular, OJK Regulation No. 75 /POJK.04/2017 issued on 21 December 2017 imposes liability upon directors for the financial statements of an issuer or a public company if they are found to be incorrect or misleading.

§ ID:19 Insider trading

Article 95 of the Capital Market Law 1995 prohibits an insider of an issuer or a public company from purchasing or selling securities of the issuer or public company concerned or another company which is engaged in transactions with the issuer or public company concerned. The explanatory memorandum to Article 95 clarifies the meaning of "insider" to mean the following persons:

(i) a commissioner, director, or employee of an issuer or a public company;

(ii) a majority shareholder of an issuer or a public company;

(iii) an individual, who, because of his/her position or profession or because of his/her business relationship with the issuer or public company, may obtain inside information; or

(iv) any party who within the last six months has ceased being a person referred to in paragraphs (i) to (iii) above.

Inside information is material information possessed by an insider which is not yet available to the public.

Article 96 of the Capital Market Law 1995 goes further and prohibits an insider from influencing a third party to purchase or sell securities himself or to provide any inside information to any other party to use such information to purchase or sell securities.

OJK Regulation No. 78 /POJK.04/2017, issued on 21 December 2017, however, provides for certain types of transactions for which insiders are not prohibited. For example, this regulation states that a securities transaction is not prohibited among insiders of the same issuer or public company if the insiders have the same inside information and the transaction is conducted outside a stock exchange.

In addition, an insider of an issuer or a public company may also undertake a securities transaction with non-insiders for securities of the issuer or the public company or of other companies which conduct transactions with such issuer or public company as long as this is undertaken outside a stock exchange and subject to the condition that:

a. the insider has previously given all inside information to the parties who are not insiders;

b. the parties who are not insiders do not use such inside information apart from for conducting the securities transaction with such insider;

c. the parties who are not insiders provide a written statement to the insider who gave them such information, stating that they will keep the information received confidential and will not use such information for any purpose other than conducting the securities transaction with the insider; and

d. apart from conducting the securities transaction with the insider who gave them the inside information, the parties who are not insiders do not conduct any other securities transaction involving the issuer or public company concerned or another company which conducts transactions with the issuer or public company concerned within a period of 6 (six) months from the date the information was obtained.

A violation of this OJK regulation on the permitted use of inside information provides for imprisonment for a maximum of ten years and a maximum fine of Rp.15 billion.

§ ID:20 Taxation of securities transactions—Taxation of shares

The taxation on the sale of listed shares can be summarized briefly as follows:

Seller	**Listed Shares**
Indonesian Resident Tax Payer	0.1%[1]
Non Resident Tax Payer:	
- In a tax treaty country	0.1%[2]
- In a non treaty country	0.1%[3]

Regarding dividends, the withholding tax rates as follows:

Shareholders:	**Withholding Tax Rate**
Indonesian Resident Shareholders	

[Section ID:20]

[1]The basis of the calculation is the sale proceeds. The tax is final in nature under the income tax law of Indonesia. It is collected through the stock exchange. If the seller is a founding shareholder, the rate is 0.6%. Based on Government Regulation No. 41/1994 as amended by Government Regulation No. 14/1997.

[2]The seller can apply for a refund of this tax if the treaty supports tax exemption. This tax is automatically collected through the stock exchange prior to the potential application of a tax treaty and the request for a refund. Treaty eligibility also requires the completion of a Certificate of Domicile (COD) and a questionnaire.

[3]See footnote 1 above.

Shareholders:	**Withholding Tax Rate**
(a) Individual	10% final tax[4]
(b) Limited Liability Company	
• Holding 25% of shares or more	Exempt[5]
• Holding less than 25%	15% non final tax[6]
Non Resident Shareholders	
(a) In tax treaty locations	Subject to treaty provisions (5% to 15% final tax)[7]
(b) In non treaty countries	20% final tax[8]

§ ID:21 Taxation of securities transactions—Taxation of bonds

Based on Government Regulation No. 16/2009 as amended by Government Regulation No. 100/2013, the taxation of interest/discount on listed bonds is as follows:

– 15% for tax residents (but see point on mutual funds below);

– 20% or lower based on applicable treaty provisions for non residents which are subject to treaty eligibility requirements; or

– 5% for Indonesian mutual funds for 2014-2020 and 10% from 2021 onward.

This withholding tax is final in nature and does not apply to resident banks and approved pension funds holding such funds.

§ ID:22 Sanctions

The Capital Market Law 1995 provides administrative sanctions and penal sanctions for violations of its provisions and implementing regulations. The scope of parties who may be subject to sanctions is wide. It includes not only issuers, public companies, their officers and insiders, but also a host of professionals involved in capital market activity that are licensed, approved or registered by Bapepam.

Administrative sanctions may take any of the following forms:

(i) written admonitions;

(ii) fines;

(iii) restrictions on business activities;

(iv) freezing of business activities;

---

[4]Based on Article 17(2)(c) of the Income Tax Law.

[5]Based on Article 4(3)(f) of the Income Tax Law.

[6]Based on Article 23(1a.1) of the Income Tax Law.

[7]Treaty eligibility requires the completion of a Certificate of Domicile (COD) and questionnaire.

[8]Based on Article 26(1a) of the Income Tax Law.

(v) revocation of business licenses;

(vi) cancellation of approvals; and

(vii) cancellation of registration.

These administrative sanctions are further regulated by Government Regulation No. 45 of 1995 Concerning the Implementation of Business Activities in Capital Markets and OJK Regulation No. 3/POJK.04/2021 dated 22 February 2021 on the Implementation of Activities in the Capital Market Sector ("POJK 3/2021").

As for penal sanctions, the Capital Market Law 1995 imposes imprisonment and fines for specific violations of its provisions and implementing regulations. For example, any party which undertakes activity in the capital market without the required licenses, approvals or registrations is subject to imprisonment for a maximum of five years and a maximum fine of Rp. 5 billion. As mentioned earlier, insider trading violations are punishable by up to ten years imprisonment and a sanction of up to Rp. 15 billion. The OJK has recently issued regulations pertaining to the obligation to pay administrative sanctions in form of fines to OJK for any violation of regulations in the financial services sector (including collection, payment and objection procedures).

§ ID:23 Investor Protection Fund

The OJK has legislated the establishment of an Investor Protection Fund for the purpose of providing compensation for the loss of investors' assets (cash and securities) deposited at custodian banks and/or securities brokers (except in the event such loss is due to the mistake by the investors, or in the case where investors experiencing the loss are the controllers of the custodian banks and/or securities brokers (or affiliates of such custodian banks and/or securities brokers)) due to (a) the custodian and/or the securities brokers not having the ability to refund the assets to the investor, or (b) the custodian bank and/or the securities brokers being incapable of continuing their business activities and have their licenses revoked by OJK. Investor protection fund is governed under OJK Regulation No. 49/POJK.04/2016 dated 2 December 2016. The Investor Protection Fund is managed by a corporation licensed by OJK and owned by the IDX, the Indonesia Securities Clearing and Settlement Corporation, the Indonesia Central Securities Depository and other legal entities in financial sector or any other institutions complying with the requirements from the OJK.

§ ID:24 Electronic filing of reports

Furthering the technological improvements in Indonesia's capital markets systems, OJK has set up a specific internet portal for listed companies to submit their various reports and disclosures. Pursuant to OJK Regulation No. 7 /POJK.04/2018 dated 25 April 2018, per 25

October 2018, listed companies must submit reports and disclosures electronically via the said internet portal. OJK has further stipulated that as per 25 October 2018, OJK no longer accepts reports submitted manually. OJK shall impose administrative sanction for any party who did not submit reports and disclosures electronically via the said internet portal.

§ ID:25 OJK levy

The OJK Law mandates that financial services companies and institutions pay a levy to OJK to partially finance OJK operations. It is important to note that the OJK Law specifically stipulates OJK to, despite being partially financed by the financial services companies and institutions, maintain its independence as the financial services regulator. New regulations have been introduced to set out the amount of levies required to be paid by each type of financial services companies and institutions, the method of collection and payment and also the method for applying for reduction of such levies.

§ ID:26 Alternative dispute resolution in the financial services sector

New regulations have been introduced to specifically govern the manner and process for out of court settlement of disputes in the financial services sector by way of engaging OJK approved Dispute Settlement Resolutions Institutions.

§ ID:27 Consumer protection regulations

The OJK has introduced consumer protection regulations to focus on (a) transparency, (b) fair treatment of consumers, (c) reliability, (d) confidentiality, and (e) handling complaints and resolving disputes efficiently.

A Financial Services Provider (including securities companies) must provide accurate, honest, clear and non-misleading information regarding its (i) products/services, (ii) acceptance, suspension or refusal to provide financial products or services to consumers based on application therefor, (iii) costs and fees that must be borne by consumers related to offered financial products and services, and (iv) amendments to benefits, costs, risks, or terms and conditions of its financial products and services.

Financial Services Providers are obliged to provide consumers with concise written information on the benefits, costs, risks, and terms and conditions of products and services offered (including any changes in relation to the products or service) which are accessible by consumers. Further, Financial Service Providers are also required to conduct consumer education to enhance community knowledge and awareness of financial products and services by organizing financial literacy events which must be incorporated into the Financial Service Provider's annual work plan and must be periodically reported to OJK.

Further, these regulations also provide that agreements between Financial Service Providers and consumers must be made based on fair, reasonable and just principles. If the Financial Service Providers use a standardized contract (i.e. a non-negotiable contract), then certain terms are prohibited from being incorporated:

- transfer of the Financial Services Provider's responsibilities onto consumers;
- limiting rights of consumers to refunds;
- the granting of a power of attorney to the Financial Services Provider to act unilaterally over collateral, unless permitted under prevailing laws and regulations;
- imposing a burden of proof on consumers in the event that the Financial Service Provider denies responsibility for the loss of a benefit from any purchased product or service;
- Financial Service Providers being granted rights to reduce the benefit of financial products or services or diminish the consumer's assets that are the object of the financial product or service agreement;
- binding consumers to future amendments or revisions to terms and conditions that are decided unilaterally by the Financial Service Provider during the term of the provision of the financial products or services; and
- having consumers grant a power of attorney to the Financial Services Provider to encumber their financial products or services purchased on an installment basis.

§ ID:28 New Developments

Cryptocurrency and initial coin offerings (ICOs) are totally banned in Indonesia. Bank Indonesia (Indonesia's central bank – "BI") and the OJK (the Financial Services regulator) have jointly affirmed that based on the prevailing regulations, the Rupiah is the only valid currency in Indonesia, and as such cryptocurrencies like bitcoins are not recognized as currency in Indonesia, and ICOs are a banned activity in Indonesia. However, despite this affirmation from BI and the OJK, Bappebti (the Commodities Futures Trading Supervisory Agency, an agency under the Ministry of Trade of Indonesia tasked to supervise Commodities and Futures trading in Indonesia) in early June 2018 issued a press statement declaring that cryptocurrency is now included as one of the commodities eligible to be traded in Indonesia's futures and commodities exchanges. Bappebti (and later, the Ministry of Trade) further issued regulations in February 2019 that affirmed its position that whilst it is not a legal currency in Indonesia, cryptocurrency assets deemed as commodities can be subject to futures trading.

Fintech has grown very rapidly in Indonesia, in particular as regards peer to peer lending, equity crowdfunding and payment

system providers. From a seemingly non- existent business at the end of 2015, fintech businesses demonstrated phenomenal growth by the end of 2017 and continues its upward trajectory up to early 2020. As of August 5, 2020, the total number of registered and licensed fintech operators stands at 158 companies.[1] As of August 14, 2020, the total amount of fintech peer-to-peer lending or fintech lending operators registered and licensed at OJK numbers 157 companies.[2] The OJK supervises P2PL, equity crowdfunding, and insurance technology while BI supervises fintech companies dealing in payment system applications. In 2019, there are 58 fintech companies dealing in payment system applications registered with BI.[3]

§ ID:29 Going private

POJK 3/2021 stipulates new provisions regarding going private. In POJK 3/2021, OJK stipulates three conditions where a public company can go private: voluntarily, based on an order from OJK, or based on an order from IDX.

In the event whereby going private is conducted on a voluntarily basis, the public company would need to: (a) obtain approval from its independent shareholders, (b) buyback all shares owned by its public shareholders until the number of shareholders is less than 50 (or any other number determined by OJK), except if there is a party who undertakes to buy all shares owned by the public shareholders, (c) announce the go private plan along with the announcement of GMS to approve such plan, and (d) submit a request for the revocation of the effective registration statement to the OJK.

In the event going private is ordered by OJK, the public company would need to: (a) obtain the approval of a GMS, (b) disclose all necessary information to the public and OJK within two business days upon receipt of the OJK's go-private instruction, (c) buy back the shares of public shareholders so that the number of shareholders of the company amounts to less than 50 following the buyback, or such other figure as may be determined by OJK, (d) the public listed company fulfills its outstanding obligations (if any) to the OJK, IDX, and depository and settlement institution (Lembaga Penyimpanan dan Penyelesaian—"LPP"), and (e) apply for approval to the Minister of Law and Human Rights so as to be certified as a private company.

In the event whereby going private is ordered by IDX: (a) the public company experiences a condition or event that has a significant negative effect on the sustainability of the business of the public company,

---

[Section ID:28]

[1] https://www.ojk.go.id/id/kanal/iknb/financial-technology/Pages/Penyelenggara-Fintech-Terdaftar-dan-Berizin-di-OJK-per-5-Agustus-2020.aspx.

[2] https://www.ojk.go.id/id/kanal/iknb/financial-technology/Pages/-Penyelenggara-Fintech-Terdaftar-dan-Berizin-di-OJK-per-14-Agustus-2020.aspx.

[3] https://www.cnbcindonesia.com/tech/20190702132510-37-82123/terbaru-ini-58-perusahaan-fintech-yang-terdaftar-di-bi.

and/or (b) the public company does not meet the requirements for listing of securities on the stock exchange.

§ ID:30 Conclusion

There have been significant changes to Indonesia's capital markets framework since the landmark privatization of the JSX in the early 1990s. Among the more turbulent events during this period was the 1997 Asian financial crisis which affected Indonesia for several years. The merger in 2007 of the SSX and JSX to create the IDX was a major milestone in Indonesia's capital markets history, as well as 31 December 2012 when the OJK took over Bapepam's jurisdiction of the capital markets. Despite the recent ructions in global financial markets Indonesia's capital market continues to grow (including the potential for growth in smaller commodities type exchanges for palm oil futures and tin) whilst trading conditions and networks have continued to modernize. Indonesia's capital markets are not, however, given the volume of foreign capital invested in them, immune to future global financial and capital market shocks.

There remain, however, various regulatory grey areas and the need for improved regulatory oversight. The regulatory framework has improved significantly in recent years and the OJK has been busy in its short history in rolling out several key regulations to the industry which apply greater compliance and responsibilities on securities companies.

APPENDIX ID-1

The Capital Market Law Number 8 Year 1995

Unofficial English Translation

WITH THE BLESSING OF GOD THE ALMIGHTY

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

CONSIDERING:

a) that the goal of national development[1] based on Pancasila and the 1945 Constitution is the advancement of a just and prosperous people;

b) that the Capital Market has a strategic role in national development as a source of funding for business and as a vehicle for public investment;

c) that in order for the Capital Market to develop, there must be a way of providing a sound legal foundation for Persons that do business in the Capital Market and of protecting the investing public against practices that may cause loss;

d) that considering the goals of national development and the demands of economic globalization, Emergency Law No. 79 of 1951 on

---

[1]National development reflects a pursuit of continuous improvement in the prosperity and well-being of Indonesian citizens, in ways benefitting the lives of men and women with justice and equality, and promoting a progressive, democratic nation founded on *Pancasila* and the 1945 Constitution. This is in accordance with the Great National Guiding Principles that set the formation of independent and progressive qualities in the Indonesian people in a climate of peace and prosperity, as a goal for the Second Long-Term Development Plan. This goal includes the preservation of fundamental traditions, based on *Pancasila,* and the creation of a balanced lifestyle with harmonious relations among men, and between men and the community, nature, and Almighty God. In the field of economics, one objective of the Second Long-Term Development Plan is building a free, secure economy, with reasonably fast growth, more evenly distributed wealth, and an environment of national stability. To reach these goals, laws are needed to stimulate, facilitate and control economic development.

Necessary legislation for economic development includes regulation of the Capital Market. Until now, this has been Law 15 of 1952 entitled "*The Emergency Law on the Securities Exchange*", included in the Statues of 1951 and 1952 (Books 79 and 67, respectively). With the promulgation of this new "*Law on the Capital Market*", it is expected that the Capital Market will have a greater role in development, so that national economic objectives may be achieved.

The purpose of the Capital Market is to support national development by enhancing public welfare through economic growth and societal stability, while fostering a more equitable distribution of wealth. To reach this objective, the Capital Market plays a strategic role by financing businesses, both large and small. At the same time, the Capital Market provides the public with investment opportunities, including products for small and medium investors.

Exchanges[2] and Enabling Laws Nos. 15 and 67 of 1952 are no longer adequate for the current situation;

e) that based on these considerations, it is necessary to promulgate a Law on Capital Markets;

IN VIEW OF:

1. Article 5 item (1), Article 20 item (1), and Article 33 of the 1945 Constitution;

2. The Limited Liability Company Law No. 1 of 1995 (Statute Book No. 13 for 1995 and its Supplement No. 3587)

WITH THE APPROVAL OF THE HOUSE OF REPRESENTATIVES OF THE REPUBLIC OF INDONESIA HAS DECIDED TO ENACT:

A LAW ON THE CAPITAL MARKET

CHAPTER I GENERAL PROVISIONS

Article 1

In this Law, what is meant by:

1. Affiliation is:

---

[2]Regulation of the Capital Market under Law 15 of 1952, "*The Emergency Law on the Securities Exchange*" included in the Statues of 1951 and 1952 (Books 79 and 67, respectively), is considered in adequate in today's environment, it does not contain important Capital Market provisions, such as the adoption of the principle of full disclosure of material information in a Public Offering, and other essential public safeguards. In view of the rapid development of the economy and the globalization of business, the time is propitious for a new *"Law on the Capital Market",* based on *Pancasila* and the 1945 Constitution.

This new Law requires Companies making Public Offerings, as well those that qualify as *Public Companies,* to make public all information that is material regarding their finances, management, operations, and other business activities. It is essential that the public have access to this information when making investment decisions. The Law also requires Persons making Public Offerings and *Public Companies* to comply with disclosure requirements when their securities are traded in the secondary market. Violation of such provisions by Persons making a Public Offering and the professionals involved, makes such persons liable to the public for losses that are due to inadequate disclosure. When the disclosure is fraudulent, violators are subject to criminal sanctions. Professionals involved in a Public Offering, such as Underwriters, Accountants, Legal Consultants, Notaries, Appraisers, and others, are required to fulfill certain obligations, and are subject to administrative and criminal sanctions for violations.

The Law also covers securities trading in the secondary market. Securities Exchanges, Clearing and Guarantee Institutions, and the Central Securities Depository have the duty to ensure that securities trading is conducted in an orderly, fair, and efficient manner.

To further ensure that the Capital Market is conducted in an orderly and fair manner, and that public investors are protected from harmful and illegal practices, a *Capital Market Supervisory Agency* is authorized to administer and enforce the Law. This Agency has authority to conduct investigations under the Indonesian Criminal Code.

a) a family relationship[3] by marriage and descent to the second degree, horizontal as well as vertical;

b) a relationship between a Person and its employees,[4] directors, or commissioners;

c) a relationship between two Companies with one or more directors or commissioners in common;[5]

d) a relationship between a Company and a Person that directly or indirectly, controls[6] or is controlled by that Company;

e) a relationship between two Companies that are controlled directly or indirectly by the same Person;[7] or

---

[3]What is meant by a "family relationship by marriage" is the relationship of a person with:

1. a husband or wife;
2. a mother or father-in-law, and a son or daughter-in-law (1st degree, vertical);
3. a grandfather or grandmother-in-law, and a grandson or grand-daughter-in-law (2nd degree, vertical);
4. a brother or sister-in-law (2nd degree, horizontal); and
5. a husband or wife of a brother or sister-in-law (2nd degree, horizontal).

What is meant by a "family relationship by descent" is the relationship of a person with:

1. a parent or child (1st degree, vertical);
2. a grandparent or grandchild (2nd degree, vertical);
3. a sibling (2nd degree, horizontal).

[4]"Employee" means an individual who receives a periodic wage or salary and that works for a Person with authority to control and direct his actions.

[5]An example of a relationship between two companies with directors or commissioners in common, is as follows:

Mr. A is a Director of Company X and Company Y, or a Commissioner of Company X and Company Y, or a Director of Company X and a Commissioner of Company Y.

[6]"Control" means the ability to determine, directly or indirectly, and by whatever means, the management or policies of a Company.

An example of a relationship between a Company and a Person that controls the Company is as follows:

Mr. A controls Company X.

An example of a relationship between a Company and a Person that indirectly controls the Company is as follows:

Mr. A controls Company X and Company X controls Company Y. Therefore Mr. A indirectly controls Company Y.

An example of a relationship between a Company and a Person that is directly controlled by the Company is as follows:

Company Y is controlled by Company X.

An example of a relationship between a Company and a Person that is indirectly controlled by the Company is as follows:

*Company Z is controlled by Company Y and Company Y is controlled by Company X. Therefore Company Z is indirectly cont*rolled by Company X.

[7]An example of a relationship between two Companies that are directly controlled by the same Person is as follows:

Company X and Company Y are controlied by Mr. A.

f) a relationship between a Company and a substantial shareholder.[8]

2. A Member of a Securities Exchange is a Broker-Dealer, licensed by BAPEPAM, that is permitted by the rules of the Securities Exchange to use its systems and facilities.

3. A Securities Administration Agency is a Person that, under contract, maintains ownership records of an Issuer's Securities and distributes entitlements on such Securities.

4. A Securities Exchange is a Person that organizes and provides the system and facilities[9] that are used to bring together offers of those who intend to buy and sell Securities.

5. Securities are promissory notes, commercial paper, shares, bonds, evidences of indebtedness, Participation Units of collective investment contracts, futures contracts related to Securities, and all derivatives[10] of Securities.

6. An Issuer is a Person who makes a Public Offering.

7. Material Information[11] is any important and relevant fact concerning events, incidents or data that may affect the price of a Security on an Exchange or that may influence the decisions of investors, prospective investors or others that have an interest in such information.

8. A Custodian is a Person who provides safekeeping services[12] with respect to Securities and Securities-related assets and other services,

---

An example of a relationship between two Companies that are indirectly controlled by the same Per son is as follows:

Company X1 is controlled by Company X2 and Company Y1 is controlled by Company Y2. However, Company X2 and Company Y2 are controlled by Mr. A. Therefore, Company X1 and Company Y1 are indirectly controlled by Mr. A.

[8]"Substantial Shareholder" refers to a Person that directly or indirectly holds at least twenty percent of the voting rights of a Company's issued shares, or such lower percentage stipulated by BAPEPAM. An example of a relationship between a Company and a Substantial Shareholder is as follows:

Mr. A has voting rights to twenty percent of Company X's issued shares with voting rights.

[9]This definition includes systems that bring together offers to buy and sell, even without means for trading Securities.

[10]"Derivatives" refers to rights that are derived from either debt or equity Securities, such as Options or Warrants. An "Option" is the right to purchase or sell within a certain time, a specified number of Securities at a specified price. A "Warrant" is a Security issued by a Company giving the holder the right, six months or more after the Securities are issued, to subscribe to shares of the Company at a specified price.

[11]Material Information is information that may affect the price of Securities or the decision of investors, prospective investors, or others with an interest in such information, and includes information on matters such as:

1. mergers, acquisitions, consolidations or joint ventures;
2. the distribution of stock splits or stock dividends;
3. extraordinary income or dividends
4. the making or loss of an important contract;
5. a new product or significant invention;
6. a change in a Company's financial year; and
7. a change in control or an important change in management;

[12]Safekeeping includes Collective Custody. "Account holders" are Persons whose

including collection of dividends, interest, and other entitlements, the settlement of Securities Transactions, and agency services for clients who are account holders.

9. A Clearing Guarantee Institution is a Person that clears[13] and guarantees the settlement of Securities Exchange Transactions.

10. A Central Securities Depository is a Person that acts as a central Custodian for Custodian banks, Securities Companies and others.

11. An Investment Manager is a Person other than an insurance Company, pension fund or bank with respect to its own lawful activities, that, as a business, manages Securities Portfolios or collective investment Portfolios for clients or groups of clients.

12. The Minister is The Minister of Finance of The Republic of Indonesia

13. The Capital Market is the activity of trading and Offering Securities to the Public, the activity of a Public Company with respect to Securities it has issued, and the activities of Securities-related institutions and professions.

14. An Investment Advisor is a Person who, for a fee, renders advice[14] to others regarding the sale or purchase of Securities.

15. A Public Offering[15] is an offer to sell Securities to the public, made

---

names are registered on a Securities account, based on a contract with a Custodian. Account holders may be the owners or representatives of the owners of the Securities posted to their accounts. A "Securities account" is a record showing an investor's position of Securities and funds held with a Custodian.

For example, an owner deposits his Securities in an account in his name at a Securities Company. The Securities Company later deposits these Securities in an account in its name at a Custodian bank. The Custodian Bank then deposits the Securities in its account at a Central Depository. The Custodian bank is the registered account holder at the Central Depository. In this illustration, the Custodian bank with respect to securities registered in its account at the Central Depository, is the representative of the Securities Company that in turn represents the owner of the Securities.

[13]"Clearing" is the process of determining the rights and obligations arising from Exchange Transactions. The "Guarantee" referred to is the assurance that rights and obligations of Exchange Members with respect to Exchange Transactions will be settled.

[14]"Advice" includes both oral and written advice, and advice published in the mass media.

[15]"Public Offering" refers to an offering of Securities that takes place within a certain time and within specified amounts, either within the territory of Indonesia, or to Indonesian citizens abroad, and offered either through the mass media, or otherwise to more than one hundred Persons, or resulting in sales to more than fifty Persons. An "Offering" within the territory of Indonesia includes both domes tic and foreign Issuers, as well as offerings to both domestic and foreign investors, in compliance with Disclosure Principles. Regulations regarding Public Offerings also apply to offerings by domestic Is suers to Indonesian citizens abroad. This provides necessary protection to Indonesian investors over seas in the case of Securities offered by domestic Issuers. In determining whether there has been an offering of Securities to more than one hundred Persons, it is not relevant that the offering is followed by the purchase of Securities. However, the sale of Securities to more than fifty Persons is deter mined by the actual purchase of Securities, whether or not associated with an offer. "Mass media" refers to newspapers, magazines, film, television, radio and other

by an Issuer in ways stipulated in this Law and its implementing regulations.

16. Collective Custody is the service of safekeeping Securities owned jointly[16] by more than one Person whose interests are represented by the Custodian.

17. An Underwriter is a Person who makes an agreement with an Issuer to conduct a Public Offering, with or without the obligation to purchase Securities that are not sold.

18. A Broker-Dealer is a Person who engages in the business of buying and selling Securities for the account of others or for his own account.

19. A Registration Statement is the set of documents that must be submitted to BAPEPAM by a Public Company, or by an Issuer in a Public Offering.

20. A Company is a limited liability company as defined in Law Number 1 of 1995 on Limited Liability Companies (Article 1, item 1 in the General Provisions).

21. A Securities Company is a Person who engages in the business of Underwriter, Broker-Dealer and/or Investment Manager.

22. A Public Company is a Company that has at least 300 shareholders and a paid-in capital of at least three billion rupiah, or such other number of shareholders and paid-in capital that may be stipulated in Government Regulations.

23. A Person is a natural person, a Company, a partnership, an association or any organized group.

24. A Securities Portfolio is a collection of Securities that is owned by a Person or Persons.

25. The Disclosure Principle is the general guideline that requires an Issuer, a Public Company, and other Persons subject to this Law, to disclose to the public within a certain time, Mate rial Information with respect to their business or Securities, when such information may influence decisions of investors in such Securities and/or the price of the Securities.

26. A Prospectus is written information that is intended to induce another Person to buy Securities in a Public Offering.

27. An Investment Fund is a vehicle used by an Investment Manager to gather funds from the public for investment in a Securities Portfolio.

---

electronic media, as well as letters, brochures and printed matter distributed to more than one hundred Persons. The number of one hundred offerees and fifty purchasers, used to determine a Public Offering, may be adjusted by BAPEPAM in response to Capital Market developments.

[16]"Jointly-owned" refers to Securities owned by more than one Person and registered in the name of a Custodian. For example, Securities in Collective Custody at a Central Depository are recorded in the Issuer's register of Security-holders in the name of the Central Depository. These Securities are recognized by the Issuer as being owned by one or more Person represented by the Central Depository. Securities in Collective Custody with a Custodian bank or Securities Company are registered in a Securities account at a Central Depository. These Securities are recognized by the Central Depository as being owned by more than one Person represented by such Custodian bank or Securities Company.

28. A Securities Exchange Transaction is a contract between Members of a Securities Exchange in accordance with Exchange rules, that relates to the purchase, sale, borrowing, lending, or other contractual arrangement regarding Securities or the price of Securities.[17]

29. A Participation Unit is the method of measuring a Person's ownership interest in a collective investment Portfolio.

30. A Trust-Agent is a Person who represents the interests of holders of credit Securities.

Article 2

The Minister shall determine general policy[18] with respect to the Capital Market.

CHAPTER II THE CAPITAL MARKET SUPERVISORY AGENCY

Article 3

1) The *Capital Market Supervisory Agency,* hereinafter referred to as BAPEPAM, shall provide guidance, regulation, and day-to-day supervision of the Capital Market.[19]

2) BAPEPAM reports and is responsible to the Minister.

Article 4

In providing the guidance, regulation and supervision specified in *Article 3,* BAPEPAM shall act with the purpose of ensuring that the Capital Market is orderly, fair, and efficient and that the interests of investors and the public are protected.

Article 5

In order to carry out the provisions of *Articles 3 and 4,* BAPEPAM shall have authority to:

a) grant:

1) business licenses to Securities Exchanges, Clearing Guarantee Institutions, a Central Securities Depository, Investment Funds, Securi-

[17]The borrowing and lending of Securities may occur when a Securities Exchange Member lacks the Securities needed to settle a Securities Exchange transaction. Other contracts involving the price of Securities include share-price-index options.

[18]General policy is Capital Market policy directly or indirectly related to fiscal and monetary policy and macroeconomics in general.

[19]Because the Capital Market is a source of financing for business and an investment vehicle for investors, and because the market has a strategic role in national development, its activities must be supervised to ensure that they are orderly, fair, and efficient. Consequently, BAPEPAM is given administrative authority and the responsibility to guide, regulate and supervise Persons engaged in Capital Market activities. Such supervision may be preventive in the form of regulations, guidelines, guidance and directions, or remedial in the form of inspections, investigations and the imposition of sanctions.

ties Companies, Investment Ad visors, and Securities Administration Agencies;

2) individual licenses to Underwriter's Representatives, Broker-Dealer's Representatives, and Investment Manager's Representatives; and

3) approvals to Custodian banks;

b) require the registration of Capital Market Supporting Professionals and Trust-Agents;

c) establish qualifications and nominating procedures for directors and commissioners of Securities Exchanges, Clearing Guarantee Institutions, the Central Securities Depository, as well as the procedures for suspending such officials and for appointing interim management until the election of new commissioners or directors;[20]

d) establish the requirements and procedures regarding Registration

---

[20]Candidates for director or commissioner of Securities Exchanges, Clearing and Guarantee Institutions, and Central Depositories must fulfill requirements established by BAPEPAM. Among other things, candidates must:

1. have Indonesian citizenship and be legally competent;
2. have never been declared bankrupt or a director or commissioner that has been declared responsible for having caused a Company to go bankrupt;
3. have never been found guilty of a criminal act;
4. have never committed a disgraceful act in the Capital Market or in the financial sector;
5. have good character and morals;
6. have expertise in the Capital Market; and
7. have never committed a material violation of Capital Market laws and regulations.

Procedures for nominating directors or commissioners of Securities Exchanges, Clearing and Guarantee Institutions, and Central Depositories are as follows:

1. Candidates for director or commissioner shall be proposed to BAPEPAM and shall be subject to requirements established by BAPEPAM;
2. When a prospective director or commissioner meets the requirements, BAPEPAM shall give its approval. If, in its evaluation, BAPEPAM determines that the candidate does not meet the requirements, it will reject the nomination; and
3. Candidates for director and commissioner that have been approved by BAPEPAM shall be eligible for election by the General Meeting of Shareholders.

BAPEPAM may temporarily suspend a director or commissioner of a Securities Exchange, Clearing and Guarantee Institution or Central Depository, when such director or commissioner, among other things:

1. loses his Indonesian citizenship or becomes legally incompetent;
2. has been declared bankrupt;
3. has been found guilty of a criminal act;
4. has committed a disgraceful act in the Capital Market or in the financial sector;
5. does not have a good character and or morals; or,
6. commits a material violation of Capital Market laws and regulations.

When BAPEPAM temporarily suspends all members of a board of directors, BAPEPAM may appoint any Person, employed or not by the Securities Exchange, Clearing and Guarantee Institution or Central Depository, as a temporary manager. Thereupon, the Securities Exchange, Clearing and Guarantee Institution or Central

Statements and declare, delay, or cancel the effectiveness of such Registration Statements;[21]

e) inspect and investigate any Person with respect to suspected violations of this Law or its implementing regulations;

f) require any Person to:

(1) suspend and/or correct any advertisement or promotion related to the Capital Market;[22] or

(2) take actions necessary to remedy the effects of such advertisement or promotion;[23]

g) inspect:[24]

(1) Issuers and Public Companies that have submitted or that are required to submit a Registration Statement to BAPEPAM; or

(2) Persons that, under this Law, are required to have a business or individual license, or to be approved, or to be registered as a professional;

h) authorize a Person,[25] under powers granted to BAPEPAM in letterg, to conduct an inspection;

i) publish findings of inspections;[26]

Depository shall convene a General Meeting of Shareholders to elect new members of the board of directors.

[21]"Effectiveness" refers to having completed or fulfilled all procedures and legal requirements with respect to a Registration Statement. A declaration of effectiveness is not an approval of the Public Offering nor is it a declaration that BAPEPAM has determined that the information disclosed by the Is suer or Public Company is true and sufficient. Issuers and Public Companies that submit a Registration Statement are responsible to ensure that all information and statements therein are true and not misleading. BAPEPAM does not guarantee that information in a Registration Statement is true or complete. BAPEPAM may delay declaring a Registration Statement effective when the relevant procedures or requirements have not been met. In addition, BAPEPAM may cancel the effectiveness of a Registration Statement when new information is received indicating that there is a violation of this Law or its implementing regulations.

[22]When a Person engaged in Capital Market activities makes an advertisement or promotion in contravention of this Law or its implementing regulations, BAPEPAM may halt the advertisement or pro motion and order the Person to make corrections in order to protect the interests of investors and/or the Capital Market

[23]When investors or others incur a loss as a result of an advertisement or promotion as referred to in item 1), BAPEPAM may order the Person responsible to take necessary measures to remedy the situation, including reimbursement of losses.

[24]In this letter, "inspection" means a routine examination of an Issuer, Public Company, or other Per son that has a license, approval or registration from BAPEPAM. In its inspections, BAPEPAM may order the Persons inspected to submit certain reports, and may examine offices and records, such as accounts, books, documents, and working papers, whether recorded manually, mechanically, electronically or by other means.

[25]"Authorized Person" refers to a Securities Exchange that is authorized by BAPEPAM to inspect its Member firms. Authority to conduct inspections may be given also to Public Accountants and others when necessary.

[26]The results of the BAPEPAM inspections referred to in letters e and g, may be published when BAPEPAM deems it is necessary to inform the public of its findings

j) suspend or cancel the listing of a Security on a Securities Exchange or suspend trading in a Security on an Exchange for a certain period, in order to safeguard investors' interests;[27]

k) suspend all trading on a Securities Exchange in times of emergency;[28]

l) investigate petitions for relief from Persons sanctioned by a Securities Exchange, a Clearing Guarantee Institution, or a Central Securities Depository and decide whether to revoke or sustain such sanctions;[29]

m) set fees for the granting of licenses, approvals, registrations, and fees for inspections and examinations, and other fees related to the Capital Market;[30]

n) take steps necessary to avert loss to the public arising from violation of Capital Market regulations;[31]

---

in order to safeguard market integrity and to promote compliance with this Law and or its implementing regulations.

[27]BAPEPAM may suspend or cancel the listing of a Security on a Securities Exchange or halt trading in a Security on an Exchange, when investors' interests are endangered or when it is not possible to trade fairly in a Security, such as when an Issuer fails to disclose the true condition of a Company.

[28]"Emergency" refers to circumstances beyond anyone's control, including wars, strikes, sabotage and riots, and natural disasters such as earthquakes or floods, as well as a sudden significant drop in the prices of Securities on a Securities Exchange due to a breakdown in the trading or settlement system.

[29]A Person that is sanctioned by a Securities Exchange, Clearing and Guarantee Institution or Central Depository, may petition BAPEPAM for relief. BAPEPAM may grant relief to the petitioner, when its review shows there has been an error of fact or of law in the application of the sanction. BAPEPAM may cancel or amend a decision of a Securities Exchange, Clearing and Guarantee Institution, or Central Depository. Conversely, BAPEPAM may decide that there is no basis to grant relief and reaffirm the decision of the Securities Exchange, Clearing and Guarantee Institution, or Central Depository.

[30]"License fees" refer to moneys collected by BAPEPAM for processing license applications of Per sons intending to engage in Capital Market activities, including licenses for Securities Exchanges, Clearing Guarantee Institutions, Central Depositories, Securities Companies, Investment Advisors, and Representatives of Underwriters, Broker-Dealers and Investment Managers. "Approval fees" refer to moneys collected by BAPEPAM for processing applications of Persons seeking approval to engage in certain Capital Market activities, such as banks that wish to act as Custodians. "Registration fees" refer to moneys collected for processing the registration of a Trust-agent or a Capital Market Supporting Professional, such as an Accountant, Appraiser, Notary, or Legal Consultant. "Inspection and examination fees" refer to moneys collected for reviewing a Registration Statement or for costs of a special inspection by an Accountant in connection with an investigation. "Other fees" refer to miscellaneous charges, such as fees for information provided investors. All fees that are collected are revenues of the State and shall be paid to the State Treasury. In view of the scope of its duties and the anticipated expansion in its workload, BAPEPAM requires an adequate appropriation in the State Income and Expenditure Budget (APBN) so that its responsibilities may be properly met.

[31]"Steps necessary to prevent loss" refer to significant, timely actions taken to protect the public against violations of this Law and its implementing regulations, including such actions as:

o) provide technical interpretations regarding this Law and its implementing regulations;

p) define other instruments as Securities,[32] in addition to those mentioned in *Article 1 item 5;* and

q) do any other act[33] required by this Law.

CHAPTER III SECURITIES EXCHANGES, CLEARING GUARANTEE INSTITUTIONS AND CENTRAL SECURITIES DEPOSITORY

Section One Securities Exchanges

Paragraph 1. Licensing

Article 6

1. Only a Company that has been granted a business license by BAPEPAM may carry on business as a Securities Exchange.[34]

2. Requirements and procedures[35] for the licensing referred to in item (1) with respect to Securities Exchanges shall be determined in Government Regulations.

---

1. Determining how transactions that the Clearing and Guarantee Institution is not able to settle, will be settled;
2. In the event of counterfeit shares, taking essential measures, such as requesting the Director General of Immigration, or the Department of Justice through the Attorney General to arrest certain Persons;
3. Requiring a Securities Exchange to change its rules that are contrary to Capital Market regulations;
4. Requiring an Issuer to use funds raised in a Public Offering for purposes stated in the Prospectus; and
5. Subject to approval by the General Meeting of Shareholders, permitting changes in the utilization of funds raised through Public Offering.

[32]When defining other instruments as Securities, the provisions of current laws and regulations and the authority of other agencies, such as Bank Indonesia, shall be observed.

[33]"Any other act" refers to powers other than those indicated in letters a through p. Among the other powers granted to BAPEPAM are:

1. The determination of the method of preparation and submission of the annual budget and profit-utilization plan of a Securities Exchange, in accordance with Article 7 item (3);
2. Approval of required rules of a Securities Exchange, including amendments thereto, in accordance with in Article 11;
3. The determination of other services that may be provided by a Clearing and Guarantee Institution and a Central Depository as stated in Article 14 paragraph (3); and
4. The determination of the method of preparation and submission of the annual budget and profit-utilization plan of a Clearing Guarantee Institution and a Central Depository, in accordance with the provisions of Article 14 paragraph (4).

[34]A Securities Exchange is organized primarily to provide systems and facilities for members to trade Securities. Because savings of the public are invested, trading must be orderly, fair and efficient. For this reason, a Securities Exchange must be licensed by BAPEPAM to conduct its business.

[35]Requirements and procedures for licensing deal with such matters as:

Paragraph 2. Purpose and Ownership

Article 7

1. Securities Exchanges shall be founded for the purpose of organizing an orderly, fair and efficient trading market for Securities.[36]

2. To achieve the purposes mentioned in item (1), a Securities Ex change must supervise Members' activities and provide them with facilities.[37]

3. A Securities Exchange must submit an annual budget and profit utilization plan to BAPEPAM according to BAPEPAM rules.[38]

Article 8

Only Securities Companies that are licensed as Broker-Dealers may be shareholders of a Securities Exchange.[39]

Paragraph 3. Securities Exchange Rules and Inspection Units

---

1. the business license;
2. provisions that must be included in the articles of association;
3. the management;
4. the capital; and
5. the economic basis for establishing the Securities Exchange.

[36]Securities trading is orderly, fair and efficient when it is based on clear rules that are followed consistently. Prices should be determined by supply and demand. Trading efficiency is reflected in the speed and cost of transactions.

[37]The purpose of a Securities Exchange is to provide systems and facilities for trading Securities. With effective systems and facilities, share-holder-Members may trade Securities in an orderly, fair and efficient manner. Efficient systems and facilities also help Securities Exchanges to supervise their members effectively.

[38]In preparing an annual budget and a profit utilization plan, a Securities Exchange must endeavor to achieve Capital Market efficiency and the Exchange must observe BAPEPAM stipulations regarding, among other things:

1. Improvement of trading systems and facilities;
2. Improvement in guidance and supervision of Members;
3. Development of efficient systems for listing Securities;
4. Development of systems for clearing and settling Exchange Transactions;
5. Improvement of information systems;
6. Development of the Capital Market through promotion and research; and
7. Training human resources.

The annual budget and profit utilization plan shall be approved by the General Meeting of Shareholders and submitted to BAPEPAM. After reviewing the annual budget and profit utilization plan, BAPEPAM may reject proposals that are contrary to the above objectives. Plans that are rejected by BAPEPAM shall be amended by the directors of the Exchange and after obtaining approval from the board of commissioners, resubmitted to BAPEPAM for approval. Only annual budgets and profit utilization plans that have been approved by BAPEPAM may be implemented.

[39]Considering that the purpose of a Securities Exchange is to provide facilities and systems for trading Securities, and that with respect to trading, only Securities Companies may be Broker-Dealers, shareholders of a Securities Exchange are limited to licensed Securities Companies.

Article 9

1. A Securities Exchange must make rules on Membership, listing, fungibility of Securities, clearing and settlement of Exchange Transactions, and related Exchange matters.[40]

2. Securities Exchanges shall determine the procedures for transferring Securities in connection with Exchange Transactions.[41]

3. Securities Exchanges may set listing fees, Membership dues, Transaction fees, and service charges.[42]

4. Fees and dues referred to in item (3) shall be in accordance with functional needs of the Securities Exchange.[43]

Article 10

A Securities Exchange may not restrain beneficial competition nor re strict its Members from joining other Securities Exchanges.[44]

Article 11

Securities Exchange rules and rule changes become effective when approved by BAPEPAM.[45]

Article 12

---

[40]Securities Exchanges have self-regulatory powers. Exchange rules bind Members, Issuers of securities listed on the Exchange, and Exchange contractors such as the Clearing Guarantee Institution, the Central Securities Depository, and Custodian banks. Rule-making on clearing and settlement must be coordinated with the Clearing Guarantee Institution. "Related matters" refers to rules on Member inspections, the coordination of trading with the Clearing Guarantee Institution and the Central Securities Depository, and rules related to new kinds of operations. Fungibility refers to an attribute of Securities that relates to their interchangeability with comparable Securities with the same value, of the same Issuer.

[41]Securities Exchange rules regarding the transfer of Securities must consider general practices in the Capital Market. The "transfer of Securities" also refers to the transfer of entitlements.

[42]The principal revenues of a Securities Exchange are membership dues, transaction fees, and listing fees. Such revenues are intended to cover costs of services to Members related to Exchange trading, so that such operations are orderly, fair and efficient.

[43]The dues and fees collected by a Securities Exchange are necessary to cover operational costs and to develop the Exchange. When income is more than sufficient for operating and development needs, the Exchange may reduce its dues and fees.

[44]This Article is intended to discourage unfair competition among Securities Exchanges by allowing Securities Company to become members of more than one Exchange.

[45]To ensure that rules of a Securities Exchange comply with this Law and or its implementing regulations, such rules must be approved by BAPEPAM in order to take effect.

1. A Securities Exchange must have an inspection unit that is responsible for periodic and surprise inspections of the Exchange and its Members.[46]

2. The supervisor of the inspection unit shall report directly to the boards of directors and commissioners of the Securities Exchange, and to BAPEPAM, whenever matters are discovered that could materially affect a Member or the Exchange.[47]

3. Securities Exchanges must make inspection reports available to BAPEPAM on request.[48]

Section Two Clearing Guarantee Institutions, and The Central Securities Depository

Paragraph 1. Licensing

Article 13

1. Only a Company that is licensed by BAPEPAM may act as a Clearing Guarantee Institution or a Central Securities Depository.[49]

2. Procedures and requirements for the licensing referred to in *item (1)* with respect to a Clearing Guarantee Institution and a Central Securities Depository shall be stipulated in Government Regulations.[50]

Paragraph 2. Purpose and Ownership

Article 14

---

[46]The Securities Exchange inspection unit is intended to continuously supervise Exchange Members and management, to ensure that they comply with this Law, its implementing regulations and Securities Exchange rules.

[47]Reporting to the boards of directors and commissioners of the Securities Exchange and BAPEPAM is required so that they may take necessary actions to resolve problems of the Exchange and its Members.

[48]The Securities Exchanges must administer inspection unit reports properly so that they are available to BAPEPAM upon request.

[49]Clearing Guarantee Institution operations are a continuation of activities of the Securities Exchange through settlement of Exchange Transactions. Because public savings are involved, the Clearing Guarantee Institution must fulfill certain technical requirements to ensure that transactions are settled in an orderly, fair and efficient manner. In like manner, a Central Securities Depository, as the principal Custodian for safekeeping Securities, must meet certain technical requirements. Therefore, these two institutions must be licensed by BAPEPAM.

[50]Among licensing requirements and procedures are matters such as:

1. the business license;
2. required provisions in the articles of association;
3. management; and
4. capital.

1. A Clearing Guarantee Institution is established for the purpose of providing clearing services[51] that are orderly, fair and efficient and of guaranteeing settlement of Exchange Transactions.

2. A Central Securities Depository is established for the purpose of providing central Custodian services and orderly, fair and efficient services relating to the settlement of Transactions.

3. Clearing Guarantee Institutions and Central Securities Depository may provide other services in accordance with BAPEPAM rules.[52]

4. A Clearing Guarantee Institution as well as a Central Securities Depository must submit an annual budget and profit-utilization plan to BAPEPAM in accordance with BAPEPAM regulations.[53]

Article 15

1. Securities Exchanges, Securities Companies, Securities Administration Agencies, Custodian banks or others approved by BAPEPAM, may be shareholders of a Clearing Guarantee Institution and a Central Securities Depository.[54]

---

[51]Clearing is the process of determining and informing Securities Exchange Members of their rights and obligations of with respect to trades they have made.

[52]"Other services" include such things the distribution of voting proxies and annual reports, the processing of preemptive subscription rights, the receipt of Securities in a tender offer, and settlement services for foreign central Custodians.

[53]The annual budget and profit-utilization plan of a Clearing Guarantee Institution or a Central Securities Depository must take into consideration the goal of an efficient Capital Market and BAPEPAM provisions with respect to such matters as:

1. Improvements to clearing and guarantee services so that exchange transactions are orderly, fair and efficient;
2. Improvements to Central Securities Depository services so that settlement of transactions is orderly, fair and efficient;
3. Improved safety of book-entry settlement of Exchange Transactions; and
4. Development of secure systems for safekeeping Securities.

The annual budget and profit utilization plan of the Clearing Guarantee Institution and Central Securities Depository must be approved by the General Meeting of Shareholders and submitted to BAPEPAM. When BAPEPAM finds that the annual budget and profit-utilization plan of a Clearing Guarantee Institution or a Central Securities Depository is not satisfactory, it may reject the proposal. When BAPEPAM rejects a budget or profit-utilization plan, the board of directors of the respective institution must make changes and obtain approval of its board of commissioners before resubmitting the plan to BAPEPAM. The annual budget and profit-utilization plan can be implemented only when approved by BAPEPAM.

[54]Activities of a Clearing Guarantee Institution, and a Central Securities Depository are closely related to the settlement of Securities transactions. Therefore a Clearing Guarantee Institution and a Central Securities Depository should be owned principally by users of the services of these institutions such as Securities Exchanges, Securities Companies, Securities Administration Agencies and Custodian Banks. However, when funding requirements for organizing a Clearing Guarantee Institution or a Central Securities Depository cannot be met from such sources, other Persons may be shareholders, subject to BAPEPAM approval.

2. The majority of the shares of a Clearing Guarantee Institution must be owned by a Securities Exchange.[55]

Paragraph 3. Rules of Clearing Guarantee Institutions and The Central Securities Depository

Article 16

1. A Clearing Guarantee Institution must make rules on clearing and on the guaranteed settlement of Exchange Transactions, and its service charges.[56]

2. A Central Securities Depository must make rules on central Custodian services and Securities Transaction settlement services, and its service charges.[57]

3. The charges mentioned in *items (1) and (2)* shall be compatible with the functional requirements of the Clearing Guarantee Institution and the Central Securities Depository.[58]

Article 17

Rules of a Clearing Guarantee Institution or a Central Securities Depository, and amendments thereof, become effective when approved by BAPEPAM.[59]

CHAPTER IV INVESTMENT FUNDS

Section One Legal Form and Licensing

Article 18

1. An Investment Fund can be organized as a:

---

[55]Clearing and guaranteed settlement of Exchange Transactions are part of Securities Exchange business. Therefore, in order to assure that clearing and settlement guarantees are consistent with Securities Exchange activities, the majority of shares of a Clearing Guarantee Institution shall be owned by Securities Exchanges. Majority refers to shareholders with more than fifty percent of the issued and paid-in capital of the company.

[56]In order to ensure that clearing and guaranteed settlement of Exchange Transactions is orderly, fair and efficient, rules protecting the interests of service-users are required. For this reason, a Clearing Guarantee Institution has authority to establish rules that bind and must be observed by all service users.

[57]To protect the users' interests, a Central Securities Depository must issue rules establishing users' rights and obligations.

[58]As nonprofit institutions, services fees of a Clearing Guarantee Institution and a Central Securities Depository must be compatible with their operating and developmental costs and the interests of their users.

[59]In order to ensure that rules of a Clearing Guarantee Institution or a Central Securities Depository are in accordance with this Law and its implementing regulations, such rules become effective only when approved by BAPEPAM.

a) **Company**;[60] or

b) collective investment contract[61]

2. The Investment Funds referred to in *item (1) letter a* may be open-ended or closed-ended.[62]

3. An Investment Fund organized in accordance with *item (1) letter a* must be **Company** licensed by BAPEPAM.

4. An Investment Fund organized in accordance with *item (1) letter b* must be managed by an Investment Manager under Contract.[63]

5. Requirements and licensing procedures for Investment Funds referred to in *item (3)* shall be determined in Government Regulations.[64]

Article 19

1. Shareholders of open-end Investment Funds may sell their shares back to the Fund.

2. When shareholders wish to sell back their shares, an open-end Investment Fund must buy the shares.

3. Exceptions to the requirement of *item (2)* may be made when

a) the Securities Exchange where most of the Securities in the Investment Fund Portfolio are traded, is closed;[65]

b) trading is suspended on the Exchange with respect to Securities that make up most of the Investment Fund Securities Portfolio;[66]

---

[60]The business of an Investment Fund in corporate form is investing the proceeds of the sale of its shares in Securities traded on the Capital and the money markets.

[61]A Collective investment contract is an agreement between an Investment Manager and a Custodian Bank that binds participating unit-holders and that authorizes the Investment Manager to manage the collective investment portfolio and the Custodian Bank to provide Collective Custody services. Funds organized as collective investment contracts raise funds by issuing Participation Units to investors for the purchase of Securities traded in capital and money markets.

[62]An open-end Investment Fund is a Fund that offers to sell and repurchases shares from investors up to its authorized capital, whereas a closed-end Investment Fund is a Fund that does not repurchase shares from its shareholders.

[63]To ensure that the portfolio of a collective investment contract is managed professionally, the management must be done by an Investment Manager.

[64]Licensing rules and procedures include such matters as:

1. the business license;
2. provisions that must be included in the articles of association;
3. management; and
4. capital

[65]"Most of the portfolio" refers to that amount that may significantly affect the valuation of the portfolio and the Fund's net asset value per share. Valuation of a portfolio and the per share net asset value is based on prices on the Exchange where the securities are traded. When the Exchange is closed, there are no prices to serve as a basis for evaluating of the Fund's portfolio or the net asset value of per share.

[66]"Most of the portfolio" has the same meaning as in letter a. When Exchange trading in a Security in the Fund's portfolio is suspended, there is no price basis for the Security.

c) there is an emergency;[67] or

d) there has occurred some other circumstance stipulated in the investment management contract ap proved by BAPEPAM.[68]

Article 20

1. The Investment Manager, as administrator of an open-end Investment Fund in the form of a collective investment contract, may continuously sell and repurchase Participation Units, within limits stipulated in the contract.[69]

2. An Investment Manager must repurchase the Participation Units of holders that wish to sell their Units.

3. Exceptions from the stipulation of *item (2)* can be made when:

a) the Securities Exchange where most of the Securities in the Investment Fund Portfolio are traded, is closed;[70]

b) trading is suspended on the Exchange with respect to Securities that make up most of the Investment Fund Securities Portfolio;[71]

c) there is an emergency;[72] or

d) some other circumstance stipulated in the investment management contract approved by BAPEPAM has occurred.[73]

Section Two Management

Article 21

1. Administration of Investment Funds, whether in corporate or collective investment contract form, shall be carried out by an Investment Manager under contract.[74]

---

[67]"Emergency" has the same meaning as in the note to Article 5, letter k.

[68]The provision for "other circumstances" is meant to anticipate Capital Market developments that give rise to a situations other than those referred to in letters a, b and c and provisions ordinarily included in contracts under Article 1338 of the Indonesian Civil Code that establishes freedom of contract. Provisions other than those referred to in letters a, b and c, are binding only when approved by BAPEPAM.

[69]Units of Participation of an Investment Fund in the form of a collective investment contract shall be redeemed by the Investment Manager for the account of the Fund. Money used by the Investment Manager to redeem Participation Units comes from the Fund's assets.

[70]"Most of the portfolio" refers to that amount that may significantly affect the valuation of the portfolio and the Fund's net asset value per Unit Valuation of a portfolio and the per share net asset value is based on prices on the Exchange where the securities are traded. When the Exchange is closed, there are no prices to serve as a basis for evaluating of the Fund's portfolio or the net asset value of per Unit.

[71]"Most of the portfolio" has the same meaning as in letter a. When Exchange trading in a Security in the Fund's portfolio is suspended, there is no price basis for the Security.

[72]"Emergency" has the same meaning as in the note to Article 5, letter k.

[73]"Other circumstances" has the same meaning as in Article 19, item (3) letter d.

[74]"Administration of an Investment Fund" means management of an Investment

2. Parties to an Investment Fund management contract with respect to Funds in corporate form, shall be the board of directors and the Investment Manager.[75]

3. Parties to an Investment Fund management contract are the Investment Manager and the Custodian bank in the case of a open-end collective investment contract, and this contract includes the management contract.[76]

4. Further regulation of the provisions of *items (2) and (3)* shall be made by BAPEPAM.[77]

Article 22

On every Exchange day, the Investment Manager shall determine the fair market value of Securities in the Portfolio of an open-end Investment Fund, whether organized as a corporation or as a collective investment contract, in accordance with BAPEPAM rules.[78]

Article 23

Net asset value shall be the basis for evaluating shares of an open end, corporate Investment Fund and Participation Units of a collective investment contract.[79]

Article 24

Fund by an investment Manager.

[75]A management contract includes such things as:

1. Portfolio diversification policy with respect to the money market and the Capital Market;
2. Diversification policy with respect to bonds and shares;
3. Diversification policy with respect to industry groups; and
4. Prohibitions regarding certain types of investment.

[76]A management contract includes such things as:

1. Portfolio diversification policy with respect to the money market and the Capital Market;
2. Diversification policy with respect to bonds and shares;
3. Diversification policy with respect to industry groups; and
4. Prohibitions regarding certain types of investment.

[77]Further regulation refers to such matters as:

1. Guidelines for investment management contracts; and
2. Submission procedures for draft investment management contracts.

[78]The fair market value of a Security that is actively traded on a Securities Exchange is its market price or quotation. The fair market value may differ from the market price when a Security is not actively traded or has not been traded for some time. In such cases, fair market value is determined in accordance with criteria established by BAPEPAM. An "Exchange day" is any day on which a Securities Exchange is open for business.

[79]"Net asset value" is the fair market value of the Securities portfolio and other assets of a Fund, less the liabilities of the Fund.

1. An Investment Fund may neither borrow nor lend money.[80]

2. An Investment Fund may not acquire shares or Participation Units of another Investment Fund.

3. Further restrictions on Investment Fund operations may be set by BAPEPAM.[81]

Article 25

1. The assets of an Investment Fund must kept with a Custodian bank.[82]

2. The Custodian bank mentioned in *item (1)* may not be Affiliated with the Fund's Investment Manager.[83]

3. Investment Funds must calculate and publish their net asset value.[84]

Article 26

1. Parties to the contract for custody of the assets of an Investment Fund in corporate form, shall be the board of directors and the Custodian bank.[85]

2. A collective investment contract shall include the custodial agreement and shall be made by the Investment Manager and the Custodian bank.[86]

---

[80]This provision does not prohibit the purchase of bonds or other debt Securities by an Investment Fund, nor the deposit of cash in banks.

[81]Investment limitations include such things as:

1. The amount invested in a single Security;
2. Limitations on investment in foreign Securities; and
3. Certain instruments that may not be purchased by the Fund.

[82]Investment Fund assets include cash and such Securities as deposit certificates, commercial paper, shares, bonds, and promissory notes. The mandatory deposit of Investment Fund assets with a Custodian Bank is intended to protect the Fund's assets. For the same reason, the function of Custodian is separate from the function of Investment Manager.

[83]To avoid conflicts of interest in Investment Fund administration, the powers of the both the Investment Manager and the Custodian Bank are limited. The Investment Manager acts only as portfolio manager, while the Custodian provides safekeeping and administrative services for Fund assets. As an additional safeguard, Investment Managers may not be affiliated with the Fund's Custodian Bank.

[84]The net asset value of open-end Investment Funds must be calculated and published each trading day. The net asset value of a closed-end Investment Fund must be calculated and published at least once a week

[85]The board of directors of an Investment Fund oversees the management and administration of the Fund, including the custody of Fund assets. Therefore, the board of directors must contract with a Custodian Bank with respect to Investment Fund assets.

[86]A custodial contract must include at least the following provisions:

1. Investment Fund Securities must be segregated from those of the Custodian;
2. Changes in Fund assets must be recorded;
3. A Custodian may not terminate its services until a new Custodian is appointed; and

3. Further regulation[87] regarding *items (1) and (2)* shall be made by BAPEPAM.

Article 27

1. To the extent possible, an Investment Manager must, in good faith and in a fully responsible manner, carry out his duties in the sole interest of the Investment Fund.[88]

2. An Investment Manager that does not carry out his duties in accordance with *item (1)* shall be liable for losses resulting from his actions.[89]

Article 28

1. Shares of a corporate open-end Investment Fund have no par value.[90]

2. At least one percent of the authorized capital of a corporate Investment Fund shall be issued and paid-in when the fund is established.[91]

3. Shares of a corporate Investment Fund may be repurchased and resold without the approval of the *General Meeting of Shareholders*.[92]

4. The repurchase of shares of a corporate Investment Fund shall be made from the Fund's assets.[93]

Article 29

1. A corporate Investment Fund is not required to maintain reserves.

---

4. Certain reports must be prepared and submitted to the Investment Manager and to BAPEPAM.

[87]Such regulation includes such matters as:

1. guidelines for a custodial contract; and
2. procedures for submitting a draft collective custody contract.

[88]Because Investment Managers administer public funds, there must be maximum assurance that the Investment Manager acts with good intentions and full responsibility with respect to the interests of the Fund.

[89]An Investment Manager is liable for the Fund's losses that result from its irresponsible management or bad faith.

[90]The value of Investment Fund shares is based on the net portfolio value. As the portfolio value changes, the net asset value per share also changes. Investors buy and sell Fund shares at net asset value. From the time the Fund is established, the price of Fund shares is always equal to the net asset value per share. Because the net asset value per share constantly changes with the value of the portfolio, Investment Fund shares are issued without par value.

[91]The initial capital of a Fund is supplied by the founder in order to start operations. A Fund's founder need only pay in one percent of the authorized capital. The purpose of a Fund is to gather public savings for portfolio investment Therefore, additional capital, up to the amount authorized, is obtained through a Public Offering.

[92]Approval of the General Meeting of Shareholders is not required, because the repurchase of Investment Fund shares and subsequent resales occur constantly as a result of shareholder redemptions.

[93]The Fund's assets include cash and proceeds from the sale of securities from the Fund's portfolio.

2. BAPEPAM shall determine the reserves that may be maintained by an Investment Fund.[94]

CHAPTER V SECURITIES COMPANIES, SECURITIES COMPANY REPRESENTATIVES AND INVESTMENT ADVISORS

Section One Licensing of Securities Companies

Article 30

1. Only a Company licensed by BAPEPAM may carry on business as a Securities Company.[95]

2. A Securities Company licensed under *item (1)* may carry on business as an Underwriter, Broker-Dealer and/or Investment Manager and any other business permitted by BAPEPAM rules.[96]

3. A Securities Company license is not required when a Person acts as an Underwriter, Broker-Dealer and/or Investment Manager only with respect to credit Securities that have a maturity of less than one year, or certificates of deposit, insurance policies, Securities issued or guaranteed by the *Indonesian Government* or other Securities determined by BAPEPAM.[97]

4. Further licensing requirements and procedures with respect to Securities Companies shall be stipulated in Government Regulations.[98]

Article 31

A Securities Company is accountable for all Securities-related activities of its directors, employees and other Persons that work for the Company.[99]

---

[94]In principle, profits of a corporate Investment Fund are distributed as dividends to shareholders. Investment Funds may not borrow from third parties. Therefore, reserve are not needed for the protection of creditors. However, reserves may be maintained to increase the size of the Fund and the value of its investment portfolio.

[95]Securities Company must meet certain licensing requirements, such as sufficient expertise and capital.

[96]An Underwriter's license also serves as a license to act as a Broker-Dealer. Securities Companies that are licensed Underwriters may carry on business as Broker-Dealers. However, a Securities Company licensed only as a Broker-Dealer may not act as an Underwriter.

[97]Persons that act as Underwriters, Broker-Dealers, or Investment Managers only with respect to the types of Securities described in this item are not required to be licensed by BAPEPAM. However, because Persons licensed by BAPEPAM may also deal in such exempt securities, and because operations in these Securities may give rise to new types of Securities that are not regulated or supervised by other government agencies, BAPEPAM has the authority to regulate such activities by virtue of this Law and its implementing regulations.

[98]Licensing requirements and procedure include such things as:

1. Requirements with respect to management, capital and expertise; and
2. Procedures for submitting license applications

[99]Securities-related activities refer to the business activities of the Securities Company, such as acting as an Underwriter, Broker-Dealer, or Investment Manager.

Section Two Licensing of Securities Company Representatives

Article 32

1. Only individuals licensed by BAPEPAM may act as Under writer Representatives, Broker-Dealer Representatives or Investment Manager Representatives.[100]

2. Further licensing requirements and procedures for Securities Company Representatives shall be stipulated in Government Regulations.[101]

Article 33

1. An individual licensed as an Underwriter Representative may also act as a Broker-Dealer Representative.[102]

2. An individual licensed as an Underwriter Representative, Broker-Dealer Representative or Investment Manager Representative may only be employed by one Securities Company.[103]

Section Three Licensing of Investment Advisors

Article 34

1. Only Persons licensed by BAPEPAM may engage in the business of Investment Advisor.[104]

"Employee" has the same meaning as defined in the note to Article 1 item 1 letter b. "Other Persons that work for the Company" includes non-employees authorized by the Company to perform specific duties.

[100]An Underwriter's Representative acts for the Securities Company with respect to its Securities underwriting business. A Broker-Dealer's Representative acts for the Securities Company with respect to its Securities trading business An Investment Manager's Representative acts for the Securities Company with respect to its Securities Portfolio management business.

[101]Licensing requirements and procedure include such things as:

1. Requirements with respect to experience and expertise; and
2. Procedures for submitting license applications.

[102]Since a licensed Underwriter's Representative is also a licensed Broker-Dealer's Representative, a licensed Underwriter's Representative may represent the Company in both the Underwriting and Broker-Dealer business. However, an individual licensed only as a Broker-Dealer's Representative may only represent a Securities Company with respect to its Broker-Dealer activities.

[103]The individuals in question work both for a company and its clients. In order to avoid conflicts of interest, Underwriter's Representatives, Broker-Dealer's Representatives and Investment Manager's Representatives may work for only one Securities Company.

[104]The business of an Investment Advisor is to give advice with respect to the sale or purchase of Securities, for a fee. An Investment Advisor must have certain qualifications, such as proficiency in Securities analysis. The scope of the Investment Advisory business includes the activities of a Securities Rating Agency. To ensure they have adequate qualifications, Investment Advisors must be licensed by BAPEPAM in order to do business in the capital market.

2. Further requirements and licensing procedures for Investment Advisors shall be stipulated in Government Regulations.[105]

Section Four Code of Conduct

Article 35

Securities Companies and Investment Advisors are prohibited from:

a) influencing or pressuring clients to act in ways contrary to their interests;[106]

b) disclosing a client's name or business, unless authorized in writing by the client or otherwise required by current law and regulations;

c) concealing material information from clients or making misrepresentations regarding their business capabilities or financial condition;[107]

d) recommending that clients buy or sell Securities, without revealing that the Securities Company or Investment Advisor has an interest in such Securities;[108] or

e) buying or holding in its name or in the name of an Affiliated Person, Securities of an oversubscribed Public Offering, with respect to which the Securities Company is the Underwriter or selling agent, until orders of Unaffiliated Persons are filled.[109]

---

[105]Licensing requirements and procedure include such things as:

1. Competency requirements, such as being a licensed Investment Manager's Representative; and
2. Procedures for submitting license applications.

[106]The business of Securities Companies and Investment Advisors is based on trust. In going about their business, Securities Companies and Investment Advisors must give priority to protecting the legitimate interests of their clients. They must avoid actions contrary to the interests of their clients. For example, a Securities Company salesman must not persuade a customer with limited resources to invest in high-risk Securities.

[107]In view of the trust and confidence of their clients, Securities Companies and Investment Advisors must honestly inform customers regarding their professional skills and financial situation, truthfully disclosing all information that is relevant.

[108]This prohibition is meant to avoid possible conflicts of interest, by requiring a Securities Company or Investment Advisor to disclose any interests they may have certain Securities. When Securities Companies or Investment Advisors and their clients have interests in the same Securities, the clients must be informed of such interest before making a recommendation. An interest in Securities exists when:

1. Persons, directly or indirectly, individually or jointly with others, own Securities or are en titled to dividends, interest or proceeds from the sale and or use of the Securities;
2. Persons are bound by covenants or agreements to buy Securities, or have the right to transfer or change the ownership of Securities or have preemptive subscription rights;
3. Persons are under obligation to buy unsold Securities in a Public Offering; and
4. Persons, individually or jointly with others, control any Person referred to in the previous three items.

[109]Besides serving to mobilize public funds, Public Offerings are meant to create

Article 36

Securities Companies and Investment Advisors must:[110]

a) know the background, financial situation, and investment objectives of their clients; and

b) prepare and maintain proper records of their financial condition, orders, and Transactions.

Article 37

Securities Companies must follow procedures stipulated by BAPEPAM when receiving clients' Securities and must:

a) register clients' Securities in accounts that are separate from accounts of the Securities Company;[111] and

b) maintain secure facilities for safekeeping clients' as sets, with separate records for each client.[112]

Article 38

A Broker-Dealer may not execute transactions on a Securities Exchange for his own account or for the account of Affiliated Persons,

---

liquidity for Securities. Wide distribution of Securities among investors is important When Securities are only held by a few investors, distribution is insufficient to create liquidity. On the other hand, liquidity creates opportunities for investors to use the market to increase their wealth. To achieve this end, when there is strong demand for a Public Offering, Underwriters must give priority to unaffiliated subscribers, in stead of their own orders, or orders of their sales agents or other affiliated Persons.

[110]Because the relationship between Securities Companies and Investment Advisors and their clients is based on trust, they should know the objectives, qualifications and background of their clients. With such knowledge, the Securities Company or Investment Advisor is able adjust its services to fit the needs of each client Securities Companies and Investment Advisors must avoid situations in which the trust of their clients is abused or actions in their own interest that are against the interest of their clients. In addition, Securities Companies or Investment Advisors must maintain proper records of clients' orders, transactions and investment activities. In this way, at all times documentation is available as proof when needed by clients.

[111]Clients' Securities in safekeeping with a Securities Company are not part of the Securities Company's assets. For this reason, clients' Securities must be maintained in accounts that are segregated from accounts of the Securities Company. Since clients' Securities are not assets of the Securities Company, when the Company is bankrupt or is liquidated, clients' Securities are not part of the assets in bankruptcy or liquidation. Therefore, creditors or others with claims against the Securities Company have no rights with respect to the Securities of clients in custody with the Securities Company.

[112]Besides being obligated to segregate client's Securities from their own assets, a Securities Company must also keep separate records for each client to avoid confusing ownership of Securities. A Securities Company must also provide safe storage facilities for assets to reduce the chance that clients' securities will be lost, damaged or stolen. With separate accounts, clients of Securities Companies can readily determine the number of Securities they own and use such records as evidence

until all buy and sell orders with respect to the same Securities for Unaffiliated clients have been executed.[113]

Article 39

An Underwriter must fulfill all terms of the underwriting agreement disclosed in the Registration Statement.[114]

Article 40

An Underwriter must disclose in the Prospectus[115] any Affiliation or other material relationship with the Issuer.

Article 41

A Broker-Dealer that is the Investment Manager of an Investment Fund, or a Broker-Dealer that is Affiliated with a Fund's Investment Manager,

---

[113]A Broker-Dealer may not purchase Securities for his own account or for the account of an affiliated Person, when there is an open purchase order with better terms from a non-affiliated Person with respect to the same Securities. However, a Broker-Dealer may purchase Securities for his own account or for the account of an affiliated Person on less favorable terms than orders of non-affiliated Persons. A Broker-Dealer may not sell Securities for his own account or for the account of an affiliated Person, when there is an open selling order on more favorable terms from a non-affiliated Person with respect to the same Securities. A Broker-Dealer may sell Securities for his own account or for the account of an affiliated Person on less favorable terms than orders of non-affiliated Persons. For example, if an non-affiliated Person gives an order to buy shares of PT X for Rp 10,000.00, the Broker-Dealer may purchase the same shares for his own account or for the account of an affiliated per son for more than Rp 10,000.00. When a non-affiliated Person gives an order to sell shares of PT X for Rp 10,000.00, the Broker-Dealer may sell the same type of shares for his own account or for the account of an affiliated Person for less than Rp 10,000.00.

[114]The agreement between the Underwriter and the Issuer with respect to a Public Offering must be disclosed in the Prospectus and the parties are required to comply with its terms. An Underwriting contract may be on a full commitment or best efforts basis. Under a full commitment contract, Underwriters must purchase unsold Securities. Under a best efforts contract, Underwriters must do their best to sell the Securities, but are not obliged to purchase Securities that are not sold.

[115]Issuers can issue Securities without using an Underwriter. In such cases, the Issuer determines the price. Underwriters may assist Issuers in marketing or may provide Issuers with assurances that they will receive the expected proceeds from the sale. In either case, the investor decides whether or not to purchase the Securities. Investors consider offerings in which the Underwriter is affiliated with the Issuer as similar to offerings by an Issuer acting without an Underwriter. When the Underwriter is affiliated with the Issuer, the investor is aware of possible conflicts of interest. When clearly disclosed in the Prospectus, the relationship between the Issuer and the Underwriter is not the decisive factor for investors. With disclosure, investors may evaluate the degree of independence of the Underwriter with respect to the Issuer. "Other material relationships" include such things as a business or debtor creditor relationship between an Issuer and an Underwriter or a contract to provide certain services.

may not charge commissions to the Fund that are higher than would be charged by an Unaffiliated Broker-Dealer.[116]

Article 42

An Investment Manager or an Affiliated Person may not receive any form of direct or indirect compensation that might influence that Investment Manager to buy or sell Securities for the Investment Fund.[117]

CHAPTER VI CAPITAL MARKET SUPPORTING INSTITUTIONS

Section One Custodians

Paragraph 1. Approval Article 43

1. Only a Central Securities Depository, a Securities Company or a Commercial bank approved by BAPEPAM may carry on business as a Custodian.[118]

2. Further requirements and procedures for approving commercial banks as Custodians shall be stipulated in Government Regulations.[119]

Paragraph 2. Securities in Custody Article 44

1. A Custodian is responsible for safekeeping an account holder's Securities and for fulfilling the conditions of the account-holder's contract with the Custodian.

2. Securities on deposit must be maintained and recorded separately.

---

[116]This is to safeguard the Investment Fund against excessive commissions charged by a Securities Company that is both Investment Manager and Broker-Dealer for the Fund, or by a Broker-Dealer that is affiliated with the Investment Manager.

[117]Investment Managers may not receive compensation of any type that influences their decisions to buy or sell Securities for an Investment Fund. Such decisions must be based solely on the interests of share or unit-holders of the Fund. An Investment Manager providing Broker-Dealer services may receive commissions without violating Article 41, as long as such commissions are not excessive. Other compensation related to fund management and stipulated in the investment management contract is also permitted.

[118]Safekeeping is an activity of Commercial Banks that is permitted under banking laws. Therefore, Commercial Banks do not require a license from BAPEPAM to provide safekeeping services. To act as Custodians, Commercial Banks must be approved by BAPEPAM since custody involves a wider range of services than safekeeping and relates to activities of the Central Securities Depository, Securities Companies, and Investment Funds. Neither A Central Securities Depository nor a Securities Company requires a separate license or approval to act as a Custodian, because their licenses already cover Custodial activities.

[119]Approval requirements and procedures include such things as:

1. Requirements regarding facilities;
2. Requirements with respect to expertise;
3. Qualifications for supervisors of Custodial activities; and
4. Procedures for submitting an application for approval.

3. Securities in safekeeping or posted to a Securities account with a Custodian are not part of the Custodian's assets.[120]

Article 45

A Custodian may deliver Securities or funds recorded in a Securities account only upon written instruction from the account-holder or from a Person authorized to act in the account-holder's name.[121]

Article 46

A Custodian must reimburse account-holders for losses resulting from the Custodian's mistake.[122]

Article 47

1. A Custodian or an Affiliated Person may not give out information on a client's Securities account to any Person other than:[123]

a) a Person authorized in writing by the account-holder or his heirs;

b) the police, public prosecutor or a judge with regards to criminal proceedings;

c) the Court with regards to civil proceedings on request of the disputing Persons;

d) tax officials for tax purposes;

e) BAPEPAM, a Securities Exchange, a Clearing Guarantee Institution, an Issuer, a Securities Administration Agency or another Custodian in the execution of their respective functions; or

---

[120]Because Securities held in Securities accounts are not property of the Custodian, such Securities cannot be taken or seized by the creditors of the Custodian. When a Custodian is bankrupt, the Securities deposited with the Custodian are excluded from the bankruptcy assets and must be returned to the account-holders.

[121]"Written instruction" includes a signed letter or any other type of instruction authorized in the con tract between the Custodian and the account-holder.

[122]Since Securities held by a Custodian in a Securities account are under his administration, the account-holders must be safeguarded against losses for which the Custodian is responsible, such as

1. loss or damage to assets and related records;
2. delay in transferring assets; or
3. failure to collect income on assets, such as dividends, interest and other rights.

[123]Exceptions are necessary to make it possible to implement systems for trading Securities, including related clearing services, settlement guarantees, and custody of securities, since the institutions involved need information on Securities accounts. For such purposes, Securities Exchanges and Clearing Guarantee Institutions must have access to information on Securities accounts with Custodians, including Custodian Banks and the Central Securities Depository. In addition, Securities Administration Agencies need information on Securities accounts with Custodians, including Custodian Banks and the Central Securities Depository, in order to keep records of Security-holders and to dis tribute entitlements, such as dividends. Exceptions are also needed for BAPEPAM to carry out its supervisory function under the powers stipulated in this Law.

f) a Person serving the Custodian, including a consultant, a legal advisor and a public accountant.

2. Other than as necessary in carrying out their duties, Persons mentioned in *letters a through f of item (1)* may not disclose information received from a Custodian or an Affiliate concerning a client's Securities account.[124]

3. Requests for information on clients' Securities accounts referred to in *letters b, c, and d of item (1)* shall be submitted for approval to BAPEPAM by the *Commander-in-Chief of the Police Force of the Republic of Indonesia,* the *Attorney General,* the *Chairman* or official of the *Supreme Court,* or the *Director General of Taxation,* stating the name and rank of the police officer, prosecutor, judge, or tax official, and the name or number of the account-holder and the reasons and justification for the request.[125]

Section Two Securities Administration Agencies

Article 48

1. Only a Company that is licensed by BAPEPAM may carry on business as a Securities Administration Agency.

2. Further requirements and procedures for the Securities Administration Agency license referred to in *item (1)* shall be stipulated in Government Regulations.[126]

Article 49

1. A Securities Administration Agency may record Securities ownership in the Issuer's register of Security-holders, and may distribute entitlements on such Securities, in accordance with the written contract between the Issuer and the Securities Administration Agency;

2. The contract mentioned in *item (1)* must clearly indicate the rights and obligations of the Securities Administration Agency and the Issuer, as well as their duties to Security-holders.

---

[124]Although Persons indicated in item (1), letters a through f, are authorized to have access to information on Clients' Securities accounts with Custodian and their affiliated Persons, such information may not be passed on freely to other Persons. Information regarding Securities accounts only may be passed to others that needed it to carry out their duties. For example, a Securities Administration Agency needs information about the Securities accounts of Clients of a Central Securities Depository in order to give Issuers the names of shareholders that are entitled to participate in the General Meeting of Shareholders.

[125]The named official is the individual who is authorized to have access to information from Securities accounts by the Commander-in-Chief of the Police Force of the Republic of Indonesia, the Attorney General, or the Chairman of the Supreme Court.

[126]Licensing requirements and procedures refer to such matters as:

1. requirements concerning the availability of facilities;
2. qualifications of staff experts;
3. capital requirements; and
4. procedures for submitting an application for approval.

Section Three Trust-Agents

Article 50

1. The function of Trust-Agent may be performed by:[127]
   a) a commercial bank; and
   b) any other Person permitted by Government Regulation
2. Commercial banks or other Persons mentioned in *item (1)* must register with BAPEPAM before acting as a Trust Agent.[128] Further requirements and procedures for the registration of Trust-Agents shall be stipulated in Government Regulations.[129]

Article 51

1. A Trust-Agent may not be Affiliated with an Issuer, except for Government-owned Trust-Agents.[130]
2. A Trust-Agent shall represent the interests of the credit Security-holders in and out of court.[131]
3. A Trust-Agent may not have any credit relationship with an Issuer that exceed limits set by BAPEPAM as representing a possible conflict of interests between the Trust-Agent as creditor and as a representative of credit Security-holders.[132]

---

[127]Because debt securities acknowledge the indebtedness of one Person with respect to widely dispersed creditors, Trust-agents are needed in order to represent these creditors and manage their interests. In order that Trust-agents may represent the interests of holders of debt securities, Commercial Banks may engage in trust-agency activities since they have wide business connections. However, as the Capital Market grows, Persons other than Commercial Banks may be permitted by Government Regulation to act as Trust-agents.

[128]Trust-agency is one of the functions of Commercial Banks under the banking laws. Therefore, Commercial Banks do not require a license from BAPEPAM to act as Trust-agents. Nevertheless, in order to undertake such activities, Commercial Banks still need to register with BAPEPAM.

[129]Licensing requirements and procedure for Trust-agents include such things as:

1. Requirements with respect to expertise;
2. Capital requirements; and
3. Procedures for submitting registration applications.

[130]These requirements are intended to prevent conflicts of interest between a Trust-agent as the representative of creditors and the interests of the Trust-agent as a Person affiliated with the Debt Issuer. This is necessary so that a Trust-agent does its duty to fully protect the interests of creditors with in dependence.

[131]When signing a trust-agency contract with an Issuer, the Trust-agent agrees to represent the holders of the debt securities. Such representation becomes effective when the securities have been allocated to these creditors. In this process, the Law authorizes Trust-agents to represent debt security-holders of in court to defend their interests as creditors. A Trust-agents authority encompasses claiming the rights of debt security-holders, both in and out of court, without the need for specific powers-of-attorney from these creditors.

[132]This is to avoid conflicts of interest between a Trust-agent in its capacity as

4. The use of Trust-Agent services shall be regulated by BAPEPAM.[133]

Article 52

The terms of the trust-agency agreement between an Issuer and a Trust-Agent shall be regulated by BAPEPAM.[134]

Article 53

A Trust-Agent must reimburse credit Security-holders for losses due to its negligence in performing its duties under this Law and the implementing regulations or under the terms of the Trust-Agency agreement.[135]

Article 54

A Trust-Agent may not represent the interests of both the holders and guarantors of the same credit Securities.[136]

CHAPTER VII COLLECTIVE CUSTODY AND THE SETTLEMENT OF EXCHANGE TRANSACTIONS

Section One Settlement of Securities Exchange Transactions

Article 55

1. Settlement of Securities Exchange Transactions may occur by book-entry, physical delivery or other means stipulated in Government Regulations.[137]

---

representative of debt security-holders and the Trust-agent as a creditor or debtor of the Issuer. This is necessary so that the Trust-agent performs its functions independently so as to fully protect the interests of debt security-holders.

[133]This item refers to the need of an Issuer of bonds or other long-term debt Securities to use Trust Agency services.

[134]BAPEPAM may stipulate that the terms of the Trust-agency agreement cover matters such as:

1. the principal, interest and other benefits to be paid by the Issuer;
2. the maturity date;
3. the guarantee (if any);
4. the paying agent; and
5. the duties and functions of the Trust-agent.

[135]This Article gives debt security-holders the right to claim compensation from a Trust-agent that, through negligence to its duties, is the cause of their loss.

[136]This Article prevents a Trust-agent from having a conflict of interest between its role as representative of the interests of debt security-holders and interests it would have as a guarantor that was bound to fulfill the Issuer's obligations in the event of default.

[137]"Book-entry settlement" refers to the fulfillment of rights and obligations arising from an Exchange Transaction, by means of debits and credits to Securities accounts with a Custodian, including electronic transfers. The transfer of rights to such

2. A Clearing Guarantee Institution must guarantee settlement of Securities Exchange Transactions.[138]

3. Procedures for guaranteeing the settlement of Securities Exchange Transactions mentioned in *items (1) and (2),* shall be stipulated by contracts with the Securities Exchange, the Clearing Guarantee Institution, and the Central Securities Depository.[139]

4. In guaranteeing the settlement of Securities Exchange Transactions as stipulated in *item (2),* a Clearing Guarantee Institution may require collateral from users of its services.

5. The contracts and collateral guarantees mentioned in *items (3) and (4)* shall be subject to BAPEPAM.

Section Two Collective Custody

Article 56

1. Securities in Collective Custody at a Central Securities Depository shall be recorded in the Issuer's registry of Security holders in the name of the Central Securities Depository as the representative of its accountholders.[140]

2. Securities in Collective Custody at a Custodian bank or a Securities Company and posted to a Securities account at a Central Securities Depository, shall be registered in such account in the name of the

---

Securities occurs at the time of delivery, or at the time the Securities are debited to one Securities account and credited to another. "Physical Delivery" refers to settlement of Exchange Transactions by conveyance of Security certificates between Broker Dealers. "Other means of settlement of Exchange Transactions" refers to such methods as:

1. posting to the Issuer's registry of Security-holders miner than posting to Securities accounts at a Custodian;
2. settlements between countries or in other countries;
3. electronic settlement or settlement using new technology;
4. other means of settlement that may become necessary as are result of new laws and regulations.

[138]Because Exchange Transactions are interrelated, all trades must be settled by the parties. Since prior transactions are the basis for subsequent Transactions, the cancellation of a trade affects succeeding trades. A Clearing Guarantee Institution is necessary to guarantee settlement of Exchange contracts by assuring that the obligations of Exchange Members are met.

[139]Because the function of Securities Exchanges, Clearing Guarantee Institutions, and the Central Securities Depository are linked and inter-related, from the execution of the trade until settlement, these institutions must ensure that their activities are performed with efficiency and safety. To this end, these institutions must agree among themselves in writing with respect to such matters as procedures and scheduling for trading and settlement, methods of acquiring collateral from Exchange Members and the amount of collateral required, and transaction and settlement fees.

[140]This provision provides legal assurance that holders of accounts at a Central Securities Depository are recognized as the owners of the Securities or as Persons with rights with respect to the Securities, while their interests are represented by the Central Securities Depository in whose name the Securities are recorded in the Issuer's registry of Security-holders.

Custodian bank or Securities Company as the representative of its account holders.[141]

3. Securities in Collective Custody at a Custodian bank that are part of a Securities Portfolio under a collective investment contract and that are not deposited in Collective Custody at a Central Securities Depository, shall be recorded in the Is suer's registry of Security-holders in the name of the Custodian bank as the representative of owners of Participation Units of the collective investment contract.[142]

4. Issuers must provide either certificates or confirmations to the Central Securities Depository referred to in *item (1)* or to the Custodian bank referred to in *item (3),* as proof of registry in the Issuer's record of Security-holders.[143]

5. Central Securities Depository, Custodian banks, and Securities Companies must provide account-holders with confirmations[144] that serve as proof of registry in the Securities accounts mentioned in *items (1) and (2).*

Article 57

Securities In Collective Custody are interchangeable with and equivalent to other Securities of the same type and class of the same Issuer.[145]

---

[141]This provision provides legal assurance that account-holders at Custodian Banks and Securities Companies are either the owners or Persons with other rights with respect to Securities recorded in Securities accounts at the Central Securities Depository, even though the names of the Custodian Banks and Securities Companies are recorded on the accounts at the Central Securities Depository. In this case, Custodian Banks and Securities Companies represent the interests of their account holders.

[142]This provision provides legal assurance that all holders of Participation Units in an Investment Fund that is organized as a collective investment contract, are the owners or Persons with other rights with respect to the Securities in the Fund's portfolio. The Custodian Bank in whose name the Securities are registered on the Issuers registry of Security-holders, represents the owners. In this case, the Custodian Bank acts solely as representative of the owners of Participation Units in the Investment Fund.

[143]A Confirmation may be a written statement or any other form that indicates the number of Securities that are registered in the name of the Central Securities Depository in the Issuer's record of Security-holders, as representative of the interests of its account holders, or Securities registered in the name of a Custodian Bank that represents the interests of holders of Participation Units in an Investment Fund that is organized as a collective investment contract.

[144]This provision requires a Central Securities Depository, a Custodian Bank and a Securities Company to provide proof of registration in the form of confirmations to their account-holders.

[145]Securities in Collective Custody are deemed to be fungible, so that settlement of Securities trans actions is more efficient. In this respect, Securities are considered as having the same characteristics as money. For example, when someone withdraws money from a bank account, he cannot claim that the bank deliver money that is the same tangible currency he had previously deposited. In the same way, holders of Securities accounts cannot claim ownership of specific Securities based on certificate numbers, serial numbers or other characteristic of the Securities that had been

Article 58

1. A Custodian shall record the transfer of ownership of Securities in Collective Custody by debiting and crediting the respective Securities accounts with the number of Securities transferred.

2. On the instruction of the Central Securities Depository or Custodian bank, the Issuer must record on its books, the transfer of Securities out of Collective Custody, from the name of the Central Securities Depository or Custodian bank, to the name of the Person indicated.[146]

3. An Issuer shall refuse to record in Collective Custody, Securities that have been reported lost or destroyed, unless the Person requesting such registry can provide the Issuer with proof or a guarantee that it considers sufficient.[147]

4. An Issuer shall refuse to record in Collective Custody, Securities that have been pledged, blocked by court order, or seized as a result of a criminal investigation.[148]

Article 59

1. An account-holder has the right to withdraw funds and Securities at any time from his Securities account at a Central Securities Depository.[149]

2. Notwithstanding the stipulation of *item (1),* a Central Securities Depository may refuse to allow funds to be withdrawn or to transfer Securities from a Securities account, when such assets are blocked, restricted, or pledged.[150]

---

deposited in the account Account-holders can only lay claim to a certain quantity of Securities of a specific type and class.

[146]Although the name of a Central Securities Depository or Custodian Bank is recorded in an Issuer's registry of Security-holders, an account-holder may instruct the Central Securities Depository or Custodian Bank to transfer the Securities in the Issuer's registry of Security-holders into his own name or into the name of any other Person that he indicates. A Central Securities Depository or Custodian Bank, on receiving such instructions, must instruct the Issuer to record the Securities in its registry of Security-holders, in the name of the account-holder or such other Person indicated by the account holder. Issuers, on receiving such instructions, must execute them in accordance with this item.

[147]This provision is to ensure that Securities in Collective Custody are valid, which means that they are clear from any legal defect including claims from anyone with respect to any rights to such Securities. This is necessary so that Securities in Collective Custody are truly available for trading. Securities that have been reported as lost or destroyed are considered to be defective, and therefore, cannot be included in Collective Custody. However, a Person may be able to prove that he owns the lost or destroyed Securities and that these Securities have never been transferred to anyone else. In this case, an Issuer may decide to allow the registry of such Securities in Collective Custody and to take responsibility for such registration.

[148]Securities that are pledged, foreclosed by court decision, or seized as a result of a criminal investigation, are considered invalid for trading. Therefore, this item stipulates that such Securities cannot be entered into Collective Custody.

[149]Cash and Securities in Securities accounts at a Central Securities Depository belong to the account-holders. This items affirms that account-holders have the right to withdraw such cash and Securities at any time.

[150]When a Securities account is blocked, restricted or pledged, the funds and Se-

3. The blocking of a Securities account as stipulated in *item (2),* may only take place when the Central Securities Depository receives a written order from BAPEPAM or a written request from the *Head of the Regional Police Force,* the *Chairman of the High Prosecutor,* or the *Chairman of the High Court,* with respect to civil or criminal court proceedings.

Article 60

1. Account holders that have Securities in Collective Custody are entitled to vote at the *General Meeting of Security holders*.[151]

2. Issuers, the Central Securities Depository, Custodian banks, and Securities Companies must promptly distribute dividends, interest, bonus shares and other ownership entitlements on an account-holder's Securities in Collective Custody.[152]

Article 61

Except for Securities in the account of an Investment Fund, Securities in Collective Custody may be loaned or pledged.[153]

Article 62

Issuers must provide for Collective Custody[154] in their Articles of Association.

---

curities in the ac count may not be withdrawn or transferred. Therefore, the Central Securities Depository may refuse to comply with a request to withdraw or transfer funds or Securities from such an account.

[151]Because account-holders own or have rights over the Securities in their accounts, they have intrinsic voting rights with respect to these Securities. This provision provides assurances and affirms that account-holders are entitled to attend and vote in the General Meeting of Security-holders, even though the Securities are recorded on the Issuer's registers in the name of the Central Securities Depository or a Custodian Bank. The role of the Central Securities Depository or Custodian Bank, in this case, is that of a Custodian representing the interests of account holders.

[152]The item affirms that account holders should promptly receive entitlements in the form of dividends, interest, bonus shares or other rights. This is essential to protect account holders against losses that may result from delays in collecting of such entitlements.

[153]Account-holders may loan or pledge Securities in their accounts at any time, without having to withdraw the Securities from Collective Custody. This is a requisite for safe and efficient loaning and pledging of Securities. The loan or pledge must be done by the account-holder's written instructions to the Central Securities Depository or to the Custodian Bank, specifying the number and type of Securities that are to be loaned or pledged, the name of the borrower or pledgee, and the conditions of the loan or pledge.

[154]Securities holders, especially shareholders, must clearly understand their rights with respect to Securities in Collective Custody and be able to exercise them. The Articles of Association of an Issuer must include provisions regarding Collective Custody, covering such matters as:

1. the fungibility of Securities;
2. the obligation to issue certificates or confirmations to the Central Securities Depository or to a Custodian Bank;

Article 63

Further rules on Collective Custody shall be stipulated by BAPEPAM

CHAPTER VIII CAPITAL MARKET SUPPORTING PROFESSIONALS

Section One Registration

Article 64

1. *Capital Market Supporting Professionals* include:
   a) Accountants;[155]
   b) Legal Consultants;[156]
   c) Appraisers;[157]
   d) Notaries;[158] and
   e) Other professionals[159] specified in Government Regulations.

2. The *Capital Market Supporting Professionals* mentioned in *item (1)* must register with BAPEPAM before engaging in Capital Market activities.[160]

3. Further requirements and procedures for the registration of *Capital Market Supporting Professionals* shall be stipulated in Government Regulations.[161]

Article 65

1. A *Capital Market Supporting Professional's* registration with

---

3. the voting rights, rights to dividends and other entitlements of account-holders with respect to Securities in Collective Custody; and
4. the transfer of ownership of Securities in Collective Custody.

[155]This item refers to Accountants that are licensed by the Minister of Finance and that are registered with BAPEPAM.

[156]Legal Consultants are the legal experts registered with BAPEPAM that give legal opinions to others.

[157]Appraisers are Persons registered with BAPEPAM that evaluate Company assets.

[158]Notaries are public officials that are registered with BAPEPAM and that are authorized to authenticate deeds.

[159]BAPEPAM is authorized to require the registration of other professionals whose opinions or evaluations are necessary as a result of future developments in the Capital Market.

[160]Because of the importance of their opinions to the decision-making of investors, Capital Market Supporting Professionals must register with BAPEPAM in order that their activities in the Capital Market may be supervised.

[161]Registration requirements and procedures include such matters as:

1. requirements with respect to expertise and basic facilities;
2. educational qualifications;
3. requirements regarding professional licensing by the appropriate authorities; and
4. procedures for submitting an application for registration.

BAPEPAM is automatically canceled when the professional's license is revoked by the issuing authority.[162]

2. Prior services rendered by a *Capital Market Supporting Professional* shall remain valid despite cancellation of the professional's registration, except for services that caused the cancellation of his registration or the revocation of his license.

3. When the registration of a *Capital Market Supporting Professional* is canceled, BAPEPAM may investigate and evaluate other services rendered by this Professional with respect to the Capital Market to determine whether such services remain valid.[163]

4. If BAPEPAM decides that services of a *Capital Market Supporting Professional,* referred to *item (3)* are invalid, BAPEPAM may order a Company that used these services to appoint another *Capital Market Supporting Professional to* audit and evaluate the Company.

Section Two Obligations

Article 66

All *Capital Market Supporting Professionals* must comply with codes of ethics and professional standards set by their respective professional associations as long as such standards are not in conflict with this Law and its implementing regulations.[164]

Article 67

When engaged in Capital Market business, *Capital Market Supporting Professionals* must provide independent opinions and evaluations.[165]

Article 68

Accountants that are registered with BAPEPAM and that audit financial

---

[162]A professional license is requirement for registration. Therefore, the BAPEPAM registration is void when the license is revoked.

[163]Capital Market Supporting Professionals perform a variety of services. Moreover, some services involve ongoing, periodic duties. Services are provided to more than one client. When registration is revoked with respect to service of a specific type to a specific client, or with respect to services provided over a period for a client, BAPEPAM may investigate services of other types and given at other times, to the same or to other clients. "Other services" are services other than those that were the basis for the cancellation of registration or revocation of the professional license referred to in item (2). Investigation of such other services is essential to determine whether such services were correctly performed.

[164]Codes of ethics and professional standards represent minimum quality expectations with respect to client services, and must be adhered to by all Capital Market Supporting Professionals. However, if an item in such codes or standards is illegal, professionals must comply with the law. This is vital for investor protection.

[165]This provision is intended to ensure that Capital Market Supporting Professionals provide opinions that are professional, objective, impartial, and not influenced by clients or affiliated persons.

reports of Issuers, Securities Exchanges, Clearing Guarantee Institutions, Central Securities Depository and other Persons engaged in Capital Market activities, must report in confidence[166] to BAPEPAM within three working days of discovering the following:

a) any violation of this Law and or its implementing regulations; or

b) any matter that may jeopardize the financial condition of the institution, or the interests of its clients.

Section Three Accounting Standards

Article 69

1. Financial reports that are submitted to BAPEPAM must be prepared in accordance with generally accepted accounting principles.[167]

2. Notwithstanding the requirement in *item (1),* BAPEPAM may establish accounting rules with respect to the Capital Market.[168]

CHAPTER IX ISSUERS AND PUBLIC COMPANIES

Section One Registration Statements

Article 70

1. The only Issuers that may conduct a Public Offering are those that have submitted a Registration Statement to BAPEPAM with respect to the sale or offering of Securities to the public, and then only after such Registration Statement has become effective.[169]

2. The stipulations of *item (1)* are not applicable[170] to Persons that:

---

[166]The purpose of reporting violations within three days is to ensure that BAPEPAM is informed of such matters as soon as possible; so that it may take immediate action to limit or prevent loss to investors, when necessary. These confidential reports must be submitted to BAPEPAM in writing.

[167]"Generally accepted accounting principles" refer to Financial Accounting Standards issued by the Indonesian Institute of Accountants and other general accounting practices used in the Capital Market.

[168]When the Financial Accounting Standards referred in the note to item (1) are inadequate for the needs of the Capital Market, such as compliance with the Full Disclosure Principle, BAPEPAM may establish rulings on such matters in order to protect the public interest.

[169]Public Offerings are a method of raising funds from the public. It is necessary to protect the interests of public investors in Securities. For this reason, Persons intending to raise funds through a Public Offering are required to submit a Registration Statement to BAPEPAM. The Public Offering may only be initiated when the Registration Statement becomes effective.

[170]Exemptions with respect to item (1) are required because the Securities referred to in letters a, b, and c of this item are subject to the administration, regulation, and supervision of other agencies. The requirements of item (1) do not apply to Securities that are issued or guaranteed by the Indonesian Government, because the Government is capable of meeting all obligations with respect to such Securities. In anticipation of the issuance of other Securities, BAPEPAM may have reason to provide exemptions for such Securities from the obligations of item (1).

a) make an offering of credit Securities with a maturity of less than one year;

b) issue certificates of deposit;

c) issue insurance policies;

d) make an offering of Indonesian Government Securities or Securities guaranteed by the Indonesian Government; or

e) make an offering other types of Securities stipulated by BAPEPAM.

Article 71

No Person may sell Securities in a Public Offering, unless the purchaser or subscriber certifies on the order form that, before or at the time of subscription, he has received or has had an opportunity to read the Prospectus with respect to such Securities.[171]

Article 72

1. Managing Underwriters are appointed by Issuers.

2. When there is more than one Managing Underwriter, all are jointly and severally liable for the conduct of the Public Offering.[172]

3. Managing Underwriters and Issuers are responsible for the correctness and completeness of Registration Statements submitted to BAPEPAM.

Article 73

Every Public Company must submit a Registration Statement to BAPEPAM.[173]

Section Two Procedures for Submitting Registration Statements

Article 74

1. A Registration Statement becomes effective on the forty-fifth day after receipt in complete form, or on any earlier date on which it is declared effective by BAPEPAM.[174]

2. During the period referred to in *item (1),* BAPEPAM may request

---

[171]Investors have an opportunity to have review to the contents of a Prospectus when making their investment decisions.

[172]Joint and several liability means that when there are multiple Underwriters, investors can claim compensation from one or more of these Underwriters, when they have losses due to the negligence of such Underwriters.

[173]To protect the interests of shareholders of Public Companies, Companies that are so classified must submit a Registration Statement.

[174]This provision assures Issuers that their Registration Statement will become effective automatically on the forty-fifth day, even though BAPFPAM takes no action, as long as the Registration Statements that have been submitted are complete and meet all requirements.

amendments and additional information from the Issuer or Public Company.

3. When a Public Company or Issuer submits changes or additional information, the Registration Statement is considered to have been resubmitted as of the date such amendments or additional information are received.[175]

4. A Registration Statement does not become effective until the additional information or amendments mentioned in *item (2)* have been received and all BAPEPAM requirements have been met.[176]

Article 75

1. BAPEPAM shall consider the completeness, adequacy, objectivity, comprehensiveness and clarity of a Registration Statement in order to ensure that it fulfills the Disclosure Principle.

2. BAPEPAM shall not evaluate the merits and weakness of a Security.[177]

Article 76

When the Registration Statement states that Securities are to be listed on a Securities Exchange, the offering of such Securities shall be null and void if the listing requirements are not met, and the subscription moneys shall be returned to subscribers.[178]

Article 77

Further rules regarding the requirements and procedures for submit ting Registration Statements shall be made by BAPEPAM.[179]

---

[175]When BAPEPAM asks an Issuer or Public Company to amend or provide additional information with respect to a Registration Statement, the date that the Registration Statement automatically becomes effective is counted from the date that such additional information or amendment is received.

[176]It may occur that a Registration Statement submitted to BAPEPAM is incomplete and does not meet the requirements so that the date that Registration Statement become effective exceeds the initial forty-five day period. In such cases, BAPEPAM may request amendments and additional information from the Issuer or Public Company. An amended Registration Statements may be declared effective, when:

1. All amendments and additional information required by BAPEPAM have been submitted; and
2. Such amendments and additional information meet the requirements.

[177]BAPEPAM does not judge the quality of Securities offered. The decision to invest is entirely that of the investor.

[178]The intent to list Securities on a Securities Exchange is an important consideration in the investment decision. Therefore, when such intent is disclosed but not met, the Public Offering is annulled, and Issuers and Underwriters must return subscription moneys to the investors.

[179]Requirements and procedures for submitting Registration Statements include, among other things:

Section Three Prospectuses and Publications

Article 78

1. A Prospectus shall not contain false statements with respect to Material Information, and shall not omit Material Informations that would be necessary for the Prospectus to not be misleading.[180]

2. All Persons are prohibited from stating, directly or indirectly, that BAPEPAM has approved, authorized, certified or re searched the merits or weaknesses of a Security.[181]

3. Further regulation regarding Prospectuses shall be made by BAPEPAM.[182]

Article 79

1. Announcements in the mass media that relate to Public Offerings shall not contain false statements regarding Material Information and shall not omit to state Material Information that is required in order that the statements contained in such announcements are not misleading.[183]

2. Matters that must be disclosed and the contents and requirements for the announcements mentioned in *item (1)* shall be further regulated by BAPEPAM.[184]

---

1. requirements as to the type of documents that make up the Registration Statement;
2. requirements that must be fulfilled by Persons making a Public Offering; and
3. procedures for submitting Registration Statements.

[180]A Prospectus is one of the main documents in a Public Offering. For this reason, the information contained must truthfully describe the Issuer's situation and constitute a useful basis for making investment decisions. When Material Information is false, or when Material Information is not disclosed, investors may be led to make unsuitable investment decisions.

[181]This provision is intended to prevent Persons that are trying to influence the public to buy Securities, from falsely stating that BAPEPAM has approved, licensed, verified, examined, or evaluated the various aspects or advantages of such Securities.

[182]Such "further regulation" shall deal with the form and content of the Prospectus. A Prospectus shall at least contain:

1. a description of the Public Offering;
2. the purpose of the Public Offering and the projected use of the proceeds;
3. an analysis and discussion of the business and finances;
4. business risks;
5. financial data;
6. information on legal aspects;
7. information regarding how to subscribe to the Securities; and
8. information on the Articles of Association.

[183]The intent of this item is to provide the public with correct information regarding Issuers on which to base their investment decisions.

[184]These announcements shall include, among other things:

1. the name of the issuer,
2. the type of Securities being offered;
3. the issuer's line of business;

Section Four Liability For False Or Misleading Information

Article 80

1. When the Registration Statement of a Public Offering contains false Material Information or is misleading because of the omission of Material Information required by this Law and its implementing regulations, then the following Persons shall be jointly and severally liable for losses that are a consequence of such actions:

a) each Person that signs the Registration Statement;

b) the Issuer's directors and commissioners at the time the Registration Statement became effective;

c) the Managing Underwriter; and

d) Capital Market Supporting Professionals and other Persons that consented to provide an opinion or in formation included in the Registration Statement;

2. The Persons in *item (1) letter d* shall be liable only with respect to opinions or information they have provided.[185]

3. The liability imposed in *item (1)* is not applicable when a Per son specified in *letters c and d of item (1)* can prove that he acted professionally[186] and took adequate measures to ensure that:

a) the statements or information published in the Registration Statement were true; and

b) he knew of no omitted Material Information that was needed for the Registration Statement not to be misleading.

4. Claims for compensation for violations of *item (1),* must be filed within five years of the effective date of the Registration Statement.

Article 81

1. A Person offering or selling Securities by Prospectus or by other means, either written or verbal, with Material Information that he knows or should know to be false or to have been omitted, shall be liable for losses resulting from his actions.

2. A buyer of Securities that is aware that information is false or misleading prior to completing the purchase cannot claim reimbursement for losses arising from the transaction.

---

4. the names and addresses of Selling Agents (if any); and,

5. the names and addresses of Underwriters (if any).

[185]The liability of a Capital Market Supporting Professional is limited to opinions or information that he provides for the Registration Statement. Therefore, investors can claim compensation from a Capital Market Supporting Professional only for losses related to the information he has provided.

[186]A Managing Underwriter or Capital Market Supporting Professional is not liable to reimburse investors' losses, as long as he has developed evaluations and opinions included in the Registration Statement professionally, with due diligence to verify statements and information in accordance with the principles and codes of ethics of his profession, and so long as his opinions and evaluations were independent

Section Five Preemptive Rights, Conflicts of Interest, Tender Offers, Mergers, Consolidations and Acquisitions

Article 82

1. BAPEPAM may require Issuers and Public Companies to give preemptive subscription rights to shareholders on a proportionate basis whenever they issue new shares or Securities convertible into shares.[187]

2. BAPEPAM may require Issuers and Public Companies to obtain approval from independent shareholders with respect to transactions in which the economic interests of the Company are in conflict with the private economic interests of directors, commissioners, or substantial shareholders.[188]

3. Further requirements and procedures regarding preemptive subscription rights and conflict-of-interest transactions referred to in *items (1) and (2)* shall be determined by BAPEPAM.[189]

Article 83

A Person that makes a tender offer to purchase Securities of Issuers or Public Companies must comply with rules on disclosure, fairness and reporting stipulated by BAPEPAM.[190]

Article 84

An Issuer or a Public Company that merges or consolidates with another Company, must comply with rules on disclosure, fairness and

---

[187]Preemptive subscription rights are rights of a shareholder to purchase new Securities before they are offered to others.

[188]To protect the interests of independent shareholders, that are usually in the minority, against acts of directors, commissioners or principal shareholders that, out of personal interest, would cause the Company to enter into transactions on unfair terms, BAPEPAM may require the Company to obtain the consent of a majority of independent shareholders with respect to such conflict-of-interest transactions.

[189]Requirements and procedures regarding preemptive rights and conflict-of-interest transactions include such things as:

1. the form and content of a Registration Statement relating to preemptive rights;
2. documents to be submitted with such Registration Statements;
3. the form and content of a Prospectus relating to preemptive rights; and
4. quorum and voting requirements in the General Meeting of Shareholders convened obtain the consent of independent shareholders.

[190]A Tender Offer is an offer in the mass media to buy or exchange equity Securities. Equity Securities are shares, or Securities that are convertible into shares, or Securities with rights to acquire shares. Considering that a Tender Offer involves the purchase of Securities from the public and may result in a significant decrease in the number of shareholders, the Company involved may lose its status as a Public Company. Because of this, Tender Offers must conducted properly, so that public shareholders are protected. The proper conduct of a Tender Offer includes providing information regarding the offer, such as the offer price, procedures for tendering Securities, and conditions that could lead to cancellation of the offer.

reporting stipulated by BAPEPAM and with other applicable laws and regulations.[191]

CHAPTER X REPORTING AND DISCLOSING INFORMATION

Article 85

Securities Exchanges, Clearing Guarantee Institutions, Central Securities Depository, Investment Funds, Securities Companies, Investment Advisors, Securities Administration Agencies, Custodian banks, Trust-Agents and other Persons that are licensed by, approved by, or registered with BAPEPAM, must submit reports to BAPEPAM.[192]

Article 86

1. An Issuer whose Registration Statement has become effective, or a Public Company, is required to:[193]

a) publish periodic reports and submit such reports to BAPEPAM;[194] and

b) make public Material Information regarding events that may affect the price of Securities, not later than two working days after the event, while reporting such information to BAPEPAM.[195]

2. BAPEPAM may exempt Issuers and Public Companies from the reporting requirements[196] referred to *in item (1).*

Article 87

---

[191]This Article is intended to protect investors against loss in the event of mergers, consolidations, or acquisitions that involve Issuers or Public Companies, by requiring compliance with the Principles of Disclosure, in accordance with reporting procedures established by BAPEPAM. This provision shall be implemented without curtailing to the provisions of Law Number 1 of 1995 on Limited Liability Companies.

[192]This Article refers to both periodic reports and occasional reports.

[193]Information on Issuers and Public Companies is essential to investors and also to BAPEPAM for purposes of effective supervision. Issuers and Public Companies must submit reports to BAPEPAM and such reports are made public so that information regarding the business of such companies is widely available.

[194]Investors require periodic information on the business and financial status of Issuers and Public Companies in order to make investment decisions with respect to these Securities. Therefore, Issuers and Public Companies must submit periodic reports to BAPEPAM and such reports shall be made available to the public.

[195]In addition to the periodic reports referred to in letter a, Issuers and Public Companies must report material events to BAPEPAM within two working days. At the same time, such material event must be announced to the public.

[196]This item authorizes BAPEPAM to determine conditions under which an Issuer or Public Company is not required to submit the reports referred to in item (1). Such conditions may include the number of shareholders and paid-up capital below which Companies are no longer required to submit the re ports referred to in item (1). However, Public Companies that have registered with BAPEPAM are not automatically exempted from the reporting requirements referred to in item (1), when they no longer meet the definition of a Public Company.

1. Directors and commissioners of Issuers and Public Companies must report to BAPEPAM, their ownership of the shares of such Companies and each change of such ownership.[197]

2. Every Person owning five percent or more of the shares of an Issuer or Public Company must report such ownership to BAPEPAM, as well as each change in ownership.

3. Reports mentioned in *items (1) and (2)* must be submitted not later than ten days of the acquistion or sale of the shares.[198]

Article 88

Further requirements and procedures with respect to the reports specified in *Articles 85, 86, and 87* shall be determined by BAPEPAM.[199]

Article 89

1. All information that must be submitted to BAPEPAM by virtue of this Law and its implementing regulations shall be available to the public.[200]

2. Exceptions from the requirement of *item (1)* can only be made by BAPEPAM.[201]

CHAPTER XI FRAUD, MARKET MANIPULATION AND INSIDER TRADING

Article 90

When buying and selling Securities,[202] every Person is prohibited from directly or indirectly:

---

[197]Because of their critical positions, directors and commissioners of Issuers or Public Companies are required to disclose changes in their ownership of the Securities of such Companies.

[198]The time limit for reporting changes in ownership is to be counted from the date of the transaction.

[199]Requirements and procedures for reporting to BAPEPAM includes such things as:

1. the form and contents of reports;
2. persons entitled to sign reports;
3. deadlines for submitting reports; and
4. procedures for submitting reports.

[200]The information referred to in this item includes, among other things, Registration Statements Prospectuses, business license applications individual license applications, applications for approval and professional registration, and periodic and other reports.

[201]The exceptions refer to such things as a secret specification of a Company's product or service.

[202]Buying and selling securities includes the offering of securities for sale in a Public Offering, offers to purchase or securities on a Securities Exchange, as well as offers to purchase or sell Securities of Issuers and Public Companies off of a Securities Exchange.

a) defrauding or deceiving another Person, by any means or method;
b) participating in a fraud or deception against another Person; and
c) falsely stating Material Information or failing to disclose Material Information so that statements are misleading with respect to conditions at the time, either with the intent to obtain a benefit or to avoid a loss, either for himself or for another Person, or with the intent of influencing another Person to buy or sell Securities.

Article 91

Every Person is prohibited from, directly or indirectly, taking any action that has the purpose of creating a false or misleading appearance of trading activity, market conditions or the price of Securities on a Securities Exchange.[203]

Article 92

Every Person, either alone or with others, with intent to influence others to buy, sell or hold Securities, is prohibited from making two or more Securities Transactions, that directly or indirectly cause the price of Securities on the Securities Exchange to rise, fall, or remain steady.[204]

Article 93

All Persons are prohibited from making, by any means, a statement and giving Material Information that is false or misleading and that affects the price of Securities on a Securities Exchange, if at the time of making such statement or giving such information:
a) the Person knows or should have known that such Material Information was false or misleading; or
b) the Person has failed to exercise due care in deter mining the truth of such statement or information.

Article 94

BAPEPAM may determine that certain activities[205] of Securities Companies, are not prohibited by *Articles 91 and 92.*

---

[203]Public investors need information on trading activities, market conditions, and securities prices on a Securities Exchange, as indicators by the strength of the supply and demand, and as a basis for making investment decisions with respect to Securities. This article prohibits activities that create a deceptive representation of trading activities, market conditions or Securities prices, such as:

1. Securities transactions that do not represent any change in ownership; or
2. Offers to sell or buy Securities at a certain price made by someone in conspiracy with another Person who offers to sell or buy the same Securities at approximately the same price.

[204]This article prohibits anyone, either alone or with others in a conspiracy, with intent to obtain bene fits for themselves or others, from engaging in a series of Securities transactions that create of a deceptive pattern of prices on a Securities Exchange, based on trades that are not legitimate.

[205]The type of activities referred to in this Article include, among other things:

Article 95

An insider[206] with respect to an Issuer or Public Company, who is in possession of inside information, is prohibited from buying or selling Securities of:

a) the Issuer or Public Company;[207] or

b) another Company engaged in transactions[208] with the Issuer or Public Company.

Article 96

The insider[209] referred to in *Article 95* is prohibited from:

a) influencing a Person to buy or sell the Securities in question; or

---

1. stabilization of prices during a Public Offering, when such stabilization is disclosed in the Prospectus; and
2. dealing in Securities by a Securities Company that regularly acts as a market-maker in order to maintain a liquid market in such Securities.

[206]"Insider" means:

1. a commissioner, director or employee of an Issuer or Public Company;
2. a substantial shareholder of an Issuer or Public Company;
3. an individual, who because of his position or profession, or because of a business relationship with an Issuer or Public Company, has access to inside information; and
4. an individual who within the last six months was a Person defined in letters a, b or c, above.

The term "position" in letter c, includes a position at a government agency, institution or body. The term "business relationship" in letter c, is any working relationship or partnership in a business activity, as well as the relationship as client, supplier, contractor, customer, or creditor. The term "inside information" in letter c, refers to Material Information held by an insider that is not yet available to the public. An example of the case indicated in letter d, would be as follows:

Although, Mr. A quit as a director on January 1, he is still considered to be an insider until June 30 of the same year.

[207]An insider that has inside information is prohibited from buying or selling Securities of the Issuer or Public Company with which he is associated, based on the principle that an insider has a duty to put first the interests of his Company and its shareholders as a whole, and this duty precludes him from using inside information for his personal benefit or for the benefit of others.

[208]In addition to the restriction referred to in letter a, an insider of an Issuer or Public Company that unengaged in transactions with another company, is also prohibited from trading in the Securities of such other company, even though he is not an insider of the other company. This is because the information with respect to the other Company is usually obtained due to the insider's position in the Issuer or Public Company. The term "transactions" in this letter refers to all types of transactions that might take place between an Issuer or Public Company and another Company, including transactions involving the Securities of such other Company.

[209]An insider as referred to in Article 95 is prohibited from influencing other Persons to buy and or sell Securities of such Issuer or Public Company, even when the insider, so as not to use inside information to induce other Persons to trade in the Securities, does not actually pass on the inside information to such other Persons. In addition, insiders are prohibited from giving inside information to other Persons who are likely to use such information to buy or sell Securities. Accordingly, insiders have an obligation to use caution when divulging information in order that such informa-

b) providing inside information to a Person he has reason to believe may use such information to buy or sell the Securities in question.

Article 97

1. A Person that tries to obtain inside information[210] from an insider in violation of the law and who obtains such information, is subject to the same prohibitions as the insiders mentioned in *Articles 95 and 96.*

2. A Person who tries to obtain inside information and who obtains it without violating the law, is not subject to the prohibitions applicable to insiders mentioned in *Articles 95 and 96,* as long as such information is made available without restriction by the Issuer or Public Company.[211]

Article 98

A Securities Company that has inside information concerning an Issuer or a Public Company is prohibited from engaging in Securities transactions[212] of such Issuer or Public Company, unless:

a) the transaction is made for the account of and in accordance with instructions of a client; and

b) the Securities Company makes no recommendation to the client with respect to such Securities.

Article 99

BAPEPAM may determine that certain transactions[213] are exempted from the prohibitions of *Articles 95 and 96.*

---

tion is not misused for Securities trading by the Persons receiving such information.

[210]A Person who, in violation of the law, attempts to obtain and eventually obtains inside information regarding an Issuer or Public Company, is subject to the same prohibitions as an insider, as indicated in Articles 95 and 96. Consequently, such Persons are prohibited from trading in such Securities, from influencing other Persons to trade in such Securities, and from passing on inside information to other Persons that are likely to use it to trade in such Securities. Examples of obtaining information in violation of the law, include:

1. stealing inside information;
2. obtaining inside information by tricking insiders; and
3. obtaining inside information by violence or threat

[211]As an example, when someone who is not an insider requests information from an Issuer or Public Company and obtains it easily without any conditions, such Person is not subject to the restrictions applicable to insiders. However, if the inside information is provided, under condition of confidentiality or some other restriction, the Person obtaining the inside information is subject to the restrictions as in Articles 95 and 96.

[212]This Article allows a Securities Company that has inside information to execute Securities transactions for the account of a client, as a Broker-Dealer. However, in executing such trades, the Securities Company that has inside information, is prohibited from making any recommendation to its clients, with respect to such Securities. If this condition is not followed, the Securities Company is in violation of the restrictions on insider trading of Articles 95 and 96.

[213]Article 99 authorizes BAPEPAM to exempt certain Securities transactions from the prohibitions of Articles 95 and 96. For example, certain Securities transactions

CHAPTER XII FORMAL INVESTIGATIONS

Article 100

1. BAPEPAM may initiate a formal investigation of any Person suspected of violating or being involved in a violation of this Law and/or its implementing regulations.[214]

2. When conducting investigations[215] referred to in *item (1),* BAPEPAM is authorized to:

a) request information and corroboration from Persons suspected of engaging in or having been involved in a violation of this Law or its implementing regulations, or from other Persons, as deemed necessary;

b) require Persons suspected of engaging in or having been involved in a violation of this Law or its implementing regulations, to do or not to do certain things;

c) inspect and make copies of records, books, and or other documents owned by Persons suspected of engaging in or having been involved in a violation of this Law or its implementing regulations, including records, books, and documents owned by other Persons, when deemed necessary; and

d) establish requirements for and/or permit Persons to do certain

---

among insiders may be permitted.

[214]In order to supervise the Capital Market, BAPEPAM requires the authority to investigate any Per son that is suspected of having violated; being engaged in a violation; attempting to engage in a violation; or attempting to influence or assist another Person to engage in a violation of this Law and or its implementing regulations. With this authority, BAPEPAM can obtain data, information, and other endence of violation of this Law and its implementing regulations.

[215]When making an investigation, BAPEPAM may request information and corroboration from any Person suspected of violating or participating in a violation of this Law and its implementing regulations, of from other Persons as deemed necessary, and in such regard, BAPEPAM may inspect the records, books and other documents of such Persons. BAPEPAM may order the cessation of specific activities that constitute violations of this Law and its implementing regulations, including ordering an Issuer or Public Company to suspend publication of a misleading advertisement in the mass media. Conversely, when deemed necessary, BAPEPAM may direct that certain things be done to reduce or prevent loss, such as ordering an Issuer or Public Company to correct an advertisement in the mass media. BAPEPAM may also stipulate conditions and consent to a settlement regarding losses resulting from violations of this Law and its implementing regulations. Such settlement may be a commercial arrangement between the parties. Data, information, material and facts gathered in an investigation may be used by BAPEPAM in connections with the imposition of administrative sanctions. Should BAPEPAM decide to pursue an inquiry as a criminal investigation, such data, information, material and facts may be used as initial evidence in such investigation. It is not necessary that an criminal investigation be preceded by a formal investigation. BAPEPAM may initiate a criminal investigation whenever it considers an activity to involve a violation of this Law and its implementing regulations, and that the activity is contrary the interests of the Capital Market or endangers investors and the public.

things that are appropriate in the context of the settlement of losses that have occurred as a result of a suspected violation of this Law and or its implementing regulations.

3. Further provisions regarding the investigative procedures mentioned in *item (1),* shall be stipulated in Government Regulations.[216]

4. BAPEPAM employees and other Persons appointed by BAPEPAM to conduct formal investigations, may not use for themselves, information obtained by virtue of this Law or disclose such information to another Person, except as necessary to achieve BAPEPAM's purposes of, or as otherwise required by law.[217]

CHAPTER XIII CRIMINAL INVESTIGATIONS

Article 101

1. Whenever BAPEPAM believes that a violation of this Law or its implementing regulations has damaged Capital Market interests and/or has placed property of investors or the public in jeopardy, BAPEPAM may initiate a criminal investigation.[218]

2. Specific *Government Officials* of BAPEPAM have special authority to conduct criminal investigations with respect to the Capital Market, based on provisions in the *Indonesian Criminal Code*.[219]

3. Investigators referred to *item (2)* are authorized to:

a) Receive reports, information or complaints from Per sons with respect to Capital Market crimes;

b) Investigate the authenticity of reports or information relating to Capital Market crimes;

c) Investigate Persons suspected of Capital Market crimes;

---

[216]Investigative procedures include:

1. methods of programming and investigation;
2. procedures for conducting an investigation; and
3. procedures for reporting the findings of an investigation.

[217]BAPEPAM Employees are the Civil Servants on the BAPEPAM staff.

[218]Capital Market misbehavior varies in type, *modus operandi,* and potential for loss. For this reason, BAPEPAM is authorized to consider the consequences of a violation and has discretion to proceed with an investigation, based on its judgment. BAPEPAM is not required to initiate a criminal investigation for every violation of this Law and its implementing regulations, since such a course of action might inhibit general business in the Securities market. When the harm inflicted endangers the Capital Market system, the interests of investors or the public, or when a settlement is not reached with respect to losses, BAPEPAM may initiate a criminal investigation. The Chairman of BAPEPAM orders the initiation of investigations by Criminal Investigators on BAPEPAM staff.

[219]A criminal investigation in the Capital Market involves a series of investigative acts to find and gather necessary evidence so as to solve a Capital Market crime, and to locate suspects and deter mine the amount of harm that has been done. Capital Market Criminal Investigators are specific Civil Servants on the staff of BAPEPAM, that are appointed by the Minister of Justice in accordance with current laws and regulations.

d) Summon, inspect, and request information and evidence from Persons suspected of Capital Market crimes;

e) Inspect books, records and other documents with reference to Capital Market crimes;

f) Inspect certain locations where evidence may be found in books, records and other documents and seize materials that may be used as evidence in criminal cases related to the Capital Market;

g) Block bank accounts or other financial assets of Per sons suspected of Capital Market crimes;

h) Request professional assistance in criminal investigations related to the Capital Market; and

i) Determine the initiation and termination of an investigation.[220]

4. When conducting an investigation as mentioned in *item (1),* BAPEPAM, may make a request to the Minister to obtain information from banks on the financial situation of suspects, under applicable banking laws and regulations.[221]

5. Investigators mentioned in *item (2),* shall announce the initiation of an investigation and deliver their results to the *Attorney General,* in accordance with provisions in the *Indonesian Criminal Code.*

6. When using the investigative powers mentioned in *item (1),* BAPEPAM may request assistance from other law enforcement agencies.[222]

7. BAPEPAM officials and other Persons appointed by BAPEPAM to conduct criminal investigations, may not use for themselves information obtained by virtue of this Law, or disclose such information to another Person, except as necessary to achieve BAPEPAM purposes, or as otherwise required by law.

CHAPTER XIV ADMINISTRATIVE SANCTIONS

Article 102

1. BAPEPAM may impose administrative sanctions for violations of this Law and/or its implementing regulations against every Person that is licensed, approved or registered with BAPEPAM.[223]

2. The administrative sanctions referred to in *item (1)* may consist of:

---

[220]The opening and closing of an investigation by Criminal Investigators on BAPEPAM staff requires the approval of the Chairman of BAPEPAM.

[221]This item stipulates that when conducting a criminal investigation, in order to obtain information from a bank regarding the financial status of a suspect, BAPEPAM must obtain the approval of the Minister. If the investigation is not related to bank information on the financial status of a suspect, BAPEPAM does not need to obtain approval of the Minister.

[222]The other law enforcement agencies referred to in include the Police Force of the Republic of Indonesia, the Director General of Immigration, the Ministry of Justice, and the Attorney General.

[223]In applying administrative sanctions, BAPEPAM needs to consider the constructive aspects of sanctions with respect to the Person concerned. Persons

a) written admonitions;
b) fines;
c) restrictions on business activity;
d) suspensions of business activity;
e) revocations of business licenses;
f) cancellations of approvals; and
g) cancellations of registrations.

3. Further provisions regarding the administrative sanctions in *items (1) and (2)* shall be determined by Government Regulation.

CHAPTER XV CRIMINAL PROVISIONS

Article 103

1. Any Person who engages in Capital Market business activities without a license, approval, or registration required in *Articles 6, 13, 18, 30, 34, 43, 50, and 64,* shall be subject to imprisonment for a maximum of five years and a maximum fine of five billion rupiah.

2. Any Person who engages in business without a license required in *Article 32* shall be subject to imprisonment for a maximum of one year and a maximum fine of one billion rupiah

Article 104

Any Person who violates the provisions of *Articles 90, 91, 92, 93, 95, 96, 97 item (1) and 98,* shall be subject to imprisonment for a maxi mum often years and a maximum fine of fifteen billion rupiah.

Article 105

Investment Managers and or Affiliated Persons that violate the provisions of *Article 42* shall be subject to imprisonment for a maximum of one year and a maximum fine of one billion rupiah.

Article 106

1. Any Person who violates the provisions of *Article 70* shall be subject to imprisonment for a maximum period of ten years and a maximum fine of fifteen billion rupiah.[224]

---

referred to in this article are Issuers, Public Companies, Securities Exchanges, Clearing Guarantee Institutions, the Central Securities Depository, Investment Funds, Securities Companies, Investment Advisors, Underwriters' Representatives, Broker-dealers' Representatives, Investment Managers' Representatives, Securities Administration Agencies, Custodians, Trust-Agents, Capital Market Supporting Professionals and other Persons that have been licensed, approved or registered by BAPEPAM. The stipulations of this article also apply to directors, commissioners, and any Person referred to in Article 87 and holding at least five percent of the shares of an Issuer or Public Company.

[224]This item stipulates that every Public Offering must conform to the provisions

2. Any Person who violates the provisions of *Article 73* shall be subject to imprisonment for a maximum period of three years and a maximum fine of five billion rupiah.[225]

Article 107

Any Person with intent to deceive or to cause loss to another Person or to mislead BAPEPAM, loses, destroys, erases, obscures, hides, or falsifies records of a Person that is licensed approved or registered, including a registered Issuer or a Public Company shall be subject to imprisonment for a maximum period of three years and a maximum fine of five billion rupiah.

Article 108

The criminal penalties of imprisonment, confinement, and fines mentioned in *Articles 103, 104, 105, 106 and 107,* shall also be applied to Persons who, directly or indirectly, influence other Persons to violate such *Articles.*

Article 109

Any Person who disobeys or obstructs the implementation of *Article 100* is subject to criminal confinement for a maximum period of one year and a maximum fine of one billion rupiah.

Article 110

1. Criminal acts mentioned in *Articles 103 item (2), 105, and 109,* are misdemeanors.

2. Criminal acts mentioned in *Articles 103 item (1), 104, 106, and 107,* are felonies.

CHAPTER XVI OTHER PROVISIONS

Article 111

Any Person who suffers losses arising from violations of this Law and or its implementing regulations can sue for compensation, either jointly or severally with other Persons with similar claims, against the Person or Persons responsible for such violations.

---

of Article 70 item (1). In accordance with Article 1, item 6, an Issuer is defined the Person that makes a Public Offering. Therefore, it is the Issuer that must submit the Registration Statement to BAPEPAM and such Registration Statement must have become effective. Accordingly, every Person that intends to make a Public Offering must meet the requirements of Article 70 item (1), and may be subject to criminal sanctions in case of a violation.

[225]The "Person" referred to in this item is a Public Company as defined in Article 1, item 22.

Article 112

BAPEPAM and *Bank Indonesia* shall mutually consult and coordinate their respective functions of overseeing Custodians, Trust-Agents, and other matters regarding Capital Market operations of commercial banks, as specified in law and regulations.

CHAPTER XVII TRANSITIONAL PROVISIONS

Article 113

Any Company meeting the criteria of a Public Company as defined in this Law, that has not submitted a Registration Statement to BAPEPAM as of the date this Law becomes effective, must fulfil out the provisions in this Law not later than two years from the date the Law becomes effective.

Article 114

Upon the effectiveness of this Law:

a) all laws and regulations issued prior to the effective ness of this Law, shall remain in force insofar they are not contrary to this Law or not revised by this Law;

b) all business licenses, individual licenses, approvals and registrations issued prior to the effectiveness of this Law shall remain in force;

c) Registration Statements and applications for business licenses, approvals and registrations submitted prior to the effectiveness of this Law shall be disposed of according to the regulation prevailing prior to the effectiveness of this Law; and

d) clearing activities, settlement of Securities Transactions, and custody of Securities that are being carried out by a Company licensed as a *Clearing, Central Securities Depository,* may continue to be done for a period determined by BAPEPAM.

CHAPTER XVIII CLOSING PROVISIONS

Article 115

Upon the effectiveness of this Law, the "Emergency Law on Securities Exchanges" No. 15 of 1952 and Laws 79 of 1951 and 67 of 1952, is revoked.

Article 116

This Law shall become effective on January 1, 1996.

IN ORDER THAT EVERYONE MAY BE INFORMED, IT IS ORDERED THAT THIS LAW BE PROCLAIMED BY PUBLICATION IN THE STATE GAZETTE OF THE REPUBLIC OF INDONESIA.

Authorized in Jakarta
on November 10, 1995
THE PRESIDENT OF THE
REPUBLIC OF INDONESIA

SOEHARTO

Promulgated in Jakarta
on November 10, 1995
THE MINISTER STATE SECRETARY
THE REPUBLIC OF INDONESIA

MOERDIONO

APPENDIX ID-2

Capital Market Organization Number 45 Year 1995

A GOVERNMENT REGULATION OF THE REPUBLIC OF INDONESIA

NUMBER 45 YEAR 1995

CONCERNING

CAPITAL MARKET ORGANIZATION

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

CONSIDERING:

a) that in order to establish an orderly, fair and efficient Capital Market, it is necessary to set requirements to be followed by Persons engaged in Capital Market activities, as well as administrative sanctions for Persons that violate Capital Market rules and regulations;

b) that based on these considerations, it is necessary to promulgate a Government Regulation that establishes requirements and procedures for granting licenses, approvals, and for the registration of Persons engaging in Capital Market activities, as well as with respect to administrative sanctions;

IN VIEW OF:

1. Article 5 item (2), of the 1945 Constitution;
2. Law No. 8 of 1995 on The Capital Market (Statute Book No. 64, Supplement to Statute Book No. 3608)

HAS DECIDED TO ENACT: A GOVERNMENT REGULATION Concerning

CAPITAL MARKET ORGANIZATION

CHAPTER I SECURITIES EXCHANGES

Article 1

In order to engage in business as a Securities Exchange, it is necessary to obtain a license from BAPEPAM.

Article 2

A Securities Exchange must have a minimum paid-in capital of seven billion five hundred million Rupiah.

Article 3

1. A license application for a Securities Exchange must be submitted to BAPEPAM accompanied by the following documents and information:

a) the Company's deed of establishment, approved by the Minister of Justice;

b) a list of Securities Companies that are shareholders of the Securities Exchange;

c) the Tax Registration Number of the Company;

d) the economic justification for establishment of the Securities Exchange and a description of the market it will serve;

e) a three-year financial projection;

f) a three-year operational plan, including organizational structure, communication facilities, and training programs;

g) a list of the candidates for directors, commissioners, and senior officials reporting to directors;

h) a list of Persons that intend to list Securities on the Securities Exchange;

i) draft rules on membership, listing, trading, fungibility of Securities, clearing and settlement of Exchange Transactions, and charges and fees for Exchange services;

j) the opening balance sheet of the Company, audited by an accountant registered with BAPEPAM; and

k) such other documents and supporting information related to the license application of the Securities Exchange, as stipulated by BAPEPAM4.

2. The application referred to in paragraph (1) must be submitted in the form, format, and with the content prescribed by BAPEPAM.

Article 4

BAPEPAM will evaluate the application referred to in Article 3 by considering:

a) the integrity and expertise of candidates for director and commissioner,

b) the feasibility of the plan; and

c) the prospects for the establishment of an orderly, fair, and efficient market.

Article 5

1. Shareholders of a Securities Exchange must be Securities Companies that are licensed as Broker-dealers.

2. A Securities Exchange must have at least fifty shareholders when established.

3. A Securities Exchange must accept applications of Securities Companies to become shareholders, until the number of shareholders that are Members reaches two hundred.

Article 6

1. Only Securities Exchange shareholders that meet the Exchange's membership requirements may become Members of the Exchange.

2. A Securities Exchange must accept as Members, all shareholders that are qualified to become Members, until the number of Exchange Members reaches two hundred.

Article 7

1. Shares of a Securities Exchange may only be transferred to Securities Companies that are licensed as Broker-dealers and that are qualified to become Members of the Exchange.

2. Before a share of a Securities Exchange may be transferred, the Securities Exchange must have issued a statement that the transferee is a Securities Company qualified to be a Member of the Exchange.

Article 8

1. A Securities Company that is a shareholder of a Securities Exchange and is not allowed to become a Member, must transfer its share to another Securities Company qualified to be a Member, within three months from the date of acquiring the share.

2. A Securities Company that ceases to be a Member of a Securities Exchange must transfer its share to another Securities Company qualified to be a Member, within three months of the date that membership was terminated.

3. When a Securities Company does not transfer its Exchange share to another Securities Company as required in paragraphs (1) and (2), the Exchange must sell the share in auction to the highest bidder, within three months of the deadline stipulated in paragraphs (1) or (2)5.

4. When an Exchange share cannot be sold within the time specified in paragraph (3), the Securities Company must sell the share to the Exchange at par value and the Exchange must buy the share at that price.

Article 9

1. A Securities Exchange may not have more than seven directors and seven commissioners.

2. Directors may not be directors, commissioners, or officers of another company.

3. Directors and commissioners shall be elected for three years and may be re-elected.

Article 10

1. Shares of a Securities Exchange are registered and have equal par value and voting rights.
2. Each shareholder of a Securities Exchange may own only one share
3. A Securities Company that is a shareholder of a Securities Exchange and that is not qualified to be a Member, or that is no longer a Member, does not have the right to vote the share.
4. A Securities Exchange is prohibited from distributing dividends to shareholders.

Article 11

A Securities Company that is a shareholder of a Securities Exchange may not be associated with another Securities Company that is a shareholder of the same Exchange, by means of

a) ownership, direct or indirect, of twenty percent or more of voting shares;
b) directors or commissioners in common; or
c) direct or indirect control of management or company policy.

Article 12

Shareholders of a Securities Exchange must deposit their Exchange shares with the Exchange's Clearing Guarantee Institution, in guarantee of their Securities transactions.

Article 13

1. A Securities Exchange must submit its articles of association, its rules, and any amendments thereto to BAPEPAM for approval.
2. If BAPEPAM should reject the Exchange's articles of association, rules, or amendments, as mentioned in paragraph (1), BAPEPAM will give the reason for such rejection.
3. In order to establish an orderly, fair, and efficient Capital Market, BAPEPAM may order a Securities Exchange to amend its articles of association or rules.

Article 14

BAPEPAM may further regulate organizational activities of a Securities Exchange based on this Government Regulation.

CHAPTER II CLEARING GUARANTEE INSTITUTIONS AND CENTRAL SECURITIES DEPOSITORIES

Article 15

Before engaging in business as a Clearing Guarantee Institution or as a Central Securities Depository, it is necessary to obtain a license from BAPEPAM.

Article 16

The paid-in capital of a Clearing Guarantee Institution or a Central Securities Depository must be at least fifteen billion Rupiah.

Article 17

1. A license application for a Clearing Guarantee Institution or a Central Securities Depository must be submitted to BAPEPAM accompanied by the following documents and information:

a) the Company's deed of establishment, approved by the Minister of Justice;

b) the Tax Registration Number of the Company

c) a three-year financial projections

d) a three-year operational plan, including organizational structure, communication facilities, and training programs;

e) a list of candidates for director, commissioner and senior officials reporting to directors;

f) the Securities Exchange(s) that will manage and or use the services of the Clearing Guarantee Institution or Central Securities Depository;

g) proposed rules on clearing, guarantee and settlement of Exchange Transactions, including service fees set by the Clearing Guarantee Institution;

h) proposed rules on services of the Central Securities Depository with respect to settlement of Exchange Transactions, including fees for such services set by the Central Securities Depository; and

i) other documents and supporting information stipulated by BAPEPAM related to the license application of a Clearing Guarantee Institution or Central Securities Depository.

2. The application referred to in Paragraph (1) shall be submitted in the form, format, and with the content Prescribed by BAPEPAM.

Article 18

In evaluating the application referred to in Article 17, BAPEPAM shall consider:

a) the integrity and expertise of the Proposed directors and commissioners;

b) the feasibility of the plan;

c) Prospects for the establishment of an orderly, fair and efficient market; and

d) the safety and efficiency of clearing, guaranteed settlement, and the custodial system.

Article 19

1. A Clearing Guarantee Institution or a Central Securities Depository may not have more than seven directors and seven commissioners.

2. Directors of a Clearing Guarantee Institution or Central Securities Depository may not be directors, commissioners, or officers of another company.

3. Directors and commissioners are elected for three years and may be re-elected.

Article 20

1. Shares of a Clearing Guarantee Institution or a. Central Securities Depository are registered and have equal par value and voting rights.

2. Shares of a Clearing Guarantee Institution or Central Securities Depository may be owned only by Securities Exchanges, Securities Companies, Securities Administration Agencies, Custodian Banks, and other Persons approved by BAPEPAM.

3. The majority of shares of a Clearing Guarantee Institution Must be owned by a Securities Exchange.

4. Shares of Clearing Guarantee Institutions or Central Securities Depositories may be transferred only to Securities Exchanges, Securities Companies, Securities Administration Agencies, Custodian Banks, or other Persons approved by BAPEPAM.

5. Shares of a Clearing Guarantee Institution may be transferred to Persons who are not Securities Exchanges as long as a Securities Exchange still owns the majority of the Clearing Guarantee Institution's shares.

6. A Clearing Guarantee Institution or Central Securities Depository may not distribute dividends to shareholders.

Article 21

1. A Clearing Guarantee Institution and a Central Securities Depository must submit their articles of association, rules, and amendments thereto, to BAPEPAM for approval.

2. When BAPEPAM rejects the articles of association, rules, or amendments thereto, of a Clearing Guarantee Institution or Central Securities Depository, as referred to in paragraph (1), it will give the reason for such rejection.

3. In order to develop an orderly, fair, and efficient Capital Market BAPEPAM may order a Clearing Guarantee Institution or Central Securities Depository to amend its articles of association or rules.

Article 22

BAPEPAM may establish further requirements regarding the organization of Clearing Guarantee Institutions and Central Securities Depositories, based on this Government Regulation.

CHAPTER III INVESTMENT FUNDS

Article 23

A license from BAPEPAM is required to operate an Investment Fund in corporate form.

Article 24

1. The license application for the type of Investment Fund referred to in Article 23 must be submitted to BAPEPAM accompanied by the following documents and information:

a) the company's deed of establishment, approved by the Minister of Justice;

b) the name and address of the founder(s) of the Investment Fund;

c) the name and address of the directors of the Investment Fund;

d) the name and address of the Investment Manager and Custodian Bank;

e) the Investment Fund management contract;

f) the Custodial contract with respect to the assets of the Investment Fund;

g) the Capital Market Supporting Professionals that will provide services to the Fund; and

h) other documents and information related to the license application as required by BAPEPAM.

2. The application referred to in paragraph (1) shall be submitted in the form, format, and with the content prescribed by BAPEPAM.

Article 25

The purpose of an Investment Fund in corporate form is to carry on business as an Investment Fund.

Article 26

An open-end Investment Fund in corporate form may issue, repurchase, and transfer shares without approval of a Shareholders' General Meeting.

Article 27

An Investment Fund in corporate form must be dissolved when its license is revoked by BAPEPAM.

Article 28

When an Investment Manager or director of an Investment Fund in corporate form violates Law Number 8 of 1995, its implementing regulations, the Investment Fund management contract, or the Investment Fund's articles of association, BAPEPAM may revoke the Investment Fund's license and/or suspend operations of the Fund, placing the assets in safekeeping and naming another Investment Manager to manage the Fund.

Article 29

When the Investment Manager of an Investment Fund organized as a collective investment contract, violates Law Number 8 of 1995, its implementing regulations, or the collective investment contract, BAPEPAM may dissolve the Investment Fund, or suspend the operations of the Fund, placing the assets in safekeeping, and naming another Investment Manager to manage the Investment Fund's assets.

Article 30

BAPEPAM may further regulate the activities of Investment Funds based on this Government Regulation.

CHAPTER IV SECURITIES COMPANIES

Article 31

A Securities Company must obtain a license from BAPEPAM before engaging in business as an Underwriter, Broker-dealer and/or Investment Manager.

Article 32

1. A Securities Company as referred to in Article 31 may be organized as:

   a) a national Securities Company, the shares of which and owned only by Indonesian legal entities or Indonesian citizens;

   b) cl joint-venture Securities Company, the shares of which are owned by Indonesian citizens, Indonesian legal entities, and/or foreign legal entities that operate in the financial sector.

2. Terms of paragraph (1) do not apply to Securities Companies that have made a Public Offering.

3. Provisions regarding the ownership of shares of a Securities Company by a foreign citizen and/or foreign legal entity, shall be determined by the Minister of Finance.

Article 33

1. A Securities Company must meet the following capital requirements:

   a) The capital of a national Securities Company shall be as follows:

      (i) To operate as an Underwriter and Broker-dealer, a national Securities Company must have paid-in capital of at least ten billion Rupiah and must maintain Net Adjusted Working Capital of at least five hundred million Rupiah.

      (ii) To operate as a Broker-dealer, a national Securities Company must have paid-in capital of at least five hundred million Rupiah and must maintain Net Adjusted Working Capital of at least two hundred million Rupiah.

      (iii) To operate as an Investment Manager, a national Securities Company must have paid-in capital of at least five hundred million

Rupiah and must maintain Adjusted Net Working Capital of at least two hundred million Rupiah;

(iv) To operate as an Underwriter, Broker-dealer, and Investment Manager, a national Securities Company must have paid-in capital of at least ten billion and five hundred million Rupiah and must maintain Net Adjusted Working Capital of at least seven hundred million Rupiah;

(v) To operate as a Broker-dealer and Investment Manager, a national Securities Company must have paid-in capital of at least one billion Rupiah and must maintain Net Adjusted Working Capital of at least four hundred million Rupiah.

b) The capital of a joint-venture Securities Company shall be as follows:

(i) To operate as an Underwriter and Broker-dealer, a joint-venture Securities Company must have paid-in capital of at least ten billion Rupiah and must maintain Net Adjusted Working Capital of at least five hundred million Rupiah;

(ii) To operate as a Broker-dealer, a joint-venture Securities Company must have paid-in capital of at least one billion Rupiah and must maintain Net Adjusted Working capital of at least two hundred million Rupiah;

(iii) To operate as an Investment Manager, a joint-venture Securities Company must have paid-in capital of at least one billion Rupiah and must maintain Net Adjusted Working Capital of at least two hundred million Rupiah;

(iv) To operate as an Underwriter, Broker-dealer, and Investment Manager, a joint-venture Securities Company must have paid-in capital of at least eleven billion Rupiah and must maintain Net Adjusted Working Capital of at least seven hundred million Rupiah; and

(v) To operate as a Broker-dealer and Investment Manager, a joint venture Securities Company must have paid-in capital of at least two billion Rupiah and must maintain Net Adjusted Working Capital of at least four hundred million Rupiah.

2. The Ministry of Finance may determine paid-in capital requirements for Securities Companies that are different from the amounts indicated in paragraph (1).

3. BAPEPAM may determine maintenance requirements for Net Adjusted Working Capital of Securities Companies that are different from the amounts indicated in paragraph (1).

Article 34

1. A license application to engage in business as a Securities Company shall be submitted to BAPEPAM accompanied by the following documents and information:

a) the company's deed of establishment, approved by the Minister of Justice;

b) the Tax Registration Number of the Company;

c) the names of the directors and expects who have individual licenses from BAPEPAM to act as the Securities Company's representatives; and

d) other documents and supporting information related to the license application as required by BAPEPAM.

2. The application referred to in paragraph (1) shall be submitted in the form, format, and with the content prescribed by BAPEPAM.

Article 35

1. A Securities Company may not be controlled, either directly or indirectly, by individuals who:

a) have committed a shameful act or that have been convicted of a crime involving a financial transaction; or

b) lack good character and morals.

2. Directors, commissioners, and Representatives of a Securities Company must:

a) be legally competent;

b) have not been declared bankrupt or have been the director or commissioner that caused the bankruptcy of a company;

c) have never committed a disgraceful act or have been convicted of a crime involving a financial transaction;

d) have good character and morals; and

e) have Capital Market expertise.

Article 36

1. To operate as an Underwriter, a Securities Company must have at least one director and one officer that are each licensed as an Underwriter's Representative.

2. To operate as a Broker-dealer, a Securities Company must have at least one director and one officer that are each licensed as a Broker-dealer's Representative or Underwriter's Representative.

3. To operate as an Investment Manager, a Securities Company must have at least one director and one officer that are each licensed as an Investment Manager's Representative.

Article 37

BAPEPAM may establish further provisions necessary to implement the activities of Securities Companies based on this Government Regulation.

CHAPTER V SECURITIES COMPANY REPRESENTATIVES

Article 38

1. An individual license as:

a) an Underwriter's Representative may only be granted to an individual who has expertise in underwriting and Broker-dealer activities;

b) a Broker-dealer's Representative may only be granted to an individual who has expertise in Broker-dealer activities; and;

c) an Investment Manager's Representative may only be granted to an individual who has expertise in Securities analysis and Securities Portfolio management.

2. Requirements regarding the expertise referred to in paragraph (1) shall be determined by BAPEPAM.

Article 39

1. An application for a license as a Securities Company's representative shall be submitted to BAPEPAM with the following documents and information:

a) a certificate of formal education;

b) a certificate of expertise and/or a description of work experience; and;

c) other documents and supporting information related to the license application as determined by BAPEPAM.

2. The application referred to in paragraph (1) must be submitted in the form, format, and with the content prescribed by BAPEPAM.

Article 40

Based on this Government Regulation, BAPEPAM may stipulate further requirements with respect to the licensing of Securities Company Representatives.

CHAPTER VI INVESTMENT ADVISORS

Article 41

1. Before engaging in business as an Investment Advisor, an individual or company must to obtain a license from BAPEPAM.

2. In order to carry on business as an Investment Advisor, or to be a director, commissioner, or to directly or indirectly control a corporation acting as an Investment Advisor, an individual must:

a) have not committed a disgraceful act and/or been convicted of a crime involving a financial transaction;

b) have good character and morals; and

c) have Capital Market expertise.

Article 42

The Investment Advisor referred to in Article 41 must have at least one expect that is licensed as an Investment Manager's Representative.

Article 43

In order to engage in the Securities rating business, an investment Advisor must.

a) be incorporated;
b) have paid-in capital of five hundred million Rupiah; and
c) have at least one director with expertise in Securities rating.

Article 44

1. A license application for Investment Advisor must be submitted to BAPEPAM with the following documents and information:
   a) the license as Investment Manager's Representative;
   b) the Tax Registration Number; and
   c) other related documents and supporting information stipulated by BAPEPAM.
2. The application referred to in the paragraph (1) must be submitted in the form. format. and with the content prescribed by BAPEPAM.

Article 45

Based on this Government Regulation, BAPEPAM may determine further requirements to engage in Investment Advisor activities.

CHAPTER VII COMMERCIAL BANK CUSTODIANS

Article 46

A Commercial Bank may engage in business as a Custodian in the Capital Market after obtaining approval from BAPEPAM.

Article 47

1. The application for approval as a Custodian must be submitted to BAPEPAM with the following documents and information:
   a) the articles of association;
   b) the Tax Registration Number;
   c) the Commercial Bank license;
   d) the latest annual financial statement, audited by an Accountant registered with BAPEPAM;
   e) an operations manual with respect to Custodial activities and information on the physical facilities to be used;
   f) a recommendation from Bank Indonesia; and
   g) other related documents and supporting information as determined by BAPEPAM.
2. The application referred to in the paragraph (1) must be submitted in the form, format, and with the content prescribed by BAPEPAM.

Article 48

Based on this Government Regulation, BAPEPAM may prescribe additional requirements to engage in business as a Custodian.

CHAPTER VIII SECURITIES ADMINISTRATION AGENCIES

Article 49

Before engaging in business as a Securities Administration Agency, it is necessary to obtain a license from BAPEPAM.

Article 50

A Securities Administration Agency must have paid-in capital of at least five hundred million Rupiah.

Article 51

1. A license application for a Securities Administration Agency business must be submitted to BAPEPAM with the following documents and information:

a) the deed of establishment, approved by the Minister of Justice;

b) the Tax Registration Number of the Company;

c) an operations manual on activities to be conducted and information regarding the physical facilities to be used; and

d) other related documents and supporting information as determined by BAPEPAM.

2. The application referred to in paragraph (1) must be submitted in the form, format, and with the content prescribed by BAPEPAM.

Article 52

Based on this Government Regulation, BAPEPAM may establish further requirements to engage in business as a Securities Administration Agency.

CHAPTER IX TRUST-AGENTS

Article 53

1. Only a Commercial Bank may carry on business as a Trust-agent.
2. Only a Trust-agent that has registered with BAPEPAM may engage in Trust-agent business in the Capital Market.

Article 54

1. An application for registration as a Trust-agent must be submitted to BAPEPAM with by the following documents and information:

a) the articles of association;

b) the Tax Registration Number;

c) the license as a Commercial Bank;

d) the latest annual financial statements, audited by an Accountant registered with BAPEPAM;

e) a recommendation from Bank Indonesia; and

f) other related documents and supporting information as determined by BAPEPAM.

2. The application referred to in paragraph (1) must be submitted in the form, format, and with the content prescribed by BAPEPAM.

Article 55

Based on this Government Regulation, BAPEPAM may determine further requirements to engage in business activities as a Trust-agent.

CHAPTER X CAPITAL MARKET SUPPORTING PROFESSIONALS

Article 56

1. The activities of Capital Market Supporting Professionals are those of

a) Accountants;

b) Legal Consultants;

c) Appraisers; and

d) Notaries.

2. Capital Market Supporting Professionals may provide services in the Capital Market only after registering with BAPEPAM.

Article 57

1. An application for registration as a Capital Market Supporting Professional must be submitted in the form, format, and with the content prescribed by BAPEPAM.

2. Individual applicants referred to in paragraph (1), MUST:

a) have not committed a disgraceful act and/or have been convicted of a crime involving a financial transaction;

b) have good character and morals; and

c) have Capital Market expertise

Article 58

Based on this Government Regulation, BAPEPAM may determine further requirements for Professionals that provide services in the Capital Market.

CHAPTER XI PROCEDURES FOR ISSUING OR REJECTING A LICENSE, OR REGISTRATION

Article 59

1. The approval or rejection of an application by BAPEPAM with respect to a license, approval, or registration, must be done within forty-five days from the date the complete application is received by BAPEPAM.

2. Within the period referred to in paragraph (1), BAPEPAM may

request amendments and/or additional information to complete the application for licensing, approval, or registration.

3. When BAPEPAM requests an amendment and/or additional information as specified in paragraph (2), the period for approval or denial shall be counted from the date such amendment and/or additional information is received by BAPEPAM.

Article 60

1. Approval or rejection of applications for changes in the rules of a Securities Exchange, a Clearing Guarantee Institution, or a. Central Securities Depository must be made within sixty days of receipt by BAPEPAM of the complete application.

2. During the period stipulated to in paragraph (1), BAPEPAM may request amendments to the proposed rule changes and/or request additional information related to such proposed rule changes.

3. When BAPEPAM requests modifications or additional information as provided in paragraph (2), the period for acting on the proposal shall be counted from the date that such modifications or information is received by BAPEPAM.

CHAPTER XII ADMINISTRATIVE SANCTIONS

Article 61

Violations of Capital Market rules and regulations by Issuers, Public Companies, Securities Exchanges, Clearing Guarantee Institutions, Central Securities Depositories, Investment Funds, Securities Companies, Investment Advisors, Underwriter's Representatives, Broker-dealer's Representatives, Investment Manager's Representatives, Securities Administration Agencies, Custodians, Trust-agents, Capital Market Supporting Professionals, and other Persons that have obtained a license, approval, or registration from BAPEPAM, and by directors, commissioners, and any Person owning five percent or more of the shares of an Issuer or Public Company, are subject to the following administrative sanctions:

a) a written warning;
b) a fine or obligation to pay a certain amount of money;
c) restrictions on business activity;
d) the suspension of business activity;
e) revocation of a license;
f) cancellation of an approval; and
g) cancellation of registration.

Article 62

1. The sanctions stipulated to in Article 61 letters b through g may be imposed without the written warning referred to in letter a of Article 61.

2. The fine stipulated to in letter b of Article 61 may be imposed

separately or together with any of the sanctions stipulated in letters c through g of Article 61.

Article 63

Persons referred to in Articles 85, 86, and 87 of Law No. 8 of 1995 that are late in submitting reports prescribed by BAPEPAM, are subject to the following administrative sanctions:

a) a Securities Exchange, Clearing Guarantee Institution or Central Securities Depository may be subject to a fine of five hundred thousand Rupiah for each day of delay in submitting a report, up to a maximum fine of five hundred million Rupiah;

b) a Securities Administration Agency, Custodian Bank, or Trust-agent may be subject to a fine of Rp one hundred thousand Rupiah for each day of delay in submitting a report, up to a maximum fine of one hundred million Rupiah;

c) a Securities Company may be subject to a fine one hundred thousand Rupiah for each day of delay in submitting a report, up to a maximum fine of one hundred million Rupiah 29;

d) an Investment Advisor may be subject to a fine of one hundred thousand Rupiah for each day of delay in submitting a report, up to a maximum fine of one hundred million Rupiah;

e) An Issuer whose Registration Statement has become effective may be subject to a fine of one million Rupiah for each day of delay in submitting a report, up to a maximum fine of five hundred million Rupiah;

f) A Public Company that is late in submitting a Registration Statement may be subject to a fine of one hundred thousand Rupiah for each day of delay, up to a maximum fine of one hundred million Rupiah;

g) A director or commissioner of an Issuer or Public Company, and every Person with five percent or more of the shares of an Issuer or Public Company, may be subject to a fine of one hundred thousand Rupiah for each day of delay in submitting a report, up to a maximum fine of one hundred million Rupiah;

h) Persons other than those mentioned in letters a through g that have a license, approval, or registration from BAPEPAM, may be subject to a fine of one hundred thousand Rupiah for each day of delay in submitting a report, up to a maximum fine of one hundred million Rupiah:

Article 64

1. Monetary sanctions for violation of Capital Market Regulations, other than those stipulated to in Article 63, may be imposed on Persons mentioned in Article 61 up to a maximum of one hundred million Ruplah for individuals and five hundred million Rupiah for non-individuals.

2. BAPEPAM may determine further stipulations regarding the imposition of the sanctions mentioned in paragraph (1).

Article 65

1. The sanctions referred to in Articles 63 and 64 are imposed for each violation of Capital Market rules and regulations.

2. The administrative sanctions referred to in Article 61 may be announced in the mass media by BAPEPAM.

CHAPTER XIII CLOSING PROVISIONS

Article 66

1. A national Securities Company licensed as an Underwriter prior to the effectiveness of this Government Regulation, must meet the paid-in capital requirements stipulated in paragraph (1), letter a, number 1 of Article 33, within two years of the effectiveness of this Government Regulation.

2. Securities Companies that have been licensed before the effectiveness of this Government Regulation, must comply with the stipulations of Article 36 within one year of the effectiveness of this Government Regulation.

Article 67

Upon the effectiveness of this Government Regulation, Presidential Decree No 53 of 1990 on the Capital Market is revoked.

Article 68

This Government Regulation shall be effective on January 1, 1996.

In order that all may be informed, this Government Regulation shall be promulgated by publication in the State Gazette of the Republic of Indonesia.

Authorized in Jakarta
on November 10, 1995
THE PRESIDENT
OF THE REPUBLIC OF INDONESIA

SOEHARTO

Promulgated in Jakarta
on November 10, 1995
THE MINISTER STATE SECRETARY
THE REPUBLIC OF INDONESIA

MOERDIONO

APPENDIX ID-3

Capital Market Formal Investigative Procedures Number 46 Year 1995

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

CONSIDERING:

a. that in implementing its investigative functions based on Law No. 8 of 1995, Bapepam is authorized to investigate Persons suspected of having violated or being involved in a violation of Capital Market laws or regulations;

b. that in relation on the above, it is necessary to stimulate formal Capital Market investigative procedures in a Government Regulation;

IN VIEW OF:

1. Article 5 item (2) of the 1945 Constitution;

2. Law No. 8 of 1995 on The Capital Market (Statute Book No. 64, Supplement to Statute Book No. 3608);

HAS DECIDED TO ENACT: A GOVERNMENT REGULATION
Concerning

CAPITAL MARKET FORMAL INVESTIGATIVE PROCEDURES

CHAPTER I GENERAL PROVISIONS

Article 1

Definition of terms used in this Government Regulation:

1. An Investigator is a Civil Servant that is an Officer of Bapepam and appointed by the Chairman to conduct formal investigations as stipulated in Article 100 of Law No. 8 of 1995.

2. An investigation is a series of activities by an Investigator related to the collection, gathering, and processing of data and other information, in order to prove whether or not there has been a violation of Capital Market rules or regulations.

CHAPTER II PURPOSE OF A FORMAL INVESTIGATION

Article 2

1. The purpose of a formal investigation is to determine whether there has been a violation of a Capital Market rule or regulation.

2. The formal investigation referred to in item (1) may be conducted when:

a. there is a report, notice, or complaint concerning a violation of a Capital Market rule or regulation;

b. there are unfulfilled obligations by Persons who have a license, approval or registration from Bapepam or other Persons that are required to submit a report to Bapepam; or

c. there is an indication regarding a possible violation of a Capital Market rule or regulation.

CHAPTER III FORMAL INVESTIGATIVE STANDARDS

Article 3

A formal investigation must be conducted in compliance with standards with respect to Investigators, investigations, and Persons being investigated.

Article 4

Investigative standards relating to Investigators are as follows:

a. When conducting an investigation, the Investigator must have an Investigator Identification Card and a Formal Investigation Order from the Chairman of Bapepam;

b. The Investigator must inform Persons under investigation in writing concerning the investigation;

c. The Investigator must show the Investigator's Identification Card and Formal Inspection Order to the Persons under investigation;

d. The Investigator must explain the objectives and purposes of the investigation to Persons under investigation;

e. The Investigator must prepare a report on the results of the investigation; and

f. The Investigator may not disclose evidence received during the investigation from Persons under investigation to others that do not have the right to such information.

Article 5

Investigative standards for conducting an investigation are as follows:

a. the investigation must be conducted by more than one investigator;

b. an investigation may take place in the Investigator's office, or any office, factory, work place, residence and or other place that seems to be related to the violation;

c. the investigation shall be conducted during working hours on working days, but may be continued after working hours and on non-work days, when necessary;

d. the results of an investigation shall be set out in a report of the investigation; and

e. the results of the investigation that are agreed by Persons under investigation shall be included in a statement signed by such Persons.

Article 6

Investigative standards for Persons under investigators are as follows:

a. Persons under investigation have the right to ask the Investigator to present the Formal Investigation Order and the Investigator's Identification Card;

b. Persons under investigation have the right to ask the Investigator to provide an explanation regarding the intent and purposes of the investigation; and

c. Persons under investigation may sign a statement indicating agreement with the results of the investigation.

Article 7

An investigation shall follow investigative guidelines that consist of general guidelines, implementation guidelines, and reporting guidelines.

Article 8

General investigative guidelines are as follows:

a. an investigation must be conducted by competent Investigators that have adequate technical training and that use there expertise with precision and care;

b. investigators must work honestly, fairly, and with responsibility and dedication and must avoid any inappropriate actions; and

c. investigators must prepare reports that accurately describe the facts.

Article 9

Investigative implementation guidelines are as follows:

a. an investigator must carefully plan and supervise the investigation to ensure that it is conducted efficiently and fulfills its objectives;

b. the scope of an investigation shall be determined by the strength of evidence obtained through verification, interviews, observation, and other means; and

c. conclusions must be based on evidence that is within the scope of the investigation and grounded upon rules and regulations pertaining to the Capital Market.

Article 10

Investigation reporting guidelines are as follows:

a. in compiling the investigative report, the Investigator must pay attention to:

1) the nature of the infraction;

2) evidence and clues that there has been a violation;

3) effects or consequences of the violation;

4) the Capital Market rules and regulations that may have been violated; and

5) other matters that are necessary within scope of the investigation.

b. the investigative report must be clear, detailed, and brief and must to conform to the scope and objectives of the investigation.

c. descriptions and summaries must be supported by evidence and reasoning regarding the occurrence or non-occurrence of a violations of Capital Market rules and regulations.

Article 11

Further provisions regarding investigative standards may be established by Bapepam.

CHAPTER IV INVESTIGATIVE PROCEDURES

Article 12

1. Investigations must be authorized by the Chairman of Bapepam.

2. In order to obtain the authorization referred to in item (1), an investigation proposal must contain:

a. the purpose of the investigation;

b. the scope of the investigation; and

c. the starting time for the investigation.

3. During an investigation, an Investigator may:

a. request any information, confirmation or evidence from Persons under investigation and other Persons as deemed necessary;

b. order Persons under investigation to do or not to do certain activities;

c. review records, books, and other supporting documents;

d. borrow or copy records, books, and other documents when necessary;

e. enter a place or room that is used to keep records, books, and other documents; and

f. order Persons under investigation to safeguard records, books and or other documents for purposes of the investigation.

4. When borrowing records, books and other documents as stipulated in item (3) letter d, the Investigator must provide a receipt that describes clearly and in detail all the documents borrowed.

Article 13

1. When either the Person under investigation, his agent, or his power-of-attorney is not present during the investigation, the investigation may continue as long as there is someone who can and who is authorized to represent the Person under investigation, within limits as to matters that

may be investigated. Eventually, the investigation may be postponed and continued at another time.

2. As a matter of security, before postponing an investigation, the Investigator may order the Person under investigation to safeguard records, books and other documents as stipulated in Article 12 item (3) letter f.

3. If, after postponing of an investigation, the Person under investigation, his agent, or his power-of-attorney is still not present at the location, the investigation may continue after requesting an employee of the Person under investigation to facilitate the investigation.

4. When a Person under investigation, his agent or his power-of-attorney is available, but refuses or obstructs the investigation, such Person must sign a Statement of Refusal or Obstruction of the Investigation.

5. When employees of the Person under investigation refuse to cooperate or obstruct the conduct of the investigation, such employees must sign a Statement of Non-Cooperation or Obstruction of the Investigation.

6. When there is a refusal to sign the Statement referred to in items (4) and (5), the Investigator shall prepare and sign a memorandum regarding such refusal.

7. The Statement of Refusal or Obstruction of the Investigation, the Statement of Non-Cooperation or Obstruction of the Investigation, or the memorandum, indicated in items (4), (5), and (6), may be grounds for a criminal investigation.

Article 14

1. An Investigator shall prepare an investigative report to prove whether or not there have been violations of Capital Market rules and regulations.

2. The Investigative report required in item (1) shall be submitted to the Chairman of Bapepam.

Article 15

1. When initial evidence of criminal activity in the Capital Market is found during a formal investigation, the investigation should continue and the Investigator should submit a report of such preliminary evidence of a criminal act to the Chairman of Bapepam.

2. The Chairman of Bapepam may authorize a criminal investigation based on the preliminary evidence referred to in item (1).

CHAPTER V CLOSING PROVISIONS

Article 16

Bapepam may establish other rules that are necessary to implement this Government Regulation.

Article 17

This Government Regulation shall be effective on January 1, 1996.

In order that all may be informed, this Government Regulation shall be promulgated by publication in the State Gazette of the Republic of Indonesia.

Authorized in Jakarta
on December 30, 1995
THE PRESIDENT
OF THE REPUBLIC OF INDONESIA
by
SOEHARTO

Promulgated in Jakarta
on December 30, 1995
THE MINISTER STATE SECRETARY
THE REPUBLIC OF INDONESIA
by
MOERDIONO

STATE GAZETTE OF THE REPUBLIC OF INDONESIA YEAR 1995
NUMBER 87
Based on the Original Documents

CABINET SECRETARY
OF THE REPUBLIC OF INDONESIA
Chairman of the Bureau of Law and Regulations
by
Lambock V. Nahattands, S.H.

ELUCIDATION OF A GOVERNMENT REGULATION OF THE REPUBLIC OF INDONESIA NUMBER 46 YEAR 1995

CONCERNING

CAPITAL MARKET FORMAL INVESTIGATIVE PROCEDURES

General

To assure that Capital Market operations are orderly, fair, and efficient, and that public investors are protected from harmful and illegal practices, Bapepam is authorized to investigate any Person suspected of having violated or being involved in a violation of Capital Market laws or regulations.

To assure that investigations are conducted properly, with due

consideration of the rights and obligations of Persons under investigation, it is necessary to issue a Government Regulation to implement the provisions of in Article 100 item (3) of Law No. 8 of 1995 on the Capital Market.

Article 1

Number 1

Sufficiently clear

Number 2

Sufficiently clear

Article 2

Item (1)

Sufficiently clear

Item (2)

Letter a

Sufficiently clear

Letter b

Sufficiently clear

Letter c

Sufficiently clear

Article 3

Investigative Standards are rules that regulate all matters between the Investigator and the Persons under investigation during an investigation.

Investigation standards must be followed by Investigators and Persons under investigation, so that the investigation may be conducted in an expeditious and orderly manner.

Article 4

Letter a

The Investigator's Identification Card is needed to ensure that only authorized Investigators conduct investigations. The Investigation Order is needed to ensure that only Persons whose names are included in the Investigation Order are subjects of the investigation.

Investigators must show the Investigator's Identification Card and the Investigation Order to Persons under investigation.

When an Investigator does not present the Investigator's Identification Card and the Investigation Order, or when the Persons named on the Investigator's Identification Card is different from the Investigator names in the Investigation Order, Persons under investigation have the right to refuse to cooperate in the investigation.

Letter b

Sufficiently clear

Letter c

Sufficiently clear

Letter d

Sufficiently clear

Letter e

Sufficiently clear

Letter f

This provision does not limit Bapepam's authority to announce the results of an investigation.

Article 5

Letter a

Sufficiently clear

Letter b

Sufficiently clear

Letter c

Sufficiently clear

Letter d

Sufficiently clear

Letter e

Sufficiently clear

Article 6

Letter a

Sufficiently clear

Letter b

Sufficiently clear

Letter c

Sufficiently clear

Article 7

Investigative guidelines are principles that include the bounds imposed upon Investigators regarding the nature and scope of the investigation and the content of inspection reports.

Article 8

Letter a

Sufficiently clear
Letter b
Sufficiently clear
Letter c
Sufficiently clear

Article 9

Letter a
Sufficiently clear
Letter b
Sufficiently clear
Letter c
Sufficiently clear

Article 10

Letter a
Number 1)
Sufficiently clear
Number 2)
Sufficiently clear
Number 3)
Sufficiently clear
Number 4)
Sufficiently clear
Number 5)
Sufficiently clear
Letter b
Sufficiently clear
Letter c
Sufficiently clear

Article 11

Sufficiently clear

Article 12

Item (1)
Sufficiently clear
Item (2)

Sufficiently clear

Item (3)

Letter a

Sufficiently clear

Letter b

Sufficiently clear

Letter c

Sufficiently clear

Letter d

Copies include photocopies.

Letter e

Sufficiently clear

Letter f

Sufficiently clear

Item (4)

Sufficiently clear

Article 13

Item (1)

Sufficiently clear

Item (2)

Before the Investigator leaves the room or place of Persons under investigation, he may order that books, records and or other documents related to activities of Persons under investigation be safeguarded by such Persons, so as to avoid damage, destruction, modification, falsification, or removal of these documents.

This provision also applies to an agent or power-of-attorney, or Persons that is able and is authorized to act as a representative of a Person under investigation.

Item (3)

Sufficiently clear

Item (4)

Sufficiently clear

Item (5)

Sufficiently clear

Item (6)

Sufficiently clear

Item (7)

Sufficiently clear

Article 14

Item (1)

An investigative report shall include, among other things, the objectives, findings, and conclusions of the investigation.

Item (2)

Sufficiently clear

Article 15

Item (1)

Sufficiently clear

Item (2)

Sufficiently clear

Article 16

Sufficiently clear

Article 17

Sufficiently clear

APPENDIX ID-4

Revocation of Capital Market Decree No. 1548/KMK.013/1990 of the Minister of Finance As Last Amended by Decree No. 284/KMK.010/1995

A DECREE OF THE MINISTER OF FINANCE OF THE REPUBLIC OF INDONESIA

NUMBER 645/KMK.010/1995

CONCERNING

REVOCATION OF CAPITAL MARKET DECREE NO. 1548/KMK.013/ 1990 OF THE MINISTER OF FINANCE AS LAST AMENDED BY DECREE NO. 284/KMK.010/1995

THE MINISTER OF FINANCE OF THE REPUBLIC OF INDONESIA

CONSIDERING:

That with the effectiveness of Law No. 8 Year 1995 regarding the Capital Market, it is necessary to issue a Decree of the Minister of Finance to revoke the Decree of the Minister of Finance No. 1548/ KMK.013/1990 regarding the Capital Market, as last amended by the Decree of the Minister of Finance No. 284/KMK.010/1995.

IN VIEW OF:

1. Law No. 8 Year 1995 on Capital Market (Statute Book Year 1995 No. 64, Supplement to Statute Book No. 3608);
2. Government Regulation No. 45 Year 1995 on The Implementation of Operations in the Capital Market (Statute Book Year 1995 No. 86, Supplement to Statute Book No. 3617);
3. Government Regulation No. 46 Year 1995 on The Inspection Procedures in the Capital Market (Statute Book Year 1995 No. 87, Supplement to Statute Book No. 3618);

HAS DECIDED TO ISSUE: A DECREE OF THE MINISTER OF FINANCE Concerning

REVOCATION OF CAPITAL MARKET DECREE NO. 1548/KMK.013/ 1990 OF THE MINISTER OF FINANCE AS LAST AMENDED BY DECREE NO. 284/KMK.010/1995

Article 1

Decree of the Minister of Finance No. 1548/KMK.013/1990 on the Capital Market as last amended by the Decree of the Minister of Finance No. 284/KMK.010/1995, is hereby revoked.

Article 2

This Decree shall be effective on January 1, 1996. In order that all will be informed, this Decree will be promulgated by publication in the State Gazette of the Republic of Indonesia.

Issued in Jakarta
on December 30, 1995
MINISTER OF FINANCE
MAR'IE MUHAMMAD

Based on the Original Documents
HEAD OF THE BUREAU FOR GENERAL AFFAIRS

Ny Henati Mulatsih
ACTING HEAD
OF THE ADMINISTRATIVE DIVISION

APPENDIX ID-5

Foreign Ownership of Investment Funds Number 646/KMK.010/1995

A DECREE OF THE MINISTER OF FINANCE OF THE REPUBLIC OF INDONESIA

NUMBER 646/KMK.010/1995

CONCERNING

FOREIGN OWNERSHIP OF INVESTMENT FUNDS

THE MINISTER OF FINANCE OF THE REPUBLIC OF INDONESIA

CONSIDERING:

that with the effectiveness of Law No. 8 of 1995 on the Capital Market, it is necessary to regulate ownership by Foreign Investors of shares or participation units of Investment Funds by a Decree of the Minister of Finance

IN VIEW OF:

1. Law No. 8 Year 1995 on The Capital Market (Statute Book Year 1995 No. 64, Supplement to Statute Book No. 3608);
2. Government Regulation No. 45 Year 1995 on The Implementation of Operations in the Capital Market (Statute Book Year 1995 No. 86, Supplement to Statute Book No. 3617);
3. Government Regulation No. 46 Year 1995 on The Inspection Procedures in the Capital Market (Statute Book Year 1995 No. 87, Supplement to Statute Book No. 3618);

HAS DECIDED TO ISSUE: A DECREE OF THE MINISTER OF FINANCE Concerning

FOREIGN OWNERSHIP OF INVESTMENT FUNDS

Article 1

Definition of terms used in this Decree:

1) A Foreign Investor is an individual who is a foreign citizen or a foreign legal entity.

2) A Domestic Investor is an individual who is an Indonesian citizen or an Indonesian legal entity.

Article 2

The shares or participation units of Investment Funds may be owned by Foreign Investors or Local Investors, in part or in whole.

Article 3

The Investment Manager of an Investment Fund is required to report the composition of the ownership of shares or participation units of Investment Funds to BAPEPAM.

Article 4

This Decree shall be effective on January 1, 1996. In order that all will be informed, this Decree will be promulgated by publication in the State Gazette of the Republic of Indonesia.

Issued in Jakarta
on December 30, 1995
MINISTER OF FINANCE
MAR'IE MUHAMMAD

Based on the Original Documents
HEAD OF THE BUREAU FOR GENERAL AFFAIRS

Ny Hertati Mulatsih
ACTING HEAD
OF THE ADMINISTRATIVE DIVISION

Chapter JP

Securities Regulations in Japan

Hideki Ebata and Taku Ishizu

I. JAPANESE LEGAL SYSTEM

§ JP:1 Authority
§ JP:2 Nature of Japanese Laws

II. SECURITIES AND EXCHANGE ACT (SEA)

§ JP:3 Establishment of and amendment to the Securities and Exchange Act
§ JP:4 SEA Amendments between 1952 and 1955
§ JP:5 SEA Amendments in 1965
§ JP:6 SEA Amendments in 1971
§ JP:7 SEA Amendments in 1988
§ JP:8 SEA Amendments in 1990
§ JP:9 SEA Amendments in 1991 and 1992
§ JP:10 SEA Amendment in 1997
§ JP:11 SEA Amendment in 2000
§ JP:12 SEA Amendment in 2003
§ JP:13 SEA Amendment in 2004
§ JP:14 SEA Amendment in 2005

III. THE FINANCIAL INSTRUMENTS AND EXCHANGE ACT (FIEA)

§ JP:15 FIEA Amendment in 2006
§ JP:16 Disclosure Regulations
§ JP:17 Business Regulation
§ JP:18 Disciplinary Regulations
§ JP:19 FIEA Amendments in 2008 and 2009

IV. SOURCES OF SECURITIES REGULATION

§ JP:20 Overview

V. REGULATORY AUTHORITIES FOR SECURITIES REGULATIONS

§ JP:21 Generally
§ JP:22 Self Regulated Organizations

§ JP:23 Investors Protection Funds
§ JP:24 Corporate Accounting Council

VI. DISCUSSION OF REGULATIONS REGARDING SECURITIES MATTERS

A. DEFINITIONS

§ JP:25 "Securities" defined
§ JP:26 "Financial Instruments Business" defined
§ JP:27 "Type I Financial Instruments Business" defined
§ JP:28 "Type II Financial Instruments Business" defined
§ JP:29 "Investment Advisory and Agency Business" defined
§ JP:30 "Investment Management Business" defined
§ JP:31 "Specially Permitted Business for Qualified Institutional Investors, etc." defined

VII. PUBLIC OFFERING, SECONDARY DISTRIBUTION AND PRIVATE PLACEMENT OF SECURITIES

A. IN GENERAL

§ JP:32 Overview

B. HIGH LIQUIDITY FINANCIAL INSTRUMENTS

§ JP:33 Public Offering/Private Placement
§ JP:34 Solicitations Only for Qualified Institutional Investors
§ JP:35 Solicitations Only for Professional Investors
§ JP:36 Solicitations for a Small Number of Investors
§ JP:37 Secondary Distribution of Securities

C. LOW LIQUIDITY FINANCIAL INSTRUMENTS

§ JP:38 Public Offering of Securities
§ JP:39 Secondary Distribution of Securities

VIII. DISCLOSURE REQUIREMENT IN THE PRIMARY MARKET

§ JP:40 Registration Requirement
§ JP:41 Filing of Securities Registration Statements
§ JP:42 Public Inspection of SRS
§ JP:43 Shelf Registration
§ JP:44 Acquisition of Securities and Use of Prospectus

IX. CRIMINAL AND CIVIL LIABILITY

§ JP:45 SRS and Shelf Registration Statement
§ JP:46 Prospectus and Other Materials
§ JP:47 Liability under Article 16 of the FIEA
§ JP:48 Administrative Monetary Penalty

X. CONTINUOUS DISCLOSURE REQUIREMENT

§ JP:49 Securities Report
§ JP:50 Quarterly Report and Semi-annual Report
§ JP:51 Extraordinary Report
§ JP:52 Internal Control Report and Certification Letter
§ JP:53 Share Buyback Report
§ JP:54 Parent Company Status Report
§ JP:55 Public Inspection, Amendment Report, Liability

XI. PARTICIPANTS OF THE SECURITIES MARKET

§ JP:56 Financial Instruments Business Operator and Foreign Securities Company
§ JP:57 Other Financial Institutions
§ JP:58 Financial Instruments Intermediary Service Operator
§ JP:59 Financial Instruments Exchange
§ JP:60 Financial Instruments Firms Association
§ JP:61 Investors Protection Fund
§ JP:62 Financial Instruments Clearing Organization

XII. REGULATION IN THE SECONDARY MARKET

§ JP:63 Dealing and Brokerage Transactions
§ JP:64 Large Volume Holding Report
§ JP:65 Tender Offer
§ JP:66 Regulation on Insider Trading
§ JP:67 Regulation on Short Swing Transactions
§ JP:68 Regulation on Manipulation and Other Unfair Acts
§ JP:69 Stabilization

XIII. SECURITIES INVESTMENT TRUST AND INVESTMENT CORPORATION

§ JP:70 Securities Investment Trust
§ JP:71 Investment Corporation

Appendix JP-1. Financial Instruments and Exchange Act

Appendix JP-2. Order for the Enforcement of the Financial Instruments and Exchange Act

I. JAPANESE LEGAL SYSTEM

§ JP:1 Authority

The present Constitution of Japan (the "Constitution") was enacted in 1946 and came into force in 1947, with a view to the democratization of Japan in line with the Potsdam Proclamation of 1945, which was accepted by Japan and ended World War II. The Constitution replaced the Meiji Constitution of 1889, which was based on the constitutional monarchy. The Constitution stipulates that the emperorship rests on the doctrine of the popular will and represents

only "the symbol of the State and the unity of the people"[1] and that the legislative, judicial and executive powers are vested independently in the Diet, the Supreme Court and lower courts, and the cabinet, respectively.[2]

The administrative branch, with the cabinet and the Prime Minister of Japan (hereinafter, "Prime Minister") at the top, applies laws and regulations in the first instance, by exercising its administrative power, while the courts have the ultimate authority to interpret and apply the laws. The Diet, in many cases, empowers the administrative branch to provide regulations within the framework of the laws enacted by the Diet. In addition, many of the laws enacted by the Diet are proposed by the administrative branch. The administrative branch exercises a substantial influence not only over the regulated parties but also, through the realization of its administrative policy through such regulated parties, over the people as a whole. "Administrative guidance" broadens this influence by way of voluntary compliance by the regulated parties. Within the framework of the interrelationship of the three branches of government, the administrative branch plays an important role, not only in the application of the law but also in the creation of new laws and regulations.

§ JP:2 Nature of Japanese Laws

With regard to the nature of Japanese laws, after the Meiji Restoration of 1868 many of the modern Japanese laws such as the Civil Law[1] and the Commercial Code[2] were modeled after the codified laws of continental European countries. The primary source of law in Japan is codified written law, not customary law. However, since the end of World War II, most Japanese laws have been substantially influenced by Anglo-American law. The Financial Instruments and Exchange Act (the "FIEA"), a main Japanese securities Regulation, is modeled on the securities regulations of the United States.

II. SECURITIES AND EXCHANGE ACT (SEA)

§ JP:3 Establishment of and amendment to the Securities and Exchange Act

For a few years after World War II, the Japanese people were unable to invest in securities, since there were few investors due to the dissolution of family-run conglomerates (*zaibatsu*) mandated by General Headquarters of Allied Forces (GHQ) and, accordingly, there was

---

[Section JP:1]

[1]The Constitution Art. 1.

[2]The Constitution Arts. 41, 76 and 65.

[Section JP:2]

[1]Law No. 89, April 27, 1896.

[2]Law No. 48, March 9, 1899.

no securities exchange in Japan. However, in response to growing demands for investment in securities, the Securities and Exchange Act[1] (the "SEA"), the predecessor of the FIEA, was enacted (and around the same time tradings at the Tokyo Stock Exchange, Osaka Securities Exchange and the other stock exchanges were established under the SEA). Originally, the SEA constituted a consolidation of the Securities Act of 1933 and the Securities Exchange Act of 1934 of the United States, providing for both disclosure requirements in the primary and secondary markets and regulation of securities companies, stock exchanges and securities transactions. Additionally, it included a provision[2] prohibiting commercial banks from engaging in the securities business, similar to the provision in the Glass-Steagall Act of the United States.

Since then, Japanese securities regulations including the SEA have been amended from time to time in accordance with the increasing demand to protect investors, requests of the business community and other reasons. The following are the main amendments to the SEA.

§ JP:4 SEA Amendments between 1952 and 1955

After Japan regained its autonomy following the conclusion of the San Francisco Peace Treaty in 1951, the SEA was amended as follows:

(1) margin trading was permitted to stimulate trading by introducing speculative demand and supply;
(2) minimum capital regulations on companies that engage in the securities business (securities companies) were introduced;
(3) provisions relating to the supervision of securities companies were strengthened; and
(4) securities registration regulations were simplified.

§ JP:5 SEA Amendments in 1965

The following amendments and enactments were made due to the securities market crisis in Japan, which resulted from a long period when the stock market was sluggish:

(1) a licensing system for securities companies was introduced (previously, it had been a registration system);
(2) the supervision of securities companies was strengthened such as by the prohibition of statements as to the future performance of shares meant to induce trading, the prohibition of promises by securities companies to compensate their clients for any losses, and the establishment of disciplinary regula-

---

[Section JP:3]

[1]Law No. 25, April 13, 1948.

[2]Under the FIEA, financial institutions including commercial banks are, in principal, prohibited from engaging in the Securities-Related Business (Art. 28, para. 8 of FIEA) and Investment Management Business (Art. 28, para. 4 of FIEA). See Art. 33. para. 1 of the FIEA.

tions for securities companies, their officers and employees; and

(3) a registration system was introduced for securities companies' sales representatives (*shoken-gaimuin*).

§ JP:6 SEA Amendments in 1971

Fraudulent accounting by some companies immediately before declaring bankruptcy became an important issue in Japan, which resulted in some of the following amendments to the SEA:

(1) amendment of the securities registration system such as simplifying the content of Securities Registration Statements (*yukashoken-todokedesho*, the "SRS") filed by companies required to make continuous disclosure that have filed annual securities reports (*yukashoken-hokokusho*);

(2) amendment of the continuous disclosure system such as the expansion of the events necessary to file extraordinary reports (*rinji-hokokusho*);

(3) strengthening of civil liabilities such as those for loss incurred as a result of any actions by issuers, and their officers, certified public accountants and underwriters for material misstatements;

(4) creation of the takeover bid (TOB) regulations; and

(5) creation of the "Law Concerning Foreign Securities Firms," which relates to foreign securities firms that engage in the securities dealing business in Japan.

§ JP:7 SEA Amendments in 1988

In 1988, the provisions relating to stock price index futures trading, which is a means of off-setting the risk of price fluctuations in the stock markets, was introduced into the SEA and, accordingly, the regulations of the securities futures markets were strengthened. In addition, insider trading regulations were introduced.

§ JP:8 SEA Amendments in 1990

Due to an increase in the occurrence of substantial amounts of stocks of listed companies being bought-up by stock speculators, the SEA was tasked with ensuring the fairness and transparency of the market. Accordingly, regulations requiring disclosure of status for those holding a large volume of shares were introduced and the takeover bid (TOB) regulations were thoroughly amended to accord with internationally accepted standards.

§ JP:9 SEA Amendments in 1991 and 1992

The provision by securities companies of substantial amounts of compensation for the loss of their certain clients and deep involvement with anti-social forces became a serious problem and, conse-

quently, compensating clients for their loss and discretionary trading by securities companies were prohibited in 1991.

Additionally, the following amendments to the SEA were made in 1992:

(1) establishment of the Securities and Exchange Surveillance Commission to boost surveillance over violations of the securities trading regulations; and
(2) reinforcement of the functions of securities exchanges and securities dealers associations as self-regulatory organizations.

Furthermore, for the purpose of the ongoing financial deregulation and internationalization, the following changes to the SEA were made:

(3) insurance companies, banks and securities companies were allowed to enter parts of each other's respective business fields;
(4) definition of "Securities" subject to the SEA was expanded; and
(5) concepts of the "Public Offering of Securities" and the "Private Placement of Securities" in regard to the requirement to file a SRS were readjusted.[1]

§ JP:10 SEA Amendment in 1997

With the acceptance of stock option plans by the Japanese legal system such as in the Commercial Code, the takeover bid (TOB) regulations were further amended. Additionally, as a part of the means of coping with corporate scandals, such as in the case of Japanese securities companies and banks providing illegal benefits to certain corporate shareholder extortionists (*sokai-ya*), the penalties for illegal activities related to securities transactions were strengthened.

§ JP:11 SEA Amendment in 2000

The amendment allowed procedures for the disclosure of corporate information by the filing and publication of disclosure documents such as securities reports and SRS to be made electronically.

§ JP:12 SEA Amendment in 2003

Although, previously, only certain persons such as securities companies were permitted to deal securities, the amendment allowed persons registered as Securities Sales Intermediate Agents[1] to deal securities (this business is defined as "Securities Intermediary Ser-

---

[Section JP:9]

[1]See Art. 2, para. 3 of the FIEA.

[Section JP:12]

[1]Currently, Financial Instruments Sales Intermediate Agents. See Art. 2, para. 12 of the FIEA.

vice"[2]) in order to vitalize the Japanese securities market by enabling investors to invest in securities in a greater variety of ways.

§ JP:13 SEA Amendment in 2004

Investment instruments that take advantage of collective investment schemes[1] were made subject to the SEA by categorizing them as "Securities." Additionally, Japanese financial institutions were permitted to engage in the Securities Intermediary Service. Furthermore, an administrative monetary penalty (*kachokin*) system was introduced which imposes on a person, for example, who has conducted an offering with disclosure documents that include a material misstatement, an administrative monetary penalty calculated based on the profit resulting from the fraudulent behavior.

§ JP:14 SEA Amendment in 2005

To cope with the changing situation of the securities markets and to improve the international competiveness of the Japanese domestic market, the following amendments to the securities regulations were made:

(1) the parent company of a listed company that is required to submit its own status report unless it has filed a securities report; and

(2) the system that foreign companies may submit continuous disclosure documents in their original English language under specific conditions is introduced.

III. THE FINANCIAL INSTRUMENTS AND EXCHANGE ACT (FIEA)

§ JP:15 FIEA Amendment in 2006

Since the traditional securities regulations including the SEA were originally vertically administrated, they were re-examined with the aim of establishing a so-called "Investment Services Act" which is a regulation on dealing and management relating to a wide-range of financial instruments such as securities, futures trading and mutual funds, and the Financial Futures Trading Act, the Law Concerning Foreign Securities Firms, the Act for the Regulation, etc. of Securities Investment Advisory Business, and the Act on Regulation, etc. of Mortgage Securities Business, which regulated the dealing and management of these financial instruments, have now been repealed and their provisions integrated into the SEA. In addition, the SEA was renamed the "Financial Instruments and Exchange Act".

---

[2]Currently, Financial Instruments Intermediately Services. See Art. 2, para. 11 of the FIEA.

[Section JP:13]

[1]See Art. 2, para. 2 of the FIEA.

The FIEA is based on four concepts: (i) regulations relating to investment services, (ii) maintenance of disclosure regulations, (iii) ensuring proper management of self-regulated services by securities exchanges, and (iv) ensuring a strict response to unfair trading. The amendments based on the above concepts are mainly as follows.

§ JP:16 Disclosure Regulations

The FIEA has additionally imposed on companies required to make continuous disclosure, etc. relating to highly-liquid listed financial instruments such as shares, the obligation to implement an Internal Control Report System,[1] a Quarterly Securities Reports System,[2] and a System of Confirmation Letter by Managers.[3]

Securities which are deemed low-liquid financial instruments such as equities relating to collective investment schemes are exempted from the application of the disclosure regulations. In this regard, however, equities relating to collective investment schemes that mainly invest in Securities may now be subject to the disclosure obligation.[4] Thus, if a considerably large number of persons acquire such equities relating to such collective investment scheme, it falls under the category of a "Public Offering of Securities" or the "Secondary Distribution of Securities" and, accordingly, a person or corporation that is deemed to be the issuer of such equities is subject to the obligations pursuant to the disclosure regulations such as the filing of an SRS.[5]

§ JP:17 Business Regulation

The inclusive business regulation provisions regarding collective investment schemes were established in order to regulate collective investment schemes, and the scope of deliberative transaction to be regulated has been expanded.

Additionally, an inclusive and all-encompassing legal structure has been established by integrating (i) the securities business under the SEA and (ii) the Act Concerning Foreign Securities Firms, (iii) the investment trust commissioned business under the Investment Trust and Investment Corporation Act, and (iv) the discretionary investment management business under the Act for the Regulation, etc. of Securities Investment Advisory Business, into the "Financial Instru-

---

[Section JP:16]

[1]See Art. 24-4-4 of the FIEA.

[2]See Art. 24-4-7 of the FIEA.

[3]See Art. 24-4-2 of the FIEA.

[4]See Art. 3, item 3 of the FIEA.

[5]See Art. 2, para. 3, item 3 of the FIEA.

ments Business"[1] under the FIEA. The Financial Instruments Business has been divided into the "Type I Financial Instruments Business,"[2] "Type II Financial Instruments Business,"[3] "Investment Advisory and Agency Business,"[4] and "Investment Management Business,"[5] according to the characteristics of each operator. Additionally, the requirements to engage in the Financial Investments Business, other than a Private Trading System (PTS),[6] have been integrated into a registration system (*torokusei*), rather than a license system. The financial institutions that are registered as Registered Financial Institutions[7] with the Prime Minister (administered by the Commissioner of Financial Services Agency) to engage in parts of the Financial Institutional Business are subject to the disciplinary regulations of the FIEA as is the Financial Instruments Business Operator.

With regard to collective investment schemes, persons who make a sale and placement of the rights relating to collective investment schemes must be registered with the Prime Minister (administrated by the Commissioner of Financial Services Agency) as a Type II Financial Instrument Business Operator, and, additionally, since the management of the fund, such as money collected for a collective investment scheme by the investment in securities or rights relating to derivative transactions falls under the Financial Instrument Business as Investment Management Business, persons who intend to conduct the activities mentioned above (including a specific purpose company, which is a vehicle for a collective investment scheme) must be registered as a Financial Instruments Business Operator. However, even in the case above, if they solicit "Qualified Institutional Investors," and less than 50 persons other than the Qualified Institutional Investors, they are exempted from the obligation of registration, provided they make a Special Business Filing.[8]

§ JP:18 Disciplinary Regulations

The disciplinary regulations of the FIEA are flexibly applied to the Financial Services Business Operators and the Registered Financial Institutions by the application of different regulations depending of whether the transaction by the Financial Services Business Operators or the Registered Financial Institutions is carried out with Profes-

---

[Section JP:17]

[1]Art. 2, para. 8 of the FIEA.

[2]Art. 28, para. 1 of the FIEA.

[3]Art. 28, para. 2 of the FIEA.

[4]Art. 28, para. 3 of the FIEA.

[5]Art. 28, para. 4 of the FIEA.

[6]Art. 2, para. 8, item10 of the FIEA.

[7]Art. 33-2 of the FIEA.

[8]Art. 63, para. 1 of the FIEA.

sional Investors[1] or non-professional investors.[2] Accordingly, such flexible application has expanded the scope of services by the Financial Services Business Operators and made a difference in the disciplinary regulations to be applied depending upon the characteristics of the investors and the type of services offered.

§ JP:19 FIEA Amendments in 2008 and 2009

The FIEA was amended in 2008 and 2009 in order to deal with various urgent issues such as the enhancement of competitiveness of the financial and capital markets in Japan as follows:

(1) provisions relating to opening the markets for Professional Investors and diversification of ETFs were added;
(2) firewall regulations among securities companies, banks and insurance companies were eased, a management system for conflict of interest among other business fields was established and the scope of services of financial institutions such as banks was expanded;
(3) administrative monetary penalties were increased and the parameters of those subject to the administrative monetary system, etc. were expanded;
(4) regulations on credit rating agencies such as a registration system (*torokusei*) were introduced;
(5) Alternative Dispute Resolution (ADR) for the financial services sector was established; and
(6) the definition of "Secondary Distribution of Securities" depending upon the character of Securities and investors' attributes was readjusted so that it is in line with that of Public Offering of Securities.

(Amendments (1) to (3) and (4) to (6) were made in 2008 and 2009, respectively.)

The FIEA has been amended since the above changes were made and will continue to be amended in the future as the situation demands.

IV. SOURCES OF SECURITIES REGULATION

§ JP:20 Overview

The post-war development of Japanese securities markets and the political and economic environment have been reflected in the changes and developments in the various sources of Japanese securities regulation.

The basic sources of securities regulation are statutory provisions,

---

[Section JP:18]

[1]Art. 2, para. 31 of the FIEA.

[2]Arts. 27-31 through 27-35 of the FIEA.

as well as enabling legislation in the form of cabinet orders and ministerial ordinances and rules. Additionally, various notices, notifications and releases by the regulatory authorities have provided an interpretation of the regulations concerning specific matters and as such also constitute sources of securities regulation.

The regulatory authority exercises its administrative power through the supervision of the regulated parties, including self-regulatory organizations, and their "administrative guidance" has an important impact on the performance of the regulated parties. Self-imposed regulations made officially by the self-regulatory organizations under the respective statutes, or unofficially by securities companies, in each case under the guidance or support of the government regulatory authority, have a material impact on the securities markets.

Securities regulations found in these sources are indispensable in locating all the regulations applicable to a specific issue at a given time. A list of selected sources of Japanese securities regulations as they appear in the statutes, cabinet orders and ministerial ordinances and rules is set out below and, where appropriate, a brief discussion of their history is provided.

The FIEA and Enforcement Orders thereunder mainly provide for (a) disclosure requirements (including those relating to public offerings, tender offers and large volume holdings of shares, etc.),[1] (b) regulations on parties engaging in securities transactions, such as Financial Instruments Business Operators,[2] Financial Instruments Intermediary Service Providers,[3] Credit Rating Agencies,[4] Financial Instruments Firms Associations including the Japan Securities Dealers Association,[5] Investor Protection Funds,[6] Financial Instruments Exchanges including stock exchanges,[7] Foreign Financial Instruments Exchanges,[8] Financial Instruments Clearing Organizations,[9] Securities Finance Companies,[10] and Directed Dispute Settlement Institutions,[11] (c) regulations on (i) transactions relating to Securities by the Financial Instruments Business Operators such as securities compa-

---

[Section JP:20]

[1]Arts. 2-2 through 27-35 of the FIEA, Arts. 2 through 14-14 of the Enforcement Order of the FIEA.

[2]Art. 2, para. 9 and Arts. 28 through 65-6 of the FIEA.

[3]Art. 2, para. 12 and Arts. 66 through 66-26 of the FIEA.

[4]Art. 2, para. 36 and Arts. 66-27 though 66-49 of the FIEA.

[5]Art. 2, para. 13 and Arts. 67 through 79-19 of the FIEA.

[6]Arts. 79-20 through 79-80 of the FIEA.

[7]Art. 2, para. 16 through 18 and Arts. 80 through 154-2 of the FIEA.

[8]Art. 2, para. 26 and Arts. 155 through 156 of the FIEA.

[9]Art. 2, para. 29 and Arts. 156-2 through 156-22 of the FIEA.

[10]Art. 2, para. 30 and Arts. 156-23 through 156-37 of the FIEA.

[11]Arts. 156-38 through 156-61 of the FIEA.

nies,[12] (ii) those at the Financial Instruments Exchanges[13] and fraudulent securities transactions such as insider trading and short-swing transactions,[14] and (d) regulations on administrative monetary penalties,[15] criminal punishment[16] and miscellaneous regulations.[17]

The disclosure requirements include (a) disclosure requirements at the time of public offering (including the Public Offering of Securities and the Secondary Distribution of Securities) by filing an SRS, securities notification statements or shelf registration statements and by the use of prospectuses,[18] (b) continuous disclosure requirements (including annual securities reports, semi-annual securities reports and quarterly securities reports, extraordinary reports, internal control reports, status reports of the parent company, etc.) applicable to the issuers of publicly offered securities, the issuers of securities listed on the Financial Instruments Exchange and issuers of securities whose holders exceed certain threshold numbers,[19] (c) disclosure requirements applicable to takeover bids (TOB),[20] (d) disclosure requirements as to large holdings and bulk transfers of securities,[21] (e) special provisions for procedures relating to the use of electronic data processing systems for disclosure, and (f) disclosure requirements for Professional Investors.[22]

The regulations under the FIEA concerning disclosure requirements include:

(1) Cabinet Ordinance Concerning Disclosure of Affairs, etc. of Corporations (MOF) Ordinance No. 5, January 30, 1973);
(2) Cabinet Ordinance Concerning Disclosure of Affairs, etc. of Issuers of Foreign Government Bonds, etc. (MOF Ordinance No. 26, April 27, 1972);
(3) Cabinet Ordinance Concerning Disclosure with Respect to Specified Securities (MOF Ordinance No. 22, March 3, 1933);
(4) Cabinet Ordinance Concerning Disclosure with Respect to Tender Offer of Share Certificates, etc. by Persons Other than the Issuer Thereof (MOF Ordinance No. 38, November 26, 1990);
(5) Cabinet Ordinance Concerning Disclosure with Respect to Tender Offers of Share Certificates, etc. by the Issuer Thereof (MOF Ordinance No. 95, September 15, 1994);

---

[12]Arts. 38, 42-2, 44 through 44-4, etc. of the FIEA.

[13]Arts. 110 through 133-2 of the FIEA.

[14]Arts. 157 through 171-2 of the FIEA.

[15]Arts. 172 through 185-21 of the FIEA.

[16]Arts. 197 through 209 of the FIEA.

[17]Arts. 186 through 196-2 of the FIEA.

[18]Arts. 3 through 13, Arts. 15 through 23-13, Arts. 25 through 27 of the FIEA.

[19]Arts. 24 through 27 of the FIEA.

[20]Arts. 27-2 through 27-22-4 of the FIEA.

[21]Arts. 27-23 through 27-30 of the FIEA.

[22]Arts. 27-31 through 27-35 of the FIEA.

(6) Cabinet Ordinance Concerning Disclosure of Status of Large Volume Holdings of Share Certificates, etc. (MOF Ordinance No. 36, November 20, 1988); and
(7) Cabinet Ordinance on Special Provisions, etc. for Procedures by Use of Electronic Data Processing System for Disclosure. (CO Ordinance No. 45, May 22, 2002).

The Cabinet Ordinances referred to above have undergone various amendments as the policy of the regulatory authority has changed.

For the purpose of the disclosure of financial statements, the FIEA requires financial statements prepared according to the regulations thereunder, together with opinions of independent certified public accountants. In this connection, the following Rules and Ordinance apply:

(1) Rules Concerning Terminology, Form and Method of Preparation of Financial Statements, etc. (MOF Ordinance No. 59, November 27, 1963),
(2) Rules Concerning Terminology, Form and Method of Preparation of Consolidated Financial Statements (MOF Ordinance No. 28, October 30, 1976),
(3) Rules Concerning Terminology, Form and Method of Preparation of Interim Financial Statements, etc. (MOF Ordinance No. 38, August 30, 1977),
(4) Rules Concerning Terminology, Form and Method of Preparation of Interim Consolidated Financial Statements (MOF Ordinance No. 24, March 30, 1999),
(5) Rules Concerning Terminology, Form and Method of Preparation of Quarterly Financial Statements, etc. (CO Ordinance No. 63, August 10, 2007),
(6) Rules Concerning Terminology, Form and Method of Preparation of Quarterly Consolidated Financial Statements (CO Ordinance No. 64, August 10, 2008), and
(7) Ministerial Ordinance Concerning Audit Certificate of Financial Statements, etc. (MOF Ordinance No. 12, March 28, 1957).

The rules listed in (1) through (7) above concentrate on the format of financial statements. The accounting principles to be applied in preparation of the financial statements of Japanese companies under the securities regulations (i.e., Japan GAAP) are set forth in the Financial Accounting Standards (*kigyo-kaikei-gensoku*). The Financial Accounting Standards were originally established in 1949 by the Financial Accounting System Study Committee, which was subsequently reorganized into the Financial Accounting Council of the Ministry of Finance.

For the purpose of regulating parties, such as Financial Institutional Business Operators including securities companies, foreign securities firms and investment management companies that engage in the Financial Instruments Business, the Ordinance Concerning Financial Instruments Business, etc. (PMO Ordinance No. 52, August 6, 2007) was passed.

Additionally, regulations for financial instruments transactions are included, in addition to the FIEA and Enforcement Order thereunder, in the:

(a) Ordinance Concerning Rules Relating to Transaction of Securities, etc. (PMO Ordinance No. 59, August 8, 2007), and

(b) Ordinance Concerning Transactions and their Security Deposits Set Forth in Article 162-2 of the Financial Instruments and Exchange Act (MOF Ordinance No. 75, August 27, 1948).

V. REGULATORY AUTHORITIES FOR SECURITIES REGULATIONS

§ JP:21 Generally

In addition to enforcement by the courts, securities regulations including the FIEA are, in the first instance, applied by various regulatory authorities as mentioned above.

When the SEA was enacted in 1948, the securities regulations were within the purview of the Securities and Exchange Commission created as an independent administrative commission modeled after the U.S. SEC. However, in June 1949 the Commission became an external bureau of the Ministry of Finance and by amendment to the SEA in 1952 the Commission was abolished and its function was assumed by the Minister of Finance.

By the 1993 amendment to the SEA, the Securities and Exchange Surveillance Commission (*shoken-torihikito-kanshi-iinkai*) was created within the Ministry of Finance. The Commission is empowered to investigate a violation of the securities regulations and, on finding reasonable grounds to suspect, is obliged to indict.

In 1998 after the *jusen* problems[1] surfaced, and as part of administrative reform, the Financial Supervisory Agency (*kinyu kantoku cho*) was established as an external bureau of the Prime Minister's Office. The Agency was charged with the duty of regulating institutions engaged in the banking, insurance and securities business in order to protect the interests of depositors, insurance customers and securities investors and to ensure fairness in securities trading. At the same time the Securities and Exchange Surveillance Commission was moved from the Ministry of Finance and placed under the supervision of the Financial Supervisory Agency. In the same year, in order to handle failures of financial institutions and financial crisis management, the Financial Reconstruction Commission (*kinyu saisei iinkai*)

[Section JP:21]

[1]These problems related to how to treat bad and doubtful debt, which Jusen companies (mortgage lending institutions created by Japanese banks in the early 1970s with strong encouragement from the Ministry of Finance) owned a great deal of during the bubble economy. These problems later led to the restructuring of the Ministry of Finance.

was created and the Financial Supervisory Agency was placed under this Commission.

In 2000 the Financial Supervisory Agency was reorganized into the Financial Services Agency (*kinyu cho*) and, in 2001, the Financial Reconstruction Commission was abolished and, due to the reorganization of government ministries and agencies, the Financial Services Agency became an extra ministerial bureau of the Cabinet Office.

At present, although the Prime Minister mainly has administrative authority over the securities regulations, most of his authority has been delegated to the Commissioner of Financial Services Agency (who in turn has delegated parts of this authority, such as that relating to securities transactions, to the Securities and Exchange Surveillance Commission). Thus, the Financial Services Agency and the Securities and Exchange Surveillance Commission are the principal administrative agencies charged with the administration of securities regulations.

In concrete terms, the securities regulations are, in the main, divided among the different agencies as set out below:

(1) Information disclosure system—the Prime Minister (the Commissioner of the Financial Services Agency and the Securities and Exchange Surveillance Commission) (filing of securities registration statements, securities reports, etc.; their examination; effectiveness of registration, order to suspend effectiveness, etc.);

(2) Regulation of the Financial Instruments Business Operators—the Prime Minister (the Commissioner of the Financial Services Agency);

(3) Regulation of the Financial Instruments Exchanges and the Financial Instruments Dealers Associations—the Prime Minister (the Commissioner of the Financial Services Agency); and

(4) Regulation of the Investors Protection Funds—in the main, under the jurisdiction of the Minister of Finance.

§ JP:22 Self Regulated Organizations

The other organizations provided for in the FIEA are the Financial Instruments Exchanges[1] such as securities exchanges, and the Financial Instruments Dealers Associations.[2] There are at present six Financial Instruments Exchanges (Tokyo Stock Exchange, Osaka Securities Exchange, Nagoya Stock Exchange, Sapporo Securities Exchange, Fukuoka Stock Exchange and Tokyo AIM)[3] located in five major cities (Tokyo, Osaka, Nagoya, Sapporo and Fukuoka) in Japan.

[Section JP:22]

[1]Art. 2, para. 16 of the FIEA.

[2]Arts. 67 through 79-19 of the FIEA.

[3]As of November 2011, one company is listed on Tokyo AIM.

The Financial Instruments Dealers Associations are self-regulated organizations, of which there are three types. One type is the Authorized Financial Instruments Dealers Association[4] formed under the authority (*ninka*) of the Prime Minister. In 1973 the Japan Securities Dealers Association (JSDA, *nihon shokengyo-kyokai*) was formed through the consolidation of the ten regional securities dealers associations then existing in Japan. It was established by securities companies for the purpose of securing fair securities transactions and for the protection of investors. It is now the only Authorized Financial Instruments Dealers Association in existence. The second type is the Public Interest Corporation-Type Financial Instruments Firms Association[5] which is certified (*nintei*) by the Prime Minister pursuant to the FIEA (formed pursuant to the Civil Law). They include: The Financial Futures Association of Japan (*kinyu-sakimono torihikigyo kyokai*), the Investment Trusts Association, Japan (*toshishintaku kyokai*), Japanese Securities Investment Adviser Association (*nihon shokentoshi-komongyo kyokai*) and the Japan Commodities Fund Association (*nihon shohintoshi-hanbaigyo kyokai*), (which were formed for the purpose of securing fair transactions and the protection of investors in their respective fields).

Furthermore, the Financial Instrument Dealers Association includes Certified Investor Protection Organizations as the third type.[6] They are civil organizations (which can be established by those other than Financial Instruments Business Operators), other than the self-regulated institutions such as the Authorized Financial Instruments Dealers Association and the Public Interest Corporation Type Financial Instruments Firms Association above, established for the main purpose of grievance resolution and mediation to protect investors. Certification by the administrative agency is intended to enhance their reliability.

§ JP:23 Investors Protection Funds

The 1998 amendment to the SEA introduced the Investors Protection Fund.[1] In order to protect securities customers in the event of bankruptcy or insolvency of a securities company, the investors' protection fund was created under the authority (*ninka*) of the Prime Minister. At least 20 Financial Instruments Business Operators are members of the Investment Protection Fund. Financial Instruments Business Operators that engage in Securities Related Business must be a member of at least one Investors Protection Fund.

---

[4]Art. 2, para. 13 and Arts. 67 through 77-7 of the FIEA.

[5]Arts. 78 through 79-6 of the FIEA.

[6]Arts. 79-7 through 79-19 of the FIEA.

[Section JP:23]

[1]Arts. 79-20 through 79-80 of the FIEA.

§ JP:24 Corporate Accounting Council

The Corporate Accounting Council under the jurisdiction of the Ministry of Finance (currently, the Financial Services Agency) was previously responsible for the investigation and deliberation of accounting principles. However, the Accounting Standards Board has been responsible for the investigation and deliberation, since it was established by the Financial Accounting Standards Foundation, which is part of the private sector, in 2001. In addition, the Japan Certified Public Accountants Institute is an important self-regulatory organization which promotes fair disclosure of financial information of corporate issuers. The Institute was originally formed in 1949 as a self-disciplinary association, and reorganized under the Certified Public Accountants Act in 1966. All certified public accountants and auditing corporations are required to be members of the Institute.

VI. DISCUSSION OF REGULATIONS REGARDING SECURITIES MATTERS

A. DEFINITIONS

§ JP:25 "Securities" defined

The purpose of the FIEA is (i) to ensure fairness in the issuance of Securities and other transactions of financial instruments, etc.; (ii) to facilitate the smooth distribution of Securities by, among other things, streamlining systems for disclosure of corporate affairs and other related matters, providing for the necessary matters relating to operators of Financial Instruments Business and securing appropriate operations of Financial Instruments Exchanges; and (iii) to enable fair price formation of financial instruments, etc. through the full utilization of the functions of the capital markets, and thereby to contribute to the sound development of the national economy and the protection of investors. Thus, we can say the term "Securities" marks the scope of the application of the FIEA.

The FIEA defines Securities to mean: (i) national government bonds; (ii) municipal bonds; (iii) debentures issued by a juridical person under a special act; (iv) specified bond certificates prescribed in the Act on the Securitization of Assets;[1] (v) bond certificates; (vi) investment securities issued by a juridical person established under a special act; (vii) preferred equity investment certificates prescribed in the Act on Preferred Equity Investment by Cooperative Structured Financial Institutions;[2] (viii) preferred equity investment certificates and securities indicating subscription rights for new preferred equity investments prescribed in the Act on the Securitization of Assets; (ix) share certificates and share option certificates; (x) beneficiary certificates of

---

[Section JP:25]

[1]Law No.105, June 15, 1998.

[2]Law No.44, May 12, 1993.

investment trusts or foreign investment trusts prescribed in the Act on Investment Trusts and Investment Corporations;[3] (xi) investment securities or investment corporation debentures, or foreign investment securities prescribed in the Act on Investment Trusts and Investment Corporations; (xii) beneficiary certificates of loan trusts; (xiii) beneficiary certificates of specific purpose trusts prescribed in the Act on the Securitization of Assets; (xiv) beneficiary securities issuing trusts prescribed in the Trust Act; (xv) promissory notes that have been issued by a juridical person in order to raise the funds necessary to operate its business and are specified by a cabinet office ordinance; (xvi) mortgage securities prescribed in the Mortgage Securities Act; (xvii) securities or certificates that have been issued by a foreign state or foreign person and have the characteristics of securities or certificates listed in items (i) to (ix) or item (xii) of the preceding item (excluding those set forth in the following item); (xviii) among the securities or certificates issued by a foreign person that indicate a beneficial right of a trust wherein loan claims held by a banking business operator or any other money lending business operator are entrusted, or that indicate any other similar rights, those specified by a cabinet office ordinance; (xix)[4] securities or certificates that indicate rights pertaining to transactions set forth in Article 2, paragraph 21, item (iii) of the FIEA conducted in a Financial Instruments Market, in accordance with such requirements and by using such methods as prescribed by the operator of the Financial Instruments Market, rights pertaining to transactions that are conducted in a Foreign Financial Instruments Market and are similar to those specified in Article 2, paragraph 21(iii) of the FIEA, or rights pertaining to transactions specified in Article 2, paragraph 22(iii) or (iv) of the FIEA conducted in neither a Financial Instruments Market nor a Foreign Financial Instruments Market; (xx)[5] securities or certificates issued by a person to whom securities or certificates set forth in any one of the preceding items are deposited and in a state other than the state wherein the deposited securities or certificates were issued, which indicate the rights pertaining to the deposited securities or certificates; and (xxi) in addition to those set forth in the preceding items, securities or certificates specified by a cabinet order as those for which it is found, when taking into consideration the liquidity and other circumstances thereof, necessary to secure the public interest or the protection of investors.[6] In addition, the rights that are to be represented by any of the above securities or instruments are deemed to be securities even when the certificates therefor are not issued.

Furthermore, the definition of "Securities" includes (a) beneficial rights of a trust; (b) rights that are claimable against a foreign person

[3]Law No.198, June 4, 1951.

[4]Securities or certificates that indicate an option.

[5]Securities or certificates that indicate a depositary receipt.

[6]At present negotiable certificates of deposit (CD) issued by foreign corporations are so designated (Art. 1, item 1 of the Enforcement Order of the FIEA).

and that have the characteristics of the rights specified in (a) above; (c) membership rights of a general partnership company (*gomeikaisha*) or limited partnership company (*goshikaisya*) (limited to those specified by a cabinet order) or membership rights of a limited liability company; (d) membership rights of a foreign juridical person that have the characteristics of rights specified in (c) above; (e)[7] among the rights based on a partnership agreement provided in Article 667(1) of the Civil Code, an anonymous partnership agreement provided in Article 535 of the Commercial Code, a limited partnership agreement for investment provided in Article 3(1) of the Limited Partnership Act for Investment[8] or a limited liability partnership agreement provided in Article 3(1) of the Limited Liability Partnership Act, membership rights of an incorporated association and other rights (excluding those based on laws and regulations of a foreign state), rights for which the holders thereof (hereinafter referred to as an "Equity Investor" in this item) can receive dividends of profits arising from the business conducted by using money or something similar to money invested or contributed by the Equity Investors (such business is hereinafter referred to as "Investor-Financed Business" in this item) or distribution of the assets of Investor-Financed Business that does not fall under any of the categories set forth in the sub-items of Article 2, clause 2, item 5 of the FIEA (for example, where all of the Equity Investors participate in Investor-Financed Business as specified by a cabinet order, the rights of those Equity Investors, and the rights of the relevant Equity Investors with respect to which it is provided that the Equity Investor will not receive dividends of profits or a distribution of the assets of the Investor-Financed Business in an amount exceeding the amount invested or contributed respectively by them); (f) rights based on laws and regulations of a foreign state that are similar to those specified in (e) above; or (g) in addition to Specified Electronically Recorded Monetary Claims and those listed in the preceding items, rights specified by a cabinet order as those for which it is found, when taking into consideration the fact that they have economic characteristics similar to the Securities provided in the preceding paragraph and rights set forth in the preceding items and other attributes, necessary and appropriate to secure the public interest or the protection of investors by deeming them to be Securities.

§ JP:26 "Financial Instruments Business" defined

Another important definition under the FIEA is "Financial Instruments Business." The FIEA defines activities detailed in Article 2, paragraph 8 of the FIEA as Financial Instruments Business and requires a person who intends "to conduct the Financial Instruments Business" to be registered with the Prime Minister. The term "to conduct the Financial Instruments Business" means to conduct the

[7]Collective investment schemes.

[8]Law No.90, June 3, 1998.

Financial Instruments Business with an intention to do so repeatedly and on an ongoing basis. Therefore, if a person intends to conduct such activities repeatedly and on an ongoing basis, he or she is required to register the Financial Instruments Business, even if it is the first time he or she has conducted such activities. Since it is not a requirement that the activities are conducted for profit, even activities conducted without charge may fall under the definition of Financial Instruments Business. The person or corporation who is registered in relation to a Financial Instruments Business is supervised by the Financial Services Agency and subject to the disciplinary regulations of the FIEA, etc.

The only type of business that was previously regulated by the SEA was "securities business," which was equivalent to "securities related business"[1] under the FIEA. However, the type of business regulated by the FIEA also includes financial futures business, commodity investment dealing business, beneficiary rights dealing business, investment advisory business, business relating to discretionary investment agreements, investment trust management business, investment corporation asset management business, and mortgage securities business, as well as securities business. Additionally, since the 2006 amendment to the FIEA (as mentioned above), Financial Instruments Business includes solicitation of applications to acquire newly issued beneficial securities or equities of collective investment schemes by issuers themselves (so-called, "self-solicitation"), conclusion of Investment Advisory Contracts[2] or Discretionary Investment Contracts[3] by agencies or intermediary services, management of trust funds or funds of collective investment schemes as investments mainly in securities or rights relating to derivative transactions (so-called "self-management"), and the book-entry transfer of bonds, etc. relating to securities transactions, and so on.

The term "Financial Instruments Business" is divided into the following classifications: "Type I Financial Instruments Business," "Type II Financial Instruments Business," "Investment Advisory and Agency Business," "Investment Management Business," and "Specially Permitted Businesses for Qualified Institutional Investors, etc." A person or corporation who intends to conduct any of the types of business above in the course of trade must apply for registration of a Financial Instruments Business, indicate the type of business they intend to conduct, and fulfill the necessary requirements depending on the type of business they intend to carry out. To add a new type of business to a registered business, an amendment to registration is required; amendments to registrations are separately screened to ensure that the specific requirements for the new type of business are fulfilled.

[Section JP:26]

[1]Art. 28 para. 8 of the FIEA.

[2]Art. 2, para. 8, item 11 of the FIEA.

[3]Art. 2, para. 8, item 12 (b) of the FIEA.

"Financial Instruments Business" is divided into the classifications above in order to establish separate entry and assets regulations specific to the characteristics of each business.

§ JP:27 "Type I Financial Instruments Business" defined

The term "Type I Financial Instruments Business" means, in the context of Financial Instruments Business, the conducting of any of the acts listed in Article 28, paragraph 1 of the FIEA in the course of trade.

In addition to sales or purchase, intermediary, brokerage or agency service for sales and purchase for Securities (only (i) to (xxi) in 1.1 above), businesses such as Over-the-Counter Transactions of Derivatives, etc., asset management business, wholesale underwriting business and PTS (proprietary trading systems) can be conducted only by a Type I Financial Instruments Business. This includes securities business, such as the safekeeping of securities, and financial forward trading business, which was provided for in the SEA before the 2006 amendment. Additionally, a person who has been registered as a Type I Financial Instruments Business Operator is permitted to conduct all the types of Financial Instruments Business, including Type II Financial Instruments Business and Financial Instruments Intermediary Service Provider.

§ JP:28 "Type II Financial Instruments Business" defined

The term "Type II Financial Instruments Business" means, in the context of a Financial Instruments Business, the conducting of any of the acts listed in Article 28, paragraph 2 of the FIEA in the course of trade.

The term refers to sales or purchase, intermediary, brokerage or agency service for sales and purchase, Public Offering, Private Placement or Secondary Distribution, or dealing in a Public Offering, Secondary Distribution of Securities or dealing in a Private Placement (excluding underwriting) of instruments which have low liquidity among Securities, and so on, in the course of trade. It includes the commodity investment dealing business, the beneficiary rights dealing business, and the mortgage securities business, which were not included in the SEA before the 2006 amendment.

§ JP:29 "Investment Advisory and Agency Business" defined

The term "Investment Advisory and Agency Business" means, in the context of a Financial Instruments Business, the conducting of any of the acts listed in Article 28, paragraph 3 of the FIEA in the course of trade. It means the conducting of any of the following activities in the course of trade: (i) the conclusion of the Investment Advisory Contract, that is a contract in which one of the parties promises

to provide the other party with advice on the Value, etc. of Securities[1] and on investment decisions based on an analysis of the Value, etc. of Financial Instruments,[2] orally, in writing or otherwise, and the other party promises to pay remuneration therefor (such a contract is hereinafter referred to as an "Investment Advisory Contract"), and the provision of advice under such an Investment Advisory Contract, or (ii) the conclusion of an Investment Advisory Contract or a Discretionary Investment Contract by an agency or intermediary service.

§ JP:30 "Investment Management Business" defined

The term "Investment Management Business" means, in the context of a Financial Instruments Business, the conducting of any of the acts listed in Article 28, paragraph 4 of the FIEA in the course of trade. It means the conducting of any of the following activities in the course of trade:

(1) The conclusion of a contract on entrustment of assets investment with a registered investment corporation, or a Discretionary Investment Contract, that is a contract wherein one of the parties is fully or partly entrusted by the other party with the discretion in making investment decisions based on analysis of values, etc. of Financial Instruments and is also entrusted with the authority necessary for making investments on behalf of the other party based on such investment decisions, and an investment of money or other property in Securities or rights pertaining to Derivative Transactions based on an analysis of the Values, etc. of Financial Instruments under such a contract;

(2) An investment of money or other property by a person who holds rights indicated on the investment securities, investment corporation debentures or the like, or other rights specified by a cabinet order, as an investment in Securities or rights pertaining to Derivative Transactions based on an analysis of the Values, etc. of Financial Instruments; or

(3) An investment of money or other property by a person who holds equity in a collective investment scheme, or other rights specified by a cabinet order, as an investment mainly in Securities or rights pertaining to Derivative Transactions conducted based on an analysis of the Values, etc. of Financial Instruments.

A person who intends to conduct an act described in (3) above, is, in principal, not required to apply for the registration of a Financial Instruments Business, provided he or she has filed for the registration of a Specially Permitted Business for Qualified Institutional Investors, etc. as below.

[Section JP:29]

[1]See Art. 2, para. 8, item 11(a) of the FIEA.

[2]See Art. 2, para. 8, item 11(b) of the FIEA.

§ JP:31 "Specially Permitted Business for Qualified Institutional Investors, etc." defined

The term "Specially Permitted Business for Qualified Institutional Investors, etc.," means the conducting of any of the acts listed in each of the items of Article 63, paragraph 1 of the FIEA in the course of trade. The acts which fall under the definition of Specially Permitted Business for Qualified Institutional Investors, etc. include the Private Placement of equities of a collective investment scheme or any of the other rights listed in items (v) or (vi) of Article 2, paragraph 2 of the FIEA, and Investment Management Business relating to them. A person who intends to conduct an act that falls under the definition of Specially Permitted Business for Qualified Institutional Investors, etc. is not required to apply for the registration of a Financial Instruments Business, provided he or she has filed for the registration of a Specially Permitted Business for Qualified institutional Investors, etc.

VII. PUBLIC OFFERING, SECONDARY DISTRIBUTION AND PRIVATE PLACEMENT OF SECURITIES

A. IN GENERAL

§ JP:32 Overview

One of the major regulatory pillars of the FIEA is the regulation of the primary market. The FIEA requires any public offering of newly issued Securities (*boshu*) or secondary distribution of Securities (*uridashi*) to be registered with the Prime Minister (administered by the Commissioner of Financial Services Agency), unless it is exempted from the registration requirement of the FIEA. The exemptions from the registration requirement vary depending on the liquidity of the financial instrument.

B. HIGH LIQUIDITY FINANCIAL INSTRUMENTS

§ JP:33 Public Offering/Private Placement

Under the current provisions of the FIEA, a "Public Offering of Securities" relating to high liquidity financial instruments, such as Securities listed in each of the items of Article 2, paragraph 1 of the FIEA, Rights to be Indicated on Securities deemed as Securities in Article 2, paragraph 2 of the FIEA, and Specified Electronically Recorded Monetary Claims, consist of (a) solicitations of offers to acquire newly issued securities from 50 or more persons (excluding QIIs described below where it falls under the case described in the cabinet order as solicited Securities acquired by the relevant QIIs unlikely to transfer to any person other than QIIs), and (b) solicitations other than Solicitations Only for Qualified Institutional Investors (hereinafter referred to as "QII"), Solicitations Only for Professional Investors, and Solicitations for a Small Number of Investors, which fall within the category of a "Private Placement of Securities," respectively.

§ JP:34 Solicitations Only for Qualified Institutional Investors

The first category falling within "Private Placement" is the "Solicitation Only for Qualified Institutional Investors." The term "Solicitation Only for Qualified Institutional Investors" means a solicitation for acquisition made only to QIIs (regardless of their number), where the solicited Securities are, as specified by a cabinet order, not likely to be transferred from the person who acquires them to any other person other than a QII.

The exemption requirements for a Solicitation Only for Qualified Institutional Investors "if the solicited Securities are not likely to be transferred from the person who acquired them to any other person other than a QII" differ between the case of equity-related Securities, such as shares of stocks and stock options, and that of other Securities. For equity-related Securities to fulfill the exemption requirements the issuer of the relevant equity-related Securities must not be a person who has issued the same type equity-related Securities as those to be solicited for the relevant placement, or the same type shares of stock as those to be issued upon the exercise of stock options to be solicited for the relevant placement (the relevant equity-related Securities and the relevant stock options mentioned above, collectively "relevant equity-related Securities, etc."): (a) that are listed on any Financial Instruments Exchange or OTC registered securities, (b) have filed Securities Registration Statements, (c) are held by 1000 or more persons when the paid-up capital of the issuer corporation is ¥500,000,000 or more. Additionally, it is necessary that the same type of Securities as the relevant equity related Securities, etc. are not Securities for Professional Investors. Furthermore, it is required that a solicitation be made on the condition that an agreement for the transfer of the relevant equity-related Securities is concluded that provides that the person who has acquired such relevant equity-related Securities does not transfer them to persons other than QIIs.

For Securities other than equity-related Securities, the Securities must meet the exemption requirements specified by a cabinet office ordinance as being equivalent to the above requirements for equity-related Securities. For example, in order for corporate bonds (excluding book entry bonds) to meet the requirements for exemption, the transfer restriction (i.e., the person who has acquired the bonds must not transfer the bonds to persons other than QIIs) must be stated on the certificate of the relevant corporate bonds (which must be distributed to such persons) or the documents which are distributed to persons who acquire the bonds.

§ JP:35 Solicitations Only for Professional Investors

The second category of "Private Placement" is "Solicitations Only for Professional Investors." The term "Solicitations Only for Professional Investors" means solicitations for acquisition made only to Professional Investors that meet all of the following requirements

(excluding solicitations falling under Solicitations Only for Qualified Institutional Investors).

The first requirement is that where the counterparties to the relevant solicitation do not include the State, the Bank of Japan, or QIIs, the solicitation must be made by a Financial Instruments Business Operator, etc.[1] pursuant to entrustment from customers or for the Financial Instruments Business Operator's own benefit, etc.

The second requirement is that it must be unlikely that the solicited Securities, as specified by a cabinet order, will be transferred from the acquirers thereof to any persons other than Professional Investors, etc. (meaning a Professional Investor or Non-Resident).

This exemption was added in the 2008 amendment to the FIEA to establish a market for professional investors. With regard to Solicitations Only for Professional Investors, the issuer is exempted from the application of the primary disclosure regulation which requires the issuer's information and securities information to be made available for public inspection; only minimum disclosure requirements apply under the self-regulatory standards of the Financial Instruments Exchange.

§ JP:36 Solicitations for a Small Number of Investors

The third category of "Private Placement" is "Solicitations for a Small Number of Investors". The term "Solicitations for a Small Number of Investors" means solicitations that do not fall under the categories of "solicitations made for a large number of persons" specified in Article 2, paragraph 2, item 1 of the FIEA, and Solicitations Only for Qualified Institutional Investors and Solicitations Only for Professional Investors, where the solicited Securities are, as specified by a cabinet order, unlikely to be owned by a large number of persons.

The first requirement is that the solicitation does not fall under the categories of solicitations made for a large number of persons, Solicitations Only for Qualified Institutional Investors, or Solicitations Only for Professional Investors. The first category means solicitations made for a large number of persons, solicitations of offers to acquire newly issued securities from 50 or more persons (excluding QIIs, where the solicitations to the QIIs fall under the case described in the cabinet order as solicited Securities acquired by the relevant QIIs unlikely to transfer to any person other than QIIs). In determining whether or not the number of persons to whom the solicitation is directed is less than 50, if during the 6 months preceding the present solicitation the same type of Securities were solicited, the number of persons in such previous solicitation and that of the present solicitation are aggregated and if such aggregated number is 50 or more, then the present solicitation is not deemed a Solicitation for a Small Number of Investors and is subject to the registration requirement.

[Section JP:35]

[1]Financial Instruments Business Operators, etc. collectively refers to Financial Instruments Business Operators and Registered Financial Institutions (Art. 34 of the FIEA).

The second requirement is that the solicited Securities are "unlikely to be owned by a large number of persons." In order to fulfill this requirement, for example, if the solicited Securities are shares of stock, the same type of the solicited Securities must not have been listed on any securities exchange, not have been filed with the SRS, and the total number of holders thereof must be less than 1,000. If the solicited shares do not so qualify, any offering of the same shares, even where such shares are solicited to less than 50 persons, constitutes a "Public Offering" and, in the case of any other type of Securities, such Securities are subject to the restriction that they cannot be transferred unless made en bloc to a single transferee.

For Securities other than equity-related Securities such as shares of stock, the Securities must meet the exemption requirements specified by a cabinet office ordinance. For example, in order for corporate bonds (excluding book entry bonds) to meet the requirements for exemption, the transfer restriction that the person who has acquired the bonds must not transfer the bonds other than in the case where they transfer all of them to one person must be stated on the certificate of the relevant corporate bonds (which must be distributed to such persons) and the documents that are distributed to persons who acquire the bonds.

§ JP:37 Secondary Distribution of Securities

The term "Secondary Distribution of Securities" previously meant an offer to sell or a solicitation of an offer to buy securities that are issued and outstanding to or from 50 or more persons on uniform terms. However, since the 2009 amendment, the wording "on uniform terms" has been deleted from the meaning of this term. Additionally, the concept of "private secondary distribution" corresponds to the Private Placement established at the time. Therefore, the requirements for a "Secondary Distribution of Securities" are now similar to the requirements for a "Primary Offering of Securities".

C. LOW LIQUIDITY FINANCIAL INSTRUMENTS

§ JP:38 Public Offering of Securities

For financial instruments with low liquidity such as collective investment equities and other Securities listed in Article 2, paragraph 2 of the FIEA, "Public Offering of Securities" means a solicitation of applications to acquire newly-issued Securities that, as specified by a cabinet order, will render the Securities pertaining thereto to be owned by a considerably large number of persons who respond to the solicitation. The term "a considerably large number of persons" refers to the case where the number of holders of the relevant Securities is 500 or more. Unlike the Securities listed in Article 2, paragraph 1 of the FIEA, whether or not a solicitation of financial instruments with low liquidity falls under a Public Offering of Securities is determined by the number of holders of the relevant Securities who accept the solicitation, not the number of persons to whom the solicitation was made.

§ JP:39 Secondary Distribution of Securities

For financial instruments with low liquidity, the term "Secondary Distribution of Securities" differs from that relating to the Securities listed in Article 2, paragraph 1 of the FIEA and is prescribed the following definition, subject to the condition that there are 500 holders of the relevant Securities. Specifically, it is defined as a solicitation for selling, etc. that, as specified by a cabinet order, will render the Securities pertaining thereto to be owned by a considerably large number of persons who respond to the solicitation. Similar to a Public Offering of Securities for financial instruments with low liquidity, the term "a considerably large number of persons" refers to the case where the number of holders of the relevant Securities is 500 or more.

VIII. DISCLOSURE REQUIREMENT IN THE PRIMARY MARKET

§ JP:40 Registration Requirement

No Public Offering of Securities or Secondary Distribution of Securities may be made unless a registration statement is filed with the Prime Minister by an issuer of such securities except, *inter alia*, in the following cases:

(1) where an issuer solicits for the acquisition or sale of its stock acquisition rights to certain officers or employees of it or its wholly-owned subsidiary;
(2) where "disclosure has been made" with respect to such securities;
(3) where a Secondary Distribution of Securities is made by a Financial Instruments Business Operators, etc. for existing securities issued in a foreign country that meet certain requirements such as availability of price information thereof in the Japanese market; and
(4) where the total amount of issue or sale of such securities is less than one hundred million yen (¥100,000,000).[1]

The filing exemption (1) above applies to the granting of stock options to officers or employees of the issuer or its wholly-owned subsidiaries. As stated in (2) above, when a Secondary Distribution of Securities is made of securities with respect to which disclosure has been made, no filing of a registration statement is required.[2] If the issuer of the subject securities has registered securities of the same type in their previous Public Offering of Securities or Secondary Distribution of Securities and has been subject to the continuous disclosure requirement or securities reports have been filed due to their listing or OTC registration or otherwise, it is deemed that

---

[Section JP:40]

[1]FIEA Art. 4.

[2]FIEA Art. 4, para. 1, item (3).

"disclosure has been made" with respect to such securities.[3] However, even in the case of the Secondary Distribution of Securities where disclosure has been made, a prospectus needs to be prepared in certain circumstances.[4] This exemption from registration is applicable only to the Secondary Distribution of existing securities not to the Public Offering of newly issued securities. The Cabinet Order specifies the requirements to apply for the filing exemption (3) above.[5] Although these requirements are specified for each type of security, it is generally required that price information of the securities within the Japanese market and issuer information to be disclosed under the laws or regulations of foreign exchanges be easily available through the Internet or other mediums and that they are traded continuously in a foreign country. For the purpose of determining ¥100,000,000 as set forth in (4) above, the amount of issues or sales made during the period of one year preceding the present offering, or the offerings made concurrently with the present offering, are aggregated with the amount of the present offering.[6]

The following securities are exempted from the registration requirement: Japanese government bonds; municipal bonds; bonds issued by a juridical person pursuant to special law; capital contribution certificates issued by a corporation established by a special law, beneficial certificates of loan trusts; low liquidity financial instruments deemed as securities under Article 2, Section 2 of the FIEA; bonds guaranteed by the Japanese government; and bonds issued by an international organization of which Japan is a member (e.g., IBRD bonds and ADB bonds).[7]

When (a) a Secondary Distribution of Securities is made where disclosure has been made and the total amount of the selling price is not less than ¥100,000,000, and (b) a Public Offering of Securities or Secondary Distribution of Securities has been made where the total amount of the issue price or selling price is less than ¥100,000,000 but more than ¥10,000,000, a simpler form, a "securities notification statement", must be filed with the Prime Minister before the commencement of the offering or distribution in certain circumstances.[8] Securities notification statements are not open for public inspection.

In addition to the above, a similar registration requirement is also applied to the issue or delivery of securities made in connection with issuer's reorganization procedures such as merger, company split and share exchange,[9] unless disclosure has not been made in respect of shares or other certain equity-type securities of a reorganized

---

[3]FIEA Art. 4, para. 7; Disclosure Ordinance Art. 6.

[4]FIEA Art. 4, para. 7, Art. 15, para. 2.

[5]FIEA Enforcement Order Art. 2-12-3.

[6]Disclosure Ordinance Art. 2, para. 4.

[7]FIEA Art. 3; FIEA Enforcement Order Art. 2-9 through 2-11.

[8]FIEA Art. 4, paras. 5 and 6; Disclosure Ordinance Arts. 4 through 6.

[9]See FIEA Arts. 4 and 2-2.

company, or disclosure has been made in respect of the securities to be issued or delivered to the shareholders of a reorganized company.[10]

§ JP:41 Filing of Securities Registration Statements

The issuer of securities is required to file a SRS with the Prime Minister to conduct the Public Offering of Securities or Secondary Distribution of Securities.[1] The SRS must be prepared in accordance with the form and instructions prescribed by the relevant disclosure ordinance. An SRS generally contains (a) information on the securities being offered, including the terms of the offering, and (b) information on the issuer of the securities being offered, including its financial information, and (c) if the securities are debt securities guaranteed by any other person, information on the guarantor. The financial information, which includes both consolidated and non-consolidated financial statements of the issuer, must be prepared in accordance with the respective rules governing the consolidated financial statements and non-consolidated financial statements, and audited by a certified public accountant or an audit firm in accordance with the applicable rules.[2]

If the issuer has filed a securities report(s) continuously for one year or more, such issuer may incorporate them by combining copies of its most recent securities report, its exhibits, its subsequently filed quarterly report(s) or a semi-annual report (including their amendments), if any, and stating certain additional subsequent material information in the SRS ("incorporation by combining").[3] Further, if such issuer's shares are either listed on a Financial Instruments Exchange or registered on a OTC market, and certain qualifications such as trading volume and market capitalization are met, the issuer may utilize the information contained in its latest securities report, and its subsequently filed quarterly report(s) or semi-annual and extraordinary report(s), if any, by incorporating such information by reference thereto ("incorporation by reference").[4]

§ JP:42 Public Inspection of SRS

In order to make the information contained in the SRS and its exhibits accessible to investors, the law requires the Prime Minister to place the filed SRS and its exhibits at the offices of the Kanto Local Financial Bureau and of the Regional Financial Bureau having juris-

---

[10]FIEA Art. 4, para. 1, item (2).

[Section JP:41]

[1]FIEA Art. 4, para. 1. By the provisions of the Delegation of Power Ordinance, the Prime Minister's power with respect to registration is delegated, through the Commissioner of Financial Services Agency, to the Director General of the Regional Finance Bureau (or the Director of the Regional Finance Bureau Fukuoka branch).

[2]Corporate Disclosure Ordinance; FS Rules; CFS Rules; Audit Ordinance.

[3]FIEA Art. 5, para. 3; Corporate Disclosure Ordinance Art. 9-3.

[4]Corporate Disclosure Ordinance Art. 9-4.

diction over the location of the head office of the registrant and it must be open for public inspection for a period of five years (in the case of an SRS that incorporates securities reports and other documents by reference, one year).[1] In addition, the issuer must keep such documents at its head office and principal branch offices and make them available for public inspection.[2]

Once an SRS is filed with the Prime Minister, solicitation may be made; however, in order for the investor to acquire the securities the registration should have become effective.[3] The registration becomes effective generally 15 days from the day of filing (the waiting period).[4] The Prime Minister may designate a shorter period or may notify the registrant that the registration will become immediately effective or will become effective the next day if the Prime Minister concludes that the public can easily understand the contents of the filed registration documents or information on the registrant has been widely disseminated to the public.[5]

If, prior to the effective date of the registration, there is any change with respect to any material fact that should be stated in the SRS or if there arises any situation prescribed by the Cabinet Office Ordinance calling for the modification of the contents of the registration documents, the registrant should file an "amendment statement" or if the registrant finds it necessary to do so, it may file an amendment statement.[6] The Prime Minister may issue an order for filing an amendment statement if the registration documents are defective or insufficient with respect to any material facts to be stated therein.[7] When an amendment statement is filed, the aforementioned waiting period before the registration becomes effective starting from the day of filing of such amendment statement.

§ JP:43 Shelf Registration

Any issuer who satisfies the requirements for registration by incorporation by reference as referred to above may make blanket registration of future potential offering(s) by filing with the Prime Minister a "shelf registration statement" setting out the period during which the securities are intended to be offered (either one year or two years), the type of securities, proposed total amount or maximum residual amount of the offering and anticipated principal underwrit-

---

[Section JP:42]

[1]FIEA Art. 25, para. 1; Corporate Disclosure Ordinance Art. 21.

[2]FIEA Art. 25, para. 2; Corporate Disclosure Ordinance Art. 22.

[3]FIEA Art. 4, para. 1, Art. 15, para. 1.

[4]FIEA Art. 8, paras. 1 and 2.

[5]FIEA Art. 8, para. 3.

[6]FIEA Art. 7.

[7]FIEA Arts. 9 and 10.

ers, in accordance with the Cabinet Office Ordinance.[1] The shelf registration becomes effective after 15 days have elapsed or less as in the case of the SRS.[2] Once the shelf registration becomes effective, no SRS needs to be filed for each individual offering of any part of the securities covered by the shelf registration, however, the registrant must file with the Prime Minister a "shelf registration supplement" setting out the amount of the offering and other terms of the offering.[3] Upon filing of a shelf registration supplement, the investors may acquire the subject securities. The shelf registration ceases to be effective upon the expiry of the intended period of the offering.[4] If prior to such expiry the offerings of the total amount registered have been completed, the registrant must file a "shelf registration withdrawal statement" with the Prime Minister.[5]

If during the effective period of the shelf registration a situation arises as prescribed by the law and Cabinet Office Ordinance, the registrant must file an "amendment shelf registration statement."[6] However, no amendment may be made to increase the total amount or maximum residual amount of offerings, change the proposed period of offerings, or change the type of securities subject to the registration.[7]

§ JP:44 Acquisition of Securities and Use of Prospectus

Once the SRS is filed, solicitation can commence; however, until and unless the registration becomes effective, no firm commitment for the acquisition of the subject securities by investors can be made.[1]

The issuer of securities of which Public Offering of Securities or Secondary Distribution of Securities is subject to registration is required to prepare a prospectus in connection with such offering or distribution.[2] The issuer, the seller, the underwriters, securities companies, registered financial institutions or Financial Instruments Intermediary Service Providers are required to deliver to the investors prior to or at the same time with such investors making commitment for the acquisition, a prospectus meeting the requirements prescribed by the law, except in the case of the sale to QIIs (unless so requested by such QIIs) or where the investors have held the same type of securities or any persons living together with the investors

---

[Section JP:43]

[1]FIEA Art. 23-3.

[2]FIEA Arts. 23-5 and 8.

[3]FIEA Art. 23-3, para. 3, Art 23-8.

[4]FIEA Art. 23-6, para. 2.

[5]FIEA Art. 23-7.

[6]FIEA Art. 23-4; Corporate Disclosure Ordinance Art. 14-5.

[7]FIEA Art. 23-4; Corporate Disclosure Ordinance Art. 14-5.

[Section JP:44]

[1]FIEA Arts. 4 and 15.

[2]FIEA Art. 13, para. 1.

have already received or will receive the prospectus.[3] The delivery of a prospectus is also required in the event of sale (not by way of Public Offering of Securities or Secondary Distribution or Securities) of an unsold portion of securities (exclusive of listed securities and OTC registered securities) subject to a Public Offering of Securities or Secondary Distribution of Securities during the period of three months from the effective date of registration.[4]

A prospectus whose delivery is required by the law as stated above ("delivery prospectus") should contain the matters prescribed by laws and regulations, and basically, its contents should be substantially identical to those of the SRS.[5] However, in the case of the beneficiary securities of investment trusts or investment units, the contents of a delivery prospectus may be simplified. The information omitted from a delivery prospectus is included in another type of prospectus, and such prospectus is delivered to investors only upon their request (request prospectus). Any documents, illustrations or other materials, whether in physical or electronic form, may be used for the purposes of a Public Offering of Securities or Secondary Distribution of Securities, unless such materials contain any misstatement.[6] In the case of offerings under a shelf registration, the provisions for the use of a prospectus and other materials under ordinary registration are applied similarly.[7]

IX. CRIMINAL AND CIVIL LIABILITY

§ JP:45 SRS and Shelf Registration Statement

Under the FIEA, the filing of an SRS or shelf registration statement or their exhibits or amendments that contains a material misstatement is subject to criminal sanction.[1] Criminal sanctions may also be imposed if a Public Offering of Securities or Secondary Distribution of Securities is carried out without the required registrations of such documents.[2] In addition, if a director, statutory accounting advisor, statutory auditor or executive officer of a corporation uses documents containing a material misstatement for the offering, such director, statutory accounting advisor, statutory auditor or executive officer is subject to a penalty under the Company Act.[3]

If an SRS or shelf registration statement contains any untrue statement of a material fact or omits to state any material fact required to

---

[3]FIEA Art. 15, para. 2.

[4]FIEA Art. 15, para. 6.

[5]FIEA Art. 13, paras. 2; Corporate Disclosure Ordinance Arts. 12 through 14.

[6]FIEA Art. 13, para. 5.

[7]FIEA Art. 23-12.

[Section JP:45]

[1]FIEA Arts. 197, 197-2, and 207.

[2]FIEA Arts. 197-2, 200 and 207.

[3]Company Act Art. 964.

be stated therein or necessary to make the statements therein not misleading, the issuer of the subject securities (the registrant) is liable for any damages sustained by the investors who acquired the subject securities in the Public Offering of Securities or Secondary Distribution of Securities.[4] However, if the issuer proves that the investors knew of such misstatement at the time of their subscription to the subject securities, the issuer is not so liable.

The amount of compensation for damages in the case of such material misstatement or omission is the amount paid by the investors for the acquisition of the securities less the market value of the securities at the time of claiming the damages or, if the investors have already disposed of the securities, the amount they paid for the acquisition less the price for such disposition.[5] If the issuer proves that any portion of the damages sustained by the investors resulted from causes other than a decline in the price of the securities attributable to the material misstatement, the issuer is not liable for such portion of the damages.[6] The investors may not receive compensation for damages unless they make a claim for damages within 3 years from the date on which the investors discovered or could have discovered by the exercise of due diligence such misstatement, or if 7 years have passed from the day on which the subject registration became effective.[7]

In addition to the issuer, the following persons may also be liable for damages sustained by the investors due to the material misstatement: (1) directors, statutory accounting advisors, and statutory auditors, officers or their equivalent ("officers") of the issuer at the time of filing the SRS or shelf registration statement; (2) the seller of securities in the Secondary Distribution of securities; (3) certified public accountants or audit firm who certified the audit report contained in the SRS or shelf registration statement; and (4) the securities companies that entered into the underwriting agreement with the issuer or seller of the securities.[8] As in the case of the issuer's civil liability, they are not so liable if they prove that the investors knew of such misstatement at the time of their subscription to the subject securities.[9] Moreover, these persons may raise another defense to avoid the liability, respectively. If the persons enumerated in (1) or (2) above prove that they did not know and, in spite of their exercise of due diligence, could not have known such misstatement, if the persons enumerated in (3) above prove that they acted in good faith and without intent or negligence in preparing the audit report, or if the persons referred to in (4) above prove that they did not know such misstatement and, with respect to the parts other than the financial

[4]FIEA Art. 18, para. 1, Art. 23-12, para. 5.

[5]FIEA Art. 19, para. 1, Art. 23-12, para. 5.

[6]FIEA Art. 19, para. 2, Art. 23-12, para. 5.

[7]FIEA Art. 20, Art. 23-12.

[8]FIEA Art. 21, Art. 23-12.

[9]FIEA Art. 21, para. 2, Art. 23-12, para. 5.

section, they could not have known in spite of their exercise of due diligence, they are exonerated from such liability.[10] There is no specific provision in the FIEA concerning the amount of damages.

The issuer of the securities (the registrant) is also liable for any damages due to the material misstatement sustained by any person who acquired the subject securities other than through the Public Offering of Securities or Secondary Distribution of Securities for the period during which the documents containing such misstatement were available for public inspection. However, in no event may the amount of compensation for damages in this case exceed the amount specified above in the case of civil liability upon a Public Offering of Securities or Secondary Distribution of Securities.[11] As in the case of civil liability upon the Public Offering of Securities or Secondary Distribution of Securities, the registrant is not so liable if it proves that the persons who acquired the securities knew such misstatement at the time of their subscription. In this case, it is not necessary for the claimants to prove the amount of damages caused by such misstatement if they acquired the relevant securities within a year before the fact of existence of such misstatement is publicly announced and thereafter continue to hold such securities up to the day of the public announcement. Here, the amount of damages is deemed as the average market price (if not applicable, the expected sale price) of such securities over the period of one month prior to the day of the public announcement less the average market price over the period of one month after the day of the public announcement.[12] If the issuer proves that any portion of the damages sustained by the claimants resulted from causes other than a decline in the price of the securities attributable to such misstatement, the issuer is not liable for such portion of the damages.[13] Otherwise, the court may decide, in its discretion, a reasonable reduction of the amount of damages if the court finds all or any part of the damages sustained by the claimants resulted from causes other than a decline in the price of the securities attributable to such misstatement; however, the amount of the damages attributable to the other causes is, by its nature, extremely difficult to prove.[14] The statute of limitation applies in the same manner as the issuer's civil liability upon the Public Offering of Securities or Secondary Distribution of Securities above.[15]

In addition to the issuer, the persons enumerated in (1) and (3) above are also liable for the damages sustained by any person who, unaware of the material misstatement in the SRS or shelf registration statement, acquired the securities other than by the Public Offer-

[10]FIEA Art. 21, para. 2, Art. 23-12, para. 5.

[11]FIEA Art. 21-2, para. 1.

[12]FIEA Art. 21-2, para. 2.

[13]FIEA Art. 21-2, para. 4.

[14]FIEA Art. 21-2, para. 5.

[15]FIEA Art. 21-3.

ing of Securities or Secondary Distribution of Securities.[16] The same defense as good-faith and proper due diligence in regard to their civil liability upon the Public Offering of Securities or Secondary Distribution of Securities above is applicable to the persons enumerated in (1) and (3), respectively.[17]

§ JP:46 Prospectus and Other Materials

The issuer of securities that prepared the prospectus pursuant to Article 13, paragraph 1 of the FIEA, which contains any material misstatement, is liable to for the damages caused by any person who acquired the securities in the Public Offering of Securities or Secondary Distribution of Securities upon delivery of such prospectus in the same way as discussed above with respect to the SRS and shelf registration statement.[1] A similar liability applies to the officers of the issuer and the seller of the securities.[2] If the officer of a corporation uses a prospectus containing a material misstatement, such officer is subject to a penalty under the Company Act.[3]

Any person who induces any other person to acquire securities by use of a prospectus or "other materials" that contain any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading is liable for any damages sustained by such other person not knowing such misstatement.[4] However, if it is proven that the person who used the prospectus for inducement did not know and, in spite of their exercise of due diligence, could not have known such misstatement, such person will not be liable for damages sustained by a person who acquire the securities. This provision applies not only to a Public Offering of Securities or Secondary Distribution of Securities requiring registration but also to a Secondary Distribution of Securities for which disclosure has been made and registration is not required.

§ JP:47 Liability under Article 16 of the FIEA

Under Article 16 of the FIEA, any person who induces any other person to acquire securities before the effective date of the registration or without delivering a prospectus (prepared in accordance with

---

[16]FIEA Art. 22, para. 1, Art. 23-12, para. 5.

[17]FIEA Art. 22, art. 21, para. 2.

[Section JP:46]

[1]FIEA Art. 18, para. 2, Art. 23-12, para. 5.

[2]FIEA Art. 21, para. 3, Art. 23-12, para. 5.

[3]Company Act Art. 964.

[4]FIEA Art. 17.

Article 13, paragraphs 2, item 1 of the FIEA) is liable for any damages sustained by such other person as a result of such acquisition.[1]

§ JP:48 Administrative Monetary Penalty

The Prime Minister shall impose an administrative monetary penalty on: (1) a person who makes a Public Offering of Securities or Secondary Distribution of Securities without filing a SRS or shelf registration statement or amendments thereto; (2) an issuer or seller of securities that induces investors to acquire such securities prior to the SRS being effective or shelf registration supplement being filed; or (3) a seller of securities that makes a Secondary Distribution of Securities exempted from a SRS requirement and induces investors to acquire the subject securities without delivery of a prospectus.[1] The Prime Minister shall also impose an administrative monetary penalty on: (1) an issuer of securities that files disclosure documents that include any material misstatement or omission and induces investors to acquire newly issued securities or securities held by the issuer through a Public Offering of Securities or Secondary Distribution of Securities; (2) officers, attorneys or employees of an issuer of securities that file disclosure documents that include any material misstatement or omission and sell securities held by them to investors through a Secondary Distribution of Securities; (3) an issuer of securities that makes a Secondary Distribution of Securities exempted from the SRS requirement and induces investors to acquire the subject securities held by the issuer using a prospectus that includes any material misstatement or omission, or (4) officers, attorneys or employees of an issuer of securities that sell securities held by them to investors through a Secondary Distribution of Securities using such false prospectus as described in (3) above.[2] The disclosure documents in this 2.6.4 refer to the SRS, shelf registration statement, their exhibits, amendments to the SRS and shelf registration and shelf registration supplement, including all documents incorporated by reference therein.[3]

X. CONTINUOUS DISCLOSURE REQUIREMENT

§ JP:49 Securities Report

The following issuers are required to prepare and file with the Prime Minister a "securities report" every business year: (1) issuers of securities listed on a financial instruments exchange, (2) issuers of OTC registered securities, (3) issuers of securities that were subject to the registration requirement with respect to their Public Offering of Secu-

---

[Section JP:47]

[1]FIEA Art. 16.

[Section JP:48]

[1]FIEA Art. 172 and Art. 173, para. 6.

[2]FIEA Art. 172-2, para. 1, 2, 4 and 5.

[3]FIEA Art. 172-2, para. 3.

rities or Secondary Distribution of Securities, and (4) issuers whose paid-in capital is ¥500,000,000 or more and number of shareholders at the end of any of the past five business years was 1000 or more.[1] Such requirement to file a securities report ceases or is suspended: (a) if the securities are de-listed (in the case of the issuer falling within the category referred to in (1) above), or if the OTC securities registration is cancelled (in the case of the issuer falling within the category referred to in (2)); (b) upon obtaining the approval *(shonin)* of the Prime Minister when the number of shareholders at the end of any of the past five business years is reduced to less than 300 (in the case of the issuer falling within (3) above); (c) if either its paid-in capital becomes less than ¥500,000,000, or the number of shareholders at the end of the last business year is reduced to less than 300 (in the case of the issuer falling within the category referred to in (4) above); (d) upon obtaining the approval *(shonin)* of the Prime Minister when the issuer goes into liquidation, or suspends its business for a substantial period of time (in the case of the issuer falling within (3) and (4) above), or (e) the number of shareholders at the end of the last business year is reduced to less than 25 (in the case of the issuer falling within (3)).[2]

A securities report should be prepared in the prescribed form within 3 months after the end of each of its business years (in the case of a foreign corporation, within 6 months) and filed with the Prime Minister and with respect to the "specified securities" provided in Paragraph 1 of Article 5 of the FIEA, for each period prescribed by the Cabinet Ordinance.[3]

§ JP:50 Quarterly Report and Semi-annual Report

If the business year of the issuer subject to the requirement to file a securities report is more than three months, and such issuer is an issuer of securities listed on a financial instruments exchange or OTC registered securities, such issuer must prepare a quarterly report in the prescribed form covering every 3 months of each business year and file it with the Minister of Finance within 45 days from the end of such quarter year periods.[1] If the issuer is subject to the requirement to file a securities report but not subject to the above-mentioned quarterly report requirement, such issuer must prepare a semi-annual report in the prescribed form covering the first 6 months of each busi-

---

[Section JP:49]

[1]FIEA Art. 24; FIEA Enforcement Order Arts. 3 through 3-6.

[2]FIEA Art. 24, para. 1; FIEA Enforcement Order Arts. 3-6 and 4; Corporate Disclosure Ordinance Art. 16, para. 2.

[3]FIEA Art. 24, paras. 1 and 5.

[Section JP:50]

[1]FIEA Art. 24-4-7, para. 1.

ness year and file it with the Prime Minister within three months from the end of such half year period.[2]

§ JP:51 Extraordinary Report

If certain important events occur with respect to the issuer subject to the continuous disclosure requirement or its subsidiaries, the issuer is required to prepare and file with the Prime Minister an extraordinary report without delay.[1]

§ JP:52 Internal Control Report and Certification Letter

If the issuer of securities listed on a financial instruments exchange or OTC registered securities is subject to the requirement to file a securities report, it must prepare and file, at the same time as filing a securities report, an internal control report in which evaluation is made with regard to its system as necessary for ensuring the appropriateness of statements on financial, accounting and other information concerning the issuer and its subsidiaries.[1] It must also prepare and file, at the same time as filing of a securities report and quarterly reports, a certification letter certifying the appropriateness of the descriptions in such reports under the FIEA and its subordinated legislation.[2]

§ JP:53 Share Buyback Report

If the issuer of the securities listed on a financial instruments exchange or OTC registered securities determines a share buyback

---

[2]FIEA Art. 24-5, para. 1.

[Section JP:51]

[1]FIEA Art. 24, para. 5; Corporate Disclosure Ordinance Art. 19 The important events giving rise to the requirement to file an extraordinary report include: (1) the Public Offering or Secondary Distribution of shares, convertible bonds or bonds with share subscription warrants in a foreign country, (2) the issue of any such securities that does not constitute a Public Offering, (3) the granting of stock options, (4) any change in the issuer's parent corporation or subsidiary corporation, (5) any change in any principal shareholder of the issuer, (6) the occurrence of a calamity or disaster materially affecting the issuer's operation, (7) the institution of a law suit against the issuer or the determination or settlement of a law suit resulting in payment of a large amount of money, (8) a share exchange or share transfer, company split or merger involving the issuer, (9) a business transfer, (10) any change in a representative director, (11) the filing of a petition for bankruptcy, civil rehabilitation or corporate reorganization, (12) the resolution by shareholders' meeting (only in the case of the issuer of securities listed on any financial instruments exchange or issuer of OTC registered securities), (13) any change in a public accountant or audit firm providing audit certification, (14) a failure or delay in collection of claims held by the issuer, (15) any other situation that may materially affect its financial position or business or consolidated financial position or consolidated business, and (16) any equivalent events in relation to the issuer's consolidated subsidiaries.

[Section JP:52]

[1]FIEA Art. 24-4-4, para. 1.

[2]FIEA Art. 24-4-2, para. 1, Art. 24-4-8, para. 1.

pursuant to the provision of the Company Act, it must prepare and file a report concerning the status of the share buyback, and other matters specified by a Cabinet Office Ordinance as necessary and appropriate for the public interests or protection of investors, for each month after the resolution of such share buyback by the shareholders' meeting or board of directors.[1]

§ JP:54 Parent Company Status Report

A company that holds majority voting rights of or has a similar relationship with an issuer of the securities listed on a financial instruments exchange or OTC registered securities and subject to a securities report filing requirement, must prepare and file a report concerning its shareholders and other information specified by a Cabinet Office Ordinance as necessary and appropriate for the public interests or protection of investors for each business year, unless such parent company is subject to a securities report filing requirement.[1]

§ JP:55 Public Inspection, Amendment Report, Liability

The securities report, quarterly report, semi-annual report and extraordinary report are held at the offices of the Kanto Local Finance Bureau and other Regional Finance Bureaus having jurisdiction over the location of the head office and open for public inspection for the respective periods prescribed by the FIEA, and the issuer must maintain copies thereof at its head office and principal branch offices, open for public inspection.[1]

The FIEA contains provisions similar to those applicable to the SRS as to the amendments to the securities report, and other continuous reports as set forth above and the relevant parties' liability resulting from material misstatement.[2]

In addition, the issuer of listed securities is subject to various timely disclosure requirements prescribed by the rules of the relevant financial instruments exchange on which such securities are listed.

XI. PARTICIPANTS OF THE SECURITIES MARKET

§ JP:56 Financial Instruments Business Operator and Foreign Securities Company

The FIEA comprehensively regulates a wide range of business

[Section JP:53]

[1]FIEA Art. 24-6, para. 1, Art. 24-4-8, para. 1.

[Section JP:54]

[1]FIEA Art. 24-7, para. 1.

[Section JP:55]

[1]FIEA Art. 25; Corporate Disclosure Ordinance Art. 21 5 years for a securities report, 3 years for a semi-annual report and 1 year for an extraordinary report.

[2]FIEA Arts. 24-2 through 24-4, Art. 24-4-3, Art. 24-4-5, Art. 24-4-6, Art. 24-4-7, para. 4, Art. 24-4-8, para. 2, Art. 24-5, para. 5, Art. 24-6, para. 2, Art. 24-7, para. 3.

concerning securities (Financial Instruments Business) and derivative transactions that were previously separately regulated under several laws and regulations. The FIEA generally requires business operators who carry out any Financial Instruments Business to obtain registration *(toroku)* according to the category of contemplated business activity. The registered business operators (Financial Instruments Business Operators and other business operators described in 4. below) are regulated by the Prime Minister whose power is generally delegated to the Commissioner of the Financial Services Agency.[1] Without such registration, no person may engage in any Financial Instruments Business in Japan as business.[2]

When an applicant applies for registration as a Financial Instruments Business Operator, the Prime Minister cannot refuse to register it as a Financial Instruments Business Operator unless the applicant falls within any of the grounds for refusal to register proscribed by the FIEA.[3]

In addition to the registration, if a Financial Instruments Business Operator intends to engage in the business of running a proprietary trading system (PTS), it must obtain a validation *(ninka)* from the Prime Minister.[4] Separate qualifications that must be fulfilled are prescribed by the FIEA for the granting by the Prime Minister of the validation.[5]

The categories of Financial Instruments Business are Type I Financial Instruments Business, Type II Financial Instruments Business, Investment Advisory/Agency Business and Investment Management Business. Type I Financial Instruments Business deals with categories of securities (Type I Securities) with high liquidity such as stocks, bonds and investment trust beneficial certificates under the registration of Type I Financial Instruments Business, operators of which are subject to more strict regulations than those applicable to Type II Financial Instruments Business. Type II Financial Instru-

---

[Section JP:56]

[1]FIEA Art. 194-7, para. 1.

[2]FIEA Art. 29.

[3]FIEA Arts. 29-3 and 29-4, FIEA Enforcement Order Arts. 15-6 to 15-10. The reasons for disqualification for registration of an operator of Type I Financial Instruments Business, which is one category of the Financial Business Operators, for example, include: (1) the applicant is not a joint stock corporation *(kabushiki kaisha)* that has a board of directors and corporate auditor or the committee system, (2) the amount of paid-in capital is less than ¥50,000,000 (that may be higher for a certain underwriting business), (3) the amount of net assets is less than ¥50,000,000 (that may be higher for a certain primary underwriting business), (4) the capital adequacy ratio is less than 120%, (5) a similar registration has been revoked, (6) it or its major shareholders, or their officers received a criminal penalty for violation of the FIEA or related laws, (7) the applicant is concurrently engaged in another business deemed inappropriate in the public interest, and (8) its staffing is not deemed sufficient for it to properly engage in the securities business.

[4]FIEA Art. 30, para. 1.

[5]FIEA Art. 30-4.

ments Business deals with other categories of securities (Type II Securities) with no- or limited- liquidity such as beneficiary rights in a trust issuing no certificates, membership rights of a general partnership company or limited partnership company (limited to those specified by a Cabinet Order), or membership rights of a limited liability company and rights in a corrective investment scheme under the registration of Type II Financial Instruments Business. The FIEA distinguishes between the Investment Advisory/Agency Business and the Investment Management Business. Simply giving investment advice to customers on a fee basis falls within the first category.[6] Operating discretionary accounts for customers falls within the latter category of business, which is subject to more strict regulations than the first category.[7]

The principal actors in the public securities market are securities companies as Type I Financial Instruments Business Operators.

The Type I Financial Instruments Business Operator may engage in certain peripheral businesses to its main securities business.[8] In addition, by filing a report with the Prime Minister, the securities company may engage in certain associated businesses.[9] Furthermore, it is possible for a securities company to engage in any other business (except when the Prime Minister considers it inappropriate in the public interests or for the protection of investors) by obtaining the approval *(shonin)* of the Prime Minister.[10]

The foregoing regulations are basically applicable to foreign securities firms intending to engage in Financial Instruments Business in Japan.[11]

Type I Financial Instruments Business Operators are subject to various financial (mainly, capital adequacy ratio) and assets regulations. They are required to provide "reserves for possible losses from financial instruments transactions" *(kinyu shohin torihiki sekinin junbikin)* in accordance with the FIEA and the regulations thereunder.[12] Securities companies in the Securities Custody Business, which is one category of business that Type I Financial Instruments Business Operators may conduct, are required to keep customers' money and other assets separately from their own money and assets,[13] and the use of customers' assets for charging as securities or securities lending is subject to the written consent of the customers.[14]

Various regulations on the conduct of business by the Type I

---

[6]FIEA Art, 2, para. 8, item 11.

[7]FIEA Art. 2, para. 8, items 12 and 14.

[8]FIEA Art. 35, para. 1.

[9]FIEA Art. 35, paras. 2 and 3.

[10]FIEA Art. 35, para. 4.

[11]FIEA Art. 29-2, para. 1.

[12]FIEA Art. 46-5, para. 1.

[13]FIEA Art. 43-2.

[14]FIEA Art. 43-4.

Financial Instruments Business Operators are provided under the FIEA and the related regulations.[15] The Type I Financial Instruments Business Operator and its sales representatives (who are subject to the registration requirement) are subject to the supervision of the FSA and other relevant regulatory agencies.[16]

§ JP:57 Other Financial Institutions

Article 33 of the FIEA generally prohibits banks and other financial institutions (the "Financial Institutions") from engaging in securities-related business and Investment Management Business except for certain limited types of securities and transactions.[1] Article 33-2 of the FIEA requires a Financial Institution to obtain registration *(toroku)* with the Prime Minister if it intends to engage in the securities business ("Registered Financial Institution"); provided that the scope of activities of a Registered Financial Institution is restricted compared to a Financial Instruments Business Operator.[2]

The Anti-Monopoly Act of Japan permits the establishment of bank holding companies. In addition, pursuant to the FIEA, the Banking Act and the Insurance Business Act, Financial Instruments Business Operators, banks and insurance companies are permitted through subsidiary corporations to mutually enter each others' business areas, although the permitted scope of activities of such subsidiary Financial Instruments Business Operators is restricted to some extent. In addition, Registered Financial Institutions may act as intermediaries for and on behalf of the Financial Instruments Business Operator specified in advance.

In order to protect bank depositors, to prevent conflicting interests and to present fair competition, Financial Instruments Business Operators and Registered Financial Institutions must comply with various regulations under the FIEA such as establishment of the firewalls, and compliance with arm's-length rule.[3] Moreover, Type I Financial Instruments Business Operators and Registered Financial Institutions must also establish an internal system for managing conflicts of interest and properly manage customer's undisclosed information to protect the interests of their and their subsidiaries' customers.[4]

---

[15]FIEA Arts. 36 et seq. Arts. 43 et seq.; Financial Instruments Business Ordinance.

[16]FIEA Arts. 50 et seq., Arts. 64 et seq.

[Section JP:57]

[1]FIEA Art. 33, paras. 1 and 2.

[2]FIEA Art. 33-2.

[3]FIEA Art. 40, para. 2; Financial Instruments Business Ordinance Art. 123; FIEA Art. 44-3; Financial Instruments Business Ordinance Arts. 153 and 154.

[4]FIEA Art. 36, para. 2.

§ JP:58 Financial Instruments Intermediary Service Operator

A person or corporation other than a Financial Institution may solicit customers to purchase or sell financial instruments, acting as an introducing intermediary for and on behalf of the specified Financial Instruments Business Operator or Registered Financial Institution, by being so registered (*toroku*) with the Prime Minister (Financial Instruments Intermediary Service Operator).[1] Such specified Financial Instruments Business Operator or Registered Financial Institution, as applicable, is responsible for the activities of such Financial Instruments Intermediary Service Operator.[2]

§ JP:59 Financial Instruments Exchange

The Financial Instruments Exchange is an organization in the form of a membership association or joint stock corporation with a license (*menkyo*) granted by the Prime Minister under the FIEA for the purpose of establishing a market for the purchasing and selling of securities and derivative transactions (referred to under the FIEA as the "Financial Instruments Exchange Market").[1] A membership cooperation is a juridical person whose membership consists of securities companies and foreign securities companies.[2] There are at present six licensed Financial Instruments Exchanges.

The Financial Instruments Exchange must establish the rules governing the business *(gyomu kitei)* of financial instruments trading on the Financial Instruments Exchange Market established by it and the brokerage agreement standards *(jutaku keiyaku junsoku)*.[3] These rules and standards, as well as the articles of incorporation thereof, are subject to the examination of the Prime Minister when granting a license, and also subject to validation *(ninka)* thereof upon subsequent changes.[4] The Financial Instruments Exchange must also establish the listing rules in accordance with their *gyomu kitei*.[5] In addition, the Financial Instruments Exchange also has the power to exercise disciplinary measures over its members, which operations may be entrusted to the Self-Disciplinary Organization upon validation

---

[Section JP:58]

[1]FIEA Art. 66.

[2]FIEA Art. 40, item 2; Financial Instruments Business Ordinance Art. 123 15 and Art. 66-24.

[Section JP:59]

[1]FIEA Art. 2, para. 14 and 16, and Art. 80, para. 1.

[2]FIEA Art. 2, para. 15 and Art 88 et seq.

[3]FIEA Art. 82, para. 1.

[4]FIEA Art. 82, para. 1 and Art. 149, para 1.

[5]FIEA Art. 117, item (4).

(*ninka*) by the Prime Minister.[6] On the other hand, the Financial Instruments Exchange is subject to the supervision of the Commissioner of the Financial Services Agency (the Commissioner's power of requesting reports and exercising inspection is delegated to the Securities and Exchange Surveillance Commission).[7]

§ JP:60 Financial Instruments Firms Association

As a self regulatory organization the FIEA provides for the establishment of the Validated Financial Instruments Firms Associations and Accredited Financial Instruments Firms Associations. These associations are established by the Financial Instruments Business Operators and the Registered Financial Institutions with the validation *(ninka)* of the Prime Minister (in the case of a Validated Financial Instruments Firms Association) or the accreditation *(nintei)* of the Commissioner of the Financial Services Agency (in the case of an Accredited Financial Instruments Firms Association).[1] The Japan Securities Dealers Association is currently the sole Validated Financial Instruments Firms Association. There are currently four Accredited Financial Instruments Firms Association such as The Investment Trusts Association, Japan and The Financial Futures Association of Japan.

Validated Financial Instruments Firms Associations and Accredited Financial Instruments Firms Associations are self regulatory organizations and as such establish various rules for the purposes of preventing unfair dealings and promoting the credibility of securities trading. A Validated Financial Instruments Firms Association may also establish the over-the-counter (OTC) securities market.[2] Validated Financial Instruments Firms Associations and Accredited Financial Instruments Firms Associations are charged with the duty of administering the registration of securities representatives.[3] They also handle the disputes arising from financial instruments or derivative transactions and conduct mediation *(assen)* in any such dispute.[4] These associations are subject to the supervision of the Commissioner of the Financial Services Agency (partly by the Securities and Exchange Surveillance Commission).[5]

§ JP:61 Investors Protection Fund

The 1998 amendment to the SEL introduced the "Investors Protec-

---

[6]FIEA Art. 85, para. 1.

[7]FIEA Art. 151 et seq. and Art. 194-7, para 2.

[Section JP:60]

[1]FIEA Arts. 67, 67-2 and 78; and Art. 194-7 and Cabinet Order 37-2.

[2]FIEA Art. 67, para. 2.

[3]FIEA Art. 64-7.

[4]FIEA Arts. 77, 77-2, 79-12 and 79-13.

[5]FIEA Arts. 73 through 76; 79-2 through 79-6; and Art. 194-7.

tion Fund" in order to protect securities customers in the event of bankruptcy or insolvency of a securities company. The Investors Protection Fund is a juridical person created under the FIEA with at least 20 Financial Instruments Business Operators as its members with the validation *(ninka)* of the Prime Minister and the Minister of Finance.[1] Every Type I Financial Instruments Business Operator must become a member of at least one Investors Protection Fund.[2]

When a Financial Instruments Business Operator faces financial difficulties rendering it difficult for such company to smoothly repay customers' assets to its customers, the Fund will repay money upon the customers' demand to the customers (other than QIIs and other investors specified in the Cabinet Order) on behalf of the distressed Financial Instruments Business Operator.[3] The customer assets subject to the protection of the Fund are provided by the law and regulations.[4] The maximum amount to be paid to each customer by the fund is limited currently to ¥10,000,000.[5] Other detailed provisions are made in the FIEA and Cabinet Ordinance.[6]

§ JP:62 Financial Instruments Clearing Organization

As a clearing house, the FIEA provides for the establishment of the Financial Instruments Clearing Organization, which provides the services to assume the obligations of the Financial Instruments Business Operators, Registered Financial Institutions and Securities Finance Companies that arise from the sale and purchase of securities, derivative transactions or othertransactions specified by a Cabinet Order (Financial Instruments Obligation Assumption Services).[1] It must be established as a joint stock corporation licensed by the Prime Minister.[2] The Financial Instruments Exchange may also provide Financial Instruments Obligation Assumption Services by obtaining approval (*shonin*) from the Prime Minister.[3]

The FIEA regulates securities finance companies (Securities Finance Companies) that engage in business of lending money or securities to a member of a Financial Instruments Exchange or a

---

[Section JP:61]

[1]FIEA Arts. 79-29 and 79-30.

[2]FIEA Art. 79-27. The Japan Investor Protection Fund is the only Investors Protection Fund.

[3]FIEA Art. 79-56.

[4]FIEA Art. 79-20, para. 3; FIEA Enforcement Order Arts. 18-5 through 18-7.

[5]FIEA Art. 79-57, para. 3; FIEA Enforcement Order Art. 18-12.

[6]FIEA Arts. 79-20 through 79-80; FIEA Enforcement Order Arts. 18-5 through 18-15.

[Section JP:62]

[1]FIEA Art. 2, para. 28 and 29, Art 156-2.

[2]FIEA Arts. 156-2 through 156-4.

[3]FIEA Art. 156-19, para. 1.

member of a Validated Financial Instruments Firms Association as necessary for the settlement of sales and purchase of securities with credit granting to customers (margin transactions) and other transactions specified by a Cabinet Order, by utilizing clearing systems of a Financial Instruments Exchange Market established bythe Financial Instruments Exchange or clearing systems of the OTC securities market established by the Validated Financial Instruments Firms Association.[4] They must be a joint stock corporation with a capital stock of no less than one-hundred million yen and licensed (*menkyo*) by the Prime Minister.[5]

For the purpose of providing an alternative dispute resolution option to customers and related parties of financial instruments and derivative transactions, the FIEA requires Financial Instruments Business Operators and Registered Financial Institutions, as a general rule, to contract with the Designated Dispute Resolution Organization so that it can process customers' complaints for their business and arranges for the settlement of disputes regarding their business.[6] The Designated Dispute Resolution Organizations are designated by the Prime Minister as those meeting the requirements specified under the FIEA according to the dispute resolution for the type of Financial Instruments Business they handle.[7]

XII. REGULATION IN THE SECONDARY MARKET

§ JP:63 Dealing and Brokerage Transactions

The FIEA provides that in order for a member and qualified participant of a Financial Instruments Exchange to accept commissions for trading in securities and derivative transactions in the Financial Instruments Exchange Market, such commissions must be consistent with the brokerage agreement standards (*jutaku keiyaku junshoku*) established by the Exchange.[1] Each Financial Instruments Exchange provides in its brokerage agreement standards the terms that each of its members must comply with in accepting and executing customers' orders in compliance with the FIEA.[2] The brokerage agreement standards are subject to the examination and validation (*ninka*) of the Prime Minister.[3] Thus, customers' orders must be accepted and executed in accordance with such standards.

§ JP:64 Large Volume Holding Report

The FIEA stipulates that if any person holds, individually or jointly

---

[4]FIEA Art. 156-24.

[5]FIEA Arts. 156-23 through 156-24; FIEA Enforcement Order Arts. 19-5.

[6]FIEA Art. 37-7, para 1.

[7]FIEA Arts. 156-38 through 156-40.

[Section JP:63]

[1]FIEA Art. 133, para. 1.

[2]FIEA Art. 133, para. 2.

[3]FIEA Arts. 83, 85-2 and 155-2.

with any other persons within the same group having the same objective of control, beneficially more than 5% of the shares of voting stock (or other equity related securities, such as convertible bonds) of an issuer that is listed on a Financial Instruments Exchange or OTC securities market, such person shall file a "large volume holding report" with the Prime Minister within 5 business days from the day on which the person becomes such a large volume holder. Such large volume holding report shall set out the name of the large volume holder(s), statements as to the holding, the purpose of the holding, matters concerning the source of funds for the acquisition, and a statement as to the status of acquisition/disposition in the past 60 days.[1] The large volume holder must send copies of the large volume holding report to the issuer of the subject securities and the Financial Instruments Exchange(s) or (in the case of OTC securities) to the Financial Instruments Firms Association without delay.[2] After filing the large volume holding report, if the holding ratio changes (either upwards or downwards) 1% or more, an "amendment large volume holding report" must be filed within 5 business days from such change.[3] If during the period of 60 days the reporter's shareholding is reduced by more than 5% of the total issued shares, resulting in a ratio that is less than one-half of the highest ratio during such period, the amendment large volume holding report must disclose the counterparties to which the dispositions were made.[4]

Criminal penalties are provided in the FIEA in relation to the violation of regulations on large volume holding reports.[5] In addition, an administrative monetary penalty is imposed on the violator.[6]

§ JP:65 Tender Offer

If a person intends to obtain a controlling interest in a listed company, the purchase by such person of the shares of the listed company is often made outside the Financial Instruments Exchange Market. The FIEA regulates such purchase outside the Financial Instruments Exchange Market affecting the control of a listed company by requiring the purchase of the shares to be made pursuant to the tender offer rules so that the necessary information may be disclosed to the investors.

The FIEA provides that an acquisition by any person other than the issuer (who is subject to the continuous disclosure requirement) of the shares of a listed company, including other equity securities, outside

---

[Section JP:64]

[1]FIEA. Art. 27-23; Large Volume Holding Disclosure Ordinance annexed Forms.

[2]FIEA Art. 27-27.

[3]FIEA Art. 27-25, para 1.

[4]FIEA Art. 27-25, para. 2.

[5]FIEA Art. 197-2, items (5) and (6).

[6]FIEA Arts. 172-7 and 172-8.

the Financial Instruments Exchange Market must be made by "tender offer" if such acquisition meets certain criteria.[1] A "tender offer" is defined as an offer to make purchases of shares from many unspecified persons or solicitations of offers to make sales of shares by such persons through public notice and making such purchases outside the Financial Instruments Exchange Market from such persons.[2] While the criteria for the purchases that are subject to the tender offer rules are very technical and complicated, the general concept is that: (1) the purchases of shares made outside the Financial Instruments Exchange Market result in the holding of more than 5% of the total issued shares (excluding the purchases made from no more than 10 persons during a 60 day-period); (2) the purchases of shares made (i) outside the Financial Instruments Exchange Market or (ii) on the Financial Instruments Exchange Market by means other than the auction method results in the holding of more than one-third of the total issued shares; (3) the purchases and/or subscription of shares exceeds 10% of the total issued shares during a six month-period, the purchase of share made (i) outside the Financial Instruments Exchange Market or (ii) in the Financial Instruments Exchange Market otherwise than by auction method exceed 5% of the total issued shares and the resulting shareholding is more than one-third of the total issued shares; or (4) the purchases of shares made during a tender offer initiated by another party exceed 5% of the total issued shares and the resulting total shareholding ratio is more than one-third of the total issued shares.[3]

In order to conduct a tender offer, the person making the tender offer must make a "public notice concerning commencement of tender offer" setting out the purpose of the offer, the purchase price, the number of shares intended to be purchased, the period ("tender offer period") during which the purchase is to be made and other matters prescribed by the Tender Offer Ordinance.[4] Copies of the public notice must be sent to the Financial Instruments Exchange(s) or Financial Instruments Firms Association and the issuer of the target shares.[5] On the day of the public notice, the person making the tender offer must file with the Prime Minister a "tender offer registration statement" containing information prescribed by the Tender Offer Ordinance.[6] The tender offer period is required to be a period from 20 business days to 60 business days. The equal purchase price applies

---

[Section JP:65]

[1]FIEA Art. 27-2, para. 1.

[2]FIEA Art. 27-2, para. 6.

[3]FIEA Art. 27-2, para. 1, FIEA Enforcement Order Art. 7.

[4]FIEA Art. 27-3; Tender Offer Ordinance Art. 10.

[5]FIEA Art 27-2, para. 4.

[6]FIEA Art. 27-3, paras. 2 and 4; Tender Offer Ordinance Arts. 14.

to each shareholder responding to the tender offer.[7] As a general rule, if the purchaser aims to acquire more than two-thirds of the total issued shares after the tender offer, such purchaser must offer to purchase all shares in the tender offer.[8]

The person making the tender offer must prepare a "tender offer explanatory statement" (*kokai kaitsuke setsumeisho*) in accordance with the Tender Offer Ordinance.[9] The person making the tender offer must deliver the tender offer explanatory statement to the responding shareholders prior to or at the same time as the purchase.[10]

The target company must file with the Prime Minister an "opinion report" regarding the tender offer and send a copy thereof to the person making the tender offer.[11] Such opinion report is made available for public inspection by the Prime Minister. The opinion report may include inquires to the person making the tender offer and a request to extend the tender offer period if the initial period is less than 30 business days. If the opinion report includes such inquiries or request, the person making the tender offer must respond to the inquires within 5 business days or extend the tender offer period to 30 business days.[12]

The person making the tender offer may not purchase the shares of the target company during the tender offer period otherwise than by way of the tender offer, with certain exceptions, the violation of which is subject to the special civil liability.[13]

The person who has made the tender offer is required to make a public notice and file with the Prime Minister the tender offer report on the next day following the last day of the tender offer period, both of which describe the results of the tender offer in accordance with the Tender Offer Ordinance.[14]

Various civil and criminal penalties are provided in the FIEA in relation to tender offers.[15] In addition, an administrative monetary penalty is imposed on the violator.[16]

§ JP:66 Regulation on Insider Trading

The FIEA prohibits the purchase and sale of listed shares (and other equity-related securities) and derivative transactions by certain

---

[7]FIEA Art. 27-2, para. 3; FIEA Enforcement Order Art. 8, para. 3.

[8]FIEA Art. 27-2, para. 5; FIEA Enforcement Order Art. 8, para. 5, item (3).

[9]FIEA Art. 27-9, Tender Offer Ordinance Art. 24.

[10]Tender Offer Ordinance Art. 24, para. 4.

[11]FIEA Art. 27-10; Tender Offer Ordinance Art. 25.

[12]FIEA Art. 27-10, paras. 1, 3 and 11.

[13]FIEA Arts. 27-5 and 27-17; FIEA Enforcement Order art. 12; Tender Officer Ordinance Art. 18.

[14]FIEA Art. 27-13, paras. 1 and 2; Tender Offer Ordinance Arts. 30 and 31.

[15]FIEA Arts. 27-16 through 27-21, 197 and seq.

[16]FIEA Arts. 172-5 and 172-6.

insiders (and tippees) having knowledge of undisclosed material information on the issuer of the relevant listed securities.[1] Similar restrictions are also applicable to transactions relating to OTC registered shares.

The persons subject to the prohibition are: (1) officers, agents, employees of the issuer and its parent corporation and subsidiary corporations (the "issuer, etc."); (2) the holders of 3%[2] or more of the shares of the issuer, etc., and if such shareholder is a corporation, its officers, agents and employees; (3) any person who has a statutory power over the issuer, etc. (such as government officials who have the statutory power to investigate the issuer, etc.); and (4) any person who has entered or negotiates to enter into an agreement with the issuer, etc., and if such person is a corporation, its officers, agents and employees (a "corporate insider").[3] If any of the corporate insiders has come to possess any "material fact" (*juyo jijitsu*) relating to the operation, business or assets of the issuer or its subsidiaries, such person is prohibited from engaging in the purchase, sale or any other disposition or transfer of such securities, or derivative transactions with respect to such securities before such fact is "disclosed to the public".[4] A tippee who receives directly from any corporate insider any material fact and certain related persons belonging to the same entity as a tippee are also subject to the same prohibitions.[5]

The material facts subject to the insider regulations include: (a) the decision by the issuer on important corporate matters (such as issuance of shares, reduction of capital, stock split, dividend of surplus, share exchange/transfer, merger, company split and transfer of business[6]), (b) the occurrence of a material event (such as a natural disaster, change in major shareholders and de-listing[7]), (c) material change in business performance,[8] and (d) any other matter of importance with respect to the business, operation or assets of the issuer that might have a material impact on the investment decision of investors.[9] Certain events with respect to the issuer's subsidiaries are also included in the material facts. In addition, the decision by any person to make a tender offer or acquire more than 5% of the total issued

---

[Section JP:66]

[1]FIEA Arts. 166 and 167.

[2]Unless otherwise specified by the articles of incorporation of the issuer. Company Act Art. 433.

[3]FIEA Art. 166, para. 1.

[4]FIEA Art. 166, para. 1.

[5]FIEA Art. 166, para. 3.

[6]FIEA Art. 166, para. 2, item (1); FIEA Enforcement Order Art. 28.

[7]FIEA Art. 166, para. 2, item (2); FIEA Enforcement Order Art. 29.

[8]FIEA Art. 166, para. 2, item (3).

[9]FIEA Art. 166, para. 2, item (4).

shares or to suspend such activity constitutes a material fact.[10] Exceptional situations not falling within the material facts subject to the insider regulation are prescribed by the FIEA and Cabinet Ordinance.[11]

The insider trading prohibition applies until the relevant material fact is disclosed to the public. The material fact is deemed to be disclosed to the public when: (1) the issuer or its subsidiary has disclosed such information to at least two mass media sources (newspaper publisher, news agency or broadcaster) and 12 hours have passed; (2) a SRS, securities report, quarterly report or extraordinary report, or other similar statutory disclosure documents that contain such information is made for public inspection; or (3) in the case of a tender offer, a tender offer registration statement or tender offer withdrawal statement is made for public inspection or the public notice or announcement concerning commencement or withdrawal of the tender offer is published.[12]

Violation of the insider rule is subject to criminal penalty.[13] In addition, an administrative monetary penalty is imposed on the violator.[14]

§ JP:67 Regulation on Short Swing Transactions

The FIEA requires officers or holders of 10% or more of the shares of a listed corporation (including an issuer of OTC registered securities) to pay to the corporation upon its demand any profit gained by such officers or holders from buying/selling and selling/buying of the securities subject to the insider regulation made during the previous 6 months.[1] If the corporation does not make such demand, any shareholder of the corporation may institute an action on behalf of the corporation for the payment to the corporation of such profit.[2] In order to ensure the compliance with the short swing regulation as set forth above, Article 163 of the FIEA requires officers and holders of 10% or more of the shares of a listed corporation to file a report with the Prime Minister whenever they conduct a purchase or sale of the securities subject to the insider regulation or certain other similar transaction no later than the 15th day of the month following the month during which such transaction was conducted.[3] The Prime Minister, upon recognizing, from the above report, that a profit has been realized, shall send the listed corporation a copy of the report that shows

---

[10]FIEA Art. 167, para. 2; see also FIEA Enforcement Order Art. 31.

[11]FIEA Art. 166, para. 8; Transaction Regulation Ordinance Arts. 48 and seq.

[12]FIEA Art. 166, para. 4 and Art. 167, para. 4.

[13]FIEA Art. 197-2, item (13).

[14]FIEA Art. 175.

[Section JP:67]

[1]FIEA Art. 164, Art. 163.

[2]FIEA Art. 164, para. 2.

[3]FIEA Art. 163.

the profit, after the same copy is sent to the relevant officers or major shareholders and they do not object to the facts included in the report within 20 days.[4]

A similar regulation relating to both returning profits and reporting shall generally apply if such shares exceeding 10% in the aggregate are held as the assets of a partnership or other similar entity.[5]

§ JP:68 Regulation on Manipulation and Other Unfair Acts

Article 157 of the FIEA contains a provision similar to Section 10b of the United States Securities Exchange Act of 1934 and Rule 10b-5 thereunder. Although this provision is considered to be the basic prohibition on unfair dealing and activities in relation to securities, because of the generality of the provision, this provision has never been invoked as the basis of criminal sanction.

Article 158 of the FIEA prohibits the circulation of false rumors or the use of deceptive schemes, etc. in connection with securities or derivative transactions. Violation of this provision is subject to a criminal sanction and administrative monetary penalty.[1]

Article 159 of the FIEA prohibits "market manipulation" in the transactions of the listed securities or derivative transaction related to listed financial products or financial index. The law prohibits the following activities if they are purported to mislead a third party with respect to the situation of the transactions: (1) false sale/purchase of securities or derivative transactions involving no transfer of title, (2) false derivative transactions involving no delivery of cash, (3) transactions in collusion with the counterparty or a third party, and (4) entrustment or accepting entrustment of the foregoing activities. The law also prohibits the following activities if they are purported to induce others to conduct securities dealing or derivative transactions: (5) conducting a series of securities transactions or derivative transactions, or their entrustment that would mislead a third party into believing that there is active dealing in such securities or that cause market fluctuations, (6) circulating a rumor to the effect that the market will fluctuate on its own or due to another party's operation or intentionally making a false or misleading representation in making securities transactions or derivative transactions, and (7) conducting a series of securities transactions or derivative transactions or their entrustment for the purpose of pegging, fixing or stabilizing the market in contravention of the Cabinet Order.[2] Violation of the prohibi-

---

[4]FIEA Art. 163.

[5]FIEA Art. 165-2.

[Section JP:68]

[1]FIEA Art. 197, para.1, item (5), 198-2 and 173.

[2]FIEA Art. 159, paras. 1, 2 and 3.

tion of market manipulation is subject to a criminal sanction, administrative monetary penalty and civil liability.[3]

Short selling of securities in contravention to the provision of the Cabinet Order is also prohibited.[4]

§ JP:69 Stabilization

The FIEA Ordinance provides for the exceptional situation where "stabilization" of the market is permitted.[1] While stabilization transactions are permitted for the purpose of smoothing a Public Offering of Securities or Secondary Distribution of Securities, they must be conducted strictly in accordance with the rules and regulations.[2] The persons who are permitted to engage in stabilization transactions, the period during which such transactions are permitted, the prices at which such transactions may be conducted, and various reporting requirements, are provided in the Cabinet Order and Cabinet Ordinance.[3]

XIII. SECURITIES INVESTMENT TRUST AND INVESTMENT CORPORATION

§ JP:70 Securities Investment Trust

Japanese securities regulations recognize a "securities investment trust" as one of the collective investment vehicles. The Act on Investment Trusts and Investment Corporations (IT & ICA) defines a securities investment trust as a trust created for the purpose of investing the trust assets principally in securities on the direction of the person establishing the trust (the management company), the beneficial interest of which is equally divided and is subscribed by investors.[1] Any creation of a trust under which the assets are invested principally in securities other than securities investment trusts are prohibited.[2]

§ JP:71 Investment Corporation

An investment corporation (*toshi hojin*) is a corporation established

---

[3]FIEA Art. 197, para. 1, item (5), Art. 197, para. 2, Art. 198-2; Art. 174 and 174-2; Art. 160.

[4]FIEA Art 162, FIEA Enforcement Order Arts. 26-2 and 26-3; Transaction Regulation Ordinance.

[Section JP:69]

[1]FIEA Art. 159, para. 3; FIEA Enforcement Order Arts. 20 through 26-5; Transaction Regulation Ordinance.

[2]FIEA Enforcement Order Art. 20.

[3]FIEA Enforcement Order Arts. 20 through 26; Transaction Regulation Ordinance.

[Section JP:70]

[1]lT & ICA Arts. 2, paras 1 and 4.

[2]lT & ICA Art. 7.

under IT & ICA as a vehicle to invest its assets principally in the specified assets including securities and real property.[1] Investment corporations are required to register (*toroku*) with the Prime Minister in order to manage invested assets.[2] Investment corporations issue investment units (*toshiguchi*), each of which has an equal value and is subscribed by investors.[3]

IT & ICA contains various provisions relating to the organization, management, treatment and management of assets of investment corporations. Investment corporations are subject to the supervision of the Prime Minister.[4]

[Section JP:71]

[1]IT & ICA Art. 2, paras 1 and 12.

[2]IT & ICA Art. 187.

[3]IT & ICA Art. 76, Art. 77, para 4 and Arts. 82 through 86.

[4]IT & ICA Arts. 212 through 217.

APPENDIX JP-1

Financial Instruments and Exchange Act

(Act No. 25 of April 13, 1948)

Chapter I: General Provisions

Article 1 (Purpose)

The purpose of this Act is to ensure fairness in the issuance of Securities and other transactions of Financial Instruments, etc. and to facilitate the smooth distribution of Securities by, among other things, streamlining systems for disclosure of corporate affairs and other related matters, providing for the necessary matters relating to operators of Financial Instruments Business and securing appropriate operations of Financial Instruments Exchanges, as well as to facilitate the smooth distribution of Securities and to aim at fair price formation of Financial Instruments, etc. through the full utilization of functions of the capital market, and thereby to contribute to the sound development of the national economy and the protection of investors.

Article 2 (Definitions)

(1) The term "Securities" as used in this Act means the following:

(i) national government bonds;

(ii) municipal bonds;

(iii) bonds issued by a juridical person under a special Act (excluding those set forth in the following item and item (xi));

(iv) specified bond certificates prescribed in the Act on the Securitization of Assets (Act No. 105 of 1998);

(v) company bond certificates (including those issued by a mutual company; hereinafter the same shall apply);

(vi) investment securities issued by a juridical person established under a special Act (excluding those set forth in the following item, item (viii) and item (xi));

(vii) preferred equity investment certificates prescribed in the Act on Preferred Equity Investment by Cooperative-Structured Financial Institution (Act No. 44 of 1993; hereinafter referred to as the "Preferred Equity Investment Act");

(viii) preferred equity investment certificates and securities indicating subscription rights for new preferred equity investments prescribed in the Act on the Securitization of Assets;

(ix) share certificates and share option certificates;

(x) beneficiary certificates of investment trusts or foreign investment trusts prescribed in the Act on Investment Trusts and Investment Corporations (Act No. 198 of 1951);

(xi) investment securities or investment corporation bonds, or foreign investment securities prescribed in the Act on Investment Trusts and Investment Corporations;

(xii) beneficiary certificates of loan trusts;

(xiii) beneficiary certificates of specific purpose trusts prescribed in the Act on the Securitization of Assets;

(xiv) beneficiary certificates of beneficiary certificates issuing trusts prescribed in the Trust Act (Act No. 108 of 2006);

(xv) among the promissory notes issued by a juridical person in order to raise funds necessary to operate its business, what is specified by a cabinet office ordinance;

(xvi) mortgage securities prescribed in the Mortgage Securities Act (Act No. 15 of 1931);

(xvii) securities or certificates that have been issued by a foreign state or foreign person and have the characteristics of securities or certificates set forth in items (i) to (ix) or item (xii) to the preceding item (excluding those set forth in the following item);

(xviii) among the securities or certificates issued by a foreign person that indicate a beneficial right of a trust wherein loan claims held by a banking business operator or any other money lending business operator are entrusted, or that indicate any other similar rights, what is specified by a cabinet office ordinance;

(xix) securities or certificates that indicate rights pertaining to transactions set forth in Article 2, paragraph (21), item (iii) conducted in a Financial Instruments Market, in accordance with such requirements and by using such methods as prescribed by the operator of the Financial Instruments Market, rights pertaining to transactions that are conducted in a Foreign Financial Instruments Market (meaning the "Foreign Financial Instruments Market" as defined in sub-item (b) of item (iii) of paragraph (8) of that Article; hereinafter the same shall apply in this item) and are similar to those specified in item (iii) of paragraph (21) of that Article, or rights pertaining to transactions specified in item (iii) or (iv) paragraph (22) of that Article conducted in neither a Financial Instruments Market nor a Foreign Financial Instruments Market (those rights are hereinafter referred to as "Options");

(xx) securities or certificates issued by a person to whom securities or certificates of the category set forth in any one of the preceding items are deposited and in a state other than the state wherein the deposited securities or certificates were issued, which indicate the rights pertaining to the deposited securities or certificates; and

(xxi) in addition to what is set forth in the preceding items, securities or certificates specified by a cabinet order as those for which it is found, when taking into consideration the liquidity thereof and other circumstances, necessary to secure the public interest or the protection of investors.

(2) Rights to be indicated on Securities of the category set forth in any one of items (i) to (xv) of the preceding paragraph, on Securities of the category set forth in item (xvii) of that paragraph (excluding those which have the characteristics of Securities of the category of the category set forth in item (xvi) of that paragraph) and on Securities of the category set forth in item (xviii) of that paragraph, and rights to be indicated on Securities of the category set forth in item (xvi) of that paragraph, on Securities of the category set forth in item (xvii) of that paragraph (limited to those which have the characteristics of Securities of the category set forth in item (xvi) of that paragraph) and on Securities of the category set forth in any one of items (xix) to (xxi) of that paragraph, which are specified by a cabinet office ordinance (hereinafter collectively referred to as "Rights to Be Indicated on Securities" in this paragraph and the following paragraph) shall, even when Securities indicating those rights have not been issued, be deemed to be Securities and, among Electronically Recorded Monetary Claims (meaning an Electronically Recorded Monetary Claim as defined in Article 2, paragraph (1) of the Electronically Recorded Monetary Claims Act (Act No. 102 of 2007); hereinafter the same shall apply in this paragraph), what is specified by a cabinet order as those for which it is found, when taking into consideration the liquidity thereof and other circumstances, necessary to be deemed to be company bond certificates or other Securities of the category set forth in any one of the items of the preceding paragraph (in item (vii) and the following paragraph, referred to as "Specified Electronically Recorded Monetary Claims") shall be deemed as Securities and the rights set forth in the following items shall, even when they are not indicated on securities or certificates, be deemed as Securities and the provisions of this Act shall apply to all of the aforementioned rights:

(i) beneficial rights of a trust (excluding those to be indicated on beneficiary certificates of investment trusts

specified in item (x) of the preceding paragraph and those to be indicated on Securities of the category set forth in any one of items (xii) to (xiv) of that paragraph);

(ii) rights that are claimable against a foreign person and that have the characteristics of the rights specified in the preceding item (excluding those to be indicated on beneficiary certificates of foreign investment trusts specified in item (x) of the preceding paragraph and those to be indicated on Securities of the category set forth in item (xvii) or (xviii) of the that paragraph);

(iii) membership rights of a general partnership company or limited partnership company (limited to what is specified by a cabinet order) or membership rights of a limited liability company;

(iv) membership rights of a foreign juridical person that have the characteristics of rights specified in the preceding item;

(v) among the rights based on a partnership agreement provided in Article 667, paragraph (1) of the Civil Code (Act No. 89 of 1896), an anonymous partnership agreement provided in Article 535 of the Commercial Code (Act No. 48 of 1899), a investment limited partnership agreement mentioned in Article 3, paragraph (1) of the Act on Investment Limited Partnership Agreements (Act No. 90 of 1998) or a limited liability partnership agreement mentioned in Article 3, paragraph (1) of the Act on Limited Liability Partnership Agreements (Act No. 40 of 2005), membership rights of an incorporated association and other rights (excluding those based on laws and regulations of a foreign state), rights for which the holders thereof (hereinafter referred to as an "Equity Investor" in this item) can receive dividends of profits arising from the business conducted by using money (including what is specified by a cabinet order as being similar to money) invested or contributed by the Equity Investors (the business is hereinafter referred to as the "Investor-Financed Business" in this item) or distribution of the assets of the Investor-Financed Business and that does not fall under any of the categories set forth in the following sub-items (excluding Rights to Be Indicated on Securities set forth in the items of the preceding paragraph and rights deemed to be Securities pursuant to the provisions of this paragraph (excluding this item)):

(a) where all of the Equity Investors participate in the Investor-Financed Business as specified by a cabinet order, the rights of those Equity Investors;

(b) the rights of the relevant Equity Investors with respect to which it is provided that the Equity Investor

will not receive dividends of profits or distribution of the assets of the Investor-Financed Business in an amount exceeding the amount invested or contributed respectively by them (excluding rights set forth in sub-item (a));

(c) rights (excluding the rights set forth in sub-items (a) and (b)) based on an insurance agreement wherein an insurance business operator as defined in Article 2, paragraph (1) of the Insurance Business Act (Act No. 105 of 1995) is the insurer, a mutual aid agreement concluded with a cooperative as prescribed in Article 5 of the Agricultural Cooperatives Act (Act No. 132 of 1947) that operate the business prescribed in Article 10, paragraph (1), item (x) of that Act, a mutual aid agreement concluded with a cooperative as prescribed in Article 4 of the Consumer Cooperatives Act (Act No. 200 of 1948) that operates the mutual aid business as prescribed in Article 10, paragraph (2) of that Act, a mutual aid agreement concluded with a cooperative as prescribed in Article 2 of the Fishery Cooperative Act (Act No. 242 of 1948) that operates the business specified in Article 11, paragraph (1), item (xi), Article 93, paragraph (1), item (vi)-2, or Article 100-2, paragraph (1), item (i) of that Act, a mutual aid agreement concluded with a cooperative as prescribed in Article 3 of the Small and Medium-Sized Enterprise Cooperatives Act (Act No. 181 of 1949) that operates the mutual aid business as prescribed in Article 9-2, paragraph (7) of that Act, or a real estate specified joint enterprise agreement as defined in Article 2, paragraph (3) of the Real Estate Specified Joint Enterprise Act (Act No. 77 of 1994); or

(d) in addition to what is set forth in sub-items (a) to (c), rights specified by a cabinet order as those for which it is found not to hinder the public interest or the protection of Equity Investors even if they are not deemed to be Securities;

(vi) rights based on laws and regulations of a foreign state that are similar to those specified in the preceding item; or

(vii) in addition to Specified Electronically Recorded Monetary Claims and what set forth in the preceding items, rights specified by a cabinet order as those for which it is found, when taking into consideration the fact that they have the economic characteristics similar to Securities provided in the preceding paragraph and rights set forth in the preceding items and other circumstances, necessary and appropriate to secure the public

interest or the protection of investors by deeming them to be Securities.

(3) The term "Public Offering of Securities" as used in this Act means, among solicitations of applications to acquire newly-issued Securities (including what is specified by a cabinet office ordinance as being similar to such a solicitation (in the following paragraph, referred to as an "Act Similar to Solicitation for Acquisition"); hereinafter referred to as a "Solicitation for Acquisition"), a Solicitation for Acquisition as set forth in the following item (i) or (ii) if it is conducted with regard to Securities set forth in paragraph (1) or Rights to Be Indicated on Securities or Specified Electronically Recorded Monetary Claims that are deemed to be Securities pursuant to the provisions of the preceding paragraph (in the following paragraph, paragraphs (4) and (5) of the following Article, and Article 23-13, paragraph (4), such Securities or rights are referred to as "Paragraph (1) Securities"), and a Solicitation for Acquisition as set forth in the following item (iii) if it is conducted with regard to rights that are deemed to be Securities pursuant to the provisions of the preceding paragraph and are set forth in the items of that paragraph (in the following paragraph, paragraphs (4) and (5) of the following Article, and Article 23-13, paragraph (4), such rights are referred to as "Paragraph (2) Securities"), and the term "Private Placement of Securities" means a Solicitation for Acquisition that does not come within the purview of Public Offering of Securities:

(i) a Solicitation for Acquisition made to a large number of persons (excluding, where Qualified Institutional Investors (means persons specified by a cabinet office ordinance as those having expert knowledge of and experience with investment in Securities; hereinafter the same shall apply) are included in the scope of that solicitation, and if the solicited Securities are, as specified by a cabinet order, unlikely to be transferred from the Qualified Institutional Investors who acquired them to any other persons other than Qualified Institutional Investors, the Qualified Institutional Investors) as specified by a cabinet order (excluding those which are made only to Professional Investors);

(ii) in addition to the cases specified in the preceding item, the cases not falling under any one of the following sub-items:

(a) a Solicitation for Acquisition made only to Qualified Institutional Investors, if the solicited Securities are, as specified by a cabinet order, unlikely to be transferred from the acquirers thereof to any other persons other than Qualified Institutional Investors;

(b) a Solicitation for Acquisition made only to Profes-

sional Investors that meets all of the following requirements (excluding the cases falling under subitem (a) of this item):

1. that, where the counterparties to the relevant Solicitation for Acquisition are not the State, the Bank of Japan or Qualified Institutional Investors, the Solicitation for Acquisition shall be made by a Financial Instruments Business Operator, etc. (meaning a Financial Instruments Business Operator, etc. as defined in Article 34; the same shall apply in the following paragraph, Article 4, paragraph (1), item (iv) and paragraph (3) of that Article, Article 27-32-2, and Article 27-34-2) pursuant to entrustment from customers or for the own benefit of that Financial Instruments Business Operator, etc.; and
2. that the solicited Securities shall be, as specified by a cabinet order, unlikely to be transferred from the acquirers thereof to any other persons other than Professional Investors, etc. (meaning a Professional Investor or Non-Resident (meaning a Non-Resident as defined in Article 6, paragraph (1), item (vi) of the Foreign Exchange and Foreign Trade Act (Act No. 228 of 1949) and limited to those specified by a cabinet order); the same shall apply hereinafter);

(c) a Solicitation for Acquisition that does not fall under the categories specified in the preceding item or subitem (a) or (b) of this item (excluding those meeting the requirements specified by a cabinet order taking into consideration the status of the issuance and solicitation of Securities that are of the same type as the solicited Securities or other circumstances), if the solicited Securities are, as specified by a cabinet order, unlikely to be owned by a large number of persons; and

(iii) a Solicitation for Acquisition that, as specified by a cabinet order, will render the Securities pertaining thereto to be owned by a considerably large number of persons who respond to the Solicitation for Acquisition.

(4) The term "Secondary Distribution of Securities" as used in this Act means, among solicitations of applications to sell or purchase already-issued Securities (excluding those fall under the category of the Acts Similar to Solicitation for Acquisition and what is specified by a cabinet office ordinance; hereinafter referred to as a "Solicitation for Selling, etc."), a Solicitation for Selling, etc. as prescribed in item (i) or (ii) if it is conducted with regard to Paragraph (1) Securities, and a Solicitation for Selling, etc. as prescribed in item (iii) if it is

conducted with regard to Paragraph (2) Securities (excluding those pertaining to a sale and purchase of Securities in a Financial Instruments Exchange Market and a transaction equivalent thereto and other transactions of Securities specified by a cabinet order):

(i) a Solicitation for Selling, etc. made to a large number of persons (excluding where Qualified Institutional Investors are included in the scope of that solicitation, and if the solicited Securities are, as specified by a cabinet order, unlikely to be transferred from the Qualified Institutional Investors who acquired them to any other persons other than Qualified Institutional Investors) as specified by a cabinet order (excluding those made only to Professional Investors, the Qualified Institutional Investors);

(ii) in addition to the cases specified in the preceding item, the cases not falling under any one of the following sub-items:

(a) a Solicitation for Selling, etc. made only to Qualified Institutional Investors, if the solicited Securities are, as specified by a cabinet order, unlikely to be transferred from the acquirers thereof to any other persons other than Qualified Institutional Investors;

(b) a Solicitation for Selling, etc. made only to Professional Investors that meets all of the following requirements (excluding the cases falling under sub-item (a) of this item):

1. that, where the counterparties to the relevant Solicitation for Selling, etc. are not the State, the Bank of Japan or Qualified Institutional Investors, the Solicitation for Selling, etc. shall be made by a Financial Instruments Business Operator, etc. pursuant to entrustment from customers or for the own benefit of the Financial Instruments Business Operator, etc.; and
2. that the solicited Securities shall be, as specified by a cabinet order, unlikely to be transferred from the acquirers to any other persons other than Professional Investors, etc.;

(c) a Solicitation for Selling, etc. does not fall under the categories specified in the preceding item or sub-item (a) or (b) of this item (excluding those meeting the requirements specified by a cabinet order taking into consideration the status of the issuance and solicitation of Securities that are of the same type as the solicited Securities or other circumstances), if the solicited Securities are, as specified by a cabinet order, unlikely to be owned by a large number of persons; and

(iii) the cases of a Solicitation for Selling, etc. that, as specified by a cabinet order, will render the Securities pertaining thereto to be owned by a considerably large number of persons who respond to the Solicitation for Selling, etc.

(5) The term "Issuer" as used in this Act means a person who issues, or intends to issue, Securities (or a person specified by a cabinet office ordinance for the Securities specified thereby), and with respect to the rights that are not rights to be indicated on securities or certificates but are deemed to be Securities pursuant to the provisions of paragraph (2), the person as specified for each type of rights by a cabinet office ordinance shall be deemed to be the issuer thereof at the time specified by a cabinet office ordinance.

(6) The term "Underwriter" as used in this Act (excluding Chapter V) means a person who, at the time of a Public Offering, Secondary Distribution, Private Placement of Securities or Solicitation for Selling, etc. Only for Professional Investors (the term "Solicitation for Selling, etc. for Only Professional Investors" means a Solicitation for Selling, etc. pertaining to Paragraph (1) Securities that fall under the category specified in paragraph (4), item (ii), sub-item (b) (excluding those relating to a sale and purchase of Securities in a Financial Instruments Exchange Market and a transaction equivalent thereto and other transactions of Securities specified by a cabinet order); the same shall apply hereinafter), conducts either of the acts set forth in the following items:

(i) acquires all or part of the relevant Securities for the purpose of having other persons acquire them; or

(ii) concludes an agreement, if there is a lack of persons to acquire all or part of the relevant Securities, wherein the Underwriter promises to acquire all of those remaining Securities.

(7) The term "Securities Registration Statement" as used in this Act means the statement referred to in Article 5, paragraph (1) (including where it is applied *mutatis mutandis* under paragraph (5) of that Article; hereinafter the same shall apply) and documents to be attached thereto pursuant to the provisions of paragraph (6) of that Article and an Amendment Report as referred to in Article 7, Article 9, paragraph (1), or Article 10, paragraph (1).

(8) The term "Financial Instruments Business" as used in this Act means to conduct any of the following acts (excluding what is specified by a cabinet order as found not to hinder the protection of investors in consideration of the details of the relevant act and other related factors, and what is set forth in item (xii), (xiv) or (xv) of this paragraph or the items of Article 28, paragraph (8) conducted by a bank, a

Cooperative-Structured Financial Institution as defined in Article 2, paragraph (1) of the Act on Preferred Equity Investment (hereinafter referred to as a "Cooperative-Structured Financial Institution") or other financial institution specified by a cabinet order) in the course of trade:

(i) sale and purchase of Securities (excluding those falling under the category of Derivatives Transactions; hereinafter the same shall apply), Market Transactions of Derivatives or Foreign Market Derivatives Transactions (excluding sale and purchases of Securities falling under the category of acts set forth in item (x));

(ii) intermediation, brokerage (excluding Brokerage for Clearing Securities, etc.) or agency for sale and purchases of Securities, Market Transactions of Derivatives or Foreign Market Derivatives Transactions (excluding intermediation, brokerage or agency for sale and purchases of Securities falling under the category of acts set forth in item (x));

(iii) intermediation, brokerage or agency for entrustment of the following transactions:

  (a) sale and purchases of Securities or Market Transactions of Derivatives conducted in a Financial Instruments Exchange Market; or

  (b) sale and purchases of Securities or Foreign Market Derivatives Transactions conducted in a Foreign Financial Instruments Market (meaning a market in a foreign state similar to a Financial Instruments Exchange Market; hereinafter the same shall apply);

(iv) Over-the-Counter Transactions of Derivatives or intermediation, brokerage (excluding Brokerage for Clearing Securities, etc.) or agency therefor (hereinafter referred to as an "Over-the-Counter Transaction of Derivatives, etc.");

(v) Brokerage for Clearing Securities, etc.;

(vi) Underwriting of Securities (the term "Underwriting of Securities" means acts set forth in any one of the items of paragraph (6) conducted at the time of a Public Offering, Secondary Distribution, Private Placement of Securities, or Solicitation for Selling, etc. Only for Professional Investors);

(vii) Public Offering or Private Placement of Securities (limited to those set forth in the following sub-items):

  (a) among the beneficiary certificates of investment trusts as prescribed in item (x) of paragraph (1), those pertaining to beneficial rights of a trust for investment based on the settlor's instruction as defined in Article 2, paragraph (1) of the Act on Investment Trusts and Investment Corporations;

(b) beneficiary certificates of foreign investment trusts as prescribed in item (x) of paragraph (1);
(c) Securities of the category set forth in item (xvi) of paragraph (1);
(d) among the Securities of the category set forth in item (xvii) of paragraph (1), those having the characteristics of Securities of the category set forth in item (xvi) of that paragraph;
(e) among the rights to be indicated on Securities of the category set forth in sub-item (a) or (b) above, or the rights to be indicated on, among the Securities of the category set forth in sub-item (c) or (d) above, what is specified by a cabinet office ordinance, those deemed to be Securities pursuant to the provisions of paragraph (2);
(f) the rights set forth in item (v) or (vi) of paragraph (2) that are deemed to be Securities pursuant to the provisions of that paragraph; and
(g) in addition to what is set forth in sub-items (a) to (f) above, Securities specified by a cabinet order;

(viii) Secondary Distribution of Securities or Solicitation for Selling, etc. Only for Professional Investors;

(ix) dealing of a Public Offering or Secondary Distribution of Securities or dealing of a Private Placement of Securities or Solicitation for Selling, etc. Only for Professional Investors;

(x) sale and purchase of Securities or intermediation, brokerage or agency therefor that is conducted through an electronic data processing system, by using any one of the price formation methods set forth in the following sub-items or any other method similar thereto, and in which a large number of persons participate simultaneously as the counterparties in the transaction or the transaction is conducted among a large number of persons (excluding what is specified by cabinet orders as being inappropriate to conduct on a market other than a Financial Instruments Exchange Market or an Over-the-Counter Securities Market (meaning an Over-the-Counter Securities Market as defined in Article 67, paragraph (2)) for the protection of investors in light of the type of the dealt Securities):
(a) an auction method (limited to where the trading volume of Securities does not exceed the criteria specified by a cabinet order);
(b) with regard to Securities listed on a Financial Instruments Exchange, a method using the trading prices of the relevant Securities in the Financial Instruments Exchange Market operated by the relevant Financial Instruments Exchange;

(c) with regard to Securities registered pursuant to the provisions of Article 67-11, paragraph (1) (hereinafter referred to as Over-the-Counter Traded Securities), a method using the trading prices of the relevant Securities publicly announced by the Authorized Financial Instruments Firms Association with which the Securities are registered;

(d) a method using the prices decided by negotiation between customers; and

(e) in addition to what is set forth in sub-items (a) to (d) above, any other methods specified by a cabinet office ordinance;

(xi) the conclusion of an agreement wherein one of the parties promises to provide the other party with advice on the matters set forth in the following sub-items, orally, in writing (excluding newspapers, magazines, books or others that are issued to be sold to many and unspecified persons and many and unspecified persons can buy as needed) or otherwise, and the other party promises to pay remuneration therefor (such an agreement is hereinafter referred to as an "Investment Advisory Agreement"), and the provision of advice under the relevant Investment Advisory Agreement:

(a) Values, etc. of Securities (the term "Values, etc. of Securities" means the value of Securities, amount receivable for Securities Related Options (the term "Securities Related Options" means rights pertaining to transactions specified in Article 28, paragraph (8), item (iii), sub-item (c) conducted in a Financial Instruments Market in accordance with such requirements and by using such methods as prescribed by the operator of the Financial Instruments Market, rights pertaining to transactions similar to those specified in sub-item (c) of that item conducted in a Foreign Financial Instruments Market, or rights pertaining to transactions specified in sub-item (c) or (d) of item (iv) of that paragraph conducted in neither a Financial Instruments Market nor a Foreign Financial Instruments Market) or movement of Securities Indicators (the term "Securities Indicators" means prices or interest rates of Securities, or what is specified by a cabinet office ordinance as being equivalent thereto or figures calculated based thereon)); or

(b) Investment Decisions (the term "Investment Decisions" means decisions on types, issue names, amounts or prices of Securities to be invested as well as whether the Securities shall be purchased or sold, by what method and at what timing, or decision on

the details and timing of Derivatives Transactions to be conducted; hereinafter the same shall apply) based on analysis of Values, etc. of Financial Instruments (the term "Value, etc. of Financial Instruments" means the value of Financial Instruments, amount receivable for Options, or movement of Financial Indicators; hereinafter the same shall apply);

(xii) the conclusion of an agreement as set forth in the following sub-items, and investment (including instructions of investment; hereinafter the same shall apply) of money or other properties in Securities or rights pertaining to Derivatives Transactions conducted based on Investment Decisions based on analysis of Values, etc. of Financial Instruments under such an agreement:

(a) an agreement on entrustment of assets investment prescribed in Article 188, paragraph (1), item (iv) of the Act on Investment Trusts and Investment Corporations concluded with a registered investment corporation as defined in Article 2, paragraph (13) of that Act; or

(b) in addition to what is set forth in sub-item (a), an agreement wherein one of the parties is fully or partly entrusted by the other party with the discretion in making Investment Decisions based on analysis of Values, etc. of Financial Instruments and is also entrusted with the authorities necessary for making investment on behalf of the other party based on the Investment Decisions (such an agreement is hereinafter referred to as a "Discretionary Investment Agreement");

(xiii) agency or intermediary for the conclusion of an Investment Advisory Agreement or a Discretionary Investment Agreement;

(xiv) investment of money and other properties contributed by holders of rights indicated on Securities of the category set forth in item (x) of paragraph (1) or other rights specified by a cabinet order, as an investment in Securities or rights pertaining to Derivatives Transactions conducted based on Investment Decisions based on analysis of Values, etc. of Financial Instruments (excluding acts falling under the category specified in item (xii));

(xv) investment of money and other properties invested or contributed by holders of the rights set forth in the following sub-items or other rights specified by a cabinet order, as an investment mainly in Securities or rights pertaining to Derivatives Transactions conducted based on Investment Decisions based on analy-

sis of Values, etc. of Financial Instruments (excluding acts falling under the categories specified in item (xii) and the preceding item):

(a) the rights indicated on Securities of the category set forth in item (xiv) of paragraph (1) or item (xvii) of that paragraph (limited to those having the characteristics of Securities of the category set forth in item (xiv) of that paragraph);

(b) the rights set forth in item (i) or (ii) of paragraph (2); or

(c) the rights set forth in item (v) or (vi) of paragraph (2);

(xvi) acceptance of deposits of money or securities or certificates as set forth in the items of paragraph (1) from the customers in relation to the acts set forth in items (i) to (x) of this paragraph;

(xvii) transfer of company bonds, etc. conducted in response to the opening of an account for transfer of company bonds, etc. as prescribed in Article 2, paragraph (1) of the Act on Book-Entry Transfer of Company Bonds, Shares, etc. (Act No. 75 of 2001); or

(xviii) acts specified by a cabinet order as being similar to those set forth in the preceding items.

(9) The term "Financial Instruments Business Operator" as used in this Act means a person registered by the Prime Minister pursuant to the provisions of Article 29.

(10) The term "Prospectus" as used in this Act means a document that states the business operated by an Issuer of Securities and other mattes and is prepared for a Public Offering or Secondary Distribution of Securities or for a General Solicitation for Securities Acquired by Qualified Institutional Investor as defined in Article 4, paragraph (2) (excluding those falling under the category of Secondary Distribution of Securities) or for a General Solicitation for Securities Acquired by Professional Investors, etc. defined in paragraph (3) of that Article (excluding those falling under the category of Secondary Distribution of Securities), which is delivered, or is to be delivered on request, to the other party.

(11) The term "Financial Instruments Intermediary Business" as used in this Act means a service of conducting any one of the acts set forth in the following items on behalf of, and based on the entrustment from, a Financial Instruments Business Operator (limited to an operator of Type 1 Financial Instruments Business as defined in Article 28, paragraph (1) or Investment Management Business as defined in paragraph (4) of that Article) or a Registered Financial Institution (the term "Registered Financial Institution" means a bank, Cooperative-Structured Financial Institution or other financial institution specified by a cabinet order that is

registered under Article 33-2; the same shall apply hereinafter) (excluding the act specified in the following item (iv) conducted by an operator of Investment Management Business as defined in Article 28, paragraph (4)):

(i) intermediation for sales and purchases of Securities (excluding those set froth in item (x) of paragraph (8));

(ii) intermediation as prescribed in item (iii) of paragraph (8);

(iii) the act set forth in item (ix) of paragraph (8); or

(iv) intermediation as prescribed in item (xiii) of paragraph (8).

(12) The term "Financial Instruments Intermediary" as used in this Act means a person who has been granted registration by the Prime Minister pursuant to the provisions of Article 66.

(13) The term "Authorized Financial Instruments Firms Association" as used in this Act means a person established under Subsection 1 of Section 1 of Chapter IV.

(14) The term "Financial Instruments Market" as used in this Act means a market in which sales and purchases of Securities or Market Transactions of Derivatives are conducted.

(15) The term "Financial Instruments Membership Corporation" as used in this Act means a membership association established under Subsection 1 of Section 2 of Chapter V for the purpose of establishing a Financial Instruments Market.

(16) The term "Financial Instruments Exchange" as used in this Act means a Financial Instruments Membership Corporation or a stock company that has established a Financial Instruments Market with license granted by the Prime Minister pursuant to the provisions of Article 80, paragraph (1).

(17) The term "Financial Instruments Exchange Market" as used in this Act means a Financial Instruments Market established by a Financial Instruments Exchange.

(18) The term "Financial Instruments Exchange Holding Company" as used in this Act means a stock company that has a stock company establishing a Financial Instruments Exchange Market (hereinafter referred to as a "Stock Company-Type Financial Instruments Exchange") as its Subsidiary Company (meaning a Subsidiary Company as defined in Article 87-3, paragraph (3)) and that has been established under the authorization by the Prime Minister pursuant to the provisions of Article 106-10, paragraph (1) or has been granted the authorization by the Prime Minister under that paragraph or the proviso clause of paragraph (3) of that Article.

(19) The term "Trading Participant" as used in this Act means a person who is allowed to participate in sales and purchases of Securities or Market Transactions of Derivatives in a

Financial Instruments Exchange Market based on the qualifications for trading granted pursuant to the provisions of Article 112, paragraph (1) or Article 113, paragraph (1).

(20) The term "Derivatives Transaction" as used in this Act means a Market Transaction of Derivatives, Over-the-Counter Transaction of Derivatives or Foreign Market Derivatives Transaction.

(21) The term "Market Transaction of Derivatives" as used in this Act means any one of the transactions set forth in the following items conducted in a Financial Instruments Market, in accordance with such requirements and by using such methods as prescribed by the operator of the Financial Instruments Market:

(i) transactions wherein the parties thereto promise to deliver or receive Financial Instruments or consideration therefor at a fixed time in the future, and, when a resale or repurchase of the underlying Financial Instruments are made, settlement thereof may be made by paying or receiving the difference;

(ii) transactions wherein the parties thereto promise to pay or receive the amount of money calculated based on the difference between the figure of a Financial Indicator to which the parties agree in advance (hereinafter referred to as the "Agreed Figure") and the actual figure of the Financial Indicator at a fixed time in the future (hereinafter referred to as the "Actual Figure");

(iii) transactions wherein one of the parties grants the other party the right to effect, by unilateral manifestation, a transaction set forth in the following sub-items between the parties, and the other party promises to pay the consideration therefor:

(a) sale and purchase of Financial Instruments (excluding those set forth in item (i)); or

(b) any one of the transactions set forth in the preceding two items or the following item to item (vi) (including transactions equivalent to those set forth in the preceding item (iii), as designated by the relevant Financial Instruments Exchange);

(iv) transactions wherein the parties mutually promise that, using the amount the parties have agreed to as the principal, one of the parties will pay the amount of money calculated based on the rate of change in the agreed period of the Interest Rate, etc. (meaning an interest rate or what is specified by a cabinet office ordinance as being equivalent thereto; the same shall apply hereinafter) of the Financial Instruments (excluding those set forth in Article 2, paragraph (24), item (iii)) or of the Financial Indicators (excluding Interest Rates, etc. of Financial Instruments (excluding those

set forth in that item) and figures calculated based thereon; hereinafter the same shall apply in this item and item (v) of the following paragraph) agreed upon between the parties, and the other party will pay the amount of money calculated based on the rate of change in the agreed period of the Interest Rates, etc. of the Financial Instruments (excluding those set forth in Article 2, paragraph (24), item (iii)) or of the Financial Indicators agreed upon between the parties (including transactions wherein the parties promise that, in addition to the payment of the amounts, they will also pay, deliver or receive the amount of money or financial instrument that amounts to the agreed principal);

(v) transactions wherein one of the parties pays money, and the other party, as the consideration therefor, promises to pay money where a cause agreed upon between the parties in advance and set forth in the following items occurs (including those wherein one of the parties promises to transfer Financial Instruments, a right pertaining to Financial Instruments or monetary claim (excluding claims that are Financial Instruments or rights pertaining to Financial Instruments), but excluding those set forth in the preceding three items):

(a) a cause pertaining to the credit status of a juridical person or what is specified by a cabinet order as being similar thereto; or

(b) a cause that it is impossible or extremely difficult for either party to exert that party's influence on the occurrence of and that may have serious influence on business activities of the parties or other business operators as specified by a cabinet order (excluding those set forth in sub-item (a)); and

(vi) transactions similar to those set forth in the preceding items and specified by a cabinet order.

(22) The term "Over-the-Counter Transaction of Derivatives" as used in this Act means any one of the following transactions that are conducted in neither a Financial Instruments Market nor a Foreign Financial Instruments Market (excluding what is specified by a cabinet order as not impairing the public interest or the protection of investors when taking into account their respective details and other related factors):

(i) a sale and purchase transaction wherein the parties promise to deliver and receive Financial Instruments (excluding those set forth in Article 2, paragraph (24), item (v); hereinafter the same shall apply in this paragraph) and the consideration therefor at a fixed point in time in the future, and which may be settled by delivery and receipt of the difference if a resale or repurchase of the underlying Financial Instruments or any other act specified by a cabinet order is made;

(ii) a transaction wherein the parties promise to pay and receive the amount of money calculated based on the difference between the Agreed Figure and the Actual Figure or any other similar transaction;

(iii) a transaction wherein one of the parties grants the other party the right to effect, by unilateral manifestation of intention, a transaction set forth in either of the following items between the parties, and the other party promises to pay the consideration therefor or any other similar transaction:

(a) sale and purchase of Financial Instruments (excluding those set forth in item (i)); or

(b) any transaction set forth in any one of the preceding two items or items (v) to (vii);

(iv) a transaction wherein one of the parties grants the other party the right to effect, by unilateral manifestation of intention, a transaction wherein the parties promise to pay and receive the amount of money calculated based on the difference between a figure on which the parties agree as the Financial Indicator to be used when that manifestation is made and the actual figure of the Financial Indicator at the time of that manifestation, and the other party promises to pay the consideration therefor, or any other similar transaction;

(v) a transaction wherein the parties mutually promise that, using the amount agreed upon by the parties as the principal, one of the parties will pay the amount of money calculated based on the rate of change during the agreed period of such Interest Rate, etc. of Financial Instruments (excluding those set forth in Article 2, paragraph (24), item (iii)) or of such Financial Indicator as agreed upon with the other party, and the other party will pay the amount of money calculated based on the rate of change during the agreed period of such Interest Rate, etc. of Financial Instruments (excluding those set forth in that item) or of such Financial Indicator as agreed upon with the former party (including transactions wherein the parties promise that, in addition to the payment of such amounts, they will also pay, deliver and receive the amount of money or Financial Instruments that amounts to the agreed principal), or any other similar transaction;

(vi) a transaction wherein one of the parties pays money, and the other party, as the consideration therefor, promises to pay money when a cause agreed upon by the parties in advance and set forth in either of the following items occurs (including those wherein one of the parties promises to transfer Financial Instruments, rights pertaining to Financial Instruments or monetary

claims (excluding claims that are Financial Instruments or rights pertaining to Financial Instruments) when the relevant cause occurs, but excluding those set forth in item (ii) to the preceding item), or any other similar transaction:

(a) a cause pertaining to the credit status of a juridical person or what is specified by a cabinet order as being similar thereto; or

(b) a cause with respect to which it is impossible or extremely difficult for either party to exert his/her influence on the occurrence thereof and which may have serious influence on business activities of the parties or other business operators as specified by a cabinet order (excluding those set forth in sub-item (a)); or

(vii) in addition to what is set forth in the preceding items, a transaction having economic characteristics similar to any one of those transactions and is specified by a cabinet order as found necessary to secure the public interest or the protection of investors.

(23) The term "Foreign Market Derivatives Transaction" as used in this Act means a transaction that is conducted in a Foreign Financial Instruments Market and is similar to a Market Transaction of Derivatives.

(24) The term "Financial Instrument" as used in this Act means the following:

(i) Securities;

(ii) a claim based on a deposit agreement or any other right, or security instrument or certificate indicating such a claim or right as specified by a cabinet order (excluding those falling under the category set forth in the preceding item);

(iii) a currency;

(iv) in addition to what is set forth in the preceding three items, an asset for which there are many of the same type, which have substantial price volatility, and which is specified by a cabinet order as found necessary to secure the protection of investors with regard to Derivatives Transactions (including any other similar transactions) pertaining thereto (excluding the commodities as defined in Article 2, paragraph (4) of the Commodity Exchange Act (Act No. 239 of 1950)); and

(v) a standardized instrument created by a Financial Instruments Exchange for the purpose of facilitating Market Transactions of Derivatives by standardizing the interest rate, maturity period and other conditions, among the Financial Instruments of the category set forth in item (i), item (ii), or the preceding item, as specified by a cabinet office ordinance.

(25) The term "Financial Indicator" as used in this Act means the following:
  (i) prices of a Financial Instrument or Interest Rates, etc. of a Financial Instrument (excluding those of the category set forth in item (iii) of the preceding paragraph);
  (ii) figures pertaining to the results of meteorological observations published by the Meteorological Agency or others;
  (iii) an indicator with respect to which it is impossible or extremely difficult for any person to exert his/her influence on the fluctuation therein and which may have serious influence on business activities of business operators (excluding those set forth in the preceding item) or statistical figures pertaining to social or economic conditions, which shall be specified by a cabinet order as found necessary to secure the protection of investors with regard to Derivatives Transactions (or other similar transactions) pertaining thereto (excluding commodity indices as defined by Article 2, paragraph (5) of the Commodity Exchange Act); and
  (iv) figures calculated based on those set forth in the preceding three items.

(26) The term "Foreign Financial Instruments Exchange" as used in this Act means a grantee of the authorization by the Prime Minister under Article 155, paragraph (1).

(27) The term "Brokerage for Clearing Securities, etc." as used in this Act means a Subject Transaction (meaning a "Subject Transaction" as defined in the following paragraph; hereinafter the same shall apply in this paragraph) that is conducted by a Financial Instruments Business Operator or Registered Financial Institution under the entrustment by, and for the account of, a customer in accordance with the business rules of a Financial Instruments Clearing Organization, on the condition that the obligation arising from the Subject Transaction will be assumed by the Financial Instruments Clearing Organization, and meets the requirement set forth in either of the following items:
  (i) that the Subject Transaction shall be effected by the relevant customer on behalf of the relevant Financial Instruments Business Operator or Registered Financial Institution; or
  (ii) that the relevant customer shall identify the other party in the Subject Transaction and other matters specified by a cabinet office ordinance in advance at the time of the entrustment.

(28) The term "Financial Instruments Debt Assumption Function" as used in this Act means to assume debts based on a Subject Transaction (meaning a sale and purchase of Securities or Derivatives Transaction (excluding transactions specified by

a cabinet order as found not to impair the public interest or the protection of investors when taking into account the influence on the conditions of transaction and capital market of our State, and other related factors) or transactions specified by a cabinet order as those being incidental or related thereto) conducted by a Financial Instruments Business Operator, Registered Financial Institution or Securities Finance Company (hereinafter referred to as a "Business Operator Covered by Financial Instruments Debt Assumption Function" in this paragraph), in the course of trade, the counterparties of which are Business Operators Covered by Financial Instruments Debt Assumption Function.

(29) The term "Financial Instruments Clearing Organization" as used in this Act means a grantee of the license or approval of the Prime Minister pursuant to the provisions of Article 156-2 or Article 156-19, paragraph (1).

(30) The term "Securities Finance Company" as used in this Act means a grantee of the license of the Prime Minister pursuant to the provisions of Article 156-24.

(31) The term "Professional Investor" as used in this Act means the following:

(i) a Qualified Institutional Investor;

(ii) the State;

(iii) the Bank of Japan; and

(iv) in addition to what is set forth in the preceding three items, an Investor Protection Fund as prescribed in Article 79-21 and other juridical persons specified by a cabinet office ordinance.

(32) The term "Specified Financial Instruments Exchange Market" as used in this Act means a Financial Instruments Exchange Market in which Purchases for General Investors, etc. as defined in Article 117-2, paragraph (1) are prohibited pursuant to the provision of that paragraph.

(33) The term "Specified Listed Securities" as used in this Act means Securities listed only on a Specified Financial Instruments Exchange Market.

(34) The term "Credit Rating" as used in this Act means, with respect to the result of assessment of the credit status (hereinafter referred to as a "Credit Assessment" in this paragraph) of a Financial Instrument or juridical person (including what is specified by a cabinet office ordinance as being similar to a juridical person), a grade (excluding what is specified by a cabinet office ordinance as grades prescribed mainly taking into account factors other than a Credit Assessment) indicated by using a mark or figure (including those specified by a cabinet office ordinance as being similar to marks or figures).

(35) The term "Credit Rating Service" as used in this Act means to grant, provide, and make available for inspection Credit

Ratings (excluding what is specified by a cabinet office ordinance as found to be unlikely to impair the protection of investors when taking into account the scope of the counterparties to the acts and other manner of the acts) in the course of trade.

(36) The term "Credit Rating Service Provider" as used in this Act means a grantee of the registration granted by the Prime Minister pursuant to the provisions of Article 66-27.

(37) The term "Financial Instruments Exchange Establishing Commodities Market" as used in this Act means a Stock Company-Type Financial Instruments Exchange that establishes the necessary market to conduct Commodity Futures Transactions (meaning a Commodity Futures Transaction as defined in Article 2, paragraph (3) of the Commodity Futures Transactions Act; hereinafter the same shall apply) with the grant of the authorization under the proviso clause of Article 87-2, paragraph (1).

(38) The term "Commodities Exchange" as used in this Act means a Membership-Type Commodities Exchange (meaning a Membership-Type Commodities Exchange as defined in Article 2, paragraph (5) of the Commodity Futures Transactions Act) and a Stock Company-Type Commodities Exchange (meaning a Stock Company-Type Commodities Exchange as defined in paragraph (6) of that Article and limited to those specified by a cabinet order as being regulated at the same level as a Stock Company-Type Financial Instruments Exchange).

(39) The term "Commodities Exchange Holding Company" as used in this Act means a Commodities Exchange Holding Company as defined in Article 2, paragraph (11) of the Commodity Futures Transactions Act (limited to those specified by a cabinet order as being regulated at the same level as a Financial Instruments Exchange Holding Company).

Chapter II: Disclosure of Corporate Affairs, etc.

Article 2-2 (Reorganization, etc.)

(1) The term "Reorganization" as used in this Chapter means a merger, company split, share exchange or other acts with regard to the organization of a company as specified by a cabinet order.

(2) The term "Securities Issuance Procedure for Reorganization" as used in this Chapter means, where Securities are newly issued due to a Reorganization (including the cases specified by a cabinet office ordinance as being similar thereto (in the following paragraph, referred to as a "Case Similar to Securities Issuance Procedure for Reorganization")), the Keeping of Documents, etc. (meaning the keeping of documents or Electromag-

netic Records pursuant to the provision of Article 782, paragraph (1) of the Companies Act (Act No. 86 of 2005) or the keeping of documents or Electromagnetic Records pursuant to the provisions of Article 803, paragraph (1) of that Act; in the following paragraph, the same shall apply) pertaining to the Reorganization and other acts specified by a cabinet order.

(3) The term "Securities Delivery Procedure for Reorganization" as used in this Chapter means, where the Securities already issued are delivered due to a Reorganization (excluding the cases falling under the category of Case Similar to Securities Issuance Procedure for Reorganization), the keeping of documents, etc. pertaining to the Reorganization and other acts specified by a cabinet order.

(4) The term "Specified Securities Issuance Procedure for Reorganization" as used in this Chapter means, among the Securities Issuance Procedures for Reorganization, the cases set forth in either of item (i) or item (ii) below if the relevant Securities Issuance Procedure for Reorganization pertains to Paragraph (1) Securities, or the cases set forth in item (iii) if the relevant Securities Issuance Procedure for Reorganization pertains to Paragraph (2) Securities:

(i) the cases specified by a cabinet order as where there are many owners of shares certificates (including share option certificates and other Securities specified by a cabinet order) the Issuer of which is a company that, through a Reorganization, becomes a Company Absorbed in Absorption-Type Merger (meaning a Company Absorbed in Absorption-Type Merger as defined in Article 749, paragraph (1), item (i) of the Companies Act) or a Wholly Owned Subsidiary Company in Share Exchange (meaning a Wholly Owned Subsidiary Company in Share Exchange as defined in Article 768, paragraph (1), item (i) of said Act), or any other type of company specified by a cabinet order (in Article 4, paragraph (1), item (ii), sub-item (a), referred to as the "Reorganized Company") (hereinafter such owners are referred to as "Shareholders, etc. of the Reorganized Company") (excluding where the Shareholders, etc. of the Reorganized Company consist exclusively of Qualified Institutional Investors);

(ii) in addition to what is set forth in the preceding item, the cases not falling under either of the following subitems:

(a) where the Shareholders, etc. of the Reorganized Company consist exclusively of Qualified Institutional Investors, and if, as specified by a cabinet order, it is unlikely that Securities pertaining to the relevant Securities Issuance Procedure for Reorganization will be transferred from any person who has acquired

them to any other person who is not a Qualified Institutional Investor; or

(b) in the cases other than as set forth in the preceding item or sub-item (a) above (excluding where the requirements specified by a cabinet order are met when taking into account the situation, etc. of the issuance and delivery of the Securities of the same type as those pertaining to the relevant Securities Issuance Procedure for Reorganization), and if, as specified by a cabinet order, it is unlikely that Securities pertaining to the Securities Issuance Procedure for Reorganization will be owned by many persons; or

(iii) the cases specified by a cabinet order as where there are substantially many Shareholders, etc. of the Reorganized Company.

(5) The term "Specified Securities Delivery Procedure for Reorganization" as used in this Chapter means, among the Securities Delivery Procedures for Reorganization, the cases set forth in item (i) or (ii) if the relevant Securities Delivery Procedure for Reorganization pertains to Paragraph (1) Securities or the cases set forth in item (iii) if the relevant Securities Delivery Procedure for Reorganization pertains to Paragraph (2) Securities:

(i) the cases specified by a cabinet order as where there are many Shareholders, etc. of the Reorganized Company (excluding where the Shareholders, etc. of the Reorganized Company consist exclusively of Qualified Institutional Investors); and

(ii) in addition to what is set forth in the preceding item, the cases not falling under either of the following sub-items:

(a) where the Shareholders, etc. of the Reorganized Company consist exclusively of Qualified Institutional Investors, and if, as specified by a cabinet order, it is unlikely that Securities pertaining to the relevant Securities Delivery Procedure for Reorganization will be transferred by any person who has acquired them to any other person who is not a Qualified Institutional Investor; or

(b) in the cases other than as set forth in the preceding item or sub-item (a) above (excluding where the requirements specified by a cabinet order are met when taking into account the situation, etc. of the issuance and delivery of the Securities of the same types as those pertaining to the relevant Securities Delivery Procedure for Reorganization), and if, as specified by a cabinet order, it is unlikely that Securities pertaining to the Securities Delivery Procedure

for Reorganization will be owned by many persons; or

(iii) the cases specified by a cabinet order as where there are substantially many Shareholders, etc. of the Reorganized Company.

Article 3 (Exempted Securities)

The provisions of this Chapter shall not apply to the following Securities:

(i) Securities of the categories set forth in Article 2, paragraph (1), items (i) and (ii);

(ii) Securities of the categories set forth in Article 2, paragraph (1), items (iii), (vi) and (xii) (excluding those specified by a cabinet order as Securities for which disclosure of corporate affairs and other related matters is necessary and appropriate for the public interest or the protection of investors);

(iii) rights set forth in the items of paragraph (2) of Article 2 as those deemed to be Securities pursuant to the provisions of that paragraph (excluding the rights set forth in the following sub-items (in Article 24, paragraph (1), referred to as "Rights in Securities Investment Business, etc."):

(a) among the rights set forth in Article 2, paragraph (2), item (v), those specified by a cabinet order as a right to Investor-Financed Business (meaning Investor-Financed Business as defined by that item) as mainly making investments in Securities;

(b) among the rights set forth in Article 2, paragraph (2), items (i) to (iv), (vi) or (vii), those specified by a cabinet order as being similar to the rights set forth in sub-item (a) above; and

(c) other rights specified by a cabinet order;

(iv) company bond certificates for which the government guarantees the redemption of principal or the payment of interests; and

(v) among Securities other than the Securities of the categories set forth in the above items, those specified by a cabinet order.

Article 4 (Notification of Public Offering or Secondary Distribution)

(1) A Public Offering of Securities (including a Specified Securities Issuance Procedure for Reorganization; hereinafter the same shall apply in this Chapter and the following Chapter, except in Article 13 and Article 15, paragraphs (2) to (6)) or Secondary Distribution of Securities (excluding those falling under the category of General Solicitation for Securities Acquired by Qualified Institutional Investors as defined in the following paragraph and General Solicitation for Securities Acquired by Professional Investors, etc. as defined in para-

graph (3), but including a Specified Securities Delivery Procedure for Reorganization; hereinafter the same shall apply in this paragraph) may not be made unless the Issuer thereof has made a notification of Public Offering or Secondary Distribution of the relevant Securities to the Prime Minister. However, this shall not apply to the cases that fall under any one of the following items:

(i) a Public Offering or Secondary Distribution of Securities wherein the counterparties have already obtained or can easily obtain information on the matters set forth in the items of paragraph (1) of the following Article pertaining to the relevant Securities, as specified by a cabinet order;

(ii) a Public Offering or Secondary Distribution of Securities where any of the Securities Issuance Procedures for Reorganization or Securities Delivery Procedures for Reorganization having been conducted relating thereto fall under either of the following cases (excluding those set forth in the preceding item):

(a) the cases not falling under the Case Where Disclosure Has Been Made with regard to share certificates (including share option certificates and other Securities specified by a cabinet order) the Issuer of which is the Reorganized Company; or

(b) the Cases Where Disclosure Has Been Made with regard to the Securities newly issued with respect to the Securities Issuance Procedure for Reorganization or the issued and existing Securities with respect to the Securities Delivery Procedure for Reorganization;

(iii) a Secondary Distribution of Securities in the Case Where Disclosure Has Been Made with regard to the Securities (excluding those Secondary Distributions set forth in the preceding two items);

(iv) among the Secondary Distributions (limited to those conducted by a Financial Instruments Business Operator, etc.) of Securities already issued in a foreign state or other Securities specified by a cabinet order as being equivalent thereto, those satisfying the requirement that information regarding the sale prices of the relevant Securities in Japan can be easily obtained and other requirements specified by a cabinet order (excluding those Secondary Distributions specified in the preceding three items); or

(v) a Public Offering or Secondary Distribution of Securities of which the total issue price or total distribution price is less than 100 million yen and that is specified by a cabinet office ordinance (excluding those Public Offerings or Secondary Distributions specified in the preceding items).

(2) With regard to Securities for which a Solicitation for Newly Issued Securities, etc. (meaning a Solicitation for Acquisition and a Securities Issuance Procedure for Reorganization; hereinafter the same shall apply) or a Solicitation for Delivery of Existing Securities, etc. (meaning a Solicitation for Selling, etc. and a Securities Delivery Procedure for Reorganization; hereinafter the same shall apply) fell under any one of the categories set forth in the following items (in the cases falling under the category set forth in item (ii) below, limited to Securities acquired by Qualified Institutional Investors excluded pursuant to the provision of Article 2, paragraph (3), item (i) from the scope of large number of persons, and in the cases falling under the category set forth in item (iv) below, limited to Securities acquired by Qualified Institutional Investors excluded pursuant to the provision of Article 2, paragraph (4), item (i) from the scope of large number of persons), a Solicitation for Delivery of Existing Securities, etc. conducted by a Qualified Institutional Investor to persons other than Qualified Institutional Investors (hereinafter referred to as a "General Solicitation for Securities Acquired by Qualified Institutional Investor") may not be made unless the Issuer of the relevant Securities has made a notification of the General Solicitation for Securities Acquired by Qualified Institutional Investor to the Prime Minister; however, this shall not apply in the Cases Where Disclosure Has Been Made with regard to the Securities and the cases satisfying the requirement that the General Solicitation for Securities Acquired by Qualified Institutional Investor is to be made for a compelling reason as specified by a cabinet office ordinance or any other requirements specified by a cabinet office ordinance:

(i) the category of cases set forth in Article 2, paragraph (3), item (ii), sub-item (a);

(ii) the category of cases set forth in Article 2, paragraph (3), item (ii), sub-item (c) (limited to where the solicitation no longer falls under the category set forth in item (i) of that paragraph by excluding Qualified Institutional Investors from the scope of large number of persons pursuant to the provision of that item);

(iii) the category of cases set forth in Article 2, paragraph (4), item (ii), sub-item (a);

(iv) the category of cases set forth in Article 2, paragraph (4), item (ii), sub-item (c) (limited to where the solicitation no longer falls under the category set forth in item (i) of that paragraph by excluding Qualified Institutional Investors from the scope of large number of persons pursuant to the provision of that item);

(v) the category of cases set forth in Article 2-2, paragraph (4), item (ii), sub-item (a); or

(vi) the category of cases set forth in Article 2-2, paragraph (5), item (ii), sub-item (a).

(3) A Solicitation for Delivery of Existing Securities, etc. of Securities falling under any one of the following items (excluding Securities falling under any one of the items of Article 24, paragraph (1) and Securities specified by a cabinet order as those unlikely to be owned by a large number of Professional Investors; hereinafter referred to as "Securities Only for Professional Investors"), other than that made to Professional Investors, etc. through entrustment to a Financial Instruments Business Operator, etc., (excluding those solicitations made to the State, Bank of Japan, and Qualified Institutional Investors and other solicitations specified by a cabinet order; hereinafter referred to as a "General Solicitation for Securities Acquired by Professional Investors, etc."), shall not be made unless the Issuer of the relevant Securities has made a notification of the General Solicitation for Securities Acquired by Professional Investors, etc. to the Prime Minister; however, this shall not apply to the Cases Where Disclosure Has Been Made with regard to the Securities and the category of cases specified by a cabinet office ordinance as not impairing the public interest or the protection of investors without a notification of the General Solicitation for Securities Acquired by Professional Investors, etc.:

(i) Securities of which the Solicitation for Acquisition fell under the category of cases set forth in Article 2, paragraph (3), item (ii), sub-item (b) (hereinafter such a solicitation is referred to as a "Solicitation for Acquisition Only for Professional Investors");

(ii) Securities of which the Solicitation for Selling, etc was a Solicitation for Selling, etc. Only for Professional Investors;

(iii) Securities issued by an Issuer who issues Securities that fall under either of the preceding two items and are specified by a cabinet office ordinance as being of the same type as Securities falling under either of the preceding two items; or

(iv) Specified Listed Securities and Securities specified by a cabinet order as those of which the state of distribution is equivalent thereto.

(4) Where a Public Offering or Secondary Distribution of Securities (including a General Solicitation for Securities Acquired by Qualified Institutional Investor (excluding that falling under the category of Secondary Distribution of Securities), General Solicitation for Securities Acquired by Professional Investors, etc. (excluding that falling under the category of Secondary Distribution of Securities), and Specified Securities Delivery Procedure for Reorganization; hereinafter the same shall apply in this Chapter and the following Chapter, except in the following paragraph and paragraph (6) of this Article, Article 13, and paragraphs (2) to (6) of Article 15) is made to

shareholders (including preferred equity investors mentioned in the Preferred Equity Investment Act) who are stated or recorded in the shareholder registry (including the preferred equity investor registry mentioned in the Preferred Equity Investment Act) on a certain date, the notification of the Public Offering or Secondary Distribution pursuant to the provisions of the preceding three paragraphs shall be made twenty five days prior to the day on which the Public Offering or Secondary Distribution is to be made. However, this shall not apply in the cases specified by a cabinet office ordinance by taking into consideration the issue price or distribution price of the Securities and other factors.

(5) Any material used for, among the Public Offerings or Secondary Distributions of Securities of the category set forth in item (v) of paragraph (1), or the General Solicitations for Securities Acquired by Qualified Institutional Investor excluded from the application of the main clause of paragraph (2) by the proviso clause of that paragraph or General Solicitations for Securities Acquired by Professional Investors, etc. excluded from the application of the main clause of paragraph (3) by the proviso clause of that paragraph, that which falls under the category of Secondary Distribution of Securities or that which does not fall under the category of Secondary Distribution of Securities and does not fall under the Case Where Disclosure Has Been Made (hereinafter referred to as the "Specified Public Offering" in this paragraph and the following paragraph), or used for having Securities pertaining to a Specified Public Offering to be acquired or for selling such Securities, should indicate to the effect that the main clause of paragraph (1), the main clause of paragraph (2), or the main clause of paragraph (3) does not apply to the Specified Public Offering.

(6) Where a Specified Public Offering or Secondary Distributions of Securities of the category set forth in item (iii) of paragraph (1) (hereinafter referred to as "Specified Public Offering, etc." in this paragraph) is made, the Issuer of the Securities pertaining to the Specified Public Offering, etc. shall, pursuant to the provisions of a cabinet office ordinance, submit a written notice of the Specified Public Offering, etc. to the Prime Minister by the day preceding the day on which the Specified Public Offering, etc. is to begin. However, this shall not apply to any Secondary Distribution of Securities of the category set forth in paragraph (4) in the Case Where Disclosure Has Been Made if the total distribution price is less than 100 million yen, any Secondary Distribution of Securities of the category set forth in item (iii) of paragraph (1) if made by persons other than the Issuer of the Securities or other persons specified by a cabinet office ordinance, or any Public Offering or Secondary Distribution of Securities of the category set forth in item (v) of paragraph (1) if the total issue price or total distribution price is less than the amount specified by a cabinet office ordinance.

(7) The term "the Case Where Disclosure Has Been Made" as used in sub-items (a) and (b) of item (ii) and item (iii) of paragraph (1), in paragraph (2), paragraph (3) and the preceding two paragraphs means the following cases:

(i) where a notification made pursuant to the provisions of paragraph (1) has come into effect with regard to the Public Offering or Secondary Distribution (excluding that falling under the category of General Solicitation for Securities Acquired by Qualified Institutional Investor or General Solicitations for Securities Acquired by Professional Investors, etc.) already made for the relevant Securities, a notification made pursuant to the provisions of paragraph (2) has come into effect with regard to the General Solicitation for Securities Acquired by Qualified Institutional Investor already made for the relevant Securities, or a notification made pursuant to the provisions of paragraph (3) has come into effect with regard to the General Solicitation for Securities Acquired by Professional Investors, etc. already made for the relevant Securities (excluding where the proviso clause of Article 24, paragraph (1) (including where it is applied *mutatis mutandis* under paragraph (5) of that Article or where these provisions are applied *mutatis mutandis* under Article 27) applies to the Issuer of the Securities); or

(ii) the cases specified by a cabinet office ordinance as being equivalent to the category of cases set forth in the preceding item.

Article 5 (Submission of Securities Registration Statement)

(1) An Issuer of Securities who intends to make a notification for a Public Offering or Secondary Distribution of Securities (excluding a Public Offering or Secondary Distribution of Securities to be made with regard to Specified Securities (meaning Securities specified by a cabinet order as those for which information that will have material influence on investors' Investment Decisions is information on the management of assets or other similar business functions conducted by the Issuer thereof; hereinafter the same shall apply in this paragraph and paragraph (5) of this Article and Article 24); hereinafter the same shall apply in this paragraph and the following paragraph) pursuant to the provisions of paragraphs (1) to (3) of the preceding Article shall submit a statement containing descriptions on the matters set forth in the following items to the Prime Minister pursuant to the provisions of a cabinet office ordinance if the Issuer is a company (including a foreign company; hereinafter the same shall apply, except in Article 50-2, paragraph (9), Article 66-40, paragraph (5), and Article 156-3, paragraph (2), item (iii)) (including where the company

is to be established by issuance of the relevant Securities (excluding Specified Securities; hereinafter the same shall apply in this paragraph to paragraph (4))); however, where it is necessary to make the Public Offering of Securities before deciding their issue price or in any other cases specified by a cabinet office ordinance, the statement may be submitted without stating the issue price or other matters specified by a cabinet office ordinance among the matters required to be stated under item (i) below:

(i) matters pertaining to the Public Offering or Secondary Distribution; and

(ii) the trade name of the company, financial conditions of the Corporate Group (meaning the group consisting of the company and others (limited to companies and other organizations specified by a cabinet office ordinance) meeting the requirements specified by a cabinet office ordinance as those for being regarded as having a close relationship with the company, including the requirement that the company shall hold a majority of voting rights of such another company; hereinafter the same shall apply) to which the company belongs and of the company, other important matters concerning the company's business and other matters specified by a cabinet office ordinance as being necessary and appropriate for the public interest or the protection of investors.

(2) Among those who intend to submit a statement under the preceding paragraph for a Public Offering or Secondary Distribution of Securities to which the main clause of paragraph (1), the main clause of paragraph (2) or the main clause of paragraph (3) of the preceding Article applies, of which the total issue price or the total distribution price is less than 500 million yen, and which is specified by a cabinet office ordinance (in Article 24, paragraph (2), such a Public Offering or Secondary Distribution of Securities is referred to as "Small Amount Public Offering, etc."), a person not falling under any one of the following items may state, among the matters set forth in item (ii) of the preceding paragraph, only those specified by a cabinet office ordinance as pertaining to the company, instead of descriptions on all of the matters set forth in that item:

(i) an Issuer of Securities falling under any one of the categories of Securities set forth in Article 24, paragraph (1), item (i), (ii) or (iv);

(ii) a person who has submitted or must submit a statement under the preceding paragraph containing descriptions on the matters set forth in item (ii) of that paragraph for a Public Offering or Secondary Distribution of Securities to which the main clause of paragraph (1), the main clause of paragraph (2) or the main clause of paragraph (3) of the preceding Article applied

(excluding those of the category set forth the preceding item); or

(iii) a person who has already submitted an Annual Securities Report (meaning a report as defined in Article 24, paragraph (1); hereinafter the same shall apply in this Article) containing descriptions on the matters set forth in the main clause of paragraph (1) of Article 24, a quarterly securities report as set forth in Article 24-4-7, paragraph (1) or (2) (hereinafter referred to as a "Quarterly Securities Report" in this Article) containing descriptions on the matters set forth in Article 24-4-7, paragraph (1), or a Semiannual Securities Report (meaning the report defined in Article 24-5, paragraph (1); hereinafter the same shall apply in this Article and Article 24, paragraph (2)) containing descriptions on the matters set forth in Article 24-5, paragraph (1) (excluding those of the categories set forth in the preceding two items).

(3) A person who has continuously filed Annual Securities Reports as specified by a cabinet office ordinance for the period specified by a cabinet office ordinance may, when making a notification pursuant to the provisions of paragraphs (1) to (3) of the preceding Article, instead of descriptions of the matters set forth in item (ii) of paragraph (1), insert a copy of the latest Annual Securities Report pertaining to that person and the attachments thereto, a copy of the Quarterly Securities Report or Semiannual Securities Report submitted after the submission of the Annual Securities Report and a copy of amendment reports submitted with regard to the foregoing reports to the statement set forth in paragraph (1) pursuant to the provisions of a cabinet office ordinance, and state facts that occurred after the submission of the Annual Securities Report and fall under the category of facts specified by a cabinet office ordinance in the statement set forth in paragraph (1).

(4) When a person who satisfies all of the requirements set forth in the following items makes a notification pursuant to the provisions of paragraphs (1) to (3) of the preceding Article, and if the person states in the statement under paragraph (1) to the effect that reference should be made to the latest Annual Securities Report pertaining to that person and the attachments thereto, the Quarterly Securities Report or Semiannual Securities Report and Extraordinary Report (meaning the report defined in Article 24-5, paragraph (4)) submitted after the submission of the Annual Securities Report and the amendment reports submitted with regard to the foregoing reports (hereinafter referred to as "Reference Documents"), pursuant to the provisions of a cabinet office ordinance, the person shall be deemed to give descriptions on the matters set forth in item (ii) of paragraph (1) in the statement:

(i) that the person shall have continuously filed Annual Securities Reports as specified by a cabinet office ordinance for the period specified by a cabinet office ordinance; and

(ii) that the person shall satisfy the criteria specified by a cabinet office ordinance on the state of transactions of Securities the Issuer of which is that person in the relevant Financial Instruments Exchange Market and other matters, regarding information on the matters set forth in item (ii) of paragraph (1) pertaining to the person as being widely available to the public.

(5) The provisions of paragraph (1) to the preceding paragraph shall apply *mutatis mutandis* where the relevant Securities are Specified Securities. In this case, the phrases "excluding a Public Offering or Secondary Distribution of Securities" and "the relevant Securities (excluding Specified Securities; hereinafter the same shall apply in this paragraph to paragraph (4))" in paragraph (1) shall be deemed to be replaced with "limited to a Public Offering or Secondary Distribution of Securities" and "the relevant Specified Securities," respectively; the part "the trade name of the company, financial conditions of the Corporate Group (meaning the group consisting of the company and others (limited to companies and other organizations specified by a cabinet office ordinance) meeting the requirements specified by a cabinet office ordinance as those for being regarded as having a close relationship with the company, including the requirement that the company shall hold a majority of voting rights of such another company; hereinafter the same shall apply) to which the company belongs and of the company, other important matters concerning the company's business" in item (ii) of paragraph (1) shall be deemed to be replaced with "the financial conditions of assets pertaining to asset investment or other similar business functions performed by the company, other important matters concerning the company's assets"; the term "a Public Offering or Secondary Distribution of Securities" in paragraph (2) shall be deemed to be replaced with "a Public Offering or Secondary Distribution of Specified Securities"; the term "Securities falling under any one of the categories" in item (i) of paragraph (2) shall be deemed to be replaced with "Specified Securities falling under any one of the categories"; the term "Public Offering or Secondary Distribution of Securities" in item (ii) of paragraph (2) shall be deemed to be replaced with "Public Offering or Secondary Distribution of Specified Securities"; the terms "the main clause of Article 24, paragraph (1)," "Article 24-4-7, paragraph (1) or (2)," "the matters set forth in Article 24-4-7, paragraph (1)" and "the matters set forth in Article 24-5, paragraph (1)" in item (iii) of paragraph (3) shall be deemed to be replaced with "the main clause of Article 24, paragraph (1) as applied *mutatis mutandis* under Article 24,

paragraph (5)," "Article 24-4-7, paragraph (1) or (2) as applied *mutatis mutandis* under Article 24-4-7, paragraph (3)," "the matters set forth in Article 24-4-7, paragraph (1) as applied *mutatis mutandis* under Article 24-4-7 paragraph (3)" and "the matters set forth in Article 24-5, paragraph (1) as applied *mutatis mutandis* under Article 24-5, paragraph (3)," respectively. In addition, any other necessary deemed replacement of terms and phrases shall be specified by a cabinet order.

(6) A statement under paragraph (1) shall be attached with the articles of incorporation and other documents that are specified by a cabinet office ordinance as being necessary and appropriate for the public interest or the protection of investors.

Article 6 (Submission of Copies of the Statement and Other Documents to Financial Instruments Exchanges, etc.)

When an Issuer of Securities of the category set forth in either of the following items makes a notification pursuant to the provisions of Article 4, paragraphs (1) to (3), the Issuer shall without delay submit copies of the statement and other documents pursuant to the provisions of paragraphs (1) and (6) of the preceding Article to the entity specified in the respective items:

(i) Securities listed on a Financial Instruments Exchange—that Financial Instruments Exchange; and

(ii) Securities specified by a cabinet order as those of which the state of distribution is equivalent to that of Securities of the category set forth in the preceding item—the Authorized Financial Instruments Firms Association specified by the cabinet order.

Article 7 (Voluntary Submission of Amendment)

When there occurs any change in the important matters to be stated in a statement and other documents pursuant to the provisions of Article 5, paragraphs (1) and (6), or there occurs any other circumstance specified by a cabinet office ordinance as that which requires amendment of those documents for the public interest or the protection of investors, during the period on or after the day on which the notification was made pursuant to the provisions of Article 4, paragraphs (1) to (3) but before the day on which the notification is to take effect, the person making the notification (or, after the incorporation of the company subject to the notification, that company; hereinafter the same shall apply) shall submit an amendment to the Prime Minister. This shall also apply where despite the lack of such a change or circumstance, the person making the notification finds that the statement and other documents include any document requiring amendment.

Article 8 (Effective Date of Notification)

(1) A notification made pursuant to the provisions of Article 4, paragraphs (1) to (3) shall come into effect on the day on which

fifteen days have elapsed from the day on which the Prime Minister accepted the statement submitted pursuant to the provisions of Article 5, paragraph (1) (or, if the matters referred to in the proviso clause of that paragraph are not stated in the statement, the amendment submitted pursuant to the provisions of the preceding Article in relation to those matters; in the following paragraph, the same shall apply).

(2) With regard to the application of the preceding paragraph where the amendment is submitted pursuant to the provisions of the preceding Article within the period mentioned in the preceding paragraph, it shall be deemed that the statement submitted pursuant to the provisions of Article 5, paragraph (1) was accepted by the Prime Minister on the day on which the Prime Minister accepts the amendment.

(3) When the Prime Minister finds that a statement and other documents submitted pursuant to the provisions of Article 5, paragraphs (1) and (6) or the preceding Article are easily understandable to the public or finds that information on the matters set forth in Article 5, paragraph (1), item (ii) pertaining to the person submitting the statement and other documents has already been widely available to the public, the Minister may designate a period for the person shorter than that mentioned in paragraph (1) or give the person a notice that the notification made pursuant to the provisions of Article 4, paragraphs (1) to (3) will come into effect immediately or on the day following the day on which the Minister accepts the statement mentioned in paragraph (1). In this case, the notification made pursuant to the provisions of Article 4, paragraphs (1) to (3) shall come into effect on the day on which the shorter period has elapsed where the shorter period is designated, or shall come into effect immediately or on the above-mentioned following day where the notice is given.

(4) The provision of paragraph (2) shall apply *mutatis mutandis* where a shorter period is designated pursuant to the provisions of the preceding paragraph.

Article 9 (Order to Submit an Amendment by Reason of Deficiencies in Formalities, etc.)

(1) When the Prime Minister finds any deficiencies in the formalities of a statement and other documents pursuant to the provisions of Article 5, paragraphs (1) and (6) or Article 7, or finds insufficiency of the statements on important matters to be stated in those documents, the Minister may order the person submitting those documents to submit an amendment. In this case, a hearing shall be held irrespective of the categories of procedures for stating opinions pursuant to the provisions of Article 13, paragraph (1) of the Administrative Procedure Act (Act No. 88 of 1993).

(2) Where the disposition under the preceding paragraph is made,

the notification made pursuant to the provisions of Article 4, paragraphs (1) to (3) shall come into effect on the day of the expiry of the period designated by the Prime Minister, notwithstanding the provisions of the preceding Article.

(3) The provisions of paragraphs (2) to (4) of the preceding Article shall apply *mutatis mutandis* to the cases under the preceding paragraph.

(4) The disposition under paragraph (1) may not be given on or after the day on which the notification made pursuant to the provisions of Article 4, paragraphs (1) to (3) comes into effect. However, this shall not apply to the amendment submitted pursuant to the provisions of Article 7 on or after that day.

Article 10 (Order to Submit an Amendment by Reason of False Statement, etc. and Order for Suspension of the Effect of Notification)

(1) When the Prime Minister discovers that a Securities Registration Statement contains a false statement on important matters, lacks a statement on important matters that should be stated, or lacks a statement on a material fact that is necessary for avoiding misunderstanding, the Minister may at any time order the person submitting the Securities Registration Statement to submit an amendment, and when finding it necessary, the Minister may order the suspension of the effect of the notification made pursuant to the provisions of Article 4, paragraphs (1) to (3). In this case, a hearing shall be held irrespective of the categories of procedures for stating opinions pursuant to the provisions of Article 13, paragraph (1) of the Administrative Procedure Act.

(2) The provisions of paragraphs (2) and (3) of the preceding Article shall apply *mutatis mutandis* where an order to submit an amendment is given under the preceding paragraph before the day on which the notification made pursuant to the provisions of Article 4, paragraphs (1) to (3) comes into effect.

(3) Where a suspension order is given under paragraph (1), when an amendment is submitted pursuant to the provisions of that paragraph and the Prime Minister finds the amendment as being appropriate, the Minister shall cancel the suspension order under that paragraph.

Article 11 (Suspension of the Effect of Notification Made Within One Year from the Submission of Securities Registration Statement Containing a False Statement)

(1) Where a Securities Registration Statement contains a false statement on important matters, and if the Prime Minister finds it necessary and appropriate for the public interest or the protection of investors, the Minister may, with regard to the Securities Registration Statement, or statements prescribed in Article 5, paragraph (1), any Shelf Registration Statement prescribed in Article 23-3, paragraph (1) or Shelf

Registration Supplement prescribed in Article 23-8, paragraph (1) by the person who submitted the Securities Registration Statement during the period within one year from the day on which the person submitted the Securities Registration Statement, order the suspension of the effect of the notification or the suspension of effect of the Shelf Registration pertaining to the Shelf Registration Statement or the Shelf Registration Supplements, or extend the period specified in Article 8, paragraph (1) (including where it is applied *mutatis mutandis* under Article 23-5, paragraph (1)), for the period that the Minister finds appropriate for the public interest or the protection of investors. In this case, a hearing shall be held irrespective of the categories of procedures for stating opinions pursuant to the provisions of Article 13, paragraph (1) of the Administrative Procedure Act.

(2) Where the disposition under the preceding paragraph is made, the Prime Minister may cancel the disposition, if the Minister finds that the content of the amendment submitted pursuant to the provisions of Article 7 or paragraph (1) of the preceding Article in relation to the false statement referred to in the preceding paragraph is appropriate and that even allowing acquisitions or sales of Securities the Issuer of which is the person having submitted the Securities Registration Statement through a Public Offering or Secondary Distribution would not impair the public interest or the protection of investors.

Article 12 (Submission of a Copy of the Amendment to the Financial Instruments Exchange, etc.)

The provision of Article 6 shall apply *mutatis mutandis* where an amendment is submitted pursuant to the provisions of Article 7, Article 9, paragraph (1), or Article 10, paragraph (1).

Article 13 (Preparation of a Prospectus and Prohibition of Use of a Prospectus, etc. Containing a False Statement)

(1) With regard to Securities of which a Public Offering or Secondary Distribution (including a General Solicitation for Securities Acquired by Qualified Institutional Investor (excluding those falling under the category of Secondary Distribution of Securities) and a General Solicitation for Securities Acquired by Professional Investors, etc. (excluding those falling under the category of Secondary Distribution of Securities); hereinafter the same shall apply in this Article and Article 15, paragraphs (2) to (4) and (6)) is subject to the main clause of paragraph (1), the main clause of paragraph (2) or the main clause of paragraph (3) of Article 4, the Issuer of those Securities shall prepare a Prospectus for the Public Offering or Secondary Distribution. The same shall apply to an Issuer of Securities of which a Secondary Distribution (excluding where

the total distribution price is less than 100 million yen or where the Secondary Distribution falls under the categories specified by a cabinet office ordinance) falls under the Case Where Disclosure Has Been Made (meaning the Case Where Disclosure Has Been Made as defined in paragraph (7) of that Article; hereinafter the same shall apply in this Chapter) (hereinafter such Securities are referred to as "Already Disclosed Securities" in this Chapter).

(2) In the Prospectus mentioned in the preceding paragraph, according to the categories set forth respectively in the following items, the matters specified therein shall be stated; however, where the statement under the main clause of Article 5, paragraph (1) has been submitted without stating the Issue Price or other matters specified by a cabinet office ordinance among the matters required to be stated under item (i) of that paragraph (hereinafter referred to as the "Issue Price, etc." in this paragraph and Article 15, paragraph (5)) pursuant to the provision of the proviso clause of Article 5, paragraph (1), the Issue Price, etc. shall not be required to be stated in the Prospectus if it falls under the category set forth in item (i):

(i) where delivery of the Prospectus is required under the main clause of Article 15, paragraph (2)—according to the categories of Securities set forth respectively in sub-item (a) or (b), the matters specified therein:

(a) Securities of which a Public Offering or Secondary Distribution is subject to the main clause of paragraph (1), the main clause of paragraph (2), or the main clause of paragraph (3) of Article 4—the following matters:

1. among the matters set forth in the items of Article 5, paragraph (1), the matters specified by a cabinet office ordinance as those that may have an extremely material influence on investors' Investment Decisions; and
2. the matters other than the matters set forth in the items of Article 5, paragraph (1) specified by a cabinet office ordinance;

(b) Already Disclosed Securities—the following matters:

1. the matters set forth in sub-item (a)1.; and
2. the matters other than the matters set forth in the items of Article 5, paragraph (1) specified by a cabinet office ordinance;

(ii) where delivery of the Prospectus is required under Article 15, paragraph (3)—according to the categories of Securities set forth respectively in sub-item (a) or (b), the matters specified therein:

(a) Securities of which a Public Offering or Secondary Distribution is subject to the main clause of para-

graph (1), the main clause of paragraph (2), or the main clause of paragraph (3) of Article 4—the following matters:

1. among the matters set forth in the items of Article 5, paragraph (1), the matters specified by a cabinet office ordinance as those that may have a material influence on investors' Investment Decisions; and
2. the matters other than the matters set forth in the items of Article 5, paragraph (1) specified by a cabinet office ordinance;

(b) Already Disclosed Securities—the following matters:

1. the matters set forth in sub-item (a)1.; and
2. the matters other than the matters set forth in the items of Article 5, paragraph (1) specified by a cabinet office ordinance; or

(iii) where delivery of the Prospectus is required under the main clause of Article 15, paragraph (4)—the matters stated in the amendment under Article 7.

(3) With regard to a Prospectus falling under the category set forth in item (i) or (ii) of the preceding paragraph that should be prepared by the person who has submitted a notification to which Article 5, paragraph (4) (including where it is applied *mutatis mutandis* under paragraph (5) of that Article; hereinafter the same shall apply) is applicable, or that pertains to Already Disclosed Securities and should be prepared by the person who satisfies all of the requirements set forth in the items of paragraph (4) of that Article, if the person states in the Prospectus to the effect that reference should be made to the Reference Documents, the Prospectus shall be deemed to contain descriptions on the matters set forth in paragraph (1), item (ii) of that Article.

(4) No person shall use a Prospectus under paragraph (1) that contains a false statement or lacks any statement that should be stated, for any Public Offering or Secondary Distribution of Securities that is subject to the main clause of paragraph (1), the main clause of paragraph (2), or the main clause of paragraph (3) of Article 4, or of Already Disclosed Securities.

(5) When using any document other than the Prospectus referred to in paragraph (1), drawing, sound, or other material (where they are prepared as an Electromagnetic Record (meaning a record made by an electronic form, a magnetic form, or any other form not recognizable to human perception, which is used in information processing by computers; hereinafter the same shall apply), including anything that indicates the information contained in that Electromagnetic Record; in Article 17, the same shall apply) for a Public Offering or Secondary Distribution of Securities that is subject to the main clause of

paragraph (1), the main clause of paragraph (2), or the main clause of paragraph (3) of Article 4, or of Already Disclosed Securities, no person shall make false indication or misleading indication.

Article 14 Deleted

Article 15 (Prohibition of Transaction of Securities for Which Notification Has Not Yet Come into Effect, and Delivery of Prospectus)

(1) With regard to Securities of which a Public Offering or Secondary Distribution is subject to the main clause of paragraph (1), the main clause of paragraph (2) or the main clause of paragraph (3) of Article 4, the Issuer, a person who engages in the Secondary Distribution of Securities, an Underwriter (including a person who, with regard to a General Solicitation for Securities Acquired by Qualified Institutional Investor (excluding where it pertains to Securities in the Case Where Disclosure Has Been Made) or General Solicitation for Securities Acquired by Professional Investors, etc. (excluding where it pertains to Securities in the Case Where Disclosure Has Been Made), carries out any of the acts specified in the items of Article 2, paragraph (6); hereinafter the same shall apply in this Chapter), a Financial Instruments Business Operator, a Registered Financial Institution, or a Financial Instruments Intermediary shall not have another person acquire those Securities or sell those Securities to another person through a Public Offering or Secondary Distribution unless the notification made pursuant to the provisions of Article 4, paragraphs (1) to (3) comes into effect.

(2) Where an Issuer, a person who engages in a Secondary Distribution of Securities, an Underwriter, a Financial Instruments Business Operator, a Registered Financial Institution, or a Financial Instruments Intermediary has another person acquire Securities referred to in the preceding paragraph or Already Disclosed Securities, or sells those Securities to another person through a Public Offering or Secondary Distribution, they shall deliver the Prospectus containing the matters specified in Article 13, paragraph (2), item (i) to the other person in advance of, or at the same time as, having the Securities acquired or selling the Securities; however, this shall not apply to the following cases:

(i) where those Securities are acquired by or sold to a Qualified Institutional Investor (excluding where the Qualified Institutional Investor requests the delivery of the Prospectus by the time when those Securities are acquired or sold through the Public Offering or Secondary Distribution); or

(ii) where those Securities are acquired by or sold to either

of the persons set forth in the following items who has consented not to receive the Prospectus (excluding where the consenting person requests the delivery of the Prospectus by the time when those Securities are acquired or sold through the Public Offering or Secondary Distribution):

(a) a person who already owns Securities of the same issue name as that of those Securities; or

(b) a person living together with another person who has already received the Prospectus or is certainly expected to receive the Prospectus.

(3) Where an Issuer, a person who engages in a Secondary Distribution of Securities, an Underwriter, a Financial Instruments Business Operator, a Registered Financial Institution, or a Financial Instruments Intermediary has another person acquire Securities referred to in paragraph (1) (limited to those specified by a cabinet order; hereinafter the same shall apply in this paragraph) or Already Disclosed Securities, or sells those Securities to another person through a Public Offering or Secondary Distribution, if the other person requests the delivery of the Prospectus stating the matters specified in Article 13, paragraph (2), item (ii) by the time when those Securities are acquired or sold, they shall immediately deliver the Prospectus to the other person.

(4) Where an Issuer, a person who engages in a Secondary Distribution of Securities, an Underwriter, a Financial Instruments Business Operator, a Registered Financial Institution, or a Financial Instruments Intermediary has another person acquire Securities referred to in paragraph (1) or sells those Securities to another person through a Public Offering or Secondary Distribution, if an amendment under Article 7 has been submitted with regard to the statement pertaining to the Securities under the main clause of Article 5, paragraph (1), they shall deliver the Prospectus stating the matters specified in Article 13, paragraph (2), item (iii) to the other person in advance of, or at the same time as, having the Securities acquired or selling the Securities. However, this shall not apply in the cases set forth in the items of paragraph (2).

(5) The provision of the main clause of the preceding paragraph shall not apply where a Prospectus delivered under paragraph (2) states no Issue Price, etc. as permitted by the proviso clause of Article 13, paragraph (2) but states to the effect that the Issue Price, etc. will be publicly announced separately and specifies the method of public announcement of the Issue Price, etc. (limited to those specified by a cabinet office ordinance), and the Issue Price, etc. is publicly announced by that method of pubic announcement.

(6) The provisions of paragraph (2) to the preceding paragraph shall apply *mutatis mutandis* where the remainder of the Se-

curities referred to in paragraph (1) that is not acquired by any person through a Public Offering or Secondary Distribution (excluding Securities falling under any one of the categories set forth in Article 24, paragraph (1), items (i) and (ii)) is acquired by, or sold to, someone not through a Public Offering or Secondary Distribution during the period from the day on which the notification made pursuant to the provisions of Article 4, paragraphs (1) to (3) for the Public Offering or Secondary Distribution came into effect until the day on which three months (excluding, where a suspension order has been given under Article 10, paragraph (1) or Article 11, paragraph (1), the period from the day on which the order was given until the day on which the order was canceled) have elapsed.

Article 16 (Damages Liability of a Violator)

A person who has another person acquire Securities in violation of the provisions of preceding Article shall be held liable to compensate for the damage arising from the violation and sustained by the person who acquires the Securities.

Article 17 (Damages Liability of a Person Using a Prospectus, etc. Containing a False Statement)

With regard to a Public Offering or Secondary Distribution of Securities that is subject to the main clause of paragraph (1), the main clause of paragraph (2), or the main clause of paragraph (3) of Article 4 or Already Disclosed Securities, a person who has another person acquire the Securities using a Prospectus referred to in Article 13, paragraph (1) that contains any false statement on important matters, lacks a statement on important matters that should be stated or lacks a statement on a material fact that is necessary for avoiding misunderstanding, or a material that contains any false indication or misleading indication on important matters or lacks indication on a material fact that is necessary for avoiding misunderstanding, shall be held liable to compensate for the damage sustained by the other person who acquires the Securities without knowing the existence of the false statement, lack of the required statement, the existence of the false indication or misleading indication or lack of the required indication. However, this shall not apply where the person liable for the damage proves that the person did not know, and was not able to know despite reasonable care, the existence of the false statements, lack of the required statement, the existence of the false indication or misleading indication or lack of the required indication.

Article 18 (Damages Liability of a Person, etc. Submitting a Securities Registration Statement Containing a False Statement)

(1) If a Securities Registration Statement contains any false statement on important matters, lacks a statement on important matters that should be stated or lacks a statement on a material fact that is necessary for avoiding misunderstanding, the person who submitted the Securities Registration Statement

shall be held liable to compensate for the damage sustained by a person who acquires the Securities in response to a Public Offering or Secondary Distribution. However, this shall not apply where the person who acquired the Securities knew the existence of the false statement or lack of the required statement at the time of application for acquisition of the Securities.

(2) The provisions of the preceding paragraph shall apply *mutatis mutandis* where a Prospectus referred to in Article 13, paragraph (1) contains a false statement on important matters, lacks a statement on important matters that should be stated or lacks a statement on a material fact that is necessary for avoiding misunderstanding. In this case, the phrases "the person who submitted the Securities Registration Statement" and "in response to a Public Offering or Secondary Distribution" in the preceding paragraph shall be deemed to be replaced with "the Issuer who prepared the Prospectus" and "in response to a Public Offering or Secondary Distribution after receiving the Prospectus," respectively.

Article 19 (Amount of Damages Payable by a Person, etc. Submitting a Securities Registration Statement Containing a False Statement)

(1) The amount of damages to be paid pursuant to the provisions of the preceding Article shall be the amount calculated by deducting either of the amounts set forth in the following items from the amount paid to acquire the relevant Securities by the person who is entitled to claim damages:

(i) the market value of the Securities at the time of claiming damages pursuant to the provisions of the preceding Article (or, where no market value exists, the estimated disposal value at that time); or

(ii) disposal value of the Securities, if the Securities have been disposed of before the time referred to in the preceding item.

(2) The person liable for damages pursuant to the provisions of the preceding Article shall not be liable for all or part of the damages where the person proves that all or part of the damages sustained by the person who is entitled to claim damages was caused by any reason other than the decline in value of the relevant Securities that should arise from the fact that the Securities Registration Statement or the Prospectus contains a false statement on important matters, lacks a statement on important matters that should be stated or lacks a statement on a material fact that is necessary for avoiding misunderstanding.

Article 20 (Prescription for the Right to Claim Damages from the Person, etc. Submitting a Securities Registration Statement Containing a False Statement)

The right to claim damages under Article 18 shall be extinguished

by prescription when the right is not exercised within three years from the time when the person who is entitled to claim the damages comes to know, or is able to know with reasonable care, that the Securities Registration Statement or the Prospectus contains a false statement on important matters, lacks a statement on important matters that should be stated or lacks a statement on a material fact that is necessary for avoiding misunderstanding. The same shall also apply where the right is not exercised within seven years (excluding, where a suspension order has been given under Article 10, paragraph (1) or Article 11, paragraph (1), the period from the day on which the order was given to the day on which the order was canceled) from the time when the notification made pursuant to the provisions of Article 4, paragraphs (1) to (3) for a Public Offering or Secondary Distribution of the Securities comes into effect or the delivery of the Prospectus is made.

Article 21 (Damages Liability of Officers, etc. of the Company Submitting a Securities Registration Statement Containing a False Statement)

(1) Where a Securities Registration Statement contains a false statement on important matters, lacks a statement on important matters that should be stated or lacks a statement on a material fact that is necessary for avoiding misunderstanding, the persons set forth in the following items shall be liable to compensate each person who has acquired the relevant Securities in response to a Public Offering or Secondary Distribution for the damage arising from the false statement or lack of the required statement; however, this shall not apply where the person who acquired the Securities knew the existence of the false statements or the lack of the required statement at the time of application for acquisition of the Securities:

(i) an Officer (meaning a director, accounting advisor, company auditor or executive officer, or an equivalent person thereto; hereinafter the same shall apply, except in Articles 163 to 167) of the company having submitted the Securities Registration Statement, incumbent at the time of submission thereof, or an incorporator of the company (limited to where the Securities Registration Statement was submitted before the establishment of the company);

(ii) an owner of Securities pertaining to the relevant Secondary Distribution (or, where the owner has acquired those Securities from the previous owner by concluding an agreement specifying that the Securities would be sold through a Secondary Distribution, the counterparty to that agreement);

(iii) the certified public accountant or the auditing firm who has certified in the audit certification of the Securities Registration Statement as prescribed in Article 193-2,

paragraph (1) that the documents pertaining to the audit certification do not contain any false statement or do not lack a required statement despite the existence of the false statement or the lack of a required statement; and

(iv) the Financial Instruments Business Operator or Registered Financial Institution that has concluded a Wholesale Underwriting Agreement with the Issuer of the Securities pertaining to the relevant Public Offering, or with either of the persons set forth in item (ii).

(2) In the cases under the preceding paragraph, the person set forth respectively in the following items shall not be required to assume the liability to compensate for damage as prescribed in that paragraph, if the person proves the facts set forth therein:

(i) the person set forth in item (i) or (ii) of the preceding paragraph—the fact that the person did not know, and was not able to know despite reasonable care, the existence of the false statement or the lack of the required statement;

(ii) the person or firm set forth in item (iii) of the preceding paragraph—the fact that there was no willfulness or negligence on the part of that person or firm in making the certification as specified in that item; or

(iii) the business operator or institution set forth in item (iv) of the preceding paragraph—the fact that the business operator or institution did not know the existence of the false statement or the lack of the required statement, and was not able to know the existence of the false statement or the lack of the required statement despite the reasonable care that the operator or institution exercised with respect to the part other than the part pertaining to statements on finance and accounting specified in Article 193-2, paragraph (1).

(3) The provisions of items (i) and (ii) of paragraph (1) and item (i) of the preceding paragraph shall apply *mutatis mutandis* where a Prospectus referred to in Article 13, paragraph (1) contains a false statement on important matters, lacks a statement on important matters that should be stated or lacks a statement on a material fact that is necessary for avoiding misunderstanding. In this case, the phrases "in response to a Public Offering or Secondary Distribution," "the company having submitted the Securities Registration Statement," "at the time of submission thereof," and "was submitted" in paragraph (1) shall be deemed to be replaced with "in response to a Public Offering or Secondary Distribution after receiving the Prospectus," "the company having prepared the Prospectus," "at the time of preparation thereof" and "was prepared," respectively.

(4) The term "Wholesale Underwriting Agreement" as used in item (iv) of paragraph (1) means an agreement concluded for a Public Offering or Secondary Distribution of Securities and falling under either of the categories specified in the following items:

(i) an agreement in which it is agreed that a party will acquire all or part of the relevant Securities from the Issuer or owners thereof (excluding those who are a Financial Instruments Business Operator or Registered Financial Institution; in the following item, the same shall apply) for the purpose of having other persons acquire them; or

(ii) an agreement, if there is a lack of persons to acquire all or part of the relevant Securities, wherein a party promises to acquire from the Issuer or owners thereof all of the remaining Securities.

Article 21-2 (Damages Liability of a Person Submitting a Document Containing a False Statement, etc.)

(1) If any of the documents set forth in the items of Article 25, paragraph (1) (excluding items (v) and (ix) of that paragraph) (hereinafter referred to as the "Documents" in this Article) contains a false statement on important matters, lacks a statement on important matters that should be stated or lacks a statement on a material fact that is necessary for avoiding misunderstanding, the person who has submitted the Documents shall be held liable to compensate a person who, during the period when the Documents were made available for public inspection pursuant to the provision of that paragraph, acquires the Securities whose Issuer is the person who submitted the Documents (excluding the Documents set forth in item (xii) of that paragraph) or the person whose Parent Company, etc. (meaning Parent Company, etc. as defined by Article 24-7, paragraph (1)) is the person having submitted the Documents (limited to the Documents set forth in Article 25, paragraph (1), item (xii)) not through Public Offering or Secondary Distribution for the damage arising from the false statements or lack of the required statement (hereinafter referred to as a "False Statement, etc." in this Article), to the extent not exceeding the amount calculated according to the same rule as specified in Article 19, paragraph (1). However, this shall not apply when the person who acquired the Securities had known of the existence of the False Statement, etc. at the time of the acquisition.

(2) In the cases under the main clause of the preceding paragraph, when the Public Announcement of the Facts of False Statement, etc. is made with respect to the relevant Documents, a person who acquired the relevant Securities within one year preceding the date of the Public Announcement of the Facts of

False Statement, etc. (hereinafter referred to as the "Public Announcement Date" in this paragraph) and continues to own those Securities on the Public Announcement Date may claim, as the amount of damage arising from the False Statement, etc. of the Documents, the amount calculated by deducting the average market value of the Securities (or, where no market value exists, the estimated disposal value; hereinafter the same shall apply in this paragraph) during one month following the Public Announcement Date from the average market value of the Securities during one month preceding the Public Announcement Date.

(3) The term "Public Announcement of the Facts of False Statement, etc." as used in the preceding paragraph means the fact that the person who has submitted the relevant Documents or a person who has an authority under laws and regulations over the business or properties of the person having submitted the relevant Documents takes measures to make available to a large number of persons important matters pertaining to the False Statement, etc. in those Documents that should be stated or material facts pertaining to the False Statement, etc. that are necessary for avoiding misunderstanding, by way of public inspection pursuant to the provisions of Article 25, paragraph (1) or by other means.

(4) In the cases under paragraph (2), when the person liable for damages proves that all or part of the damages sustained by the person who is entitled to claim damages was caused by any reason other than the decline in value of the relevant Securities that should arise from the False Statement, etc. in the relevant Documents, the person shall not be liable for all or part of the damages.

(5) In addition to the cases under the preceding paragraph, in the cases under paragraph (2), when the court finds that all or part of the damage sustained by the person who is entitled to claim damages was caused by any reason other than the decline in value of the relevant Securities that should arise from the False Statement, etc. in the relevant Documents, and it is extremely difficult to prove the amount of damages arising from that other reason due to its characteristics, the court may, based on the entire import of oral arguments and the result of examination of evidence, determine a reasonable amount of damages for which the person liable for damages is not liable.

Article 21-3 (Prescription for the Right to Claim Damages from a Person Submitting a Document Containing a False Statement, etc.)

The provisions of Article 20 shall apply *mutatis mutandis* to the right to claim damages under the preceding Article. In this case, the phrases "Article 18," "the Securities Registration Statement or the Prospectus," and "three years" in Article 20 shall be deemed to be

replaced with "Article 21-2," "any of the documents set forth in the items of Article 25, paragraph (1) (excluding items (v) and (ix) of that paragraph)," and "two years," respectively; and the part "seven years (excluding, where a suspension order has been given under Article 10, paragraph (1) or Article 11, paragraph (1), the period from the day on which the order was given to the day on which the order was canceled) from the time when the notification made pursuant to the provisions of Article 4, paragraphs (1) to (3) for a Public Offering or Secondary Distribution of the Securities comes into effect or the delivery of the Prospectus is made" in Article 20 shall also be deemed to be replaced with "five years from the time when the document is submitted."

Article 22 (Liability for Damages of Officers, etc. of the Company Submitting a Securities Registration Statement Containing a False Statement, etc.)

(1) When a Securities Registration Statement contains a false statement on important matters, lacks a statement on important matters that should be stated, or lacks a statement on a material fact that is necessary for avoiding misunderstanding, the persons set forth in Article 21, paragraph (1), items (i) and (iii) shall be held liable to compensate a person who has acquired Securities the Issuer of which is the person having submitted the Securities Registration Statement, not through a Public Offering or Secondary Distribution, without knowing the existence of the false statement, the lack of the required statement for damage arising from the false statement, or the lack of the required statement.

(2) The provisions of Article 21, paragraph (2), items (i) and (ii) shall apply *mutatis mutandis* to the persons liable for damages as specified the preceding paragraph.

Article 23 (Prohibition of Presumed Finding, etc. of the Veracity of a Securities Registration Statement)

(1) No person may presume, from the fact that a notification made pursuant to the provisions of Article 4, paragraphs (1) to (3) for a Public Offering or Secondary Distribution of Securities was made and has come into effect, or from the fact that a suspension order given under Article 10, paragraph (1) or Article 11, paragraph (1) was canceled, that the Prime Minister finds that any and every statement contained in the Securities Registration Statement submitted for the notification is true and accurate or the Securities Registration Statement does not lack any statement on any important matters, or that the Prime Minister guarantees or approves the value of the relevant Securities.

(2) No person may make any indication that violates the preceding paragraph.

Article 23-2 (Replacement of Terms and Phrases of Applicable Provisions Where Reference Is Made to Reference Documents)

With regard to the application of the provisions of Article 7, Articles

9 to 11, Articles 17 to 21, Article 22, and the preceding Article where a statement to which Article 5, paragraph (4) is applicable or an amendment to such a statement is submitted or a Prospectus to which Article 13, paragraph (3) is applicable is prepared, the phrase "a statement and other documents pursuant to the provisions of Article 5, paragraphs (1) and (6)" in Article 7 shall be deemed to be replaced with "a statement and other documents pursuant to the provisions of Article 5, paragraphs (1) and (6) (including, in the cases of a statement to which paragraph (4) of that Article (including where it is applied *mutatis mutandis* under paragraph (5) of that Article; in Articles 9 to 11, the same shall apply) is applicable, Reference Documents pertaining thereto; hereinafter the same shall apply in this Article)"; the phrase "the statement and other documents pursuant to the provisions of Article 5, paragraphs (1) and (6) or the Article 7" in Article 9, paragraph (1) shall be deemed to be replaced with "the statement and other documents pursuant to the provisions of Article 5, paragraphs (1) and (6) or Article 7 (including, in the cases of a statement to which Article 5, paragraph (4) is applicable or an amendment submitted in relation to such a statement under Article 7, Reference Documents pertaining thereto)"; the term "Securities Registration Statement" in Article 10, paragraph (1) shall be deemed to be replaced with "Securities Registration Statement (including, in the cases of a statement to which Article 5, paragraph (4) is applicable or an amendment submitted in relation to such a statement under Article 7, paragraph (1) of the preceding Article or this paragraph, Reference Documents pertaining thereto)"; the term "amendment" in Article 10, paragraph (3) shall be deemed to be replaced with "amendment (including, in the cases of an amendment submitted in relation to a statement to which Article 5, paragraph (4) is applicable, Reference Documents pertaining thereto)"; the term "a Securities Registration Statement contains" in Article 11, paragraph (1) shall be deemed to be replaced with "a Securities Registration Statement (including, in the cases of a statement to which Article 5, paragraph (4) is applicable or an amendment submitted in relation to such a statement under Article 7, Article 9, paragraph (1) or paragraph (1) of the preceding Article, Reference Documents pertaining thereto) contains"; the term "amendment" in Article 11, paragraph (2) shall be deemed to be replaced with "amendment (including, in the cases of an amendment submitted in relation to a statement to which Article 5, paragraph (4) is applicable, Reference Documents pertaining thereto)"; the term "Prospectus" in Article 17 shall be deemed to be replaced with "Prospectus (including, in the cases of a Prospectus to which Article 13, paragraph (3) is applicable, Reference Documents pertaining thereto)"; the term "a Securities Registration Statement contains" in Article 18, paragraph (1) shall be deemed to be replaced with "a Securities Registration Statement (including, in the cases of a statement to which Article 5, paragraph (4) is applicable or an amendment submitted in relation to such a statement under Article 7, Article 9, paragraph (1) or Article 10, paragraph (1), Reference Documents

pertaining thereto) contains"; the phrase "a Prospectus referred to in Article 13, paragraph (1) contains" in Article 18, paragraph (2) shall be deemed to be replaced with "a Prospectus referred to in Article 13, paragraph (1) (including, in the cases of a Prospectus to which paragraph (3) of that Article is applicable, the Prospectus or Reference Documents pertaining thereto) contains"; the terms "Securities Registration Statement" and "Prospectus" in Article 19, paragraph (2) and the first sentence of Article 20 shall be deemed to be replaced with "Securities Registration Statement (including, in the cases of a statement to which Article 5, paragraph (4) is applicable or an amendment submitted in relation to such a statement under Article 7, Article 9, paragraph (1) or Article 10, paragraph (1), the statement, the amendment or Reference Documents pertaining to the statement or the amendment)" and "Prospectus (including, in the cases of a Prospectus to which Article 13, paragraph (3) is applicable, the Prospectus or Reference Documents pertaining thereto)," respectively; the term "a Securities Registration Statement contains" in Article 21, paragraph (1) shall be deemed to be replaced with "a Securities Registration Statement (including, in the cases of a statement to which Article 5, paragraph (4) is applicable or an amendment submitted in relation to such a statement under Article 7, Article 9, paragraph (1) or Article 10, paragraph (1), the statement or Reference Documents pertaining thereto) contains"; the phrase "a Prospectus referred to in Article 13, paragraph (1) contains" in Article 21, paragraph (3) shall be deemed to be replaced with "a Prospectus referred to in Article 13, paragraph (1) (including, in the cases of a Prospectus to which paragraph (3) of that Article is applicable, the Prospectus or Reference Documents pertaining thereto) contains"; the term "a Securities Registration Statement contains" in Article 22, paragraph (1) shall be deemed to be replaced with "a Securities Registration Statement (including, in the cases of a statement to which Article 5, paragraph (4) is applicable or an amendment submitted in relation to such a statement under Article 7, Article 9, paragraph (1) or Article 10, paragraph (1), the statement or Reference Documents pertaining thereto) contains"; and the term "Securities Registration Statement" in paragraph (1) of the preceding Article shall be deemed to be replaced with "Securities Registration Statement (including, in the cases of a statement to which Article 5, paragraph (4) is applicable or an amendment submitted in relation to such a statement under Article 7, Article 9, paragraph (1) or Article 10, paragraph (1), the statement, the amendment or Reference Documents pertaining thereto)."

Article 23-3 (Submission of Shelf Registration Statements)

(1) The Issuer of Securities of which Public Offerings or Secondary Distributions are planned who falls under the category prescribed in Article 5, paragraph (4) may, where the total issue price or the total distribution amount of the relevant Securities (hereinafter referred to as the "Planned Issuance

Amount") is 100 million yen or more (including, if the Securities of which Public Offerings or Secondary Distributions are planned are share option certificates, where the total amount of the Planned Issuance Amount and the amount to be paid in when the share options pertaining to the share option certificates are exercised is 100 million yen or more), register Public Offerings or Secondary Distributions of those Securities by submitting a document that, pursuant to the provisions of a cabinet office ordinance, states the matters specified by a cabinet office ordinance as those necessary and appropriate for the public interest or the protection of investors, including the period in which Public Offerings or Secondary Distributions of the Securities are planned (hereinafter referred to as the "Planned Issuance Period"), the type of the Securities, the Planned Issuance Amount or the upper limit of outstanding balance of issuance, and the names of principal Financial Instruments Business Operators or Registered Financial Institutions that plan to underwrite the Securities (the document is hereinafter referred to as a "Shelf Registration Statement") to the Prime Minister. However, this shall not apply where a Secondary Distribution is planned for the Securities of which a Solicitation for Newly Issued Securities, etc. or Solicitation for Delivery of Existing Securities, etc. was conducted in a manner falling under the category of Solicitation Only for Qualified Institutional Investors as defined in Article 23-13, paragraph (1) (limited to a Solicitation Only for Qualified Institutional Investors to which the provision of the main clause of that paragraph is applicable) (excluding a Case Where Disclosure Has Been Made with regard to the Securities), where a Secondary Distribution is planned for Securities Only for Professional Investors (excluding a Case Where Disclosure Has Been Made with regard to the Securities), or where a Secondary Distribution is planned for the Securities of which a Solicitation for Newly Issued Securities, etc. or Solicitation for Delivery of Existing Securities, etc. was conducted in a manner falling under the category of Solicitation for Small Number of Investors as defined in Article 23-13, paragraph (4) (limited to a Solicitation for Small Number of Investors to which the provisions of the main clause of that paragraph is applicable) (excluding a Case Where Disclosure Has Been Made with regard to the Securities).

(2) The provisions of the preceding paragraph shall apply only where the Shelf Registration Statement mentioned in the preceding paragraph states, in addition to the matters specified by a cabinet office ordinance as mentioned in the preceding paragraph, to the effect that reference should be made to the latest Reference Documents pertaining to the Issuer for the matters set forth in Article 5, paragraph (1), item (ii) pursuant to the provisions of a cabinet office ordinance, and are ac-

companied by documents that are specified by a cabinet order as necessary and appropriate for the public interest or the protection of investors.

(3) The provisions of Article 4, paragraphs (1) to (3) shall not apply to any Public Offering or Secondary Distribution of the Securities for which a registration has been made pursuant to the provisions of paragraph (1) (hereinafter referred to as a "Shelf Registration").

(4) A company that is the Issuer of Securities for which a Shelf Registration has been made may continue the submission of Annual Securities Reports pursuant to the provisions of Article 24, paragraph (1) (including where it is applied *mutatis mutandis* under paragraph (5) of that Article; hereinafter the same shall apply in this paragraph) and the attachments thereto even after the obligation to submit Annual Securities Reports pursuant to the provision of paragraph (1) of that Article extinguishes, if their submission is necessary to meet the requirements prescribed in Article 5, paragraph (4).

Article 23-4 (Submission of Amended Shelf Registration Statements)

When, during the period on or after the day on which a Shelf Registration was made but before the day on which the Shelf Registration ceases to be effective, documents of the same type as the Reference Documents referenced in the Shelf Registration Statement pursuant to the provision of paragraph (2) of the preceding Article are newly submitted, or there occurs any other circumstance that, as specified by a cabinet office ordinance, requires amendment of descriptions in the Shelf Registration Statement and the attachments thereto (hereinafter referred to as the "Shelf Registration Documents" in this Article) for the public interest or the protection of investors, the person having made the Shelf Registration (hereinafter referred to as the "Shelf Registrant") shall submit an Amended Shelf Registration Statement to the Prime Minister pursuant to the provisions of a cabinet office ordinance. This shall also apply where despite the lack of such a circumstance, the Shelf Registrant finds that any description in the Shelf Registration Documents should be amended. In this case, the Shelf Registrant may not make any amendment to increase the Planned Issuance Amount of or the upper limit of outstanding balance of issue, change the Planned Issuance Period or change other matters specified by a cabinet office ordinance.

Article 23-5 (Effective Date of Shelf Registration Statement)

(1) The provisions of Article 8 shall apply *mutatis mutandis* to the effectuation of a Shelf Registration Statement. In this case, the phrase "the statement submitted pursuant to the provisions of Article 5, paragraph (1) (or, if the matters referred to in the proviso clause of that paragraph are not stated in the statement, the amendment submitted pursuant to the provisions of the preceding Article in relation to those matters; in

the following paragraph, the same shall apply)" in Article 8, paragraph (1) shall be deemed to be replaced with "a Shelf Registration Statement prescribed in Article 23-3, paragraph (1) (hereinafter referred to as a "Shelf Registration Statement" in this Article to Article 23)"; the phrases "the amendment submitted pursuant to the provisions of the preceding Article" and "the statement submitted pursuant to the provisions of Article 5, paragraph (1)" in Article 8, paragraph (2) shall be deemed to be replaced with "the Amended Shelf Registration Statement submitted pursuant to the provisions of Article 23-4" and "the Shelf Registration Statement," respectively; and the phrases "the statement and other documents submitted pursuant to the provisions of Article 5, paragraphs (1) and (6) or the preceding Article" and "the person submitting the statement and other documents" in Article 8, paragraph (3) shall be deemed to be replaced with "the Shelf Registration Statement and the attachments thereto, or the Amended Shelf Registration Statement submitted pursuant to the provisions of Article 23-4 before the day on which the Shelf Registration as defined in Article 23-3, paragraph (3) (hereinafter referred to as a "Shelf Registration" in this Article to Article 23) comes into effect" and "the person submitting these documents," respectively.

(2) When an Amended Shelf Registration Statement is submitted pursuant to the provisions of the preceding Article on or after the day on which the Shelf Registration comes into effect, the Prime Minister may order the suspension of the effect of the Shelf Registration for the period designated by the Minister, which may not exceed 15 days from the day on which the Amended Shelf Registration Statement is submitted, if the Minister finds it is necessary and appropriate for the public interest or the protection of investors.

Article 23-6 (Planned Issuance Period of Securities for Which Shelf Registration Has Been Made)

(1) The Planned Issuance Period of Securities for which a Shelf Registration has been made shall be a period specified by a cabinet office ordinance that may not exceed two years from the day on which the Shelf Registration comes into effect.

(2) A Shelf Registration shall cease to be effective on the day of the expiry of the Planned Issuance Period.

Article 23-7 (Submission of Written Withdrawal of Shelf Registration)

(1) When the Public Offering or Secondary Distribution is completed for the entire Planned Issuance Amount of the relevant Securities before the day of the expiry of the Planned Issuance Period specified in paragraph (1) of the preceding Article, the Shelf Registrant shall withdraw the Shelf Registra-

tion by submitting a written withdrawal of Shelf Registration stating to that effect pursuant to the provisions of a cabinet office ordinance to the Prime Minister.

(2) In the cases under the preceding paragraph, the Shelf Registration shall cease to be effective on the day of the Prime Minister's acceptance of the written withdrawal of Shelf Registration, notwithstanding the provision of paragraph (2) of the preceding Article.

Article 23-8 (Submission of Shelf Registration Supplements)

(1) With respect to Securities for which Public Offerings or Secondary Distributions have been registered by the Shelf Registration thereof, the Shelf Registrant, a person conducting a Secondary Distribution of the relevant Securities, an Underwriter, a Financial Instruments Business Operator, or a Registered Financial Institution shall not have another person acquire the Securities or sell the same to another person, through Public Offerings or Secondary Distributions, unless the Shelf Registration has already come into effect and, for each Public Offering or Secondary Distribution, a document that states the total issue price or total distribution amount, conditions of issuance or distribution of the Securities or other matters specified by a cabinet office ordinance as necessary and appropriate for the public interest or the protection of investors (hereinafter referred to as a "Shelf Registration Supplement") has been submitted to the Prime Minister pursuant to the provisions of a cabinet office ordinance. However, this shall not apply to Public Offerings or Secondary Distributions specified by a cabinet office ordinance if the total issue price or total distribution amount of each Public Offering or Secondary Distribution is less than 100 million yen.

(2) Notwithstanding the provisions of the preceding paragraph, with regard to, among the book-entry company bonds, etc. as defined in Article 278, paragraph (1) of the Act on Book-Entry Transfer of Company Bonds, Shares, etc. for which Public Offerings or Secondary Distributions have been registered by the Shelf Registration thereof, short-term company bonds as defined in Article 66, item (i) of that Act, or other book-entry company bonds, etc. specified by a cabinet order (limited to those of which the outstanding balance is made available for public inspection by the Book-Entry Transfer Institution (meaning a Book-Entry Transfer Institution as defined in Article 2, paragraph (2) of that Act) that handles those book-entry company bonds, etc.) may be acquired or sold through Public Offerings or Secondary Distributions when the Shelf Registration is effective.

(3) With regard to a Public Offering or Secondary Distribution of Securities to be made only to shareholders who are stated or recorded in the shareholder registry on a certain date, a Shelf

Registration Supplement for that Public Offering or Secondary Distribution shall be submitted by ten days prior to that certain date. However, this shall not apply to the cases so specified by a cabinet office ordinance in consideration of the issue price or distribution price or other circumstances.

(4) The provisions of Article 4, paragraphs (5) and (6) shall apply *mutatis mutandis* to a Public Offering or Secondary Distribution of Securities to which the provision of the proviso clause of paragraph (1) is applicable. In this case, the phrases "pertaining to a Specified Public Offering" and "apply to the Specified Public Offering" in paragraph (5) of that Article shall be deemed to be replaced with "pertaining to the Public Offering or Secondary Distribution" and "apply to the Public Offering or Secondary Distribution," respectively; and the phrases "the Securities pertaining to the Specified Public Offering, etc.," "of the Specified Public Offering, etc.," "the Specified Public Offering, etc. is to begin" and "any Secondary Distribution of Securities of the category set forth in paragraph (4) in the Case Where Disclosure Has Been Made if the total issue price is less than 100 million yen, any Secondary Distribution of Securities of the category set forth in item (iii) of paragraph (1) if made by persons other than the Issuer of the Securities or other persons specified by a cabinet office ordinance, or any Public Offering or Secondary Distribution of Securities of the category set forth in item (v) of paragraph (1) if the total issue price" in paragraph (6) of that Article shall be deemed to be replaced with "the Securities," "of the Public Offering or Secondary Distribution," "the Public Offering or Secondary Distribution is to begin," "any Public Offering or Secondary Distribution if the total issue price," respectively.

(5) A Shelf Registration Supplement mentioned in paragraph (1) shall state, in addition to the matters specified by a cabinet office ordinance, as mentioned in that paragraph, to the effect that reference should be made to the latest Reference Documents pertaining to the Issuer for the matters set forth in Article 5, paragraph (1), item (ii) pursuant to the provisions of a cabinet office ordinance, and shall be accompanied by documents specified by a cabinet office ordinance as necessary and appropriate for the public interest or the protection of investors.

Article 23-9 (Order to Submit Amended Shelf Registration Statement by Reason of Deficiencies in Formalities, etc.)

(1) When the Prime Minister finds any deficiencies in the formalities of a Shelf Registration Statement (including Reference Documents pertaining thereto) or the attachments thereto, or an Amended Shelf Registration Statement submitted pursuant to the provisions of Article 23-4 (including Reference Documents pertaining thereto), or finds insufficiency of a statement

on important matters to be stated in those documents, the Minister may order the person submitting these documents to submit an Amended Shelf Registration Statement. In this case, a hearing shall be held irrespective of the categories of procedures for stating opinions pursuant to the provisions of Article 13, paragraph (1) of the Administrative Procedure Act.

(2) Where a disposition is made pursuant to the provisions of the preceding paragraph before the day on which a Shelf Registration comes into effect, the Shelf Registration shall come into effect on the day of the expiry of the period designated by the Prime Minister from the day of the Prime Minister's acceptance of the Shelf Registration Statement submitted for the Shelf Registration, notwithstanding the provisions of Article 8 as applied *mutatis mutandis* under Article 23-5, paragraph (1).

(3) In the cases under the preceding paragraph, when an Amended Shelf Registration Statement is submitted pursuant to the provisions of Article 23-4 during the period designated by the Prime Minister, it shall be deemed that the Shelf Registration Statement is accepted by the Prime Minister on the day of the Prime Minister's acceptance of the Amended Shelf Registration Statement.

(4) In the cases under the preceding paragraph, when the Prime Minister finds that the Amended Shelf Registration Statement submitted pursuant to the provisions of Article 23-4 is easily understandable to the public or finds that information on the matters set forth in Article 5, paragraph (1), item (ii) pertaining to the person who submitted the Amended Shelf Registration Statement has already been widely available to the public, the Minister may designate a period shorter than that designated by the Minister under paragraph (2). In this case, the Shelf Registration shall come into effect on the day of the expiry of that shorter period.

(5) The provision of paragraph (3) shall apply *mutatis mutandis* where the shorter period is designated pursuant to the provisions of the preceding paragraph, and if an Amended Shelf Registration Statement is submitted pursuant to the provisions of Article 23-4 during that shorter period.

Article 23-10 (Order to Submit Amended Shelf Registration Statement by Reason of False Statement, etc.)

(1) When the Prime Minister has discovered that a Shelf Registration Statement (including Reference Documents pertaining thereto) or the attachments thereto, an Amended Shelf Registration Statement submitted pursuant to the provisions of Article 23-4 or paragraph (1) of the preceding Article (including Reference Documents pertaining thereto) or Shelf Registration Supplements (including Reference Documents pertaining thereto) or the attachments thereto contains false statements

on important matters, lacks a statement on important matters that should be stated or lacks a statement on a material fact that is necessary for avoiding misunderstanding, the Minister may at any time order the person submitting these documents to submit an Amended Shelf Registration Statement. In this case, a hearing shall be held irrespective of the categories of procedures for stating opinions pursuant to the provisions of Article 13, paragraph (1) of the Administrative Procedure Act.

(2) The provisions of paragraphs (2) to (5) of the preceding Article shall apply *mutatis mutandis* where an order to submit an Amended Shelf Registration Statement is given pursuant to the provisions of the preceding paragraph before the day on which the Shelf Registration comes into effect.

(3) Where a disposition is made pursuant to the provisions of paragraph (1) on or after the day on which the Shelf Registration comes into effect, the Prime Minister may, when the Minister finds it necessary, order the suspension of the effect of the Shelf Registration.

(4) Where a suspension order is given pursuant to the provision of the preceding paragraph, when an Amended Shelf Registration Statement is submitted pursuant to the provisions of paragraph (1) and the Prime Minister finds the Amended Shelf Registration Statement as being appropriate, the Minister shall cancel the suspension order.

(5) The provisions of the preceding paragraphs shall apply *mutatis mutandis* where the Prime Minister has discovered that an Amended Shelf Registration Statement submitted pursuant to the provisions of paragraph (1) (including Reference Documents pertaining thereto) contains false statements on important matters, lacks a statement on important matters that should be stated or lacks a statement on a material fact that is necessary for avoiding misunderstanding.

Article 23-11 (Suspension of the Effect of Shelf Registration by Reason of False Statement)

(1) Where a Shelf Registration Statement or the attachments thereto, an Amended Shelf Registration Statement submitted pursuant to the provisions of Article 23-4, paragraph (1) of Article 23-9, or paragraph (1) of the preceding Article (including where it is applied *mutatis mutandis* under paragraph (5) of that Article), or Shelf Registration Supplements or the attachments thereto, or Reference Documents pertaining to any of the foregoing, contains false statements on important matters, if the Prime Minister finds it necessary and appropriate for the public interest or the protection of investors, the Minister may, with regard to the Shelf Registration Statement or the attachments thereto, or the Amended Shelf Registration Statement, or the Shelf Registration Supplements or the attachments thereto (hereinafter referred to as the "Shelf

Registration Documents, etc." in this Article) or statements prescribed in Article 5, paragraph (1), other Shelf Registration Statements or other Shelf Registration Supplements submitted by the person who submitted the Shelf Registration Documents, etc. during the period within one year from the day on which the person submitted the Shelf Registration Documents, etc. order the suspension of effect of the Shelf Registration pertaining to the Shelf Registration Documents, etc., the suspension of effect of the notification pertaining to the statements prescribed in Article 5, paragraph (1) or the suspension of effect of the Shelf Registration pertaining to the other Shelf Registration Statements, or other Shelf Registration Supplements, or extend the period prescribed in Article 8, paragraph (1) (including where it is applied *mutatis mutandis* under Article 23-5, paragraph (1)), for the period that the Minister finds appropriate for the public interest or the protection of investors. In this case, a hearing shall be held irrespective of the categories of procedures for stating opinions pursuant to the provisions of Article 13, paragraph (1) of the Administrative Procedure Act.

(2) Where a disposition has been made pursuant to the provisions of the preceding paragraph, the Prime Minister may cancel the disposition, if the Minister finds that the content of an Amended Shelf Registration Statement (including Reference Documents pertaining thereto) submitted pursuant to the provisions of Article 23-4 or paragraph (1) of the preceding Article (including where it is applied *mutatis mutandis* under paragraph (5) of that Article) in relation to the false statements mentioned in the preceding paragraph is appropriate and that even if acquisition or sale of Securities issued by the person having submitted the Amended Shelf Registration Statement through a Public Offering or Secondary Distribution is allowed, it would not impair the public interest or the protection of investors.

Article 23-12 (Provisions Applied *Mutatis Mutandis* for Shelf Registration Statement, etc.)

(1) The provisions of Article 6 shall apply *mutatis mutandis* where a Shelf Registration Statement and the attachments thereto, an Amended Shelf Registration Statement pursuant to the provisions of Article 23-4, Article 23-9, paragraph (1), or Article 23-10, paragraph (1) (including where it is applied *mutatis mutandis* under paragraph (5) of that Article), or Shelf Registration Supplements and the attachments thereto are submitted.

(2) The provisions of Article 13, paragraph (1) shall apply *mutatis mutandis* to the Issuer of Securities for which a Shelf Registration has been made, the provision of the main clause of paragraph (2) of that Article shall apply *mutatis mutandis* to a

Prospectus to be prepared by the Issuer of Securities for which a Shelf Registration has been made, and the provisions of paragraphs (4) and (5) of that Article shall apply *mutatis mutandis* to a Public Offering or Secondary Distribution of Securities for which a Shelf Registration has been made. In this case, the phrase "according to the categories set forth respectively in the following items, the matters specified therein" in the main clause of paragraph (2) of that Article shall be deemed to be replaced with "the matters to be stated in a Shelf Registration Statement, an Amended Shelf Registration Statement submitted pursuant to the provisions of Article 23-4 or Shelf Registration Supplements and the matters so specified by a cabinet office ordinance."

(3) The provisions of Article 15, paragraphs (2) and (6) shall apply *mutatis mutandis* to a Public Offering or Secondary Distribution of Securities for which a Shelf Registration has been made. In this case, the phrase "containing the matters specified in Article 13, paragraph (2), item (i)" in Article 15, paragraph (2) shall be deemed to be replaced with "referred to in Article 13, paragraph (1) as applied *mutatis mutandis* under Article 23-12, paragraph (2)"; and the phrases "paragraph (2) to the preceding paragraph," "the day on which the notification made pursuant to the provisions of Article 4, paragraphs (1) to (3) for the Public Offering or Secondary Distribution came into effect" and "Article 10, paragraph (1) or Article 11, paragraph (1)" in Article 15, paragraph (6) shall be deemed to be replaced with "paragraph (2)," "the day on which the Shelf Registration Supplements relating to the Shelf Registration that was made for the Public Offering or Secondary Distribution and already came into effect are submitted" and "Article 23-10, paragraph (3) or Article 23-11, paragraph (1)," respectively.

(4) The provisions of Article 16 shall apply *mutatis mutandis* to a person who has another person acquire Securities in violation of the provisions of Article 23-8, paragraph (1) or (2), or the provisions of Article 15, paragraph (2) or (6) as applied *mutatis mutandis* under the preceding paragraph.

(5) The provisions of Article 17 to Article 21, Article 22 and Article 23 shall apply *mutatis mutandis* to a Public Offering or Secondary Distribution of Securities for which Shelf Registration has been made. In this case, the phrase "Prospectus referred to in Article 13, paragraph (1)" in Article 17 shall be deemed to be replaced with "Prospectus referred to in Article 13, paragraph (1) as applied *mutatis mutandis* under Article 23-12, paragraph (2) (including Reference Documents pertaining thereto)"; the phrases "a Securities Registration Statement contains" and "the Securities Registration Statement" in Article 18, paragraph (1) shall be deemed to be replaced with "Shelf Registration Documents, an Amended Shelf Registration Statement submitted pursuant to the provisions of Article

23-4, Article 23-9, paragraph (1), or Article 23-10, paragraph (1) (including where it is applied *mutatis mutandis* under paragraph (5) of that Article) (hereinafter referred to as an "Amended Shelf Registration Statement"), or Shelf Registration Supplements or the attachments thereto or Reference Documents pertaining to any of the foregoing (hereinafter referred to as the "Shelf Registration Documents, etc.") contain" and "the Shelf Registration Documents, the Amended Shelf Registration Statement or Shelf Registration Supplements or the attachments to the foregoing," respectively; the phrase "a Prospectus referred to in Article 13, paragraph (1) contains" in Article 18, paragraph (2) shall be deemed to be replaced with "a Prospectus referred to in Article 13, paragraph (1) (including Reference Documents pertaining thereto) contains"; the phrases "the Securities Registration Statement" and "the Prospectus" in Article 19, paragraph (2) shall be deemed to be replaced with "the Shelf Registration Documents, etc." and "the Prospectus (including Reference Documents pertaining thereto)," respectively; the phrases "the Securities Registration Statement," "the Prospectus contains," "when the notification made pursuant to the provisions of Article 4, paragraphs (1) to (3) for Public Offering or Secondary Distribution of the Securities comes into effect" and "Article 10, paragraph (1) or Article 11, paragraph (1)" in Article 20 shall be deemed to be replaced with "the Shelf Registration Documents, etc.," "the Prospectus (including Reference Documents pertaining thereto) contains," "when the Shelf Registration Supplements relating to the Shelf Registration that was made for the Public Offering or Secondary Distribution and already came into effect are submitted" and "Article 23-10, paragraph (3) or Article 23-11, paragraph (1)," respectively; the phrase "a Securities Registration Statement contains" in the non-itemized part of Article 21, paragraph (1) shall be deemed to be replaced with "Shelf Registration Documents, etc. contain"; the phrase "the Securities Registration Statement" in items (i) and (iii) of that paragraph shall be deemed to be replaced with "the Shelf Registration Documents, the Amended Shelf Registration Statement or Shelf Registration Supplements or the attachments to the foregoing"; the phrase "a Prospectus referred to in Article 13, paragraph (1) contains" in Article 21, paragraph (3) shall be deemed to be replaced with "a Prospectus referred to in Article 13, paragraph (1) (including Reference Documents pertaining thereto)"; the phrases "a Securities Registration Statement contains" and "the Securities Registration Statement" in Article 22, paragraph (1) shall be deemed to be replaced with "the Shelf Registration Documents, etc. contain" and "the Shelf Registration Documents, the Amended Shelf Registration Statement or Shelf Registration Supplements or the attachments to the foregoing," respectively; the

phrases "a notification made pursuant to the provisions of Article 4, paragraphs (1) to (3) for a Public Offering or Secondary Distribution of Securities was made and has come into effect," "Article 10, paragraph (1) or Article 11, paragraph (1)," "the notification" and "the Securities Registration Statement" in Article 23 shall be deemed to be replaced with "the fact that a Shelf Registration has come into effect and Shelf Registration Supplements relating thereto are submitted (in the case of Public Offering or Secondary Distribution of Securities referred to in Article 23-8, paragraph (2), the fact that the Shelf Registration therefor has come into effect)," "Article 23-10, paragraph (3) or Article 23-11, paragraph (1)," "the Shelf Registration" and "the Shelf Registration Documents, etc.," respectively.

(6) The provisions of paragraphs (2) and (3) and Article 17, Article 18, paragraph (2) and Article 21, paragraph (3) as applied *mutatis mutandis* under the preceding paragraph shall not apply to the Securities mentioned in Article 23-8, paragraph (2).

Article 23-13 (Notification of Solicitation Only for Qualified Institutional Investors)

(1) A person shall, when conducting a Solicitation for Newly Issued Securities, etc. or a Solicitation for Delivery of Existing Securities, etc. that falls under any one of the categories set forth in the following items (where the Solicitation for Newly Issued Securities, etc. or the Solicitation for Delivery of Existing Securities, etc. falls under the category set forth in item (ii), limited to a Solicitation for Newly Issued Securities, etc. or a Solicitation for Delivery of Existing Securities, etc. made to Qualified Institutional Investors who are excluded from the scope of a large number of persons pursuant to the provision of Article 2, paragraph (3), item (i), and where the Solicitation for Newly Issued Securities, etc. or the Solicitation for Delivery of Existing Securities, etc. falls under the category set forth in item (iv), limited to a Solicitation for Newly Issued Securities, etc. or a Solicitation for Delivery of Existing Securities, etc. made to Qualified Institutional Investors who are excluded from the scope of a large number of persons pursuant to the provision of in Article 2, paragraph (4), item (i); hereinafter referred to as a "Solicitation Only for Qualified Institutional Investors" in this Article), notify the solicited persons of the matters specified by a cabinet office ordinance, including the fact that the Solicitation Only for Qualified Institutional Investors falls under any one of the categories set forth in the following items and therefore the notification to be made pursuant to the provisions of Article 4, paragraph (1) has not been made for the Solicitation Only for Qualified Institutional Investors; however, this shall not apply to the Case Where Disclosure Has Been Made with regard to the Securities solicited by

the Solicitation Only for Qualified Institutional Investors or where the Solicitation Only for Qualified Institutional Investors is made for Securities of which the total issue price or the total transfer price was or is less than 100 million yen and that falls under the cases specified by a cabinet office ordinance:

(i) the category set forth in Article 2, paragraph (3), item (ii), sub-item (a);

(ii) the category set forth in Article 2, paragraph (3), item (ii), sub-item (c) (limited to the cases that are not to fall under the category set forth in item (i) of that paragraph by excluding Qualified Institutional Investors from the scope of a large number of persons pursuant to the provision of that item;

(iii) the category set forth in Article 2, paragraph (4), item (ii), sub-item (a);

(iv) the category set forth in Article 2, paragraph (4), item (ii), sub-item (c) (limited to the cases that are not to fall under the category set forth in item (i) of that paragraph by excluding Qualified Institutional Investors from the scope of a large number of persons pursuant to the provision of that item;

(v) the category set forth in Article 2-2, paragraph (4), item (ii), sub-item (a); or

(vi) the category set forth in Article 2-2, paragraph (5), item (ii), sub-item (a).

(2) A person conducting a Solicitation Only for Qualified Institutional Investors to which the provision of the main clause of the preceding paragraph is applicable shall, when having another person acquire the relevant Securities or selling the Securities to another person through the Solicitation Only for Qualified Institutional Investors, deliver a document containing a description on the matters to be notified pursuant to the provisions of that paragraph to the other person in advance of, or at the same time as, having the other person acquire the Securities or selling the Securities to the other person.

(3) A person who conducts either of the acts set forth in the following items shall notify the solicited persons of the matters specified therein in the manner specified in a cabinet office ordinance; however, this shall not apply to the Case Where Disclosure Has Been Made with regard to the Securities solicited by the act:

(i) Solicitation for Acquisition Only for Professional Investors or Solicitation for Selling, etc. Only for Professional Investors—the matters specified by a cabinet office ordinance, including the fact that the notification to be made pursuant to the provisions of Article 4, paragraph (1) has not been made for the Solicitation for Acquisition Only for Professional Investors or the Solicitation for Selling, etc. Only for Professional Investors; or

(ii) Solicitation for Delivery of Existing Securities, etc. of Securities for Professional Investors that does not fall under any of the categories of Solicitation for Selling, etc. Only for Professional Investors or General Solicitation for Securities Acquired by Professional Investors, etc. (limited to a General Solicitation for Securities Acquired by Professional Investors, etc. to which the provisions of the main clause of Article 4, paragraph (3) are applicable)—the matters specified by a cabinet office ordinance, including the fact that the Solicitation for Delivery of Existing Securities, etc. does not fall under the category of Case Where Disclosure Has Been Made with regard to Securities for Professional Investors.

(4) A person shall, when conducting a Solicitation for Newly Issued Securities, etc. or a Solicitation for Delivery of Existing Securities, etc. that falls under any one of the categories set forth in the following items, according to the types of Securities specified therein (excluding those specified by a cabinet order (including a Solicitation for Newly Issued Securities, etc. and a Solicitation for Delivery of Existing Securities, etc. for Securities of the category set forth in Article 2, paragraph (1), item (ix)) and, in the category set forth in sub-item (a) or (b) of item (i), excluding those falling under the category of Solicitation Only for Qualified Institutional Investors) (hereinafter referred to as a "Solicitation for Small Number of Investors" in this Article), notify the solicited persons of the matters specified by a cabinet office ordinance, including the fact that the Solicitation for Small Number of Investors made for the Securities falls under any of the categories set forth in the following items according to the types of Securities specified therein (in the category set forth in sub-item (a) or (b) of item (i), excluding those falling the category of Solicitation Only for Qualified Institutional Investors) and therefore the notification to be made pursuant to the provisions of Article 4, paragraph (1) has not been made for the Solicitation for Small Number of Investors.; however, this shall not apply to the Case Where Disclosure Has Been Made with regard to the Securities pertaining to the Solicitation for Small Number of Investors and where the Solicitation for Small Number of Investors is made for the Securities of which the total issue price or the total transfer price was or is less than 100 million yen and that falls under the cases specified by a cabinet office ordinance:

(i) Paragraph (1) Securities—the cases falling under:
  (a) Article 2, paragraph (3), item (ii), sub-item (c);
  (b) Article 2, paragraph (4), item (ii), sub-item (c);
  (c) Article 2-2, paragraph (4), item (ii), sub-item (b); or
  (d) Article 2-2, paragraph (5), item (ii), sub-item (b);

(ii) Paragraph (2) Securities—the cases not falling under:

(a) Article 2, paragraph (3), item (iii); or
(b) Article 2-2, paragraph (4), item (iii).

(5) A person who conducts a Solicitation for Small Number of Investors to which the provisions of the main clause of the preceding paragraph is applicable shall, when having another person acquire the relevant Securities or selling the Securities to another person through the Solicitation for Small Number of Investors, deliver a document containing a description on the matters to be notified pursuant to the provision of that paragraph to the other person in advance of, or at the same time as, having the other person acquire the Securities or selling the Securities to the other person.

Article 24 (Submission of Annual Securities Reports)

(1) A company that is an Issuer of Securities shall, if those Securities (excluding Specified Securities; hereinafter the same shall apply in this Article except in the following items) fall under any one of the categories of Securities set forth in the following items, submit, for each business year, a report stating the trade name of the company, financial conditions of the Corporate Group to which the company belongs and of the company, other important matters concerning the company's business and other matters specified by a cabinet office ordinance as necessary and appropriate for the public interest or the protection of investors (hereinafter referred to as an "Annual Securities Report") to the Prime Minister within three months after the end of that business year in the case of a domestic company (or, if it is found unable to submit it within that period due to compelling reasons, within the period approved in advance by the Prime Minister pursuant to the provisions of a cabinet office ordinance), or, in the case of a foreign company, within the period specified by a cabinet order as the period necessary and appropriate for the public interest or the protection of investors, pursuant to the provisions of a cabinet office ordinance; however, this shall not apply where the relevant Securities fall under the category of Securities set forth in item (iii) (limited to share certificates and other Securities specified by a cabinet order) and the number of owners of the Securities is less than the number to be calculated pursuant to the provisions of a cabinet order on the last day of that business year of the company that is the Issuer of the Securities (limited to where five years have already passed for the company after the end of the Report Submission Starting Year (meaning the business year that includes the day on which the provision of the main clause of paragraph (1), the main clause of paragraph (2) or the main clause of paragraph (3) of Article 4, or the provision of the main clause of paragraph (1) or paragraph (2) of Article 23-8 became applicable to the Public Offering or Secondary

Distribution of the Securities, or, if there are several such business years, the latest one), and on the last day of each business year commencing within four years before the first day of the first-mentioned business year, and if the Prime Minister approves pursuant to the provisions of a cabinet office ordinance that even if the company does not submit Annual Securities Reports, the public interest or the protection of investors will not be impaired; where the relevant Securities fall under the category of Securities set forth in item (iv), if the amount of the stated capital of the company that is the Issuer of the Securities is less than 500 million yen on the last day of that business year (or if the amount specified by a cabinet order as the amount of the asset of the company is less than the amount specified by a cabinet order on the last day of that business year where the Securities are Rights in Securities Investment Business, etc. that shall be deemed to be Securities pursuant to the provisions of Article 2, paragraph (2)), or if the number of owners of the Securities on the last day of that business year is less than the number specified by a cabinet order; and where the relevant Securities fall under the category of Securities set forth in item (iii) or (iv), if the Prime Minister approves, pursuant to the provisions of a cabinet order, that even if the company does not submit Annual Securities Reports, the public interest or the protection of investors will not be impaired:

(i) Securities listed on a Financial Instruments Exchange (excluding Specified Listed Securities);

(ii) Securities specified by a cabinet order as those of which the state of distribution is equivalent to that of those set forth in the preceding item (excluding Securities specified by a cabinet order as those of which the state of distribution is equivalent to that of Specified Listed Securities);

(iii) Securities the Public Offering or Secondary Distribution of which was subjected to the provision of the main clause of paragraph (1), the main clause of paragraph (2) or the main clause of paragraph (3) of Article 4, or the provision of the main clause of paragraph (1) or paragraph (2) of Article 23-8 (excluding those set forth in the preceding two items); or

(iv) Securities (limited to share certificates, Rights in Securities Investment Business, etc. that shall be deemed to be Securities pursuant to the provision of Article 2, paragraph (2), and other Securities specified by a cabinet order) issued by the relevant company, if the number of owners thereof on the last day of the relevant business year or on the last day of any one of the business years commencing within four years before the first day of that business year is not less than the

number specified by a cabinet order (or if the number of owners thereof on the last day of that business year is not less than the number specified by a cabinet order where the relevant Securities are Rights in Securities Investment Business, etc. that shall be deemed to be Securities pursuant to the provision of that paragraph) (excluding those set forth in the preceding three items).

(2) Among the companies that are Issuers of Securities falling under the category of Securities set forth in item (iii) of the preceding paragraph and that have submitted a statement prescribed in Article 5, paragraph (1) containing descriptions on the matters mentioned in paragraph (2) of that Article for a Small Amount Public Offering, etc., a company not falling under either of the following items may state in the Annual Securities Report required to be submitted by the main clause of the preceding paragraph, among the matters prescribed in the main clause of Article 5, paragraph (1), those specified by a cabinet office ordinance as the matters pertaining to the company, instead of descriptions on all of the matters prescribed in the main clause of that paragraph:

(i) a company that has already submitted an Annual Securities Report containing descriptions on the matters prescribed in the main clause of the preceding paragraph, a Quarterly Securities Report under Article 24-4-7, paragraph (1) or (2) containing descriptions on the matters mentioned in paragraph (1) of that Article, or a Semiannual Securities Report containing descriptions on the matters mentioned in Article 24-5, paragraph (1); or

(ii) a company that has submitted or is required to submit a statement prescribed in Article 5, paragraph (1) containing descriptions on the matters set forth in item (ii) of that paragraph with respect to a Public Offering or Secondary Distribution of Securities to which the provision of the main clause of paragraph (1), the main clause of paragraph (2) or the main clause of paragraph (3) of Article 4 has applied (excluding the companies set forth in the preceding item).

(3) When Securities the Issuer of which is a company to which the provision of the main clause of paragraph (1) does not apply come to fall under any one of the categories of Securities set forth in items (i) to (iii) of that paragraph (excluding the cases specified by a cabinet office ordinance), that company shall without delay submit an Annual Securities Report pertaining to the business year immediately prior to the business year that includes the day on which the Securities come to fall under the relevant category to the Prime Minister pursuant to the provisions of a cabinet office ordinance.

(4) The matters necessary for the calculation of the number of owners prescribed in item (iv) of paragraph (1) shall be specified by a cabinet office ordinance.

(5) The provisions of the preceding paragraphs shall apply *mutatis mutandis* where Specified Securities fall under any one of the categories of Securities set forth in the items of paragraph (1). In this case, the phrase "company that is an Issuer of Securities" in the main clause of paragraph (1) shall be deemed to be replaced with "company that is an Issuer of Securities (with respect to Securities specified by a cabinet office ordinance, excluding companies specified thereby)"; the phrase "excluding Specified Securities" in the main clause of paragraph (1) shall be deemed to be replaced with "limited to Specified Securities"; the phrase "for each business year" in the main clause of paragraph (1) shall be deemed to be replaced with "for each of the periods of time specified by a cabinet office ordinance for the Specified Securities (hereinafter referred to as the "Specified Period" in this Article)"; the part "the trade name of the company, financial conditions of the Corporate Group to which the company belongs and of the company, other important matters concerning the company's business" in the main clause of paragraph (1) shall be deemed to be replaced with "financial conditions of asset investment or other similar businesses conducted by the company, other important matters concerning the company's assets"; the term "that business year" in the main clause of paragraph (1) shall be deemed to be replaced with "that Specified Period"; the part "the relevant Securities fall under the category of Securities set forth in item (iii) (limited to share certificates and other Securities specified by a cabinet order) and the number of owners of the Securities is less than the number to be calculated pursuant to the provisions of a cabinet order on the last day of that business year of the company that is the Issuer of the Securities (limited to where five years have already passed for the company after the end of the Report Submission Starting Year (meaning the business year that includes the day on which the provision of the main clause of paragraph (1), the main clause of paragraph (2) or the main clause of paragraph (3) of Article 4, or the provision of the main clause of paragraph (1) or paragraph (2) of Article 23-8 became applicable to the Public Offering or Secondary Distribution of the Securities, or, if there are several such business years, the latest one), and on the last day of each business year commencing within four years before the first day of the first-mentioned business year, and if the Prime Minister approves pursuant to the provisions of a cabinet office ordinance that even if the company does not submit Annual Securities Reports, the public interest or the protection of investors will not be impaired; where the relevant Securities fall under the category of Securities set forth in item (iv)" in the proviso clause of paragraph (1) shall be deemed to be replaced with "the relevant Specified Securities fall under the

category of Securities set forth in item (iv)"; the part "or if the number of owners of the Securities on the last day of that business year is less than the number specified by a cabinet order; and" in the proviso clause of paragraph (1) shall be deemed to be replaced with "and"; the part "share certificates, Rights in Securities Investment Business, etc. that shall be deemed to be Securities pursuant to the provision of Article 2, paragraph (2)" in item (iv) of paragraph (1) shall be deemed to be replaced with "Rights in Securities Investment Business, etc. that shall be deemed to be Securities pursuant to the provision of Article 2, paragraph (2)"; the part "the number of owners thereof on the last day of the relevant business year or on the last day of any one of the business years commencing within four years before the first day of that business year is not less than the number specified by a cabinet order (or if the number of owners thereof on the last day of that business year is not less than the number specified by a cabinet order where the relevant Securities are Rights in Securities Investment Business, etc. that shall be deemed to be Securities pursuant to the provision of that paragraph)" in item (iv) of paragraph (1) shall be deemed to be replaced with "the number of owners thereof on the last day of the Specified Period is not less than the number specified by a cabinet order"; the term "of Securities" in paragraph (2) shall be deemed to be replaced with "of Specified Securities"; the phrase "When Securities" in paragraph (3) shall be deemed to be replaced with "When Specified Securities"; the term "the Issuer of which" in paragraph (3) shall be deemed to be replaced with "the Issuer (with respect to the Securities specified by a cabinet office ordinance, excluding companies specified thereby) of which"; the phrase "the main clause of paragraph (1)" in paragraph (3) shall be deemed to be replaced with "the main clause of paragraph (1) as applied *mutatis mutandis* under paragraph (5)"; the term "the business year" in paragraph (3) shall be deemed to be replaced with "the Specified Period," and the phrase "the day on which the Securities" in paragraph (3) shall be deemed to be replaced with "the day on which the Specified Securities." In addition, any other necessary deemed replacement of terms and phrases shall be specified by a cabinet order.

(6) An Annual Securities Report shall be attached with the articles of incorporation and other documents specified by a cabinet office ordinance as necessary and appropriate for the public interest or the protection of investors.

(7) The provisions of Article 6 shall apply *mutatis mutandis* where an Annual Securities Report and the attachments thereto are submitted pursuant to the provisions of paragraphs (1) to (3) (including where they are applied *mutatis mutandis* under paragraph (5)) and the preceding paragraph.

(8) A foreign company required to submit Annual Securities Reports pursuant to the provisions of paragraph (1) (including where it is applied *mutatis mutandis* under paragraph (5); hereinafter the same shall apply in this paragraph to paragraph (13)) (including foreign companies that have submitted Annual Securities Reports pursuant to the provision of Article 23-3, paragraph (4); hereinafter referred to as a "Reporting Foreign Company") may, in the cases specified by a cabinet office ordinance as not impairing the public interest or the protection of investors, submit, instead of Annual Securities Reports under paragraph (1) and the attachments thereto under paragraph (6) (hereinafter referred to as "Annual Securities Reports, etc." in this Article), a document that is prepared in English and similar to Annual Securities Reports, etc. Disclosed in a Foreign State (meaning that the relevant document is made available for public inspection in a foreign state based on laws and regulations of that state (including the rules prescribed by the operator of a Foreign Financial Instruments Market and others specified by a cabinet office ordinance); in Article 24-4-7, paragraph (6) and Article 24-5, paragraph (7), the same shall apply) is conducted (hereinafter such documents are referred to as a "Foreign Company Report" in this Chapter).

(9) A Foreign Company Report shall be attached with a Japanese translation of the summary of the matters specified by a cabinet office ordinance as those necessary and appropriate for the public interest or the protection of investors, among the matters stated in the Foreign Company Report, and a document stating the matters specified by a cabinet office ordinance as those necessary and appropriate for the public interest or the protection of investors, among the matters not stated in the Foreign Company Report, and any other documents specified by a cabinet office ordinance (hereinafter such documents are referred to as the "Supplementary Documents" in this Article and paragraph (4) of the following Article), pursuant to the provisions of a cabinet office ordinance.

(10) Where a Reporting Foreign Company submits a Foreign Company Report and Supplementary Documents instead of the Annual Securities Reports, etc. pursuant to the provisions of the preceding two paragraphs, the part "within three months after the end of that business year in the case of a domestic company (or, if it is found unable to submit it within that period due to compelling reasons, within the period approved in advance by the Prime Minister pursuant to the provisions of a cabinet office ordinance), or, in the case of a foreign company, within the period specified by a cabinet order as the period necessary and appropriate for the public interest or the protection of investors, pursuant to the provi-

sions of a cabinet office ordinance" in paragraph (1) shall be deemed to be replaced with "within the period specified by a cabinet order as the period necessary and appropriate for the public interest or the protection of investors after the end of that business year"; and the part "the term 'that business year' in the main clause of paragraph (1) shall be deemed to be replaced with 'that Specified Period' " in paragraph (5) shall be deemed to be replaced with "the part 'within three months after the end of that business year in the case of a domestic company (or, if it is found unable to submit it within that period due to compelling reasons, within the period approved in advance by the Prime Minister pursuant to the provisions of a cabinet office ordinance), or, in the case of a foreign company, within the period specified by a cabinet order as the period necessary and appropriate for the public interest or the protection of investors, pursuant to the provisions of a cabinet office ordinance' in the main clause of paragraph (1) shall be deemed to be replaced with 'within the period specified by a cabinet order as the period necessary and appropriate for the public interest or the protection of investors after the end of that Specified Period.' "

(11) Where a Reporting Foreign Company submits a Foreign Company Report and Supplementary Documents pursuant to the provisions of paragraphs (8) and (9), the provisions of this Act and orders based thereon (hereinafter referred to as the "Financial Instruments and Exchange Act and Related Regulations" in this Chapter to Chapter II-4) shall apply, by deeming the Foreign Company Report and Supplementary Documents to be an Annual Securities Report and deeming submission of the former to be submission of an Annual Securities Report, etc.

(12) The Prime Minister shall, if the Minister finds that a Reporting Foreign Company submitting a Foreign Company Report is not allowed to submit a Foreign Company Report under paragraph (8), notify that finding to the Reporting Foreign Company. In this case, a hearing shall be held irrespective of the categories of procedures for stating opinions pursuant to the provisions of Article 13, paragraph (1) of the Administrative Procedure Act.

(13) Notwithstanding the provisions of paragraph (1), a Reporting Foreign Company receiving a notice made under the preceding paragraph shall submit an Annual Securities Report pursuant to the provisions of that paragraph within the period specified by a cabinet order as the period necessary and appropriate for the public interest or the protection of investors, commencing on the day on which the notice is made.

(14) Where a company required to submit Annual Securities Reports pursuant to the provisions of paragraph (1) (limited to where it is applied *mutatis mutandis* under paragraph (5);

hereinafter the same shall apply in this Article) submits, pursuant to the provisions of a cabinet office ordinance, a document containing descriptions on part of the matters specified by a cabinet office ordinance, as mentioned in paragraph (1) (limited to documents prepared based on laws and regulations or rules of the relevant Financial Instruments Exchange (including those specified by a cabinet office ordinance as being similar to such rules); hereinafter such a document is referred to as a "Document Substituting Part of Annual Securities Report" in this paragraph and the following paragraph), together with an Annual Securities Report to the Prime Minister, with regard to the application of the provisions of paragraphs (1) and (2) in the cases approved by the Prime Minister as specified by a cabinet office ordinance as where the public interest or the protection of investors will not be impaired, the part "other matters specified by a cabinet office ordinance as necessary and appropriate for the public interest or the protection of investors" in paragraph (1) shall be deemed to be replaced with "other matters specified by a cabinet office ordinance as necessary and appropriate for the public interest or the protection of investors (excluding the matters stated in the Document Substituting Part of Annual Securities Report as defined in paragraph (14))"; and the phrase "among the matters prescribed in the main clause of Article 5, paragraph (1)" in paragraph (2) shall be deemed to be replaced with "among the matters prescribed in the main clause of Article 5, paragraph (1) (excluding the matters stated in the Document Substituting Part of Annual Securities Report as defined in paragraph (14))."

(15) When a Document Substituting Part of Annual Securities Report is submitted together with an Annual Securities Report under paragraph (1) as applied by replacing certain terms under the provisions the preceding paragraph, the provisions of the Financial Instruments and Exchange Act and Related Regulations shall apply by deeming the Document Substituting Part of Annual Securities Report to form a part of the Annual Securities Report and deeming the submission of the Document Substituting Part of Annual Securities Report to be the submission of the Document Substituting Part of Annual Securities Report as a part of the Annual Securities Report.

Article 24-2 (Application *Mutatis Mutandis* of Provisions Concerning Amendments)

(1) The provisions of Article 7, Article 9, paragraph (1), and Article 10, paragraph (1) shall apply *mutatis mutandis* to Annual Securities Reports and the attachments thereto. In this case, the part "a statement and other documents pursuant to the provisions of Article 5, paragraphs (1) and (6), or there occurs any

other circumstance specified by a cabinet office ordinance as that which requires amendment of those documents for the public interest or the protection of investors, during the period on or after the day on which the notification was made pursuant to the provisions of Article 4, paragraphs (1) to (3) but before the day on which the notification is to take effect" and the terms "the person making the notification" and "an amendment" in Article 7 shall be deemed to be replaced with "an Annual Securities Report and the attachments thereto, or there occurs any other circumstance specified by a cabinet office ordinance as that which requires amendment of those documents for the public interest or the protection of investors," "the person submitting the Annual Securities Report" and "an amendment report," respectively; the terms "the person submitting those documents" and "an amendment" in Article 9, paragraph (1) shall be deemed to be replaced with "the person submitting the Annual Securities Report" and "an amendment report," respectively; and the term "the person submitting the Securities Registration Statement" and the part "to submit an amendment, and when finding it necessary, the Minister may order the suspension of the effect of the notification made pursuant to the provisions of Article 4, paragraphs (1) to (3)" in Article 10, paragraph (1) shall be deemed to be replaced with "the person submitting the Annual Securities Reports" and "to submit an amendment report," respectively.

(2) When a company that is an Issuer of Securities submits an amendment report with regard to any description on important matters stated in its Annual Securities Report pursuant to the provisions of Article 7 or Article 10, paragraph (1) as applied *mutatis mutandis* under the preceding paragraph, it shall give public notice to that effect pursuant to the provisions of a cabinet order.

(3) The provision of Article 6 shall apply *mutatis mutandis* where an amendment report for an Annual Securities Report or any attachment thereto is submitted pursuant to the provisions of Article 7, Article 9, paragraph (1), or Article 10, paragraph (1) as applied *mutatis mutandis* under paragraph (1).

(4) The provisions of paragraphs (8), (9) and (11) of the preceding Article shall apply *mutatis mutandis* where an amendment report for a Foreign Company Report and Supplementary Documents submitted by a Reporting Foreign Company is submitted pursuant to the provisions of Article 7, Article 9, paragraph (1) or Article 10, paragraph (1) as applied *mutatis mutandis* by replacing certain terms pursuant to paragraph (1).

Article 24-3 (Suspension of the Effect of the Notifications Made Within One Year from the Submission of an Annual Securities Report Containing False Statement)

The provisions of Article 11 shall apply *mutatis mutandis* to each

statement prescribed in Article 5, paragraph (1), Shelf Registration Statement, or Shelf Registration Supplement submitted by a company that has submitted an Annual Securities Report (including an amendment report therefor; in the following Article, the same shall apply) that contains any false statement on important matters, during the period within one year from the day on which the company submitted an amendment report regarding the false statement pursuant to the provisions of Article 7 as applied *mutatis mutandis* under paragraph (1) of the preceding Article or was ordered to submit the amendment report pursuant to the provisions of Article 10, paragraph (1) as applied *mutatis mutandis* under Article 24-2, paragraph (1).

Article 24-4 (Liability for Damages of Officers, etc. of a Company Submitting Annual Securities Report Containing False Statement)

The provisions of Article 22 shall apply *mutatis mutandis* where an Annual Securities Report contains any false statement on important matters, lacks a statement on important matters that should be stated or lacks a statement on a material fact that is necessary for avoiding misunderstanding. In this case, the part "a person who has acquired Securities the Issuer of which is the person having submitted the Securities Registration Statement, not through a Public Offering or Secondary Distribution" in paragraph (1) of that Article shall be deemed to be replaced with "a person who has acquired Securities the Issuer of which is the person having submitted the Securities Registration Statement."

Article 24-4-2 (Submission of Confirmation Letter for Annual Securities Report)

(1) Among the companies required to submit Annual Securities Reports pursuant to the provisions of Article 24, paragraph (1) (including those having submitted Annual Securities Reports pursuant to the provision of Article 23-3, paragraph (4); in the following paragraph, the same shall apply), a company that is an Issuer of Securities of the category set forth in Article 24, paragraph (1), item (i) or any other company specified by a cabinet order shall submit a letter confirming that, pursuant to the provisions of a cabinet office ordinance, the content of each Annual Securities Report is appropriate under the Financial Instruments and Exchange Act and Related Regulations (hereinafter referred to as a "Confirmation Letter" in this Article and the following Article) to the Prime Minister, together with the relevant Annual Securities Report (or the relevant Foreign Company Report where Foreign Company Reports are submitted, pursuant to the provision of Article 24, paragraph (8), instead of Annual Securities Reports, etc. as defined in that paragraph).

(2) A company required to submit Annual Securities Reports pursuant to the provisions of Article 24, paragraph (1) may, if the company does not fall under the category of companies that

are required to submit a Confirmation Letter together with an Annual Securities Report pursuant to the provisions of the preceding paragraph (excluding where the company falls under the category of companies specified by a cabinet order), voluntarily submit a Confirmation Letter as prescribed in that paragraph.

(3) The provisions of the preceding two paragraphs shall apply *mutatis mutandis* to companies that, among those required to submit Annual Securities Reports pursuant to the provisions of Article 24, paragraph (1) as applied *mutatis mutandis* under paragraph (5) of that Article (including companies that have submitted Annual Securities Reports pursuant to the provision of Article 23-3, paragraph (4)), are specified by a cabinet order.

(4) The provisions of the preceding three paragraphs shall apply *mutatis mutandis* where an amendment report is submitted pursuant to the provisions of Article 7, Article 9, paragraph (1), and Article 10, paragraph (1) as applied *mutatis mutandis* by replacing certain terms pursuant to the provisions of Article 24-2, paragraph (1). In this case, any necessary deemed replacement of terms and phrases shall be specified by a cabinet order.

(5) The provision of Article 6 shall apply *mutatis mutandis* where a Confirmation Letter is submitted pursuant to the provisions of paragraph (1) or (2) (including where they are applied *mutatis mutandis* under paragraph (3) (including where it is applied *mutatis mutandis* under the preceding paragraph) or the preceding paragraph: hereinafter the same shall apply in this Article). In this case, any necessary deemed replacement of terms and phrases shall be specified by a cabinet order.

(6) The provisions of Article 24, paragraphs (8), (9), and (11) to (13) shall apply *mutatis mutandis* where a Reporting Foreign Company submits a Confirmation Letter pursuant to the provisions of paragraph (1) or (2) of this Article (limited to where the Reporting Foreign Company submits a Foreign Company Report). In this case, the parts "foreign company(including foreign companies that have submitted Annual Securities Reports pursuant to the provision of Article 23-3, paragraph (4); hereinafter referred to as a "Reporting Foreign Company")," "Annual Securities Reports under paragraph (1) and the attachments thereto under paragraph (6) (hereinafter referred to as "Annual Securities Reports, etc." in this Article)" and "and similar to Annual Securities Reports, etc. Disclosed in a Foreign State (meaning that the relevant document is made available for public inspection in a foreign state based on laws and regulations of that state (including the rules prescribed by the operator of a Foreign Financial Instruments Market or others specified by a cabinet office ordinance); in Article 24-4-7, paragraph (6) and Article 24-5, paragraph (7), the same

shall apply)" in Article 24, paragraph (8) shall be deemed to be replaced with "foreign company", "a Confirmation Letter under Article 24-4-2, paragraph (1) or (2) (including where they are applied *mutatis mutandis* under paragraph (3) of that Article (including where it is applied *mutatis mutandis* under paragraph (4) of that Article) or paragraph (4) of that Article)" and "and states the matters to be stated in the Confirmation Letter," respectively; the part "a document stating the matters specified by a cabinet office ordinance as those necessary and appropriate for the public interest or the protection of investors, among the matters not stated in the Foreign Company Report, and any other" in Article 24, paragraph (9) shall be deemed to be replaced with "other"; the term "an Annual Securities Report, etc." in Article 24, paragraph (11) shall be deemed to be replaced with "a Confirmation Letter to be submitted pursuant to the provisions of Article 24-4-2, paragraph (1) or (2) (including where they are applied *mutatis mutandis* under paragraph (3) of that Article (including where it is applied *mutatis mutandis* under paragraph (4) of that Article) or paragraph (4) of that Article)." In addition, any other necessary deemed replacement of terms and phrases shall be specified by a cabinet order.

Article 24-4-3 (Submission of Amendment Confirmation Letter)

(1) The provisions of Article 7, Article 9, paragraph (1), and Article 10, paragraph (1) shall apply *mutatis mutandis* to a Confirmation Letter. In this case, the part "a statement and other documents pursuant to the provisions of Article 5, paragraphs (1) and (6), or there occurs any other circumstance specified by a cabinet office ordinance as that which requires amendment of those documents for the public interest or the protection of investors, during the period on or after the day on which the notification was made pursuant to the provisions of Article 4, paragraphs (1) to (3) but before the day on which the notification is to take effect" in Article 7 shall be deemed to be replaced with "a Confirmation Letter, or there occurs any other circumstance provided for by a cabinet office ordinance as that which requires amendment of a Confirmation Letter for the public interest or the protection of investors"; the terms "the person making the notification" and "an amendment" in Article 7 shall be deemed to be replaced with "the person submitting the Confirmation Letter" and "an amendment Confirmation Letter," respectively; the terms "the person submitting those documents" and "an amendment" in Article 9, paragraph (1) shall be deemed to be replaced with "the person submitting the Confirmation Letter" and "an amendment Confirmation Letter," respectively; the term "the person submitting the Securities Registration Statement" and the part "to submit an amendment, and when finding it necessary, the Minister may

order the suspension of the effect of the notification made pursuant to the provisions of Article 4, paragraphs (1) to (3)" in Article 10, paragraph (1) shall be deemed to be replaced with "the person submitting the Confirmation Letter" and "to submit an amendment Confirmation Letter," respectively. In addition, any other necessary deemed replacement of terms and phrases shall be specified by a cabinet order.

(2) The provision of Article 6 shall apply *mutatis mutandis* where an amendment Confirmation Letter for a Confirmation Letter is submitted pursuant to the provisions of Article 7, Article 9, paragraph (1) and Article 10, paragraph (1) as applied *mutatis mutandis* under the preceding paragraph. In this case, any necessary deemed replacement of terms and phrases shall be specified by a cabinet order.

(3) The provisions of Article 24, paragraphs (8), (9) and (11) shall apply *mutatis mutandis* where an amendment Confirmation Letter for a Confirmation Letter submitted by a foreign company is submitted pursuant to the provisions of Article 7, Article 9, paragraph (1), and Article 10, paragraph (1) as applied *mutatis mutandis* by replacing certain terms pursuant to the provision of paragraph (1). In this case, any necessary deemed replacement of terms and phrases shall be specified by a cabinet order.

Article 24-4-4 (Evaluation of System for Ensuring Appropriateness of Statements on Finance and Accounting and Other Information)

(1) Among the companies required to submit Annual Securities Reports pursuant to the provisions of Article 24, paragraph (1) (including those having submitted Annual Securities Reports pursuant to the provision of Article 23-3, paragraph (4); in the following paragraph, the same shall apply), a company that is an Issuer of Securities of the category set forth in Article 24, paragraph (1), item (i) or any other company specified by a cabinet order shall, pursuant to the provisions of a cabinet office ordinance, submit a report in which evaluation pursuant to the provisions of a cabinet office ordinance is made with regard to the company's systems specified by a cabinet office ordinance as necessary for ensuring the appropriateness of statements on finance and accounting and other information concerning the Corporate Group to which the company belongs and concerning the company (hereinafter referred to as an "Internal Control Report") to the Prime Minister together with an Annual Securities Report (or a Foreign Company Report where Foreign Company Reports are submitted instead of Annual Securities Reports, etc. as defined in Article 24, paragraph (8) pursuant to the provisions of that paragraph) for each business year.

(2) A company required to submit Annual Securities Reports pursuant to the provisions of Article 24, paragraph (1) may, if the

company does not fall under the category of companies that are required to submit Internal Control Reports together with Annual Securities Reports pursuant to the provision of the preceding paragraph (excluding those specified by a cabinet order), voluntarily submit Internal Control Reports as prescribed in that paragraph.

(3) The provisions of the preceding two paragraphs shall apply *mutatis mutandis* to, among the companies required to submit Annual Securities Reports pursuant to the provisions of Article 24, paragraph (1) as applied *mutatis mutandis* under paragraph (5) of that Article (including companies that have submitted Annual Securities Reports pursuant to the provision of Article 23-3, paragraph (4)), those specified by a cabinet order. In this case, the phrase "or any other company specified by a cabinet order" in paragraph (1) shall be deemed to be replaced with "or any other company specified by a cabinet order (limited to the Issuer of Specified Securities (meaning Specified Securities as defined in Article 5, paragraph (1); hereinafter the same shall apply in this paragraph)"; the phrase "concerning the Corporate Group to which the company belongs and concerning the company" in paragraph (1) shall be deemed to be replaced with "concerning asset investment or other similar businesses conducted by the company"; the term "business year" in paragraph (1) shall be deemed to be replaced with "Specified Period (meaning Specified Period as defined in Article 24, paragraph (1) as applied *mutatis mutandis* under paragraph (5) of that Article) designated for the Specified Securities." In addition, any other necessary deemed replacement of terms and phrases shall be specified by a cabinet order.

(4) An Internal Control Report shall be attached with a document stating the matters pertaining to the system specified by a cabinet office ordinance mentioned in paragraph (1) and other documents specified by a cabinet office ordinance as necessary and appropriate for the public interest or the protection of investors.

(5) The provision of Article 6 shall apply *mutatis mutandis* where an Internal Control Report and the attachments thereto are submitted pursuant to the provisions of paragraph (1) or (2) (including where they are applied *mutatis mutandis* under paragraph (3); hereinafter the same shall apply in this Article) and the preceding paragraph. In this case, any necessary deemed replacement of terms and phrases shall be specified by a cabinet order.

(6) The provisions of Article 24, paragraphs (8), (9) and (11) to (13) shall apply *mutatis mutandis* where a Reporting Foreign Company submits an Internal Control Report pursuant to the provisions of paragraph (1) or (2) of this Article (limited to where the Reporting Foreign Company submits Foreign Company Reports). In this case, the parts "foreign companys

(including foreign companies that have submitted Annual Securities Reports pursuant to the provision of Article 23-3, paragraph (4); hereinafter referred to as a "Reporting Foreign Company")," "Annual Securities Reports under paragraph (1) and the attachments thereto under paragraph (6) (hereinafter referred to as "Annual Securities Reports, etc." in this Article)" and "and similar to Annual Securities Reports, etc. Disclosed in a Foreign State (meaning that the relevant document is made available for public inspection in a foreign state based on laws and regulations of that state (including the rules prescribed by the operator of a Foreign Financial Instruments Market or others specified by a cabinet office ordinance); in Article 24-4-7, paragraph (6) and Article 24-5, paragraph (7), the same shall apply)" in Article 24, paragraph (8) shall be deemed to be replaced with "foreign companys," "an Internal Control Report under Article 24-4-4, paragraph (1) or (2) (including where they are applied *mutatis mutandis* under paragraph (3) of that Article) and the attachments thereto under paragraph (4) of that Article (hereinafter referred to as an "Internal Control Report, etc." in this Article)" and "and states the matters to be stated in the Internal Control Report, etc.," respectively; the part "a document stating the matters specified by a cabinet office ordinance as those necessary and appropriate for the public interest or the protection of investors, among the matters not stated in the Foreign Company Report, and any other" in Article 24, paragraph (9) shall be deemed to be replaced with "other"; the term "an Annual Securities Report, etc." in Article 24, paragraph (11) shall be deemed to be replaced with "an Internal Control Report, etc." In addition, any other necessary deemed replacement of terms and phrases shall be specified by a cabinet order.

Article 24-4-5 (Submission of Amendments of Internal Control Reports)

(1) The provisions of Article 7, Article 9, paragraph (1), and Article 10, paragraph (1) shall apply *mutatis mutandis* to Internal Control Reports and the attachments thereto. In this case, the part "a statement and other documents pursuant to the provisions of Article 5, paragraphs (1) and (6), or there occurs any other circumstance specified by a cabinet office ordinance as that which requires amendment of those documents for the public interest or the protection of investors, during the period on or after the day on which the notification was made pursuant to the provisions of Article 4, paragraphs (1) to (3) but before the day on which the notification is to take effect" in Article 7 shall be deemed to be replaced with "an Internal Control Report and the attachments thereto, or there occurs any other circumstance specified by a cabinet office ordinance as that which requires amendment of an Internal Control

Report and the attachments thereto for the public interest or the protection of investors"; the terms "the person making the notification" and "an amendment" in Article 7 shall be deemed to be replaced with "the person submitting the Internal Control Report" and "an amendment report," respectively; the terms "the person submitting those documents" and "an amendment" in Article 9, paragraph (1) shall be deemed to be replaced with "the person submitting the Internal Control Report" and "an amendment report," respectively; the term "the person submitting the Securities Registration Statement" and the part "to submit an amendment, and when finding it necessary, the Minister may order the suspension of the effect of the notification made pursuant to the provisions of Article 4, paragraphs (1) to (3)" in Article 10, paragraph (1) shall be deemed to be replaced with "the person submitting the Internal Control Report" and "to submit an amendment report," respectively. In addition, any other necessary deemed replacement of terms and phrases shall be specified by a cabinet order.

(2) The provision of Article 6 shall apply *mutatis mutandis* where an amendment report for an Internal Control Report or any attachment thereto is submitted pursuant to the provisions of Article 7, Article 9, paragraph (1) and Article 10, paragraph (1) as applied *mutatis mutandis* under the preceding paragraph. In this case, any necessary deemed replacement terms and phrases shall be specified by a cabinet order.

(3) The provisions of Article 24, paragraphs (8), (9) and (11) shall apply *mutatis mutandis* where an amendment report for an Internal Control Report submitted by a foreign company is submitted pursuant to the provisions of Article 7, Article 9, paragraph (1) and Article 10, paragraph (1) as applied *mutatis mutandis* by replacing certain terms pursuant to paragraph (1). In this case, any necessary deemed replacement of terms and phrases shall be specified by a cabinet order.

Article 24-4-6 (Application *Mutatis Mutandis* of Provisions Concerning Liability for Damages)

The provisions of Article 22 shall apply *mutatis mutandis* where an Internal Control Report (including amendment reports therefor) contains any false statement on important matters, lacks a statement on important matters that should be stated or lacks a statement on a material fact that is necessary for avoiding misunderstanding. In this case, the part "a person who has acquired Securities the Issuer of which is the person having submitted the Securities Registration Statement, not through a Public Offering or Secondary Distribution" in paragraph (1) of that Article shall be deemed to be replaced with "a person who has acquired Securities the Issuer of which is the person having submitted the Internal Control Report (including amendment reports therefor)." In addition, any other necessary deemed replacement of terms and phrases shall be specified by a cabinet order.

Article 24-4-7 (Submission of Quarterly Securities Reports)

(1) Among the companies required to submit Annual Securities Reports pursuant to the provisions of Article 24, paragraph (1) (including those having submitted Annual Securities Reports pursuant to the provision of Article 23-3, paragraph (4); in the following paragraph, the same shall apply), a company that is an Issuer of Securities of the category set forth in Article 24, paragraph (1), item (i) or any other company specified by a cabinet order (hereinafter such a company is referred to as a "Listed Company, etc." in this paragraph and the following paragraph) shall, if its business year is longer than three months, submit, for each three-month period of its business years (excluding periods specified by a cabinet order; hereinafter the same shall apply), pursuant to the provisions of a cabinet office ordinance, a report stating financial conditions of the Corporate Group to which the company belongs and other matters specified by a cabinet office ordinance as necessary and appropriate for the public interest or the protection of investors (hereinafter referred to as the "Matters to Be Stated in Quarterly Securities Report" in this paragraph) (hereinafter such a report is referred to as a "Quarterly Securities Report") to the Prime Minister within the period designated by a cabinet order but not exceeding 45 days after the three-month period (if it is found that the company is unable to submit a Quarterly Securities Report within that period due to compelling reasons, then within the period approved by the Prime Minister in advance pursuant to the provisions of a cabinet office ordinance). In this case, among the Listed Companies, etc., those conducting a category of business specified by a cabinet office ordinance shall submit a Quarterly Securities Report stating, in addition to the Matters to Be Stated in Quarterly Securities Report, financial conditions of the company and other matters specified by a cabinet office ordinance as necessary and appropriate for the public interest or the protection of investors to the Prime Minister within the period specified by a cabinet order but not exceeding 60 days after the three-month period (if it is found that the Listed Company, etc. is unable to submit a Quarterly Securities Report within that period due to unavoidable reasons, then within the period approved by the Prime Minister in advance pursuant to the provisions of a cabinet office ordinance).

(2) A company that is required to submit Annual Securities Reports pursuant to the provisions of Article 24, paragraph (1) and is a company (excluding those specified by a cabinet order) other than a Listed Company, etc. may voluntarily submit Quarterly Securities Reports.

(3) The provisions of the preceding two paragraphs shall apply *mutatis mutandis* to those specified by a cabinet order among

the companies required to submit Annual Securities Reports pursuant to the provisions of Article 24, paragraph (1) as applied *mutatis mutandis* under paragraph (5) of that Article (including companies having submitted Annual Securities Reports pursuant to the provision of Article 23-3, paragraph (4)). In this case, the phrase "specified by a cabinet order ("in paragraph (1) shall be deemed to be replaced with "specified by a cabinet order (limited to the Issuer of Specified Securities (meaning Specified Securities as defined in Article 5, paragraph (1); hereinafter the same shall apply in this paragraph)"; the phrase "if its business year" in paragraph (1) shall be deemed to be replaced with "if the Specified Period (meaning a Specified Period as defined in Article 24, paragraph (1) as applied *mutatis mutandis* under Article 24, paragraph (5); hereinafter the same shall apply in this paragraph) designated for the Specified Securities"; the phrase "of its business years" in paragraph (1) shall be deemed to be replaced with "of the Specified Period"; the phrase "the Corporate Group to which the company belongs" in paragraph (1) shall be deemed to be replaced with "assets related to asset investment or other similar businesses conducted by the company"; the phrase "financial conditions of the company" in paragraph (1) shall be deemed to be replaced with "financial conditions of assets related to asset investment or other similar businesses conducted by the company." In addition, any other necessary deemed replacement of terms and phrases shall be specified by a cabinet order.

(4) The provisions of Article 7, Article 9, paragraph (1), and Article 10, paragraph (1) shall apply *mutatis mutandis* to Quarterly Securities Reports, and the provisions of Article 22 shall apply *mutatis mutandis* where a Quarterly Securities Report or any amendment report thereof contains any false statement on important matters or lacks a statement on important matters that should be stated, or lacks a statement on any material fact necessary for avoiding misunderstanding. In this case, the part "a statement and other documents pursuant to the provisions of Article 5, paragraphs (1) and (6), or there occurs any other circumstance specified by a cabinet office ordinance as that which requires amendment of those documents for the public interest or the protection of investors, during the period on or after the day on which the notification was made pursuant to the provisions of Article 4, paragraphs (1) to (3) but before the day on which the notification is to take effect" in Article 7 shall be deemed to be replaced with "a Quarterly Securities Report (meaning a Quarterly Securities Report as prescribed in Article 24-4-7, paragraph (1) or (2) (including where they are applied *mutatis mutandis* under Article 24-4-7, paragraph

(3); hereinafter the same shall apply in this Article, Article 9, paragraph (1), Article 10, paragraph (1), and Article 22), or there occurs any other circumstance specified by a cabinet office ordinance as that which requires amendment of a Quarterly Securities Report for the public interest or the protection of investors"; the term "the person making the notification" in Article 7 shall be deemed to be replaced with "the person submitting the Quarterly Securities Report"; the term "an amendment" in Article 7 shall be deemed to be replaced with "an amendment report"; the terms "the person submitting those documents" and "an amendment "in Article 9, paragraph (1) shall be deemed to be replaced with "the person submitting the Quarterly Securities Report" and "an amendment report," respectively; the term "the person submitting the Securities Registration Statement" in Article 10, paragraph (1) shall be deemed to be replaced with "the person submitting the Quarterly Securities Report"; the part "to submit the amendment, and when finding it necessary, the Minister may order the suspension of the effect of the notification made pursuant to the provisions of Article 4, paragraphs (1) to (3)" in Article 10, paragraph (1) shall be deemed to be replaced with "to submit an amendment report"; the part "a person who has acquired Securities the Issuer of which is the person having submitted the Securities Registration Statement, not through a Public Offering or Secondary Distribution" in Article 22, paragraph (1) shall be deemed to be replaced with "a person who has acquired Securities the Issuer of which is the person having submitted the Quarterly Securities Report and amendment reports"; the term "the preceding paragraph" in Article 22, paragraph (2) shall be deemed to be replaced with "the preceding paragraph as applied *mutatis mutandis* under Article 24-4-7, paragraph (4)." In addition, any other necessary deemed replacement of terms and phrases shall be specified by a cabinet order.

(5) The provisions of Article 6 shall apply *mutatis mutandis* where a Quarterly Securities Report is submitted pursuant to the provisions of paragraph (1) or (2) (including where they are applied *mutatis mutandis* under paragraph (3); in the following paragraph to paragraph (11), the same shall apply), and where an amendment report for a Quarterly Securities Report is submitted pursuant to the provisions of Article 7, Article 9, paragraph (1) or Article 10, paragraph (1) as applied *mutatis mutandis* under the preceding paragraph. In this case, any necessary deemed replacement of terms and phrases shall be specified by a cabinet order.

(6) A Reporting Foreign Company required to submit Quarterly Securities Reports pursuant to the provisions of paragraph (1) (including a Reporting Foreign Company submitting Quarterly Securities Reports pursuant to the provision of

paragraph (2); hereinafter the same shall apply in this Article) may, in the cases specified by a cabinet office ordinance as not impairing the public interest or the protection of investors, submit, instead of Quarterly Securities Reports under paragraph (1), a document that is prepared in English and similar to Quarterly Securities Report, and has been Disclosed in a foreign state (hereinafter such a document is referred to as a "Foreign Company Quarterly Securities Report" in this Article).

(7) A Foreign Company Quarterly Securities Report shall be attached with a Japanese translation of the summary of the matters specified by a cabinet office ordinance as those necessary and appropriate for the public interest or the protection of investors, among the matters stated in the Foreign Company Quarterly Securities Report, and a document stating the matters specified by a cabinet office ordinance as those necessary and appropriate for the public interest or the protection of investors, among the matters not stated in the Foreign Company Quarterly Securities Report, and any other documents specified by a cabinet office ordinance (hereinafter such a document is referred to as a "Supplementary Document" in this Article), pursuant to the provisions of a cabinet office ordinance.

(8) Where a Reporting Foreign Company submits a Foreign Company Quarterly Securities Report and Supplementary Documents pursuant to the provisions of the preceding two paragraphs, the provisions of the Financial Instruments and Exchange Act and Related Regulations shall apply by deeming the Foreign Company Quarterly Securities Report and Supplementary Documents to be a Quarterly Securities Report and deeming the submission of the former to be the submission of the latter.

(9) The Prime Minister shall, if the Minister finds that a Reporting Foreign Company that has submitted a Foreign Company Quarterly Securities Report is not allowed to submit a Foreign Company Quarterly Securities Report under paragraph (6), notify that finding to the Reporting Foreign Company. In this case, a hearing shall be held irrespective of the categories of procedures for stating opinions pursuant to the provisions of Article 13, paragraph (1) of the Administrative Procedure Act.

(10) Notwithstanding the provisions of paragraph (1), a Reporting Foreign Company receiving a notice made pursuant to the provisions of the preceding paragraph, shall submit a Quarterly Securities Report pursuant to the provisions of paragraph (1) within the period specified by a cabinet order as the period necessary and appropriate for the public interest or the protection of investors, commencing on the day on which the notice is made.

(11) The provisions of paragraphs (6) to (8) shall apply *mutatis mutandis* where an amendment report is submitted to amend a Foreign Company Quarterly Securities Report submitted by a Reporting Foreign Company pursuant to the provisions of Article 7, Article 9, paragraph (1), or Article 10, paragraph (1) as applied *mutatis mutandis* by replacing certain terms and phrases under paragraph (4) and any Supplementary Document therefore. In this case, any necessary deemed replacement of terms and phrases shall be specified by a cabinet order.

(12) Where a company required to submit Quarterly Securities Reports pursuant to the provisions of paragraph (1) (limited to where it is applied *mutatis mutandis* under paragraph (3); hereinafter the same shall apply in this Article) (including a company submitting Quarterly Securities Reports pursuant to the provision of paragraph (2) (limited to where it is applied *mutatis mutandis* under paragraph (3))) submits, pursuant to the provisions of a cabinet office ordinance, a document containing descriptions on part of the matters specified by a cabinet office ordinance, as mentioned in paragraph (1) (limited to documents prepared based on laws and regulations or rules of the relevant Financial Instruments Exchange (including those specified by a cabinet office ordinance as being similar to such rules); hereinafter such a document is referred to as a "Document Substituting Part of Quarterly Securities Report" in this paragraph and the following paragraph) together with a Quarterly Securities Report to the Prime Minister, with regard to the application of paragraph (1) in the cases approved by the Prime Minister specified by a cabinet office ordinance as where the public interest or the protection of investors will not be impaired, the term "other matters specified by a cabinet office ordinance" in paragraph (1) shall be deemed to be replaced with "other matters specified by a cabinet office ordinance (excluding matters stated in a Document Substituting Part of Quarterly Securities Report as defined in paragraph (12))."

(13) When a Document Substituting Part of Quarterly Securities Report is submitted together with a Quarterly Securities Report under paragraph (1) as applied by replacing certain terms and phrases under the preceding paragraph, the provisions of the Financial Instruments and Exchange Act and Related Regulations shall apply, by deeming the Document Substituting Part of Quarterly Securities Report to form a part of the Quarterly Securities Report and deeming the submission of the Document Substituting Part of Quarterly Securities Report to be the submission of the Document Substituting Part of Quarterly Securities Report as a part of the Quarterly Securities Report.

Article 24-4-8 (Application *Mutatis Mutandis* of the Provisions Concerning Confirmation Letters to Quarterly Securities Reports)

(1) The provisions of Article 24-4-2 shall apply *mutatis mutandis* where a Quarterly Securities Report is submitted pursuant to the provisions of paragraph (1) or (2) of the preceding Article (including where they are applied *mutatis mutandis* under paragraph (3) of that Article) and where an amendment report is submitted pursuant to the provisions of Article 7, Article 9, paragraph (1) and Article 10, paragraph (1) as applied *mutatis mutandis* by replacing certain terms and phrases under paragraph (4) of that Article. In this case, the phrases "the content of each Annual Securities Report," "the relevant Foreign Company Report," and "Foreign Company Reports are submitted pursuant to the provision of Article 24, paragraph (8), instead of Annual Securities Reports, etc. as defined in that paragraph" in Article 24-4-2, paragraph (1) shall be deemed to be replaced with "the content of the Quarterly Securities Report (including any amendment report thereof; hereinafter the same shall apply in this Article)," "the relevant Foreign Company Quarterly Securities Report," and "Foreign Company Quarterly Securities Reports are submitted instead of Quarterly Securities Report," respectively; the phrase "together with an Annual Securities Report" in Article 24-4-2, paragraph (2) shall be deemed to be replaced with "together with a Quarterly Securities Report"; the part "a Confirmation Letter to be submitted pursuant to the provisions of Article 24-4-2, paragraph (1) or (2) (including where they are applied *mutatis mutandis* under paragraph (3) of that Article (including where it is applied *mutatis mutandis* under paragraph (4) of that Article) or paragraph (4) of that Article)" in Article 24-4-2, paragraph (6) shall be deemed to be replaced with "a Confirmation Letter to be submitted pursuant to the provisions of Article 24-4-2, paragraph (1) or (2) (including where they are applied *mutatis mutandis* under paragraph (3) of that Article (including where it is applied *mutatis mutandis* under paragraph (4) of that Article) or paragraph (4) of that Article) as applied *mutatis mutandis* by replacing certain terms and phrases under Article 24-4-8." In addition, any other necessary deemed replacement of terms and phrases shall be specified by a cabinet order.

(2) The provisions of Article 24-4-3 shall apply *mutatis mutandis* where an amendment Confirmation Letter for a Confirmation Letter submitted pursuant to the provisions of the preceding paragraph is submitted. In this case, any necessary deemed replacement of terms and phrases shall be specified by a cabinet order.

Article 24-5 (Submission of Semiannual Securities Reports and Extraordinary Reports)

(1) Among the companies required to submit Annual Securities

Reports pursuant to the provisions of Article 24, paragraph (1) (including a company that has submitted Annual Securities Reports pursuant to the provisions of Article 23-3, paragraph (4); in paragraph (4), the same shall apply), a company other than that required to submit Quarterly Securities Reports pursuant to the provisions of Article 24-4-7, paragraph (1) (including a company that has submitted Quarterly Securities Reports pursuant to the provision of paragraph (2) of that Article; in paragraph (3), the same shall apply) shall, if its business year is longer than six months, submit, for each business year, a report stating financial conditions of the Corporate Group to which the company belongs and of the company, other important matters concerning the company's business and other matters specified by a cabinet office ordinance as necessary and appropriate for the public interest or the protection of investors pertaining to the first six months of the business year (hereinafter such a report is referred to as a "Semiannual Securities Report") pursuant to the provisions of a cabinet office ordinance to the Prime Minister within three months after the end of the first six months (if it is found that the company is unable to submit a Semiannual Securities Report within that period due to unavoidable reasons, then within the period approved by the Prime Minister in advance in accordance with a cabinet office ordinance).

(2) Among the companies that have submitted, or intend to submit, an Annual Securities Report containing descriptions on the matters specified in Article 24, paragraph (2) pursuant to the provisions of paragraph (1) of that Article, a company not falling under either of the following items may state in the Semiannual Securities Report required by that paragraph, among the matters set forth in the preceding paragraph, only those specified by a cabinet office ordinance as the matters pertaining to the company, instead of descriptions on all of the matters set forth in that paragraph:

(i) a person who has already submitted an Annual Securities Report containing descriptions on the matters specified in the main clause of Article 24, paragraph (1) or a Semiannual Securities Report containing descriptions on the matters specified in the preceding paragraph; or

(ii) a person who has submitted or is required to submit a statement prescribed in Article 5, paragraph (1) containing descriptions on the matters set forth in item (ii) of that paragraph for a Public Offering or Secondary Distribution of Securities to which the main clause of paragraph (1), the main clause of paragraph (2) or the main clause of paragraph (3) of Article 4 has applied (excluding those set forth in the preceding item).

(3) The provisions of the preceding two paragraphs shall apply

mutatis mutandis to, among the companies required to submit Annual Securities Reports pursuant to the provisions of Article 24, paragraph (1) as applied *mutatis mutandis* under paragraph (5) of that Article (including a company that has submitted Annual Securities Reports pursuant to the provisions of Article 23-3, paragraph (4); in the following paragraph and paragraph (15), the same shall apply), a company other than that required to submit Quarterly Securities Reports pursuant to the provisions of Article 24-4-7, paragraph (1) as applied *mutatis mutandis* under paragraph (3) of that Article. In this case, the phrase "a company other than" in paragraph (1) shall be deemed to be replaced with "a company (limited to the Issuer of Specified Securities (meaning Specified Securities as defined in Article 5, paragraph (1); hereinafter the same shall apply in this paragraph and the following paragraph)) other than"; the term "its business year" in paragraph (1) shall be deemed to be replaced with "the Specified Period (meaning a Specified Period as defined in Article 24, paragraph (1) as applied *mutatis mutandis* under paragraph (5) of that Article; hereinafter the same shall apply in this paragraph) designated for the Specified Securities"; the phrase "for each business year" in paragraph (1) shall be deemed to be replaced with "for each Specified Period"; the part "financial conditions of the Corporate Group to which the company belongs and of the company, other important matters concerning the company's business" in paragraph (1) shall be deemed to be replaced with "financial conditions of assets related to asset investment or other similar business conducted by the company, other important matters concerning the company's assets"; the term "of the business year" in paragraph (1) shall be deemed to be replaced with "of the Specified Period"; and the phrase "of Securities" in paragraph (2) shall be deemed to be replaced with "of Specified Securities."

(4) A company required to submit Annual Securities Reports pursuant to the provisions of Article 24, paragraph (1) (including where it is applied *mutatis mutandis* under paragraph (5) of that Article) shall, where a Public Offering or Secondary Distribution is conducted in a foreign state with respect to Securities the Issuer of which is that company, or in other cases specified by a cabinet office ordinance as necessary and appropriate for the public interest or the protection of investors, submit a report stating the details thereof (hereinafter referred to as an "Extraordinary Report") pursuant to the provisions of a cabinet office ordinance to the Prime Minister without delay.

(5) The provisions of Article 7, Article 9, paragraph (1), and Article 10, paragraph (1) shall apply *mutatis mutandis* to Semiannual Securities Reports and Extraordinary Reports,

and the provisions of Article 22 shall apply *mutatis mutandis* where any Semiannual Securities Report, Extraordinary Report or amendment thereof contains any false statement on important matters, lacks a statement on important matters that should be stated, or lacks a statement on any material fact that is necessary for avoiding misunderstanding. In this case, the part "a statement and other documents pursuant to the provisions of Article 5, paragraphs (1) and (6), or there occurs any other circumstance specified by a cabinet office ordinance as that which requires amendment of those documents for the public interest or the protection of investors, during the period on or after the day on which the notification was made pursuant to the provisions of Article 4, paragraphs (1) to (3) but before the day on which the notification is to take effect" in Article 7 shall be deemed to be replaced with "a Semiannual Securities Report (meaning a Semiannual Securities Report as defined in Article 24-5, paragraph (1) (including where it is applied *mutatis mutandis* under paragraph (3) of that Article); hereinafter the same shall apply in this Article, Article 9, paragraph (1), Article 10, paragraph (1), and Article 22) or an Extraordinary Report (meaning an Extraordinary Report as defined in Article 24-5, paragraph (4); hereinafter the same shall apply in this Article, Article 9, paragraph (1), Article 10, paragraph (1), and Article 22), or there occurs any other circumstance specified by a cabinet office ordinance as that which requires amendment of a Semiannual Securities Report or an Extraordinary Report for the public interest or the protection of investors"; the term "the person making the notification" in Article 7 shall be deemed to be replaced with "the person submitting the Semiannual Securities Report or Extraordinary Report"; the term "an amendment" in Article 7 shall be deemed to be replaced with "an amendment report"; the terms "the person submitting those documents" and "an amendment" in Article 9, paragraph (1) shall be deemed to be replaced with "the person submitting the Semiannual Securities Report or Extraordinary Report" and "an amendment report," respectively; the term "the person submitting the Securities Registration Statement" in Article 10, paragraph (1) shall be deemed to be replaced with "the person submitting the Semiannual Securities Report or Extraordinary Report"; the part "to submit an amendment, and when finding it necessary, the Minister may order the suspension of the effect of the notification made pursuant to the provisions of Article 4, paragraphs (1) to (3)" in Article 10, paragraph (1) shall be deemed to be replaced with "to submit an amendment report"; the part "a person who has acquired Securities the Issuer of which is the person having submitted the Securities Registration Statement, not through a Public Offering or Secondary

Distribution" in Article 22, paragraph (1) shall be deemed to be replaced with "a person who has acquired Securities the Issuer of which is the person having submitted the Semiannual Securities Report or Extraordinary Report, or amendment reports therefor"; and the term "the preceding paragraph" in Article 22, paragraph (2) shall be deemed to be replaced with "the preceding paragraph as applied *mutatis mutandis* under Article 24-5, paragraph (5)."

(6) The provisions of Article 6 shall apply *mutatis mutandis* where a Semiannual Securities Report or Extraordinary Report is submitted pursuant to the provisions of paragraph (1) (including where it is applied *mutatis mutandis* under paragraph (3); in the following paragraph to paragraph (12), the same shall apply) or paragraph (4) and where an amendment report therefor is submitted pursuant to the provisions of Article 7, Article 9, paragraph (1), or Article 10, paragraph (1) as applied *mutatis mutandis* under the preceding paragraph.

(7) A Reporting Foreign Company required to submit Semiannual Securities Reports pursuant to the provisions of paragraph (1) may, in the cases specified by a cabinet office ordinance as not impairing the public interest or the protection of investors, submit, instead of Semiannual Securities Reports under paragraph (1), a document that is prepared in English and similar to Semiannual Securities Reports, and has been Disclosed in a foreign state (hereinafter such a document is referred to as a "Foreign Company Semiannual Securities Report" in this Article).

(8) A Foreign Company Semiannual Securities Report shall be attached with a Japanese translation of the summary of the matters specified by a cabinet office ordinance as those necessary and appropriate for the public interest or the protection of investors, among the matters stated in the Foreign Company Semiannual Securities Report, and a document stating the matters specified by a cabinet office ordinance as those necessary and appropriate for the public interest or the protection of investors, among the matters not stated in the Foreign Company Semiannual Securities Report, and any other documents specified by a cabinet office ordinance (hereinafter, such a document is referred to as a "Supplementary Document" in this Article) pursuant to the provisions of a cabinet office ordinance.

(9) Where a Reporting Foreign Company submits a Foreign Company Semiannual Securities Report and Supplementary Documents pursuant to the provisions of the preceding two paragraphs, the provisions of the Financial Instruments and Exchange Act and Related Regulations shall apply by deeming the Foreign Company Semiannual Securities Report and Supplementary Documents to be a Semiannual Securities

Report and deeming the submission of the former to be the submission of the latter.

(10) The Prime Minister shall, if the Minister finds that a Reporting Foreign Company that has submitted a Foreign Company Semiannual Securities Report is not allowed to submit a Foreign Company Semiannual Securities Report under paragraph (7), notify that finding to the Reporting Foreign Company. In this case, a hearing shall be held irrespective of the categories of procedures for stating opinions under Article 13, paragraph (1) of the Administrative Procedure Act.

(11) Notwithstanding the provisions of paragraph (1), a Reporting Foreign Company receiving a notice made pursuant to the provisions of the preceding paragraph, shall submit a Semiannual Securities Report pursuant to the provisions of that paragraph within the period specified by a cabinet order as the period necessary and appropriate for the public interest or the protection of investors, commencing on the day on which the notice is made.

(12) The provisions of paragraphs (7) to (9) shall apply *mutatis mutandis* where any amendment report is submitted to amend a Foreign Company Semiannual Securities Report submitted by a Reporting Foreign Company pursuant to the provisions of Article 7, Article 9, paragraph (1), or Article 10, paragraph (1) as applied *mutatis mutandis* by replacing certain terms and phrases under paragraph (5) and Supplementary Documents thereof.

(13) Where a company required to submit Semiannual Securities Reports under paragraph (1) (limited to where it is applied *mutatis mutandis* under paragraph (3); hereinafter the same shall apply in this paragraph and following paragraph) submits, pursuant to the provisions of a cabinet office ordinance, a document containing descriptions on part of the matters specified by a cabinet office ordinance as mentioned in paragraph (1) (limited to a document prepared based on laws and regulations or rules of the relevant Financial Instruments Exchange (including those specified by a cabinet office ordinance as being similar to such rules); hereinafter, such a document is referred to as a "Document Substituting Part of Semiannual Securities Report" in this paragraph and the following paragraph) together with a Semiannual Securities Report to the Prime Minister, with regard to the application of paragraphs (1) and (2) in the cases approved by the Prime Minister specified a cabinet office ordinance as where the public interest or the protection of investors will not be impaired, the phrase "other matters specified by a cabinet office ordinance" in paragraph (1) shall be deemed to be replaced with "other matters specified by a cabinet office ordinance (excluding matters stated in Documents Substituting Part of Semiannual Securities Report as defined in

paragraph (13))"; and the phrase "the matters set forth in that paragraph" in paragraph (2) shall be deemed to be replaced with "the matters set forth in that paragraph (excluding matters stated in the Document Substituting Part of Semiannual Securities Report as defined in paragraph (13))."

(14) When a Document Substituting Part of Semiannual Securities Report is submitted together with a Semiannual Securities Report mentioned in paragraph (1) as applied by replacing certain terms and phrases under the provisions of the preceding paragraph, the provisions of the Financial Instruments and Exchange Act and Related Regulations shall apply, by deeming the Document Substituting Part of Semiannual Securities Report to form a part of the Semiannual Securities Report and deeming the submission of the Document Substituting Part of Semiannual Securities Report to be the submission of the Document Substituting Part of a Semiannual Securities Report as a part of the Semiannual Securities Report.

(15) Where a company required to submit an Extraordinary Report pursuant to the provision of paragraph (4) (limited to a company required to submit Annual Securities Reports pursuant to the provisions of Article 24, paragraph (1) as applied *mutatis mutandis* paragraph (5) of that Article) submits a document containing, pursuant to the provisions of a cabinet office ordinance, descriptions on part of the matters to be stated in an Extraordinary Report pursuant to the provision of paragraph (4) (limited to a document prepared based on laws and regulations or rules of the relevant Financial Instruments Exchange (including those specified by a cabinet office ordinance as being similar to such rules); hereinafter such a document is referred to as a "Document Substituting Part of Extraordinary Report" in this paragraph and the following paragraph) together with an Extraordinary Report to the Prime Minister, with regard to the application of the provision of paragraph (4) to the cases approved by the Prime Minister specified by a cabinet office ordinance as where the public interest or the protection of investors will not be impaired, the phrase "a report stating the details thereof" in that paragraph shall be deemed to be replaced with "a report stating the details thereof (excluding the details stated in the Document Substituting Part of Extraordinary Report as defined in paragraph (15)."

(16) Where a Document Substituting Part of Extraordinary Report is submitted together with an Extraordinary Report mentioned in paragraph (4) as applied by replacing certain terms and phrases under the provisions of the preceding paragraph, the provisions of the Financial Instruments and Exchange Act and Related Regulations shall apply by, deeming the

Document Substituting Part of Extraordinary Report to form a part of the Extraordinary Report and deeming the submission of the Document Substituting Part of Extraordinary Report to be the submission of the Document Substituting Part of Extraordinary Report as a part of the Extraordinary Report.

Article 24-5-2 (Application *Mutatis Mutandis* of the Provisions Concerning Confirmation Letters to Semiannual Securities Reports)

(1) The provisions of Article 24-4-2 shall apply *mutatis mutandis* where a Semiannual Securities Report is submitted pursuant to the provisions of paragraph (1) of the preceding Article (including where it is applied *mutatis mutandis* under paragraph (3) of that Article) and where an amendment report is submitted pursuant to the provisions of Article 7, Article 9, paragraph (1), and Article 10, paragraph (1) as applied *mutatis mutandis* by replacing certain terms and phrases under paragraph (5) of the preceding Article. In this case, the phrases "a Foreign Company Report," "Foreign Company Reports are submitted, pursuant to the provisions of Article 24, paragraph (8), instead of Annual Securities Reports, etc.," and "the content of each Annual Securities Report" in Article 24-4-2, paragraph (1) shall be deemed to be replaced with "Foreign Company Semiannual Securities Reports," "Foreign Company Semiannual Securities Reports are submitted, pursuant to the provisions of Article 24, paragraph (8), instead of Semiannual Securities Reports" and "the content of each Semiannual Securities Report (including amendment reports therefor; hereinafter the same shall apply in this Article)," respectively; the phrase "together with the relevant Annual Securities Report" in paragraph (2) of that Article shall be deemed to be replaced with "together with the relevant Semiannual Securities Report"; the part "a Confirmation Letter to be submitted pursuant to the provisions of Article 24-4-2, paragraph (1) or (2) (including where they are applied *mutatis mutandis* under paragraph (3) of that Article (including where it is applied *mutatis mutandis* under paragraph (4) of that Article) or paragraph (4) of that Article)" in paragraph (6) of that Article shall be deemed to be replaced with "a Confirmation Letter to be submitted pursuant to the provisions of Article 24-4-2, paragraph (1) or (2) (including where they are applied *mutatis mutandis* under paragraph (3) of that Article (including where it is applied *mutatis mutandis* under paragraph (4) of that Article) or paragraph (4) of that Article) as applied *mutatis mutandis* by replacing certain terms and phrases under Article 24-5-2." In addition, any other deemed technical replacement of terms and phrases shall be specified by a cabinet order.

(2) The provisions of Article 24-4-3 shall apply *mutatis mutandis* where an amendment Confirmation Letter for a Confirmation

Letter submitted pursuant to the provisions of the preceding paragraph is submitted. In this case, any necessary deemed replacement of terms shall be specified by a cabinet order.

Article 24-6 (Submission of Share Buyback Reports)

(1) A company that is an Issuer of share certificates listed on a Financial Instruments Exchange, share certificates specified by a cabinet order as those of which the state of distribution is equivalent to that of share certificates listed on a Financial Instruments Exchange or other Securities specified by a cabinet order (hereinafter referred to as "Listed Share Certificates, etc." in this Article, Articles 27-22-2 to 27-22-4 and 167) shall, when a resolution of a shareholders meeting or meeting of the board of directors (hereinafter referred to as the "Shareholders Meeting, etc." in this paragraph) is made pursuant to the provisions of Article 156, paragraph (1) of the Companies Act (including where it is applied by replacing certain terms and phrases under Article 165, paragraph (3) of that Act), submit a report that, pursuant to the provisions of a cabinet office ordinance, states matters pertaining to the status of buyback of Listed Share Certificates, etc. issued by itself conducted based on the resolution of the Shareholders Meeting, etc. during each month from the month that includes the date of the resolution of the Shareholders Meeting, etc. is made to the month that includes the expiry date of the period set forth in Article 156, paragraph (1), item (iii) of that Act (in this paragraph, each month is referred to as a "Reporting Month") (including where no buyback is conducted) and other matters specified by a cabinet office ordinance as necessary and appropriate for the public interest or the protection of investors to the Prime Minister by the 15th day of the month following each Reporting Month.

(2) The provisions of Article 7, Article 9, paragraph (1) and Article 10, paragraph (1) shall apply *mutatis mutandis* to a report submitted under the preceding paragraph (hereinafter referred to as a "Share Buyback Report"), and the provisions of Article 22 shall apply *mutatis mutandis* where a Share Buyback Report contains any false statement on important matters, lacks a statement on important matters that should be stated, or lacks a statement on any material fact that is necessary for avoiding misunderstanding. In this case, the part "a statement and other documents required pursuant to the provisions of Article 5, paragraphs (1) and (6), or there occurs any other circumstance specified by a cabinet office ordinance as that which requires amendment of those documents for the public interest or the protection of investors, during the period on or after the day on which the notification was made pursuant to the provisions of Article 4, paragraph (1) to (3) but before the day on which the notification is to take effect" and the phrases

"the person making the notification" and "an amendment" in Article 7 shall be deemed to be replaced with "a Share Buyback Report (meaning a report mentioned in Article 24-6, paragraph (1); hereinafter the same shall apply in this Article, Article 9, paragraph (1), Article 10, paragraph (1), and Article 22), or there occurs any other circumstance specified by a cabinet office ordinance as that which requires amendment of a Share Buyback Report for the public interest or protection of investors," "the person submitting the Share Buyback Report" and "an amendment report," respectively; the phrases "the person submitting those documents" and "an amendment" in Article 9, paragraph (1) shall be deemed to be replaced with "the person submitting the Share Buyback Report" and "an amendment report," respectively; the phrases "the person submitting the Securities Registration Statement" and "to submit an amendment, and when finding it necessary, the Minister may order the suspension of the effect of the notification made pursuant to the provisions of Article 4, paragraphs (1) to (3)" in Article 10, paragraph (1) shall be deemed to be replaced with "the person submitting the Share Buyback Report" and "to submit an amendment report," respectively; the phrase "persons set forth in Article 21, paragraph (1), items (i) and (iii)" and the part "person who has acquired Securities the Issuer of which is the person having submitted the Securities Registration Statement, not through a Public Offering or Secondary Distribution" in Article 22, paragraph (1) shall be deemed to be replaced with "person who, at the time of submission of the Share Buyback Report, is an Officer of the company having submitted the Share Buyback Report" and "person who has acquired the Securities the Issuer of which is the person submitting the Share Buyback Report," respectively; the terms "Article 21, paragraph (2), items (i) and (ii)" and "the preceding paragraph" in Article 22, paragraph (2) shall be deemed to be replaced with "Article 21, paragraph (2), item (i)" and "the preceding paragraph as applied *mutatis mutandis* under Article 24-6, paragraph (2)," respectively.

(3) The provisions of Article 6 shall apply *mutatis mutandis* where a Share Buyback Report is submitted pursuant to the provisions of the preceding paragraph and where an amendment report for Share Buyback Report is submitted pursuant to the provisions of Article 7, Article 9, paragraph (1), and Article 10, paragraph (1) as applied *mutatis mutandis* under the preceding paragraph.

Article 24-7 (Submission of Parent Company, etc. Status Reports)

(1) A company holding a majority of voting rights of another company that is required to submit Annual Securities Reports pursuant to the provisions of Article 24, paragraph (1) (limited Issuers of Securities of the category set forth in item (i) or (ii)

of that paragraph; in paragraph (4) of this Article, paragraph (5) of the following Article and Article 27-30-10, such a company is referred to as a "Subsidiary Company Submitting Annual Securities Reports"), or a company specified by a cabinet order as otherwise having a close relationship with another company required to submit Annual Securities Reports (excluding companies required to submit Annual Securities Reports pursuant to the provisions of Article 24, paragraph (1) (including where it is applied *mutatis mutandis* under paragraph (5) of that Article; in the items of paragraph (4) of this Article, the same shall apply) (including those having submitted Annual Securities Reports pursuant to the provisions of Article 23-3, paragraph (4) or specified by a cabinet office ordinance); hereinafter referred to as a "Parent Company, etc." in this Article and paragraphs (2), (4) and (5) of the following Article) shall, pursuant to the provisions of a cabinet office ordinance, submit a report stating matters pertaining to persons who hold shares of the Parent Company, etc. and other matters specified by a cabinet office ordinance as necessary and appropriate for the public interest or the protection of investors for each business year of the Parent Company, etc. (or the period specified by a cabinet office ordinance where the Parent Company, etc. is an Issuer of Specified Securities; hereinafter the same shall apply in this paragraph and the following paragraph) (hereinafter referred to as a "Parent Company, etc. Status Report") to the Prime Minister within three months after the end of each business year (or, where the Parent Company, etc. is a foreign company, within the period specified by a cabinet order as the period necessary and appropriate for the public interest or the protection of investors). However, this shall not apply where the Prime Minister approves pursuant to the provisions of a cabinet order that even if the company does not submit a Parent Company, etc. Status Report, the public interest or the protection of investors will not be impaired.

(2) When a company excluded from the application of the main clause of the preceding paragraph becomes a Parent Company, etc., the company shall submit, pursuant to the provisions of a cabinet office ordinance, a Parent Company, etc. Status Report pertaining to the business year immediately prior to the business year that includes the day on which the company becomes a Parent Company, etc. to the Prime Minister without delay. However, this shall not apply where the Prime Minister approves pursuant to the provisions of a cabinet order that even if the company does not submit a Parent Company, etc. Status Report, the public interest or the protection of investors will not be impaired.

(3) The provisions of Article 7, Article 9, paragraph (1), and Article 10, paragraph (1) shall apply *mutatis mutandis* to a Parent

Company, etc. Status Report. In this case, the part "a statement and other documents pursuant to the provisions of Article 5, paragraphs (1) and (6), or there occurs any other circumstance specified by a cabinet office ordinance as that which requires amendment of those documents for the public interest or the protection of investors, during the period on or after the day on which the notification was made pursuant to the provisions of Article 4, paragraphs (1) to (3) but before the day on which the notification is to take effect" in Article 7 shall be deemed to be replaced with "a Parent Company, etc. Status Report (meaning Parent Company, etc. Status Report as defined in Article 24-7, paragraph (1); hereinafter the same shall apply), or there occurs any other circumstance specified by a cabinet office ordinance as that which requires amendment of a Parent Company, etc. Status Report for the public interest or the protection of investors"; the terms "the person making the notification" and "an amendment" in Article 7 shall be deemed to be replaced with "the person submitting the Parent Company, etc. Status Report" and "an amendment report," respectively; the terms "the person submitting those documents" and "an amendment" in Article 9, paragraph (1) shall be deemed to be replaced with "the person submitting the Parent Company, etc. Status Report" and "an amendment report," respectively; the term "the person submitting the Securities Registration Statement" and the part "to submit an amendment, and when finding it necessary, the Minister may order the suspension of the effect of the notification made pursuant to the provisions of Article 4, paragraphs (1) to (3)" in Article 10, paragraph (1) shall be deemed to be replaced with "the person submitting the Parent Company, etc. Status Report" and "to submit an amendment report," respectively. In addition, any other necessary deemed replacement of terms and phrases shall be specified by a cabinet order.

(4) A Parent Company, etc. submitting a Parent Company, etc. Status Report pursuant to the provisions of the main clause of paragraph (1) or the main clause of paragraph (2) or submitting an amendment report for a Parent Company, etc. Status Report pursuant to the provisions of Article 7, Article 9, paragraph (1) and Article 10, paragraph (1) as applied *mutatis mutandis* under the preceding paragraph shall send a copy thereof to the relevant Subsidiary Company Submitting Annual Securities Reports of that Parent Company, etc. without delay, and also submit a copy thereof to the exchange or association specified respectively in the following items, according to the categories of Securities, as set forth therein, of which the Issuer is that Parent Company, etc.:

(i) Securities of the category set forth in Article 24, paragraph (1), item (i)—the Financial Instruments Exchange mentioned in that item; or

(ii) Securities of the category set forth in Article 24, paragraph (1), item (ii)—the Authorized Financial Instruments Firms Associations specified by a cabinet order.

(5) The provisions of Article 24, paragraphs (8), (9) and (11) to (13) shall apply *mutatis mutandis* where a Parent Company, etc. that is a foreign company submits a Parent Company, etc. Status Report. In this case, the parts "foreign company (including foreign companies that have submitted Annual Securities Reports pursuant to the provisions of Article 23-3, paragraph (4); hereinafter referred to as a "Reporting Foreign Company")," and "and similar to Annual Securities Reports, etc. Disclosed in a Foreign State (meaning that the relevant document is made available for public inspection in a foreign state based on laws and regulations of that state (including the rules prescribed by the operator of a Foreign Financial Instruments Market or others specified by a cabinet office ordinance); in Article 24-4-7, paragraph (6) and Article 24-5, paragraph (7), the same shall apply)" in Article 24, paragraph (8) shall be deemed to be replaced with "Parent Company, etc. that is a foreign company (meaning a Parent Company, etc. as defined by Article 24-7, paragraph (1); hereinafter the same shall apply in this Article)," and "and states the matters to be stated in the Parent Company, etc. Status Report," respectively; the part "a document stating the matters specified by a cabinet office ordinance as those necessary and appropriate for the public interest or the protection of investors, among the matters not stated in the Foreign Company Report, and any other" in Article 24, paragraph (9) shall be deemed to be replaced with "other." In addition, any other necessary deemed replacement of terms and phrases shall be specified by a cabinet order.

(6) The provisions of the preceding paragraphs shall apply *mutatis mutandis* where the Parent Company, etc. is not a company. In this case, the parts "A company holding the majority of voting rights," "a company specified by a cabinet order as otherwise having a close relationship," and "persons who hold shares of the Parent Company, etc." in paragraph (1) shall be deemed to be replaced with "A person other than a company holding the majority of voting rights," "a person other than a company specified by a cabinet order as otherwise having a close relationship" and "Equity Investors of the Parent Company, etc. and other person," respectively; and the terms "a company" and "the company" in paragraph (2) shall be deemed to be replaced with "a person other than a company" and "the person other than a company," respectively; the term "that is a foreign company" in the preceding paragraph shall be deemed to be replaced with "that is a foreign person." In addition, any other deemed necessary technical replacement of terms and phrases shall be specified by a cabinet order.

Article 25 (Public Inspection of Securities Registration Statements, etc.)

(1) The Prime Minister shall, pursuant to the provisions of a cabinet office ordinance, make documents set forth in the following items (hereinafter referred to as "Documents for Public Inspection" in this Article and the following Article) available for public inspection for the period specified in the following items from the day on which the Minister receives the Documents for Public Inspection (for an amendment, an Amended Shelf Registration Statement, an amendment report and an amendment Confirmation Letter set forth in the following items, the period specified respectively in the following items from the day on which the Minister receives the statements and the attachments thereto under Article 5, paragraphs (1) and (6), the statement and the attachments thereto to which the provision of paragraph (4) of that Article is applicable, the Shelf Registration Statement and the attachments thereto, the Annual Securities Report and the attachments thereto, the Confirmation Letter, the Internal Control Report and the attachments thereto, the Quarterly Securities Report, the Semiannual Securities Report, the Extraordinary Report, the Share Buyback Report, or the Parent Company, etc. Status Report for which the amendment, an Amended Shelf Registration Statement, an amendment report or an amendment Confirmation Letter is submitted; and for a Confirmation Letter set forth in items (v) and (ix) (limited to where the Confirmation Letter is submitted for an amendment report for an Annual Securities Report and the attachments thereto, an amendment report for a Quarterly Securities Report or an amendment report for a Semiannual Securities Report), the period specified respectively in the following items from the day on which the Minister receives the Annual Securities Report and the attachments thereto, the Quarterly Securities Report or the Semiannual Securities Report for which the amendment report is submitted):

(i) a statement and the attachments thereto under Article 5, paragraphs (1) and (6), and any amendment therefor (excluding statements and attachments thereto, and amendments therefor, to which paragraph (4) of that Article is applicable)—five years;

(ii) a statement and the attachments thereto, and any amendment therefor, to which Article 5, paragraph (4) is applicable—one year;

(iii) a Shelf Registration Statement and the attachments thereto, Shelf Registration Supplements and the attachments thereto, and any Amended Shelf Registration Statement therefor—until the Shelf Registration ceases to be effective;

(iv) an Annual Securities Report and the attachments

thereto, and any amendment report therefor—five years;

(v) a Confirmation Letter under Article 24-4-2 and any amendment Confirmation Letter therefor—five years;

(vi) an Internal Control Report and the attachments thereto, and any amendment report therefor—five years;

(vii) a Quarterly Securities Report and any amendment report therefor—three years;

(viii) a Semiannual Securities Report and any amendment report therefor—three years;

(ix) a Confirmation Letter under Article 24-4-2 as applied *mutatis mutandis* under Article 24-4-8 or 24-5-2, and any amendment Confirmation Letter therefor—three years;

(x) an Extraordinary Report and any amendment report therefor—one year;

(xi) a Share Buyback Report and any amendment report therefor—one year; and

(xii) a Parent Company, etc. Status Report and any amendment report therefor—five years.

(2) An Issuer of Securities shall, when the Issuer submits documents set forth in items (i) to (xi) of the preceding paragraph or when the Issuer's Parent Company, etc. submits documents set forth in item (xii) of that paragraph, keep copies of these documents at the Issuer's head office and principal branch offices and make these documents available for public inspection for the period from the day on which these documents are submitted to the Prime Minister to the day on which the period specified respectively in the items of that paragraph is elapsed, pursuant to the provisions of a cabinet office ordinance.

(3) A Financial Instruments Exchange and an Authorized Financial Instruments Firms Association specified by the cabinet order shall, pursuant to the provisions of a cabinet office ordinance, keep copies of the Documents for Public Inspection submitted pursuant to the provisions of Article 6 (including where it is applied *mutatis mutandis* under Article 12, Article 23-12, paragraph (1), Article 24, paragraph (7), Article 24-2, paragraph (3), Article 24-4-2, paragraph (5) (including where it is applied *mutatis mutandis* under Article 24-4-8, paragraph (1) and Article 24-5-2, paragraph (1)), Article 24-4-3, paragraph (2) (including where it is applied *mutatis mutandis* under Article 24-4-8, paragraph (2) and Article 24-5-2, paragraph (2)), Article 24-4-4, paragraph (5), Article 24-4-5, paragraph (2), Article 24-4-7, paragraph (5), Article 24-5, paragraph (6), and Article 24-6, paragraph (3); in paragraph (5), the same shall apply) and paragraph (4) of the preceding Article at their

office and make copies of these documents available for public inspection for the period from the day on which the copies of these documents are submitted to the day on which the period specified respectively in the items of the paragraph (1) is elapsed.

(4) Notwithstanding the provisions of the preceding three paragraphs, when an Issuer of Securities having submitted documents set forth in items (i) to (xi) of paragraph (1) or a Parent Company, etc. having submitted documents set forth in item (xii) of that paragraph makes an application that requires exclusion of part of the documents specified in the preceding three paragraphs from making available for public inspection by reason of necessity to keep confidentiality of a business secret to the Prime Minister and the Prime Minister approves it, the part of the documents pertaining to the application shall not be made available for public inspection.

(5) When an Issuer of Securities or Parent Company, etc. that has obtained the approval mentioned in the preceding paragraph sends copies of the Documents for Public Inspection to the Subsidiary Company Submitting Annual Securities Reports or submits those copies to the Financial Instruments Exchange or the Authorized Financial Instruments Firms Association specified by a cabinet order pursuant to the provisions of Article 6 or paragraph (4) of the preceding Article, the Issuer of Securities or the Parent Company, etc. may remove or delete the part of the documents that is exempted from public inspection pursuant to the provisions of the preceding paragraph from the documents to be send or submitted.

(6) Notwithstanding the provision of paragraph (1), when the Prime Minister makes any one of the following dispositions, the Minister may decide not to make all or part of the Documents for Public Inspection pertaining to the disposition available for public inspection:

(i) order to submit an amendment pursuant to the provisions of Article 9, paragraph (1) or Article 10, paragraph (1);

(ii) order to submit an Amended Shelf Registration Statement pursuant to the provisions of Article 23-9, paragraph (1), Article 23-10, paragraph (1), or paragraph (1) of that Article as applied *mutatis mutandis* under paragraph (5) of that Article;

(iii) order to submit an amendment report pursuant to the provisions of Article 24-2, paragraph (1), Article 24-4-5, paragraph (1), Article 24-4-7, paragraph (4), Article 24-5, paragraph (5), Article 24-6, paragraph (2), Article 9, paragraph (1), or Article 10, paragraph (1) as applied *mutatis mutandis* under Article 24-7, paragraph (3) (including where it is applied *mutatis mutandis* under paragraph (6) of that Article); or

(iv) order to submit an amendment Confirmation Letter pursuant to the provisions of Article 9, paragraph (1) or Article 10, paragraph (1) as applied *mutatis mutandis* under Article 24-4-3, paragraph (1).

(7) In the cases under the preceding paragraph, the Prime Minister shall notify the person making copies of the relevant Documents for Public Inspection available for public inspection pursuant to the provisions of the paragraph (2) (or, where those Documents for Public Inspection are Parent Company, etc. Status Reports or amendment reports thereof, the person who has submitted those Documents for Public Inspection or who makes copies thereof available for public inspection; in the following paragraph, referred to as the "Person Submitting Public Inspection Documents, etc.") and the Financial Instruments Exchange or the Authorized Financial Instruments Firms Association specified by the cabinet order, as mentioned in paragraph (3), that shall make copies of the Documents for Public Inspection available for public inspection pursuant to the provision of that paragraph of the Prime Minister's decision not to make all or part of the Documents for Public Inspection available for public inspection.

(8) When the Person Submitting Public Inspection Documents, etc. and the Financial Instruments Exchange or the Authorized Financial Instruments Firms Association is notified by the Prime Minister pursuant to the provision of the preceding paragraph, the provisions of paragraphs (2) and (3) shall not thereafter apply to any copies of the Documents for Public Inspection pertaining to the Prime Minister's notice.

Article 26 (Order for Production of Reports by Persons Submitting Securities Registration Statements, etc. and Inspection on Those Persons)

When the Prime Minister finds it necessary and appropriate for the public interest or the protection of investors, the Minister may order any person who has submitted Documents for Public Inspection or is found to be required to submit them, an Underwriter of the Securities or any other persons concerned or witnesses to submit reports or materials that will be helpful, or have the relevant officials inspect the books and documents or other articles held by these persons.

Article 27 (Provisions Applied *Mutatis Mutandis* for Issuers Other than Companies)

The provisions of Article 2-2, Articles 5 to 13, Articles 15 to 24-5-2, and Article 24-7 to the preceding Article shall apply *mutatis mutandis* where an Issuer is not a company (with regard to the application *mutatis mutandis* of Article 24, paragraphs (8) to (13), Article 24-2, paragraph (4), Article 24-4-2, paragraph (6) (including where it is applied *mutatis mutandis* under Article 24-4-8, paragraph (1) and Article 24-5-2, paragraph (1)), Article 24-4-3, paragraph (3), Article 24-4-4,

paragraph (6), Article 24-4-5, paragraph (3), Article 24-4-7, paragraphs (6) to (11), and Article 24-5, paragraphs (7) to (12), limited to where an Issuer is a foreign person). In this case, the term "a foreign company" in Article 24, paragraph (8) shall be deemed to be replaced with "a foreign person other than a foreign company"; the term "Reporting Foreign Company" in Article 24, paragraph (8), Article 24, paragraphs (10) to (13), Article 24-2, paragraph (4), Article 24-4-7, paragraphs (6) and (8) to (11), and Article 24-5, paragraph (7) and (9) to (12) shall be deemed to be replaced with "reporting foreign person." In addition, any other necessary deemed replacement of terms and phrases and other matters necessary for the application of these provisions shall be specified by a cabinet order.

Chapter II-2: Disclosure for Tender Offer

Section 1 Tender Offer for Share Certificates, etc. by Persons Other than the Issuer

Article 27-2 (Tender Offer for Share Certificates, etc. by Persons Other than the Issuer)

(1) As for Share Certificates, company bonds certificates with share options and other Securities specified by a cabinet order (hereinafter referred to as "Share Certificates, etc." in this Chapter and Article 27-30-11 (excluding paragraph (4))) for which Issuers are required to submit Annual Securities Reports or that are issued by an Issuer of Specified Listed Securities (including Securities specified by a cabinet order as those of which the state of distribution is equivalent to that of Specified Listed Securities, and limited to Share Certificates, etc.), a Purchase, etc. (meaning a purchase or other type of acceptance of transfer for value of Share Certificates, etc., and including acts specified by a cabinet order as being similar to such an acceptance; hereinafter the same shall apply in this Section) of them shall be made by means of a Tender Offer, if the Purchase, etc. is made by a person other than the Issuer and falls under any one of the categories set forth in the following items; however, this shall not apply to a Purchase, etc. of Share Certificates, etc. conducted as the exercise of an share option by a holder thereof, a Purchase, etc. of Share Certificates, etc. from Persons with Special Relationship with the person conducting the Purchase, etc. of Share Certificates, etc. (limited to, among the persons set forth in item (i) of paragraph (7), those specified by a cabinet office ordinance) or any other Purchase, etc. of Share Certificates, etc. specified by a cabinet order:

(i) a Purchase, etc. of Share Certificates, etc. conducted outside of the Financial Instruments Exchange Markets (excluding Purchases, etc. of Share Certificates, etc. conducted through transactions specified by a cabinet

order as being equivalent to a sale and purchase or the like of Securities conducted in a Financial Instruments Exchange Market and Purchases, etc. of Share Certificates, etc. specified by a cabinet order as a Purchase, etc. from an extremely small number of persons) after which the Share Certificates, etc. Owning Rate of the Share Certificates, etc. belonging to the ownership (including the cases specified by a cabinet order as being equivalent to the ownership of Share Certificates, etc.; hereinafter the same shall apply in this Section) of the person conducting the Purchase, etc. (or, where there are any Persons with Special Relationship with the person conducting the Purchase, etc. (excluding Persons with Special Relationship specified in item (i) of paragraph (7) and specified by a cabinet office ordinance), the Share Certificates, etc. Owning Rate calculated by adding the Share Certificates, etc. Owning Rates of those Persons with Special Relationship to that of the person conducting the Purchase, etc.; hereinafter the same shall apply in this paragraph) exceeds five percent;

(ii) a Purchase, etc. of Share Certificates, etc. conducted outside of the Financial Instruments Exchange Markets (excluding Purchases, etc. of Share Certificates, etc. conducted through transactions specified by a cabinet order as being equivalent to a sale and purchase or the like of Securities conducted in a Financial Instruments Exchange Market; in paragraph (iv), the same shall apply) that falls under the category of Purchase, etc. of Share Certificates, etc. that is specified by a cabinet order as a Purchase, etc. from an extremely small number of persons and after which the Share Certificates, etc. Owning Rate of the Share Certificates, etc. belonging to the person who conducted the Purchase, etc. exceeds one third;

(iii) a Purchase, etc. of Share Certificates, etc. through a sales and purchase or the like of Securities conducted in a Financial Instruments Exchange Market using a method designated by the Prime Minister as a method other than the method of auction (hereinafter such a sale and purchase or the like of Securities is referred to as a "Specified Sale and Purchase, etc." in this paragraph) after which the Share Certificates, etc. Owning Rate of the Share Certificates, etc. belonging to the ownership of the person conducting the Purchase, etc. exceeds one third;

(iv) a Purchase, etc. of Share Certificates, etc. (excluding those set forth in the preceding three items) where an acquisition of Share Certificates, etc. in excess of the

proportion specified by a cabinet order during the period specified by a cabinet order not exceeding six months is made by a Purchase, etc. of Share Certificates, etc. or Acquisition of Newly Issued Share Certificates, etc. (meaning an acquisition of Share Certificates, etc. that is newly issued by the Issuer; hereinafter the same shall apply in this item) (where the acquisition of Share Certificates, etc. is made by means of a Purchase, etc. of Share Certificates, etc., limited to a Purchase, etc. of Share Certificates, etc. in excess of the proportion specified by a cabinet order conducted through a Specified Sale and Purchase, etc. or outside of the Financial Instruments Exchange Markets (excluding those conducted by means of a Tender Offer)) after which the Share Certificates, etc. Owning Rate of the Share Certificates, etc. belonging to the ownership of the person conducting the Purchase, etc. of Share Certificates, etc. exceeds one third;

(v) a Purchase, etc. of Share Certificates, etc. (excluding those set forth in the preceding items) to be conducted in excess of the proportion specified by a cabinet order during the period specified by a cabinet order not exceeding six months by a person other than the Issuer of the Share Certificates, etc. (limited to where the Share Certificates, etc. Owning Rate of the Share Certificates, etc. belonging to the ownership of the person conducting the Purchase, etc. exceeds one third) where another person's Tender Offer is conducted for the Share Certificates, etc.; and

(vi) any other Purchase, etc. of Share Certificates, etc. specified by a cabinet order as being equivalent to a Purchase, etc. of Share Certificates, etc. set forth in any one of the preceding items.

(2) A Purchase, etc. of Share Certificates, etc. by means of a Tender Offer as prescribed in the main clause of the preceding paragraph shall be made by specifying a period for Purchase, etc. that may not exceed the period specified by a cabinet order.

(3) When a Purchase, etc. of Share Certificates, etc. is made by means of a Tender Offer as prescribed in the main clause of paragraph (1), the price for the Purchase, etc. (or, where the Purchase, etc. is made by any other type of acceptance of transfer for value than purchase, what is specified by a cabinet order as being equivalent to price for Purchase, etc.; hereinafter the same shall apply in this Section) shall be specified on the same conditions for all offerees, pursuant to the provisions of a cabinet order.

(4) When a Purchase, etc. of Share Certificates, etc. is made by means of a Tender Offer as prescribed in the main clause of paragraph (1), management of Share Certificates, etc., pay-

ment for the Purchase, etc. and other affairs specified by a cabinet order shall be performed by a Financial Instruments Business Operator (limited to those engaged in the Type 1 Financial Instruments Business as defined in Article 28, paragraph (1); in Article 27-12, paragraph (3), the same shall apply) or a Bank, etc. (meaning a bank, Cooperative-Structured Financial Institution or other financial institution specified by a cabinet order; in Article 27-12, paragraph (3), the same shall apply).

(5) When a Purchase, etc. of Share Certificates, etc. is made by means of a Tender Offer as prescribed in the main clause of paragraph (1), it shall be implemented pursuant to the conditions and methods specified by a cabinet order, in addition to the provisions of the preceding three paragraphs and other provisions of this Section.

(6) The term "Tender Offer" as used in this Article means an act of soliciting offers for a Purchase, etc. or Sale, etc. (meaning a sale or other type of transfer for value; hereinafter the same shall apply in this Section) of Share Certificates, etc. from many and unspecified persons through public notice, and making Purchase, etc. of Share Certificates, etc. outside of the Financial Instruments Exchange Markets.

(7) The term "Persons with Special Relationship" as used in paragraph (1) means:

(i) a person having a shareholder relationship, family relationship or any other special relationship specified by a cabinet order with the person conducting a Purchase, etc. of Share Certificates, etc.; and

(ii) a person having agreed with the person conducting a Purchase, etc. of Share Certificates, etc. to jointly acquire or transfer the relevant Share Certificates, etc. or to jointly exercise voting rights or other rights as shareholders held by the Issuer of those Share Certificates, etc., or to transfer or accept transfer of those Share Certificates, etc. between them after the Purchase, etc. thereof.

(8) The term "Share Certificates, etc. Owning Rate" as used in paragraph (1) means:

(i) as for the person conducting a Purchase, etc. of Share Certificates, etc., the rate obtained, pursuant to the provisions of a cabinet office ordinance, by dividing the total of the Number of Voting Rights (meaning the number of voting rights pertaining to the relevant shares calculated pursuant to the provisions of a cabinet office ordinance in the case of share certificates, or the number of voting rights specified by a cabinet office ordinance in the case of Securities other than share certificates; hereinafter the same shall apply in this paragraph) pertaining to the Relevant Share Certificates, etc. belonging to the ownership of that person (excluding those specified by a

cabinet office ordinance considering the manner of ownership or other circumstances; hereinafter the same shall apply in this paragraph), by the number obtained by adding the total number of voting rights issued by the Issuer to the number of voting rights pertaining to bond certificates with share options or other Securities specified by a cabinet order issued by the Issuer and held by that person and any Persons with Special Relationship with that person; or

(ii) as for a Person with Special Relationship as defined in the preceding paragraph (excluding persons who fall under the category specified in item (ii) of that paragraph and conduct a Purchase, etc. of any Share Certificates, etc. issued by the Issuer of the relevant Share Certificates, etc.), the rate obtained, pursuant to the provisions of a cabinet office ordinance, by dividing the total of the Number of Voting Rights Pertaining to the Relevant Share Certificates, etc. in possession by that person, by the number obtained by adding the total number of voting rights issued by the Issuer to the number of voting rights pertaining to bond certificates with share options or other Securities specified by a cabinet order issued by the Issuer and held by that person and the person conducting the Purchase, etc. of the Share Certificates, etc. set forth in the preceding item.

Article 27-3 (Submission of Public Notice for Commencing Tender Offer and Tender Offer Notification)

(1) A person required pursuant to the provisions of the main clause of paragraph (1) of the preceding Article to make Purchases, etc. of Share Certificates, etc. by means of a Tender Offer as defined in that paragraph (hereinafter referred to as a "Tender Offer" in this Section) shall, pursuant to the provisions of a cabinet order, give public notice of the purpose of the Tender Offer, the price for Purchase, etc., the Number of Share Certificates, etc. Planned to Be Purchased (meaning the number of shares in the case of share certificates, or the number specified by a cabinet office ordinance in the case of Securities other than share certificates; hereinafter the same shall apply in this Section), the period of Purchase, etc. and other matters specified by a cabinet office ordinance with regard to the Tender Offer. In this case, when the period of Purchase, etc. is shorter than the period specified by a cabinet order, the public notice shall clearly indicate that the period of Purchase, etc. may be extended pursuant to the provisions of Article 27-10, paragraph (3).

(2) A person who has given public notice pursuant to the provisions of the preceding paragraph (hereinafter referred to as a "Public Notice for Commencing Tender Offer" in this Section)

(such a person is hereinafter referred to as a "Tender Offeror" in this Section) shall, pursuant to the provisions of a cabinet office ordinance, submit a document containing the following matters and the attachments thereto as specified by a cabinet office ordinance (hereinafter referred to as a "Tender Offer Notification" in this Section and Article 167, Article 197, and Article 197-2) to the Prime Minister on the day on which the Public Notice for Commencing Tender Offer is made; however, if the day on which the Tender Offer Notification shall be submitted falls on a Sunday or any other day specified by a cabinet office ordinance, the Tender Offer Notification shall be submitted on the following day:

(i) the price for Purchase, etc., the Number of Share Certificates, etc. Planned to Be Purchased, the period of Purchase, etc. (including the statement included in the public notice pursuant to the provision of the second sentence of the preceding paragraph), the transfer and other settlement procedures and other terms of Purchase, etc. set by the Tender Offeror (hereinafter referred to as the "Conditions of Purchase, etc." in this Section);

(ii) the details of the agreement, if any, for making Purchases, etc. of the Share Certificates, etc. pertaining to the Tender Offer not through the Tender Offer on or after the day on which the Public Notice for Commencing Tender Offer is made; and

(iii) the purpose of the Tender Offer, the matters concerning the Tender Offeror and other matters specified by a cabinet office ordinance.

(3) None of the Tender Offeror, Persons with Special Relationship with the Tender Offeror (meaning a Person with Special Relationship as defined in Article 27-2, paragraph (7); hereinafter the same shall apply in this Section) and any other persons concerned as specified by a cabinet order (hereinafter referred to as the "Tender Offeror and Others" in this Section) shall conduct any solicitation of offers for Sale, etc. or other acts pertaining to the Tender Offer as specified by a cabinet office ordinance on and after the day following the day on which the Public Notice for Commencing Tender Offer is made, unless the Tender Offeror submits a Tender Offer Notification to the Prime Minister.

(4) The Tender Offeror shall, immediately after the submission of the Tender Offer Notification, send a copy of the Tender Offer Notification to the Issuer of the Share Certificates, etc. pertaining to the Tender Offer (and the person who has already submitted a Tender Offer Notification with regard to any Share Certificates, etc. issued by the Issuer as of the day on which the Tender Offer Notification is submitted, if any), and, if the Share Certificates, etc. pertaining to the Tender Offer fall

under any one of the categories set forth in the following items, also send a copy of the Tender Offer Notification to the exchange or association specified respectively in the following items, according to the categories of Share Certificates, etc. set forth therein; in this case, the matters necessary for sending of the copy shall be specified by a cabinet office ordinance:

(i) Share Certificates, etc. listed on a Financial Instruments Exchange—the Financial Instruments Exchange; and

(ii) Share Certificates, etc. specified by a cabinet order as those of which the state of distribution is equivalent to that of Share Certificates, etc. set forth in the preceding item—the Authorized Financial Instruments Firms Association specified by a cabinet order.

Article 27-4 (Purchase, etc. in Which Securities Are Delivered as the Consideration Therefor)

(1) In the case of a Tender Offer in which Securities are to be delivered as the consideration of Purchase, etc., if the relevant Securities are subject to the main clause of paragraph (1), the main clause of paragraph (2) or the main clause of paragraph (3) of Article 4 with respect to a Public Offering or Secondary Distribution thereof, the Tender Offeror and Others shall not conduct any solicitation of offers for Sale, etc. or other acts pertaining to the Tender Offer as specified by a cabinet office ordinance unless the Issuer of the Securities has made a notification to the Prime Minister as prescribed in those provisions concurrently with the submission of the Tender Offer Notification or an amendment therefor, except as prescribed in the following paragraph.

(2) In the cases under the preceding paragraph, if a Shelf Registration has been made for the Securities mentioned in the preceding paragraph, the Tender Offeror and Others shall not conduct any solicitation of offers for Sale, etc. or other acts pertaining to the Tender Offer as specified by a cabinet office ordinance unless the Shelf Registration has come into effect and the Shelf Registrant of the Securities has submitted a Shelf Registration Supplements to the Prime Minister concurrently with the submission of the Tender Offer Notification or an amendment therefor.

(3) Notwithstanding the provision of paragraph (2) of the preceding Article, in the case of a Tender Offer in which Securities are to be delivered as the consideration of Purchase, etc., if the notification under Article 4, paragraphs (1) to (3) has been made for the Public Offering or Secondary Distribution of the Securities or the Shelf Registration Supplements have been submitted for the Securities, part of the matters to be stated in a Tender Offer Notification and the attachments thereto may be omitted as specified by a cabinet office ordinance in the Tender Offer Notification to be submitted for the Tender Offer.

Article 27-5 (Prohibition of Purchase, etc. Not Through Tender Offer)

A Tender Offeror and Others shall not make a Purchase, etc. of any Share Certificates, etc. issued by the Issuer of the Share Certificates, etc. pertaining to the Tender Offer not through the Tender Offer during the Tender Offer Period (meaning the period from the day on which the Public Notice for Commencing Tender Offer is made to the last day of the period for the Purchase, etc. through the Tender Offer and including the extended period, if any; hereinafter the same shall apply in this Section). However, this shall not apply to the following cases:

(i) where an agreement for making Purchase, etc. of Share Certificates, etc. issued by the Issuer of the relevant Share Certificates, etc. not through the Tender Offer has been concluded before the Public Notice for Commencing Tender Offer and the existence and details of that agreement are stated in the Tender Offer Notification;

(ii) where a person who falls under the category of persons set forth in Article 27-2, paragraph (7), item (i) (excluding where such a person also falls under the category of persons set forth in item (ii) of that paragraph) notifies the fact that the person does not fall under the category of persons set forth in item (ii) of that paragraph to the Prime Minister pursuant to the provisions of a cabinet office ordinance; or

(iii) any other cases specified by a cabinet order.

Article 27-6 (Changes in Conditions of Purchase, etc. for Tender Offer)

(1) A Tender Offeror shall not make any of the changes in the Conditions of Purchase, etc. set forth in the following items:

(i) to lower the price for Purchase, etc. (excluding those implemented where the Public Notice for Commencing Tender Offer and the Tender Offer Notification state, as one of the Conditions of Purchase, etc., that the price for Purchase, etc. may be lowered according to standards specified by a cabinet office ordinance if the Subject Company (meaning the Subject Company as defined in Article 27-10, paragraph (1)) conducts share split or other act specified by a cabinet order during the Tender Offer Period);

(ii) to reduce the Number of Share Certificates, etc. Planned to Be Purchased;

(iii) to shorten the period for Purchase, etc.; or

(iv) any other change in the Conditions of Purchase, etc. as specified by a cabinet order.

(2) A Tender Offeror may make any change of the Conditions of Purchase, etc. other than those specified in the items of the preceding paragraph. In this case, the Tender Offeror who intends to make such a change shall give public notice of the

details of the change in the Conditions of Purchase, etc. (excluding the extension of the period for Purchase, etc. made pursuant to the provisions of Article 27-10, paragraph (3)) and other matters specified by a cabinet office ordinance during the Tender Offer Period pursuant to the provisions of a cabinet order.

(3) When it is difficult to give public notice under the preceding paragraph by the last day of the Tender Offer Period, the Tender Offeror shall publicly announce the details and the matters specified in that paragraph pursuant to the provisions of a cabinet office ordinance by the last day of the period and give public notice as prescribed in that paragraph immediately after that.

Article 27-7 (Amendment of Public Notice for Commencing Tender Offer)

(1) A Tender Offeror who has made Public Notice for Commencing Tender Offer (including public notice under paragraph (2) or (3) of the preceding Article and public announcement under paragraph (3) of that Article; in the following paragraph, the same shall apply) shall, if the Tender Offeror finds that the Public Notice for Commencing Tender Offer contains any deficiency in the formalities thereof or a statement that contravenes the actual facts, amend it and give public notice of or publicly announce it pursuant to the provisions of a cabinet office ordinance.

(2) The Prime Minister may, when the Minister finds the necessity to amend Public Notice for Commencing Tender Offer, order the Tender Offeror who made the Public Notice for Commencing Tender Offer to give public notice of or publicly announce the amendment pursuant to the provisions of a cabinet office ordinance by designating a time limit therefor.

(3) The disposition under the preceding paragraph may not be given after the last day of the Tender Offer Period (including the period to be extended pursuant to the provision of paragraph (8) of the following Article).

Article 27-8 (Submission of Amendment of Tender Offer Notification)

(1) When a Tender Offeror who has submitted a Tender Offer Notification (including any amendment therefor; hereinafter the same shall apply in this Article) finds that the Tender Offer Notification contains deficiencies in formalities or a statement that contravenes the actual facts, or contains only an insufficient statement, or entirely lacks a statement on the matters that should be stated therein or on a fact that is necessary for avoiding misunderstanding, the Tender Offeror shall submit an amendment to the Prime Minister pursuant to the provisions of a cabinet office ordinance.

(2) When there occurs any change in the Conditions of Purchase,

etc. (excluding the extension of the period for Purchase, etc. made pursuant to the provision of Article 27-10, paragraph (3)) or in the important matters to be stated in a Tender Offer Notification, or any other circumstance specified by a cabinet office ordinance as that which requires amendment of a Tender Offer Notification, during the period from the day on which the Tender Offer Notification was submitted to the last day of the Tender Offer Period, the Tender Offeror who has submitted the Tender Offer Notification shall immediately submit an amendment to the Prime Minister pursuant to the provisions of a cabinet office ordinance.

(3) The Prime Minister may, when finding that any of the following facts is clear, order the Tender Offeror who has submitted the Tender Offer Notification to submit an amendment by designating a time limit therefor:

(i) the fact that the Tender Offer Notification contains deficiencies in formalities;

(ii) the fact that the Conditions of Purchase, etc. stated in the Tender Offer Notification do not comply with the provisions of this Section;

(iii) the fact that the change in the Conditions of Purchase, etc. stated in the amendment violates Article 27-6, paragraph (1); or

(iv) the fact that the Tender Offer Notification contains only insufficient statement on the matters that should be stated therein.

(4) Excluding where the provisions of the preceding paragraph apply, the Prime Minister may, when finding any of the following facts, order the Tender Offeror who has submitted the Tender Offer Notification to submit an amendment by designating a time limit therefor; in this case, a hearing shall be held irrespective of the categories of procedures for stating opinions pursuant to the provisions of Article 13, paragraph (1) of the Administrative Procedure Act:

(i) the fact that the Tender Offer Notification contains any false statement on important matters; or

(ii) the fact that the Tender Offer Notification lacks a statement on any important matters that should be stated or lacks a statement on a material fact that is necessary for avoiding misunderstanding.

(5) A disposition under paragraph (3) may not be given after the last day of the Tender Offer Period (including the period to be extended pursuant to the provision of paragraph (8); in paragraph (7), the same shall apply) (or, in the cases of disposition resulting in the submission of an amendment after the last day of the Tender Offer Period, after the day on which five years have elapsed from the day following the last day), and the disposition under the preceding paragraph may not be given after the day on which five years have elapsed from the day following the last day.

(6) The provisions of Article 27-3, paragraph (4) shall apply *mutatis mutandis* where an amendment is submitted pursuant to the provisions of paragraphs (1) to (4).

(7) Where a disposition under paragraph (3) or (4) is given during the Tender Offer Period, the Tender Offeror and Others shall not conduct any solicitation of offers for Sale, etc. or other acts pertaining to the Tender Offer as specified by a cabinet office ordinance before the amendment required by the disposition is submitted.

(8) Where an amendment is submitted pursuant to the provision of paragraph (1) or (2) or an order to submit an amendment is given pursuant to the provision of paragraph (3) or (4) during the Tender Offer Period, except in the cases specified by a cabinet office ordinance, the Tender Offeror shall extend the period for Purchase, etc. pertaining to the Tender Offer to the period specified by a cabinet office ordinance and immediately give public notice of, or publicly announce the extension pursuant to the provisions of a cabinet office ordinance.

(9) Where an extension of the period for Purchase, etc. pertaining to a Tender Offer is required pursuant to the provision of the preceding paragraph, the Tender Offeror shall not make transfer of any Share Certificates, etc. pertaining to the Tender Offer or conduct other settlement procedures of the Tender Offer before the last day of the period to be extended.

(10) Where the period for Purchase, etc. pertaining to a Tender Offer is required to be extended pursuant to the provision of paragraph (8), the provision of Article 27-5 shall apply *mutatis mutandis* to the period ending on the last day of the period required to be extended.

(11) A Tender Offeror shall, when submitting an amendment pursuant to the provisions of paragraphs (1) to (4), give public notice of those pertaining to, among the descriptions in the amendment, the descriptions in the Public Notice for Commencing Tender Offer pursuant to the provisions of a cabinet order, or publicly announce the same pursuant to the provisions of a cabinet office ordinance. However, this shall not apply where public notice under Article 27-6, paragraph (2) or public notice and public announcement under paragraph (3) of that Article has already been made or where the amendment is submitted pursuant to the provision of paragraph (1) and falls under the category specified by a cabinet office ordinance as an amendment submitted for only a minor change.

(12) The provisions of the preceding Article shall apply *mutatis mutandis* to the public notice or public announcement required pursuant to the provision of paragraph (8) or the preceding paragraph.

Article 27-9 (Preparation and Delivery of Tender Offer Statement, etc.)

(1) A Tender Offeror shall prepare a document that states the matters specified by a cabinet office ordinance from among the matters to be stated in a Tender Offer Notification and the matters specified by a cabinet office ordinance as necessary and appropriate for the public interest or the protection of investors (hereinafter referred to as a "Tender Offer Statement" in this Section and Articles 197-2 and 200) pursuant to the provisions of a cabinet office ordinance.

(2) A Tender Offeror shall, when conducting Purchase, etc. of Share Certificates, etc. by means of the Tender Offer, deliver the Tender Offer Statement to the person who intends to conduct Sale, etc. of the Share Certificates, etc., pursuant to the provisions of a cabinet office ordinance.

(3) A Tender Offeror shall, immediately after the submission of an amendment pursuant to the provisions of paragraphs (1) to (4) of the preceding Article, amend the Tender Offer Statement pursuant to the provisions of a cabinet office ordinance and shall deliver the amended Tender Offer Statement to the person to which the Tender Offer Statement has already been delivered.

Article 27-10 (Submission of the Subject Company's Position Statement, Tender Offeror's Answer, etc.)

(1) The Issuer of the Share Certificates, etc. pertaining to a Tender Offer (hereinafter referred to as the "Subject Company" in this Section and Article 27-30-11, paragraph (3)) shall, pursuant to the provisions of a cabinet office ordinance, submit a document that states its opinion on the Tender Offer and other matters specified by a cabinet office ordinance (hereinafter referred to as the "Subject Company's Position Statement") to the Prime Minister within a period specified by a cabinet order from the day on which the Public Notice for Commencing Tender Offer is made.

(2) The Subject Company's Position Statement may contain the following matters in addition to the opinion on the relevant Tender Offer:

(i) questions to the Tender Offeror; or

(ii) a request for extension of the period for Purchase, etc. indicated in the Public Notice for Commencing Tender Offer to the period specified by a cabinet order and the reason thereof (limited to where the period for Purchase, etc. is shorter than the period specified by a cabinet order).

(3) When the request set forth in item (ii) of the preceding paragraph is made in the Subject Company's Position Statement pursuant to the provision of that paragraph and the Prime Minister makes the Subject Company's Position State-

ment available for public inspection pursuant to the provision of Article 27-14, paragraph (1), the Tender Offeror shall extend the period for Purchase, etc. to the period specified by a cabinet order.

(4) The Subject Company shall, when making the request set forth in item (ii) of paragraph (2) in the Subject Company's Position Statement pursuant to the provision of paragraph (2), pursuant to the provisions of a cabinet order, give public notice of the period for Purchase, etc. after the extension under the preceding paragraph and the other matters specified by a cabinet office ordinance on or before the day following the last day of the period set forth in paragraph (1).

(5) The Subject Company that has made the public notice pursuant to the provision of the preceding paragraph (in the following paragraph, referred to as the "Public Notice of Request for Period Extension") shall, when finding any deficiencies in formalities or a statement that contravenes the actual facts therein, amend it and give public notice of or publicly announce it pursuant to the provisions of a cabinet office ordinance.

(6) The Prime Minister may, when finding it necessary to amend the Public Notice of Request for Period Extension, order the Subject Company that has made the Public Notice of Request for Period Extension to give public notice of or publicly announce the amendment pursuant to the provisions of a cabinet office ordinance by designating a time limit therefor.

(7) The disposition under the preceding paragraph may not be given after the last day of the Tender Offer Period (including the period to be extended pursuant to the provision of Article 27-8, paragraph (8)).

(8) The provisions of Article 27-8, paragraphs (1) to (5) (excluding paragraph (3), items (ii) and (iii) of that Article) shall apply *mutatis mutandis* to the Subject Company's Position Statement. In this case, the terms "a Tender Offeror" and "amendment" in Article 27-8, paragraph (1) shall be deemed to be replaced with "the Subject Company as defined in Article 27-10, paragraph (1)" and "amendment report," respectively; the terms "change in the Conditions of Purchase, etc.," "Tender Offeror" and "amendment" in Article 27-8, paragraph (2) shall be deemed to be replaced with "change in opinion on the Tender Offer," "Subject Company defined in Article 27-10, paragraph (1)" and "amendment report," respectively; the terms "Tender Offeror" and "amendment" in Article 27-8, paragraph (3) and (4) shall be deemed to be replaced with "Subject Company defined in Article 27-10, paragraph (1)" and "amendment report," respectively; and the terms "A disposition under paragraph (3)," "amendment" and "the disposition under the preceding paragraph" in Article 27-8, paragraph (5) shall be deemed to be replaced

with "The disposition under paragraph (3) as applied *mutatis mutandis* under Article 27-10, paragraph (8)," "amendment report" and "the disposition under the preceding paragraph as applied *mutatis mutandis* under Article 27-10, paragraph (8)," respectively.

(9) The Subject Company of a Tender Offer shall, immediately after the submission of the Subject Company's Position Statement, send a copy of the Subject Company's Position Statement to the Tender Offeror pertaining to the Tender Offer (and any person other than the Tender Offeror who has already submitted a Tender Offer Notification with regard to any Share Certificates, etc. the Issuer of which is the Subject Company as of the day on which the Subject Company's Position Statement is submitted, if any), and, if the Share Certificates, etc. pertaining to the Tender Offer fall under any one of the categories of Share Certificates, etc. set forth in the items of Article 27-3, paragraph (4), also send a copy of the Subject Company's Position Statement to the exchange or association specified respectively in these items, according to the categories of Share Certificates, etc. set forth therein.

(10) The provision of preceding paragraph shall apply *mutatis mutandis* where an amendment report is submitted pursuant to the provisions of Article 27-8, paragraphs (1) to (4) as applied *mutatis mutandis* under paragraph (8).

(11) When the Subject Company's Position Statement contains a question under item (i) of paragraph (2), the Tender Offeror who has received the copy of the Subject Company's Position Statement pursuant to the provision of paragraph (9) shall, pursuant to the provisions of a cabinet office ordinance, submit a document that states an answer to the question (or, if the Tender Offeror finds it unnecessary to answer the question, the reason thereof) and other matters specified by a cabinet office ordinance (hereinafter referred to as the "Tender Offeror's Answer") to the Prime Minister within a period specified by a cabinet order from the day on which the Tender Offeror receives the copy of the Subject Company's Position Statement.

(12) The provisions of Article 27-8, paragraphs (1) to (5) (excluding paragraph (3), items (ii) and (iii) of that Article) shall apply *mutatis mutandis* to the Tender Offeror's Answer. In this case, the term "amendment" in Article 27-8, paragraph (1) shall be deemed to be replaced with "amendment report"; the terms "change in the Conditions of Purchase, etc." and "amendment" in Article 27-8, paragraph (2) shall be deemed to be replaced with "change in the answer" and "amendment report," respectively; the term "amendment" in Article 27-8, paragraphs (3) and (4) shall be deemed to be replaced with "amendment report"; and the terms "A disposition under paragraph (3)," "amendment," and "the disposition under the

preceding paragraph" in Article 27-8, paragraph (5) shall be deemed to be replaced with "The disposition under paragraph (3) as applied *mutatis mutandis* under Article 27-10, paragraph (12)," "amendment report" and "the disposition under the preceding paragraph as applied *mutatis mutandis* under Article 27-10, paragraph (12)," respectively.

(13) The Tender Offeror shall, immediately after the submission of the Tender Offeror's Answer, send a copy of the Tender Offeror's Answer to the Subject Company (and any person who has already submitted a Tender Offer Notification with regard to any Share Certificates, etc. the Issuer of which is the Subject Company as of the day on which the Tender Offeror's Answer is submitted, if any), and, if the Share Certificates, etc. pertaining to the Tender Offer fall under any one of the categories of Share Certificates, etc. set forth in the items of Article 27-3, paragraph (4), also send a copy of the Tender Offeror's Answer to the exchange or association specified respectively in these items, according to the categories of Share Certificates, etc. set forth therein.

(14) The provisions of the preceding paragraph shall apply *mutatis mutandis* where an amendment report is submitted pursuant to the provisions of Article 27-8, paragraphs (1) to (4) as applied *mutatis mutandis* under paragraph (12).

Article 27-11 (Withdrawal, etc. of Tender Offer and Cancellation of Agreements by Tender Offeror)

(1) A Tender Offeror may not withdraw offers or cancel agreements pertaining to the Tender Offer (hereinafter referred to as "Withdrawal, etc. of Tender Offer" in this Section) after having once made the Public Notice for Commencing Tender Offer. However, this shall not apply where the Tender Offeror includes in the Public Notice for Commencing Tender Offer and the Tender Offer Notification a condition that the Tender Offer may be withdrawn if there occurs any important change in the business or property of the Issuer of the Share Certificates, etc. pertaining to the Tender Offer or its Subsidiary Company (meaning a Subsidiary Company as defined in Article 2, item (iii) of the Companies Act) or there occurs any other circumstance that would significantly impede the achievement of the purpose of the Tender Offer (limited to those specified by a cabinet order), or where a decision of commencement of bankruptcy proceedings is made against the Tender Offeror or there occurs any other material change in circumstances as specified by a cabinet order.

(2) The Tender Offeror shall, when making Withdrawal, etc. of Tender Offer pursuant to the provision of the proviso clause of the preceding paragraph, give public notice of the intention of Withdrawal, etc. of Tender Offer, the reason thereof and other matters specified by a cabinet office ordinance on or before the

last day of the Tender Offer Period, pursuant to the provisions of a cabinet order. However, when it is difficult to give such public notice on or before the last day of the Tender Offer Period, the Tender Offeror shall publicly announce the matters to be stated in the public notice pursuant to the provisions of a cabinet office ordinance and give the public notice immediately after that.

(3) The Tender Offeror who has given public notice or a public announcement pursuant to the provision of the preceding paragraph shall, pursuant to the provisions of a cabinet office ordinance, submit a document that states the matters to be stated in the public notice under the preceding paragraph and other matters specified by a cabinet office ordinance (hereinafter referred to as a "Written Withdrawal of Tender Offer" in this Section and Articles 167, 197 and 197-2) to the Prime Minister on the day on which the Tender Offeror gives the public notice or public announcement.

(4) The provisions of Article 27-3, paragraph (4) shall apply *mutatis mutandis* to a Written Withdrawal of Tender Offer. In this case, the part "the Issuer of the Share Certificates, etc. pertaining to the Tender Offer (and the person who has already submitted a Tender Offer Notification with regard to any Share Certificates, etc. issued by the Issuer as of the day on which the Tender Offer Notification is submitted, if any)" in Article 27-3, paragraph (4) shall be deemed to be replaced with "the Issuer of the Share Certificates, etc. to which the Tender Offer is made."

(5) Withdrawal, etc. of Tender Offer shall come into effect only when the public notice is given pursuant to the provisions of paragraph (2). In this case, the Withdrawal, etc. of Tender Offer shall come into effect at the time when the public notice is given (or at the time when the public announcement is made where the public announcement and the public notice are given pursuant to the provision of the proviso clause of that paragraph).

Article 27-12 (Cancellation of Agreement by Accepting Shareholder, etc.)

(1) An Accepting Shareholder, etc. (meaning a person who accepts the offer for Purchase, etc. of Share Certificates, etc. made in the Tender Offer or who makes an offer for Sale, etc. of Share Certificates, etc. pertaining to the Tender Offer; hereinafter the same shall apply in this Section) may cancel the relevant agreement pertaining to the Tender Offer at any time during the Tender Offer Period (including the period to be extended pursuant to the provision of Article 27-8, paragraph (8); in paragraphs (1) and (4) of the following Article, Article 27-14, paragraph (1), and Article 27-21, paragraphs (1) and (2), the same shall apply).

(2) Where an Accepting Shareholder, etc. cancels the relevant agreement pursuant to the provision of the preceding paragraph, and if the Public Notice for Commencing Tender Offer and the Tender Offer Notification includes a condition that the cancellation of any agreement pertaining to the Tender Offer shall be made by a method specified by a cabinet order, the cancellation of agreement shall be made by that method. In this case, the cancellation of agreement shall come into effect at the time specified by a cabinet order.

(3) Even where an Accepting Shareholder, etc. cancels the agreement pursuant to the provision of paragraph (1), the Tender Offeror may not request the Accepting Shareholder, etc. to pay damages or penalty due to the cancellation of the agreement and, if the Tender Offeror has a Financial Instruments Business Operator or a Bank, etc. manage the Share Certificates, etc. Offered to Sell (meaning Share Certificates, etc. Sale, etc. of which is made by the Accepting Shareholder, etc. in response to the Tender Offer; hereinafter the same shall apply in this Section), shall bear the cost required for return of the Share Certificates, etc. Offered to Sell.

Article 27-13 (Public Notice of the Number of Share Certificates, etc. Offered to Sell in Tender Offer and Submission of Tender Offer Report, etc.)

(1) A Tender Offeror shall, pursuant to the provisions of a cabinet order, give public notice of, or publicly announce, the number of the Share Certificates, etc. Offered to Sell in the relevant Tender Offer and other matters specified by a cabinet office ordinance on the day following the last day of the Tender Offer Period. However, this shall not apply where the public notice has been given pursuant to the provision of Article 27-11, paragraph (2).

(2) A Tender Offeror who has given the public notice or public announcement pursuant to the provision of the main clause of the preceding paragraph shall, pursuant to the provisions of a cabinet office ordinance, submit a document that states the matters to be stated in the public notice or public announcement and other matters specified by a cabinet office ordinance (hereinafter referred to as a "Tender Offer Report" in this Section and Articles 197 and 197-2) to the Prime Minister on the day on which the Tender Offeror gives the public notice or public announcement.

(3) The provisions of Article 27-3, paragraph (4) and Article 27-8, paragraphs (1) to (6) shall apply *mutatis mutandis* to a Tender Offer Report. In this case, the part "the Issuer of the Share Certificates, etc. pertaining to the Tender Offer is made (and the person who has already submitted a Tender Offer Notification with regard to any Share Certificates, etc. issued by the Issuer as of the day on which the Tender Offer Notification is

submitted, if any)" in Article 27-3, paragraph (4) shall be deemed to be replaced with "the Issuer"; the term "amendment" in Article 27-8, paragraph (1) shall be deemed to be replaced with "amendment report"; the part "there occurs any change in the Conditions of Purchase, etc. (excluding the extension of the period for Purchase, etc. made under Article 27-10, paragraph (3)) or in the important matters to be stated in a Tender Offer Notification, or any other circumstance specified for by a cabinet office ordinance as that which requires amendment of a Tender Offer Notification," "submitted to the last day of the Tender Offer Period" and the term "amendment" in Article 27-8, paragraph (2) shall be deemed to be replaced with "the Number of Share Certificates, etc. of which Purchase, etc. is to be made is fixed by the Method of Proportional Distribution set forth in Article 27-13, paragraph (5)," "submitted" and "amendment report"; the terms "amendment," "the Conditions of Purchase, etc.," "the provisions of this Section," "the change in the Conditions of Purchase, etc.," and "violates Article 27-6, paragraph (1)" in Article 27-8, paragraph (3) shall be deemed to be replaced with "amendment report," "delivery and other settlement methods," "Article 27-13, paragraphs (4) and (5)," "the result of calculation for deciding the Number of Share Certificates, etc. of which Purchase, etc. is to be made," and "contravenes the method of proportional distribution specified by a cabinet office ordinance set forth in Article 27-13, paragraph (5)," respectively; the term "amendment" in Article 27-8, paragraph (4) shall be deemed to be replaced with "amendment report"; the parts "disposition under paragraph (3)" and "the last day of the Tender Offer Period (including the period to be extended pursuant to the provisions of paragraph (8); in paragraph (7), the same shall apply) (or, in the cases of disposition resulting in the submission of an amendment report after the last day of the Tender Offer Period, after the day on which five years have elapsed from the day following the last day), and the disposition under the preceding paragraph may not be given after the day on which five years have elapsed from the day following the last day." in Article 27-8, paragraph (5) shall be deemed to be replaced with "disposition under paragraph (3) and the preceding paragraph as applied *mutatis mutandis* under Article 27-13, paragraph (3)" and "the day on which five years have elapsed from the day following the last day of the Tender Offer Period," respectively; and the terms "amendment" and "paragraphs (1) to (4)" in Article 27-8, paragraph (4) shall be deemed to be replaced with "amendment report" and "paragraphs (1) to (4) as applied *mutatis mutandis* under Article 27-13, paragraph (3)," respectively.

(4) A Tender Offeror shall effect the transfer and other settlement procedures with regard to all of the Share Certificates, etc. Of-

fered to Sell pursuant to the Conditions of Purchase, etc. stated in the Public Notice for Commencing Tender Offer and the Tender Offer Notification (or, if the Conditions of Purchase, etc. have been changed by the public notice under Article 27-6, paragraph (2) or the public announcement and public notice under paragraph (3) of that Article, the Conditions of Purchase, etc. after the change), except where the Tender Offeror makes Withdrawal, etc. of Tender Offer with regard to all of the Share Certificates, etc. Offered to Sell during the Tender Offer Period pursuant to the provision of the proviso clause of Article 27-11, paragraph (1), or where the Tender Offeror includes either of the conditions set forth in the following items in the Public Notice for Commencing Tender Offer and the Tender Offer Notification (in the cases of including the condition mentioned in item (ii), limited to where the Share Certificates, etc. Owning Rate (meaning the Share Certificates, etc. Owning Rate as defined in Article 27-2, paragraph (8) of Share Certificates, etc. belonging to the ownership of the Tender Offeror after the Tender Offer, or, where there are Persons with Special Relationship as specified in item (i) of paragraph (1) of that Article with the Tender Offeror, the Share Certificates, etc. Owning Rate calculated by adding the Share Certificates, etc. Owning Rate of Share Certificates, etc. belonging to the ownership of those Persons with Special Relationship, as defined in paragraph (8) of that Article, to that for the person who conducted the Purchases, etc.) will not exceed the rate specified by a cabinet order):

(i) that if the total Number of Share Certificates, etc. Offered to Sell is less than the number of Share Certificates, etc. designated in advance in the Public Notice for Commencing Tender Offer and the Tender Offer Notification as the Number of Share Certificates, etc. Planned to Be Purchased or a part of it, the Tender Offeror will not make Purchases, etc. of any of the Share Certificates, etc. Offered to Sell; or

(ii) that if the total number of Share Certificates, etc. Offered to Sell exceeds the Number of Share Certificates, etc. Planned to Be Purchased, the Tender Offeror will not make Purchases, etc. of all or part of the Share Certificates, etc. Offered to Sell in excess of the Number of Share Certificates, etc. Planned to Be Purchased.

(5) When the condition set forth in item (ii) of the preceding paragraph has been imposed, if the total number of Share Certificates, etc. Offered to Sell exceeds the Number of Share Certificates, etc. Planned to Be Purchased, the Tender Offeror shall effect the transfer and other settlement procedures for the Purchases, etc. of Share Certificates, etc. from the Accepting Shareholders, etc. using the method of proportional distribution as specified by a cabinet office ordinance (hereinafter

referred to as the "Method of Proportional Distribution" in this Section).

Article 27-14 (Public Inspection of Tender Offer Notification, etc.)

(1) The Prime Minister shall, pursuant to the provisions of a cabinet office ordinance, make each Tender Offer Notification (including amendments therefor; in paragraph (1) of the following Article, the same shall apply), Written Withdrawal of Tender Offer, Tender Offer Report, Subject Company's Position Statement and Tender Offeror's Answer (including amendment reports therefor; in paragraph (1) of the following Article, the same shall apply) available for public inspection for the period from the day on which the Minister accepts them to the day on which five years have passed since the day following the last day of the Tender Offer Period pertaining to the relevant Tender Offer.

(2) A person (hereinafter referred to as the "Person Submitting Public Inspection Documents" in this Article) who has submitted the documents mentioned in the preceding paragraph (hereinafter referred to as the "Documents for Public Inspection" in this Article) shall, pursuant to the provisions of a cabinet office ordinance, keep copies of the Documents for Public Inspection at that person's head office or principal office and make them available for public inspection for the period during which the Documents for Public Inspection are made available for public inspection by the Prime Minister pursuant to the provision of that paragraph.

(3) The Financial Instruments Exchanges and the Authorized Financial Instruments Firms Association specified by a cabinet order shall, pursuant to the provisions of a cabinet office ordinance, keep copies of the Documents for Public Inspection that they receive pursuant to the provision of Article 27-3, paragraph (4) (including where it is applied *mutatis mutandis* under Article 27-8, paragraph (6), Article 27-11, paragraph (4), and paragraph (3) of the preceding Article), Article 27-10, paragraph (9) (including where it is applied *mutatis mutandis* under paragraph (10) of that Article) and paragraph (13) of that Article (including where it is applied *mutatis mutandis* under paragraph (14) of that Article) at their respective offices and make them available for public inspection for the period during which the Documents for Public Inspection are made available for public inspection by the Prime Minister pursuant to the provision of paragraph (1).

(4) In addition to the provisions of the preceding three paragraphs, matters necessary for public inspection mentioned in paragraph (1) shall be specified by a cabinet office ordinance.

(5) Notwithstanding the provision of paragraph (1), when the Prime Minister makes either of the following dispositions, the Minister may decide not to make all or part of the Documents

for Public Inspection pertaining to the disposition available for public inspection:

(i) an order to submit an amendment pursuant to the provisions of Article 27-8, paragraph (3) or (4); or

(ii) an order to submit an amendment report pursuant to the provisions of Article 27-10, paragraph (8) or (12), or Article 27-8, paragraph (3) or (4) as applied *mutatis mutandis* under paragraph (3) of the preceding Article.

(6) In the cases under the preceding paragraph, the Prime Minister shall notify the Person Submitting Public Inspection Documents who make copies of the relevant Documents for Public Inspection available for public inspection pursuant to the provision of paragraph (2) and the Financial Instruments Exchange or the Authorized Financial Instruments Firms Association specified by a cabinet order, as mentioned in paragraph (3), that shall make copies of the Documents for Public Inspection available for public inspection pursuant to the provision of that paragraph of the Prime Minister's decision not to make all or part of the Documents for Public Inspection available for public inspection.

(7) When the Person Submitting Public Inspection Documents, or either of the Financial Instruments Exchange or the Authorized Financial Instruments Firms Association is notified by the Prime Minister pursuant to the provision of the preceding paragraph, the provisions of paragraphs (2) and (3) shall not thereafter apply to any copies of the Documents for Public Inspection pertaining to the Prime Minister's notice.

Article 27-15 (No Deemed Finding of Veracity of Tender Offer Notification, etc.)

(1) No person may deem the Prime Minister's acceptance of a Tender Offer Notification, Written Withdrawal of Tender Offer, Tender Offer Report, Subject Company's Position Statement or Tender Offeror's Answer to be the Minister's finding that the statements contained in these documents are true and accurate or that these documents do not lack any statement on any important matters.

(2) None of the Tender Offeror and Others or the Subject Company may make any indication that violates the preceding paragraph.

Article 27-16 (Liability for Damages for Act of Violation Pertaining to Tender Offer)

The provision of Article 16 shall apply *mutatis mutandis* to a person who conducts any act specified by the cabinet office ordinance in violation of the provisions of Article 27-3, paragraph (3) or Article 27-8, paragraph (7) or conducts a Purchase, etc. of Share Certificates, etc. in violation of the provisions of Article 27-9, paragraph (2) or (3). In this case, the phrase "the person who acquires the Securities" in

Article 16 shall be deemed to be replaced with "the person who makes a Sale, etc. of the Share Certificates, etc. in response to the Tender Offer."

Article 27-17 (Liability for Damages)

(1) Any one of the Tender Offeror and Others making Purchases, etc. of Share Certificates, etc. in violation of Article 27-5 (including where it is applied *mutatis mutandis* under Article 27-8, paragraph (10); hereinafter the same shall apply in this paragraph) shall be held liable to compensate damages to each person who makes a Sale, etc. of Share Certificates, etc. in response to the Tender Offer (excluding those who make a Sale, etc. of Share Certificates, etc. that fall under the provisions of Article 27-5 and such some persons as mentioned in item (i) of paragraph (2) of the following Article).

(2) The amount of damages to be paid pursuant to the provision of the preceding paragraph shall be calculated by multiplying the difference between the price (including the provision of profits equivalent thereto; or, where two or more prices are used, the most favorable price) paid by the Tender Offeror and Others for the Purchase, etc. mentioned in that paragraph and the Tender Offer Price (meaning the price for a Purchase, etc. stated in the Public Notice for Commencing Tender Offer and the Tender Offer Notification, or, if the price for a Purchase, etc. is changed by public notice or public announcement under Article 27-6, paragraph (2) or (3), the price for a Purchase, etc. after the change; hereinafter the same shall apply in this Section), by the number of Share Certificates, etc. Offered to Sell by the person who is entitled to claim damages pursuant to the provision of that paragraph (excluding those of which the person cannot make a Sale, etc. as a result of the Method of Proportional Distribution; in paragraph (2) of the following Article and Article 27-20, paragraph (2), the same shall apply).

Article 27-18

(1) A person who conducts transfer or other settlement procedures for Purchases, etc. of Share Certificates, etc. by means of a Tender Offer in violation of Article 27-13, paragraph (4) (hereinafter referred to as the "Tender Offer Purchaser" in this Article) shall be held liable to compensate damage sustained by each person who makes a Sale, etc. of Share Certificates, etc. in response to the Tender Offer (in the case specified in item (i) of the following paragraph, excluding a person who makes a Sale, etc. at a price (including the provision of profits equivalent thereto; hereinafter the same shall apply in this Article) more favorable than the Tender Offer Price; and in the case specified in item (ii) of the following paragraph, including a person who cannot make a Sale, etc. of Share Certificates, etc. as a result of the Tender Offer Purchaser's use of the different method referred to in that item).

(2) In the cases of the following items, the amount of damages to be paid pursuant to the provision of the preceding paragraph shall be the amount specified respectively in the following items, according to the categories set forth therein:

(i) where the Tender Offer Purchaser makes Purchases, etc. at a price more favorable than the Tender Offer Price only from some of the persons who make Sales, etc. of the Share Certificates, etc. in response to the Tender Offer—the amount calculated by multiplying the difference between that favorable price (or, where two or more favorable prices are used, the most favorable price) and the Tender Offer Price by the number of Share Certificates, etc. Offered to Sell by the person entitled to claim damages under the preceding paragraph; and

(ii) where the Tender Offer Purchaser makes Purchases, etc. of the Share Certificates, etc. using a method different from the Method of Proportional Distribution stated in the Tender Offer Notification—the amount calculated by multiplying the difference between the number of the Share Certificates, etc. the Purchase, etc. of which should have been made by the Tender Offer Purchaser from the person entitled to claim damages under the preceding paragraph if the Tender Offer Purchaser used the Method of Proportional Distribution and the number of Share Certificates, etc. the Purchase, etc. of which was actually made by the Tender Offer Purchaser from the person entitled to claim damages (where the Tender Offer Purchaser did not make a Purchase, etc. of any of Share Certificates, etc. from the person entitled to claim damages, the number of the Share Certificates, etc. the Purchase, etc. of which should have been made by the Tender Offer Purchaser from the person entitled to claim damages if the Method of Proportional Distribution were used) by the difference between the Tender Offer Price (or the price paid by the Tender Offeror as specified in paragraph (2) of the preceding Article where paragraph (1) of that Article is also applicable, the favorable price referred to in the preceding item where that item is also applicable, or the more favorable one between them where both paragraph (1) of the preceding Article and the preceding item are also applicable) and the market price of the Share Certificates, etc. at the time when the damages are claimed pursuant to the provision of the preceding paragraph (or estimated disposal price at that time where there is no market price for the Share Certificates, etc., or disposal price where the Share Certificates, etc. were disposed of before the damages is claimed).

Article 27-19 (Liability for Damages of Person Who Uses Tender Offer Statement Containing False Statement, etc.)

The provisions of Article 17 shall apply *mutatis mutandis* to a person who has another person make a Sale, etc. of Share Certificates, etc. by using a Tender Offer Statement that contains any false statement on important matters, lacks an indication on any important matters that should be indicated or lacks a statement on a material fact that is necessary for avoiding misunderstanding, or other such indication. In this case, the phrase "the other person who acquires the Securities" in Article 17 shall be deemed to be replaced with "the person who makes a Sale, etc. of the Share Certificates, etc. in response to the Tender Offer."

Article 27-20 (Liability for Damages of Person Who Has Given Public Notice for Commencing Tender Offer Containing False Statement, etc.)

(1) The provisions of Article 18, paragraph (1) shall apply *mutatis mutandis* to the following persons; in this case, both of the phrases "the person who acquires the Securities in response to a Public Offering or Secondary Distribution" and "the person who acquired the Securities" in that paragraph shall be deemed to be replaced with "the person who makes a Sale, etc. of the Share Certificates, etc. in response to a Tender Offer"; and the phrase "at the time of application for acquisition of the Securities" in the same paragraph shall be deemed to be replaced with "at the time of the Sale, etc.":

(i) a person who gives Public Notice for Commencing Tender Offer, public notice, or a public announcement under Article 27-6, paragraph (2) or (3), Article 27-7, paragraph (1) or (2) (including where it is applied *mutatis mutandis* under Article 27-8, paragraph (12)) or Article 27-8, paragraph (8) or (11) (hereinafter referred to as "Public Notice for Commencing Tender Offer, etc." in this Article and the following Article) that contains any false statement on important matters, lacks an indication on any important matters that should be indicated or lacks a statement on a material fact that is necessary for avoiding misunderstanding;

(ii) a person who submits a Tender Offer Notification (including amendments therefor; hereinafter the same shall apply in this Article and the following Article) that contains any false statement on important matters, lacks a statement on any important matters that should be stated or lacks a statement on a material fact that is necessary for avoiding misunderstanding;

(iii) a person who prepares a Tender Offer Statement (including a Tender Offer Statement amended pursuant to the provision of Article 27-9, paragraph (3); hereinafter the same shall apply in this Article and the fol-

lowing Article) that contains any false statement on important matters, lacks a statement on any important matters that should be stated or lacks a statement on a material fact that is necessary for avoiding misunderstanding; and

(iv) a person who submits a Tender Offeror's Answer (including amendment reports therefor; hereinafter the same shall apply in this Article and the following Article) that contains any false statement on important matters, lacks a statement on any important matters that should be stated or lacks a statement on a material fact that is necessary for avoiding misunderstanding.

(2) Where the preceding paragraph (excluding items (i) and (iv)) is applicable, when the Tender Offeror fails to state in the relevant Tender Offer Notification or Tender Offer Statement the fact that the Tender Offeror has concluded an agreement for making Purchases, etc. of Share Certificates, etc. pertaining to the Tender Offer not through the Tender Offer after the last day of the Tender Offer Period and then makes a Purchase, etc. under that agreement after the last day of the Tender Offer Period, the amount of damages to be paid to a person who has made a Sale, etc. of Share Certificates, etc. in response to the Tender Offer (excluding those who have made Sales, etc. of Share Certificates, etc. under the agreement, those who have made Sales, etc. of Share Certificates, etc. to which Article 27-5 is applicable, and those who belong to the part of persons mentioned in Article 27-18, paragraph (2), item (i)) shall be calculated by multiplying the difference between the price (including the provision of profits equivalent thereto; where two or more prices are used for the Purchases, etc., the most favorable price) paid by the Tender Offeror and Others for the Purchase, etc. and the Tender Offer Price, by the number of Share Certificates, etc. Offered to Sell by the person who is entitled to claim damages pursuant to the provisions of the Article 18, paragraph (1) as applied *mutatis mutandis* under the preceding paragraph.

(3) Excluding where the preceding paragraph is applicable, the persons set forth in the following items shall be held jointly and severally liable for damages under paragraph (1) with the person set forth in the items of that paragraph; however, this shall not apply where the person set forth in the following items proves that the person did not know of, and was not able to know of even with reasonable care, the existence of a false statement or lack of a required statement:

(i) Persons with Special Relationship (limited to those set forth in Article 27-2, paragraph (7), item (ii)) with a person falling under any one of the categories specified in the items of paragraph (1); and

(ii) where the person set forth in the items of paragraph (1) is a juridical person or other organization, the directors, accounting advisors, company auditors, executive officers, and other persons equivalent thereto of that juridical person or other organization at the time of the submission of the Public Notice for Commencing Tender Offer, etc., the Tender Offer Notification or the Tender Offeror's Answer or at the time of the preparation of the Tender Offeror Statement.

Article 27-21 (Prescription for Liability for Damages Arising from Act of Violation Pertaining to Tender Offer)

(1) The right to claim damages under Article 27-17, paragraph (1) or the right to claim damages under Article 27-18, paragraph (1) where paragraph (2) of that Article is applicable shall be extinguished by prescription when the right is not exercised within one year from the time when the person entitled to claim damages comes to know, or is able to know by exercising reasonable care, the violation. The same shall apply where the right is not exercised within five years from the day following the last day of the Tender Offer Period pertaining to the Tender Offer.

(2) The right to claim damages under paragraph (1) of the preceding Article where paragraph (2) of that Article is applicable shall be extinguished by prescription when the right is not exercised within one year from the time when the person who is entitled to claim damages comes to know, or is able to know by exercising reasonable care, the fact that the Public Notice for Commencing Tender Offer, etc., the Tender Offer Notification, the Tender Offer Statement or the Tender Offeror's Answer contains any false statement or false indication on important matters, lacks a statement on any important matters that should be stated or indicated or lacks a statement on a material fact that is necessary for avoiding misunderstanding. The same shall apply where the right is not exercised within five years from the day following the last day of the Tender Offer Period pertaining to the Tender Offer.

Article 27-22 (Order for Production of Report by Tender Offeror and Inspection on Tender Offeror)

(1) When the Prime Minister finds it necessary and appropriate for the public interest or the protection of investors, the Minister may order the Tender Offeror, any person who is found to be the person who should make Purchases, etc. of Share Certificates, etc. by means of a Tender Offer pursuant to the provisions of the main clause of paragraph (1) of Article 27-2, Persons with Special Relationship therewith or other persons concerned or witnesses to submit reports or materials that will be helpful, or have the relevant officials inspect the books and documents or other articles held by those persons.

(2) When the Prime Minister finds it necessary and appropriate for the public interest or the protection of investors, the Minister may order the person who has submitted, or is found to be the person who should submit, the Subject Company's Position Statement, or other persons concerned therewith or witnesses to submit reports or materials that will be helpful, or have the relevant officials inspect the books and documents or other articles held by those persons.

Section 2 Tender Offer for Listed Share Certificates, etc. by Issuer

Article 27-22-2 (Tender Offer for Listed Share Certificates, etc. by Issuer)

(1) Among the Purchases, etc. (meaning a purchase or any other type of acceptance of transfer for value; hereinafter the same shall apply in this Article and the following Article) of Listed Share Certificates, etc. conducted outside of Financial Instruments Exchange Markets by the Issuer of the relevant Listed Share Certificates, etc., those falling under any one of the categories set forth in the following items shall be made by means of a Tender Offer; however, this shall not apply to Purchases, etc. of Listed Share Certificates, etc. conducted through transactions specified by a cabinet order as being equivalent to a sale and purchase or the like of Securities conducted in Financial Instruments Exchange Markets:

(i) Purchase, etc. conducted pursuant to the provision of Article 156, paragraph (1) of the Companies Act (including where it is applied *mutatis mutandis* under Article 165, paragraph (3) of that Act) (excluding where a notice is given pursuant to the provision of Article 158, paragraph (1) of that Act, as mentioned in Article 160, paragraph (1) of that Act); or

(ii) among the Purchases, etc. conducted by an Issuer of Listed Share Certificates, etc. that is a foreign company, those specified by a cabinet order as a Purchase, etc. conducted by the method for making available to a large number of persons the matters pertaining to the Purchase, etc.

(2) The provisions of Article 27-2, paragraphs (2) to (6), Article 27-3 (excluding the second sentence of paragraph (1) and item (ii) of paragraph (2)), Article 27-4, Article 27-5 (limited to the non-itemized part thereof; the same shall apply in paragraph (5) and paragraph (5) of the following Article), Articles 27-6 to 27-9 (excluding Article 27-8, paragraphs (6), (10) and (12)), Articles 27-11 to 27-15 (excluding Article 27-11, paragraph (4) and Article 27-13, paragraphs (3) and paragraph (4), item (i)), Article 27-17, Article 27-18, Article 27-21, paragraph (1), and paragraph (1) of the preceding Article shall apply *mutatis mutandis* in the cases of Purchase,

etc. conducted by means of a Tender Offer pursuant to the provision of the preceding paragraph. In this case, the term "Share Certificates, etc." in these provisions (excluding Article 27-3, paragraph (4) and the proviso clause of paragraph (1) of Article 27-11) shall be deemed to be replaced with "Listed Share Certificates, etc."; the part "Sale, etc. (meaning a sale or other type of transfer for value; hereinafter the same shall apply in this Section)" in Article 27-2, paragraph (6) shall be deemed to be replaced with "Sale, etc."; the term "the following matters" in Article 27-3, paragraph (2) shall be deemed to be replaced with "the matters set forth in items (i) and (iii) below"; the part "period of Purchase, etc. (including the statement included in the public notice pursuant to the provision of the second sentence of the preceding paragraph)" in Article 27-3, paragraph (2), item (i) shall be deemed to be replaced with "period of Purchase, etc."; the part "The Tender Offeror, Persons with Special Relationship with the Tender Offeror (meaning Persons with Special Relationship as defined in Article 27-2, paragraph (7); hereinafter the same shall apply in this Section) and any other persons concerned as specified by a cabinet order" in Article 27-3, paragraph (3) shall be deemed to be replaced with "the Tender Offeror or other person concerned as specified by a cabinet order"; the part "to the Issuer of the Share Certificates, etc. pertaining to the Tender Offer (and the person who has already submitted a Tender Offer Notification with regard to any Share Certificates, etc. issued by the Issuer as of the day on which the Tender Offer Notification is submitted, if any), and, if the Share Certificates, etc. pertaining to the Tender Offer fall under any one of the categories set forth in the following items, also send a copy of the Tender Offer Notification to the exchange or association specified in the following items, according to the categories of Share Certificates, etc. set forth therein" in the first sentence of paragraph (4) of Article 27-3 shall be deemed to be replaced with "to the exchange or association specified in the following items, according to the categories of Securities set forth therein, and also send a copy of the Tender Offer Notification to the person who has already submitted a Tender Offer Notification with regard to any Share Certificates, etc. issued by the Issuer as of the day on which the Tender Offer Notification is submitted, if any"; the term "Share Certificates, etc." in the items of paragraph (4) of Article 27-3 shall be deemed to be replaced with "Listed Share Certificates, etc."; the phrase "the following cases" in the proviso clause of Article 27-5 shall be deemed to be replaced with "the cases specified by a cabinet order"; the part "lower the price for Purchase, etc. (excluding those implemented where the Public Notice for Commencing Tender Offer and the Tender Offer Notification state, as one of

the Conditions of Purchase, etc., that the price for Purchase, etc. may be lowered according to standards specified by a cabinet office ordinance if the Subject Company (meaning the Subject Company defined in Article 27-10, paragraph (1)) conducts share split or other act specified by a cabinet order.)" in Article 27-6, paragraph (1), item (i) shall be deemed to be replaced with "lower the price for Purchase, etc."; the part "the details of the change in the Conditions of Purchase, etc. (excluding the extension of the period for Purchase, etc. made under Article 27-10, paragraph (3))" in Article 27-6, paragraph (2) shall be deemed to be replaced with "the details of the change in the Conditions of Purchase, etc."; the part "any change in the Conditions of Purchase, etc. (excluding the extension of the period for Purchase, etc. made under Article 27-10, paragraph (3))" in Article 27-8, paragraph (2) shall be deemed to be replaced with "any change in the Conditions of Purchase, etc."; the part "the Tender Offeror includes in the Public Notice for Commencing Tender Offer and the Tender Offer Notification a condition that the Tender Offer may be withdrawn if there occurs any important change in the business or property of the Issuer of the Share Certificates, etc. pertaining to the Tender Offer or its Subsidiary Company (meaning a Subsidiary Company as defined in Article 2, item (iii) of the Companies Act) or there occurs any other circumstance that would significantly impede the achievement of the purpose of the Tender Offer (limited to those specified by a cabinet order), or where a decision of commencement of bankruptcy proceedings is made against the Tender Offeror or there occurs any other material change in circumstances as specified by a cabinet order" in the proviso clause of paragraph (1) of Article 27-11 shall be deemed to be replaced with "Purchase, etc. of Listed Share Certificates, etc. conducted through the Tender Offer violates other laws and regulations or where there occurs any circumstances specified by a cabinet order as those involving the risk of violation of other laws and regulations"; the part "includes either of the conditions set forth in the following items in the Public Notice for Commencing Tender Offer and the Tender Offer Notification (in the cases of including the condition mentioned in item (ii), limited to where the Share Certificates, etc. Owning Rate (meaning the Share Certificates, etc. Owning Rate as defined in Article 27-2, paragraph (8)) of Share Certificates, etc. belonging to the ownership of the Tender Offeror after the Tender Offer, or, where there are Persons with Special Relationship as specified in item (i) of paragraph (1) of that Article with the Tender Offeror, the Share Certificates, etc. Owning Rate calculated by adding the Share Certificates, etc. Owning Rate of Share Certificates, etc. belonging to the ownership of those Persons with Special

Relationship as defined in paragraph (8) of that Article, to that for the person who conducted the Purchase, etc.) will not exceed the rate specified by a cabinet order)" in Article 27-13, paragraph (4) shall be deemed to be replaced with "includes the condition specified in item (ii) below in the Public Notice for Commencing Tender Offer and the Tender Offer Notification"; the part ", the Subject Company's Position Statement and the Tender Offeror's Answer (including" in Article 27-14, paragraph (1) shall be deemed to be replaced with "(including"; the part ", Article 27-10, paragraph (9) (including where it is applied *mutatis mutandis* under paragraph (10) of that Article) and paragraph (13) of that Article (including where it is applied *mutatis mutandis* under paragraph (14) of that Article) at" in Article 27-14, paragraph (3) shall be deemed to be replaced with "at"; the phrase "Article 27-8, paragraph (3)" in Article 27-14, paragraph (5), item (i) shall be deemed to be replaced with "Article 27-8, paragraph (3) as applied *mutatis mutandis* under Article 27-22-2, paragraph (2)"; the part "Article 27-10, paragraph (8) or (12), or Article 27-8, paragraph (3) or (4)" in Article 27-14, paragraph (5), item (ii) shall be deemed to be replaced with "Article 27-22-2, paragraph (7)"; the part ", Tender Offer Report, Subject Company's Position Statement or Tender Offeror's Answer" in Article 27-15, paragraph (1) shall be deemed to be replaced with "or Tender Offer Report"; the phrase "Tender Offeror and Others and the Subject Company" in Article 27-15, paragraph (2) shall be deemed to be replaced with "Tender Offeror"; and the part ", the person who should make Purchases, etc. of Share Certificates, etc. by means of a Tender Offer pursuant to the provisions of the main clause of paragraph (1) of Article 27-2, Persons with Special Relationship therewith" in paragraph (1) of the preceding Article shall be deemed to be replaced with "persons whose Purchase, etc. of Listed Share Certificates, etc. shall be made by means of a Tender Offer under the main clause of paragraph (1) of Article 27-22-2."

(3) The provisions of Article 27-3, paragraph (4) shall apply *mutatis mutandis* where an amendment is submitted pursuant to the provisions of Article 27-8, paragraphs (1) to (4) as applied *mutatis mutandis* under the preceding paragraph. In this case, the part "to the Issuer of the Share Certificates, etc. pertaining to the Tender Offer (and the person who has already submitted a Tender Offer Notification with regard to any Share Certificates, etc. issued by the Issuer as of the day on which the Tender Offer Notification is submitted, if any), and, if the Share Certificates, etc. pertaining to the Tender Offer fall under any of the categories set forth in the following items, also send a copy of the Tender Offer Notification to the exchange or association specified respectively in the following items, according categories of Share Certificates, etc.

set forth therein" in the first sentence of paragraph (4) of Article 27-3 shall be deemed to be replaced with "to the exchange or association specified in the following items, according to the categories of Listed Share Certificates, etc. set forth therein, and also send a copy of the Tender Offer Notification to the person who has already submitted a Tender Offer Notification with regard to any Share Certificates, etc. issued by the Issuer as of the day on which the amendment is submitted, if any"; and the term "Share Certificates, etc." in the items of paragraph (4) of Article 27-3 shall be deemed to be replaced with "Listed Share Certificates, etc."

(4) A Tender Offeror (meaning a Tender Offeror as defined in Article 27-3, paragraph (2) as applied *mutatis mutandis* under paragraph (2); hereinafter the same shall apply in this Section) shall, immediately after the submission of a Written Withdrawal of Tender Offer (meaning a Written Withdrawal of Tender Offer as defined in Article 27-11, paragraph (3) as applied *mutatis mutandis* under paragraph (2); hereinafter the same shall apply in this Section) or Tender Offer Report (meaning a Tender Offer Report as defined in Article 27-13, paragraph (2) as applied *mutatis mutandis* under paragraph (2); hereinafter the same shall apply in this Section), send a copy of the Written Withdrawal of Tender Offer or Tender Offer Report to the exchange or association specified respectively in the items of paragraph (4) of Article 27-3 as applied *mutatis mutandis* under paragraph (2), according to the categories of Listed Share Certificates, etc. pertaining to the Tender Offer set forth therein. In this case, matters necessary for sending of the copy shall be specified by a cabinet office ordinance.

(5) The provisions of Article 27-5 shall apply *mutatis mutandis* to the period ending on the last day of the period for Purchase, etc. pertaining to the Tender Offer to be extended pursuant to the provision of Article 27-8, paragraph (8) as applied *mutatis mutandis* under paragraph (2). In this case, the terms "Share Certificates, etc." and "the following cases" in Article 27-5 shall be deemed to be replaced with "Listed Share Certificates, etc." and "the cases specified by a cabinet order," respectively.

(6) The provisions of Article 27-7 shall apply *mutatis mutandis* to public notices and public announcements under Article 27-8, paragraphs (8) and (11) as applied *mutatis mutandis* under paragraph (2).

(7) The provisions of Article 27-8, paragraphs (1) to (5) shall apply *mutatis mutandis* to a Tender Offer Report. In this case, the term "amendment" in Article 27-8, paragraph (1) shall be deemed to be replaced with "amendment report"; the part "there occurs any change in the Conditions of Purchase, etc. (excluding the extension of the period for Purchase, etc. made

under Article 27-10, paragraph (3)) or in the important matters to be stated in a Tender Offer Notification, or any other circumstance specified by a cabinet office ordinance as that which requires amendment of a Tender Offer Notification, during the period from the day on which the Tender Offer Notification was submitted to the last day of the Tender Offer Period" and the term "amendment" in Article 27-8, paragraph (2) shall be deemed to be replaced with "the number of Listed Share Certificates, etc. of which Purchase, etc. is to be made is fixed by the Method of Proportional Distribution set forth in Article 27-13, paragraph (5) as applied *mutatis mutandis* under Article 27-22-2, paragraph (2) on and after the day on which the Tender Offer Notification was submitted" and "amendment report," respectively; the term "amendment" and the parts "the Conditions of Purchase, etc. stated in the Tender Offer Notification do not comply with the provisions of this Section" and "the change in the Conditions of Purchase, etc. stated in the amendment violates Article 27-6, paragraph (1)" in Article 27-8, paragraph (3) shall be deemed to be replaced with "amendment report," "the delivery and other settlement methods stated in the Tender Offer Notification do not comply with Article 27-13, paragraph (4) (excluding Article 27-13, paragraph (4), item (i)) and Article 27-13, paragraph (5) as applied *mutatis mutandis* under Article 27-22-2, paragraph (2)" and "the result of calculation for deciding the number of Listed Share Certificates, etc. of which Purchase, etc. is to be made stated in the amendment contravenes the method of proportional distribution specified by a cabinet office ordinance set forth in Article 27-13, paragraph (5) as applied *mutatis mutandis* under Article 27-22-2, paragraph (2)," respectively; the term "amendment" in Article 27-8, paragraph (4) shall be deemed to be replaced with "amendment report"; the phrase "disposition under paragraph (3)," and the part "the last day of the Tender Offer Period (including the period to be extended pursuant to the provision of paragraph (8); in paragraph (7), the same shall apply) (or, in the cases of the disposition resulting in the submission of an amendment after the last day of the Tender Offer Period, after the day on which five years have elapsed from the day following the last day), and the disposition under the preceding paragraph may not be given after the day on which five years have elapsed from the day following the last day" in Article 27-8, paragraph (5) shall be deemed to be replaced with "disposition under paragraph (3) and the preceding paragraph as applied *mutatis mutandis* under Article 27-22, paragraph (7)" and "the day on which five years have elapsed from the day following the last day of the Tender Offer Period," respectively.

(8) The provision of paragraph (4) shall apply *mutatis mutandis*

to an amendment report under Article 27-8, paragraphs (1) to (4) as applied *mutatis mutandis* under the preceding paragraph. In this case, the parts "Written Withdrawal of Tender Offer (meaning a Written Withdrawal of Tender Offer as defined in Article 27-11, paragraph (3) as applied *mutatis mutandis* under paragraph (2); hereinafter the same shall apply in this Section) or Tender Offer Report (meaning a Tender Offer Report as defined in Article 27-13, paragraph (2) as applied *mutatis mutandis* under paragraph (2); hereinafter the same shall apply in this Section)" and "the Written Withdrawal of Tender Offer or Tender Offer Report" in paragraph (4) shall be deemed to be replaced with "amendment report (meaning amendment report provided for in Article 27-8, paragraphs (1) to (4) as applied *mutatis mutandis* under paragraph (7)" and "the amendment report," respectively.

(9) The provision of Article 16 shall apply *mutatis mutandis* to a person who conducts any act specified by the cabinet office ordinance in violation of Article 27-3, paragraph (3) or Article 27-8, paragraph (7) as applied *mutatis mutandis* under paragraph (2) or conducts Purchase, etc. of Listed Share Certificates, etc. in violation of Article 27-9, paragraph (2) or (3) as applied *mutatis mutandis* under paragraph (2). In this case, the phrase "the person who acquires the Securities" in Article 16 shall be deemed to be replaced with "the person who makes a Sale, etc. of the Listed Share Certificates, etc. in response to the Tender Offer."

(10) The provisions of Article 17 shall apply *mutatis mutandis* to a person who has another person make Sale, etc. of Listed Share Certificates, etc. using a Tender Offer Statement (meaning a Tender Offer Statement as defined in Article 27-9, paragraph (1) as applied *mutatis mutandis* under paragraph (2); hereinafter the same shall apply in this Section) that contains any false statement on important matters, lacks an indication on any important matters that should be indicated or lacks an indication on a material fact that is necessary for avoiding misunderstanding, or other such indication. In this case, the phrase "the other person who acquires the Securities" in Article 17 shall be deemed to be replaced with "the person who makes a Sale, etc. of the Listed Share Certificates, etc. in response to the Tender Offer."

(11) The provisions of Article 18, paragraph (1) shall apply *mutatis mutandis* to the following persons; in this case, both of the phrases "a person who acquires the Securities through the Public Offering or Secondary Distribution" and "the person who acquired the Securities" in that paragraph shall be deemed to be replaced with "the person who made a Sale, etc. of the Listed Share Certificates, etc. in response to the Tender Offer"; and the phrase "at the time of making an offer to

acquire the Securities" in that paragraph shall be deemed to be replaced with "at the time of the Sale, etc.":

(i) a person who gives Public Notice for Commencing Tender Offer as defined in Article 27-3, paragraph (2) as applied *mutatis mutandis* under paragraph (2) or public notice or public announcement under Article 27-6, paragraph (2) or (3), Article 27-7, paragraph (1) or (2), or Article 27-8, paragraph (8) or (11) as applied *mutatis mutandis* under paragraph (2) or Article 27-7, paragraph (1) or (2) as applied *mutatis mutandis* under paragraph (6) (in the following paragraph, referred to as the "Public Notice for Commencing Tender Offer, etc.") that contains any false statement on important matters, lacks an indication on any important matters that should be indicated or lacks an indication on a material fact that is necessary for avoiding misunderstanding;

(ii) a person who submits a Tender Offer Notification as defined in Article 27-3, paragraph (2) as applied *mutatis mutandis* under paragraph (2) (including amendments therefor; in the following paragraph, the same shall apply) that contains any false statement on important matters, lacks a statement on any important matters that should be stated or lacks a statement on a material fact that is necessary for avoiding misunderstanding; and

(iii) a person who prepares a Tender Offer Statement (including a Tender Offer Statement amended pursuant to the provision of Article 27-9, paragraph (3) as applied *mutatis mutandis* under paragraph (2); in the following paragraph, the same shall apply) that contains any false statement on important matters, lacks a statement on any important matters that should be stated or lacks a statement on a material fact that is necessary for avoiding misunderstanding.

(12) Where Article 18, paragraph (1) as applied *mutatis mutandis* under the preceding paragraph is applicable, the relevant Issuer's Officers at the time of the Issuer's submission of the Public Notice for Commencing Tender Offer, etc. or Tender Offer Notification or preparation of the Tender Offeror Statement shall be held jointly and severally liable for damages arising pursuant to the provisions of the preceding paragraph with the Issuer. However, this shall not apply an Officer who proves that he/she did not know of, and was not able to know of even with reasonable care, the existence of a false statement or lack of a required statement.

(13) In the cases under paragraphs (2), (3) and (5) to (11), in addition to the replacements prescribed in these provisions, any other necessary deemed replacement of terms and phrases shall be specified by a cabinet order.

Article 27-22-3 (Public Announcement, etc. of Material Facts Pertaining to Business or Other Matters)

(1) A company that intends to make Purchases, etc. of Listed Share Certificates, etc. by means of a Tender Offer as prescribed in paragraph (1) of the preceding Article shall, if there are any Material Facts (meaning a Material Fact Pertaining to Business or Other Matters as defined in Article 166, paragraph (1) (excluding those specified by a cabinet office ordinance); hereinafter the same shall apply in this Article and the following Article) pertaining to the company that has not been publicly announced as prescribed in Article 166, paragraph (1), publicly announce those Material Facts pursuant to the provisions of a cabinet office ordinance before the day on which the Tender Offer Notification (meaning a Tender Offer Notification as defined in Article 27-3, paragraph (2) as applied *mutatis mutandis* under paragraph (2) of the preceding Article; hereinafter the same shall apply in this Article and the following Article) is submitted.

(2) When making Purchases, etc. of Listed Share Certificates, etc. by means of a Tender Offer as prescribed in the paragraph (1) of the preceding Article, if there occurs any new Material Fact pertaining to the company during the period from the day on which the Tender Offer Notification is submitted to the last day of the Tender Offer Period (including the period to be extended pursuant to the provision of Article 27-8, paragraph (8) as applied *mutatis mutandis* under paragraph (4); in the following Article, the same shall apply) as defined in Article 27-5 as applied *mutatis mutandis* under paragraph (2) of the preceding Article (including where it is found that there has been a Material Fact that occurred before the day on which the Tender Offer Notification is submitted and has not been publicly announced as prescribed in Article 166, paragraph (1)), a company that is the Tender Offeror shall without delay publicly announce that Material Fact and notify the details of the public announcement to the persons who accept the offer for Purchase, etc. of Listed Share Certificates, etc. pertaining to the Tender Offer or make an offer for Sale, etc. of the Listed Share Certificates, etc. and the persons who are about to make Sale, etc. of the Listed Share Certificates, etc., pursuant to the provisions of a cabinet office ordinance.

(3) When the period specified by a cabinet order has elapsed since the public announcement was made pursuant to the provisions of the preceding two paragraphs, it shall be deemed that the public announcement prescribed in Article 166, paragraph (1) is made.

(4) The provisions of Article 27-8, paragraphs (8) and (9) shall apply *mutatis mutandis* to the public announcement made pursuant to the provision of paragraph (2). In this case, the part "Where an amendment is submitted pursuant to the provision

of paragraph (1) or (2) or an order to submit an amendment is given pursuant to the provision of paragraph (3) or (4) during the Tender Offer Period, except in the cases specified by a cabinet office ordinance" in Article 27-8, paragraph (8) shall be deemed to be replaced with "Where the public announcement of a material fact is required pursuant to the provision of Article 27-22-3, paragraph (2)"; and the terms "the preceding paragraph" and "Share Certificates, etc." in Article 27-8, paragraph (9) shall be deemed to be replaced with "the preceding paragraph as applied *mutatis mutandis* under Article 27-22-3, paragraph (4)" and "Listed Share Certificates, etc.," respectively.

(5) The provisions of Article 27-5 shall apply *mutatis mutandis* to the period ending on the last day of the period for Purchase, etc. of the Tender Offer to be extended pursuant to the provision of Article 27-8, paragraph (8) as applied *mutatis mutandis* under the preceding paragraph. In this case, the terms "Share Certificates, etc." and "the following cases" in Article 27-5 shall be deemed to be replaced with "Listed Share Certificates, etc." and "the cases specified by a cabinet order," respectively.

(6) The provision of Article 18, paragraph (1) shall apply *mutatis mutandis* to a company that has given public notice or public announcement pursuant to the provision of Article 27-8, paragraph (8) as applied *mutatis mutandis* under paragraph (4) that contains any false statement on important matters, lacks an indication on any important matters that should be indicated or lacks an indication on a material fact that is necessary for avoiding misunderstanding. In this case, both of the phrases "a person who acquires the Securities in response to a Public Offering or Secondary Distribution" and "the person who acquired the Securities" in Article 18, paragraph (1) shall be deemed to be replaced with "the person who makes Sale, etc. of the Listed Share Certificates, etc. in response to a Tender Offer"; and the phrase "at the time of application for acquisition of the Securities" in that paragraph shall be deemed to be replaced with "at the time of the Sale, etc."

(7) Where Article 18, paragraph (1) as applied *mutatis mutandis* under the preceding paragraph is applicable, the relevant company's Officers at the time of the submission of the public notice or public announcement mentioned in the preceding paragraph shall be held jointly and severally liable for damages arising pursuant to the provisions of the preceding paragraph with the company. However, this shall not apply to an Officer who proves that he/she did not know of, and was not able to know of even with reasonable care, the existence of a false statement or lack of a required statement.

(8) The provisions of Article 27-17 shall apply *mutatis mutandis* where Purchase, etc. of Listed Share Certificates, etc. is made in violation of Article 27-5 as applied *mutatis mutandis* under

paragraph (5). In this case, the term "Share Certificates, etc." in Article 27-17 shall be deemed to be replaced with "Listed Share Certificates, etc."; and any other necessary deemed replacement of terms and phrases shall be specified by a cabinet order.

Article 27-22-4 (Liability for Damages Arising from Failure to Make Public Announcement, etc. or from False Public Announcement, etc.)

(1) If a company fails to make public announcement or notification (hereinafter referred to as a "Public Announcement, etc." in this Article) of any Material Fact for which a Public Announcement, etc. is required pursuant to the provisions of paragraph (1) or paragraph (2) of the preceding Article or makes a false Public Announcement, etc. of any Material Fact, the company shall be liable to compensate damage arising from the failure to make Public Announcement, etc. or from the false Public Announcement, etc. sustained by a person who has made a Sale, etc. of Listed Share Certificates, etc. in response to the Tender Offer. However, this shall not apply in the following cases:

(i) where the person who has made a Sale, etc. of Listed Share Certificates, etc. in response to the Tender Offer knew the fact that the Material Fact occurred with respect to the company or the fact that the Public Announcement, etc. contained falsity; or

(ii) where the company proves that it did not know the fact that the Material Fact occurred with respect to the company or the fact that the Public Announcement, etc. contained falsity, and that it was not able, at the Time of Tender Offer (meaning the time when the Public Notice for Commencing Tender Offer was submitted in the case of the public announcement required pursuant to the provision of paragraph (1) of the preceding Article, or the period on or after the day on which the Public Notice for Commencing Tender Offer was submitted and before the last day of the Tender Offer Period in the case of the public announcement and notification required pursuant to the provision of paragraph (2) of that Article; in the following paragraph, the same shall apply), to know even with reasonable care the fact that the Material Fact occurred with respect to the company or the fact that the Public Announcement, etc. contained falsity.

(2) Where the main clause of the preceding paragraph is applicable, the relevant company's Officers at the Time of Tender Offer shall be held jointly and severally liable for damages arising pursuant to the provisions of that paragraph with the company. However, this shall not apply where an Officer proves that he/she did not know of, and was not able to know of even with reasonable care, the fact that the Material Fact

occurred pertaining to the company or the fact that the Public Announcement, etc. contains falsity.

Chapter II-3: Disclosure of Status of Large Volume Holding of Share Certificates, etc.

Article 27-23 (Submission of Large Volume Holding Reports)

(1) A holder of Target Securities (including Securities of the category set forth in Article 2, paragraph (1), item (xix) indicating the Options pertaining to those Target Securities (limited to Options that will cause a person exercising them to acquire a position as a buyer in the sale or purchase of the Target Securities pertaining to those Options) and other Securities specified by a cabinet order as those indicating rights pertaining to the relevant Target Securities) the Issuer of which is a juridical person that is an Issuer (with regard to the Securities specified by a cabinet office ordinance, a person specified by a cabinet office ordinance; hereinafter the same shall apply in this Chapter and Article 27-30-11, paragraph (4), excluding Article 27-30, paragraph (2)) of share certificates, company bond certificates with share options and other Securities specified by a cabinet order (hereinafter referred to as "Securities Related to Share Certificates" in this paragraph) that are listed on a Financial Instruments Exchange (including the Securities Related to Share Certificates specified by a cabinet order as those of which the state of distribution is equivalent to that of those Securities) (hereinafter such Securities are referred to as the "Share Certificates, etc." in this Chapter and Article 27-30-11, paragraph (4)), and whose Share Certificates, etc. Holding Rate pertaining to the Share Certificates, etc. exceeds 5% (hereinafter such a holder is referred to as a "Large Volume Holder" in this Chapter) shall, pursuant to the provisions of a cabinet office ordinance, submit to the Prime Minister a report that contains the matters related to the Share Certificates, etc. Holding Rate, matters related to the funds for the acquisition, purposes of holding and any other matters specified by a cabinet office ordinance (hereinafter such a report is referred to as a "Large Volume Holding Report") within five days from the day on which the person has come to be a Large Volume Holder (Sundays and other holidays specified by a cabinet order shall not be included for the purpose of counting days; in Article 27-25, paragraph (1) and Article 27-26, the same shall apply). However, this shall not apply where there is no increase in the total number of the Share Certificates, etc. held as set forth in paragraph (4) or in any other case specified by a cabinet office ordinance.

(2) The term "Target Securities" as used in the preceding paragraph means the share certificates, company bond certifi-

cates with share options, and other Securities specified by a cabinet order.

(3) The category of holders mentioned in paragraph (1) shall include the following persons, in addition to a person who owns Share Certificates, etc. in the name of that person or another person (or under a fictitious name) (including a person who holds the right to request delivery of Share Certificates, etc. under a sale and purchase agreement or any other agreement, or any other person specified by a cabinet order as being equivalent to them); however, the person set forth in item (i) shall be deemed to become a holder on the day on which the person comes to know that he/she is entitled to the authorities prescribed in that item, only within the scope of the Share Certificates, etc. (including Securities of the category set forth in Article 2, paragraph (1), item (xx) indicating the rights pertaining to Share Certificates, etc., and other Securities specified by a cabinet office ordinance; hereinafter the same shall apply in this paragraph and the following Article) regarding which the person comes to know that he/she is entitled to the authorities:

(i) a person who has the authority to exercise voting rights and other rights as a shareholder of the Issuer of Share Certificates, etc., or to give instructions as to the exercise of those voting rights, based on a money trust agreement or any other agreement or the provisions of laws (excluding a person who falls under the following item), and who aims at controlling business activities of the Issuer; or

(ii) a person who has the authority necessary to make investments in Share Certificates, etc., based on a Discretionary Investment Agreement or any other agreement or the provisions of laws.

(4) The term "Share Certificates, etc. Holding Rate" as used in paragraph (1) means the ratio calculated by the following formula: from the total of the Number of the relevant Share Certificates, etc. (excluding the Share Certificates, etc. specified by a cabinet office ordinance by taking into consideration the manner of holding and other circumstance; hereinafter the same shall apply in this paragraph) (meaning the number of represented shares in the case of share certificates, or the number specified by a cabinet office ordinance in the case of other Securities; hereinafter the same shall apply in this Chapter) that are held (the term "hold" includes the cases of holding of the authorities set forth in the items of the preceding paragraph; hereinafter the same shall apply in this Chapter) by a Holder of Share Certificates, etc. (meaning a holder set forth in paragraph (1); hereinafter the same shall apply in this Chapter), deduct the Number of Share Certificates, etc. issued by the Issuer of the relevant Share Certifi-

cates, etc. for which the holder has an obligation of delivery (excluding an obligation of delivery that the holder has against a Joint Holder) due to the holder's transfer by way of margin transactions mentioned in Article 161-2, paragraph (1) or any other transaction methods specified by a cabinet office ordinance (hereinafter the Number of Share Certificates, etc. after the deduction is referred to as the "Number of Share Certificates, etc. Held" in this Chapter); add the Number of Share Certificates, etc. Held by the Joint Holders pertaining to the Share Certificates, etc. issued by the Issuer (excluding those for which a right to request delivery or any other rights specified by a cabinet order exist between the holder and any Joint Holder) to the Number of Share Certificates, etc. Held (hereinafter the Number of the Share Certificates, etc. after the addition is referred to as the "Total Number of Share Certificates, etc. Held"); and divide the Total Number of Share Certificates, etc. Held by the sum of the total number of issued shares of the Issuer or the number specified by a cabinet office ordinance as being equivalent to the total number of issued shares of the Issuer and the Number of Share Certificates, etc. (excluding the share certificates and any other Securities specified by a cabinet office ordinance) held by the holder and the Joint Holder.

(5) The term "Joint Holder" as used in the preceding paragraph means, where a Holder of Share Certificates, etc. has agreed to acquire or transfer the relevant Share Certificates, etc., or exercise voting rights and other rights as a shareholder of the Issuer of thereof, jointly with another holder of Share Certificates, etc. issued by the Issuer of the relevant Share Certificates, etc., the other holder.

(6) When a Holder of Share Certificates, etc. and another Holder of Share Certificates, etc. issued by the Issuer of the first-mentioned Share Certificates, etc. have a shareholder relationship, family relationship or any other special relationship specified by a cabinet order, the other holder shall be deemed to fall under the category of the Joint Holder mentioned in paragraph (4) pertaining to the holder. However, this shall not apply where the Number of Share Certificates, etc. Held by either the holder or the other holder is not more than the number specified by a cabinet office ordinance.

Article 27-24 (Preparation and Delivery of Written Notice of Status of Holding Share Certificates)

A person set forth in item (ii) of paragraph (3) of the preceding Article shall, pursuant to the provisions of a cabinet office ordinance, prepare a written notice that accounts for the status of holdings of relevant share certificates and deliver it to the customers who have the authority to exercise their voting rights or any other rights as shareholders of the Issuer of the Share Certificate, etc. or to give

instructions as to exercising the voting rights or any other rights, at least once a month.

Article 27-25 (Submission of Change Report Pertaining to Large Volume Holding Report)

(1) A person who is required to submit a Large Volume Holding Report shall, where after the day on which the person has come to be a Large Volume Holder, the Share Certificates, etc. Holding Rate (meaning the Share Certificates, etc. Holding Rate as defined in Article 27-23, paragraph (4); hereinafter the same shall apply in this Chapter) has increased or decreased by 1% or more (excluding where the increase or decrease does not result in increase or decrease in the Total Number of Share Certificates, etc. Held by the person; hereinafter the same shall apply in this Chapter), or where there arises any other change specified by a cabinet order as a change in important matters to be stated in the Large Volume Holding Report, submit to the Prime Minister a report on the changed matters (hereinafter referred to as a "Change Report") within five days from the change, pursuant to the provisions of a cabinet office ordinance. However, this shall not apply where a Change Report that reports a decrease of 1% or more in the Share Certificates, etc. Holding Rate, in which it is stated that the Share Certificates, etc. Holding Rate is 5% or less, has already been submitted or in other cases specified by a cabinet office ordinance.

(2) A person who submits a Change Report due to a decrease in the Share Certificates, etc. Holding Rate shall, if the decrease meets the criteria specified by a cabinet order as where a large number of Share Certificates, etc. have been transferred within a short period, also state in the Change Report the matters concerning the party to whom the Share Certificates, etc. have been transferred and the consideration received therefor, pursuant to the provisions of a cabinet office ordinance.

(3) When, by the day immediately prior to the day of submission of a Large Volume Holding Report or Change Report, there occurs any cause that requires the submission of another Change Report, the Change Report shall be submitted to the Prime Minister at the same time as the submission of the first-mentioned documents that have not been submitted, notwithstanding the provision of the main clause of paragraph (1).

(4) A person who has submitted a Large Volume Holding Report or Change Report shall, when finding that these documents contain a statement that contravenes the actual facts, or contains only an insufficient statement, or entirely lacks a statement on important matters that should be stated therein or on a material fact that is necessary for avoiding misunderstanding, submit an amendment report to the Prime Minister.

Article 27-26 (Special Provisions for Report by Large Volume Holder of Share Certificates, etc. Subject to Special Provisions)

(1) A Large Volume Holding Report pertaining to the Share Certificates, etc. that are held by a Financial Instruments Business Operator (limited to those who conduct the Type 1 Financial Instruments Business as defined in Article 28, paragraph (1), or who conduct the Investment Management Business as defined in paragraph (4) of that Article; hereinafter the same shall apply in this Article), a bank or any other person specified by a cabinet office ordinance (limited to those who have notified the Reference Date specified in paragraph (3) to the Prime Minister) of which the purpose of holding is not for conducting acts specified by a cabinet order as those effecting material changes in or giving material effect to the business activities of the Issuer of the Share Certificates, etc. (in paragraphs (4) and (5), such an act is referred to as an "Act of Making an Important Proposal etc.") (excluding where the Share Certificates, etc. Holding Rate exceeds the ratio specified by a cabinet office ordinance, or other cases specified by a cabinet office ordinance by taking into consideration the manner of holding and other circumstances), or that are held by the state, local government or any other person specified by a cabinet office ordinance (limited to those who have notified the Reference Date specified in paragraph (3) to the Prime Minister) (hereinafter such Share Certificates, etc. are referred to as the "Share Certificates, etc. Subject to Special Provisions" in this Article) shall, notwithstanding the provision of the main clause of paragraph (1) of Article 27-23, be submitted to the Prime Minister with a statement of the matters specified by a cabinet office ordinance with regard to the status of holding of the Share Certificates, etc. as of the Reference Date on which the Share Certificates, etc. Holding Rate has exceeded 5% for the first time, within five days from the Reference Date, pursuant to the provisions of a cabinet office ordinance.

(2) Notwithstanding the provision of the main clause of paragraph (1) of Article 27-25, a Change Report pertaining to the Share Certificates, etc. Subject to Special Provisions (excluding a Change Report pertaining to a change where the relevant Share Certificates, etc. have come to fall under the category of Share Certificates, etc. other than Share Certificates, etc. Subject to Special Provisions) shall be submitted to the Prime Minister by the date specified respectively in the following items, according to the categories of cases set forth therein, pursuant to the provisions of a cabinet office ordinance:

(i) where the Share Certificates, etc. Holding Owning Rate on a Reference Date that comes after the Reference Date pertaining to the Large Volume Holding Report mentioned in the preceding paragraph has increased or

decreased by 1% or more from the Share Certificates, etc. Holding Owning Rate stated in the Large Volume Holding Report, or where there arises any other change specified by a cabinet order as a change in important matters to be stated in the Large Volume Holding Report—within five days from the later Reference Date;

(ii) where the Share Certificates, etc. Holding Owning Rate on a Reference Date that comes after the Reference Date pertaining to the Change Report has increased or decreased by 1% or more from the Share Certificates, etc. Holding Owning Rate stated in the Change Report, or where there arises any other change specified by a cabinet order as a change in important matters to be stated in the Large Volume Holding Report—within five days from the later Reference Date;

(iii) where the Share Certificates, etc. Holding Owning Rate becomes less than the ratio specified by a cabinet office ordinance, and the relevant Share Certificates, etc. have come to fall under the category of Share Certificates, etc. Subject to Special Provisions—within five days from the date on which the Share Certificates, etc. have come to fall under the category of Share Certificates, etc. Subject to Special Provisions; and

(iv) in the cases specified by a cabinet office ordinance as being equivalent to any one of the preceding three items—the date specified by a cabinet office ordinance.

(3) The Reference Date mentioned in the preceding two paragraphs means the date notified by a holder of the Share Certificates, etc. Subject to Special Provisions to the Prime Minister pursuant to the provisions of a cabinet office ordinance, out of the combinations of two or more days of each month designated pursuant to the provisions of a cabinet order.

(4) Notwithstanding the provision of paragraph (1), when a Financial Instruments Business Operator, bank or any other person specified by a cabinet office ordinance, as mentioned in that paragraph, intends to conduct an Act of Making an Important Proposal, etc. within a period specified by a cabinet order from the date on which the Share Certificates, etc. Holding Rate has exceeded 5%, the person shall submit to the Prime Minister a Large Volume Holding Report mentioned in that paragraph by five days prior to the date of the Act of Making an Important Proposal, etc., pursuant to the provisions of a cabinet office ordinance.

(5) Notwithstanding the provision of paragraph (2), where the Share Certificates, etc. Holding Rate of a Financial Instruments Business Operator, bank or any other person specified by a cabinet office ordinance, as mentioned in paragraph (1), has increased by 1% or more after the submission of the Large Volume Holding Report mentioned in that paragraph or the

Change Report mentioned in paragraph (2), and when any of the persons intends to conduct an Act of Making an Important Proposal, etc. within the period specified by a cabinet order from the date of the increase, the person shall submit to the Prime Minister a Change Report mentioned in that paragraph by five days prior to the date of the Act of Making an Important Proposal, etc., pursuant to the provisions of a cabinet office ordinance.

(6) The provision of paragraph (4) of the preceding Article shall apply *mutatis mutandis* to a Large Volume Holding Report mentioned in paragraph (1) or (4), or a Change Report mentioned in paragraph (2) or the preceding paragraph.

Article 27-27 (Submission of Copies of Large Volume Holding Report, etc. to Financial Instruments Exchange, etc.)

When a Holder of Share Certificates, etc. shall, when submitting a Large Volume Holding Report, Change Report, or amendment reports therefor the copies thereof without delay to the Issuer of the relevant Share Certificates, etc., and to the entity specified respectively in the following items, according to the categories of Share Certificates, etc. set forth therein:

(i) Share Certificates, etc. issued by an Issuer of Share Certificates, etc. listed on a Financial Instruments Exchange—the Financial Instruments Exchange; or

(ii) Share Certificates, etc. issued by an Issuer of Share Certificates, etc. that are specified by a cabinet order as those of which the state of distribution is equivalent to that of Share Certificates, etc. of the category set forth in the preceding item—an Authorized Financial Instruments Firms Association as specified by a cabinet order.

Article 27-28 (Public Inspection of Large Volume Holding Reports, etc.)

(1) The Prime Minister shall, pursuant to the provisions of a cabinet office ordinance, make Large Volume Holding Reports and Change Reports as well as amendment reports therefor available for public inspection for five years from the day on which the Minister accepts these documents.

(2) The Financial Instruments Exchange and the Authorized Financial Instruments Firms Association specified by a cabinet order shall, pursuant to the provisions of a cabinet office ordinance, keep copies of the documents prescribed in the preceding paragraph that they receive pursuant to the provision of the preceding Article (hereinafter referred to as the "Documents for Public Inspection" in this Article) at their office and make them available for public inspection for five years from the day on which they receive the copies of the Documents for Public Inspection.

(3) With regard to the matters concerning funds for the acquisi-

tion as stated in the Documents for Public Inspection, where the fund has been borrowed from a bank, Cooperative-Structured Financial Institution or any other financial institution specified by a cabinet order (hereinafter referred to as "Banks, etc." in this paragraph) (excluding the cases specified by a cabinet office ordinance), the Prime Minister shall, notwithstanding the provision of paragraph (1), not make the names of the Banks, etc. available for public inspection, and the person who has submitted the Documents for Public Inspection shall deliver copies of the Documents for Public Inspection after deletion of the names of the Banks, etc.

(4) Notwithstanding the provision of paragraph (1), when the Prime Minister gives an order to submit an amendment report pursuant to the provision of Article 9, paragraph (1) or Article 10, paragraph (1) as applied *mutatis mutandis* under paragraph (1) of the following Article, the Minister may decide not to make all or part of the Documents for Public Inspection pertaining to the order available for public inspection.

(5) In the cases under the preceding paragraph, the Prime Minister shall notify the Large Volume Holder and the Financial Instruments Exchange or the Authorized Financial Instruments Firms Association specified by the cabinet order, as mentioned in paragraph (2), that shall make copies of the Documents for Public Inspection available for public inspection pursuant to the provision of that paragraph of the Prime Minister's decision not to make all or part of the Documents for Public Inspection available for public inspection.

(6) When the Financial Instruments Exchange or the Authorized Financial Instruments Firms Association is notified by the Prime Minister pursuant to the provision of the preceding paragraph, the provision of paragraph (2) shall not thereafter apply to the Documents for Public Inspection pertaining to the notification.

Article 27-29 (Order to Submit Amendment Report for Large Volume Holding Report, etc.)

(1) The provisions of Article 9, paragraph (1) and Article 10, paragraph (1) shall apply *mutatis mutandis* to a Large Volume Holding Report and Change Report. In this case, the part "to submit an amendment, and when finding it necessary, the Minister may order the suspension of the effect of the notification made pursuant to the provisions of Article 4, paragraphs (1) to (3)" in Article 10, paragraph (1) shall be deemed to be replaced with "to submit an amendment."

(2) The provisions of the preceding two Articles shall apply *mutatis mutandis* where an amendment report for a Large Volume Holding Report or a Change Report has been submitted pursuant to the provision of Article 9, paragraph (1) or Article 10, paragraph (1), as applied *mutatis mutandis* under the preceding paragraph.

Article 27-30 (Order for Production of Report and Inspection Related to Person Submitting Large Volume Holding Reports and Other Persons)

(1) When the Prime Minister finds it necessary and appropriate for the public interest or the protection of investors, the Minister may order a person who has submitted a Large Volume Holding Report, the person who is found to be required to submit it, a Joint Holder (meaning a Joint Holder as defined in Article 27-23, paragraph (5)) thereof or other persons concerned or witnesses to submit reports or materials that will be helpful, or have the officials inspect the books and documents and other articles held by these persons.

(2) When the Prime Minister finds it necessary and appropriate for the public interest and the protection of investors, the Minister may order the company that is the Issuer of the Share Certificates, etc. pertaining to a Large Volume Holding Report or witnesses to submit reports or materials that will be helpful.

[Articles 27-31 to 156: translation omitted.]

Chapter VI: Regulations on Transactions, etc. of Securities

Article 157 (Prohibition of Wrongful Acts)

No person shall conduct the following acts:

(i) to use wrongful means, schemes or techniques with regard to sales and purchases or other transactions of Securities or Derivatives Transactions, etc.;

(ii) to acquire money or other property, using a document or other representation containing any misrepresentation on important matters, or lacking an representation about important matters necessary for avoiding misunderstanding, with regard to sales and purchases or other transactions of Securities or Derivatives Transactions, etc.; or

(iii) to use false quotations in order to induce sales and purchases or other transactions of Securities or Derivatives Transactions, etc.

Article 158 (Prohibition of Spreading Rumor, Using Fraudulent Means, Committing Assault or Intimidation)

No person shall spread a rumor, use fraudulent means, or commit assault or intimidation for the purpose of carrying out a Public Offering, Secondary Distribution, sale and purchase or other transaction of Securities or Derivatives Transactions, etc. or causing a fluctuation in quotations of Securities, etc. (meaning Securities, Options, or Financial Instruments (excluding Securities) or Financial Indicators pertaining to Derivatives Transactions; in Articles 168, paragraph (1), 173, paragraph (1), and 197, paragraph (2), the same shall apply).

Article 159 (Prohibition of Market Manipulation, etc.)

(1) No person shall conduct any of the following acts for the

purpose of misleading other persons into believing that sales and purchases of Securities (limited to sales and purchases of Securities listed on a Financial Instruments Exchange, Over-the-Counter Traded Securities or Tradable Securities; hereinafter the same shall apply in this Article), Market Transactions of Derivatives or Over-the-Counter Transactions of Derivatives (limited to those pertaining to Financial Instruments listed on a Financial Instruments Exchange, Over-the-Counter Traded Securities or Tradable Securities (including Financial Indicators calculated based on prices or Interest Rates, etc. thereof) or Financial Indicators listed on a Financial Instruments Exchange; hereinafter the same shall apply in this Article) are thriving or otherwise misleading other persons about the state of these transactions:

(i) to conduct fake sales and purchases of Securities, fake Market Transactions of Derivatives (limited to those set forth in Article 2, paragraph (21), item (i)) or fake Over-the-Counter Transactions of Derivatives (limited to those set forth in Article 2, paragraph (22), item (i)) without the purpose of transferring rights;

(ii) to conduct fake Market Transactions of Derivatives (limited to those set forth in Article 2, paragraph (21), items (ii), (iv) and (v)) or fake Over-the-Counter Transactions of Derivatives (limited to those set forth in Article 2, paragraph (22), items (ii), (v) and (vi)) without the purpose of paying or receiving money;

(iii) to conduct fake Market Transactions of Derivatives (limited to those set forth in Article 2, paragraph (21), item (iii)) or fake Over-the-Counter Transactions of Derivatives (limited to those set forth in Article 2, paragraph (22), items (iii) and (iv)) without the purpose of granting or acquiring Options;

(iv) for a seller of Financial Instruments to conduct a sale (limited to a sale conducted through a transaction set forth in Article 2, paragraph (21), item (i) or paragraph (22), item (i) in the case of Financial Instruments other than Securities) based on collusion made in advance with another party in which that other party promises to conduct a purchase of the relevant Financial Instruments (limited to a purchase conducted through a transaction set forth in Article 2, paragraph (21), item (i) or paragraph (22), item (i) in the case of Financial Instruments other than Securities) around the same time and at the same price as where the seller conducts sales thereof;

(v) for a purchaser of Financial Instruments to conduct a purchase (limited to a purchase conducted through a transaction set forth in Article 2, paragraph (21), item (i) or paragraph (22), item (i) in the case of Financial

Instruments other than Securities) based on collusion made in advance with another party in which that other party promises to conduct a sale of the relevant Financial Instruments (limited to a sale conducted through a transaction set forth in Article 2, paragraph (21), item (i) or paragraph (22), item (i) in the case of Financial Instruments other than Securities) around the same time and at the same price as where the purchaser conducts purchases thereof;

(vi) to make an offer for Market Transactions of Derivatives (limited to those set forth in Article 2, paragraph (21), item (ii)) or Over-the-Counter Transactions of Derivatives (limited to those set forth in Article 2, paragraph (22), item (ii)) based on collusion made in advance with another party in which that other party promises to accept the offer around the same time as where the offer is made and at the same Agreed Figure as offered in the offered transaction;

(vii) to make an offer for Market Transactions of Derivatives (limited to those set forth in Article 2, paragraph (21), item (iii)) or Over-the-Counter Transactions of Derivatives (limited to those set forth in Article 2, paragraph (22), items (iii) and (iv)) based on collusion made in advance with another party in which that other party promises to accept the offer around the same time as the offer is made and at the same amount of consideration as offered for the offered transaction;

(viii) to make an offer for Market Transactions of Derivatives (limited to those set forth in Article 2, paragraph (21), items (iv) and (v)) or Over-the-Counter Transactions of Derivatives (limited to those set forth in Article 2, paragraph (22), items (v) and (vi)) based on collusion made in advance with another party in which that other party promises to accept the offer around the same time as where the offer is made and at the same conditions as set in the offered transaction; or

(ix) to make an Entrustment, etc. or Acceptance of Entrustment, etc. of an act set forth in any one of the preceding items.

(2) No person shall conduct the following acts for the purpose of inducing sales and purchases of Securities, Market Transactions of Derivatives or Over-the-Counter Transactions of Derivatives (hereinafter referred to as a "Sale and Purchase of Securities, etc." in this Article):

(i) to conduct a series of Sales and Purchases of Securities, etc. or make an offer, Entrustment, etc. or Acceptance of Entrustment, etc. therefor that would mislead other persons into believing that Sales and Purchases of Securities, etc. are thriving or would cause fluctuations in

prices of Listed Financial Instruments, etc. (meaning Financial Instruments, Financial Indicators or Options listed on a Financial Instruments Exchange Market; hereinafter the same shall apply in this Article) in a Financial Instruments Exchange Market or prices of Over-the-Counter Traded Securities in an Over-the-Counter Securities Market;

(ii) to spread a rumor to the effect that prices of Listed Financial Instruments, etc. in a Financial Instruments Exchange Market or prices of Over-the-Counter Traded Securities in an Over-the-Counter Securities Market would fluctuate due to the market manipulation by the rumor spreader or others; or

(iii) to intentionally make a false indication or an indication that would mislead other parties with regard to important matters when making Sales and Purchases of Securities, etc.

(3) No person shall conduct a series of Sales and Purchases of Securities, etc. or make offer, Entrustment, etc. or Acceptance of Entrustment, etc. therefor in violation of the provisions of a cabinet order for the purpose of pegging, fixing or stabilizing prices of Listed Financial Instruments, etc. in a Financial Instruments Exchange Market or prices of Over-the-Counter Traded Securities in an Over-the-Counter Securities Market.

Article 160 (Liability for Damages by Market Manipulation, etc.)

(1) A person who has violated the provisions of the preceding Article shall be liable for the damages suffered by any person who conducted, or entrusted another person with, sales and purchases of Securities in a Financial Instruments Exchange Market, Market Transactions of Derivatives, sales and purchases of Securities in an Over-the-Counter Securities Market or sales and purchases of Tradable Securities (hereinafter referred to as a "Sale and Purchase of Securities, etc. in Financial Instruments Exchange Market, etc." in this paragraph) for the Financial Instruments, Financial Indicators or Options whose prices, Agreed Figures or amounts of compensations were formed by that violation, at the so-formed prices, Agreed Figures or amounts of compensations, from the Sales and Purchases of Securities, etc. in Financial Instruments Exchange Market, etc. or the entrustment thereof.

(2) The right to claim damages under the preceding paragraph shall be extinguished by prescription when that right is not exercised within one year from the time when the person entitled to claim damages learns that an act in violation of the provisions of the preceding Article has been committed or within three years from the performance of that act.

Article 161 (Restriction on Transactions Conducted by Financial Instruments Business Operators for Their Own Accounts)

(1) The Prime Minister may specify the matters in a cabinet office

ordinance deemed to be necessary and appropriate to secure the public interest or protect investors, in order to restrict sales and purchases of Securities to be conducted by a Financial Instruments Business Operator, etc. or Authorized Transaction-at-Exchange Operator for its own account, or restrict excessive volumes of sales and purchases to be conducted by a Financial Instruments Business Operator, etc. or Authorized Transaction-at-Exchange Operator if such sales and purchases are found to disturb the order of a Financial Instruments Exchange Market or an Over-the-Counter Securities Market.

(2) The provision of the preceding paragraph shall apply *mutatis mutandis* to Market Transactions of Derivatives and Over-the-Counter Transactions of Derivatives.

Article 161-2 (Deposit of Money for Margin Transaction, etc.)

(1) When making a Margin Transaction or any other transaction specified by a cabinet office ordinance, a Financial Instruments Business Operator shall, pursuant to the provisions of a cabinet office ordinance, receive from customers a deposit of an amount of money not less than the amount calculated by multiplying the market value of the Securities for which the transaction is to be made by the rate decided by the Prime Minister, while giving due consideration for securing fairness in sales and purchases or other transactions of Securities.

(2) Securities may, pursuant to the provisions of a cabinet office ordinance, be deposited instead of the amount of money required under the preceding paragraph.

Article 162 (Prohibition of Short Selling and Stop Order)

(1) No person shall conduct the following acts in violation of the provisions of a cabinet order:

(i) to sell Securities without owning them or by borrowing them (including the cases specified by a cabinet order as being equivalent thereto), or to make an Entrustment, etc. or Acceptance of Entrustment, etc., for such sales of Securities; or

(ii) to make an Entrustment, etc. in which a person is entrusted to, as soon as the price of the relevant Securities rises from that at the time of the entrustment and reaches the limit given in the entrustment or higher, purchase the Securities, or to, as soon as the price thereof falls from that at the time of the entrustment and reaches the limit given in the entrustment or lower, sell the Securities.

(2) The provision of item (ii) of the preceding paragraph shall apply *mutatis mutandis* to transactions specified in Article 2, paragraph (21), item (ii) or (iii). In this case, with regard to the transactions under Article 2, paragraph (21), item (ii), the

terms "the price," "rises," "purchase the Securities," "falls," and "sell the Securities" in item (ii) of the preceding paragraph shall be deemed to be replaced with "Agreed Figure," "goes up," "make a transaction promising that the entrusting person would receive money if the Actual Figure exceeds the Agreed Figure," "goes down" and "make a transaction promising that the entrusting person would receive money if the Actual Figure falls below the Agreed Figure," respectively; and with regard to the transactions under Article 2, paragraph (21), item (iii), the terms "the price" "purchase the Securities" and "sell the Securities" in item (ii) of the preceding paragraph shall be deemed to be replaced with "the price of the Option," "make a transaction promising that the entrusting party would acquire the Option" and "make a transaction promising that the entrusting party would grant the Option," respectively.

Article 162-2 (Regulation on Sales and Purchases of Listed or Other Share Certificates by the Company That Is the Issuer Thereof)

With regard to sales and purchases of share certificates listed on a Financial Instruments Exchange or shares certificates falling under the category of Over-the-Counter Traded Securities (hereinafter these shares certificates are referred to as "Listed or Other Share Certificates" in this Article) or an Entrustment, etc. thereof to be conducted by the company that is the Issuer of the relevant Listed or Other Share Certificates, etc. pursuant to the provisions of Article 156, paragraph (1) of the Companies Act (including where it is applied by replacing certain terms and phrases pursuant to the provisions of Article 163 or Article 165, paragraph (3) of that Act) or Article 199, paragraph (1) of that Act (limited to cases where the company intends to solicit persons to subscribe for treasury shares it disposes of) or laws and regulations of a foreign jurisdiction equivalent to those provisions (limited to cases where the company is a foreign company), an Entrustment, etc. of these transactions to be conducted by a Trust Company, etc. based on a trust agreement and for the account of the company that is the Issuer of the relevant Listed or Other Share Certificates, an Acceptance of Entrustment, etc. of these transactions to be conducted by a Financial Instruments Business Operator or Authorized Transaction-at-Exchange Operator, or other acts specified by a cabinet office ordinance, the Prime Minister, for the purpose of preventing manipulation of prices of Listed or Other Share Certificates in a Financial Instruments Exchange Market or Over-the-Counter Securities Market, may specify the matters in a cabinet office ordinance that are found to be necessary and appropriate to secure the fairness in transactions of Listed or Other Share Certificates.

Article 163 (Submission of Reports on Sales and Purchases, etc. of Specified Securities, etc. by Officers, etc. of Listed Companies, etc.)

(1) When an officer or Major Shareholder (meaning a shareholder who holds voting rights (excluding those specified by a cabinet

office ordinance in consideration of the manner of acquisition or holding thereof and other circumstances) exceeding 10 percent of the Voting Rights Held by All Shareholders, etc. in the name of that officer or Major Shareholder or another person (or under a fictitious name); hereinafter the same shall apply in this Article to Article 166) of the Issuer of Securities of the category set forth in Article 2, paragraph (1), item (v), (vii) or (ix) (excluding those specified by a cabinet order) that are listed on a Financial Instruments Exchange or fall under the category of Over-the-Counter Traded Securities or Tradable Securities or other Securities specified by a cabinet order (hereinafter the Issuer is referred to as a "Listed Company, etc." in this Article to Article 166) makes a Purchase, etc. of Securities of the category set forth in Article 2, paragraph (1), item (v), (vii) or (ix) (excluding those specified by a cabinet order) of the Listed Company, etc. or other Securities specified by a cabinet order (hereinafter such Securities are referred to as "Specified Securities" in this Article to Article 166) or Securities of the category set forth in Article 2, paragraph (1), item (xix) that indicate Options pertaining to Specified Securities of the Listed Company, etc. or other Securities specified by a cabinet order (hereinafter such Securities are referred to as "Related Securities" in this paragraph) (the term "Purchase, etc." means a purchase of Specified Securities and Related Securities (hereinafter these Securities are referred to as "Specified Securities, etc." in this Article to Article 166) and any other transaction specified by a cabinet order; hereinafter the same shall apply in this Article, the following Article and Article 165-2) or makes a Sale, etc. thereof (meaning a sale of Specified Securities, etc. and any other transaction specified by a cabinet order; hereinafter the same shall apply in this Article to Article 165-2), for that person's own account (including where the trustee of a trust of which that officer or Major Shareholder is the settlor or beneficiary makes a Purchase, etc. or Sale, etc. of Specified Securities, etc. of the Listed Company, etc. as specified by a cabinet office ordinance; hereinafter the same shall apply in this Article and the following Article), that officer or Major Shareholder shall submit, pursuant to the provisions of a cabinet office ordinance, a report on the relevant sale or purchase or other transaction (hereinafter referred to as a "Sale and Purchase, etc." in this paragraph, the following Article or Article 165-2) to the Prime Minister on or before the 15th day of the month following the month that includes the day of the Sale and Purchase, etc. However, this shall not apply to the cases so specified by a cabinet office ordinance in consideration of the manner of the Purchase, etc. or Sale, etc. and other circumstances.

(2) When the officer or Major Shareholder mentioned in the preceding paragraph makes the Purchase, etc. or Sale, etc. of

Specified Securities, etc. of the Listed Company, etc. by making an Entrustment, etc. to a Financial Instruments Business Operator, etc. or Authorized Transaction-at-Exchange Operator, the report required under the preceding paragraph shall be submitted via the Financial Instruments Business Operator, etc. or Authorized Transaction-at-Exchange Operator. The same shall apply where the counterparty to the Purchase, etc. or Sale, etc. is a Financial Instruments Business Operator, etc. or Authorized Transaction-at-Exchange Operator.

Article 164 (Restitution by Officer, etc. of Listed Company, etc. of Profits Arising from Sales and Purchases Conducted in a Short Term)

(1) For the purpose of preventing wrongful use by officers or Major Shareholders of a Listed Company, etc. of secret information they have obtained in the course of their respective duties or by virtue of their respective positions, a Listed Company, etc. may request its officer or Major Shareholder who makes a Sale, etc. of Specified Securities, etc. of the Listed Company, etc. within six months after having made a Purchase, etc. thereof for that officer's or Major Shareholder's own account, or makes a Purchase, etc. of Specified Securities, etc. of the Listed Company, etc. within six months after having made a Sale, etc. thereof for that officer's or Major Shareholder's own account, to provide the Listed Company, etc. with profits earned by that Sale, etc. and Purchase, etc.

(2) Where a Listed Company, etc. fails to make a request under the preceding paragraph within 60 days from the day on which a shareholder (including a member who is an insurance policy holder, or an Equity Investor; hereinafter the same shall apply in this paragraph) of the Listed Company, etc. requested the Listed Company, etc. to make the request under the preceding paragraph, the shareholder may make the request in subrogation of the Listed Company, etc.

(3) The right to make a request to an officer or Major Shareholder of a Listed Company, etc. pursuant to the provisions of the preceding two paragraphs shall be extinguished by prescription when the right is not exercised within two years from the day of earning the relevant profits.

(4) When it is found from the report mentioned in the preceding Article that an officer or Major Shareholder of a Listed Company, etc. has gained profits as mentioned in paragraph (1), the Prime Minister shall send a copy of the portion of the report pertaining to the profits (hereinafter referred to as a "Document Relating to Profit" in this Article) to the officer or Major Shareholder, and if no application under the following paragraph is filed by such officer or Major Shareholder within the period specified therein with regard to the Document Relating to Profit, then the Prime Minister shall send a copy of

the Document Relating to Profit to the Listed Company, etc. However, this shall not apply where the Prime Minister becomes aware of the fact that the profits mentioned in paragraph (1) have already been provided to the Listed Company, etc. before a copy of the Document Relating to Profit is sent to the officer or Major Shareholder or the Listed Company, etc.

(5) Where a copy of the Document Relating to Profit is sent to an officer or Major Shareholder of the Listed Company, etc. pursuant to the provision of the main clause of the preceding paragraph, the officer or Major Shareholder may, when finding that he/she has not made the Sale and Purchase, etc. as stated in the copy of the Document Relating to Profit, file an application to that effect to the Prime Minister within a period not exceeding 20 days from the day of his/her receipt of the copy of the Document Relating to Profit.

(6) When an application to the effect that the officer or Major Shareholder has not made the Sale and Purchase, etc. as stated in the copy of the Document Relating to Profit is filed by the officer or Major Shareholder pursuant to the provision of the preceding paragraph, the portion pertaining to the application shall be deemed, for the purpose of application of the main clause of paragraph (4), to be not included in the report submitted to the Prime Minister under paragraph (1) of the preceding Article.

(7) When a copy of the Document Relating to Profit has been sent to the Listed Company, etc. under paragraph (4), the Prime Minister shall make the copy of the Document Relating to Profit available for public inspection for the period commencing on the day on which 30 days elapsed from the day on which the copy was sent and ending on the day on which the right to request under paragraph (3) is extinguished (or the day, if any, on which the Prime Minister becomes aware of the fact that the profits mentioned in paragraph (1) have already been provided to the Listed Company, etc. before the day on which the right to request is extinguished). However, this shall not apply where the Prime Minister becomes aware of the fact that the profits mentioned in paragraph (1) have already been provided to the Listed Company, etc. before making the copy of the Document Relating to Profit available for public inspection.

(8) The provisions of the preceding paragraphs shall not apply where the relevant Major Shareholder is not a Major Shareholder either at the time of the relevant Purchase, etc. or Sale, etc., or in the cases so specified by a cabinet office ordinance in consideration of the manner of the Purchase, etc. or Sale, etc. conducted by an officer or Major Shareholder and other circumstances.

(9) Where the Prime Minister, under paragraph (4), finds that an

officer or Major Shareholder of a Listed Company, etc. has gained profits as mentioned in paragraph (1), the method to be used for calculating the profits shall be specified by a cabinet office ordinance.

Article 165 (Prohibited Acts of Officers, etc. of Listed Companies, etc.)

No officer or Major Shareholder of a Listed Company, etc. shall conduct the following acts:

(i) to make a sale or any other transaction as specified by a cabinet order (hereinafter referred to as a "Specified Transaction" in this Article and paragraph (15) of the following Article) with respect to Specified Securities, etc. of the relevant Listed Company, etc., if the amount of the Specified Securities (meaning the amount of the Specified Securities sold in the case of sale of Specified Securities, or the amount specified by a cabinet office ordinance in the case of any other transaction) pertaining to the relevant Specified Transaction exceeds the amount specified by a cabinet office ordinance as the amount for the same type of Specified Securities as the Specified Securities of the Listed Company, etc. held by the relevant officer or Major Shareholder; or

(ii) to make a Sale, etc. of Specified Securities, etc. of the relevant Listed Company, etc. (excluding Specified Transactions), if the volume of the Specified Securities specified by a cabinet office ordinance as the basis to be used for calculating the amount paid or received in the Sale, etc. exceeds the volume specified by a cabinet office ordinance as the volume for the same type of Specified Securities as the Specified Securities of the Listed Company, etc. held by the relevant officer or Major Shareholder.

Article 165-2 (Specified Securities etc. Belonging to Assets of Specified Partnership, etc.)

(1) With regard to Partnerships, etc. (meaning a partnership established based on a partnership agreement provided in Article 667, paragraph (1) of the Civil Code, an investment limited partnership as defined in Article 2, paragraph (2) of the Act on Investment Limited Partnership Agreements (hereinafter referred to as an "Investment Limited Partnership" in this Article) or a limited liability partnership as defined in Article 2 of the Act on Limited Liability Partnership Agreements (hereinafter referred to as a "Limited Liability Partnership" in this Article) and other similar organizations specified by a cabinet order; hereinafter the same shall apply in this Article) whose assets include shares of a Listed Company, etc. that represent voting rights equal to or greater than 10 percent of the Voting Rights Held by All Shareholders, etc. of the Listed Company, etc. (hereinafter

referred to as a "Specified Partnership, etc." in this Article), when any of the partners of the Specified Partnership, etc. (including those specified by a cabinet office ordinance as being similar to partners of a Specified Partnership, etc.; hereinafter the same shall apply in this Article) makes a Purchase, etc. or Sale, etc. of Specified Securities, etc. of the Listed Company, etc. in relation to the assets of the Specified Partnership, etc. (including where the trustee of a trust of which all of the partners of a Specified Partnerships, etc. are the settlors or beneficiaries makes a Purchase, etc. or Sale, etc. of Specified Securities, etc. of the relevant Listed Company, etc. as specified by a cabinet office ordinance; hereinafter the same shall apply in this Article), the partner having executed such Purchase, etc. or Sale, etc. (including a partner specified by a cabinet office ordinance as being equivalent to such a partner; hereinafter the same shall apply in this Article) shall submit, pursuant to the provisions of a cabinet office ordinance, a report on the Sale and Purchase, etc. to the Prime Minister on or before the 15th day of the month following the month including the day of the Sale and Purchase, etc. However, this shall not apply to the cases so specified by a cabinet office ordinance in consideration of the manner of the Purchase, etc. or Sales, etc. and other circumstances.

(2) When the partner of the Specified Partnership, etc. mentioned in the preceding paragraph makes the Purchase, etc. or Sale, etc. of Specified Securities, etc. of the relevant Listed Company, etc. in relation to the assets of the Specified Partnership, etc. by making an Entrustment, etc. to a Financial Instruments Business Operator, etc. or Authorized Transaction-at-Exchange Operator, the report required under the preceding paragraph shall be submitted via the Financial Instruments Business Operator, etc. or Authorized Transaction-at-Exchange Operator. The same shall apply where the counterparty to the Purchase, etc. or Sale, etc. is a Financial Instruments Business Operator, etc. or Authorized Transaction-at-Exchange Operator.

(3) For the purpose of preventing wrongful use by partners of a Specified Partnership, etc. of secret information they have obtained by virtue of their respective positions, the relevant Listed Company, etc. may request a partner of the relevant Specified Partnership, etc. who, in relation to the assets of the Specified Partnership, etc., makes a Sale, etc. of Specified Securities, etc. of the Listed Company, etc. within six months after having made a Purchase, etc. thereof, or makes a Purchase, etc. of Specified Securities, etc. of the Listed Company, etc. within six months after having made a Sale, etc. thereof, to provide the Listed Company, etc. with profits earned by that Sale, etc. and Purchase, etc. from the assets of the Specified Partnerships, etc.

(4) Where the relevant Listed Company, etc. makes a request pursuant to the provision of the preceding paragraph, and unless the debt arising from that request or other debt of the relevant Specified Partnership, etc. can be repaid in full by the assets of the Specified Partnership, etc., the Listed Company, etc. may request each person who was a partner of the Specified Partnership, etc. at the time of accrual of the profits mentioned in that paragraph (excluding limited partners of an Investment Limited Partnership and partners of a Limited Liability Partnership and persons specified by a cabinet office ordinance as being similar thereto) to provide the Listed Company, etc. with the profits (to the extent of the amount that remains after deducting the amount of the profits already provided to the Listed Company, etc. under that paragraph) in proportion to the liability of each partner for the debt of the Specified Partnership, etc.

(5) In the cases specified in the preceding paragraph, the provision of the preceding paragraph shall apply where compulsory execution against the assets of the relevant Specified Partnership, etc. fails.

(6) The provision of the preceding paragraph shall not apply where a person who is a partner of the relevant Specified Partnership, etc. at the time of accrual of the profits mentioned in paragraph (3) proves that the Specified Partnership, etc. has sufficient assets and that compulsory execution may be easily made against those assets.

(7) Where the relevant Listed Company, etc. fails to make a request under paragraphs (3) to (5) within 60 days from the day on which a shareholder (including a member who is an insurance policy holder, or an Equity Investor; hereinafter the same shall apply in this paragraph) of the Listed Company, etc. requested the Listed Company, etc. to make the request under those paragraphs, the shareholder may make the request in subrogation of the Listed Company, etc.

(8) The right to request the return of profits pursuant to the provisions of paragraphs (3) to (5) or of the preceding paragraph shall be extinguished by prescription when the right is not exercised within two years from the time of accrual of the profits to the assets of the relevant Specified Partnership, etc.

(9) When it is found from the report under paragraph (1) that any profits mentioned in paragraph (3) have accrued to the assets of the relevant Specified Partnership, etc., the Prime Minister shall send a copy of the portion of the report pertaining to the profits (hereinafter referred to as a "Document Relating to Partnership Profit" in this Article) to the Reporting Partner (meaning the partner who submitted the report (limited to one pertaining to the latest Purchase, etc. or Sale, etc.) under paragraph (1)), and if no application under the following paragraph is filed by the Reporting Partner within

the period specified therein with regard to the Document Relating to Partnership Profit, the Prime Minister shall send a copy of the Document Relating to Partnership Profit to the Listed Company, etc. However, this shall not apply where the Prime Minister becomes aware of the fact that the profits mentioned in paragraph (3) have already been provided to the Listed Company, etc. before the copy of the Document Relating to Partnership Profit is sent to the Reporting Partner or the Listed Company, etc.

(10) Where a copy of the Document Relating to Partnership Profit is sent to the Reporting Partner pursuant to the provision of the main clause of the preceding paragraph, the Reporting Partner may, when finding that he/she has not made the Sale and Purchase, etc. as stated in the copy of the Document Relating to Partnership Profit, file an application to that effect to the Prime Minister within a period not exceeding 20 days from the day of his/her receipt of the copy of the Document Relating to Partnership Profit.

(11) When an application to the effect that the relevant Reporting Partner has not made the Sale and Purchase, etc. as stated in the copy of the Document Relating to Partnership Profit is filed by the Reporting Partner pursuant to the provision of the preceding paragraph, the portion pertaining to the application shall be deemed, for the purpose of application of the main clause of paragraph (9), to be not included in the report submitted to the Prime Minister under paragraph (1).

(12) When a copy of the Document Relating to Partnership Profit has been sent to the Listed Company, etc. under paragraph (9), the Prime Minister shall make the copy of the Document Relating to Partnership Profit available for public inspection for the period commencing on the day on which 30 days have elapsed from the day on which the copy was sent and ending on the day on which the right to request under paragraph (8) is extinguished (or the day, if any, on which the Prime Minister becomes aware of the fact that the profits mentioned in paragraph (3) have already been provided to the Listed Company, etc. before the day on which the right to request is extinguished). However, this shall not apply where the Prime Minister becomes aware of the fact that the profits mentioned in paragraph (3) have already been provided to the Listed Company, etc. before making the copy of the Document Relating to Partnership Profit available for public inspection.

(13) The provisions of paragraph (3) to the preceding paragraph shall not apply where the relevant Specified Partnership, etc. is not a Specified Partnership, etc. either at the time of a Purchase, etc. or a Sale, etc. in relation to the assets of the Specified Partnerships, etc., or in the cases so specified by a cabinet office ordinance in consideration of the manner of the Purchase, etc. or Sale, etc. conducted in relation to assets of the Specified Partnerships, etc. and other circumstances.

(14) Where the Prime Minister, under paragraph (9), finds that any profits accrued to the assets of the Specified Partnerships, etc. as mentioned in paragraph (3), the method to be used for calculating the profits shall be specified by a cabinet office ordinance.

(15) No partner of a Specified Partnership, etc. shall conduct the following acts in relation to the assets of the Specified Partnership, etc.:

(i) to make a Specified Transaction, if the Amount of Specified Securities Traded in Specified Transaction (meaning the amount of Specified Securities sold in the case of sale of Specified Securities, or the amount specified by a cabinet office ordinance in the case of any other transaction) exceeds the amount specified by a cabinet office ordinance as the amount for the same type of Specified Securities as the Specified Securities of the relevant Listed Company, etc. held by the partner; or

(ii) to make a Sale, etc. (excluding a Specified Transaction) of Specified Securities, etc. of the relevant Listed Company, etc., if the volume of the Specified Securities specified by a cabinet office ordinance as the basis to be used for calculating the amount paid or received in the Sale, etc. exceeds the volume specified by a cabinet office ordinance as the volume for the same type of Specified Securities as the Specified Securities of the Listed Company, etc. held by the partner.

(16) The provisions of the preceding three Articles shall not apply to a Major Shareholder who comes to fall under the category of Major Shareholder of a Listed Company, etc. as a result of obtaining shares of the Listed Company, etc. as a part of the assets of a Partnership, etc.

Article 166 (Prohibited Acts of Corporate Insiders)

(1) A person set forth in any one of the following items (hereinafter referred to as a "Corporate Insider" in this Article) who has come to know a Material Fact Pertaining to Business or Other Matters of a Listed Company, etc. (in the case of a Corporate Insider pertaining to a Subsidiary Company of the relevant Listed Company, etc. (excluding a person falling under the category of Corporate Insider pertaining to the relevant Listed Company, etc.), limited to any Material Fact Pertaining to Business or Other Matters of the Subsidiary Company that are set forth in items (v) to (viii) of the following paragraph; hereinafter the same shall apply) in the manner as specified respectively in the following items shall not make any sale and purchase, or any other types of transfer for value or acceptance of transfer for value, or Derivatives Transactions (hereinafter referred to as a "Sale and Purchase, etc." in this Article) of Specified Securities, etc. of the Listed Company, etc. before

the Material Fact Pertaining to Business or Other Matters is Publicly Announced; the same shall apply for one year to a Corporate Insider who comes to know a Material Fact Pertaining to Business or Other Matters of the Listed Company, etc. in the manner as specified respectively in the following items even after he/she ceased to be a Corporate Insider as set forth therein:

(i) an officer (where the accounting advisor is a juridical person, a member of the accounting advisor), agent, employee or other worker (hereinafter referred to as an "Officer, etc." in this Article and the following Article) of the relevant Listed Company, etc. (including its Parent Company and Subsidiary Companies; hereinafter the same shall apply in this paragraph)—when the Officer, etc. comes to know a material fact in the course of his/her duty;

(ii) a shareholder who has the right prescribed in Article 433, paragraph (1) of the Companies Act, an ordinary equity investor prescribed in the Preferred Equity Investment Act who is specified by a cabinet office ordinance as being deemed to have a right similar to that right, or a member who has the right prescribed in Article 433, paragraph (3) of the Companies Act of the relevant Listed Company, etc. (including, where such a shareholder, ordinary equity investor or member is a juridical person (including an organization that is not a juridical person and for which the representative person or administrator has been designated; hereinafter the same shall apply in this Article and the following Article), an Officer, etc. thereof, and including, where such a shareholder, ordinary equity investor or member is a person other than a juridical person, an agent or employee thereof)—when the shareholder, ordinary equity investor or member comes to know a material fact in the course of exercising the right;

(iii) a person who has any authority over the relevant Listed Company, etc. under the applicable laws and regulations—when the person comes to know a material fact in the course of exercising the authority;

(iv) a person other than an Officer, etc. of the relevant Listed Company, etc. who has concluded, or is in negotiation to conclude, an agreement with the Listed Company, etc. (including, where such a person is a juridical person, an Officer, etc. thereof, and including, where such a person is a person other than a juridical person, an agent or employee thereof)—when the person comes to know a material fact in the course of conclusion of, negotiation for, or performance of, the agreement; and

(v) an Officer, etc. of a person set forth in item (ii) above or the preceding item who is a juridical person (limited to where another Officer, etc. of that juridical person comes to know a Material Fact Pertaining to Business or Other Matters of the relevant Listed Company, etc. as prescribed in item (ii) or the preceding item)—when the Officer, etc. comes to know a material fact in the course of his/her duty.

(2) The term "Material Fact Pertaining to Business or Other Matters" as used in the preceding paragraph means any one of the following facts (excluding a fact that is regarded under the criteria specified by a cabinet office ordinance as one that may have only minor influence on investors' Investment Decisions with regard to items (i), (ii), (v) and (vi)):

(i) a decision by the organizational element of the Listed Company, etc. that is responsible for decision-making on the execution of operations of the Listed Company, etc. to carry out any of the following matters, or a decision by that organizational element not to carry out the matter once decided to be carried out in such a decision (limited to acts that have already been Publicly Announced):

(a) solicitation of persons who subscribe for shares to be issued or treasury shares to be disposed of by a joint stock corporation (including persons who subscribe for preferred equity investments to be issued by a Cooperative-Structured Financial Institution) as prescribed in Article 199, paragraph (1) of the Companies Act (including solicitation to be made under laws and regulations of a foreign state equivalent to that provision of the Companies Act (limited to where the relevant Listed Company, etc. is a foreign company; hereinafter the same shall apply in this Article) in the case of solicitation for persons who subscribe for treasury shares to be disposed of), or solicitation of persons who subscribe for share options for subscription as prescribed in Article 238, paragraph (1) of the Companies Act;

(b) reduction of the amount of the stated capital;

(c) reduction of the amount of capital reserve or retained earnings reserve;

(d) acquisition of its own shares by the relevant Listed Company, etc. as prescribed in Article 156, paragraph (1) of the Companies Act (including where it is applied by replacing certain terms and phrases pursuant to the provisions of Article 163 and Article 165, paragraph (3) of that Act) or under laws and regulations of a foreign state equivalent to these provisions of that Act (limited to where the relevant Listed

Company, etc. is a foreign company; hereinafter the same shall apply in this Article);

(e) allotment of share without contribution;
(f) share split (including split of preferred equity investments prescribed in the Preferred Equity Investment Act);
(g) dividend of surplus;
(h) share exchange;
(i) share transfer;
(j) merger;
(k) company split;
(l) transfer or acquisition of transfer of whole or part of its business;
(m) dissolution (excluding dissolution as a result of merger);
(n) commercialization of any new product or new technology; or
(o) business alliance or other matters specified by a cabinet order as being equivalent to any of the matters set forth in sub-items (a) through (n) above;

(ii) the occurrence of any one of the following facts in the relevant Listed Company, etc.:

(a) damage arising from a disaster or in the course of performing operations;
(b) change of its Major Shareholders;
(c) fact that may be a ground for delisting or recession of the registration of Specified Securities or Options pertaining thereto; or
(d) matters specified by a cabinet order as being equivalent to any of the matters set forth in sub-items (a) through (c) above;

(iii) with respect to the amount of sales, current profits or net income (hereinafter referred as the "Amount of Sales, etc." in this Article), or dividends as mentioned in item (i), sub-item (g) above of the relevant Listed Company, etc., or the Amount of Sales, etc. of the Corporate Group to which the Listed Company belongs, the existence of a difference (limited to that falling under the criteria specified by a cabinet office ordinance as a difference that may have a material influence on investors' Investment Decisions) between, on one hand, the latest Publicly Announced forecasts (or, if there is no such forecast, Publicly Announced actual figures of the preceding business year), and, on the other hand, new forecasts thereof newly prepared by the Listed Company, etc. or the results in the settlement of account for the business year of the Listed Company, etc.;

(iv) in addition to the facts set forth in the preceding three

items, any material fact concerning the operation, business or property of the relevant Listed Company, etc. that may have a significant influence on investors' Investment Decisions;

(v) a decision by the organizational element of a Subsidiary Company of the relevant Listed Company, etc. that is responsible for decision-making on the execution of operations of such Subsidiary Company to have such Subsidiary Company carry out any one of the following matters, or a decision by that organizational element not to have such Subsidiary Company carry out any matter once decided to be carried out in such a decision (limited to acts that have already been Publicly Announced):
  (a) share exchange;
  (b) share transfer;
  (c) merger;
  (d) company split;
  (e) transfer or acquisition of transfer of whole or part of its business;
  (f) dissolution (excluding dissolution as a result of merger);
  (g) commercialization of any new product or new technology; or
  (h) business alliance or other matters specified by a cabinet order as being equivalent to any one of the matters set forth in sub-items (a) through (g) above;

(vi) the occurrence of either of the following facts in a Subsidiary Company of the relevant Listed Company, etc.:
  (a) damage arising from a disaster or in the course of performing operations; or
  (b) any one of the matters specified by a cabinet order as being equivalent to the matter set forth in sub-item (a) above;

(vii) with respect to the Amount of Sales, etc. of a Subsidiary Company (limited to an Issuer of any of the Securities set forth in Article 2, paragraph (2), item (v), (vi) or (ix) that are listed in a Financial Instruments Exchange, and others specified by a cabinet office ordinance) of the relevant Listed Company, etc., the existence of a difference (limited to a difference falling under the criteria specified by a cabinet office ordinance as a difference that may have a material influence on investors' Investment Decisions) between, on one hand, the latest Publicly Announced forecasts (or, if there is no such forecast, Publicly Announced actual figures of the preceding business year in the case of lack of such forecasts), and, on the other hand, new forecasts thereof

newly prepared by the Subsidiary Company or the results in the settlement of account for the business year of the Subsidiary Company; or

(viii) in addition to the facts set forth in the preceding three items, any material fact concerning the operation, business or property of a Subsidiary Company of the relevant Listed Company, etc. that may have a significant influence on investors' Investment Decisions.

(3) A person who has received from a Corporate Insider (including a Corporate Insider prescribed in the second sentence of paragraph (1) above; hereinafter the same shall apply in this paragraph) information on a Material Fact Pertaining to Business or Other Matters set forth in that paragraph that the Corporate Insider has come to know in a manner as specified respectively in the items of that paragraph (excluding a person set forth respectively in the items of that paragraph who has come to know the Material Fact Pertaining to Business or Other Matters in the manner as specified therein), or any other Officer, etc., who comes to know such a Material Fact Pertaining to Business or Other Matters in the course of his/her duty, of a juridical person to which the recipient of such information in the course of his/her duty belongs shall not make any Sale and Purchase, etc. of Specified Securities, etc. of the Listed Company, etc. before the Material Fact Pertaining to Business or Other Matters is Publicly Announced.

(4) The term "Publicly Announced" as used in paragraph (1), items (i), (iii), (v) and (vii) of paragraph (2) above, and the preceding paragraph means, with respect to any Material Fact Pertaining to Business or Other Matters set forth in paragraph (1) above of a Listed Company, etc., a decision made by the organizational element responsible for decision-making on the execution of operations of a Listed Company, etc., the Amount of Sales, etc. or the dividend set forth in paragraph (2), item (i), sub-item (g) above of a Listed Company, etc, the Amount of Sales, etc. of the Corporate Group to which a Listed Company, etc. belongs, a decision made by the organizational element responsible for decision-making on the execution of operations of a Subsidiary Company of a Listed Company, etc., or the Amount of Sales, etc. of a Subsidiary Company of a Listed Company, etc., the taking by the relevant Listed Company, etc. or the relevant Subsidiary Company thereof of measures specified by a cabinet order as those for making the information available to a large number of persons (in the case of a Subsidiary Company, limited to a Material Fact Pertaining to Business or Other Matters set forth in paragraph (1) above of the relevant Subsidiary Company, a decision by the organizational element responsible for decision-making on the execution of operations of the relevant Subsidiary Company, or the Amount of Sales, etc. of the relevant Subsidiary Company;

hereinafter the same shall apply in this paragraph), or, the with respect to any documents specified in Article 25, paragraph (1) (excluding documents specified in item (xi) of that paragraph) submitted by the relevant Listed Company, etc. or the relevant Subsidiary Company thereof contains any of the above-mentioned matters, the making of those documents available for public inspection pursuant to the provision of that paragraph.

(5) The term "Parent Company" as used in paragraph (1) above and the following Article means a company specified by a cabinet order as that controls another company (including a Cooperative-Structured Financial Institution; hereinafter the same shall apply in this paragraph), and the term "Subsidiary Company" as used in this Article means a company stated or recorded, in the latest one among the statement prescribed in Article 5, paragraph (1), the Annual Securities Report prescribed in Article 24, paragraph (1), the Quarterly Securities Report prescribed in Article 24-4-7, paragraph (1) or (2) and the Semiannual Securities Report prescribed in Article 24-5, paragraph (1) submitted by the other company and made available for public inspection under Article 25, paragraph (1), and the Specified Information on Securities publicly announced pursuant to the provision of Article 27-31, paragraph (2), and the Issuer Information publicly announced pursuant to the provision of Article 27-32, paragraph (1) or (2), as a company belonging to the Corporate Group to which that other company belongs.

(6) The provisions of paragraphs (1) and (3) shall not apply to the following cases:

(i) where a person who has the right prescribed in Article 202, paragraph (1), item (i) of the Companies Act (including the right to receive an allotment of preferred equity investments prescribed in the Preferred Equity Investment Act) acquires share certificates (including preferred equity investment certificates prescribed in the Preferred Equity Investment Act) by exercising that right;

(ii) where a person who has a share option acquires share certificates by exercising that share option;

(ii)-2. where a person who has acquired an Option pertaining to Specified Securities, etc. makes a Sale and Purchase, etc. of Specified Securities, etc. by exercising that Option;

(iii) where a purchase of shares is demanded pursuant to the provisions of Article 116, paragraph (1), Article 469, paragraph (1), Article 785, paragraph (1), Article 797, paragraph (1) or Article 806, paragraph (1) of the Companies Act or a Sale and Purchase, etc. is made on the basis of a statutory obligation;

(iv) where a purchase (or acquisition in the case of an Option; the same shall apply in the following item) or any other type of acceptance of transfer for value of Specified Securities, etc. of the Listed Company, etc. or an Option pertaining to a sale and purchase thereof (limited to an Option the exercise of which will place the person exercising it in the position of the purchaser in the sale and purchase of the Specified Securities, etc. pertaining to that Option) is made on the basis of a request made by a decision of the board of directors of the Listed Company, etc. (including a request made by a decision of an executive officer in the case of a company with committees) in order to counteract a Tender Offer for Share Certificates, etc. (meaning Share Certificates, etc. as defined in Article 27-2, paragraph (1)) of the Listed Company, etc. launched under that paragraph (limited to where the main clause of that paragraph is applicable) or other act specified by a cabinet order as one equivalent to such a Tender Offer;

(iv)-2. where, after a resolution of a shareholders meeting or a meeting of the board of directors of the Listed Company, etc. (including a decision of an executive officer in the case of a company with committees) (limited to a resolution on the matters set forth in any one of the items of Article 156, paragraph (1) of the Companies Act) made under that paragraph (including where it is applied by replacing certain terms and phrases pursuant to the provisions of Article 163 and Article 165, paragraph (3) of that Act; hereinafter the same shall apply in this item) or a resolution or other similar decision of the Listed Company, etc. made under laws and regulations of a foreign state equivalent to these provisions with regard to acquisition of own shares provided in Article 156, paragraph (1) of that Act or laws and regulations of a foreign state equivalent to these provisions (hereinafter these resolutions or decisions are referred to as a "Resolution of Shareholders Meeting, etc." in this item) is Publicly Announced as specified in paragraph (1) above (including a decision of the organizational element of the Listed Company, etc. that is responsible for decision-making on the execution of operations of the Listed Company, etc., when the Resolution of Shareholders Meeting, etc. has the same content as the organizational element's decision and it has been Publicly Announced as specified in paragraph (1) above before the Resolution of Shareholders Meeting, etc. is made), a purchase of share certificates of those own shares, Securities of the category set forth in Article 2, paragraph (1), item (xx) indicating the rights

pertaining to share certificates or other Securities specified by a cabinet order (hereinafter referred to as "Share Certificates, etc." in this item) or an Option pertaining to sales and purchases of the Share Certificates, etc. (limited to an Option the exercise of which will place the person exercising it in the position of the buyer in the transaction to be conducted based on it; hereinafter the same shall apply in this item) is made under the Resolution of Shareholders Meeting, etc. (excluding where no Material Fact Pertaining to Business or Other Matters specified in paragraph (1) other than the decision on acquisition of those own shares made by the organizational element of the Listed Company, etc. that is responsible for decision-making on the execution of operations of the Listed Company, etc. has been Publicly Announced as specified in that paragraph (excluding where a purchase of Share Certificates, etc. of those own shares or an Option pertaining to the Share Certificates, etc. is made under this item with regard to an acquisition of own shares under Article 156, paragraph (1) of the same Act or laws and regulations of a foreign state equivalent thereto other than acquisition of those own shares));

(v) where a Sale and Purchase, etc. is made pursuant to the provisions of a cabinet order as mentioned in Article 159, paragraph (3);

(vi) where a Sale and Purchase, etc. of company bond certificates (excluding company bond certificates with share options) or other Securities specified by a cabinet order is made (excluding the cases specified by a cabinet office ordinance);

(vii) where a Sale and Purchase, etc. is made between persons falling under either of the provision of paragraph (1) or (3) through neither a Financial Instruments Exchange Market nor an Over-the-Counter Securities Market (excluding where both parties in the Sale and Purchase, etc. are aware that with respect to the Specified Securities, etc. pertaining to the Sale and Purchase, etc., a further Sale and Purchase, etc. is to be made in violation of the provision of paragraph (1) or (3)); or

(viii) where a Sale and Purchase, etc. is made as performance of an agreement for a Sale and Purchase, etc. of Specified Securities, etc. of the Listed Company, etc. concluded before coming to know a Material Fact Pertaining to Business or Other Matters prescribed in paragraph (1) of the Listed Company, etc. or as implementation of a plan for a Sale and Purchase, etc. of Specified Securities, etc. of the Listed Company, etc.

decided before coming to know a Material Fact Pertaining to Business or Other Matters of the Listed Company, etc., or where a Sale and Purchase, etc. that is obviously based on other special circumstances equivalent to these cases is made (limited to the cases specified by a cabinet office ordinance).

Article 167 (Prohibited Acts of Persons Concerned with Tender Offeror, etc.)

(1) A person set forth in any of the following items (hereinafter referred to as a "Person Concerned with Tender Offeror, etc." in this Article) who comes to know a Fact Concerning Launch of Tender Offer, etc. or a Fact Concerning Discontinuation of Tender Offer, etc. by a person who intends to launch a Tender Offer under Article 27-2, paragraph (1) (limited to where the main clause of that paragraph is applicable) or an act specified by a cabinet order as being equivalent thereto for Share Certificates, etc. specified in that paragraph that are listed on a Financial Instruments Exchange or fall under the category of Over-the-Counter Traded Securities or Tradable Securities (hereinafter referred to as "Listed or Other Share Certificates, etc." in this Article) or intends to launch a Tender Offer under Article 27-22-2, paragraph (1) for Listed Share Certificates, etc. (hereinafter each Tender Offer and such specified act is referred to as a "Tender Offer, etc.", and such a person is referred to as a "Tender Offeror, etc." in this Article), in a manner as specified respectively in the following items shall not make a Purchase, etc. (the term "Purchase, etc." means a purchase of Specified Share Certificates, etc. or Related Share Certificates, etc. (hereinafter referred to as "Share Certificates, etc." in this Article) and other transactions specified by a cabinet order; hereinafter the same shall apply in this Article) of share certificates or company bond certificates with share options issued by a company that is the Issuer of Listed or Other Share Certificates, etc. or other Securities specified by a cabinet order (hereinafter referred to as "Specified Share Certificates, etc." in this Article) pertaining to the Tender Offer, etc., or the Securities specified in Article 2, paragraph (1), item (xix) that indicate Options pertaining to Regulated Share Certificates, etc. or other Securities specified by a Cabinet Order (hereinafter referred to as "Related Share Certificates, etc." in this paragraph) where that person comes to know a Fact Concerning Launch of Tender Offer, etc., and shall not make a Sale, etc. (meaning a sale of Share Certificates, etc. and other transactions specified by a cabinet order; hereinafter the same shall apply in this Article) of Share Certificates, etc. pertaining to the Tender Offer, etc. where that person comes to know a Fact Concerning Discontinuation of Tender Offer, etc., before the Fact Concerning Launch of Tender Offer, etc. or the Fact

Concerning Discontinuation of Tender Offer, etc. is Publicly Announced; and the same shall apply for one year to a Person Concerned with Tender Offeror, etc. who comes to know a Fact Concerning Launch of Tender Offer, etc. or a Fact Concerning Discontinuation of Tender Offer, etc. in a manner as specified respectively in the following items even after that person ceased to be a Person Concerned with Tender Offeror, etc. as set forth therein:

(i) an Officer, etc. (or agent or employee where the Tender Offeror, etc. is a person other than a juridical person) of the Tender Offeror, etc. (including its Parent Company when the Tender Offeror, etc. is a juridical person; hereinafter the same shall apply in this paragraph)—where such an Officers, etc. comes to know the fact in the course of his/her duty;

(ii) a shareholder of the Tender Offeror, etc. who has the right prescribed in Article 433, paragraph (1) of the Companies Act or a member of the Tender Offeror, etc. who has the right prescribed in paragraph (3) of that Article (including an Officer, etc. of such a shareholder or member where such a shareholder or member is a juridical person, and an agent or employee of such a shareholder or member where such a shareholder or member is a person other than a juridical person)—when such a shareholder or member comes to know the fact in the course of exercise of the right;

(iii) a person who has authority under any applicable law and/or regulation over the Tender Offeror, etc.—when such a person comes to know the fact in the course of exercise of the authority;

(iv) a person who has concluded, or is in negotiation to conclude, an agreement with the Tender Offeror, etc. (including an Officer, etc. of such a person where such a person is a juridical person, and an agent or employee of such a person where such a person is a person other than a juridical person) and is a person other than an Officer, etc. of the Tender Offeror, etc. where the Tender Offeror, etc. is a juridical person or is a person other than an agent or employee of the Tender Offeror, etc. where the Tender Offeror, etc. is a person other than a juridical person—when such a person comes to know the fact in the course of conclusion of, negotiation for, or performance of that agreement; or

(v) an Officer, etc. of a person set forth in item (ii) or the preceding item who is a juridical person (limited to an Officer, etc. of the relevant juridical person where another Officer, etc. of that juridical person comes to know a Fact Concerning Launch of Tender Offer, etc. or a Fact Concerning Discontinuation of Tender Offer, etc.

by the Tender Offeror, etc. as prescribed in item (ii) or the preceding item)—when such an Officer, etc. comes to know the fact in the course of his/her duty.

(2) The term a "Fact Concerning Launch of Tender Offer, etc." or a "Fact Concerning Discontinuation of Tender Offer, etc." as used in the preceding paragraph means a fact that the Tender Offeror, etc. (or the organizational element of the Tender Offeror, etc. that is responsible for decision-making on the execution of operations of the Tender Offeror, etc. where the Tender Offeror, etc. is a juridical person; hereinafter the same shall apply in this paragraph) decides to launch the Tender Offer, etc. or not to launch the Tender Offer, etc. once decided to be launched in such a decision (limited to a Publicly Announced decision). However, this shall not apply to such a fact as is regarded under the criteria specified by a cabinet office ordinance as one that may have only minor influence on investors' Investment Decisions.

(3) A person who has received from a Person Concerned with Tender Offeror, etc. (including a person prescribed in the second sentence of paragraph (1); hereinafter the same shall apply in this paragraph) information on a Fact Concerning Launch of Tender Offer, etc. or a Fact Concerning Discontinuation of Tender Offer, etc. (hereinafter referred as to a "Fact Concerning Tender Offer, etc." in this Article) as mentioned in that paragraph that the Person Concerned with Tender Offeror, etc. has come to know in a manner as specified respectively in the items of that paragraph (excluding a person set forth respectively in the items of that paragraph who has come to know the Fact Concerning Tender Offer, etc. in a manner as specified therein), or any other Officer, etc., who comes to know such a Fact Concerning Tender Offer, etc. in the course of his/her duty, of a juridical person to which the recipient of such information in the course of his/her duty belongs shall not make a Purchase, etc. of the Share Certificates, etc. pertaining to the Tender Offer, etc. in the case of having received information on a Fact Concerning Launch of Tender Offer, etc. prescribed in that paragraph, or shall not make a Sale, etc. of the Share Certificates, etc. pertaining to the Tender Offer, etc. in the case of having received information on a Fact Concerning Discontinuation of Tender Offer, etc. prescribed in that paragraph, before the Fact Concerning Tender Offer, etc. is Publicly Announced.

(4) The term "Publicly Announced" as used in paragraph (1) to the preceding paragraph means the taking by the Tender Offeror, etc. of measures specified by a cabinet order as those for making information available to a large number of persons with regard to the relevant Fact Concerning Tender Offer, etc., the making of public notice under Article 27-3, paragraph (1) (including where it is applied *mutatis mutandis* under

Article 27-22-2, paragraph (2)) or public notice or public announcement under Article 27-11, paragraph (2) (including where it is applied *mutatis mutandis* under Article 27-22-2, paragraph (2)), or the making of a Tender Offer Notification or Written Withdrawal of Tender Offer prescribed in Article 27-14, paragraph (1) (including where it is applied *mutatis mutandis* under Article 27-22-2, paragraph (2); hereinafter the same shall apply in this paragraph) available for public inspection pursuant to the provision of Article 27-14, paragraph (1).

(5) The provisions of paragraphs (1) and (3) shall not apply to the following cases:

(i) where a person who has the right prescribed in Article 202, paragraph (1), item (i) of the Companies Act acquires share certificates by exercising that right;

(ii) where a person who has a share option acquires share certificates by exercising that share option;

(ii)-2. where a person who has acquired an Option pertaining to Share Certificates, etc. makes a Purchase, etc. or Sale, etc. of Share Certificates, etc. by exercising that Option;

(iii) where a purchase of shares is demanded under Article 116, paragraph (1), Article 469, paragraph (1), Article 785, paragraph (1), Article 797, paragraph (1) or Article 806, paragraph (1) of the Companies Act or a Purchase, etc. or Sale, etc. of Share Certificates, etc. is made on the basis of a statutory obligation;

(iv) where a Purchase, etc. of Listed or Other Share Certificates, etc. pertaining to the Tender Offer, etc. (including an Option pertaining to a sale and purchase of those Listed or Other Share Certificates, etc.; hereinafter the same shall apply in this item) is made in response to a request made by the Tender Offeror, etc. (limited to a request made by a decision of the board of directors of the Tender Offeror, etc. where the Tender Offeror, etc. is a company (including a request made by a decision of an executive officer in the case of a company with committees)) (limited to where a Purchase, etc. of Listed or Other Share Certificates, etc. is made for the purpose of making a Sales, etc. of the Listed or Other Share Certificates, etc. to the Tender Offeror, etc.);

(v) where a Purchase, etc. of Listed or Other Share Certificates, etc. pertaining to the Tender Offer, etc. (including an Option pertaining to a sale and purchase of those Listed or Other Share Certificates, etc.) is made on the basis of a request made by a decision of the board of directors of the company that is the Issuer of those Listed or Other Share Certificates, etc. (including a request made by a decision of an executive officer, in the case of a company with committees) in order to counteract the Tender Offer, etc.;

(vi) where a Purchase, etc. or Sale, etc. of Share Certificates, etc. is made pursuant to the provisions of a cabinet order as mentioned in Article 159, paragraph (3);

(vii) where a person who comes to know a Fact Concerning Launch of Tender Offer, etc. prescribed in paragraph (1) makes a Purchase, etc. from another person who knows the Fact Concerning Launch of Tender Offer, etc. through neither a Financial Instruments Exchange Market nor a Over-the-Counter Securities Market, or where a person who comes to know a Fact Concerning Discontinuation of Tender Offer, etc. prescribed in that paragraph makes a Sale, etc. to another person who knows the Fact Concerning Discontinuation of Tender Offer, etc. through neither a Financial Instruments Exchange Market nor a Over-the-Counter Securities Market (excluding where both parties in the Sale, etc. are aware that with respect to the Share Certificates, etc. pertaining to the Sale, etc., a further Sale, etc. is to be made in violation of the provision of paragraph (1) or (3)); or

(viii) where a Purchase, etc. or Sale, etc. is made as performance of an agreement for Purchase, etc. or Sale, etc. of Share Certificates, etc. pertaining to a Tender Offer, etc. concluded before coming to know the Fact Concerning Tender Offer, etc. by the Tender Offeror, etc. or as implementation of a plan for a Purchase, etc. or Sale, etc. of Share Certificates, etc. pertaining to a Tender Offer, etc. decided before coming to know the Fact Concerning Tender Offer, etc. by the Tender Offeror, etc., or where a Purchase, etc. or Sale, etc. that is obviously based on other special circumstances equivalent to these cases is made (limited to the cases specified by a cabinet office ordinance).

Article 167-2 (Prohibition of Transactions in an Unlicensed Market)

No person shall conduct the following transactions in a Financial Instruments Market established in violation of the provisions of Article 80, paragraph (1):

(i) sales and purchases of Securities; or

(ii) Market Transactions of Derivatives.

Article 168 (Prohibition of Public Notice, etc. of False Quotations)

(1) No person shall publicly notify false quotations of market prices of Securities, etc., or prepare or distribute documents that contain false quotations of market prices of Securities, etc. for the purpose of publicly notifying or distributing the documents.

(2) No person shall, in response to a request of an Issuer, a person engaged in a Secondary Distribution of Securities, a person

engaged in a Solicitation for Selling, etc. Only for Professional Investors, an Underwriter or Financial Instruments Business Operator, etc., prepare or distribute documents that contain a false statement on any important matters pertaining to Securities issued by, apportioned to or dealt by such persons for the purpose of publicly notifying or distributing the documents.

(3) No Issuer, person engaged in a Secondary Distribution of Securities, a person engaged in a Solicitation for Selling, etc. Only for Professional Investors, Underwriter or Financial Instruments Business Operator, etc. shall make a request mentioned in the preceding paragraph.

Article 169 (Restriction on Expression of Opinion in Newspaper, etc. in Exchange for Consideration)

When a person publishes in a newspaper or a magazine, or indicates by means of documents, broadcasting, motion picture or other means to the public, his/her opinion that would convey his/her decision regarding investment on any Securities, Issuer or Tender Offeror prescribed in Article 27-3, paragraph (2) (including where it is applied *mutatis mutandis* under Article 27-22-2, paragraph (2)), in exchange for consideration received from, or under a promise to receive consideration from, any Issuer, person engaged in a Secondary Distribution of Securities, a person engaged in a Solicitation for Selling, etc. Only for Professional Investors, Underwriter, Financial Instruments Business Operator, etc. or Tender Offeror, etc. prescribed in Article 27-3, paragraph (3) (including where it is applied *mutatis mutandis* under Article 27-22-2, paragraph (2)), the person shall indicate, together with the opinion, that the opinion is published or indicated in exchange for consideration received or under a promise to receive consideration. However, this shall not apply where a person who has received or has promised to receive an advertisement fee indicates such an opinion as an advertisement made in exchange for the advertisement fee.

Article 170 (Prohibition of Indication of Advantageous Purchase, etc.)

In making a solicitation of an application to acquire newly issued Securities or solicitation of an application to sell or purchase already-issued Securities to many and unspecified persons (in the following Article, referred to as a "Solicitation of Securities to Many and Unspecified Persons"), no person shall make an indication to many and unspecified persons to the effect that the person or any other person will purchase the Securities acquired by any of those many and unspecified persons at a predetermined price (including a price calculated from a predetermined amount using a certain standard; hereinafter the same shall apply in this Article) or higher or will make an arrangement for selling those Securities at a predetermined price or higher, or shall make an indication that is likely to be understood as meaning to that effect. However, this shall not apply where such a solicitation is made for any of the Securities set forth in Article 2,

paragraph (1), items (i) to (vi) or other Securities specified by a cabinet office ordinance.

Article 171 (Prohibition of Indication of a Fixed Amount of Dividend etc.)

In making a Solicitation of Securities to Many and Unspecified Persons (excluding such a solicitation pertaining to any of the Securities set forth in Article 2, paragraph (1), items (i) to (vi) or other Securities specified by a cabinet office ordinance; hereinafter the same shall apply in this Article), any person who makes that Solicitation or any of the Officers, advisors, consultants, others at a position equivalent to these persons, agents, employees or other workers of that person shall not make a indication to many and unspecified persons to the effect that a fixed amount (including an amount that may be calculated in advance by using a certain standard; hereinafter the same shall apply in this Article) or higher amount of money (including things that would bring about a fixed amount or higher amount of money by disposing of them) will be provided for the Securities so solicited after a certain period (including a indication that is likely to be understood as meaning to that effect), irrespective of how such money is called, including dividend of profits or distribution of profits. However, this shall not apply where it is clearly indicated that such an indication is only based on an expectation.

[Article 172 to the last Article: translation omitted.]

APPENDIX JP-2

Order for the Enforcement of the Financial Instruments and Exchange Act

(Cabinet Order No. 321 of September 30, 1965)

Chapter I: General Provisions

Article 1 (Security Instruments and Certificates Considered to Be Securities)

The security instruments and certificates specified by a cabinet order, as mentioned in Article 2, paragraph (1), item (xxi) of the Financial Instruments and Exchange Act (hereinafter referred to as the "Act"), shall be as set forth in the following items:

(i) among the deposit certificates of Negotiable Deposits (meaning a deposit for which a due date for refund is specified and that is not a nominative claim), those issued by a foreign juridical person; and

(ii) securities or certificates that indicate a monetary claim (limited to a claim that is not a nominative claim) owed, and accruing by way of an allotment conducted, by an Incorporated Educational Institution, etc. (meaning an Incorporated Educational Institution as defined in Article 3 of the Private Educational Institutions Act (Act No. 270 of 1949) or a juridical person prescribed in Article 64, paragraph (4) of that Act; hereinafter the same shall apply) and indicate the name of that Incorporated Educational Institution, etc. and other matters specified by a cabinet office ordinance.

Article 1-2 (Membership Rights of a General Partnership Company or Limited Partnership Company That Are Deemed to Be Securities)

What is specified by a cabinet order, as mentioned in Article 2, paragraph (2), item (iii) of the Act, shall be as set forth in the following items:

(i) the membership rights of a general partnership company of which all members fall under either of the following categories:
  (a) a stock company; or
  (b) a limited liability company; or

(ii) the membership rights of a limited partnership company of which all members with unlimited liability fall under either of the following categories:

(a) a stock company; or
(b) a limited liability company.

Article 1-3 (Things Similar to Money)

What is specified by a cabinet order, as mentioned in Article 2, paragraph (2), item (v) of the Act, shall be as set forth in the following items:

(i) securities;
(ii) bills of exchange;
(iii) promissory notes (excluding those falling under the category set forth in item (i));
(iv) goods acquired by using the entire sum of money (including those set forth in the preceding three items) invested or contributed by the holders of rights set forth in Article 2, paragraph (2), item (i), (ii), (v) or (vi) of the Act (limited to what is specified by a cabinet office ordinance as found to be necessary to secure the protection of the holders of those rights); and
(v) what is specified by a cabinet office ordinance as being equivalent to those set forth in the preceding items.

Article 1-3-2 (Participation in an Investor-Financed Business)

The cases specified by a cabinet order, as mentioned in Article 2, paragraph (2), item (v), sub-item (a) of the Act, shall be those falling under both of the following items:

(i) that the execution of business pertaining to an Investor-Financed Business (meaning an Investor-Financed Business as defined in Article 2, paragraph (2), item (v) of the Act; hereinafter the same shall apply in this Article and item (iv) of the following Article) shall be conducted with the consent of all of the Equity Investors (meaning an Equity Investor as defined in item (v) of that paragraph; hereinafter the same shall apply in this Article) (including that where an agreement has been made to the effect that the consent of all of the Equity Investors is not required, the execution of business shall be conducted after all of the Equity Investors manifest their intents as to whether or not to consent to the decision on the execution of business); and
(ii) that all of the Equity Investors shall:
(a) regularly engage in the Investor-Financed Business; or
(b) engage in the Investor-Financed Business using their highly specialized ability that is indispensable to the continuation of the Investor-Financed Business.

Article 1-3-3 (Rights Found Not to Hinder the Public Interest, etc. Even If Not Deemed to Be Securities)

The rights specified by a cabinet order, as mentioned in Article 2, paragraph (2), item (v), sub-item (d) of the Act, shall be as set forth in the following items:

(i) the rights based on an agreement pertaining to the business set forth in any one of the items of Article 2, paragraph (1) of the Insurance Business Act (Act No. 105 of 1995);

(ii) the rights pertaining to the investment or contribution made to a juridical person established under Japanese laws and regulations (excluding general incorporated associations other than public interest incorporated associations and general incorporated foundations other than public interest incorporated foundations) (excluding the rights indicated on securities of the categories set forth in Article 2, paragraph (1), items (vi) to (ix) and (xi) of the Act and the rights set forth in item (iii) of paragraph (2) of that Article that are deemed to be securities pursuant to the provisions of that paragraph);

(iii) the rights based on a profit-sharing forestry agreement as defined in Article 2, paragraph (3) of the Act on Special Measures Concerning Shared Forest (Act No. 57 of 1958);

(iv) the rights based on a Partnership Agreement, etc. (meaning a partnership agreement as mentioned in Article 667, paragraph (1) of the Civil Code (Act No. 89 of 1896) or other continuous agreements) wherein the parties are limited to the category of persons set forth in any one of the following sub-items and the Investor-Financed Business pertaining to those rights is to solely perform the service of that category of persons:

(a) certified public accountant;
(b) attorney-at-law (including registered foreign lawyer);
(c) judicial scrivener;
(d) land and house investigator;
(e) certified administrative scrivener;
(f) certified tax accountant;
(g) real property appraiser;
(h) public consultant on social and labor insurance; or
(i) patent attorney;

(v) the rights based on, among the agreements wherein any officer, employee or other persons specified by a cabinet office ordinance of a company that is the issuer of share certificates (hereinafter such a person shall be referred to as each an "Officer, etc." in this item and in Article 2-12-4, paragraph (2), item (iv)) promises to purchase the share certificates of that company jointly with any other Officers, etc. of that company according to a certain plan without depending on any individual investment decision and on an ongoing basis, an agreement that meets the requirements specified by a cabinet office ordinance; and

(vi) what is specified by a cabinet office ordinance as being equivalent to any of the rights set forth in the preceding items.

Article 1-3-4 (Rights Deemed to Be Securities)

The rights specified by a cabinet order, as mentioned in Article 2, paragraph (2), item (vii) of the Act, shall be the claims pertaining to the loans made to an Incorporated Educational Institution, etc. (limited to loans that meet all of the following requirements):

(i) that the loans (excluding loans with no interest) shall be made by two or more persons and the rate, the time of performance, and any other matters specified by a cabinet office ordinance for the loans shall be the same; and

(ii) that the loans, in whole or in part, shall fall under either of the following sub-items:

(a) that the loan is made by a person other than those who are enrolled in the relevant School (meaning a School as defined in Article 2, paragraph (1) of the Private Educational Institutions Act and including an advanced vocational school and a vocational school as defined in paragraph (2) of that Article) established by the Incorporated Educational Institution, etc. that receives the loan and those who are specified by a cabinet office ordinance as an interested person (in sub-item (b), referred to as each an "Interested Person"); or

(b) that the transfer of claims pertaining to the loan to persons other than an Interested Person is not prohibited.

Article 1-4 (Where Solicited Securities Are Unlikely to Be Transferred to Persons Other Than Qualified Institutional Investors Through a Solicitation for Acquisition)

The cases specified by a cabinet order as where solicited securities are unlikely to be transferred to persons other than a Qualified Institutional Investor, as mentioned in Article 2, paragraph (3), item (i) of the Act, and the cases specified by a cabinet order, as mentioned in sub-item (a) of item (ii) of that paragraph and Article 2-2, paragraph (4), item (ii), sub-item (a) of the Act, shall be as specified respectively in the following items, according to the categories of securities set forth therein:

(i) share certificates (including securities of the category set forth in Article 2, paragraph (1), item (xvii) of the Act that have the characteristics of share certificates, preferred equity investment certificates as prescribed in the Act on Preferred Equity Investment by Cooperative Financial Institutions (Act No. 44 of 1993; hereinafter referred to as the "Preferred Equity Investment Act") (hereinafter such a preferred equity investment certificate shall be referred to as a "Preferred Equity Investment Certificate" except in this item and the following item), preferred equity investment certificates as prescribed in the Act on Securitization of Assets (Act No. 105 of 1998; hereinafter referred to as the "Asset Securitization Act"), securities of the category set forth in item (xvii) of that paragraph that have the characteristics

of any one of the aforementioned categories of securities, and investment securities and foreign investment securities that are similar to investment securities as prescribed in the Act on Investment Trusts and Investment Corporations (Act No. 198 of 1951) (hereinafter such a security shall be referred to as an "Investment Security, etc."); hereinafter the same shall apply in sub-item (a) of the following item, Article 1-5-2, paragraph (2), item (ii), sub-item (a), Article 1-7, item (ii), sub-item (b)1., Article 1-7-4, item (ii), sub-item (a), Article 1-8-2, item (ii), sub-item (a) and Article 1-8-4, item (iii), sub-item (b)1.), and securities of the category set forth in Article 2, paragraph (1), item (xvii) of the Act that have the characteristics of securities of the category set forth in item (vi) of that paragraph (hereinafter referred to as a "Share Certificate, etc" in this item, Article 1-5-2, paragraph (2), item (i), Article 1-7, item (ii), sub-item (a), Article 1-7-4, item (i), Article 1-8-2, item (i), Article 1-8-4, item (iii), sub-item (a), Article 2-4-2, item (ii), sub-item (a) and Article 2-6-2, item (ii), sub-item (a))—where all of the following requirements are met:

(a) that the issuer of the relevant Share Certificates, etc. shall not be a person who has already issued Share Certificates, etc. that indicate the same details as those of the relevant Share Certificates, etc. (limited to the details regarding the dividends of surplus, the distribution of residual assets, the cancellation of equity by using profits or the cancellation of preferred equity investments pursuant to the provisions of Article 15, paragraph (1) of the Preferred Equity Investment Act (limited to the part pertaining to item (ii)) that are related to shares (including preferred equity investments prescribed in the Preferred Equity Investment Act and preferred equity investments prescribed in the Asset Securitization Act) or equity investments) and fall under any one of the items of Article 24, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act);

(b) that what is specified by a cabinet office ordinance as being of the same type as the relevant Share Certificates, etc. shall not be Securities Only for Professional Investors (meaning Securities Only for Professional Investors as defined in Article 4, paragraph (3) of the Act; hereinafter the same shall apply); and

(c) that a Solicitation for Acquisition (meaning a Solicitation for Acquisition as defined in Article 2, paragraph (3) of the Act; hereinafter the same shall apply) shall be made or a Securities Issuance Procedure for Reorganization (meaning a Securities Issuance Procedure for Reorganization as defined in Article 2-2, paragraph (2) of the Act; in Article 1-7-3, item (vii) and Article 2-4-2, item (i), the

same shall apply) shall be taken wherein the relevant Share Certificates, etc. are acquired on the condition that an agreement for the transfer of the Share Certificates, etc. that provides to the effect that the person who has acquired the Share Certificates, etc. shall not transfer the acquired Share Certificates, etc. to persons other than Qualified Institutional Investors (meaning a Qualified Institutional Investor as defined in Article 2, paragraph (3), item (i) of the Act; hereinafter the same shall apply) be concluded;

(ii) share option certificates, securities with share options, Rights to Subscribe for Preferred Equity Investment (meaning a Right to Subscribe for Preferred Equity Investment prescribed in the Asset Securitization Act; hereinafter the same shall apply) or rights to convert into Preferred Equity Investment Certificates as prescribed in the Asset Securitization Act and, among the securities of the category set forth in Article 2, paragraph (1), item (xvii) of the Act, those which have the characteristics of any of the aforementioned categories of securities (excluding securities of the category set forth in item (xix) of that paragraph; hereinafter referred to as a "Share Option Certificate, etc." in this item, Article 1-5-2, paragraph (2), item (ii), Article 1-7, item (ii), sub-item (b), Article 1-7-4, item (ii), Article 1-8-2, item (ii), Article 1-8-4, item (iii), sub-item (b), Article 2-4-2, item (ii), sub-item (b), Article 2-6-2, item (ii), sub-item (b) and Article 2-12-3, item (v))—where all of the following requirements are met:

(a) that the issuer of the share certificates to be acquired, subscribed for or converted into through the exercise of the rights indicated on the relevant Share Option Certificates, etc., and the share certificates and the share option certificates shall satisfy the requirements set forth in sub-items (a) and (b) of the preceding item respectively;

(b) that the issuer of the relevant Share Option Certificates, etc. (excluding share option certificates; hereinafter the same shall apply in sub-items (b) and (c)) shall not be a person who has already issued what is specified by a cabinet office ordinance as being of the same type as Share Option Certificates, etc. falling under any one of the items of Article 24, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act);

(c) that what is specified by a cabinet office ordinance as being of the same type as Share Option Certificates, etc. shall not be Securities for Professional Investors; and

(d) that the relevant Share Option Certificates, etc. (or, if they are Specified Bond Certificates with Rights to Subscribe for New Equity Investment (meaning a specified company bond certificate with a right to subscribe for

new equity investment as prescribed in the Asset Securitization Act; hereinafter the same shall apply), and if the Rights to Subscribe for New Equity Investment are transferrable separately from the Specified Company Bond Certificates (meaning a specified company bond certificate as prescribed in the Asset Securitization Act; hereinafter the same shall apply), those Specified Company Bond Certificates and the Certificates of Rights to Subscribe for Preferred Equity Investments (meaning a certificate of a right to subscribe for preferred equity investment; hereinafter the same shall apply) issued together therewith) shall be subject to a restriction prohibiting a transfer thereof except where a person who acquired or purchased the relevant Share Option Certificates, etc. transfers the same to a Qualified Institutional Investor in a manner specified in a cabinet office ordinance, and shall meet any other requirements specified by a cabinet office ordinance as being equivalent to that restriction; or

(iii) securities other than those of the categories set forth in the preceding two items—where all of the following requirements are met:

(a) that the issuer of the relevant securities shall not be a person who has already issued what is specified by a cabinet office ordinance as being of the same type as the relevant securities that fall under any one of the items of Article 24, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act);

(b) that what is specified by a cabinet office ordinance as being of the same type as the relevant Securities shall not be Securities Only for Professional Investors; and

(c) that the relevant securities shall meet the requirements specified by a cabinet office ordinance as being equivalent to the preceding item.

Article 1-5 (Where a Solicitation for Acquisition Is Made to a Large Number of Persons)

The cases of Solicitation for Acquisition specified by a cabinet order as being made to a large number of persons, as mentioned in Article 2, paragraph (3), item (i) of the Act, shall be where the Solicitation for Acquisition of securities is made to 50 or more persons.

Article 1-5-2 (Where Solicited Securities Unlikely to Be Transferred to Persons Other Than Professional Investors, etc. Through a Solicitation for Acquisition)

(1) The persons specified by a cabinet order, as mentioned in Article 2, paragraph (3), item (ii), sub-item (b)2. of the Act, shall be those falling under either of the following items:

(i) Non-Residents (meaning a Non-Resident as defined in

Article 6, paragraph (1), item (vi) of the Foreign Exchange and Foreign Trade Act (Act No. 228 of 1949); hereinafter the same shall apply) who acquire the relevant securities from Residents (meaning a Resident as defined in the first sentence of item (v) of that paragraph; hereinafter the same shall apply) through the intermediation, brokerage, or agency of a Securities-Related Business Operator (meaning a Financial Instruments Business Operator, etc. (meaning a Financial Instruments Business Operator, etc. as defined in Article 34 of the Act; hereinafter the same shall apply except in Article 44) or a Foreign Securities Broker (meaning a Foreign Securities Broker as defined in Article 58 of the Act; hereinafter the same shall apply); the same shall apply in the following item); or

(ii) Non-Residents who acquire the relevant securities from Security-Related Business Operators or other Non-Residents.

(2) The cases specified by a cabinet order, as mentioned in Article 2, paragraph (3), item (ii), sub-item (b)2. of the Act, shall be as specified respectively in the following items, according to the categories of securities set forth therein:

(i) Share Certificates, etc.—where all of the following requirements are met:

(a) that what is specified by a cabinet office ordinance as being of the same type as the relevant Share Certificates, etc. shall not fall under any one of the categories of securities set forth in the items of Article 24, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act); and

(b) that the Solicitation for Acquisition shall be made wherein the relevant Share Certificates, etc. are acquired on the condition that a transfer agreement be concluded between the issuer of the Share Certificates, etc. and the person intending to acquire the same in response to the Solicitation for Acquisition (hereinafter such a person shall be referred to as the "Acquirer" in this item) and between the person making the Solicitation for Acquisition and the Acquirer, providing that the Acquirer shall not transfer the acquired Share Certificates, etc. to persons other than Professional Investors, etc. (meaning a Professional Investor, etc. as defined in Article 2, paragraph (3), item (ii), sub-item (b)2. of the Act; hereinafter the same shall apply), and providing for any other matters specified by a cabinet office ordinance;

(ii) Share Option Certificates, etc.—where all of the following requirements are met:

(a) that the share certificates to be acquired, subscribed for or converted through the exercise of the rights indicated on the relevant Share Option Certificates, etc. shall meet the requirement set forth in sub-item (a) of the preceding item; and

(b) that the Solicitation for Acquisition shall be made wherein the relevant Share Option Certificates, etc. (or, where the Share Option Certificates, etc. are Specified Company Bond Certificates with Rights to Subscribe for Preferred Equity Investment, and those rights are transferable separately from the Specified Company Bond Certificates, the Specified Company Bond Certificates and the Certificates of Rights to Subscribe for Preferred Equity Investment issued together therewith; hereinafter the same shall apply in this item) are acquired on the condition that a transfer agreement be concluded between the issuer of the Share Option Certificates, etc. and the person intending to acquire the securities in response to the Solicitation for Acquisition (hereinafter such a person shall be referred to as the "Acquirer" in this item) and between the person making the Solicitation for Acquisition and the Acquirer, providing that the Acquirer shall not transfer the acquired Share Option Certificates, etc. to persons other than Professional Investors, etc., and providing for other matters specified by a cabinet office ordinance; or

(iii) securities other than those of the categories set forth in the preceding two items—where the requirements specified by a cabinet office ordinance as being equivalent to the preceding item are met.

Article 1-6 (Requirements for a Solicitation for Acquisition Not to Fall Under the Category of Solicitation for Small Number of Investors)

The requirements specified by a cabinet order, as mentioned in Article 2, paragraph (3), item (ii), sub-item (c) of the Act, shall be that the other securities specified by a cabinet office ordinance as being of the same type as the relevant securities (excluding those of which the Solicitation for Acquisition falls under sub-item (a) of item (ii) of that paragraph at the time of the issuance thereof, and those of which the Solicitation for Acquisition falls under the category of Public Offering of securities at the time of its issuance and for which the notification pursuant to the provisions of Article 4, paragraph (1) of the Act has been made or the Shelf Registration Supplements prescribed in Article 23-8, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act) have been submitted with regard to the Public Offering of securities; hereinafter referred to as the "Newly Issued Securities of the Same Type" in this Article) have

been issued within six months prior to the day on which the relevant Securities are issued, and the total number of persons to which the Solicitation for Acquisition of the relevant securities is to be made (where the Solicitation for Acquisition of the relevant securities is made to Qualified Institutional Investors and the relevant securities fall under the cases specified in Article 1-4, the Qualified Institutional Investors shall be excluded) and the persons to which the Solicitation for Acquisition of the Newly Issued Securities of the Same Type issued within six months prior to the day on which the relevant securities are issued, has been made (where the Solicitation for Acquisition of the Newly Issued Securities of the Same Type is made to Qualified Institutional Investors and the Newly Issued Securities of the Same Type fall under the cases specified in Article 1-4, the Qualified Institutional Investors shall be excluded) are not less than 50 persons.

Article 1-7 (Where a Solicitation for Acquisition Falls Under the Category of Solicitation for Small Number of Investors)

The cases specified by a cabinet order, as mentioned in Article 2, paragraph (3), item (ii), sub-item (c) of the Act, shall be where all of the following requirements are met:

(i) that the Solicitation for Acquisition shall be made only to Professional Investors (meaning a Professional Investor as defined in Article 2, paragraph (31) of the Act; hereinafter the same shall apply) and shall be made to less than 50 persons (where those persons are Qualified Institutional Investors and the securities pertaining to the Solicitation for Acquisition fall under the cases specified in Article 1-4, those persons shall be excluded);

(ii) that, according to the categories of securities set forth respectively in sub-items (a) to (c), the requirements specified therein shall be met:

(a) Share Certificates, etc.—to satisfy all of the following requirements:

1. that the issuer of the relevant Share Certificates, etc. shall not be a person who has already issued Share Certificates, etc. that indicate the same details as those of the relevant Share Certificates, etc. (limited to details regarding the dividends of surplus, the distribution of residual assets, the cancellation of equity by using profits or the cancellation of preferred equity investments pursuant to the provisions of Article 15, paragraph (1) of the Preferred Equity Investment Act (limited to the part pertaining to item (ii)) that are related to shares (including preferred equity investments prescribed in the Preferred Equity Investment Act and preferred equity investments prescribed in the Asset Securitization Act) or equity investments) and fall under any one of the items of Article 24, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act); and

2. that what is specified by a cabinet office ordinance as being of the same type as the relevant Share Certificates, etc. shall not be Securities Only for Professional Investors;

(b) Share Option Certificates, etc.—to satisfy all of the following requirements:

1. that the issuer of the share certificates to be acquired, subscribed for or converted through the exercise of the rights indicated on the relevant Share Option Certificates, etc., and those share certificates and the share option certificates shall meet the requirements set forth in sub-items (a)1. and (a)2. respectively;
2. that the issuer of the relevant Share Option Certificates, etc. (excluding share option certificates; hereinafter the same shall apply in sub-item (b)) shall not be a person who has already issued what is specified by a cabinet office ordinance as being of the same type as the Share Option Certificates, etc. falling under any one of the items of Article 24, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act);
3. that the securities specified by a cabinet office ordinance as being of the same type as the relevant Share Option Certificates, etc. shall not be Securities Only for Professional Investors; and
4. that the relevant Share Option Certificates, etc. (or, if they are Specified Company Bond Certificates with Rights to Subscribe for Preferred Equity Investment, and those rights are transferable separately from the Specified Company Bond Certificates, the Specified Company Bond Certificates and the Certificates of Right to Subscribe for Preferred Equity Investment issued together therewith) shall be subject to a restriction prohibiting a transfer thereof except where a person (excluding, if such a person is a Qualified Institutional Investor and if the relevant Share Option Certificates, etc. fall under any one of the cases specified in Article 1-4, that person) who has acquired or purchased the relevant Share Option Certificates, etc. transfers the same as a whole to another person in a manner specified by a cabinet office ordinance, and shall meet any other requirements specified by a cabinet office ordinance as being equivalent to that restriction;

(c) securities other than those of the categories set forth in sub-items (a) and (b)—to satisfy all of the following requirements:

1. that the issuer of the relevant securities shall not be a person who has already issued what is specified by a

cabinet office ordinance as being of the same type as the relevant securities that fall under any one of the items of Article 24, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act);

2. that what is specified by a cabinet office ordinance as being of the same type as the relevant Securities shall be not Securities Only for Professional Investors; and
3. that the relevant securities shall meet the requirements specified by a cabinet office ordinance as being equivalent to sub-item (b).

Article 1-7-2 (Where Securities Come to Be Owned by a Considerably Large Number of Persons Through a Solicitation for Acquisition)

The cases specified by a cabinet order, as mentioned in Article 2, paragraph (3), item (iii) of the Act, shall be where a Solicitation for Acquisition is made wherein the securities pertaining to the Solicitation for Acquisition are to be owned by 500 or more persons.

Article 1-7-3 (Transactions of Securities That Are Not Secondary Distributions of Securities)

The transactions of securities specified by a cabinet order, as mentioned in Article 2, paragraphs (4) and (6) of the Act, shall be those falling under any one of the following items:

(i) a sale and purchase of securities conducted in a Financial Instruments Exchange Market;

(ii) a sale and purchase of securities conducted in an Over-the-Counter Securities Market (meaning an Over-the-Counter Securities Market as defined in Article 67, paragraph (2) of the Act; hereinafter the same shall apply);

(iii) a sale and purchase of securities (limited to those listed on a Financial Instruments Exchange or Over-the-Counter Traded Securities (meaning Over-the-Counter Traded Securities as defined in Article 2, paragraph (8), item (x), sub-item (c) of the Act; hereinafter the same shall apply)) through the acts set forth in item (x) of that paragraph (where the securities are Specified Listed Securities (meaning Specified Listed Securities as defined in paragraph (33) of that Article; hereinafter the same shall apply), such a sale and purchase shall be limited to that wherein Professional Investors, etc. are the only parties);

(iv) among sales and purchases of securities (limited to those falling under the category of securities set forth in Article 24, paragraph (1), item (i) of the Act) conducted by Financial Instruments Business Operators, etc. or Professional Investors and other Financial Instruments Business Operators, etc. or Professional Investors outside the Financial Instruments Exchange Markets, a sale and purchase of securities conducted at the appropriate price based on the trading

price in a Financial Instruments Exchange Market in consideration of the state of transactions for the purpose of making a fair price and facilitating the smooth distribution of the securities;

(v) a sale of securities already issued in a foreign state that is conducted by a Foreign Securities Broker to a Financial Instruments Business Operator, etc. or a Qualified Institutional Investor pursuant to the provision of the proviso clause of Article 58-2 of the Act (the securities shall include those prescribed in Article 2-12-2 and be limited to those for which no Solicitation for Selling, etc. (meaning a Solicitation for Selling, etc. as defined in Article 2, paragraph (4) of the Act; hereinafter the same shall apply) that falls under any one of sub-items (a) to (c) of item (ii) of that paragraph is made or no Securities Delivery Procedure for Reorganization (meaning a Securities Delivery Procedure for Reorganization as defined in Article 2-2, paragraph (3) of the Act; hereinafter the same shall apply) that falls under any one of sub-item (a) or (b) of item (ii) of paragraph (5) of that Article is taken; in the following item and Article 1-8-4, item (iv), referred to as "Overseas-Issued Securities Not Subject to Transfer Restriction");

(vi) a sale of Overseas-Issued Securities Not Subject to Transfer Restriction conducted by a Financial Instruments Business Operator, etc. or Qualified Institutional Investor who has acquired the Overseas-Issued Securities Not Subject to Transfer Restriction (hereinafter referred to as a "Selling Financial Instruments Business Operator, etc." in this item) to any other Financial Instruments Business Operator, etc. (limited to those who purchase the Overseas-Issued Securities Not Subject to Transfer Restriction for the purpose of having another person acquire the same; hereinafter referred to as the "Purchasing Financial Instruments Business Operator, etc." in this item) (limited to where a sale is made by the Selling Financial Instruments Business Operator, etc. or to the Purchasing Financial Instruments Business Operator, etc. who is a member of an Authorized Financial Instruments Firms Association (limited to one Authorized Financial Instruments Firms Association designated by the Commissioner of the Financial Services Agency; hereinafter the same shall apply in this item and Article 1-8-4, item (iv))) wherein the issue name, the number and other matters specified by a cabinet office ordinance of the Overseas-Issued Securities Not Subject to Transfer Restriction are reported by the Selling Financial Instruments Business Operator, etc. (where the Selling Financial Instruments Business Operator, etc. is not a member of the Authorized Financial Instruments Firms Association, the Purchasing Financial Instruments Business Operator, etc.) to the Authorized Financial Instruments Firms Association;

(vii) a sale and purchase of securities for which neither a Solicitation for Acquisition that falls under any one of Article 2, paragraph (3), item (ii), sub-items (a) to (c) of the Act nor a Solicitation for Selling, etc. that falls under any one of sub-items (a) to (c) of item (ii) of paragraph (4) of that Article is made, or for which neither a Securities Issuance Procedure for Reorganization that falls under any one of Article 2-2, paragraph (4), item (ii), sub-items (a) to (c) of the Act nor a Securities Delivery Procedure for Reorganization that falls under any one of sub-items (a) to (c) of item (ii) of paragraph (5) of that Article is taken (hereinafter those securities shall be referred as to "Securities Not Subject to Transfer Restriction" in this item and the following item) that are owned by persons other than the persons set forth in the following sub-items:

(a) the issuer of the relevant Securities Not Subject to Transfer Restriction;

(b) an Officer (meaning a director, executive officer, accounting advisor, company auditor (including a person equivalent thereto); hereinafter the same shall apply in this item), an incorporator or a person equivalent thereto of the juridical person (including a foreign juridical person) that is the issuer of the relevant Securities Not Subject to Transfer Restriction (excluding an incorporator or a person equivalent thereto where there is a period when the incorporator or the person equivalent thereto was not an Officer, a shareholder or any other members of the juridical person after the establishment of the juridical person and the period exceeds five consecutive years; hereinafter the same shall apply in this item);

(c) a Major Shareholder (meaning a Major Shareholder as defined in Article 163, paragraph (1) of the Act; hereinafter the same shall apply in sub-item (c)) of the juridical person that is the issuer of the relevant Securities Not Subject to Transfer Restriction, or an Officer, an incorporator or a person equivalent thereto of the Major Shareholder (limited to where the Major Shareholder is a juridical person) (excluding an incorporator or a person equivalent thereto where there is a period when the incorporator or the person equivalent thereto was not an Officer, an incorporator or a person equivalent thereto of the juridical person after the establishment of the juridical person and the period exceeds five consecutive years);

(d) a Subsidiary Company (meaning a Subsidiary Company as defined in Article 29-4, paragraph (3) of the Act) of the juridical person that is the issuer of the relevant Securities Not Subject to Transfer Restriction, any other juridical persons equivalent thereto, or an Officer, an incorporator thereof or a person equivalent thereto; or

(e) a Financial Instruments Business Operator, etc;

(viii) a sale and purchase of Securities Not Subject to Transfer Restriction (limited to that wherein both parties fall under any one of sub-items (a) to (e) of the preceding item (excluding where both parties fall under sub-item (e) of that item));

(ix) a repurchase or a sale and purchase on condition of resale pertaining to securities (limited to company bond certificates or other securities specified by a cabinet office ordinance) wherein the price and the date of repurchase or resale are specified in advance;

(x) a sale of the relevant securities to the issuer or a person intends to sell the securities to the issuer (including a person who intends to sell the Securities to such a person); or

(xi) a sale and purchase of the relevant securities due to the brokerage of a sale and purchase of securities conducted by a Financial Instruments Business Operator, etc. on behalf of the customers in a Financial Instruments Exchange Market or a Foreign Financial Instruments Market (meaning a Foreign Financial Instruments Market as defined in Article 2, paragraph (8), item (iii), sub-item (b) of the Act; hereinafter the same shall apply).

Article 1-7-4 (Where Solicited Securities Are Unlikely to Be Transferred to Persons Other Than Qualified Institutional Investors Through a Solicitation for Selling, etc.)

The cases specified by a cabinet order in which solicited securities are unlikely to be transferred to persons other than a Qualified Institutional Investor, as mentioned in Article 2, paragraph (4), item (i) of the Act, and the cases specified by a cabinet order, as mentioned in sub-item (a) of item (ii) of that paragraph and Article 2-2, paragraph (5), item (ii), sub-item (a) of the Act, shall be as specified respectively in the following items, according to the categories of securities set forth therein:

(i) Share Certificates, etc.—where all of the following requirements are met:

(a) that the issuer of the relevant Share Certificates, etc. shall not be a person who has already issued Share Certificates, etc. that indicate the same details as those of the relevant Share Certificates, etc. (limited to details regarding the dividends of surplus, the distribution of residual assets, the cancellation of equity by using profits or the cancellation of preferred equity investments pursuant to the provisions of Article 15, paragraph (1) of the Preferred Equity Investment Act (limited to the part pertaining to item (ii)) that are related to shares (including preferred equity investments prescribed in the Preferred Equity Investment Act and preferred equity investments prescribed in the Asset Securitization Act) or equity investments) and fall under any one of the items of

Article 24, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act);

(b) that what is specified by a cabinet office ordinance as being of the same type as the relevant Share Certificates, etc. shall not be Securities Only for Professional Investors; and

(c) that a Solicitation for Selling, etc. shall be made or a Securities Delivery Procedure for Reorganization shall be taken wherein the relevant Share Certificates, etc. are acquired on the condition that an agreement for the transfer of the Share Certificates, etc. that provides to the effect that the person who has acquired the Share Certificates, etc. shall not transfer the acquired Share Certificates, etc. to persons other than Qualified Institutional Investors be concluded;

(ii) Share Option Certificates, etc.—where all of the following requirements are met:

(a) that the issuer of the share certificates to be acquired, subscribed for or converted through the exercise of the rights indicated on the relevant Share Option Certificates, etc., and those share certificates and share option certificates shall satisfy the requirement set forth in sub-items (a) and (b) of the preceding item respectively;

(b) that the issuer of the relevant Share Option Certificates, etc. (excluding share option certificates; hereinafter the same shall apply in sub-items (b) and (c)) shall not be a person who has already issued what is specified by a cabinet office ordinance as being of the same type as the Share Option Certificates, etc. that fall under any one of the items of Article 24, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act);

(c) that what is specified by a cabinet office ordinance as being of the same type as the relevant Share Option Certificates, etc. shall not be Securities Only for Professional Investors; and

(d) that the relevant Share Option Certificates, etc. (or, if they are Specified Company Bond Certificates with Rights to Subscribe for Preferred Equity Investment and those rights are transferable separately from the Specified Company Bond Certificates, the Specified Company Bond Certificates and the Certificates of Rights to Subscribe for Preferred Equity Investment issued together therewith) shall be subject to a restriction prohibiting a transfer thereof except where a person who has acquired or purchased the relevant Share Option Certificates, etc. transfers the same as a whole to another person in a manner specified by a cabinet office ordinance, and shall meet any other requirements specified by a cabinet office ordinance as being equivalent to that restriction;

(iii) securities other than those of the categories set forth in the preceding two items—where all of the following requirements are met:

(a) that the issuer of the relevant securities shall not be a person who has already issued what is specified by a cabinet office ordinance as being of the same type as the relevant securities that fall under any one of the items of Article 24, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act);

(b) that what is specified by a cabinet office ordinance as being of the same type as the relevant securities shall not be Securities Only for Professional Investors; and

(c) that the relevant securities meet the requirements specified by a cabinet office ordinance as being equivalent to the preceding item.

Article 1-8 (Where a Solicitation for Selling, etc. Is Made to a Large Number of Persons)

The cases specified by a cabinet order as a Solicitation for Selling, etc. made to a large number of persons, as mentioned in Article 2, paragraph (4), item (i) of the Act, shall be where it is made to 50 or more persons.

Article 1-8-2 (Where Solicited Securities Are Unlikely to Be Transferred to Persons Other Than Professional Investors, etc. Through a Solicitation for Selling, etc.)

The cases specified by a cabinet order, as mentioned in Article 2, paragraph (4), item (ii), sub-item (b)2. of the Act, shall be as specified respectively in the following items, according to the categories of securities set forth therein:

(i) Share Certificates, etc.—where all of the following requirements are met:

(a) that what is specified by a cabinet office ordinance as being of the same type as the relevant Share Certificates, etc. shall not fall under any one of the categories of securities set forth in the items of Article 24, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act); and

(b) that the Solicitation for Selling, etc. shall be made wherein the relevant Share Certificates, etc. are purchased on the condition that the person making the Solicitation for Selling, etc. of the Share Certificates, etc. and the person intending to purchase the Share Certificates, etc. in response to the Solicitation for Selling, etc. (hereinafter such a person shall be referred to as the "Purchaser" in this item) conclude a transfer agreement that provides that the Purchaser shall not transfer the purchased Share Certificates, etc. to persons other than Professional Investors, etc., and provides for any other matters specified by a cabinet office ordinance;

(ii) Share Option Certificates, etc.—where all of the following requirements are met:

(a) that the share certificates to be acquired, subscribed for or converted through the exercise of the rights indicated on the relevant Share Option Certificates, etc. shall meet the requirement set forth in sub-item (a) of the preceding item; and

(b) that the Solicitation for Selling, etc. shall be made wherein the relevant Share Option Certificates, etc. (or, where the Share Option Certificates, etc. are Specified Company Bond Certificates with Rights to Subscribe for Preferred Equity Investment and those rights are transferable separately from the Specified Company Bond Certificates, the Specified Company Bond Certificates and the Certificates of Rights to Subscribe for Preferred Equity Investment issued together therewith; hereinafter the same shall apply in this item) are purchased on the condition that the person making the Solicitation for Selling, etc. of the Share Option Certificates, etc. and the person intending to purchase the same in response to the Solicitation for Selling, etc. (hereinafter such a person shall be referred to as the "Purchaser" in this item) conclude an agreement for the transfer of the Share Option Certificates, etc. that provides that the Purchaser shall not transfer the purchased Share Option Certificates, etc. to persons other than Professional Investors, etc., and provides for any other matters specified by a cabinet office ordinance; or

(iii) securities other than those of the categories set forth in the preceding two items—where the requirements specified by a cabinet office ordinance as being equivalent to the preceding item are met.

Article 1-8-3 (Requirements for a Solicitation for Selling, etc. Not to Fall Under the Category of Solicitation for Small Number of Investors)

The requirements specified by a cabinet order, as mentioned in Article 2, paragraph (4), item (ii), sub-item (c) of the Act, shall be that a Solicitation for Selling, etc. (excluding the transactions set forth in the items of Article 1-7-3; hereinafter the same shall apply in this Article) of any other securities specified by a cabinet office ordinance as being of the same type as the relevant securities (excluding the securities set forth in the following items; hereinafter referred to as the "Already Issued Securities of the Same Type" in this Article) shall have been made within one month prior to the day on which the Solicitation for Selling, etc. of the relevant securities is made, and the total number of the persons to which the Solicitation for Selling, etc. of the relevant securities is to be made (where the Solicitation for Selling, etc. of the relevant securities is made to Qualified Institutional Inves-

tors and the relevant securities fall under any one of the cases specified in Article 1-7-4, the Qualified Institutional Investors shall be excluded) and the persons to which the Solicitation for Selling, etc. of the Already Issued Securities of the Same Type that has been made within one month prior to the day on which the Solicitation for Selling, etc. of the relevant securities is made, has been made (where the Solicitation for Selling, etc. of the Already Issued Securities of the Same Type is made to Qualified Institutional Investors and the Already Issued Securities of the Same Type fall under any one of the cases specified in Article 1-7-4, the Qualified Institutional Investors shall be excluded) shall be 50 or more persons:

(i) securities of which the Solicitation for Selling, etc. falls under any one of the cases set forth in Article 2, paragraph (4), item (ii), sub-item (a) of the Act at the time of the Solicitation for Selling, etc.;

(ii) securities of which the Solicitation for Selling, etc. falls under the category of Secondary Distributions of securities at the time of the Solicitation for Selling, etc. and for which the notification pursuant to the provisions of Article 4, paragraph (1) of the Act has been made or the Shelf Registration Supplements prescribed in Article 23-8, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act) have been submitted with regard to the Secondary Distributions of securities; and

(iii) securities of which the Solicitation for Selling, etc. falls under the category of Secondary Distribution of Foreign Securities as defined in Article 27-32-2, paragraph (1) of the Act at the time of the Solicitation for Selling, etc. and regarding which Foreign Securities Information (meaning Foreign Securities Information as defined in that paragraph; hereinafter the same shall apply) has been provided or the public announcement has been made pursuant to the provisions of that paragraph (including the securities falling under the provision of the proviso clause of that paragraph).

Article 1-8-4 (Where a Solicitation for Selling, etc. Falls Under the Category of Solicitation for Small Number of Investors)

The cases specified by a cabinet order, as mentioned in Article 2, paragraph (4), item (ii), sub-item (c) of the Act, shall be where all of the following requirements are met:

(i) that a Solicitation for Selling, etc. shall be made only to Professional Investors and shall be made to less than 50 persons (where those persons are Qualified Institutional Investors and the securities pertaining to the Solicitation for Selling, etc. fall under the cases specified in Article 1-7-4, those persons shall be excluded);

(ii) that, where a Solicitation for Selling, etc. of securities meeting the requirements set forth in Article 1-7, item (ii) is

made, the Solicitation for Selling, etc. shall be made in accordance with those requirements;

(iii) that, where a Solicitation for Selling, etc. of securities other than those specified in the preceding item is made, the Solicitation for Selling, etc. shall meet the requirements specified respectively in sub-items (a) to (c), according to the categories of securities set forth therein:

(a) Share Certificates, etc.—to meet all of the following requirements:

1. that the issuer of the relevant Share Certificates, etc. shall not be a person who has already issued Share Certificates, etc. that indicate the same details as those of the relevant Share Certificates, etc. (limited to details regarding the dividends of surplus, the distribution of residual assets, the cancellation of equity by using profits or the cancellation of preferred equity investments pursuant to the provisions of Article 15, paragraph (1) of the Preferred Equity Investment Act (limited to the part pertaining to item (ii)) that are related to shares (including preferred equity investments prescribed in the Preferred Equity Investment Act and preferred equity investments prescribed in the Asset Securitization Act) or equity investments) and fall under any one of the items of Article 24, paragraph (1) of the Act (including where it is applied mutatis mutandis under Article 27 of the Act); and
2. that what is specified by a cabinet office ordinance as being of the same type as the relevant Share Certificates, etc. shall not be Securities Only for Professional Investors;

(b) Share Option Certificates, etc.—to meet all of the following requirements:

1. that the issuer of the share certificates to be acquired, subscribed for or converted through the exercise of the rights indicated on the relevant Share Option Certificates, etc., and those share certificates and the share option certificates shall meet the requirements set forth in sub-items (a)1. and (a)2. respectively;
2. that the issuer of the relevant Share Option Certificates, etc. (excluding share option certificates; hereinafter the same shall apply in sub-item (b)) shall not be a person who has already issued what is specified by a cabinet office ordinance as being of the same type as the Share Option Certificates, etc. that fall under any one of the items of Article 24, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act);
3. that what is specified by a cabinet office ordinance as being of the same type as the relevant Share Option

Certificates, etc. shall not be Securities Only for Professional Investors; and

4. that the relevant Share Option Certificates, etc. (or, if the Share Option Certificates, etc. are Specified Company Bond Certificates with Rights to Subscribe for Preferred Equity Investment and those rights transferable separately from the Specified Company Bond Certificates, the Specified Company Bond Certificates and the Certificates of Rights to Subscribe for Preferred Equity Investment issued together therewith) shall be subject to a restriction prohibiting a transfer thereof except where a person (excluding, if such a person is a Qualified Institutional Investor and if the relevant Share Option Certificates, etc. fall under any one of the cases specified in Article 1-7-4, that person) who has acquired or purchased the relevant Share Option Certificates, etc. transfers the same as a whole to another person in a manner specified by a cabinet office ordinance, and shall meet any other requirements specified by a cabinet office ordinance as being equivalent to that restriction; or

(c) securities other than those of the categories set forth in sub-items (a) and (b)—to meet all of the following requirements:

1. that the issuer of the relevant Securities shall not be a person who has already issued what is specified by a cabinet office ordinance as being of the same type as the relevant Securities that fall under any one of the items of Article 24, paragraph (1) of the Act (including where it is applies *mutatis mutandis* under Article 27 of the Act);
2. that what is specified by a cabinet office ordinance as being of the same type as the relevant Securities shall not be Securities Only for Professional Investors; and
3. that the relevant Securities shall meet the requirements specified by a cabinet office ordinance as being equivalent to sub-item (b); and

(iv) that, where a Solicitation for Selling, etc. of Overseas-Issued Securities Not Subject to Transfer Restriction is made, the Solicitation for Selling, etc. shall meet all of the following requirements:

(a) that, where a Financial Instruments Business Operator, etc. (limited to where the Financial Instruments Business Operator, etc. is a member of an Authorized Financial Instruments Firms Association) has made a Solicitation for Selling, etc. of Overseas-Issued Securities Not Subject to Transfer Restriction, the issue name of the Overseas-Issued Securities Not Subject to Transfer Restriction, the number of persons to be calculated pursuant to the provi-

sions of a cabinet office ordinance as the number of those who have acquired the Overseas-Issued Securities Not Subject to Transfer Restriction through the Solicitation for Selling, etc. and actually owns them (hereinafter referred to as the "Number of Owners" in this item) and any other matters specified by a cabinet office ordinance shall be reported to the Authorized Financial Instruments Firms Association pursuant to the rules of the Authorized Financial Instruments Firms Association;

(b) that the Authorized Financial Instruments Firms Association shall, upon receipt of the report mentioned in sub-item (a), calculate and publicly announce the total Number of Owners per issue name of the Overseas-Issued Securities Not Subject to Transfer Restriction pursuant to the rules of the Authorized Financial Instruments Firms Association; and

(c) that the total Number of Owners per issue name of the Overseas-Issued Securities Not to Subject to Transfer Restriction mentioned in sub-item (a) shall not exceed one thousand.

Article 1-8-5 (Where a Sales Solicitation, etc. will render the Securities to be held by a considerably large number of persons who respond to the Sales Solicitation, etc.)

The cases specified by a cabinet order, as mentioned in Article 2, paragraph (4), item (iii) of the Act, shall be where a Solicitation for Selling will render the relevant securities to be owned by 500 or more persons who respond to the Solicitation for Selling, etc.

Article 1-8-6 (What Is Excluded from the Scope of Financial Instruments Business)

(1) What is specified by a cabinet order, as mentioned in Article 2, paragraph (8) of the Act, shall be as set forth in the following items:

(i) the acts set forth in the items in Article 2, paragraph (8) of the Act that are conducted by persons set forth in the following sub-items:

(a) the State;

(b) local governments;

(c) the Bank of Japan, and

(d) foreign governments and other persons equivalent to those set forth in sub-items (a) to (c) under laws of foreign countries;

(ii) among the acts set forth in Article 2, paragraph (8), item (iv) of the Act, an act of conducting an Over-the-Counter Transactions of Derivatives (excluding Securities-Related Over-the-Counter Transactions of Derivatives (meaning transactions set forth in Article 28, paragraph (8), item (iv) of the Act, the same shall

apply hereinafter in this item) with a person falling under any one of the following sub-items, or an act of conducting intermediary, brokerage (excluding Brokerage for Clearing Securities, etc.) or agency service therefor, on behalf of such a person (the acts falling under those set forth in the preceding item shall be excluded):

(a) persons specified by a cabinet office ordinance as being found to have expert knowledge and experience concerning transactions of derivatives; or

(b) stock companies of which the amount of stated capital is not less than an amount specified by a cabinet office ordinance; or

(iii) Among the acts set forth in Article 2, paragraph (8), item (xv) of the Act, an investment (hereinafter referred as a "Specified Investment" in this item and the following paragraph) in one juridical person made by appropriating all of the money or other properties invested or contributed by a person who holds beneficial interests in commodities investment prescribed in Article 2, paragraph (6) of the Act on the Regulation of Business Pertaining to Commodity Investment (Act No. 66 of 1991) (if the beneficial interests in commodities investment are the rights set forth in item (ii) of that paragraph or the rights set forth in item (iii) of that paragraph (limited to those equivalent to the rights set forth in item (ii) of that paragraph), a trustee of a trust of those rights), and which meets all of the following requirements (excluding those falling under item (i)):

(a) that the Commodities Investment Agreement (meaning a Commodities Investment Agreement as defined in Article 2, paragraph (5) of the Act on Regulation of Business Pertaining to Commodity Investments) or the trust agreement pertaining to the relevant beneficial interests in commodities investments, or the agreement on sales of the relevant beneficial interests in commodities investments shall provide that the Specified Investment shall be made to the relevant juridical person and that the juridical person shall invest the money or other properties pertaining to the Specified Investment in a Commodities Investment (meaning a Commodities Investment as defined in paragraph (1) of that Article, hereinafter the same shall apply);

(b) that the relevant juridical person shall entrust the discretion in making investment decisions with respect to Commodities Investments as prescribed in Article 2, paragraph (2) of the Act on Regulation of Business Pertaining to Commodity Investments a

Commodities Investment Advisor, etc., as defined in Article 33, paragraph (1) of that Act; and

(c) that the relevant juridical person shall not invest the money or other properties pertaining to the Specified Investment mainly in securities or rights pertaining to Derivative Transactions; and

(iv) in addition to what is set forth in the preceding three items, the acts specified by a cabinet office ordinance in consideration of the nature of the relevant act and other circumstances.

(2) Where the juridical person mentioned in item (iii) of the preceding paragraph makes an investment in another juridical person by appropriating all of the money and other properties pertaining to the Specified Investment, or the entire money and properties other than those invested in Commodities Investments, that other person shall be deemed to be the first-mentioned juridical person with regard to the application of the provisions of sub-items (a) to (c) of that item.

Article 1-9 (Acts that are excluded from Financial Instruments Business)

The financial institutions specified by a cabinet order, as mentioned in Article 2, paragraphs (8) and (11), Article 27-2, paragraph (4) (including where it is applied *mutatis mutandis* under Article 27-22-2, paragraph (2) of the Act), Article 27-28, paragraph (3) (including where it is applied *mutatis mutandis* under Article 27-29, paragraph (2) of the Act), Article 28, paragraph (4), Article 31-4, paragraphs (3) and (4), Article 33, paragraph (1), Article 33-5, paragraph (2), Article 33-7, Article 33-8, paragraph (1), Article 50, paragraph (1), item (iv), Article 58, and Article 66 of the Act shall be as set forth in the following items:

(i) Shoko Chukin Bank Limited;

(ii) Insurance Companies (meaning an Insurance Company as defined in Article 2, paragraph (2) of the Insurance Business Act; including a Foreign Insurance Company as defined in paragraph (7) of that Act; hereinafter the same shall apply);

(iii) mutual loan companies;

(iv) securities finance companies, and

(v) among persons whose primary business is to lend money for call loans or to act as intermediaries for the lending or borrowing money therefor, those designated by the Commissioner of the Financial Services Agency.

Article 1-9-2 (Securities Pertaining to a Public Offering or Private Placement That is Financial Instruments Business)

What is specified by a cabinet order, as mentioned in Article 2, paragraph (8), item (vii), sub-item (g) of the Act, shall be as set forth in the following items (excluding those of which the issuer is to be the

trustee of the trust pertaining to the relevant securities), the purpose of which shall be an investment by way of a Commodities Investment or by way of acquiring (including acquiring by production), transferring, using or causing to be used commodities falling under any of the categories set forth in Article 37, paragraph (1), item (ii), sub-items (a) to (e):

(i) securities of the category set forth in Article 2, paragraph (1), item (xiv) of the Act;

(ii) among the securities of the category set forth in Article 2, paragraph (1), item (xvii) of the Act, those that have the characteristics of securities of the category set forth in item (xiv) of that paragraph;

(iii) the rights to be indicated on securities of the category set forth in item (i) or item (ii) above that are deemed to be securities pursuant to the provisions of Article 2, paragraph (2) of the Act, and

(iv) the rights set forth in Article 2, paragraph (2), item (i) or item (ii) of the Act that are deemed to be securities pursuant to the provisions of that paragraph.

Article 1-9-3 (What is Excluded from Transactions Conducted by Using an Electronic Data Processing System)

The transactions specified by a cabinet order, as mentioned in Article 2, paragraph (8), item (x) of the Act shall be a sale and purchase of Securities Only for Professional Investors (excluding those set forth in Article 4, paragraph (3), item (iv) of the Act (excluding those set forth in Article 2-12-4, paragraph (3), item (i) or (iii) of the Act), and those falling under the Case Where Disclosure Has Been Made (meaning a case where disclosure has been made as provided in Article 4, paragraph (7) of the Act)) or intermediation, brokerage, or agency thereof conducted by using an electronic data processing system, by using any of the price formation methods set forth in Article 2, paragraph (8), item (x), sub-items (a) to (e) of the Act, or any other method similar thereto, and in which a large number of persons participate simultaneously as one party in the transaction, or in which the transaction is conducted among a large number of persons.

Article 1-10 (Criteria for Where the Auction Method Is Used)

The criteria specified by a cabinet order, as mentioned in Article 2, paragraph (8), item (x), sub-item (a) of the Act, shall be as set forth in the following items:

(i) that the ratio of the average amount of the total transaction volume for a single business day pertaining to the sales and purchases (excluding those falling under the category of Derivatives Transactions: hereinafter the same shall apply in this Article) of Listed Securities, etc. (meaning securities listed on a Financial Instruments Exchange and Over-the-Counter Traded Exchange; hereinafter the same shall apply in this Article) conducted in the past six months before the

last day of each month in accordance with the price formation method set forth in Article 2, paragraph (8), item (x), sub-item (a), to the average amount of the total transaction volume for a single business day pertaining to the sales and purchases of Listed Securities, etc. conducted in all Financial Instruments Exchange Markets and Over-the-Counter Traded Securities Markets in those six months is one percent; and

(ii) that the ratio of the average amount of the total transaction volume for each issue of Listed Securities, etc. for a single business day pertaining to the sales and purchases of Listed Securities, etc. conducted in the past six months before the last day of each month in accordance with the price formation method set forth in Article 2, paragraph (8), item (x), sub-item (a) of the Act to the average amount of the total transaction volume for a single business day pertaining to the sales and purchases of that issue of Listed Securities, etc. conducted in all Financial Instruments Exchange Markets and Over-the-Counter Traded Securities Markets is ten percent.

Article 1-11 (Scope of Investment Management Business)

The rights specified by a cabinet order, as mentioned in Article 2, paragraph (8), item (xiv) of the Act, shall be those indicated on the beneficiary certificates of an investment trust as prescribed in item (x) of paragraph (1) of that Article.

Article 1-12 (Acts Constituting Financial Instruments Business)

The acts specified by a cabinet order, as mentioned in Article 2, paragraph (8), item (xviii) of the Act, shall be the purchase, without the purpose of resale, of the securities (limited to those set forth in the following items) pertaining to the acts set forth in item (vii) of that paragraph by the person has conducted those acts:

(i) securities of the category set forth in Article 2, paragraph (8), item (vii), sub-item (a) or (b) of the Act, and

(ii) the rights to be indicated on securities of the category set forth in the preceding item that shall be deemed to be Securities pursuant to the provisions of Article 2, paragraph (2) of the Act.

Article 1-13 (Causes Resembling Those Pertaining to the Credit Status of a Juridical Person)

What is specified by a cabinet order, as mentioned in Article 2, paragraph (21), item (v), sub-item (a) and Article 2, paragraph (22), item (vi), sub-item (a) of the Act, shall be those specified by a cabinet office ordinance as causes pertaining to the credit status of a person who is not a juridical person or other causes that concerns the basis of the management of business for a person who conducts that business.

Article 1-14 (Causes That May Have a Serious Influence on the Business Activities of the Relevant Parties or Other Business Operators)

What is specified by a cabinet order, as mentioned in Article 2,

paragraph (21), item (v), sub-item (b) and Article 2, paragraph (22), item (vi), sub-item (b) of the Act, shall be as set forth in the following items:

(i) wind storm, heavy rain, heavy snow, flood, storm surge, earthquake, tsunami, volcanic eruption, and any other extraordinary natural phenomena; and

(ii) war, revolution, insurrection, riot, civil disturbance, and any other causes specified by a cabinet office ordinance as being equivalent thereto.

Article 1-15 (What Is Excluded from Over-the-Counter Transactions of Derivatives)

What is specified by a cabinet order, as mentioned in Article 2, paragraph (22) of the Act, as those found not to hinder the public interest or the protection of investors shall be as set forth in the following items:

(i) the transactions set forth in Article 2, paragraph (22), item (iii) of the Act (excluding sub-item (b)) incidental to transactions of the acceptance of deposits, etc. prescribed in Article 2, paragraph (2) of the Deposit Insurance Act (Act No. 34 of 1971) or savings, etc. prescribed in Article 2, paragraph (2) of the Agricultural and Fishery Cooperation Savings Insurance Act (Act No. 53 of 1973) (limited to transactions pertaining to currency trading);

(ii) conclusion of an agreement pertaining to insurance business as prescribed in Article 2, paragraph (1) of the Insurance Business Act and the business set forth in the items of that paragraph;

(iii) conclusion of an agreement pertaining to the guarantee of obligations; or

(iv) conclusion of an agreement for compensation for a part of the amount that will be no longer performed where the obligations pertaining to a loan are no longer performed in whole or in part (excluding those set forth in the preceding item).

Article 1-16 (Acts That Are Causes of Net Settlement)

The acts specified by a cabinet order, as mentioned in Article 2, paragraph (22), item (i) of the Act, shall be, with regard to sales and purchase wherein the parties thereto promise to deliver or receive Financial Instruments (excluding those set forth in item (v) of paragraph (24) of that Article) or the consideration for them at a fixed time in the future and that are not conducted in a Financial Instruments Market or a Foreign Financial Instruments Market, the act of cancelling the relevant sale and purchase agreement by the parties thereto.

Article 1-17 (Claims or Other Rights Based on a Deposit Agreement, or Securities or Certificates Indicating Those Claims or Rights)

What is specified by a cabinet order, as mentioned in Article 2,

paragraph (24), item (ii) of the Act, shall be the means of payment (excluding those falling under the category of currencies) prescribed in Article 6, paragraph (1), item (vii) of the Foreign Exchange and Foreign Trade Act, the securities prescribed in item (xi) of that paragraph, and the Claims prescribed in item (xiii) of that paragraph.

Article 1-18 (Scope of Financial Indicator)

What is specified by a cabinet order, as mentioned in Article 2, paragraph (25), item (iii) of the Act, shall be as set forth in the following items:

(i) figures pertaining to the results of observations on terrestrial phenomenon, terrestrial motion, terrestrial magnetism, terrestrial electricity, and hydro-meteorological phenomenon publicized by the Meteorological Agency or others;

(ii) figures of fundamental statistics prescribed in Article 2, paragraph (4) of the Statistics Act (Act No. 53 of 2007), figures pertaining to the results of the General Statistical Surveys prescribed in paragraph (7) of that Article, figures pertaining to the results of the statistical surveys notified pursuant to the provisions of Article 24, paragraph (1) and Article 25 of that Act, and other figures specified by a cabinet office ordinance as being equivalent thereto; or

(iii) figures of foreign statistics corresponding to those specified in the preceding item.

Article 1-19 (Transactions Subject to Financial Instruments Debt Assumption Service)

The transactions specified by a cabinet order, as mentioned in Article 2, paragraph (28) of the Act, as incidental to or related to sales and purchase of securities or Derivative Transactions shall be as set forth in the following items:

(i) lending and borrowing of money necessary for the settlement of a Margin Transaction, etc. (Margin Transaction (meaning a Margin Transaction as defined in Article 156-24, paragraph (1) of the Act; hereinafter the same shall apply), or sales and purchase of securities (excluding those falling under the category of Derivative Transactions; hereinafter the same shall apply) conducted by a Financial Instruments Business Operator, etc. on its own account, or Market Transactions of Derivatives or Brokerage for Clearing Securities, etc. (limited to those pertaining to Margin Transactions, sales and purchases of securities or Market Transactions of Derivatives made on the Financial Instruments Business Operators own account; hereinafter the same shall apply) (limited to the lending and borrowing of money pertaining to a loan provided by a Securities Finance Company));

(ii) lending and borrowing of securities (where a person other than a Securities Finance Company lends the securities nec-

essary for the settlement of a Margin Transaction, etc., by utilizing clearing systems of a Financial Instruments Exchange Market or Over-the-Counter Securities Market, limited to a loan pertaining to a Margin Transaction, etc., not conducted through a Financial Instruments Exchange Market or an Over-the-Counter Securities Market);

(iii) delivery and receipt of collateral pertaining to a transaction set forth in the preceding two items; or,

(iv) in addition to what is set forth in the preceding three items, sales and purchase of securities, Derivative Transactions, and the delivery and receipt of Financial Instruments or money to perform obligations arising from any of the transactions set forth in the preceding three items.

Article 1-20 (Persons Subject to the Regulations Found to Be of the Same Level as the Regulations Regarding Stock Company-Type Financial Instruments Exchanges)

The persons specified by a cabinet order, as mentioned in Article 2, paragraph (38) of the Act, shall be an Stock Company-Type Commodity Exchange mentioned in Article 2, paragraph (3) of the Commodity Exchange Act (Act No. 239 of 1950).

Article 1-21 (Persons Subject to the Regulations Found to Be of the Same Level as the Regulations Regarding Financial Instruments Exchange Holding Companies)

The persons specified by a cabinet order, as mentioned in Article 2, paragraph (39) of the Act, shall be a Commodity Exchange Holding Company as defined in Article 2, paragraph (19) of the Commodity Exchange Act.

Chapter II: Disclosure of Corporate Affairs and Other Related Matters

Article 2 (Scope of Reorganization)

What is specified by a cabinet order, as mentioned in Article 2-2, paragraph (1) of the Act, shall be share transfers.

Article 2-2 (Scope of Reorganized Company)

The companies specified by a cabinet order, as mentioned in Article 2-2, paragraph (4), item (i) of the Act, shall be a company that becomes Company Consolidated Through Consolidation-Type Merger (meaning a Company Consolidated Through Consolidation-Type Merger as defined in Article 753, paragraph (1), item (i) of the Companies Act (Act No. 86 of 2005)), Splitting Company in Absorption-Type Company Split (meaning a Splitting Company in Absorption-Type Company Split as defined in Article 758, item (i) of the Act; limited to a company that has concluded an Absorption-Type Company Split Agreement as defined in Article 757 of the Act pertaining to the relevant absorption-type company split that contains the matters set forth in Article 758,

item (viii), sub-item (b) or Article 760, item (vii), sub-item (b) of the Act and others specified by a cabinet office ordinance as being equivalent to such a company), Splitting Company in Incorporation-Type Company Split (meaning a Splitting Company in Incorporation-Type Company Split as defined in Article 763, item (v) of the Act; limited to a company that has prescribed the matters set forth in Article 763, item (xii), sub-item (b) or Article 765, paragraph (1), item (viii), sub-item (b) of the Act in the incorporation-type company split plan prescribed in Article 762 of the Act pertaining to the relevant incorporation-type company split and others specified by a cabinet office ordinance as being equivalent to such a company), and Wholly Owned Subsidiary Company in Share Transfer (meaning a Wholly Owned Subsidiary Company in Share Transfer as defined in Article 773, paragraph (1), item (v) of the Act).

Article 2-3 (Scope of Securities Issued by Reorganized Company)

The securities specified by a cabinet order, as defined in Article 2-2, paragraph (4), item (i) and Article 4, paragraph (1), item (ii), sub-item (b) of the Act, shall be as set forth in the following items:

(i) share option certificates;

(ii) corporate bonds with share options;

(iii) among Beneficiary Certificates of Securities Trusts (meaning, among the securities of the category set forth in Article 2, paragraph (1), item (xiv) of the Act, those of which securities set forth in the items of that paragraph constitute the trust property and with respect to which the act of trust provides that the details of the rights pertaining to securities that constitute the trust property (hereinafter referred to as the "Entrusted Securities") shall be included in the details of the beneficial interest of the trust, and provides for any other matters specified by a cabinet office ordinance; hereinafter the same shall apply), those of which the Entrusted Securities are share certificates or securities of the categories set forth in the preceding two items; or

(iv) securities of the category set forth in Article 2, paragraph (1), item (xx) that indicate the rights pertaining to share certificates or securities set forth in item (i) or (ii).

Article 2-4 (Where There Is a Large Number of Shareholders, etc., of the Reorganized Company in Procedures for Securities Issuance for Reorganization)

The case specified by a cabinet order prescribed in Article 2-2, paragraph (4), item (i) of the Act shall be where there are fifty or more Shareholders, etc., of the Reorganized Company (meaning Shareholders, etc., of the Reorganized Company as defined in that item; in the following Article to Article 2-7, the same shall apply).

Article 2-4-2 (Cases Falling under the Category of Solicitation for a Small Number of Investors in the Procedures for Securities Issuance for Reorganization)

The cases specified by a cabinet order, as mentioned in Article 2-2,

paragraph (4), item (ii), sub-item (b) of the Act, shall be those satisfying all of the following requirements:

(i) that the Shareholders, etc., of the Reorganized Company in the Procedures for Securities Issuance for Reorganization shall consist of only Qualified Institutional Investors, and the number of the Shareholders, etc., of the Reorganized Company shall not be fifty or more; and

(ii) that the requirements specified respectively in the following sub-items (a) to (c) shall be met, according to the categories of securities set forth therein:

(a) share certificates, etc.—to meet the requirement specified in Article 1-7, item (ii), sub-item (a);

(b) share option certificates, etc.—to meet the requirement specified in Article 1-7, item (ii), sub-item (b); or

(c) securities other than those of the categories set forth in sub-items (a) and (b)—to meet the requirement specified in Article 1-7, item (ii), sub-item (c).

Article 2-5 (Where There Is a Considerably Large Number of Shareholders, etc., of the Reorganized Company in the Procedures for Securities Issuance for Reorganization)

The cases specified by a cabinet order, as mentioned in Article 2-2, paragraph (4), item (iii) of the Act, shall be where there are five hundred or more Shareholders, etc., of the Reorganized Company.

Article 2-6 (Where There Is a Large Number of Shareholders, etc., of the Reorganized Company in the Procedures for Securities Delivery for Reorganization)

The cases specified by a cabinet order, as mentioned in Article 2-2, paragraph (5), item (i) of the Act, shall be where there are fifty or more Shareholders, etc., of the Reorganized Company.

Article 2-6-2 (Cases Falling under the Category of Solicitation for a Small Number of Investors in the Procedures for Securities Delivery for Reorganization)

The cases specified by a cabinet order, as mentioned in Article 2-2, paragraph (5), item (ii), sub-item (b) of the Act, shall be those meeting all of the following requirements:

(i) that the Shareholders, etc., of the Reorganized Company in the Procedures for Securities Delivery for Reorganization shall consist of only Qualified Institutional Investors, and the number of the Shareholders, etc., of the Reorganized Company shall not be fifty or more; and

(ii) that the requirements specified respectively in the following sub-items (a) to (c) shall be met, according to the categories of securities set forth therein:

(a) share certificates, etc.—to meet the requirement specified in Article 1-8-4, item (iii), sub-item (a);

(b) share option certificates, etc.—to meet the requirement specified in Article 1-8-4, item (iii), sub-item (b); or

(c) securities other than those of the categories set forth in sub-items (a) and (b)—to meet the requirement specified in Article 1-8-4, item (iii), sub-item (c).

Article 2-7 (Where There Is a Considerably Large Number of Shareholders, etc., of the Reorganized Company in the Procedures for Securities Delivery for Reorganization)

The cases specified by a cabinet order, as mentioned in Article 2-2, paragraph (5), item (iii) of the Act, shall be where there are five hundred or more Shareholders, etc., of the Reorganized Company.

Article 2-8 (Securities to Which the Provisions of Chapter II shall Apply)

What is specified by a cabinet order, as mentioned in Article 3, item (ii) of the Act, shall be social medical care corporation bonds prescribed in the Securities Medical Care Act (Act No. 205 of 1948).

Article 2-9 (Scope of Investor-Financed Business Pertaining to Rights in Securities Investment Business, etc. to Which the Provisions of Chapter II of the Act shall Apply)

(1) What is specified by a cabinet order, as mentioned in Article 3, item (iii), sub-item (a) of the Act, shall be those pertaining to Investor-Financed Business (meaning Investor-Financed Business, as defined in Article 2, paragraph (2), item (v) of the Act and excluding those set forth in the following items) that invests in securities using an amount exceeding 50 percent of the total amount of the value of the money and other properties invested or contributed by the holder of the right set forth in that item:

(i) a contribution to one juridical person (hereinafter referred to as a "Specified Juridical Person" in this item) using the entire money and other properties invested or contributed by the holder of the beneficial interest in commodities investment prescribed in Article 2, paragraph (6) of the Act on Regulations of Business Pertaining to Commodities Investment (limited to those pertaining to the rights set forth in item (i) of that paragraph) (hereinafter referred to as the "Specified Contribution" in this article) that meets all of the following requirements:

(a) that the Specified Juridical Person shall not invest in securities using more than 50 percent of the total amount of the money and other properties pertaining to the Specified Contribution; and

(b) that the Specified Juridical Person shall be prohibited from receiving contributions from two or more persons pursuant to laws and regulations, the articles of incorporation or articles of endowment of the Specified Juridical Person and other provisions equivalent thereto; and

(ii) a contribution using, among the goods set forth in Article 1-3, item (iv), only what is specified by a cabinet office ordinance (hereinafter referred to as the "Specified Contribution in Kind" in this item) and meets all of the following requirements:

(a) that the person who receives the Specified Contribution in Kind shall be prohibited from receiving contributions from two or more persons pursuant to laws and regulations, the articles of incorporation or articles of endowment of the person who receives the Specified Contribution or other provisions equivalent thereto, or the agreement pertaining to the Specified Contribution in Kind; and

(b) that the agreement pertaining to the Specified Contribution in Kind shall provide that the person who receives the Specified Contribution in Kind shall not acquire securities using the goods pertaining to the Specified Contribution in kind.

(2) When a Specified Juridical Person specified in item (i) of the preceding paragraph makes a contribution to another juridical person using all of the money and other properties pertaining to the Specified Contribution or all of properties other than the properties invested by way of commodities investment, that other juridical person shall be deemed to be the Specified Juridical Person with regard to the application of the provisions of sub-items (a) and (b) of that item.

Article 2-10 (Scope of Rights Deemed to Be Securities to Which the Provisions of Chapter II of the Act Apply)

(1) What is specified by a cabinet order, as mentioned in Article 3, item (iii), sub-item (b) of the Act, shall be the following rights:

(i) among the rights set forth in Article 2, paragraph (2), item (i) of the Act, a beneficial right of a trust operated by investing in securities more than 50 percent of the total value of the assets belonging to the trust property (excluding the following beneficial rights):

(a) a beneficial right of a trust prescribed in Article 130-2, paragraphs (1) and (2) of the Employees' Pension Insurance Act (Act No. 115 of 1954) (including where it is applied *mutatis mutandis* under Article 136-3, paragraph (2) of that Act (including where it is applied *mutatis mutandis* under Article 164, paragraph (3) of that Act)), Article 136-3, paragraph (1), item (i), item (iv), sub-item (d) and item (v), sub-item (f) of that Act (including where it is applied *mutatis mutandis* under Article 164, paragraph (3) of that Act) and Article 159-2, paragraphs (1) and (2) of that Act;

(b) a beneficial right of a trust prescribed in Article 128,

paragraph (3) and Article 137-15, paragraph (4) of the National Pension Act (Act No. 141 of 1959);

(c) a beneficial right of a trust prescribed in Article 30, paragraph (1), item (i), item (iv), sub-item (d), item (v), sub-item (f) and Article 30, paragraph (2) of the National Pension Fund Order (Cabinet Order No. 304 of 1990) (including where it is applied *mutatis mutandis* under Article 51, paragraph (1) of that Order);

(d) a beneficial right of a trust pertaining to a qualified retirement pension agreement (limited to a trust agreement) prescribed in Article 20, paragraph (3) of the Supplementary Provisions of the Corporation Tax Act (Act No. 34 of 1965);

(e) a beneficial right of a trust pertaining to an asset management agreement prescribed in Article 65, paragraph (3) of the Defined-Benefit Corporate Pension Act (Act No. 50 of 2001) (limited to a trust agreement set forth in item (i) of paragraph (1) of that Article), a trust agreement set forth in that item concluded pursuant to the provisions of Article 66, paragraph (1) of that Act (including where it is applied *mutatis mutandis* under Article 91-7 of that Act) or a trust agreement prescribed in Article 66, paragraph (2) of that Act (including where it is applied *mutatis mutandis* under Article 91-7 of that Act);

(f) a beneficial right of a trust pertaining to an asset management agreement prescribed in Article 8, paragraph (2) of the Defined Contribution Pension Act (Act No. 88 of 2001) (limited to a trust agreement set forth in item (i) of paragraph (1) of that Article);

(g) a beneficial right of a trust prescribed in Article 21, paragraph (1), item (iii) of the Act on the Government Pension Investment Fund (Act No. 105 of 2004);

(h) a beneficial right of a trust pertaining to a protective trust agreement concluded pursuant to the provisions of Article 51, paragraph (1) of the Act on Book-Entry Transfer of Company Bonds, Shares, etc. (Act No. 75 of 2001);

(i) a beneficial right of a trust prescribed in Article 43-2, paragraph (2) of the Act or other trusts specified by a cabinet office ordinance as being similar thereto;

(j) a beneficial right of a trust prescribed in Article 6-2, paragraph (1) and Article 6-3, paragraph (2) of the Workers' Property Accumulation Promotion Act (Act No. 92 of 1971);

(k) a beneficial right of a trust falling under the category

of beneficial right in commodities investment prescribed in Article 2, paragraph (6) of the Act on Regulation of Commodities Investment Business, where the rights set forth in item (ii) of paragraph (2) of Article 2 of the Act (limited to where the Investor-Financed Business, as prescribed in that item, pertaining to that trust operates the business of making Commodities Investments or the business of making an investment (hereinafter referred to as a "Specified Investment" in this item and paragraph (3)) in a single juridical person (hereinafter referred to as a "Specified Juridical Person") by appropriating all of the trust property of that trust) and meets all of the following requirements) or any other rights similar thereto as set forth in item (vi) of paragraph (2) of that Article are acquired:

1. that the relevant Specified Juridical Person shall not invest in securities by appropriating more than 50 percent of the total value of the money and other assets pertaining to its Specified Investment; and
2. that the relevant Specified Juridical Person shall be prohibited, by laws and regulations, or its articles of incorporation, articles of endowment or any other provisions equivalent thereto, from receiving investments from two or more persons.

(ii) among the rights set forth in Article 2, paragraph (2), item (ii) of the Act, a right that has the characteristics of any one of the rights set forth in the preceding item;

(iii) among the rights set forth in Article 2, paragraph (2), item (iii) of the Act, a membership right of a general partnership company, limited partnership company or limited liability company that conducts its business by appropriating an amount exceeding 50 percent of the total investment to the investment in securities;

(iv) among the rights set forth in Article 2, paragraph (2), item (iv) of the Act, a right that has the characteristics of any one of the rights set forth in the preceding item; and

(v) among the rights set forth in Article 2, paragraph (2), item (vi) of the Act, a right that has the characteristics of any one of the rights set forth in paragraph (1) of the preceding Article.

(2) What is specified by a cabinet order, as mentioned in Article 3, item (iii), sub-item (c) of the Act, shall be the claims set forth in Article 1-3-4.

(3) Where a Specified Juridical Person set forth in paragraph (1), item (i), sub-item (k) invests in another juridical person all of the money and other assets pertaining to its Specified Invest-

ment, or all of the assets other than those managed in its Commodities Investment, that other juridical person shall be deemed to be the Specified Juridical Person for the application of the provisions of sub-items (k)1. and (k)2. of that item.

Article 2-11 (Securities to Which the Provisions of Chapter II of the Act Do Not Apply)

What is specified by a cabinet order, as mentioned in Article 3, item (v) of the Act, shall be, among those of the category set forth in Article 2, paragraph (1), item (xvii) of the Act, bonds issued by an institution established by a treaty to which Japan is a member state and for which it is required by the treaty to obtain the consent of the Japanese government for the public offering or secondary distribution thereof within Japan.

Article 2-12 (Public Offering or Secondary Distribution of Securities for Which the Notification of a Public Offering or Secondary Distribution Is Not Required)

The cases specified by a cabinet order, as mentioned in Article 4, paragraph (1), item (i) of the Act, shall be where a company (including a foreign company; hereinafter the same shall apply except in Article 27-4, item (vi) and Article 33-2, item (vi)) that is an issuer of share option certificates (limited to those regarding which the matters set forth in Article 236, paragraph (1), item (vi) of the Companies Act are specified) or, among the securities of the category set forth in Article 2, paragraph (1), item (xvii) of the Act, those that have the characteristics of share option certificates subject to conditions specified in a cabinet office ordinance (hereinafter collectively referred to as "Share Option Certificates, etc." in this Article), makes a Solicitation for Acquisition or Solicitation for Selling, etc. of the Share Option Certificates, etc. for the director, accounting advisor, corporate auditor, executive officer or employees of the company or of another company specified by a cabinet office ordinance as a company relating to the first-mentioned company.

Article 2-12-2 (Securities Equivalent to Securities Already Issued in a Foreign State)

The securities specified by a cabinet order, as mentioned in Article 4, paragraph (1), item (iv) of the Act, shall be those already issued in Japan for which no Solicitation for Newly Issued Securities, etc. (meaning a Solicitation for Newly Issued Securities, etc. as defined in paragraph (2) of that Article; hereinafter the same shall apply) was conducted in Japan at the time of the issuance.

Article 2-12-3 (Secondary Distribution of Securities for Which the Notification of a Secondary Distribution of Securities Is Not Required)

The requirements specified by a cabinet order, as mentioned in Article 4, paragraph (1), item (iv) of the Act, shall be as specified respectively in the following items, according to the categories of securities set forth therein:

(i) among the securities of the category set forth in Article 2, paragraph (1), item (xvii) of the Act, those that have the characteristics of securities of the category set forth in item (i) of that paragraph (hereinafter referred to as "Foreign Government Bonds" in this item)—to meet all of the following requirements:
  (a) that information on the sale price of the relevant Foreign Government Bonds in Japan shall be easily obtainable by using the Internet or other means;
  (b) that sales and purchases of the relevant Foreign Government Bonds or other Foreign Government Bonds issued by the issuer of the relevant Foreign Government Bonds shall be conducted in a foreign state on an ongoing basis; and
  (c) that information on the financial conditions of the issuer of the relevant Foreign Government Bonds and other information on the issuer (limited to information written in Japanese or English) shall be publicly announced by the issuer or other equivalent person, and such information shall be easily obtainable in Japan by using the Internet or other means (excluding where the issuer has submitted an annual securities report pursuant to the provisions of Article 24, paragraph (1) of the Act as applied *mutatis mutandis* under Article 27 of the Act);

(ii) among the securities of the category set forth in Article 2, paragraph (1), item (xvii) of the Act, those that have the characteristics of securities of the category set forth in item (ii) of that paragraph (hereinafter referred to as "Foreign Local Bonds" in this item)—to meet all of the following requirements:
  (a) that information on the sale price of the relevant Foreign Local Bonds in Japan shall be easily obtainable by using the Internet or other means;
  (b) that sales and purchases of the relevant Foreign Local Bonds or other Foreign Local Bonds issued by the issuer of the relevant Foreign Local Bonds shall be conducted in a foreign state on an ongoing basis; and
  (c) that information on the financial conditions of the issuer of the relevant Foreign Local Bonds and other information on the issuer (limited to information written in Japanese or English) shall be publicly announced by the issuer or other equivalent person, and such information shall be easily obtainable in Japan by using the Internet or other means (excluding where the issuer has submitted an annual securities report pursuant to the provisions of Article 24, paragraph (1) of the Act as applied *mutatis mutandis* under Article 27 of the Act);

(iii) among the securities of the category set forth in Article 2,

paragraph (1), item (xvii) of the Act, those that have the characteristics of securities of the category set forth in item (iii) of that paragraph (hereinafter referred to as the "Foreign Special Corporation Bonds" in this item)—to meet all of the following requirements:

(a) that information on the sale price of the relevant Foreign Special Corporation Bonds in Japan shall be easily obtainable by using the Internet or other means;

(b) that sales and purchases of the relevant Foreign Special Corporation Bonds or other Foreign Special Corporation Bonds issued by the issuer of the relevant Foreign Special Corporation Bonds shall be conducted in a foreign state on an ongoing basis; and

(c) that information on the accounting of the issuer of the relevant Foreign Special Corporation Bonds and other information on the issuer (limited to information written in Japanese or English, and for information on the accounting of the issuer, limited to information prepared according to standards that the Commissioner of the Financial Services Agency finds appropriate for the public interest or the protection of investors; in sub-item (d) of the following item and item (vi), sub-item (c), the same shall apply) shall be publicly announced by the issuer or other equivalent person, and such information shall be easily obtainable in Japan by using the Internet or other means (excluding where the issuer has submitted an annual securities report pursuant to the provisions of Article 24, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act));

(iv) company bond certificates (limited to those that are converted to share certificates issued by a person other than the issuer of the relevant company bond certificates where certain requirements specified in advance are satisfied; hereinafter the same shall apply in this item) and, among the securities of the category set forth in Article 2, paragraph (1), item (xvii) of the Act, those that have the characteristics of such company bond certificates (hereinafter referred to as "Overseas-Issued Convertible Company Bond Certificates" in this item and item (vi))—to meet all of the following requirements:

(a) that information on the sale price of the relevant Overseas-Issued Convertible Company Bond Certificates in Japan shall be easily obtainable by using the Internet or other means;

(b) that the relevant Overseas-Issued Convertible Company Bond Certificates shall be listed on, among the Foreign Financial Instruments Exchanges (meaning the exchanges similar to a financial instruments exchange and established under the laws and regulations of a foreign

state; in Article 12, item (vii) and Article 14-3-7, item (ii), the same shall apply), those that are designated by the Commissioner of the Financial Services Agency taking into account the status of disclosure of information on the securities listed thereon and the issuers of the securities, and trading volume and other circumstances (hereinafter referred to as a "Designated Foreign Financial Instruments Exchange" in this Article), or sales and purchases of the Overseas-Issued Convertible Company Bond Certificates shall be conducted in a foreign state on an ongoing basis;

(c) that the share certificates that shall be converted where the certain requirements specified in advance are satisfied or, among the securities of the category set forth in Article 2, paragraph (1), item (xvii) of the Act, those that have the characteristics of share certificates (hereinafter referred to as "Share Certificates" in this Article) shall be listed on a financial instruments exchange or Designated Foreign Financial Instruments Exchange; and

(d) that information on the accounting of the issuer of the relevant Overseas-Issued Convertible Company Bond Certificates and other information on the issuer shall be publicly announced by the issuer based on the regulations prescribed by the Designated Foreign Financial Instruments Exchange if the Overseas-Issued Convertible Company Bond Certificates or the Share Certificates issued by the issuer of the Overseas-Issued Convertible Company Bond Certificates are listed on a Designated Foreign Financial Instruments Exchange, or based on the laws and regulations of the foreign state (including the regulations of an international institution similar to those; hereinafter the same shall apply in this Article) in which sales and purchases of the Overseas-Issued Convertible Company Bond Certificates are conducted on an ongoing basis in other cases, and such information shall be easily obtainable in Japan by using the Internet or other means (excluding where the issuer has submitted an annual securities report pursuant to the provisions of Article 24, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act));

(v) securities of the category set forth in any one of items (v) to (vii) of paragraph (1) of Article 2 of the Act (in the following item, referred to as "Bonds, etc.") that fall under the category of Share Option Certificates, etc. (hereinafter referred to as "Bonds with Share Options" in this item) and, among the securities of the category set forth in Article 2, paragraph (1), item (xvii) of the Act, those that have the characteristics of Bonds with Share Options (hereinafter referred to as "Overseas-Issued Bonds with Share Options" in this item

and the following item)—to meet all of the following requirements:

(a) that information on the sale price of the relevant Overseas-Issued Bonds with Share Options in Japan shall be easily obtainable by using the Internet or other means;

(b) that the relevant Overseas-Issued Bonds with Share Options shall be listed on a Designated Foreign Financial Instruments Exchange, or sales and purchases of the relevant Overseas-Issued Bonds with Share Options shall be conducted in a foreign state on an ongoing basis;

(c) that the Share Certificates that shall be acquired, subscribed for or converted through the exercise of the right indicated on the relevant Overseas-Issued Bonds with Share Options shall be listed on a Designated Foreign Financial Instruments Exchange; and

(d) that information on the accounting of the issuer of the relevant Overseas-Issued Bonds with Share Options and other information on the issuer (limited to information written in Japanese or English) shall be publicly announced by the issuer based on the regulations prescribed by the Designated Foreign Financial Instruments Exchange on which the relevant Overseas-Issued Bonds with Share Options or the Share Certificates set forth in sub-item (c) above are listed, and such information shall be easily obtainable in Japan by using the Internet or other means (excluding where the issuer has submitted an annual securities report pursuant to the provisions of Article 24, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act));

(vi) Bonds, etc. (excluding Overseas-Issued Convertible Company Bond Certificates and Overseas-Issued Bonds with Share Options; hereinafter the same shall apply in this item) and, among the securities of the category set forth in Article 2, paragraph (1), item (xvii) of the Act, those that have the characteristics of Bonds, etc. (hereinafter referred to as "Overseas-Issued Bonds" in this item)—to meet all of the following requirements:

(a) that information on the sale price of the relevant Overseas-Issued Bonds in Japan shall be easily obtainable by using the Internet or other means;

(b) that the relevant Overseas-Issued Bonds shall be listed on a Designated Foreign Financial Instruments Exchange, or sales and purchases of the relevant Overseas-Issued Bonds shall be conducted in a foreign state on an ongoing basis (excluding where the redemption of principle of and payment of interest on the relevant Overseas-Issued Bonds are guaranteed by a company (limited to an issuer of the Share Certificates listed on a financial instruments exchange or Designated Foreign Financial Instruments

Exchange; hereinafter referred to as the "Parent Company" in this item) that owns, in its own name or in another person's name, the majority of the Voting Rights Held by All Shareholders, etc. (meaning the Voting Rights Held by All Shareholders, etc. as defined in Article 29-4, paragraph (2) of the Act; hereinafter the same shall apply) of the issuer of the Overseas-Issued Bonds); and

(c) that information on the accounting of the issuer of the relevant Overseas-Issued Bonds and other information on the issuer (in the cases under the parenthetic part of subitem (b) above, if the Parent Company has submitted an annual securities report pursuant to the provisions of Article 24, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act), or if information on the accounting of the Parent Company and other information on the Parent Company (limited to the information written in Japanese or English) shall be publicly announced by the Parent Company based on the regulations prescribed by the Designated Foreign Financial Instruments Exchange on which the Share Certificates of the Parent Company are listed, and such information shall be easily obtainable in Japan by using the Internet or other means, the fact that the relevant Overseas-Issued Bonds are guaranteed, the name of the Parent Company that guarantees the relevant Overseas-Issued Bonds, the details of the business of the issuer and other information specified by a cabinet office ordinance) shall be publicly announced by the issuer based on the regulations prescribed by the Designated Foreign Financial Instruments Exchange if the relevant Overseas-Issued Bonds are listed on a Designated Foreign Financial Instruments Exchange, or based on the laws and regulations of the foreign state in which sales and purchases of the relevant Overseas-Issued Bonds are conducted on an ongoing basis in other cases, and such information shall be easily obtainable in Japan by using the Internet or other means (excluding where the issuer has submitted an annual securities report pursuant to the provisions of Article 24, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act));

(vii) Share Certificates and, among the securities of the category set forth in Article 2, paragraph (1), item (xvii) of the Act, those that have the characteristics of Share Certificates (hereinafter referred to as "Overseas-Issued Share Certificates" in this item)—to meet all of the following requirements:

(a) that information on the sale price of the relevant Overseas-Issued Share Certificates in Japan shall be easily obtainable by using the Internet or other means;

(b) that the relevant Overseas-Issued Share Certificates shall be listed on a Designated Foreign Financial Instruments Exchange; and

(c) that information on the accounting of the issuer of the relevant Overseas-Issued Share Certificates and other information on the issuer (limited to information written in Japanese or English) shall be publicly announced by the issuer based on the regulations prescribed by the Designated Foreign Financial Instruments Exchange on which the relevant Overseas-Issued Share Certificates are listed, and such information shall be easily obtainable in Japan by using the Internet or other means (excluding where the issuer has submitted an annual securities report pursuant to the provisions of Article 24, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act));

(viii) among the beneficiary certificates of foreign investment trusts set forth in Article 2, paragraph (1), item (x) of the Act, those that are similar to beneficiary certificates of investment trusts set forth in Article 12, item (ii) of the Order for Enforcement of the Act on Investment Trusts and Investment Corporations (Cabinet Order No. 480 of 2000) (hereinafter referred to as "Overseas-Issued Beneficiary Certificates" in this item), and the foreign investment securities set forth in Article 2, paragraph (1), item (xi) of the Act (excluding those that have the characteristics of investment corporation bond certificates set forth in that item; hereinafter referred to as "Overseas-Issued Investment Securities" in this item)—to meet all of the following requirements:

(a) that information on the sale price of the relevant Overseas-Issued Beneficiary Certificates or the Overseas-Issued Investment Securities (hereinafter referred to as the "Relevant Overseas-Issued Beneficiary Certificates, etc." in this item) in Japan shall be easily obtainable by using the Internet or other means;

(b) that the Relevant Overseas-Issued Beneficiary Certificates, etc. shall be listed on a Designated Foreign Financial Instruments Exchange; and

(c) that information on the Relevant Overseas-Issued Beneficiary Certificates, etc. (limited to information written in Japanese or English) shall be publicly announced by the issuer thereof based on the regulations prescribed by the Designated Foreign Financial Instruments Exchange on which the Relevant Overseas-Issued Beneficiary Certificates, etc. are listed, and such information shall be easily obtainable in Japan by using the Internet or other means (excluding where the issuer has submitted an annual securities report pursuant to the provisions of Article 24, paragraph (1) of the Act as applied *mutatis mutandis*

under paragraph (5) of that Article (including where these provisions are applied *mutatis mutandis* under Article 27 of the Act));

(ix) securities of the category set forth in Article 2, paragraph (1), item (xix) of the Act (hereinafter referred to as "Securities Indicating Rights" in this item)—to meet all of the following requirements:

(a) that the relevant Securities Indicating Rights shall indicate the rights pertaining to the transactions set forth in Article 2, paragraph (22), item (iii) or (iv) of the Act pertaining to the Share Certificates, etc. (meaning Share Certificates, securities of the category set forth in item (xi) of paragraph (1) of that Article (excluding the investment corporation bond certificates mentioned in the Act on Investment Trusts and Investment Corporations and the foreign investment securities similar to investment corporation bond certificates; hereinafter referred to as the "Investment Securities" in sub-item (a)), and securities of the category set forth in item (xx) of that paragraph indicating the rights pertaining to the Share Certificates or the Investment Securities; hereinafter the same shall apply in sub-item (a)) or the Company Bond Certificates, etc. (meaning the company bond certificates and, among the securities of the category set forth in item (xvii) of that paragraph, those that have the characteristics of the company bond certificates; hereinafter the same shall apply in sub-item (a)) that meet all of the following requirements:

1. that the relevant Share Certificates, etc. or the relevant Company Bond Certificates, etc. shall be listed on a financial instruments exchange or Designated Foreign Financial Instruments Exchange, or sales and purchases of the relevant Company Bond Certificates, etc. shall be conducted in a foreign state on an ongoing basis; and
2. that information on the accounting of the issuer of the relevant Share Certificates, etc. or the relevant Company Bond Certificates, etc. and other information on the issuer (limited to information written in Japanese or English) shall be publicly announced by the issuer based on the regulations prescribed by the Designated Foreign Financial Instruments Exchange on which the relevant Share Certificates, etc. or the relevant Company Bond Certificates, etc. are listed, or based on the laws and regulations of the foreign state where sales and purchases of the relevant Share Certificates, etc. or the relevant Company Bond Certificates, etc. are conducted on an ongoing basis, and such information shall be easily obtainable in Japan by us-

ing the Internet or other means (excluding where the issuer has submitted an annual securities report pursuant to the provisions of Article 24, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act));

(b) that it shall be promised in advance to effect a transaction pertaining to a right indicated by the relevant securities Indicating Rights, at a fixed time in the future, through the exercise of that right, and the transaction shall be settled by the paying or receipt of the applicable difference; and

(c) that information on the sale price of the relevant securities Indicating Rights in Japan shall be easily obtainable by using the Internet or other means; and

(x) securities of the category set forth in Article 2, paragraph (1), item (xx)—to meet all of the following requirements:

(a) that the relevant securities shall indicate the rights pertaining to Share Certificates;

(b) that information on the sale price of the relevant securities in Japan shall be easily obtainable by using the Internet or other means;

(c) that the relevant securities shall be listed on a Designated Foreign Financial Instruments Exchange; and

(d) that information on the accounting of the issuer of the relevant securities and other information on the issuer (limited to information written in Japanese or English) shall be publicly announced by the issuer based on the regulations prescribed by the Designated Foreign Financial Instruments Exchange on which the relevant securities are listed, and such information shall be easily obtainable in Japan by using the Internet or other means (excluding where the issuer has submitted an annual securities report pursuant to the provisions of Article 24, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act)).

Article 2-12-4 (Securities, etc. Excluded from the Securities Only for Professional Investors)

(1) What is specified by a cabinet order as those that are unlikely to be owned by a large number of Professional Investors, as mentioned in Article 4, paragraph (3) of the Act, shall be the securities approved by the Commissioner of the Financial Services Agency pursuant to the provisions of a cabinet office ordinance as those that will not impair the public interest and the protection of investors if it is prescribed that those securities (excluding the securities specified by a cabinet office ordinance as being inappropriate for the protection of investors, taking into account the type, liquidity and other conditions of the securities) do not fall under the category of Securi-

ties Only for Professional Investors, where the number of owners of the securities calculated pursuant to the provisions of a cabinet office ordinance as of the last day of the most recent business year of the issuer of the securities (if the securities fall under the category of Specified Securities, the Specified Period (meaning the Specified Period as defined in Article 24, paragraph (1) of the Act as applied *mutatis mutandis* by replacing certain terms and phrases under paragraph (5) of that Article; in Article 4-2, paragraph (1), the same shall apply) pertaining to the securities; hereinafter the same shall apply in this paragraph, Article 3-4 and Article 4-2-2) and the last days of all the business years commencing within two years before the first day of the most recent business year is less than three hundred (limited to where three years have elapsed after the end of the business year (the most recent one if there are two or more of the business years) including the day on which the securities come to fall under the category of Securities Only for Professional Investors).

(2) A Solicitation for Delivery of Existing Securities, etc. (meaning a Solicitation for Delivery of Existing Securities, etc. as defined in Article 4, paragraph (2) of the Act; hereinafter the same shall apply in this paragraph and Article 3-3) specified by a cabinet order, as mentioned in Article 4, paragraph (3) of the Act, shall be a solicitation falling under any one of the following items:

(i) a Solicitation for Delivery of Existing Securities, etc. conducted by a Financial Instruments Business Operator, etc. to Professional Investors, etc. for its own benefit;

(ii) a Solicitation for Delivery of Existing Securities, etc. conducted to Non-Residents by entrusting it to a Foreign Securities Broker;

(iii) an application for sales of Share Certificates, etc. (meaning Share Certificates, etc. as defined in Article 27-2, paragraph (1) of the Act) that is conducted in response to a Tender Offer (meaning a Tender Offer as defined in paragraph (6) of that Article; in Section 1 of the following Chapter, the same shall apply); and

(iv) a Solicitation for Delivery of Existing Securities, etc. conducted to an Officer, etc. (limited to a person who purchases the relevant Securities Only for Professional Investors (limited to the purchases that are made based on an agreement under which the Officer, etc. continuously make purchases jointly with another Officer, etc. of the issuer according to a certain plan, without depending on an individual investment decision, and the amount of the individual contribution of each Officer, etc. is less than one million yen)) of the issuer of the Securities Only for Professional Investors (limited

to those set forth in the following sub-items) pertaining to the Solicitation for Delivery of Existing Securities, etc:

(a) securities of the category set forth in Article 2, paragraph (1), item (ix);

(b) among the securities of the category set forth in Article 2, paragraph (1), item (xvii) of the Act, those that have the characteristics of securities of the category set forth in item (ix) of that paragraph;

(c) the securities of the category set forth in Article 2, paragraph (1), item (xx) of the Act indicating the rights pertaining to securities of the category set forth in sub-item (a) or (b) above; or

(d) Securities Trust Beneficial Certificates whose Entrusted Securities are Securities of the category set forth in sub-item (a) or (b) above.

(3) The securities specified by a cabinet order, as mentioned in Article 4, paragraph (3), item (iv) of the Act, shall be the following Securities:

(i) securities that were Specified Listed Securities;

(ii) Over-the-Counter Traded Securities traded only in, among the Over-the-Counter Securities Markets, those in which Purchases for General Investors, etc. (meaning a Purchase for General Investors, etc. as defined in Article 67, paragraph (3) of the Act) are prohibited by the provisions of the articles of incorporation of the authorized financial instruments firms association that establishes the relevant Over-the-Counter Securities Market (hereinafter referred to as "Specified Over-the-Counter Traded Securities"); or

(iii) securities that were Specified Over-the-Counter Traded Securities.

Article 2-13 (Scope of Specified Securities)

The securities specified by a cabinet order, as mentioned in Article 5, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act) (hereinafter referred to as "Specified Securities" in this Chapter), shall be as set forth in the following items:

(i) securities of the category set forth in Article 2, paragraph (1), items (iv), (viii), (xiii) and (xv) of the Act (for the securities of the category set forth in item (xv) of that paragraph, limited to specified promissory notes mentioned in the Asset Securitization Act);

(ii) securities of the category set forth in Article 2, paragraph (1), items (x) and (xi) of the Act;

(iii) securities of the category set forth in Article 2, paragraph (1), item (xiv) of the Act (excluding Securities Trust Beneficiary Certificates);

(iv) securities of the category set forth in Article 2, paragraph (1), item (xvi) of the Act;
(v) securities of the category set forth in Article 2, paragraph (1), item (xviii) of the Act;
(vi) Securities Trust Beneficiary Certificates (limited to those whose Entrusted Securities are Securities of the category set forth in any one of the preceding items);
(vii) rights in securities investment business, etc. as defined in Article 3, item (iii) of the Act (excluding the claims set forth in Article 1-3-4); and
(viii) what is specified by a cabinet office ordinance as being equivalent to those set forth in the preceding items.

Article 3 (Securities, etc. Equivalent to Listed Securities)

The securities specified by a cabinet order, as mentioned in Article 6, paragraph (2) of the Act (including where it is applied *mutatis mutandis* under Article 12, Article 23-12, paragraph (1), Article 24, paragraph (7), Article 24-2, paragraph (3), Article 24-4-2, paragraph (5) of the Act (including where it is applied *mutatis mutandis* under Article 24-4-8, paragraph (1) and Article 24-5-2, paragraph (1) of the Act), Article 24-4-3, paragraph (2) of the Act (including where it is applied *mutatis mutandis* under Article 24-4-8, paragraph (2) and Article 24-5-2, paragraph (2) of the Act), Article 24-4-4, paragraph (5), Article 24-4-5, paragraph (2), Article 24-4-7, paragraph (5), Article 24-5, paragraph (6) and Article 24-6, paragraph (3) of the Act, and where these provisions (excluding Article 24-6, paragraph (3) of the Act) are applied *mutatis mutandis* under Article 27 of the Act; hereinafter the same shall apply in this Article), and the securities specified by a cabinet order as those of which the state of distribution is equivalent to that of the securities of the category set forth in Article 24, paragraph (1), item (i) of the Act, as mentioned in Article 24, paragraph (1), item (ii) of the Act (including where it is applied *mutatis mutandis* under paragraph (5) of that Article, and where these provisions are applied *mutatis mutandis* under Article 27 of the Act), shall be the Over-the-Counter Traded Securities, and the authorized financial instruments firms association specified by a cabinet order, as mentioned in Article 6, item (ii) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act), Article 24-7, paragraph (4), item (ii) of the Act (including where it is applied *mutatis mutandis* under paragraph (6) of that Article, and where these provisions are applied *mutatis mutandis* under Article 27 of the Act), Article 25, paragraphs (3) and (5) of the Act (including where these provisions are applied *mutatis mutandis* under Article 27 of the Act), Article 27-30-2, Article 27-30-6, paragraph (1) and Article 27-30-8, paragraph (1) of the Act shall be the authorized financial instruments firms association that registers the Over-the-Counter Traded Securities.

Article 3-2 (Securities Specified by a Cabinet Order as Mentioned in Article 15, Paragraph (3) of the Act)

What is specified by a cabinet order, as mentioned in Article 15,

paragraph (3) of the Act, shall be securities of the category set forth in Article 2, paragraph (1), items (x) and (xi) of the Act.

Article 3-2-2 (What Is Specified by a Cabinet Order as Mentioned in Article 23-8, Paragraph (2) of the Act)

What is specified by a cabinet order, as mentioned in Article 23-8, paragraph (2) of the Act, shall be as set forth in the follow items:

(i) short-term company bonds mentioned in the Insurance Business Act;

(ii) specified short-term company bonds mentioned in the Asset Securitization Act;

(iii) short-term investment corporation bonds mentioned in the Act on Investment Trusts and Investment Corporations; or

(iv) securities of the category set forth in Article 2, paragraph (1), item (xvii) of the Act (including foreign investment securities mentioned in the Act on Investment Trusts and Investment Corporations that are similar to investment corporation bond certificates; in item (iii) of the following Article, the same shall apply) that are specified by a cabinet office ordinance as being equivalent to short-term company bonds mentioned in the Act on Book-Entry Transfer of Company Bonds, Shares, etc. or those set forth in the preceding three items.

Article 3-3 (Solicitation for Which the Announcement for Solicitation for Small Number of Investors Is Not Required)

What is specified by a cabinet order, as mentioned in Article 23-13, paragraph (4) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act), shall be a Solicitation for Newly Issued Securities, etc. or Solicitation for Delivery of Existing Securities, etc. (limited to those falling under the cases specified respectively in the items of Article 23-13, paragraph (4) of the Act) for the following securities:

(i) Certificates of Right to Subscribe for Preferred Equity Investment;

(ii) securities of the category set forth in Article 2, paragraph (1), item (xv) of the Act (including those set forth in item (xvii) of that paragraph that have the characteristics of securities of the category set forth in item (xv) of that paragraph); or

(iii) specified short-term company bonds mentioned in the Asset Securitization Act, short-term company bonds mentioned in the Act on Book-Entry Transfer of Company Bonds, Shares, etc., short-term company bonds mentioned in the Insurance Business Act or short-term investment corporation bonds mentioned in the Act on Investment Trusts and Investment Corporations (including securities of the category set forth in Article 2, paragraph (1), item (xvii) of the Act that are specified by a cabinet office ordinance as being equivalent thereto).

Article 3-4 (Time Limit for the Submission of Annual Securities Report for a Foreign Person)

The period specified by a cabinet order, as mentioned in Article 24, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under paragraph (5) of that Article (including where it is applied *mutatis mutandis* under Article 27 of the Act; hereinafter the same shall apply in this Article) and Article 27 of the Act), shall be six months. However, where a foreign person who is the issuer of securities of the category set forth in any one of the items of paragraph (1) of Article 24 of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act) or items (i) to (iii) of paragraph (1) of Article 24 of the Act as applied *mutatis mutandis* under Article 24, paragraph (5) of the Act is found to be unable to submit an annual securities report within six months after the end of its business year due to its nation's laws and regulations or the practice thereof or any other compelling reasons, such a period shall be the period approved in advance by the Commissioner of the Financial Services Agency pursuant to the provisions of a cabinet office ordinance.

Article 3-5 (Scope, etc. of Securities for Which the Submission of Annual Securities Report Is Not Required)

(1) The securities specified by a cabinet order, as mentioned in the proviso clause of paragraph (1) of Article 24 of the Act, shall be share certificates.

(2) The number calculated pursuant to the provisions of a cabinet order, as mentioned in the proviso clause of paragraph (1) of Article 24 of the Act, shall be three hundred.

Article 3-6 (Number, etc. of Owners of Securities for Which the Submission of Annual Securities Report Is Not Required)

(1) The number specified by a cabinet order, as mentioned in the proviso clause of Article 24, paragraph (1) of the Act, shall be three hundred.

(2) The securities specified by a cabinet order as those of which the state of distribution is equivalent to that of Specified Listed Securities, as mentioned in Article 24, paragraph (1), item (ii) of the Act, shall be Specified Over-the-Counter Traded Securities.

(3) The securities specified by a cabinet order, as mentioned in Article 24, paragraph (1), item (iv) of the Act, shall be share certificates, Securities Trust Beneficiary Certificates whose Entrusted Securities are share certificates, and securities of the category set forth in Article 2, paragraph (1), item (xx) of the Act indicating the rights pertaining to share certificates.

(4) The number specified by a cabinet order, as mentioned in Article 24, paragraph (1), item (iv) of the Act, shall be one thousand (where the securities are Securities Only for Professional Investors, the sum of one thousand and the number of Professional Investors calculated pursuant to the provisions of a cabinet office ordinance).

Article 4 (Approval Wherein the Submission of Annual Securities Report Is Not Required)

(1) Where an issuer (excluding an issuer of securities falling under the category of Specified Securities; in the following paragraph, the same shall apply) of securities of the category set forth in Article 24, paragraph (1), item (iii) (including where it is applied *mutatis mutandis* under Article 27 of the Act; hereinafter the same shall apply in this Article) or item (iv) (including where it is applied *mutatis mutandis* under Article 27 of the Act) of the Act intends to obtain the approval prescribed in the proviso clause of paragraph (1) of Article 24 of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act), the issuer shall submit an written application for approval, attached with its articles of incorporation, a copy of its shareholders registry, and any other documents specified by a cabinet office ordinance to the Commissioner of the Financial Services Agency.

(2) Where the application for approval mentioned in the preceding paragraph is made, when the Commissioner of the Financial Services Agency finds that the applicant falls under any one of the following items, the Commissioner shall approve that it is not necessary to submit an annual securities report for each of the business years from the business year including the day on which the application is made (if the day is a day within three months after the commencement of the business year (if the person is a foreign person, within the period specified in Article 3-4; hereinafter the same shall apply in this paragraph), the immediately preceding business year) to the immediately preceding business year of the business year including the day on which the person come to no longer fall under the items (if the day is a day within three months after the commencement of the business year, the immediately preceding business year):

(i) a person in the process of liquidation;

(ii) a person who has suspended its business for a considerable period; or

(iii) an issuer of securities of the category set forth in Article 24, paragraph (1), item (iii) of the Act the number of owners of which, to be calculated pursuant to the provisions of a cabinet office ordinance, is smaller than the number specified by a cabinet office ordinance.

(3) The approval mentioned in the preceding paragraph shall be given on the condition that the person mentioned in that paragraph submits a copy of its shareholder registry and any other documents specified by a cabinet office ordinance to the Commissioner of the Financial Services Agency, pursuant to the provisions of a cabinet office ordinance, within three months after the end of each business year (limited to the business year that includes the day on which the application set forth in that paragraph is made and the business year that

ends within the period specified by a cabinet office ordinance after the day of the end of the former business year) (if the person is a foreign person, within the period specified in Article 3-4).

(4) Where the application for approval mentioned in paragraph (1) is made (excluding where the approval is given pursuant to the provision of paragraph (2)), the Commissioner of the Financial Services Agency shall, if the applicant is subject to a decision on the commencement of reorganization proceedings and the application is made within three months after the day on which the decision is made, approve that it is not necessary to submit an annual securities report for the business year that include the day on which the decision on commencement of reorganization proceedings is made.

Article 4-2 (Approval Wherein the Submission of Annual Securities Report Pertaining to Specified Securities Is Not Required)

(1) The provision of paragraph (1) of the preceding Article shall apply *mutatis mutandis* where an issuer of securities of the categories set forth in Article 24, paragraph (1), items (iii) and (iv) of the Act that fall under the category of Specified Securities intends to obtain the approval specified in the proviso clause of paragraph (1) of that Article as applied *mutatis mutandis* under paragraph (5) of that Article (including where it is applied *mutatis mutandis* under Article 27 of the Act), and the provisions of paragraphs (2) and (3) of the preceding Article shall apply *mutatis mutandis* to the approval, respectively. In this case, the phrases "the application is made" and "business year" in paragraph (2) of the preceding Article shall be deemed to be replaced with "the application is made with regard to the relevant securities" and "Specified Period" respectively, the phrase "securities of the category set forth in Article 24, paragraph (1), item (iii) of the Act" in item (iii) of paragraph (2) of the preceding Article shall be deemed to be replaced with "securities of the category set forth in Article 24, paragraph (1), item (iii) of the Act that fall under the category of Specified Securities," and the phrases "each business year" and "the business year that includes the day on which the application set forth in that paragraph is made and the business year that ends within the period specified by a cabinet office ordinance after the day of the end of the former business year" in paragraph (3) of the preceding Article shall be deemed to be replaced with "each Specified Period with regard to the relevant securities" and "the Specified Period that includes the day on which the application set forth in that paragraph is made and the Specified Period that ends within the period specified by a cabinet office ordinance after the day of the end of the former Specified Period," respectively.

(2) What is specified by a cabinet order as the amount of assets,

as mentioned in the proviso clause of Article 24, paragraph (1) of the Act as applied *mutatis mutandis* by replacing certain terms and phrases under paragraph (5) of that Article (including where it is applied *mutatis mutandis* under Article 27 of the Act; hereinafter the same shall apply in this Article), shall be as specified respectively in the following items, according to the category of Rights in Securities Investment Business, etc. set forth therein under which the relevant securities fall:

(i) the rights set forth in Article 2, paragraph (2), item (i) of the Act—the total value of assets belonging to a trust property;

(ii) the rights set forth in Article 2, paragraph (2), item (iii) of the Act—the amount of stated capital; and

(iii) the rights set forth in Article 2, paragraph (2), item (v) of the Act—the total amount of investment or contribution.

(3) The amount specified by a cabinet order, as mentioned in the proviso clause of Article 24, paragraph (1) of the Act as applied *mutatis mutandis* by replacing certain terms and phrases under paragraph (5) of that Article, shall be 100 million yen.

(4) The securities specified by a cabinet order, as mentioned in Article 24, paragraph (1), item (iv) of the Act as applied *mutatis mutandis* by replacing certain terms and phrases under paragraph (5) of that Article, shall be, among the Rights in Securities Investment Business, etc., the rights set forth in Article 2, paragraph (2), items (i), (iii) and (v) of the Act.

(5) The number specified by a cabinet order, as mentioned in Article 24, paragraph (1), item (iv) of the Act as applied *mutatis mutandis* by replacing certain terms and phrases under paragraph (5) of that Article, shall be 500.

Article 4-2-2 (Time Limitation for the Submission of Foreign Company Report)

The period specified by a cabinet order, as mentioned in Article 24, paragraphs (1) and (5) of the Act as applied by replacing certain terms and phrases under paragraph (10) of that Article (including where it is applied *mutatis mutandis* under Article 27 of the Act), shall be four months. However, where a Reporting Foreign Company (meaning a Reporting Foreign Company as defined in Article 24, paragraph (8) of the Act; hereinafter the same shall apply) is found to be unable to submit its Foreign Company Reports (meaning a Foreign Company Report as defined in paragraph (8) of that Article; hereinafter the same shall apply) within four months after the end of its business year due to the laws and regulations or practices of the state, or any other compelling reasons, the period shall be a period approved in advance by the Commissioner of the Financial Services Agency, pursuant to the provisions of a cabinet office ordinance.

Article 4-2-3 (Time Limitation for the Submission of Annual Securities Report Where a Notice Disallowing the Submission of Foreign Company Report Has Been Given)

The period specified by a cabinet order, as mentioned in Article 24, paragraph (13) of the Act (including where it is applied *mutatis mutandis* under Article 24-7, paragraph (5) of the Act (including where it is applied *mutatis mutandis* under paragraph (6) of that Article) and where these provisions are applied *mutatis mutandis* under Article 27 of the Act), shall be the period from the day on which the notice under Article 24, paragraph (12) of the Act is given until the last day of the period wherein the Annual Securities Report under paragraph (1) of that Article is to be submitted where the submission thereof has been decided pursuant to the provisions of paragraph (1) of that Article, or until the day on which one month has elapsed from the day of the notice, whichever comes later.

Article 4-2-4 (Public Notice of the Submission of Amendment Report)

(1) Public notice under Article 24-2, paragraph (2) of the Act shall be given by either of the following methods without delay after the submission of an amendment report mentioned in that paragraph:
   (i) taking measures to make the information that should be given in public notice available to many and unspecified persons by a method that uses an Electronic Data Processing System for Disclosure (meaning an Electronic Data Processing System for Disclosure as defined in Article 27-30-2 of the Act; hereinafter the same shall apply) pursuant to the provisions of a cabinet office ordinance (hereinafter referred to as "Electronic Public Notice" in this Article); or
   (ii) publication in a daily newspaper that publishes matters on current affairs, pursuant to the provisions of a cabinet office ordinance.

(2) A person who gives public notice by way of Electronic Public Notice pursuant to the provision of the preceding paragraph shall provide the public notice by way of Electronic Public Notice on an ongoing basis during the period until five years have elapsed from the day on which the person submitted the Annual Securities Report and the attachments thereto subject to the amendment by an amendment report set forth in Article 24-2, paragraph (2) of the Act.

(3) Where a person who gives public notice by way of Electronic Public Notice pursuant to the provision of paragraph (1) is unable to give public notice by way of Electronic Public Notice due to a failure in telecommunications lines or any other causes, the person shall give public notice, in lieu of Electronic Public Notice, by the method set forth in item (ii) of that paragraph or any other method specified by a cabinet office ordinance with the approval of the Commissioner of the

Financial Services Agency pursuant to the provisions of a cabinet office ordinance.

(4) Notwithstanding the provision of paragraph (2), where the Interruption of Public Notice (meaning a situation where the information that was being made available to many and unspecified persons is no longer being made available or where the information has been altered after having been made available to many and unspecified persons; hereinafter the same shall apply in this paragraph) occurs during the period in which public notice by Electronic Public Notice is to be given pursuant to the provision of that paragraph (referred to as a "Public Notice Period" in item (ii)), if all of the following conditions are met, such an Interruption of Public Notice shall not influence the effectiveness of the public notice:

(i) that with regard to the occurrence of an Interruption of Public Notice, the person giving the public notice by way of Electronic Public Notice has acted in good faith and without gross negligence, or the person has justifiable grounds;

(ii) that the total time during which the Interruption of Public Notice occurred does not exceed one-tenth of the Public Notice Period; and

(iii) that promptly after learning the occurrence of the Interruption of Public Notice, the person giving the public notice by way of Electronic Public Notice has given public notice to that effect, including the time when the Interruption of Public Notice occurred and the details of the Interruption of the Public Notice, by appending that information to the relevant public notice, pursuant to the provisions of a cabinet office ordinance.

Article 4-2-5 (Scope, etc. of Companies Required to Submit a Confirmation Letter)

(1) What is specified by a cabinet order, as mentioned in Article 24-4-2, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act), shall be an issuer of securities of the category set forth in Article 24, paragraph (1), item (i) or (ii) of the Act (including where these provisions are applied *mutatis mutandis* under Article 27 of the Act) (limited to those that fall under the categories of securities set forth in the following items):

(i) Share Certificates;

(ii) Preferred Equity Investment Certificates;

(iii) securities of the category set forth in Article 2, paragraph (1), item (xvii) of the Act that have the characteristics of securities of the category set forth in either of the preceding two items;

(iv) Securities Trust Beneficiary Certificates whose Entrusted Securities are Securities of the category set forth in any one of the preceding three items; or

(v) securities of the category set forth in Article 2, paragraph (1), item (xx) of the Act that indicate the rights pertaining to securities of the category set forth in any one of items (i) to (iii).

(2) Where the provisions of the Act are applied *mutatis mutandis* where an Amendment Report (meaning an amendment report as specified in Article 24-2, paragraph (1) of the Act; hereinafter the same shall apply in this paragraph) is submitted pursuant to the provisions of Article 7, Article 9, paragraph (1), or Article 10, paragraph (1) of the Act as applied *mutatis mutandis* by replacing terms and phrases under Article 24-2, paragraph (1) of the Act pursuant to the provision of Article 24-4-2, paragraph (4) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act; hereinafter the same shall apply in this paragraph), the deemed replacement of terms and phrases under Article 24-4-2, paragraph (4) of the Act shall be as set forth in the following table:

Provisions of the Act Subject to Replacement	Replaced Terms and Phrases	Replacing Terms and Phrases
Article 24-4-2, paragraph (1)	content of each Annual Securities Report	content of each amendment report
	Annual Securities Reports, etc.	an amendment report
	Foreign Company Reports	a document that is similar to an amendment report and prepared in English
	the relevant Foreign Company Report	a document that is similar to an amendment report and prepared in English
Article 24-4-2, paragraph (2)	together with an Annual Securities Report	together with an amendment report

(3) Where the provisions of the Act are applied *mutatis mutandis* where a Confirmation Letter (meaning a Confirmation Letter as defined in Article 24-4-2, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act); hereinafter the same shall apply) has been submitted pursuant to the provision of Article 24-4-2, paragraph (1) or (2) of the Act (including where these provisions are applied *mutatis mutandis* under paragraph (3) of that Article (including where it is applied *mutatis mutandis* under paragraph (4) of that Article) and paragraph (4) of that Article, and where these provisions are applied *mutatis mutandis* under Article 27 of the Act) under Article 24-4-2, paragraph (5) of the Act

(including where it is applied *mutatis mutandis* under Article 27 of the Act; hereinafter the same shall apply in this paragraph), the deemed replacement of terms and phrases under Article 24-4-2, paragraph (5) of the Act shall be as set forth in the following table:

Provisions of the Act Subject to Replacement	Replaced Terms and Phrases	Replacing Terms and Phrases
Article 6	statement and other documents pursuant to the provisions of paragraphs (1) and (6) of the preceding Article	Confirmation Letter

(4) Where the provisions of the Act are applied *mutatis mutandis* where the Reporting Foreign Company submits a Confirmation Letter pursuant to the provision of Article 24-4-2, paragraph (1) or (2) of the Act (including where these provisions are applied *mutatis mutandis* under Article 27 of the Act) under Article 24-4-2, paragraph (6) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act; hereinafter the same shall apply in this paragraph) (limited to where the Reporting Foreign Company has submitted Foreign Company Reports), the deemed replacement of terms and phrases under Article 24-4-2, paragraph (6) of the Act shall be as set forth in the following table:

Provisions of the Act Subject to Replacement	Replaced Terms and Phrases	Replacing Terms and Phrases
Article 24, paragraphs (8), (9) and (11) to (13)	Annual Securities Report	Confirmation Letter
	Foreign Company Report	foreign company Confirmation Letter
	Reporting Foreign Company	foreign company

Article 4-2-6 (Replacement of Terms and Phrases Concerning Amendment Confirmation Letters)

(1) Where the provisions of the Act are applied *mutatis mutandis* to the Confirmation Letter under Article 24-4-3, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act; hereinafter the same shall apply in this Article), the deemed replacement of terms and phrases under that paragraph shall be as set forth in the following table:

Provisions of the Act Subject to Replacement	Replaced Terms	Replacing Terms
Article 7	statement and other documents	Confirmation Letter
Article 9, paragraph (1)	Article 5, paragraphs (1) and (6)	the Confirmation Letter
	statement and other documents	amendment Confirmation Letter
Article 10, paragraph (1)	Securities Registration Statement	Confirmation Letter

(2) Where the provisions of the Act are applied *mutatis mutandis* where an Amendment Confirmation Letter (meaning an amendment Confirmation Letter as specified in Article 24-4-3, paragraph (1) of the Act; hereinafter the same shall apply) for a Confirmation Letter has been submitted pursuant to the provisions of Article 7, Article 9, paragraph (1) or Article 10, paragraph (1) of the Act as applied *mutatis mutandis* under Article 24-4-3, paragraph (1) of the Act pursuant to paragraph (2) of that Article (including where it is applied *mutatis mutandis* under Article 27 of the Act; hereinafter the same shall apply in this paragraph), the deemed replacement of terms and phrases under Article 24-4-3, paragraph (2) of the Act shall be as set forth in the following table:

Provisions of the Act Subject to Replacement	Replaced Terms and Phrases	Replacing Terms and Phrases
Article 6	statement and other documents pursuant to the provisions of paragraphs (1) and (6) of the preceding Article	amendment Confirmation Letter

(3) Where the provisions of the Act are applied *mutatis mutandis* where a foreign company submits an Amendment Confirmation Letter for a Confirmation Letter submitted thereby pursuant to the provisions of Article 7, Article 9, paragraph (1) or Article 10, paragraph (1) of the Act as applied *mutatis mutandis* under Article 24-4-3, paragraph (1) of the Act pursuant to paragraph (3) of that Article (including where it is applied *mutatis mutandis* under Article 27 of the Act; hereinafter the same shall apply in this paragraph), the deemed replacement of terms and phrases under Article 24-4-3, paragraph (3) of the Act shall be as set forth in the following table:

Provisions of the Act Subject to Replacement	Replaced Terms and Phrases	Replacing Terms and Phrases
Article 24, paragraph (8)	Annual Securities Reports	an amendment Confirmation Letter
	(including foreign companies that have submitted Annual Securities Reports pursuant to the provision of Article 23-3, paragraph (4); hereinafter referred to as a "Reporting Foreign Company")	(limited to those that submit a Foreign Company Report)
	Annual Securities Reports under paragraph (1) and the attachments thereto under paragraph (6) (hereinafter referred to as "Annual Securities Reports, etc." in this Article)	an amendment Confirmation Letter
	similar to Annual Securities Reports, etc. Disclosure in a Foreign State (meaning that the relevant document is made available for public inspection in a foreign state based on laws and regulations of that state (including the rules prescribed by the operator of a Foreign Financial Instruments Market and others specified by a cabinet office ordinance); in Article 24-4-7, paragraph (6) and Article 24-5, paragraph (7), the same shall apply) is conducted	stating the matters to be stated in an amendment Confirmation Letter
	Foreign Company Report	foreign company amendment Confirmation Letter

Provisions of the Act Subject to Replacement	Replaced Terms and Phrases	Replacing Terms and Phrases
Article 24, paragraph (9)	Foreign Company Report	foreign company amendment Confirmation Letter
	and a document stating the matters specified by a cabinet office ordinance as those necessary and appropriate for the public interest or the protection of investors, among the matters not stated in the Foreign Company Report, and any other documents	any other documents
Article 24, paragraph (11)	Reporting Foreign Company	foreign company (limited to those that submit a Foreign Company Report)
	Foreign Company Report	foreign company amendment Confirmation Letter
	to be an Annual Securities Report	to be an amendment Confirmation Letter
	Annual Securities Report, etc.	amendment Confirmation Letter

Article 4-2-7 (Scope, etc. of Companies Required to Submit Internal Control Reports)

(1) What is specified by a cabinet order, as mentioned in Article 24-4-4, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act), shall be an issuer of securities of the category set forth in Article 24, paragraph (1), item (i) or (ii) of the Act (including where these provisions are applied *mutatis mutandis* under Article 27 of the Act) (limited to those that fall under the category of securities set forth in the following items):

(i) Share Certificates;

(ii) Preferred Equity Investment Certificates;

(iii) securities of the category set forth in Article 2, paragraph (1), item (xvii) of the Act that have the characteristics of securities of the category set forth in either of the preceding two items;

(iv) Securities Trust Beneficiary Certificates whose Entrusted Securities are securities of the category set forth in any one of the preceding three items; or

(v) securities of the category set forth in Article 2, paragraph (1), item (xx) of the Act that indicate the rights

pertaining to securities of the category set forth in any one of items (i) to (iii).

(2) Where the provisions of the Act are applied *mutatis mutandis* where an Internal Control Report (meaning an Internal Control Report as defined in Article 24-4-4, paragraph (1) of the Act; hereinafter the same shall apply) and the attachments thereto have been submitted pursuant to the provisions of paragraph (1) or (2) of that Article (including where these provisions are applied *mutatis mutandis* under paragraph (3) of that Article, and where these provisions are applied *mutatis mutandis* under Article 27 of the Act; hereinafter the same shall apply in this Article and the following Article) and Article 24-4-4, paragraph (4) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act) under Article 24-4-4, paragraph (5) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act; hereinafter the same shall apply in this paragraph), the deemed replacement of terms and phrases under Article 24-4-4, paragraph (5) of the Act shall be as set forth in the following table:

Provisions of the Act Subject to Replacement	Replaced Terms and Phrases	Replacing Terms and Phrases
Article 6	a statement and other documents pursuant to the provisions of paragraphs (1) and (6) of the preceding Article	an Internal Control Report and the attachments thereto

(3) Where the provisions of the Act are applied *mutatis mutandis* where a Reporting Foreign Company submits an Internal Control Report under Article 24-4-4, paragraph (1) or (2) of the Act pursuant to the provision of paragraph (6) of that Article (including where it is applied *mutatis mutandis* under Article 27 of the Act; hereinafter the same shall apply in this paragraph) (limited to where the Reporting Foreign Company has submitted Foreign Company Reports), the deemed replacement of terms and phrases under Article 24-4-4, paragraph (6) of the Act shall be as set forth in the following table:

Provisions of the Act Subject to Replacement	Replaced Terms and Phrases	Replacing Terms and Phrases
Article 24, paragraphs (8), (9) and (11) to (13)	Foreign Company Report	foreign company Internal Control Report
	Reporting Foreign Company	foreign company
	Annual Securities Report	Internal Control Report

Article 4-2-8 (Replacement of Terms Concerning Amended Internal Control Reports)

(1) When the provisions of the Act are applied *mutatis mutandis* to the Internal Control Report and attachments thereto under Article 24-4-5, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act; hereinafter the same shall apply in this Article), the deemed replacement of terms pursuant to the provisions of that paragraph shall be as set forth in the following table:

Provisions of the Act Subject to Replacement	Replaced Terms	Replacing Terms
Article 7	a statement and other documents	an Internal Control Report and the attachments thereto
Article 9, paragraph (1)	a statement and other documents pursuant to the provisions of Article 5, paragraphs (1) and (6) or	an Internal Control Report and the attachments thereto and a statement and other documents pursuant to the provisions of
	a statement and other documents	an Amendment Report
Article 10, paragraph (1)	a Securities Registration Statement	an Internal Control Report and the attachments thereto

(2) When the provisions of the Act are applied *mutatis mutandis* to the cases where an Amendment Report (meaning an amendment report as mentioned in 24-4-5, paragraph (1) of the Act; hereinafter the same shall apply in this Article and the following Article) has been submitted with respect to an Internal Control Report and the attachments thereto pursuant to the provisions of Article 7, Article 9, paragraph (1), or Article 10, paragraph (1) of the Act as applied *mutatis mutandis* under Article 24-4-5, paragraph (1) of the Act (including where it is

applied *mutatis mutandis* under Article 27 of the Act; hereinafter the same shall apply in this paragraph), the deemed replacement of terms under Article 24-4-5, paragraph (2) of the Act shall be as set forth in the following table:

Provisions of the Act Subject to Replacement	Replaced Terms	Replacing Terms
Article 6	copies of the statement and other documents pursuant to the provisions of paragraphs (1) and (6) of the preceding Article	an amendment report

(3) When the provisions of the Act are applied *mutatis mutandis* under Article 24-4-5, paragraph (3) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act; hereinafter the same shall apply in this paragraph) to the cases where an Amendment Report is submitted with respect to an Internal Control Report submitted by a foreign company pursuant to the provisions of Article 7, Article 9, paragraph (1), or Article 10, paragraph (1) of the Act as applied *mutatis mutandis* by replacing certain terms under Article 24-4-5, paragraph (1) of the Act, the deemed replacement of terms pursuant to the provisions of Article 24-4-5, paragraph (3) of the Act shall be as set forth in the following table:

Provisions of the Act Subject to Replacement	Replaced Terms	Replacing Terms
Article 24, paragraph (8)	submit Annual Securities Reports	submit an amendment report
	submitted Annual Securities Reports	submitted an amendment report
	including foreign companies that have submitted Annual Securities Reports pursuant to the provisions of Article 23-3, paragraph (4); hereinafter referred as to as a "Reporting Foreign Company")	limited to foreign companies that have submitted Foreign Company Reports
	Annual Securities Reports under paragraph (1) and the documents to be attached thereto under paragraph (6) (hereinafter referred to as "Annual Securities Reports, etc." in this Article)	an amendment report
	document that is prepared in English and similar to Annual Securities Reports, etc. Disclosed in a Foreign State (meaning that the relevant document is made available for public inspection in a foreign state based on laws and regulations of that state (including the rules prescribed by the operator of a Foreign Financial Instruments Market and others specified by a cabinet office ordinance); in Article 24-4-7, paragraph (6) and Article 24-5, paragraph (7), the same shall apply)	document that is prepared in English and states matters to be stated in an amendment report
	"Foreign Company Reports"	"Foreign Company Amendment Reports"
Article 24, paragraph (9)	Foreign Company Report	Foreign Company Amendment Report

Provisions of the Act Subject to Replacement	Replaced Terms	Replacing Terms
	a document stating the matters specified by a cabinet office ordinance as those necessary and appropriated for the public interest or the protection of investors, among the matters stated in the Foreign Company Reports, and any other documents	any other documents
Article 24, paragraph (11)	Reporting Foreign Company	foreign company (limited to one that has submitted a Foreign Company Report)
	Foreign Company Report	Foreign Company Amendment Report
	to be an Annual Securities Reports	to be an amendment report
	Annual Securities Report, etc.	amendment report

Article 4-2-9 (Replacement of Terms Concerning Liability for Damages with Respect to Internal Control Reports)

When the provisions of the Act are applied *mutatis mutandis* under Article 24-4-6 of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act; the same shall apply hereinafter in this Article) to the cases where an Internal Control Report (including an Amendment Report thereof) contains any false statement on material matters, or lacks a statement on important matters that should be stated or on a material fact that is necessary for avoiding misunderstanding, the details of the replacement of terms pursuant to the provisions of Article 24-4-6 of the Act shall be as set forth in the following table:

Provisions of the Act Subject to Replacement	Replaced Terms	Replacing Terms
Article 22, paragraph (2)	the preceding paragraph	the preceding paragraph as applied *mutatis mutandis* under Article 24-4-6

Article 4-2-10 (Scope of Companies That Shall Submit Quarterly Securities Reports)

(1) The companies and others who act as an issuer specified by a cabinet order, as mentioned in Article 24-4-7, paragraph (1) of

the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act; the same shall apply hereinafter in this Article) shall be the issuer of securities (limited to those falling under any one of the following items) of the category set forth in Article 24, paragraph (1), item (i) or (ii) of the Act (including where these provisions are applied *mutatis mutandis* under Article 27 of the Act):

(i) Share Certificates;

(ii) Preferred Equity Investment Certificates;

(iii) securities of the category set forth in Article 2, paragraph (1), item (xvii) of the Act that have the characteristics of Securities of the category set forth in either of the preceding two items;

(iv) Securities Trust Beneficiary Certificates for which Entrusted Securities fall under any one of the categories of Securities set forth in the preceding three items; and

(v) Securities set forth in Article 2, paragraph (1), item (xx) of the Act that indicate the rights pertaining to Securities of the category set forth in any one of items (i) to (iii).

(2) The period specified by a cabinet order as being excluded from each three-month period of the business years, as mentioned in Article 24-4-7, paragraph (1) of the Act, shall be the last period of each business year.

(3) The period of not exceeding 45 days specified by a cabinet order, as mentioned in Article 24-4-7, paragraph (1) of the Act, shall be 45 days.

(4) The period of not exceeding 60 days specified by a cabinet order, as mentioned in Article 24-4-7, paragraph (1) of the Act, shall be the period specified in either of the following items according to the categories of Quarterly Period (meaning each three-month period of the business year as prescribed in Article 24-4-7, paragraph (1) of the Act, the same shall apply hereinafter in this paragraph) set forth therein:

(i) the Quarterly Period immediately following the first Quarterly Period of each business year—60 days; or

(ii) any Quarterly Period other than that set forth in the preceding item—45 days.

(5) When the provisions of the Act are applied *mutatis mutandis* under Article 24-4-7, paragraph (4) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act; hereinafter the same shall apply in this paragraph and the following paragraph) to a Quarterly Securities Report (meaning a Quarterly Securities Report as defined in Article 24-4-7, paragraph (1) of the Act; hereinafter the same shall apply), the details of the deemed replacement of terms pursuant to the provisions of Article 24-4-7, paragraph (4) of the Act shall be as set forth in the following table:

Provisions of the Act Subject to Replacement	Replaced Terms	Replacing Terms
Article 9, paragraph (1)	statement and other documents pursuant to the provisions of Article 5, paragraphs (1) and (6) or Article 7	Quarterly Securities Report or a statement and other documents pursuant to the provisions of Article 7

(6) When the provisions of the Act are applied *mutatis mutandis* under Article 24-4-7, paragraph (4) of the Act to the cases where a Quarterly Securities Report and its Amendment Report (meaning an Amendment Report as defined in that paragraph; hereinafter the same shall apply in this Article and the following Article) contain any false statement on material matters, or lack a statement on material matters that are to be stated or on a material fact that is necessary for avoiding misunderstanding, the details of the deemed replacement of terms pursuant to the provisions of that paragraph shall be as set forth in the following table:

Provisions of the Act Subject to Replacement	Replaced Terms	Replacing Terms
Article 22, paragraph (1)	Securities Registration Statement	Quarterly Securities Report or its amendment report

(7) When the provisions of the Act are applied *mutatis mutandis* under Article 24-4-7, paragraph (5) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act) to the cases where a Quarterly Securities Report has been submitted pursuant to the provisions of Article 24-4-7, paragraph (1) or (2) (including where these provisions are applied *mutatis mutandis* under Article 24-4-7, paragraph (3) of the Act and the cases where these provisions are applied *mutatis mutandis* under Article 27 of the Act; hereinafter the same shall apply in this Article and the following Article) or the cases where an Amendment Report on that Quarterly Securities Report has been submitted pursuant to the provisions of Article 7, Article 9, paragraph (1) and Article 10, paragraph (1) of the Act as applied *mutatis mutandis* under Article 24-4-7, paragraph (4) of the Act, the details of the deemed replacement of terms pursuant to the provisions of Article 24-4-7, paragraph (5) of the Act shall be as set forth in the following table:

Provisions of the Act Subject to Replacement	Replaced Terms	Replacing Terms
Article 6	copies of the statement and other documents under the provisions of paragraphs (1) and (6) of the preceding Article	copies of the relevant Quarterly Securities Report and amendment report

(8) The period specified by a cabinet order, as mentioned in Article 24-4-7, paragraph (10) of the Act (including cases where it is applied *mutatis mutandis* under Article 27 of the Act), shall be the period commencing on the day on which notice is given pursuant to the provisions of Article 24-4-7, paragraph (9) of the Act ending on whichever is the later of the last day of the period in which a Quarterly Securities Report is required to be submitted under paragraph (1) of that Article if it is to be submitted pursuant to the provisions of that paragraph or the day on which 15 days have elapsed from the period commencing day.

(9) When the provisions of the Act are applied *mutatis mutandis* under Article 24-4-7, paragraph (11) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act; hereinafter the same shall apply in this paragraph) to the cases where an Amendment Report is submitted with respect to a Foreign Company Quarterly Securities Report (meaning a Foreign Company Quarterly Securities Report as defined in Article 24-4-7, paragraph (6) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act)) and its Supplementary Documents (meaning Supplementary Documents as defined in Article 24-4-7, paragraph (7) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act)) that were submitted by a Reporting Foreign Company pursuant to the provisions of Article 7, Article 9, paragraph (1) or Article 10, paragraph (1) of the Act as applied *mutatis mutandis* by replacing certain terms under Article 24-4-7, paragraph (4) of the Act, the details of the deemed replacement of terms pursuant to the provisions of Article 24-4-7, paragraph (11) of the Act shall be as set forth in the following table:

Provisions of the Act Subject to Replacement	Replaced Terms	Replacing Terms
Article 24-4-7, paragraph (6)	Reporting Foreign Company required to submit Quarterly Securities Reports pursuant to the provisions of paragraph (1)	Reporting Foreign Company required to submit amendment reports for any Foreign Company Quarterly Securities Report and its Supplementary Documents submitted by that Reporting Foreign Company pursuant to the provisions of Article 7, Article 9, paragraph (1), and Article 10, paragraph (1) of the Act as applied *mutatis mutandis* by replacing certain terms under paragraph (4)
	Quarterly Securities Reports	amendment reports
	Foreign Company Quarterly Securities Reports	amendment reports for Foreign Company Quarterly Securities Reports
Article 24-4-7, paragraph (7)	Foreign Company Quarterly Securities Reports	amendment reports for Foreign Company Quarterly Securities Reports
Article 24-4-7, paragraph (8)	Foreign Company Quarterly Securities Reports	amendment reports for Foreign Company Quarterly Securities Reports
	Quarterly Securities Reports	amendment reports

Article 4-2-11 (Replacement of Terms Concerning Confirmation Letters with Respect to Quarterly Securities Reports)

(1) When the provisions of the Act are applied *mutatis mutandis* under Article 24-4-8, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act; hereinafter the same shall apply in this Article), to the cases where a Quarterly Securities Report is submitted pursuant to the provisions of Article 24-4-7, paragraph (1) or (2) of the Act or where an Amendment Report is submitted pursuant to

Article 7, Article 9, paragraph (1) or Article 10, paragraph (1) of the Act as applied *mutatis mutandis* by replacing certain terms under Article 24-4-7, paragraph (4) of the Act, the details of the deemed replacement of terms pursuant to the provisions of Article 24-4-8, paragraph (1) of the Act shall be as set forth in the following table:

Provisions of the Act Subject to Replacement	Replaced Terms	Replacing Terms
Article 24-4-2, paragraph (1)	, together with an Annual Securities Report	, together with a Quarterly Securities Report

Article 4-2-12 (Due Date for Submitting a Semiannual Securities Report When There Is Notice That the Submission of Foreign Company Semiannual Securities Reports Is Not Permitted)

The period specified by a cabinet order, as mentioned in Article 24-5, paragraph (11) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act), shall be the period commencing on the day on which the notice is given pursuant to the provisions of Article 24-5, paragraph (10) of the Act and ending on whichever is the later of the last day of the period in which a Semiannual Securities Report under paragraph (1) of that Article is required to be submitted if it is to be submitted pursuant to the provisions of that paragraph or the day on which 15 days have elapsed from the period commencing day.

Article 4-2-13 (Replacement of Terms Concerning Confirmation Letters with Respect to Semiannual Securities Reports)

When the provisions of the Act are applied *mutatis mutandis* under Article 24-5-2, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act) to the cases where a Semiannual Securities Report is submitted pursuant to the provisions of Article 24-5, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 24-5, paragraph (3) of the Act as applied *mutatis mutandis* under Article 27 of the Act) and the cases where an Amendment Report (meaning an Amendment Report as defined in Article 24-5, paragraph (5)) is submitted pursuant to the provisions of Article 7, Article 9, paragraph (1) or Article 10, paragraph (1) of the Act as applied *mutatis mutandis* by replacing certain terms pursuant to Article 24-5, paragraph (5) of the Act (including where it is applied *mutatis mutandis* pursuant to Article 27 of the Act; hereinafter the same shall apply in this Article), the details of the deemed replacement of terms pursuant to the provisions of Article 24-5-2, paragraph (1) of the Act shall be as set forth in the following table:

Provisions of the Act Subject to Replacement	Replaced Terms	Replacing Terms
Article 24-4-2, paragraph (1)	, together with an Annual Securities Report	, together with a Semiannual Securities Report

Article 4-3 (Share Certificates, etc., Equivalent to Listed Share Certificates)

(1) Share certificates specified by a cabinet order, as mentioned in Article 24-6, paragraph (1), shall be those falling under the category of Over-the-Counter Traded Securities.

(2) Securities specified by a cabinet order, as mentioned in Article 24-6, paragraph (1), shall be as set forth in the following items:

(i) Securities Trust Beneficiary Certificates the Entrusted Securities are share certificates listed on a Financial Instruments Exchange or are share certificates mentioned in the preceding paragraph;

(ii) Securities Trust Beneficiary Certificates (limited to those the Entrusted Securities of which are share certificates, and excluding those falling under the preceding item) that fall under the category of Listed Securities (meaning securities listed on a Financial Instruments Exchange; hereinafter the same shall apply in item (iv)) or the category of Over-the-Counter Traded Securities;

(iii) securities of the category set forth in Article 2, paragraph (1), item (xx) of the Act that indicate rights pertaining to share certificates listed on a Financial Instruments Exchange or share certificates mentioned in the preceding paragraph; and

(iv) securities set forth in Article 2, paragraph (1), item (xx) of the Act (limited to those indicating rights pertaining to share certificates, and excluding those falling under the preceding item) that fall under the category of Listed Securities or the category of Over-the-Counter Traded Securities.

Article 4-4 (Companies Having Close Relationship)

(1) What is specified by a cabinet order, as mentioned in Article 24-7, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act), shall be companies of the categories set forth in the following items:

(i) a company that owns a majority of the Voting Rights of All Shareholders, etc. of a Subsidiary Company Submitting Annual Securities Reports (meaning a Subsidiary Company Submitting Annual Securities Reports as defined in Article 24-7, paragraph (1) (including where it

is applied *mutatis mutandis* under Article 27 of the Act); the same shall apply hereinafter in this item and the following item, and Article 4-7, paragraph (1), Article 39, paragraph (3), and Article 41-2, paragraph (3)) in the name of its own or another person (or under a fictitious name; hereinafter the same shall apply in this Article and Article 4-7); and

(ii) a company where it holds a majority of the Voting Rights of All Shareholders of a Juridical Person, etc. (meaning a juridical person or other collective entities; hereinafter the same shall apply) held by All the Shareholders, etc. in the name of its own or another person and where the company and the juridical person, etc. together hold a majority of the Voting Rights of All Shareholders of a Subsidiary Company Submitting Annual Securities Reports in the names of their own or other persons.

(2) Where a company holds a majority of the Voting Rights of All Shareholders of a juridical person, etc. (hereinafter referred to as the "Controlled Juridical Person, etc." in this paragraph and Article 4-7) in the name of its own or another person and where the company and the Controlled Juridical Person, etc. together hold a majority of the Voting Rights of All Shareholders of another juridical person, etc. in the names of their own or other persons, the provisions of the Article 4-4, paragraph (1), item (ii) and this paragraph shall be applied by deeming the other juridical person, etc. to be a Controlled Juridical Person, etc. of the company.

(3) In the cases under the preceding two paragraphs, the voting rights of the person mentioned in those provisions shall include those with respect to shares or equity interests that cannot be asserted against the issuer pursuant to Article 147, paragraph (1) or Article 148, paragraph (1) of the Act on Book-Entry Transfer of Company Bonds, Shares, etc. (including where these provisions are applied *mutatis mutandis* under Article 228, paragraph (1), Article 235, paragraph (1), Article 239, paragraph (1) and Article 276 (limited to item (ii)) of the same Act).

Article 4-5 (Due Date for Submitting a Parent Company, etc. Status Report on a Foreign Company)

The period specified by a cabinet order, as mentioned in Article 24-7, paragraph (1) (including where it is applied *mutatis mutandis* under paragraph (6) of that Article and where these provisions are applied *mutatis mutandis* under Article 27 of the Act) of the Act shall be three months. However, when it is found that a foreign company (or, when it is applied *mutatis mutandis* under Article 24-7, paragraph (6) of the Act, a foreign person) as a Parent Company, etc. (meaning a Parent Company, etc. as defined in Article 24-7, paragraph (1); the same shall apply in Article 4-8 of this cabinet order) is unable to

submit a Parent Company, etc. Status Report (meaning a Parent Company, etc. Status Report as defined in Article 24-7, paragraph (1) of the Act; hereinafter the same shall apply) within three months after the end of each business year due to laws or practices in the home country or any other compelling reasons, the period shall be as approved by the Commissioner of the Financial Services Agency in advance pursuant to the provisions of a cabinet office ordinance.

Article 4-6 (Replacement of Terms Concerning Amendment to Parent Company, etc. Status Reports)

When the provisions of the Act are applied *mutatis mutandis* under Article 24-7, paragraph (3) of the Act to Parent Company, etc. Status Reports, as mentioned in Article 24-7, paragraph (1), the details of the deemed replacement of terms pursuant to the provision of paragraph (3) of that Article shall be as set forth in the following table:

Provisions of the Act Subject to Replacement	Replacing Terms	Replaced Terms
Article 9, paragraph (1)	statement and other documents pursuant to the provisions of Article 5, paragraphs (1) and (6) or Article 7,	Parent Company, etc. Status Report or an amendment report pursuant to the provisions of Article 7,

Article 4-7 (Those Other Than Companies Having Close Relationship)

(1) Those other than the companies specified by a cabinet order, as mentioned in Article 24-7, paragraph (1) of the Act as applied *mutatis mutandis* by replacing certain terms under Article 24-7, paragraph (6) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act) shall be as set forth in the following items:

(i) a Cooperative-Structured Financial Institution (meaning an issuer of securities as set forth in Article 2, paragraph (1), item (vii) of the Act (including those set forth in Article 2, paragraph (1), item (xvii) of the Act that have the characteristics of those securities)) that holds a majority of the Voting Rights of All Shareholders of a Subsidiary Company Submitting Annual Securities Reports in the name of its own, another person or any other persons specified by a cabinet office ordinance (hereinafter referred to as a "Cooperative Structured Financial Institution, etc." in this Article); and

(ii) a Cooperative Structured Financial Institution, etc. where the Cooperative Structured Financial Institution, etc. and its Controlled Juridical Person, etc. together hold a majority of the Voting Rights of All Shareholders of a Subsidiary Company Submitting Annual Securities Reports in the names of their own or any other persons.

(2) Where a Cooperative Structured Financial Institution, etc. and its Controlled Juridical Person, etc. together hold a majority of the Voting Rights of All Shareholders of another Juridical Person, etc. in the names of their own or any other persons, the provisions of Article 4-7, paragraph (1), item (ii) and this paragraph shall be applied by deeming the other Juridical Person, etc. to be a Controlled Juridical Person, etc. of the Cooperative Structured Financial Institution, etc.

(3) In the cases under the preceding two paragraphs, the provisions of Article 4-4, paragraph (3) shall be applied *mutatis mutandis* to the voting rights held by the person prescribed in the relevant paragraph.

Article 4-8 (Replacement of Terms Concerning Submission of Parent Company, etc. Status Report of by Person Other Than Company)

When the provisions of the Act are applied *mutatis mutandis* under Article 24-7, paragraph (6) of the Act to the cases where a Parent Company, etc. as defined in Article 24-7, paragraph (1) of the Act is a person other than a company, the details of the deemed replacement of terms pursuant to the provisions of Article 24-7, paragraph (6) of the Act shall be as set forth in the following table:

Provisions of the Act Subject to Replacement	Replaced Terms	Replacing Terms
Article 24-7, paragraph (1)	foreign company	foreign person

Article 4-9 (Replacement of Terms Where Issuer Is Not Company)

When the provisions of the Act are applied *mutatis mutandis* under Article 27 of the Act to the cases where an issuer is not a company, the details of the deemed replacement of terms pursuant to the provisions of Article 27 of the Act shall be as set forth in the following table:

Provisions of the Act Subject to Replacement	Replaced Terms	Replacing Terms
Article 24, paragraph (10)	foreign company	foreign person

Article 4-10 (The Scope of Securities, etc. for Which Submission of Annual Securities Reports Are Not Required with Respect to the Issuer That Is Not a Company)

(1) The securities specified by a cabinet order, as mentioned in the proviso clause of Article 24, paragraph (1) of the Act (limited to where it is applied *mutatis mutandis* under Article 27 of the Act; hereinafter the same shall apply in the following

paragraph and the following Article) shall be Preferred Equity Securities.

(2) The number calculated pursuant to the provisions of a cabinet order, as mentioned in the proviso clause of Article 24, paragraph (1) of the Act, shall be three hundred.

Article 4-11 (The Amount of Assets, etc. for Which Submission of Annual Securities Reports Is Not Required with Respect to the Issuer That Is Not a Company)

(1) What is specified by a cabinet order, as the amount of assets as mentioned in the proviso clause of Article 24, paragraph (1) of the Act, shall be the amount of net assets as shown on the balance sheet of the relevant Incorporated Educational Institution, etc.

(2) The amount specified by a cabinet order, as mentioned in the proviso clause of Article 24, paragraph (1) of the Act, shall be one hundred million yen.

(3) The number specified by a cabinet order, as mentioned in the proviso clause of Article 24, paragraph (1) of the Act, shall be three hundred.

(4) The securities specified by a cabinet order, as mentioned in Article 24, paragraph (1), item (iv) of the Act (limited to where it is applied *mutatis mutandis* under Article 27 of the Act; hereinafter the same shall apply in the following paragraph) shall be preferred equity investment certificates and claims as prescribed in Article 1-3-4.

(5) The number specified by a cabinet order, as mentioned in Article 24, paragraph (1), item (iv) of the Act, shall be the number specified respectively in the following items, according to the categories of Securities set forth therein:

(i) Preferred Equity Investment Certificates—one thousand (or, where the relevant Preferred Equity Investment Certificates are Securities for Professional Investors, one thousand plus the number of Professional Investors calculated pursuant to the provisions of a cabinet office ordinance); and

(ii) the claims mentioned in Article 1-3-4—five hundred.

Article 5 (Issuers of Foreign Bonds Who Are Not Required to Submit Semiannual Securities Reports, etc.)

An issuers of those among the securities of the category set forth in Article 2, paragraph (1), item (xvii) of the Act that have the characteristics of securities set forth in item (i) or (ii) of that paragraph, or an issuers of those among the securities of the category set forth in item (xvii) of that paragraph that have the characteristics of securities listed in item (iii) of that paragraph (limited to issuers designated by the Commissioner of the Financial Services Agency as those who will not impair the public interest or the protection of investors even if they are not required to submit Semiannual Securi-

ties Reports and Extraordinary Reports (meaning a Semiannual Securities Report and Extraordinary Report as defined in Article 24-5 of the Act as applied *mutatis mutandis* under Article 27 of the Act; hereinafter the same shall apply in this Article)) shall not be required to submit Semiannual Securities Reports and Extraordinary Reports.

Chapter III: Disclosure Required for Tender Offer

Section 1 Tender Offer for Share Certificates, etc. by Persons Other Than the Issuer

Article 6 (Securities, etc. That Must Be Purchased by Means of a Tender Offer)

(1) What is specified by a cabinet order, as securities mentioned in Article 27-2, paragraph (1) of the Act, shall be the following securities (excluding share certificates pertaining to shares of which voting rights (including the voting rights of the securities that may not be asserted against the issuer pursuant to the provisions of Article 147, paragraph (1) or Article 148, paragraph (1) of the Act on Book-Entry Transfer of Company Bonds, Shares, etc. (including where these provisions are applied *mutatis mutandis* under Article 228, paragraph (1) of that Act)) may not be exercised for all the matters that may be resolved at a shareholders meeting (in Article 14-5-2, referred to as "Shares Without Voting Rights") or other securities specified by a cabinet office ordinance; hereinafter referred to as "Share Certificates, etc." in this Section):

(i) share certificates, share option certificates, and company bond certificates with share options;

(ii) securities or certificates issued by a foreign person that have the characteristics of securities of the category set forth in the preceding item;

(iii) Investment Securities, etc.;

(iv) Securities Trust Beneficiary Certificates whose Entrusted Securities are securities of the category set forth in any one of the preceding three items; and

(v) securities of the category set forth in Article 2, paragraph (1), item (xx) of the Act that indicate the rights pertaining to securities of the category set forth in any one of items (i) to (iii).

(2) What is specified by a cabinet order as securities of which the state of distribution can be regarded as being equivalent to that of Specified Listed Securities, as mentioned in Article 27-2, paragraph (1) of the Act, shall be Specified Over-the-Counter Traded Securities.

(3) What is specified by a cabinet order as being similar to the acceptance of a transfer for value of Share Certificates, etc., as

mentioned in Article 27-2, paragraph (1) of the Act, shall be as follows:

(i) pre-agreement for a sale or purchase of Share Certificates, etc. (limited to where the relevant party holds the right to complete the sale or purchase and acquires the position as a buyer through the exercise of that right);

(ii) acquisition of an Option (meaning an Option as defined in Article 2, paragraph (1), item (xix) of the Act; hereinafter the same shall apply) pertaining to a sale or purchase of Share Certificates, etc. (limited to an Option causing the person exercising the Option to acquire the position as a buyer in the sale or purchase through that exercise); and

(iii) any other acts specified by a cabinet office ordinance.

Article 6-2 (Purchase, etc. Exempted from Tender Offer)

(1) The purchases, etc. of Share Certificates, etc. specified by a cabinet order, as mentioned in the proviso clause of Article 27-2, paragraph (1) of the Act, shall be the following Purchases, etc. (meaning a Purchase, etc. as defined in that paragraph; hereinafter the same shall apply in this Section) of Share Certificates, etc.:

(i) a Purchase, etc. of Share Certificates, etc. made by a holder of the right to receive an allotment of shares through the exercise of that right;

(ii) a Purchase, etc. of Share Certificates, etc. made by a holder of a beneficiary certificate of an investment trust as set forth in Article 12, item (i) of the Order for Enforcement of the Act on Investment Trusts and Investment Corporations through the exchange of that beneficiary certificate under sub-item (a) of that item;

(iii) a Purchase, etc. of Share Certificates, etc. made by a holder of a beneficiary certificate of an investment trust as set forth in Article 12, item (ii) of the Order for Enforcement of the Act on Investment Trusts and Investment Corporations through the exchange of that beneficiary certificate under sub-item (c) of that item;

(iv) a Specified Purchase, etc. (meaning a Purchase, etc. of Share Certificates, etc. specified in paragraph (3); hereinafter the same shall apply in this paragraph) of Share Certificates, etc. where, before that Specified Purchase, etc., the sum rate of the Share Certificates, etc. Owning Rate (meaning a Share Certificates, etc. Owning Rate as defined in Article 27-2, paragraph (8) of the Act; hereinafter the same shall apply in this Section) for Share Certificates, etc. issued by the issuer of the first-mentioned Share Certificates, etc. and owned by the person conducting that Specified Purchase, etc. and the

Share Certificates, etc. Owning Rate of that person's Persons with Special Relationship (meaning Persons with Special Relationship as defined in the proviso clause of paragraph (1) of that Article) for those Share Certificates, etc. exceeds 50 percent (excluding where the Share Certificates, etc. Owning Rate for Share Certificates, etc. in the possession of the person who conducts the Specified Purchase, etc. (if that person has any Persons with Special Relationship (meaning Persons with Special Relationship set forth in item (i) of that paragraph), the rate obtained by adding the Share Certificates, etc. Owning Rate of those Persons with Special Relationship; hereinafter the same shall apply in this Section) is not less than two-thirds after that Specified Purchase, etc.);

(v) where a Juridical Person, etc. who is in the position of owning the shares or equity pertaining to the voting rights (including the voting rights of the shares or equity that may not be asserted against the issuer pursuant to the provisions of Article 147, paragraph (1) or Article 148, paragraph (1) of the Act on Book-Entry Transfer of Company Bonds, Shares, etc. (including where these provisions are applied *mutatis mutandis* under Article 228, paragraph (1), Article 235, paragraph (1), Article 239, paragraph (1) and Article 276 (limited to the parts pertaining to item (ii)) of that Act)) exceeding 50 percent of the number of the Voting Rights Held by All Shareholders, etc. of another Juridical Person, etc. (excluding the cases specified by a cabinet office ordinance; hereinafter referred to as the "Special Controlling Relationship" in this item) (such a Juridical Person, etc. shall be referred to as the "Parent Juridical Person, etc." in the following item) has a Special Controlling Relationship with another Juridical Person, etc., a Specified Purchase, etc. conducted by the other Juridical Person, etc.;

(vi) where a person who conducts a Specified Purchase, etc. and that person's Parent Juridical Person, etc. and any other persons specified by a cabinet office ordinance (hereinafter referred to as the "Juridical Persons Concerned, etc." in this item) jointly own shares or Investment Equities (meaning an Investment Equity as defined in Article 2, paragraph (14) of the Act on Investment Trusts and Investment Corporations and including the membership status of members of a Foreign Investment Corporation (meaning a Foreign Investment Corporation as defined in Article 2, paragraph (23) of that Act; hereinafter the same shall apply); hereinafter the same shall apply in this Section) pertaining

to voting rights (including the voting rights of the shares or Investment Equity that may not be asserted against the issuer pursuant to the provisions of Article 147, paragraph (1) or Article 148, paragraph (1) of the Act on Book-Entry Transfer of Company Bonds, Shares, etc. (including where these provisions are applied *mutatis mutandis* under Article 228, paragraph (1) of that Act)) exceeding one-thirds of the number of the Voting Rights Held by All Shareholders, etc. of another issuer, the Specified Purchase, etc. of Share Certificates, etc. of the other issuer conducted by the Juridical Person Concerned, etc. (excluding those persons specified by a cabinet office ordinance) (excluding the Specified Purchase, etc. set forth in the preceding item);

(vii) a Specified Purchase, etc. made in the cases specified by a cabinet office ordinance as where the number of the owners of Share Certificates, etc. is small and where all the owners of the relevant Share Certificates, etc. have given consent that the Specified Purchase, etc. of those Share Certificates, etc. will be made by means other than a Tender Offer;

(viii) a Specified Purchase, etc. made through the exercise of a security interest;

(ix) a Specified Purchase, etc. made by the acceptance of the transfer of all or part of the business;

(x) a Purchase, etc. of Share Certificates, etc. made in response to a Secondary Distribution of the Share Certificates, etc. (limited to where the notification under Article 4, paragraph (1) of the Act has been given or a Shelf Registration Supplement as defined in Article 23-8, paragraph (1) of the Act has been submitted pursuant to the provisions of that paragraph with regard to the Secondary Distribution);

(xi) where the issuer provides, as the details of all or part of its shares to be issued, that the shareholders may demand the issuer to redeem the shares, a Purchase, etc. of Share Certificates, etc. that are delivered in exchange for the redemption of those shares;

(xii) where the issuer provides, as the details of all or part of its shares or share options to be issued, that the issuer may acquire the shares or share options upon the occurrence of a specified event, a Purchase, etc. of the Share Certificates, etc. that are delivered in exchange of the acquisition of the shares or share options;

(xiii) where an Officer (meaning a director, executive officer, accounting advisor (where an accounting advisor is a juridical person, the member to perform the duties thereof shall be included; in Article 9, paragraph (1) and Article 14-8-2, paragraph (1), the same shall apply)

or company auditor, and in the cases of an Investment Corporation (meaning an Investment Corporation as defined in Article 2, paragraph (12) of the Act on Investment Trusts and Investment Corporations and including a Foreign Investment Corporation), meaning an corporate officer, supervisory officer or any other persons equivalent thereto; hereinafter the same shall apply in this item) or employee of the issuer of Share Certificates, etc. conducts a Purchase, etc. of the issuer's Share Certificates, etc. by making an entrustment to a Financial Instruments Business Operator (limited to those who conduct Type 1 Financial Instruments Business (meaning Type 1 Financial Instruments Business as defined in Article 28, paragraph (1) of the Act; hereinafter the same shall apply); in Article 10, item (i) and Article 14-3-5, item (i), the same shall apply) jointly with other Officers or employees of the issuer, the Purchase, etc. of Share Certificates, etc. made where the Purchase, etc. is conducted according to a certain plan without depending on any individual investment decision and on an ongoing basis or in any other cases specified by a cabinet office ordinance;

(xiv) a Purchase, etc. of Share Certificates, etc. issued by an issuer other than those who are required to submit an annual securities report pursuant to the provisions of Article 24, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under paragraph (5) of that Article (including where it is applied *mutatis mutandis* under Article 27 of the Act)) (excluding an issuer of Share Certificates, etc. that are Specified Listed Securities or Specified Over-the-Counter Traded Securities); and

(xv) where a Clearing Participant (meaning a Clearing Participant as defined in Article 156-7, paragraph (2), item (iii) of the Act) who has an obligation to deliver the Share Certificates, etc. to a Financial Instruments Clearing Organization has failed to perform the obligation by the time specified as the limit for the performance of the obligation in the business rules of the Financial Instruments Clearing Organization, a Purchase, etc. of Share Certificates, etc. made pursuant to the provisions of those business rules.

(2) The transactions specified by a cabinet order, as mentioned in Article 27-2, paragraph (1), items (i) and (ii) of the Act, shall be the transactions of Over-the-Counter Traded Securities in an Over-the-Counter Securities Market.

(3) The cases specified by a cabinet order as a Purchase, etc. from an extremely small number of persons, as mentioned in Article 27-2, paragraph (1), item (i) of the Act, and the cases specified

by a cabinet order as a Purchase, etc. of Share Certificates, etc. from an extremely small number of persons, as mentioned in item (ii) of that paragraph, shall be where the total number of persons who are the counterparties to the Purchase, etc. of Share Certificates, etc. and the counterparties (excluding what is specified by a cabinet office ordinance) to the Purchase, etc. of Share Certificates, etc. issued by the issuer of the Share Certificates, etc. that has been made outside of a financial instruments exchange market during the 60 days prior to the day on which the Purchase, etc. is to be made (excluding a Purchase, etc. made by means of a Tender Offer, Purchase, etc. of Share Certificates, etc. made through a transaction of Over-the-Counter Traded Securities in an Over-the-Counter Securities Market, Purchase, etc. of Share Certificates, etc. made through the exercise of share options by a person who has the share options and Purchases, etc. set forth in items (i) to (iii) and items (x) to (xv) of paragraph (1)) is not more than ten.

Article 7 (Purchase, etc. to Which Restrictions on Tender Offers Are Applicable)

(1) The cases specified by a cabinet order as being equivalent to the ownership of Share Certificates, etc., as mentioned in Article 27-2, paragraph (1), item (i) of the Act, shall be the following cases:

(i) where a person who conducts a Purchase, etc. has a rights to request delivery of Share Certificates, etc. based on a sale and purchase agreement or any other agreement;

(ii) where a person who conducts a Purchase, etc. has the authority to exercise voting rights (including the voting rights pertaining to the Share Certificates, etc. that may not be asserted against the issuer pursuant to the provisions of Article 147, paragraph (1) or Article 148, paragraph (1) of the Act on Book-Entry Transfer of Company Bonds, Shares, etc. (including where these provisions are applied *mutatis mutandis* under Article 228, paragraph (1) of that Act)) as a shareholder or Investor (meaning an Investor as defined in Article 2, paragraph (16) of the Act on Investment Trusts and Investment Corporations and including the members of a Foreign Investment Corporation; in Article 14-6-2, item (ii), the same shall apply) of the issuer of Share Certificates, etc., or the authority to give instructions with regard to the exercise of the voting rights based on a money trust agreement or any other agreement, or the provisions of laws;

(iii) where a person who conducts a Purchase, etc. has the authority necessary to make investments in Share Cer-

tificates, etc. based on a Discretionary Investment Agreement (meaning a Discretionary Investment Agreement as defined in Article 2, paragraph (8), item (xii), sub-item (b) of the Act; hereinafter the same shall apply) or any other agreement, or the provisions of laws;

(iv) where a person who conducts a Purchase, etc. has made a pre-agreement for the sale or purchase of Share Certificates, etc. (limited to where the person has the rights to complete the sale or purchase and acquires the position as a buyer through the exercise of the rights);

(v) where a person who conducts a Purchase, etc. has acquired the Options pertaining to a sale and purchase of Share Certificates, etc. (limited to the acquisition that causes the person who has exercised the Options acquire the position as a buyer in the sale and purchase through the exercise of the Options); or

(vi) any other cases specified by a cabinet office ordinance.

(2) The period specified by a cabinet order, as mentioned in Article 27-2, paragraph (1), item (iv) of the Act, shall be three months.

(3) The proportion specified by a cabinet order pertaining to an acquisition of Share Certificates, etc., as mentioned in Article 27-2, paragraph (1), item (iv) of the Act, shall be ten percent of the total number of Share Certificates, etc. issued by the issuer of the Share Certificates, etc. to be acquired. In this case, the proportion shall be calculated pursuant to the provisions of a cabinet office ordinance based on the number of voting rights pertaining to the Share Certificates, etc.

(4) The proportion specified by a cabinet order pertaining to a Purchase, etc. of Share Certificates, etc. made through a specified sale and purchase, etc., or the Purchase, etc. of Share Certificates, etc. made outside of a Financial Instruments Exchange Market, as mentioned in Article 27-2, paragraph (1), item (iv) of the Act, shall be five percent of the total number of Share Certificates, etc. issued by the issuer of the Share Certificates, etc. for which the Purchase, etc. is to be made. In this case, the proportion shall be calculated pursuant to the provisions of a cabinet office ordinance based on the number of voting rights pertaining to the Share Certificates, etc.

(5) The period specified by a cabinet order, as mentioned in Article 27-2, paragraph (1), item (v) of the Act, shall be the period from the day of commencement of the period of Purchase, etc. of Share Certificates, etc. stated in the Tender Offer Notification (meaning a Tender Offer Notification as defined in Article 27-3, paragraph (2) of the Act) pertaining to the Tender Offer conducted with regard to the Share Certificates, etc. until the day on which the period ends.

(6) The proportion specified by a cabinet order, as mentioned in Article 27-2, paragraph (1), item (v) of the Act, shall be five percent of the total number of Share Certificates, etc. issued

by the issuer of the Share Certificates, etc. for which the Purchase, etc. is to be made. In this case, the proportion shall be calculated pursuant to the provisions of a cabinet office ordinance based on the number of voting rights pertaining to the Share Certificates, etc.

(7) A Purchase, etc. of Share Certificates, etc. specified by a cabinet order, as mentioned in Article 27-2, paragraph (1), item (vi) of the Act, shall be, where the provision of item (iv) of paragraph (1) of that Article is applicable to an Acquisition of Share Certificates, etc. (meaning a Purchase, etc. of Share Certificates, etc. and an acquisition of newly issued share certificates, etc. as defined in item (iv) of paragraph (1) of that Article; hereinafter the same shall apply in this paragraph) conducted by a Share Certificates, etc. Purchaser (meaning a person who makes a Purchase of Share Certificates, etc; hereinafter the same shall apply in this paragraph) and to an Acquisition of Share Certificates, etc. conducted by a Person with Special Relationship (meaning a Person with Special Relationship as defined in item (ii) of paragraph (7) of that Article) thereto by deeming the acquisition to be an Acquisition of Share Certificates, etc. conducted by a Share Certificates, etc. Purchaser, a Purchase, etc. of Share Certificates, etc. conducted as an Acquisition of Share Certificates, etc. that falls under the category of Purchase, etc. of Share Certificates, etc. mentioned in item (iv) of paragraph (1) of that Article.

Article 8 (Period, etc. of Purchase, etc.)

(1) The period specified by a cabinet order, as mentioned in Article 27-2, paragraph (2) of the Act, shall be the period of not less than 20 days (the number of days set forth in the items of Article 1, paragraph (1) of the Act on Holidays of Administrative Organs (Act No. 91 of 1988) (hereinafter referred to as the "Holidays of Administrative Organs") shall not be included) within 60 days (the Holidays of Administrative Organs shall not be included) from the day on which the Tender Offeror (meaning a Tender Offeror as defined in Article 27-3, paragraph (2) of the Act; hereinafter the same shall apply in this Section) gives Public Notice for Commencing Tender Offer (meaning public notice under Article 27-3, paragraph (1) of the Act; hereinafter the same shall apply in this Section).

(2) What is specified by a cabinet order as being equivalent to the Price of a Purchase, as mentioned in Article 27-2, paragraph (3) of the Act, shall be, where securities or anything other than money are delivered as the consideration of the Purchase, etc., the ratio of exchange between the Share Certificates, etc. and the securities or anything other than money and include, when money is delivered for the difference arising from the exchange, the amount of that money.

(3) Where a Purchase, etc. of Share Certificates, etc. is made by

means of a Tender Offer, the Price for Purchase, etc. (meaning a Price for Purchase, etc. as defined in Article 27-2, paragraph (3) of the Act) shall be the same for all the Accepting Shareholders, etc. (meaning an Accepting Shareholder, etc. as defined in Article 27-12, paragraph (1) of the Act; hereinafter the same shall apply in this Section). However, where a Tender Offeror allows the Accepting Shareholders, etc. to select two or more types of consideration, the types of consideration that may be selected shall be the same for all Accepting Shareholders, etc., and the consideration of each type shall be the same for the Accepting Shareholders, etc. who have selected the type.

(4) The affairs specified by a cabinet order, as mentioned in Article 27-2, paragraph (4) of the Act, shall be as follows:

(i) the retention and return of Share Certificates, etc. Offered to Sell (meaning Share Certificates, etc. Offered to Sell as defined in Article 27-12, paragraph (3) of the Act);

(ii) the payment for the Purchase, etc. (where securities or anything other than money are delivered as the consideration of the Purchase, etc., the delivery of the securities or anything other than money shall be included); and

(iii) affairs to fix the number of Share Certificates, etc. for which the Purchase, etc. is to be made by the Method of Proportional Distribution (meaning the Method of Proportional Distribution as defined in Article 27-13, paragraph (5) of the Act).

(5) The conditions and methods specified by a cabinet order, as mentioned in Article 27-2, paragraph (5) of the Act, shall be as follows:

(i) that, when the period of Purchase, etc. ends, a written notice of Purchase, etc. containing the number of Share Certificates, etc. for which the Purchase, etc. is to be made and any other matters specified by a cabinet office ordinance shall be sent to the Accepting Shareholders, etc. without delay;

(ii) that the transfer or other settlement procedures for Purchase, etc. shall be made without delay after the period of Purchase, etc. ends; and

(iii) that, where the total Share Certificates, etc. Owning Rate of the person who conducts a Purchase, etc. is not less than two-thirds after the Purchase, etc. is conducted, the solicitation for application of Purchase, etc. or Sale, etc. (meaning a Sale, etc. as defined in Article 27-2, paragraph (6) of the Act; hereinafter the same shall apply in this Chapter) shall be made pursuant to the provisions of a cabinet office ordinance with regard to all the Share Certificates, etc. (excluding what is specified by a cabinet office ordinance as not impairing

the public interest or the protection of investors) issued by the issuer of the Share Certificates, etc.

(6) The person who is required to send a written notice pursuant to the provision of item (i) of the preceding paragraph may, in the cases specified by a cabinet office ordinance, provide the matters to be stated in such a written notice by a method that uses an electronic data processing system or any other method specified by a cabinet office ordinance in lieu of sending such a written notice. In this case, the person who has provided the matters shall be deemed to have sent such a written notice.

Article 9 (Special Relationship)

(1) The special relationship specified by a cabinet order, as mentioned in Article 27-2, paragraph (7), item (i) of the Act, shall be, where the person who makes a Purchase, etc. of Share Certificates, etc. is an individual, a relationship with the following persons:

(i) a relative of the relevant person (limited to the spouse thereof or the relatives by blood or affinity within the first degree of kinship; hereinafter the same shall apply in this Article); or

(ii) where the person who makes the Purchase, etc. of Share Certificates, etc. (including the relatives of the person) is in the position of owning the shares or equity pertaining to the voting rights of not less than 20 percent of the Voting Rights Held by All Shareholders, etc. of a Juridical Person, etc. in the person's own name or in another person's name (including a fictitious name; hereinafter the same shall apply in this Article) (hereinafter such a relationship is referred to as the "Special Capital Relationship" in this Article), the Juridical Person, etc. and its Officers (meaning a director, executive officer, accounting advisor and auditor (including a board member, auditor or any other persons equivalent thereto); hereinafter the same shall apply in this Article) (excluding where the person comes to have a Special Capital Relationship by conducting the relevant Purchase, etc. of the Share Certificates, etc.).

(2) The special relationship specified by a cabinet order, as mentioned in Article 27-2, paragraph (7), item (i) of the Act, shall be, where the person who makes a Purchase, etc. of Share Certificates, etc. is a Juridical Person, etc., a relationship with the following persons:

(i) Officers of the Juridical Person, etc.;

(ii) where the Juridical Person, etc. has a Special Capital Relationship with another Juridical Person, etc. (excluding where the Juridical Person, etc. comes to have a Special Capital Relationship by conducting the relevant Purchase, etc. of the Share Certificates, etc.), the other Juridical Person and its Officers; or

(iii) an individual, another Juridical Person, etc. or any Officer of the other Juridical Person, etc. who has a Special Capital Relationship with the Juridical Person, etc.

(3) Where an individual (including the relatives thereof; hereinafter the same shall apply in this Article) and a Controlled Juridical Person, etc. thereof, or a Juridical Person, etc. and a Controlled Juridical Person, etc. thereof jointly own the shares or equity pertaining to the voting rights of not less than 20 percent of the Voting Rights Held by All Shareholders, etc. of another Juridical Person, etc. in their own name or in another person's name, the individual or the Juridical Person, etc. shall be deemed to have a Special Capital Relationship with the other Juridical Person, etc. and the provisions of the preceding two paragraphs shall apply.

(4) Where an individual and a Controlled Juridical Person, etc. thereof, or a Juridical Person, etc. and a Controlled Juridical Person, etc. thereof jointly own the shares or equity pertaining to the voting rights exceeding 50 percent of the Voting Rights Held by All Shareholders, etc. of another Juridical Person, etc. in their own name or in another person's name, the other Juridical Person, etc. shall be deemed to be a Controlled Juridical Person, etc. of the individual or the Juridical Person, etc. and the provision of the preceding paragraph shall apply.

(5) A "Controlled Juridical Person, etc." mentioned in the preceding two paragraphs means, where an individual or a Juridical Person, etc. owns the shares or equity pertaining to the voting rights exceeding 50 percent of the Voting Rights Held by All Shareholders, etc. of another Juridical Person, etc. in their own name or in another person's name, the other Juridical Person, etc.

(6) In the cases under item (ii) of paragraph (1) and the preceding three paragraphs, the provision of Article 4-4, paragraph (3) shall apply *mutatis mutandis* to the voting rights held by the person mentioned in the relevant item or paragraph.

Article 9-2 (Securities to Be Added to the Calculation of the Share Certificates, etc. Owning Rate)

The securities specified by a cabinet order, as mentioned in Article 27-2, paragraph (8), items (i) and (ii) of the Act, shall be the following securities:

(i) company bond certificates with share options;

(ii) share option certificates;

(iii) where the issuer provides, as the details of all or part of its shares to be issued, that the shareholders may demand the issuer to redeem the shares, the share certificates pertaining to those shares;

(iv) where the issuer provides, as the details of all or part of its shares to be issued, that the issuer may acquire the shares

upon the occurrence of a specified event, the share certificates of those shares; and

(v) securities or certificates issued by a foreign person that have the characteristics of securities of the category set forth in any one of the preceding items.

Article 9-3 (Public Notice for Commencing Tender Offer, etc.)

(1) Public notice pursuant to the provisions of Article 27-3, paragraph (1), Article 27-6, paragraph (2), Article 27-8, paragraph (11), Article 27-10, paragraph (4), Article 27-11, paragraph (2) and Article 27-13, paragraph (1) of the Act shall be given by either of the following methods:

(i) taking measures to make the information that should be given in public notice available to many and unspecified persons by a method that uses an Electronic Data Processing System for Disclosure pursuant to the provisions of a cabinet office ordinance (in paragraphs (3) to (5), referred to as "Electronic Public Notice"); or

(ii) publication in a daily newspaper that publishes matters on current affairs (including daily newspapers that report on general industrial and economic matters; in item (i) of the following Article and Article 14-3-4, paragraph (1), item (ii), the same shall apply) pursuant to the provisions of a cabinet office ordinance.

(2) Among the public notice mentioned in the preceding paragraph, public notice under the main clause of Article 27-8, paragraph (11) of the Act shall be given immediately after submitting the amendment under that paragraph.

(3) The person who gives public notice by way of Electronic Public Notice pursuant to the provision of paragraph (1) shall publish to the effect that the public notice has been given in a daily newspaper that publishes matters on current affairs pursuant to the provisions of a cabinet office ordinance without delay after the person has given the public notice.

(4) The person who gives public notice by way of Electronic Public Notice pursuant to the provision of paragraph (1) shall provide the Electronic Public Notice on an ongoing basis until the day specified respectively in the following items, according to the category of public notice set forth therein:

(i) public notice under Article 27-3, paragraph (1), Article 27-6, paragraph (2), Article 27-8, paragraph (11), Article 27-10, paragraph (4) and Article 27-11, paragraph (2) of the Act—the last day of the Tender Offer Period; and

(ii) public notice under Article 27-13, paragraph (1) of the Act—the day on which one month has elapsed from the publication of the public notice.

(5) The provisions of Article 4-2-4, paragraphs (3) and (4) shall apply *mutatis mutandis* to a person who gives public notice by way of Electronic Public Notice pursuant to the provision of

paragraph (1). In this case, the term "item (ii) of that paragraph" in paragraph (3) of that Article shall be deemed to be replaced with "Article 9-3, paragraph (1), item (ii)," and the term "paragraph (2)" in paragraph (4) of that Article shall be deemed to be replaced with "Article 9-3, paragraph (4)."

(6) The period specified by a cabinet order, as mentioned in the second sentence of Article 27-3, paragraph (1), Article 27-10, paragraph (2), item (ii) and paragraph (3) of the Act, shall be 30 days (the Holidays of Administrative Organizations shall not be included).

Article 9-4 (Public Announcement of the Number, etc. of Share Certificates Offered to Sell)

A public announcement under Article 27-13, paragraph (1) of the Act shall be given by disclosure to the following journalistic organizations pursuant to the provisions of a cabinet office ordinance:

(i) newspaper publishers engaged in the sales of daily newspapers that publish matters on current affairs in the course of trade;

(ii) communications agencies engaged in comprehensive transmission of matters on current affairs to the newspaper publishers set forth in the preceding item in the course of trade; and

(iii) NHK (Japan Broadcasting Corporation) and Private Broadcasters (meaning the Private Broadcasters as defined in Article 2, item (iii)-3 of the Broadcast Act (Act No. 132 of 1950); hereinafter the same shall apply).

Article 10 (Person Affiliated with a Tender Offeror)

The persons concerned specified by a cabinet order, as mentioned in Article 27-3, paragraph (3) of the Act, shall be the following persons:

(i) a Financial Instruments Business Operator or a Bank, etc. (meaning a bank, a Cooperative-Structured Financial Institution as defined in Article 2, paragraph (1) of the Preferred Equity Investment Act (hereinafter referred to as a "Cooperative-Structured Financial Institution") or a financial institution set forth in the items of Article 1-9; in Article 14-3-5, item (i), the same shall apply) that carries out the affairs set forth in Article 8, paragraph (4) on behalf of the Tender Offeror; or

(ii) a person who makes the Purchase, etc. of Share Certificates, etc. by means of a Tender Offer while representing the Tender Offeror.

Article 11 (Share Certificates, etc. Equivalent to Listed Share Certificates, etc.)

The Share Certificates, etc. specified by a cabinet order, as mentioned in Article 27-3, paragraph (4), item (ii) of the Act (including where it is applied *mutatis mutandis* under Article 27-8,

paragraph (6) of the Act (including where it is applied *mutatis mutandis* under Article 27-13, paragraph (3) of the Act), Article 27-11, paragraph (4) and Article 27-13, paragraph (3) of the Act; hereinafter the same shall apply in this Article), shall be the Share Certificates, etc. that fall under the category of Over-the-Counter Traded Securities, and the authorized financial instruments firms association specified by a cabinet order, as mentioned in Article 27-3, paragraph (4), item (ii) of the Act, shall be the authorized Financial Instruments Firms Association that registers the Share Certificates, etc.

Article 12 (Where Purchase, etc. May Be Made by Means Other than a Tender Offer)

The cases specified by a cabinet order, as mentioned in Article 27-5, item (iii) of the Act (including where it is applied *mutatis mutandis* under Article 27-8, paragraph (10) of the Act), shall be the following cases:

(i) where a person set forth in the items of Article 10 makes a Purchase, etc. under entrustment from a person other than the Tender Offeror or the Persons with Special Relationship (meaning Persons with Special Relationship as defined in Article 27-2, paragraph (7) of the Act and excluding those who have given the notification to the Commissioner of the Financial Services Agency pursuant to the provisions of Article 27-5, item (ii) of the Act; hereinafter the same shall apply in this Section);

(ii) where a person set forth in the items of Article 10 makes a Purchase, etc. that is authorized for the facilitation of smooth distribution of securities by the rules prescribed by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association;

(iii) where a person who has share options makes a Purchase, etc. through the exercise of those share options;

(iv) where a Purchase, etc. set forth in Article 6-2, paragraph (1), items (i) to (iii), (xi) and (xii) is to be made;

(v) where a person set forth in the items of Article 10 makes a Purchase, etc. by exercising the Options pertaining to the sale and purchase of Share Certificates, etc. owned thereby, or in response to the exercise of the Options pertaining to the sale and purchase of Share Certificates, etc. granted thereby;

(vi) where a Purchase, etc. set forth in Article 6-2, paragraph (1), item (xv) is to be made;

(vii) where a Purchase, etc. is to be made in a foreign state where a Foreign Financial Instruments Exchange on which the relevant Share Certificates, etc. are listed is located, by means of a Foreign Tender Offer (meaning an offer similar to a Tender Offer and the solicitation for application of Purchase, etc, or Sale, etc. of Share Certificates, etc. made to many and unspecified persons based on laws and regula-

tions of the foreign state; in Article 14-3-7, item (ii), the same shall apply); or

(viii) where a Purchase, etc. pertaining to Share Certificates, etc. is to be made in response to a request for the purchase of shares pursuant to the provisions of Article 116, paragraph (1), Article 192, paragraph (1), Article 469, paragraph (1), Article 785, paragraph (1), Article 797, paragraph (1) or Article 806, paragraph (1) of the Companies Act.

Article 13 (Prohibited Changes in Conditions of Purchase, etc.)

(1) The acts specified by a cabinet order, as mentioned in Article 27-6, paragraph (1), item (i) of the Act, shall be as follows:

(i) the splitting of shares or Investment Equity; and

(ii) the allotment of shares or share options to shareholders (limited to those made without requiring an additional payment).

(2) The changes in the conditions of purchase, etc. specified by a cabinet order, as mentioned in Article 27-6, paragraph (1), item (iv) of the Act, shall be as follows:

(i) where the conditions set forth in Article 27-13, paragraph (4), item (i) of the Act have been imposed, an increase of the number of Share Certificates, etc. stated in the Public Notice for Commencing Tender Offer and the Tender Offer Notification specified in that item; however, this shall not apply where after the Public Notice for Commencing Tender Offer is given, a person other than the Tender Offeror, the Persons with Special Relationship thereto or the issuer of Share Certificates, etc. pertaining to the Tender Offer (hereinafter referred to as a "Subject Company" in this Section) has given Public Notice for Commencing Tender Offer or Public Notice or Public Announcement (meaning public notice or public announcement under Article 27-6, paragraph (2) or (3) of the Act) of the changes in the conditions of purchase that increases the number of Share Certificates, etc. planned to be purchased, and has conducted a Tender Offer with regard to the Share Certificates, etc. issued by the Subject Company;

(ii) an extension of the period of Purchase, etc. exceeding the period specified in Article 8, paragraph (1); however, this shall not apply where the period specified respectively in the following sub-items is to be extended, according to the category of cases set forth therein:

(a) where the period of Purchase, etc. must be extended pursuant to the provision of Article 27-8, paragraph (8) of the Act—the period to be extended pursuant to the provision of that paragraph; or

(b) where a person other than the Tender Offeror or the Persons with Special Relationship thereto has given,

with regard to the Share Certificates, etc. issued by the Subject Company, Public Notice for Commencing Tender Offer (including Public Notice for Commencing Tender Offer as defined in Article 27-3, paragraph (2) of the Act as applied *mutatis mutandis* under Article 27-22-2, paragraph (2) of the Act) or Public Notice or Public Announcement (meaning public notice or public announcement under Article 27-6, paragraph (2) or (3) of the Act or Article 27-8, paragraph (8) of the Act (including where these provisions are applied *mutatis mutandis* under Article 27-22-2, paragraph (2) of the Act or Article 27-22-3, paragraph (4) of the Act)) of the changes in the conditions of purchase that extend the period of Purchase, etc., during the Tender Offer Period (meaning the Tender Offer Period as defined in Article 27-5 of the Act; hereinafter the same shall apply in this Section)—the period not exceeding the number of days counted from the day following the last day of the Tender Offer Period until the last day of the Tender Offer Period (including the Tender Offer Period as defined in Article 27-5 of the Act as applied *mutatis mutandis* under Article 27-22-2, paragraph (2) of the Act) pertaining to the Public Notice for Commencing Tender Offer or the Public Notice or Public Announcement of the changes;

(iii) a change in the types of consideration for Purchase, etc.; however, this shall not apply where a new type of consideration is added as an option for the Accepting Shareholders, etc. to choose; or

(iv) where the condition set forth in Article 27-11, paragraph (1) of the Act is imposed, a change in the details of the condition.

Article 13-2 (Period to Submit a Subject Company's Position Statement)

(1) The period specified by a cabinet order, as mentioned in Article 27-10, paragraph (1) of the Act, shall be ten days (the Holidays of Administrative Organizations shall not be included).

(2) The period specified by a cabinet order, as mentioned in Article 27-10, paragraph (11) of the Act, shall be five days (the Holidays of Administrative Organizations shall not be included).

Article 14 (Withdrawal, etc. of a Tender Offer)

(1) What is specified by a cabinet order, as mentioned in Article 27-11, paragraph (1) of the Act, shall be as follows; however, with regard to circumstances set forth in items (i) to (iii), those that satisfy the criteria specified by a cabinet office ordinance as being minor shall be excluded:

(i) where the organizational element that decides on the execution of operations of the Subject Company or its Subsidiary Company (meaning a Subsidiary Company as defined in Article 2, item (iii) of the Companies Act; hereinafter the same shall apply in this Article and Article 14-8-2) has made a decision to conduct the following matters (limited to those publicly announced after the day on which Public Notice for Commencing Tender Offer was given):
  (a) share exchange;
  (b) share transfer;
  (c) company split;
  (d) merger;
  (e) dissolution (excluding a dissolution as a result of merger);
  (f) application for the commencement of bankruptcy proceedings, rehabilitation proceedings or reorganization proceedings;
  (g) reduction of the amount of stated capital;
  (h) transfer, acceptance, suspension or abolition of the business in whole or in part;
  (i) application for the delisting of Share Certificates, etc. made to a Financial Instruments Exchange;
  (j) application for rescission of the registration of Share Certificates, etc. made to an Authorized Financial Instruments Firms Association;
  (k) report under Article 74, paragraph (5) of the Deposit Insurance Act;
  (l) split of shares or Investment Equity;
  (m) allotment of shares or share options (limited to those made without requiring an additional payment);
  (n) issuance of shares, share options, company bonds with share options or Investment Equity (excluding those set forth in sub-items (l) and (m));
  (o) disposal of Treasury Shares (meaning Treasury Shares as defined in Article 113, paragraph (4) of the Companies Act) (excluding those set forth in sub-item (m));
  (p) with regard to shares that have been already issued, providing different provisions on the matters set forth in Article 108, paragraph (1), item (viii) or (ix) of the Companies Act;
  (q) disposal or transfer of important properties;
  (r) borrowing in a significant amount; and
  (s) matters equivalent to the matters set forth in sub-items (a) to (r) that the Tender Offeror has designated in the Public Notice for Commencing Tender Offer and the Tender Offer Notification (meaning a Tender

Offer Notification as defined in Article 27-3, paragraph (2) of the Act; hereinafter the same shall apply in this Article);

(ii) where the organizational element that decides on the execution of operations of the Subject Company has made the decisions specified respectively in the following sub-items, according to the category of cases set forth therein (limited to those publicly announced after the day on which Public Notice for Commencing Tender Offer was given):

(a) where, as of the date of the Public Notice for Commencing Tender Offer, the organizational element that decides on the execution of operations of the Subject Company has made a decision to issue new shares or conduct any other acts (limited to those conducted after the last day of the period of Purchase, etc. pertaining to the Tender Offer) that may reduce the Share Certificates, etc. Owning Rate of the Tender Offeror by less than the proportion specified by a cabinet office ordinance after the Tender Offer, and has publicly announced the details of that decision—a decision to maintain the above-mentioned decision; or

(b) where, as of the date of the Public Notice for Commencing Tender Offer, the Subject Company or its Subsidiary has issued Share Certificates, etc. pertaining to two or more types of shares with different details that have different provisions for the matters set forth in Article 108, paragraph (1), item (viii) or (xi) of the Companies Act—a decision not alter those different provisions;

(iii) where any of the following facts has occurred in a Subject Company (limited to those that occur on or after the day on which the Public Notice for Commencing Tender Offer was given); however, in the cases of sub-items (a), (c), (e) and (g), if the relevant acts are conducted by the Tender Offeror and any Persons with Special Relationship thereto, those acts shall be excluded:

(a) that an application is made for the issuance of an order for a provisional disposition to suspend business or make any other disposition equivalent thereto;

(b) that the revocation of a license, suspension of business, or any other disposition equivalent thereto under laws and regulations is made by an administrative agency;

(c) that an application is made for, or a notice is given of, the commencement of bankruptcy proceedings, rehabilitation proceedings, reorganization proceedings, or

the exercise of an enterprise mortgage is filed by a person other than the Subject Company;

(d) that a bill or check is dishonored (limited to dishonor due to the shortage of funds necessary for payment), or a clearinghouse makes a disposition to suspend transactions (hereinafter referred to as "Dishonor, etc." in this Article);

(e) that a transaction is suspended by a Major Trading Partner (meaning a trading partner for which the sales or purchases of the previous business year are not less than ten percent of the total amount of sales or purchases);

(f) damages resulting from a disaster;

(g) that a lawsuit pertaining to a claim based on a property right is filed;

(h) delisting of Share Certificates (limited to where the relevant Share Certificates are delisted from all the Financial Instruments Exchanges on which they are listed);

(i) rescission of the registration of Share Certificates (limited to where all the Authorized Financial Instruments Firms Associations that register the relevant Share Certificates rescind the registration thereof (excluding rescissions made due to the listing of the relevant Share Certificates)); or

(j) facts equivalent to those set forth in sub-items (a) to (i) that the Tender Offeror has designated in the Public Notice for Commencing Tender Offer and the Tender Offer Notification;

(iv) where, in the case of a permission, authorization, approval or anything similar thereto (hereinafter referred to as the "Permission, etc." in this item) from an administrative agency under other laws and regulations being necessary for the acquisition of Share Certificates, etc., the Permission, etc. is not obtained by the day immediately preceding the last day of the Tender Offer Period; and

(v) any other circumstances specified by a cabinet office ordinance as being equivalent to those set forth in the preceding items.

(2) The changes in important circumstances specified by a cabinet order, as mentioned in Article 27-11, paragraph (1) of the Act, shall be the following matters:

(i) death;

(ii) being subject to an order for the commencement of guardianship;

(iii) dissolution;

(iv) being subject to a ruling for the commencement of bank-

ruptcy proceedings, rehabilitation proceedings or reorganization proceedings;

(v) that an application for or a notice of the commencement of bankruptcy proceedings, rehabilitation proceedings, reorganization proceedings, or the exercise of an enterprise mortgage is made by a person other than the Tender Offeror or the Persons with Special Relationship thereto; or

(vi) Dishonor, etc.

Article 14-2 (Method, etc. of Cancellation of Agreements)

The method specified by a cabinet order, as mentioned in Article 27-12, paragraph (2) of the Act, shall be a method wherein a document stating the cancellation of the agreement pertaining to a Tender Offer is delivered or sent to the person designated by the Tender Offeror (limited to the persons specified by a cabinet office ordinance), and the time specified by a cabinet order, as mentioned in that paragraph, shall be the time when the document is delivered to or reached the designated person.

Article 14-2-2 (Where a Partial Tender Offer Is Allowed)

The rate specified by a cabinet order, as mentioned in Article 27-13, paragraph (4) of the Act, shall be two-thirds.

Article 14-3 (Authorized Financial Instruments Firms Association Providing Public Inspection)

The Authorized Financial Instruments Firms Association specified by a cabinet order, as mentioned in Article 27-14, paragraph (3) of the Act, shall be an authorized Financial Instruments Firms Association specified in Article 11.

Section 2 Tender Offer for Listed Share Certificates, etc. by Issuer

Article 14-3-2 (Scope of Application of a Tender Offer)

(1) The transactions specified by a cabinet order, as mentioned in Article 27-22-2, paragraph (1) of the Act, shall be the transactions of Over-the-Counter Traded Securities in an Over-the-Counter Securities Market.

(2) What is specified by a cabinet order as a Purchase, etc. (meaning a Purchase, etc. as defined in Article 27-22-2, paragraph (1) of the Act; hereinafter the same shall apply in this Section) to be made by a method that makes available to a large number of persons the matters pertaining to the Purchase, etc., as mentioned in item (ii) of that paragraph, shall be a Purchase, etc. to be made by informing a large number of persons of the matters pertaining to the Purchase, etc. (limited to those that include the wording that a solicitation for application of Purchase, etc. or Sale, etc. of Listed Share Certificates, etc. (meaning Listed Share Certificates, etc. as defined

in Article 24-6, paragraph (1) of the Act; hereinafter the same shall apply in this Section) pertaining to the Purchase, etc. is to be conducted related to the Purchase, etc.) by publication in a newspaper or magazine, or by using documents, broadcasts, movies, and any other method.

Article 14-3-3 (Period, etc. of Purchase, etc.)

(1) The period specified by a cabinet order, as mentioned in Article 27-2, paragraph (2) of the Act as applied *mutatis mutandis* under Article 27-22-2, paragraph (2) of the Act, shall be the period of not less than 20 days (the Holidays of Administrative Organizations shall not be included) within 60 days (the Holidays of Administrative Organizations shall not be included) from the day on which the Tender Offeror (meaning a Tender Offeror as defined in Article 27-3, paragraph (2) of the Act as applied *mutatis mutandis* under Article 27-22-2, paragraph (2) of the Act; hereinafter the same shall apply in this Section) gives Public Notice for Commencing Tender Offer (meaning public notice under Article 27-3, paragraph (1) of the Act as applied *mutatis mutandis* under Article 27-22-2, paragraph (2) of the Act; hereinafter the same shall apply in this Section except in Article 14-3-8, item (i), sub-item (b)).

(2) What is specified by a cabinet order as being equivalent to the price of purchase, as mentioned in Article 27-2, paragraph (3) of the Act as applied *mutatis mutandis* under Article 27-22-2, paragraph (2) of the Act, shall be the ratio of exchange between the Share Certificates, etc. and the securities or anything other than money where the securities or anything other than money are delivered as the consideration of the Purchase, etc., and when money is delivered for the difference arising from the exchange, the amount of that money shall be included.

(3) Where a Purchase, etc. of Listed Share Certificates, etc. is made by means of a Tender Offer as defined in the main clause of Article 27-22-2, paragraph (1) of the Act (hereinafter referred to as a "Tender Offer" in this Section), the Price for Purchase, etc. (meaning the Price for Purchase, etc. as defined in Article 27-2, paragraph (3) of the Act as applied *mutatis mutandis* under Article 27-22-2, paragraph (2) of the Act; hereinafter the same shall apply in this Section) shall be the same for all Accepting Shareholders, etc. (meaning an Accepting Shareholder, etc. as defined in Article 27-12, paragraph (1) of the Act as applied *mutatis mutandis* under Article 27-22-2, paragraph (2) of the Act; hereinafter the same shall apply in this Section). However, where a Tender Offeror allows the Accepting Shareholders, etc. to select two or more types of consideration, the types of consideration that may be selected shall be the same for all the Accepting Shareholders, etc., and the consideration of each type shall be the same for the Accepting Shareholders, etc. who have selected the type.

(4) The affairs specified by a cabinet order, as mentioned in Article 27-2, paragraph (4) of the Act as applied *mutatis mutandis* under Article 27-22-2, paragraph (2) of the Act, shall be as follows:

(i) the retention and return of Listed Share Certificates, etc. Offered to Sell (meaning Listed Share Certificates, etc. Offered to Sell as defined in Article 27-12, paragraph (3) of the Act as applied *mutatis mutandis* by replacing certain terms and phrases under Article 27-22-2, paragraph (2) of the Act);

(ii) the payment for the Purchase, etc. (where securities or anything other than money are delivered as the consideration of the Purchase, etc., the delivery of the securities or anything other than money shall be included); and

(iii) affairs to fix the number of Listed Share Certificates, etc. for which the Purchase, etc. is to be made by the Method of Proportional Distribution (meaning the Method of Proportional Distribution as defined in Article 27-13, paragraph (5) of the Act as applied *mutatis mutandis* under Article 27-22-2, paragraph (2) of the Act).

(5) The conditions and methods specified by a cabinet order, as mentioned in Article 27-2, paragraph (5) of the Act as applied *mutatis mutandis* under Article 27-22-2, paragraph (2) of the Act, shall be as follows:

(i) that, when the period of Purchase, etc. ends, a written notice of Purchase, etc. containing the number of Listed Share Certificates, etc. for which the Purchase, etc. is to be made and any other matters specified by a cabinet office ordinance shall be sent to the Accepting Shareholders, etc. without delay; and

(ii) that the transfer or other settlement procedures for Purchase, etc. shall be made without delay after the period of Purchase, etc. ends.

(6) The person who is required to send a written notice pursuant to the provision of item (i) of the preceding paragraph may, in the cases specified by a cabinet office ordinance, provide the matters to be stated in such a written notice by a method that uses an electronic data processing system or any other method specified by a cabinet office ordinance in lieu of sending such a written notice. In this case, the person who has provided the matters shall be deemed to have sent such a written notice.

Article 14-3-4 (Public Notice for Commencing Tender Offer, etc.)

(1) Public notice under Article 27-3, paragraph (1), Article 27-6, paragraph (2), Article 27-8, paragraph (11), Article 27-11, paragraph (2) and Article 27-13, paragraph (1) of the Act as applied *mutatis mutandis* under Article 27-22-2, paragraph (2) of the Act shall be given by either of the following methods:

(i) taking measures to make the information that should be given in public notice available to many and unspecified persons by a method that uses an Electronic Data Processing System for Disclosure pursuant to the provisions of a cabinet office ordinance (in paragraphs (3) to (5), referred to as "Electronic Public Notice"); or

(ii) publication in a daily newspaper that publishes matters on current affairs pursuant to the provisions of a cabinet office ordinance.

(2) Among the public notice mentioned in the preceding paragraph, public notice under the main clause of Article 27-8, paragraph (11) of the Act as applied *mutatis mutandis* under Article 27-22-2, paragraph (2) of the Act shall be given immediately after submitting the amendment under Article 27-8, paragraph (11) of the Act.

(3) The person who gives public notice by way of Electronic Public Notice pursuant to the provision of paragraph (1) shall publish to the effect that the public notice has been given in a daily newspaper that publishes matters on current affairs pursuant to the provisions of a cabinet office ordinance without delay after the person has given the public notice.

(4) The person who gives public notice by way of Electronic Public Notice pursuant to the provision of paragraph (1) shall provide the Electronic Public Notice on an ongoing basis until the day specified respectively in the following items, according to the category of public notice set forth therein:

(i) public notice under Article 27-3, paragraph (1), Article 27-6, paragraph (2), Article 27-8, paragraph (11) and Article 27-11, paragraph (2) of the Act as applied *mutatis mutandis* under Article 27-22-2, paragraph (2) of the Act—the last day of the Tender Offer Period; and

(ii) public notice under Article 27-13, paragraph (1) of the Act as applied *mutatis mutandis* under Article 27-22-2, paragraph (2) of the Act—the day on which one month elapses from the publication of the public notice.

(5) The provisions of Article 4-2-4, paragraphs (3) and (4) shall apply *mutatis mutandis* to a person who gives public notice by way of Electronic Public Notice pursuant to the provision of paragraph (1). In this case, the term "item (ii) of that paragraph" in paragraph (3) of that Article shall be deemed to be replaced with "Article 14-3-4, paragraph (1), item (ii)," and the term "paragraph (2)" in paragraph (4) of that Article shall be deemed to be replaced with "Article 14-3-4, paragraph (4)."

(6) The provision of Article 9-4 shall apply *mutatis mutandis* to the public announcement under Article 27-13, paragraph (1) of the Act as applied *mutatis mutandis* under Article 27-22-2, paragraph (2) of the Act.

Article 14-3-5 (Persons Affiliated with a Tender Offeror)

The persons concerned specified by a cabinet order, as mentioned in

Article 27-3, paragraph (3) of the Act as applied *mutatis mutandis* under Article 27-22-2, paragraph (2) of the Act, shall be the following persons:

(i) a Financial Instruments Business Operator or a Bank, etc. that carries out the affairs set forth in Article 14-3-3, paragraph (4) on behalf of the Tender Offeror; or

(ii) a person who makes the Purchase, etc. of Listed Share Certificates, etc. by means of a Tender Offer while representing the Tender Offeror.

Article 14-3-6 (Share Certificates, etc. Equivalent to Listed Share Certificates, etc.)

The Share Certificates, etc. specified by a cabinet order, as mentioned in Article 27-3, paragraph (4), item (ii) of the Act as applied *mutatis mutandis* under Article 27-22-2, paragraphs (2) and (3) of the Act, shall be the Share Certificates, etc. that fall under the category of Over-the-Counter Traded Securities, and the authorized Financial Instruments Firms Association specified by a cabinet order, as mentioned in Article 27-3, paragraph (4), item (ii) of the Act, shall be the authorized Financial Instruments Firms Association that registers the Share Certificates, etc.

Article 14-3-7 (Where Purchase, etc. May Be Made by Means Other than Tender Offer)

The cases specified by a cabinet order, as mentioned in Article 27-5 of the Act as applied *mutatis mutandis* by replacing the terms and phrases under Article 27-22-2, paragraphs (2) and (5) and Article 27-22-3, paragraph (5) of the Act, shall be the following cases:

(i) where a Purchase, etc. pertaining to the Share Certificates, etc. is to be made in response to a request for the purchase of shares pursuant to the provisions of Article 116, paragraph (1), Article 469, paragraph (1), Article 785, paragraph (1), Article 797, paragraph (1) or Article 806, paragraph (1) of the Companies Act, or based on the obligations under laws and regulations;

(ii) where a Purchase, etc. is to be made in a foreign state where a Foreign Financial Instruments Exchange on which the Share Certificates, etc. are listed is located, by means of a Foreign Tender Offer;

(iii) where a person set forth in the items of Article 14-3-5 makes a Purchase, etc. set forth in Article 12, items (iii) and (iv);

(iv) where a person set forth in the items of Article 14-3-5 makes a Purchase, etc. under entrustment from a person other than the Tender Offeror;

(v) where a person set forth in the items of Article 14-3-5 makes a Purchase, etc. that is authorized for the facilitation of smooth distribution of securities by the rules prescribed by a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association; or

(vi) where a person set forth in the items of Article 14-3-5 makes a Purchase, etc. by exercising the Options pertaining to the sale and purchase of Listed Share Certificates, etc. owned thereby, or in response to the exercise of the Options pertaining to the sale and purchase of Listed Share Certificates, etc. granted thereby.

Article 14-3-8 (Prohibited Changes in Conditions of Purchase, etc.)

The changes in the conditions of purchase, etc. specified by a cabinet order, as mentioned in Article 27-6, paragraph (1), item (iv) of the Act as applied *mutatis mutandis* under Article 27-22-2, paragraph (2) of the Act, shall be as follows:

(i) an extension of the period of Purchase, etc. exceeding the period specified in Article 14-3-3, paragraph (1); however, this shall not apply where the period specified respectively in the following sub-items is to be extended, according to the category of cases set forth therein:

(a) where the period of Purchase, etc. must be extended pursuant to the provision of Article 27-8, paragraph (8) of the Act as applied *mutatis mutandis* under Article 27-22-2, paragraph (2) and Article 27-22-3, paragraph (4) of the Act—the period to be extended pursuant to the provision of Article 27-8, paragraph (8) of the Act; or

(b) where a person other than the Tender Offeror has given, with regard to the Share Certificates, etc. issued by the Tender Offeror, Public Notice for Commencing Tender Offer (meaning public notice under Article 27-3, paragraph (1) of the Act) or Public Notice or Public Announcement (meaning public notice or public announcement under Article 27-6, paragraph (2) or (3) of the Act or Article 27-8, paragraph (8) of the Act) of the changes in the conditions of purchase that extend the period of Purchase, etc., during the Tender Offer Period (meaning the Tender Offer Period as defined in Article 27-5 of the Act as applied *mutatis mutandis* under Article 27-22-2, paragraph (2) of the Act)—the period not exceeding the number of days counted from the day following the last day of the Tender Offer Period until the last day of the Tender Offer Period (meaning the Tender Offer Period as defined in Article 27-5 of the Act) pertaining to the Public Notice for Commencing Tender Offer or the Public Notice or Public Announcement of the changes;

(ii) a change in the types of consideration for Purchase, etc.; however, this shall not apply where a new type of consideration is added as an option for the Accepting Shareholders, etc. to choose; or

(iii) where the condition set forth in Article 27-11, paragraph (1) of the Act as applied *mutatis mutandis* under Article 27-22-2, paragraph (2) of the Act is imposed, a change in the details of the condition.

Article 14-3-9 (Method, etc. of Cancellation of Agreements)

The method specified by a cabinet order, as mentioned in Article 27-12, paragraph (2) of the Act as applied *mutatis mutandis* under Article 27-22-2, paragraph (2) of the Act, shall be a method wherein a document stating the cancellation of the agreement pertaining to a Tender Offer is delivered or sent to the person designated by the Tender Offeror (limited to the persons specified by a cabinet office ordinance), and the time specified by a cabinet order, as mentioned in Article 27-12, paragraph (2) of the Act, shall be the time when the document is delivered to or reached the designated person.

Article 14-3-10 (Authorized Financial Instruments Firms Association Providing Public Inspection)

The Authorized Financial Instruments Firms Association specified by a cabinet order, as mentioned in Article 27-14, paragraph (3) of the Act as applied *mutatis mutandis* under Article 27-22-2, paragraph (2) of the Act, shall be an Authorized Financial Instruments Firms Association specified in Article 14-3-6.

Article 14-3-11 (Replacement of Terms and Phrases Concerning Tender Offers for Listed Share Certificates, etc. by Issuers)

(1) With regard to where a Purchase, etc is made by means of a Tender Offer pursuant to the provision of the Article 27-22-2, paragraph (1) of the Act, when the provisions of the Act are applied *mutatis mutandis* under paragraph (2) of that Article, the deemed replacement of terms and phrases under paragraph (13) of that Article shall be as set forth in the following table:

Provisions of the Act Subject to Replacement	**Replaced Terms and Phrases**	**Replacing Terms and Phrases**
Article 27-2 (limited to paragraphs (2) to (6))	Article 27-12, paragraph (3)	Article 27-12, paragraph (3) as applied *mutatis mutandis* under Article 27-22-2, paragraph (2)
	the provisions of the preceding three paragraphs and other provisions of this Section	the provisions of the preceding three paragraphs and other provisions of the following Section
Article 27-4	paragraph (2) of the preceding Article	paragraph (2) of the preceding Article as applied *mutatis mutandis* under Article 27-22-2, paragraph (2)

Provisions of the Act Subject to Replacement	Replaced Terms and Phrases	Replacing Terms and Phrases
Article 27-7	paragraph (2) or (3) of the preceding Article	paragraph (2) or (3) of the preceding Article as applied *mutatis mutandis* under Article 27-22-2, paragraph (2)
	paragraph (8) of the following Article	paragraph (8) of the following Article as applied *mutatis mutandis* under Article 27-22-2, paragraph (2)
Article 27-8 (excluding paragraphs (6), (10) and (12))	the provisions of this Section	the provisions of the following Section
	Article 27-6, paragraph (1)	Article 27-6, paragraph (1) as applied *mutatis mutandis* under Article 27-22-2, paragraph (2)
	Article 27-6, paragraph (2)	Article 27-6, paragraph (2) as applied *mutatis mutandis* under Article 27-22-2, paragraph (2)
Article 27-9	the provisions of paragraphs (1) to (4) of the preceding Article	the provisions of paragraphs (1) to (4) of the preceding Article as applied *mutatis mutandis* under Article 27-22-2, paragraph (2)
Article 27-12	Article 27-8, paragraph (8)	Article 27-8, paragraph (8) as applied *mutatis mutandis* under Article 27-22-2, paragraph (2)
	paragraphs (1) and (4) of the following Article, Article 27-14, paragraph (1), and Article 27-21, paragraphs (1) and (2)	paragraphs (1) and (4) of the following Article, Article 27-14, paragraph (1), and Article 27-21, paragraph (1) as applied *mutatis mutandis* under Article 27-22-2, paragraph (2)

Provisions of the Act Subject to Replacement	Replaced Terms and Phrases	Replacing Terms and Phrases
Article 27-13 (excluding paragraph (3))	Article 27-11, paragraph (2)	Article 27-11, paragraph (2) as applied *mutatis mutandis* under Article 27-22-2, paragraph (2)
	the proviso clause of paragraph (1) of Article 27-11	the proviso clause of paragraph (1) of Article 27-11 as applied *mutatis mutandis* under Article 27-22-2, paragraph (2)
	Article 27-6, paragraph (2)	Article 27-6, paragraph (2) as applied *mutatis mutandis* under Article 27-22-2, paragraph (2)
Article 27-14	paragraph (1) of the following Article	paragraph (1) of the following Article as applied *mutatis mutandis* under Article 27-22-2, paragraph (2)
	Article 27-3, paragraph (4) (including where it is applied *mutatis mutandis* under Articles 27-8, paragraph (6), Article 27-11, paragraph (4), and paragraph (3) of the preceding Article)	Article 27-3, paragraph (4) and Article 27-22-2, paragraph (4) (including where it is applied *mutatis mutandis* under paragraph (8) of that Article) as applied *mutatis mutandis* under Article 27-22-2, paragraphs (2) and (3)

Provisions of the Act Subject to Replacement	Replaced Terms and Phrases	Replacing Terms and Phrases
Article 27-17	Article 27-5 (including where it is applied *mutatis mutandis* under Article 27-8, paragraph (10); hereinafter the same shall apply in this paragraph)	Article 27-5 as applied *mutatis mutandis* under Article 27-22-2, paragraphs (2) and (5)
	Article 27-5	Article 27-5 as applied *mutatis mutandis* under Article 27-22-2, paragraphs (2) and (5)
	item (i) of paragraph (2) of the following Article	item (i) of paragraph (2) of the following Article as applied *mutatis mutandis* under Article 27-22-2, paragraph (2)
	Article 27-6, paragraph (2) or (3)	Article 27-6, paragraph (2) or (3) as applied *mutatis mutandis* under Article 27-22-2, paragraph (2)
	paragraph (2) of the following Article and Article 27-20, paragraph (2)	paragraph (2) of the following Article as applied *mutatis mutandis* under Article 27-22-2, paragraph (2)
Article 27-18	Article 27-13, paragraph (4)	Article 27-13, paragraph (4) as applied *mutatis mutandis* under Article 27-22-2, paragraph (2)
	paragraph (1) of the preceding Article	paragraph (1) of the preceding Article as applied *mutatis mutandis* under Article 27-22-2, paragraph (2)

Provisions of the Act Subject to Replacement	Replaced Terms and Phrases	Replacing Terms and Phrases
Article 27-21, paragraph (1)	Article 27-17, paragraph (1)	Article 27-17, paragraph (1) as applied *mutatis mutandis* under Article 27-22-2, paragraph (2)
	Article 27-18, paragraph (2)	Article 27-18, paragraph (2) as applied *mutatis mutandis* under Article 27-22-2, paragraph (2)

(2) With regard to Public Notice or Public Announcement given under Article 27-8, paragraphs (8) and (11) of the Act as applied *mutatis mutandis* under Article 27-22-2, paragraph (2) of the Act, when the provisions of the Act are applied *mutatis mutandis* under paragraph (6) of that Article, the deemed replacement of terms and phrases under paragraph (13) of that Article shall be as set forth in the following table:

Provisions of the Act Subject to Replacement	Replaced Terms and Phrases	Replacing Terms and Phrases
Article 27-7	paragraph (8) of the following Article	paragraph (8) of the following Article as applied *mutatis mutandis* under Article 27-22-2, paragraph (2)

(3) With regard to a tender offer report as defined in Article 27-13, paragraph (2) of the Act as applied *mutatis mutandis* under Article 27-22-2, paragraph (2) of the Act, when the provisions of the Act are applied as *mutatis mutandis* under paragraph (7) of that Article, the deemed replacement of terms and phrases under paragraph (13) of that Article shall be as set forth in the following table:

Provisions of the Act Subject to Replacement	Replaced Terms and Phrases	Replacing Terms and Phrases
Article 27-8 (limited to paragraphs (1) to (5))	including the period to be extended pursuant to the provision of paragraph (8); in paragraph (7), the same shall apply	including the period to be extended pursuant to the provision of paragraph (8)

Article 14-3-12 (Transitional Period After Public Announcement)

The period specified by a cabinet order, as mentioned in Article 27-22-3, paragraph (3) of the Act, shall be 12 hours.

Article 14-3-13 (Replacement of Terms and Phrases Concerning Public Announcement of Material Facts Pertaining to the Company That Is the Tender Offeror)

With regard to where a Purchase, etc. of Listed Share Certificates, etc. has been made in violation of Article 27-5 of the Act as applied *mutatis mutandis* under Article 27-22-3, paragraph (5) of the Act, when the provisions of the Act are applied *mutatis mutandis* under paragraph (8) of that Article, the deemed replacement of terms and phrases under that paragraph shall be as set forth in the following table:

Provisions of the Act Subject to Replacement	Replaced Terms and Phrases	Replacing Terms and Phrases
Article 27-17	Article 27-5	Article 27-5 as applied *mutatis mutandis* under Article 27-22-3, paragraph (5)
	item (i) of paragraph (2) of the following Article	item (i) of paragraph (2) of the following Article as applied *mutatis mutandis* under Article 27-22-2, paragraph (2)
	Article 27-6, paragraph (2) or (3)	Article 27-6, paragraph (2) or (3) as applied *mutatis mutandis* pursuant to Article 27-22-2, paragraph (2)
	excluding those of which the person cannot make a Sale, etc. as a result of the Method of Proportional Distribution; in paragraph (2) of the following Article and Article 27-20, paragraph (2), the same shall apply	excluding those of which the person cannot make a Sale, etc. as a result of the Method of Proportional Distribution

Chapter III-2: Disclosure of Status of Large Volume Holding of Share Certificates, etc.

Article 14-4 (Scope of Securities Related to Share Certificates)

(1) The share certificates, company bond certificates with share

options, and other securities specified by a cabinet order, as mentioned in Article 27-23, paragraph (1) of the Act, shall be the following securities:

(i) share certificates, share option certificates, and company bond certificates with share options;

(ii) securities or certificates issued by a foreign person that have the characteristics of securities of the category set forth in the preceding item;

(iii) Investment Securities, etc.;

(iv) Securities Trust Beneficiary Certificates whose Entrusted Securities are securities of the category set forth in any one of the preceding three items; and

(v) the securities set forth in Article 2, paragraph (1), item (xx) of the Act that indicate the rights pertaining to securities of the category set forth in any one of items (i) to (iii).

(2) The securities related to share certificates specified by a cabinet order as those for which the status of distribution is regarded as being equivalent to that of those listed on a financial instruments exchange, as mentioned in Article 27-23, paragraph (1) of the Act, shall be Over-the-Counter Traded Securities.

Article 14-4-2 (Scope of Securities That Indicate Rights Pertaining to Target Securities)

What is specified by a cabinet order as indicating the rights pertaining to the target securities, as mentioned in Article 27-23, paragraph (1) of the Act, shall be as follows:

(i) securities of the category set forth in Article 2, paragraph (1), item (xix) of the Act that indicate Options pertaining to the sale and purchase of Target Securities (meaning Target Securities as defined in Article 27-23, paragraph (2) of the Act; hereinafter the same shall apply in this Article) (limited to the Options wherein the person who exercises the Options acquires the position as a buyer in the sale and purchase through the exercise of the Options);

(ii) Securities Trust Beneficiary Certificates whose Entrusted Securities are Target Securities;

(iii) securities of the category set forth in Article 2, paragraph (1), item (xx) of the Act that indicate the rights pertaining to the Target Securities;

(iv) company bond certificates (excluding company bond certificates with share options) with a special provision that allows the redemption of the company bond certificates through the Target Securities (limited to Target Securities issued by a company other than the issuer company of the company bond certificates) (limited to those wherein the person who holds the company bond certificates has the

right to have the issuer company of the company bond certificates redeem the company bond certificates through the Target Securities); and

(v) securities of the category set forth in Article 2, paragraph (1), item (xvii) of the Act that have the characteristics of securities of the category set forth in the preceding item.

Article 14-5 (Holidays Not Included in the Reporting Period)

The holidays specified by a cabinet order, as mentioned in Article 27-23, paragraph (1) of the Act, shall be the Holidays of Administrative Organizations (excluding Sundays).

Article 14-5-2 (Scope of Target Securities)

What is specified by a cabinet order, as mentioned in Article 27-23, paragraph (2) of the Act, shall be as follows:

(i) share certificates (excluding the share certificates pertaining to those specified by a cabinet office ordinance as Shares Without Voting Rights);

(ii) share option certificates and company bond certificates with share options (excluding those with the rights to acquire only the Shares Without Voting Rights as the share options);

(iii) securities or certificates issued by a foreign person that have the characteristics of securities of the category set forth in either of the preceding two items; and

(iv) Investment Securities, etc.

Article 14-6 (Persons Equivalent to a Person Who Holds the Right to Request Delivery of Share Certificates, etc.)

The persons specified by a cabinet order, as mentioned in Article 27-23, paragraph (3) of the Act, shall be the following persons:

(i) persons who make a pre-agreement for a sale or purchase of Share Certificates, etc. (meaning Share Certificates, etc. as defined in Article 27-23, paragraph (1) of the Act; hereinafter the same shall apply in this Chapter) (limited to where the person holds the rights to complete the sale or purchase and acquires the position as a buyer through the exercise of the rights); and

(ii) persons who acquire Options pertaining to a sale and purchase of Share Certificates, etc. (excluding where the Options are indicated on securities of the category set forth in Article 14-4-2, item (i)) (limited to an acquisition wherein the person who exercises the Options acquires the position as a buyer in the sale and purchase through the exercise of the Options).

Article 14-6-2 (Exceptions for Share Certificates, etc. Held)

The rights specified by a cabinet order, as mentioned in Article 27-23, paragraph (4) of the Act, shall be the following rights:

(i) the right to request delivery of Share Certificates, etc. under a sale and purchase agreement or any other agreement;

(ii) the right to exercise voting rights as a shareholder or Investor of the issuer of Share Certificates, etc. or the right to give instructions with regard to the exercise of voting rights under a money trust agreement or any other agreement, or the provisions of laws;

(iii) the rights necessary to make investments in Share Certificates, etc. under a Discretionary Investment Agreement or any other agreement, or the provisions of laws;

(iv) the rights to complete the sale or purchase of Share Certificates, etc. and to acquire the position as a buyer under a pre-agreement for the sale or purchase of Share Certificates, etc.; and

(v) the rights whereby the person who has exercised the Options pertaining to the sale and purchase of Share Certificates, etc. acquires the position as a buyer in the sale and purchase through the exercise of the Options.

Article 14-7 (Special Relationships)

(1) The special relationships specified by a cabinet order, as mentioned in Article 27-23, paragraph (6) of the Act, shall be the following relationships:

(i) the relationship of husband and wife;

(ii) the relationship between a person who owns shares or equity pertaining to the voting rights exceeding 50 percent of the Voting Rights Held by All Shareholders, etc. of a company in his/her own name or in another person's name (or under a fictitious name; hereinafter the same shall apply in this Article) (hereinafter such a person is referred to as a "Controlling Shareholder, etc." in this Article) and the company (hereinafter referred to as a "Controlled Company" in this Article);

(iii) the relationship between a Controlled Company and another Controlled Company with the same Controlling Shareholder, etc.; or

(iv) any other relationships specified by a cabinet office ordinance as being equivalent to the relationships set forth in the preceding three items.

(2) Where a husband and wife jointly own shares or equity pertaining to the voting rights exceeding 50 percent of the Voting Rights Held by All Shareholders, etc. of a company in their own name or in another person's name, the husband and wife shall be deemed respectively to be the Controlling Shareholders, etc. of the company, and the provision of the preceding paragraph shall apply.

(3) Where the Controlling Shareholders, etc. and the Controlled Company thereof jointly own shares or equity pertaining to

the voting rights exceeding 50 percent of the Voting Rights Held by All Shareholders, etc. of another company in their own name or in another person's name, the other company shall also be deemed to be the Controlled Company of the Controlling Shareholders, etc., and the provisions of paragraph (1) and this paragraph shall apply.

(4) In the cases under any one of item (ii) of paragraph (1) and the preceding two paragraphs, the provision of Article 4-4, paragraph (3) shall apply *mutatis mutandis* to the voting rights held by the persons specified in the relevant item or paragraph. In this case, the part "Article 147, paragraph (1) or Article 148, paragraph (1) of the Act on Book-Entry Transfer of Company Bonds, Shares, etc. (including where these provisions are applied *mutatis mutandis* under Article 228, paragraph (1), Article 235, paragraph (1), Article 239, paragraph (1), and Article 276 (limited to the part pertaining to item (ii)) of that Act)" and the phrase "shares or equity interests" in Article 4-4, paragraph (3) shall be deemed to be replaced with "Article 147, paragraph (1) or Article 148, paragraph (1) of the Act on Book-Entry Transfer of Company Bonds, Shares, etc." and "shares," respectively.

Article 14-7-2 (Changes in Important Matters to Be Contained in Large Volume Holding Reports)

As for what is specified by a cabinet order as the changes in important matters to be contained in a large volume holding report, as mentioned in Article 27-25, paragraph (1) and Article 27-26, paragraph (2), items (i) and (ii) of the Act, among the changes pertaining to the details to be contained in a large volume holding report or change report (including the amendment reports thereof), the changes set forth in the following items shall be excluded:

(i) that a holder whose Holding Rate of Share Certificates, etc. in Isolation is less than one percent newly becomes a Joint Holder (meaning a Joint Holder as defined in Article 27-23, paragraph (5) of the Act and including the person who is deemed to be a Joint Holder pursuant to the provision of paragraph (6) of that Article; hereinafter the same shall apply in this Chapter);

(ii) that a holder whose Holding Rate of Share Certificates, etc. in Isolation is less than one percent ceases to be a Joint Holder;

(iii) a change in the name, address, or location of a Joint Holder whose Holding Rate of Share Certificates, etc. in Isolation is less than one percent;

(iv) an increase or decrease by less than one percent in a holder's Holding Rate of Share Certificates, etc. in Isolation;

(v) conclusion of the following agreements related to the Share Certificates, etc. in possession by the holder of

the Share certificates, etc. and the Joint Holder thereof, or among the changes in the details of those agreements, those specified by a cabinet office ordinance as being minor changes:

(a) an agreement for collateralization;

(b) an agreement for reselling;

(c) a pre-agreement for a sale or purchase that is exercisable by one party (limited to where the party holds the right to complete the sale or purchase and will acquire the position as a seller through the exercise of that right);

(d) an agreement for lending or borrowing;

(e) an agreement equivalent to any one of those set forth in sub-items (a) to (d); and

(vi) what is specified by a cabinet office ordinance as being equivalent to those set forth in the preceding items.

(2) The term "Holding Rate of Share Certificates, etc. in Isolation" as used in the preceding paragraph means the rate obtained by dividing the relevant holder's Number of Share Certificates, etc. Held (meaning a Number of Share Certificates, etc. Held as defined in Article 27-23, paragraph (4) of the Act) by the number obtained by adding the number of company bond certificates with share options and other securities, as specified by a cabinet office ordinance, that are owned by that holder and other Joint Holders to the total number of issued shares or issued Investment Equity of the issuer of the relevant Share Certificates, etc.

Article 14-8 (Criteria for the Transfer of a Large Number of Share Certificates, etc. over a Short Period)

The criteria specified by a cabinet order, as mentioned in Article 27-25, paragraph (2) of the Act, shall be that the Share Certificates, etc. Holding Rate (meaning a Share Certificates, etc. Holding Rate as defined in Article 27-23, paragraph (4) of the Act; hereinafter the same shall apply in this Article) after the change that should be stated in a change report as mentioned in Article 27-25, paragraph (2) of the Act becomes less than half of the highest among the Share Certificates, etc. Holding Rates (limited to those for which the calculation is based on a day falling on or after the 60th day prior to the day on which the calculation of the Share Certificates, etc. Holding Rate after the change has been based, and those for which the calculation is based on or before the day immediately preceding the 60th day prior to the day on which the calculation of the Share Certificates, etc. Holding Rate after the change has been based that is the nearest to the 60th day prior to the day on which the calculation of the Share Certificates, etc. Holding Rate after the change has been based) that has been stated or should have been stated in the Large Volume Holding Report (meaning the Large Volume Holding Report set forth in Article 27-23, paragraph (1) or Article 27-26, paragraph (1) of the Act)

pertaining to the change report or in another Change Report (meaning the Change Report set forth in Article 27-25, paragraph (1) or Article 27-26, paragraph (2) of the Act) pertaining to the Large Volume Holding Report, and has decreased by more than five percent from the above-mentioned highest Share Certificates, etc. Holding Rate.

Article 14-8-2 (Act of Making an Important Proposal, etc.)

(1) What is specified by a cabinet order as effecting material changes in or having material effects on the business activities of the issuer of Share Certificates, etc., as mentioned in Article 27-26, paragraph (1) of the Act, shall be the acts in which the matters set forth in the following items pertaining to the issuer or its Subsidiary are proposed at the shareholders meeting, the investors meeting, or to the Officers (meaning a member, director, executive officer, accounting advisor, company auditor, or persons equivalent thereto who execute the operations and including those who are found to have the same or higher authority than a member, director, executive officer, accounting advisor, company auditor, or persons equivalent thereto who execute the operations over the juridical person, irrespective of their titles, such as advisor, consultant, or others; in item (iv), the same shall apply); however, those that satisfy the criteria specified by a cabinet office ordinance as being minor shall be excluded:

(i) disposal or acceptance of transfer of important properties;
(ii) borrowings in a significant amount;
(iii) appointment or removal of a representative director;
(iv) important changes in the constitution of Officers (including important changes in the number or terms of office of Officers);
(v) election or dismissal of a manager or any other important employee;
(vi) establishment, changes in, or abolition of a branch office or any other important organization;
(vii) share exchange, share transfer, or split or merger of the company;
(viii) transfer, acceptance, suspension, or abolition of the business in whole or in part;
(ix) important changes in the policy regarding distribution of dividends;
(x) important changes in the policy regarding the increase in or reduction of the amount of stated capital;
(xi) delisting from the financial instruments exchange market or the recession of registration on the Over-the-Counter Securities Market of the securities issued by the relevant issuer or its Subsidiary;

(xii) listing on a financial instruments exchange market or registration in a registry of Over-the-Counter Traded Securities of the securities issued by the relevant issuer or its Subsidiary; and

(xiii) other matters specified by a cabinet office ordinance as being equivalent to those set forth in the preceding items.

(2) The combination of two or more days of each month designated pursuant to the provisions of a cabinet order, as mentioned in Article 27-26, paragraph (3) of the Act, shall be either of the following:

(i) the second and forth Monday of each month (where there is a fifth Monday, it shall be the second, forth and fifth Monday); or

(ii) the fifteenth and last day of each month (where those days fall on a Saturday, it shall be the previous day thereto, and where those days fall on a Sunday, it shall be the day two days before).

(3) The period specified by a cabinet order, as mentioned in Article 27-26, paragraphs (4) and (5), shall be the period until five days (the Holidays of Administrative Organizations shall not be included) have elapsed from the first Reference Date (meaning the Reference Date as defined in paragraph (3) of that Article) arrived on or after the day on which the Share Certificates, etc. Holding Rate has exceeded five percent or the date of the increase.

Article 14-9 (Share Certificates, etc. Equivalent to Listed Share Certificates, etc.)

The Share Certificates, etc. specified by a cabinet order, as mentioned in Article 27-27, item (ii) of the Act (including where it is applied *mutatis mutandis* under Article 27-29, paragraph (2) of the Act; hereinafter the same shall apply in this Article), shall be the Share Certificates, etc. that fall under the category of Over-the-Counter Traded Securities, and the authorized financial instruments firms associations specified by a cabinet order, as mentioned in Article 27-27, item (ii) and Article 27-28, paragraph (2) of the Act (including it is applied *mutatis mutandis* under Article 27-29, paragraph (2) of the Act), shall be the authorized financial instruments firms associations that register the Share Certificates, etc.

[Articles 14-10 to 19-6: translation omitted.]

Chapter VI: Regulations on Transactions, etc. of Securities

Article 20 (Where Stabilizing Transactions Are Allowed)

(1) A Stabilizing Transaction (meaning a series of Sales and Purchases of Securities, etc. (meaning a Sale and Purchase of Securities, etc. as defined in Article 159, paragraph (2) of the

Act; hereinafter the same shall apply in this paragraph) conducted for the purposes set forth in paragraph (3) of that Article; hereinafter the same shall apply) or an offer therefor, an Entrustment, etc. (meaning an Entrustment, etc. as defined in Article 44, item (i) of the Act; in paragraph (3) and the following Article, the same shall apply) or Acceptance of Entrustment, etc. (meaning the acceptance of the application for intermediation, brokerage (excluding brokerage for clearing securities, etc.), or agency; in the following Article, the same shall apply) thereof, may be conducted only where the series of Sales and Purchases of Securities, etc. are conducted on a financial instruments exchange market or an Over-the-Counter Securities Market for the purpose of facilitating a public offering of securities (limited to those made to not less than 50 persons; hereinafter the same shall apply in this Article to Article 22) or a Solicitation for Acquisition Only for Professional Investors (limited to those made to not less than 50 persons; hereinafter the same shall apply in this Article to Article 22), or a secondary distribution of securities (limited to those made to not less than 50 persons; hereinafter the same shall apply in this Article to Article 22) or a Solicitation for Selling, etc. Only for Professional Investors (limited to those made to not less than 50 persons; hereinafter the same shall apply in this Article to Article 22).

(2) In the cases under the preceding paragraph, a financial instruments business operator who may conduct Stabilizing Transactions on its own account shall be limited to the financial instruments business operator specified respectively in the following items, according to the category of cases set forth therein:

(i) where a statement under Article 5, paragraph (1) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act) has been submitted with regard to the public offering or secondary distribution—the financial instruments business operator who has been stated in the statement as the financial instruments business operator who will conclude a Wholesale Underwriting Agreement as defined in Article 21, paragraph (4) of the Act (including where it is applied *mutatis mutandis* under Article 27 of the Act) with the issuer of the securities pertaining to the public offering or the owner of the securities pertaining to the secondary distribution; or

(ii) other cases—the financial instruments business operator who, in advance, has been notified by the issuer of the securities pertaining to the public offering or Solicitation for Acquisition Only for Professional Investors, or secondary distribution or Solicitation for Selling, etc. Only for Professional Investors as the financial instruments business operator with whom the issuer will conclude a

Wholesale Underwriting Agreement as defined in Article 17-3, item (iii) pursuant to the provisions of the rules of each financial instruments exchange on which the issuer lists the securities issued thereby (where the securities are Over-the-Counter Traded Securities, each authorized financial instruments firms association that registers the relevant securities; in item (v) of the following paragraph and Article 22, paragraphs (3) and (4), the same shall apply) to the relevant financial instruments exchange.

(3) In the cases under paragraph (1), the persons who may make an Entrustment, etc. of Stabilizing Transactions shall be limited to the following persons:

(i) an officer of the issuer of the securities pertaining to the public offering or Solicitation for Acquisition Only for Professional Investors, or secondary distribution or Solicitation for Selling, etc. Only for Professional Investors;

(ii) the owner of the securities pertaining to the secondary distribution or Solicitation for Selling, etc. Only for Professional Investors (where the owner has acquired the securities under an agreement detailing the secondary distribution or Solicitation for Selling, etc. Only for Professional Investors of the securities from the person who owned the securities, the counterparty to the agreement);

(iii) an officer of a company that is closely affiliated as specified by a cabinet office ordinance with the issuer of the securities pertaining to the public offering or Solicitation for Acquisition Only for Professional Investors, or secondary distribution or Solicitation for Selling, etc. Only for Professional Investors;

(iv) the company mentioned in the preceding item (excluding what is specified by a cabinet office ordinance); and

(v) the person who, in advance, has been notified by the issuer of the securities pertaining to the pubic offering or Solicitation for Acquisition Only for Professional Investors, or secondary distribution or Solicitation for Selling, etc. Only for Professional Investors as a person who may make an Entrustment, etc. of Stabilizing Transactions to the relevant financial instruments exchange, pursuant to the provisions of the rules of each financial instruments exchange on which the issuer lists the securities issued thereby.

Article 21 (Statements, etc. on Prospectuses)

A Stabilizing Transaction or an offer therefor, or an Entrustment, etc. or Acceptance of Entrustment, etc. thereof may be conducted only where the following matters are stated or recorded in the prospectus or Specified Information on Securities, etc. (meaning Specified Infor-

mation on Securities, etc. as defined in Article 27-33 of the Act (limited to those provided or publicly announced pursuant to the provision of Article 27-31, paragraph (2) or (4) of the Act); in paragraph (1) of the following Article, the same shall apply) pertaining to the securities of which the public offering or Solicitation for Acquisition Only for Professional Investors, or secondary distribution or Solicitation for Selling, etc. Only for Professional Investors is intended to be facilitated by the Stabilizing Transaction:

(i) a statement to the effect that a Stabilizing Transaction may be conducted;

(ii) where the relevant securities are Listed Securities (meaning the securities listed by a financial instruments exchange; in Article 23, item (i) and Article 25, item (i), the same shall apply), all names or trade names of the financial instruments exchange markets on which the Stabilizing Transactions shall be conducted and of the financial instruments exchanges that establish those financial instruments exchange markets, and the name and trade name of the financial instruments exchange market on which the principal Stabilizing Transaction is excepted to be conducted (such a financial instruments exchange market is referred to as the "Principal Financial Instruments Exchange Market" in Article 24) and of the financial instruments exchange that establishes that financial instruments exchange market; or

(iii) where the relevant securities are Over-the-Counter Traded Securities, all names of the Over-the-Counter Securities Markets on which the Stabilizing Transactions shall be conducted and of the authorized financial instruments firms associations that establish those Over-the-Counter Securities Markets, and the name of the Over-the-Counter Securities Market on which the principal Stabilizing Transaction is expected to be conducted (such an Over-the-Counter Securities Market is referred to as the "Principal Over-the-Counter Securities Market" in Article 24) and of the authorized financial instruments firms association that establishes that Over-the-Counter Securities Market.

Article 22 (Place and Period of Stabilizing Transactions)

(1) A Stabilizing Transaction may be conducted only through a sale and purchase of securities or a market transaction of derivatives conducted on the financial instruments exchange market that has been stated or recorded in the prospectus or Specified Information on Securities, etc. pursuant to the provision of item (ii) of the preceding Article (where the securities pertaining to the Stabilizing Transaction are Over-the-Counter Traded Securities, a sale and purchase of Over-the-Counter Traded Securities conducted on the Over-the-Counter Securities Market that has been stated or recorded in the prospectus or Specified Information on Securities, etc. pursuant to the provision of item (iii) of that Article).

(2) A Stabilizing Transaction may be conducted only during the period specified respectively in the following items, according to the category of cases set forth therein:

(i) in the cases of a public offering of securities or Solicitation for Acquisition Only for Professional Investors—the period specified respectively in the following sub-items, according to the category of cases set forth therein:

(a) in the cases of a public offering or Solicitation for Acquisition Only for Professional Investors made by granting the shareholders with the rights to receive the allotment of shares—the period from the day two weeks prior to the date specified in Article 202, paragraph (1), item (ii) of the Companies Act pertaining to the public offering or Solicitation for Acquisition Only for Professional Investors until the payment date;

(b) in the cases of a public offering or Solicitation for Acquisition Only for Professional Investors made by granting the preferred equity investors specified in the Preferred Equity Investment Act with the rights to receive the allotment of preferred equity investments specified in the Preferred Equity Investment Act—the period from the day two weeks prior to the date specified in Article 8, paragraph (1), item (ii) of the Preferred Equity Investment Act pertaining to the public offering or Solicitation for Acquisition Only for Professional Investors until the payment date; or

(c) in the cases of a public offering or Solicitation for Acquisition Only for Professional Investors other than those mentioned in sub-items (a) and (b)—the period from the day 20 days prior to the day on which the period for the application for acquisition of the securities pertaining to the public offering or Solicitation for Acquisition Only for Professional Investors ends until the day on which the period ends; or

(ii) in the cases of a secondary distribution of securities or Solicitation for Selling, etc. Only for Professional Investors—the period from the day 20 days prior to the day on which the period for the application for purchase of the securities pertaining to the secondary distribution or Solicitation for Selling, etc. Only for Professional Investors ends (in the cases of an application for sale, the period of sale) until the day on which the period ends.

(3) In the cases under the preceding paragraph, if the issue price of the securities of which the public offering or Solicitation for Acquisition Only for Professional Investors, or secondary distribution or Solicitation for Selling, etc. Only for Professional Investors is intended to be facilitated by a Stabilizing Transaction, or the price for secondary distribution or Solicitation for

Selling, etc. Only for Professional Investors (in the cases of company bond certificates with share options, the issue price and the details of the share options or the price for secondary distribution or Solicitation for Selling, etc. Only for Professional Investors; hereinafter referred to as the "Issue Price, etc." in this Article) has not been decided before the commencement of the period set forth in the items of that paragraph, notwithstanding the provisions of that paragraph, the Stabilizing Transaction shall not be conducted until the day on which each financial instruments exchange on which the issuer of the relevant securities lists the securities issued thereby receives the notice of the Issue Price, etc. of the relevant securities from the issuer pursuant to the provisions of the rules of the relevant financial instruments exchange.

(4) In the cases under paragraph (2), if the Issue Price, etc. of the securities of which the public offering or Solicitation for Acquisition Only for Professional Investors, or secondary distribution or Solicitation for Selling, etc. Only for Professional Investors is intended to be facilitated by a Stabilizing Transaction has been decided without depending on a definitive figure obtained by multiplying the closing price of the securities issued by the issuer of the relevant securities on a single financial instruments exchange on a single day (where the securities issued by the issuer are Over-the-Counter Traded Securities, the closing price of the Over-the-Counter Traded Securities on a single Over-the-Counter Securities Market on a single day) by a fixed rate, notwithstanding the provision of that paragraph, the Stabilizing Transaction shall not be conducted until the day on which each financial instruments exchange on which the issuer of the relevant securities lists the securities issued thereby receives the notice of the definitive figure of the Issue Price, etc. of the relevant securities from the issuer pursuant to the provisions of the rules of the relevant financial instruments exchange.

Article 23 (Notification of Stabilizing Transaction)

A financial instruments business operator who conducts a Stabilizing Transaction on the day of commencement of Stabilizing Transactions (in the following Article, referred to as the "Stabilizing Transaction Commencement Day") shall, immediately after he/she has conducted the first Stabilizing Transaction on that day, submit three copies of a document containing the trade name of the financial instruments business operator, the issue name and concluded price of the securities pertaining to the Stabilizing Transaction (hereinafter referred to as "Securities Subject to Stabilizing Transactions" in this Article to Article 25) (such a price is referred to as the "Price at Commencement of Stabilizing Transaction" in the following Article) and any other matters specified by a cabinet office ordinance (such a document is referred to as the "Stabilizing Transaction Notification" in

Article 26) to the Commissioner of the Financial Services Agency, and pursuant to the provisions of a cabinet office ordinance, submit a copy of the document to the person specified respectively in the following items, according to the category of securities set forth therein under which the relevant Securities Subject to Stabilizing Transaction fall:

(i) Listed Securities—each financial instruments exchange that lists the Securities Subject to Stabilizing Transaction; or

(ii) Over-the-Counter Traded Securities—each authorized financial instruments firms association that registers the Securities Subject to Stabilizing Transaction.

Article 24 (Restrictions on the Price for Stabilizing Transactions)

(1) A financial instruments business operator who conducts Stabilizing Transactions on a financial instruments exchange market shall not purchase the Securities Subject to Stabilizing Transactions at a price exceeding the prices specified respectively in the following items, according to the category of Stabilizing Transactions set forth therein:

(i) a Stabilizing Transaction conducted on the Stabilizing Transaction Commencement Day—the price specified respectively in the following sub-items, according to the category of Stabilizing Transactions set forth therein:

(a) the first Stabilizing Transaction—the lower price of the closing price of the Securities Subject to Stabilizing Transactions on the Principal Financial Instruments Exchange Market on the day immediately preceding the period wherein Stabilizing Transactions are allowed pursuant to the provisions of Article 22, paragraphs (2) to (4) (such a period is referred to as the "Stabilizing Transaction Period" in the following Article and Article 26) (where sales and purchases of the Securities Subject to Stabilizing Transactions were not conducted on the Principal Financial Instruments Exchange Market on the day immediately preceding the Stabilizing Transaction Period, the closing price on the nearest day on which the relevant sales and purchases of the Securities Subject to Stabilizing Transactions were conducted that is prior to the day on which the first Stabilizing Transaction was conducted; hereinafter referred to as the "Index Closing Price for Stabilizing Transactions as of the Immediately Preceding Day" in this paragraph), or the Index Closing Price for Stabilizing Transactions as of the Immediately Preceding Day of the Stabilizing Transaction Commencement Day; or

(b) Stabilizing Transactions conducted after the first Stabilizing Transaction—the Price at Commencement of Stabilizing Transaction of the financial instruments business operator; or

(ii) Stabilizing Transactions conducted after the Stabilizing Transaction Commencement Day—the lower price of the Price at Commencement of Stabilizing Transaction (where there are two or more financial instruments business operators who have conducted Stabilizing Transactions on the Stabilizing Transaction Commencement Day, the lowest price among the Prices at Commencement of Stabilizing Transaction of those financial instruments business operators), or the Index Closing Price for Stabilizing Transactions as of the Immediately Preceding Day of the day on which a Stabilizing Transaction is scheduled.

(2) The provisions of the preceding paragraph shall apply *mutatis mutandis* to a financial instruments business operator who conducts a Stabilizing Transaction on an Over-the-Counter Securities Market.

Article 25 (Submission of a Stabilizing Transaction Report)

A financial instruments business operator who has conducted a Stabilizing Transaction shall, with regard to the sales and purchases of Securities Subject to Stabilizing Transactions conducted within the period from the day on which the first Stabilizing Transaction was conducted until the last day of the Stabilizing Transaction Period, submit three copies of a document containing the details of the sales and purchases and any other matters specified by a cabinet office ordinance (such a document is referred to as a "Stabilizing Transaction Report" in the following Article) to the Commissioner of Financial Services Agency, and pursuant to the provisions of a cabinet office ordinance, submit a copy of the document to the person specified respectively in the following items, according to the category of securities set forth therein under which the relevant Securities Subject to Stabilizing Transactions fall, until the day following the day on which the sales and purchases were conducted:

(i) Listed Securities—the financial instruments exchange that establishes the financial instruments exchange market on which the Stabilizing Transaction has been conducted; or

(ii) Over-the-Counter Traded Securities—the authorized financial instruments firms association that establishes the Over-the-Counter Securities Market on which the Stabilizing Transaction has been conducted.

Article 26 (Public Inspection of Stabilizing Transaction Notification, etc.)

(1) The Commissioner of the Financial Services Agency shall, pursuant to the provisions of a cabinet office ordinance, make the documents set forth respectively in the following items available for public inspection for one month from the day specified therein:

(i) a Stabilizing Transaction Notification—the day on which

the Commissioner of the Financial Services Agency accepts the Stabilizing Transaction Notification; or

(ii) a Stabilizing Transaction Report—the day following the day on which the Stabilizing Transaction Period ends.

(2) A financial instruments exchange and an authorized financial instruments firms association shall, pursuant to the provisions of a cabinet office ordinance, keep a copy of the documents set forth in the items of the preceding paragraph submitted pursuant to the provisions of Article 23 and the preceding Article at its office, head office, branch office, or other business office, and make the copy of those documents available for public inspection for one month from the day specified respectively in the items of that paragraph (in the cases of a copy of the Stabilizing Transaction Notification, the day on which the Stabilizing Transaction Notification is submitted to the financial instruments exchange or the authorized financial instruments firms association).

Article 26-2 (Cases Falling Under the Category of Short Selling)

The cases specified by a cabinet order, as mentioned in Article 162, paragraph (1), item (i) of the Act, shall be where it is not clear whether the relevant securities held (excluding securities borrowed) may be provided without delay after the sale thereof.

Article 26-2-2 (Confirmation, etc. of a Guarantee of Borrowed Securities)

(1) Where a Member, etc. of a financial instruments exchange has accepted an entrustment of Short Selling (meaning an entrustment of sale or brokerage for clearing securities, etc. (limited to the entrustment of sales; hereinafter referred to as the "Entrustment of Brokerage for Clearing Securities, etc." in this paragraph and paragraph (1) of the following Article) that falls under any of the following items; hereinafter the same shall apply) to be conducted on a financial instruments exchange market established by the financial instruments exchange, if the Member, etc. cannot confirm that measures specified by a cabinet office ordinance as the measures to ensure the conclusion of agreement for borrowing or any other transfer of securities pertaining to the Short Selling (limited to the securities designated by the Commissioner of the Financial Services Agency as having the risk to impair the transfer of securities pertaining to the Short Selling due to the large volume of Short Selling thereof; hereinafter the same shall apply in this paragraph (excluding the items) to paragraph (4)) (hereinafter such measures are referred to as the "Settlement Measures" in this Article) have been taken, the Member, etc. shall not conduct the Short Selling:

(i) a sale of securities made without holding the securities or by borrowing securities (excluding brokerage for clearing securities, etc.);

(ii) a sale of securities in the cases specified in the preceding Article (excluding brokerage for clearing securities, etc.);

(iii) an Entrustment of Brokerage for Clearing Securities, etc. made without holding the securities or by borrowing securities; or

(iv) an Entrustment of Brokerage for Clearing Securities, etc. made where it is not clear whether the securities may be provided without delay after the implementation of Entrustment of Brokerage for Clearing Securities, etc.

(2) If a person who has received an application for the brokerage for entrustment of Short Selling to be conducted on a financial instruments exchange market cannot confirm that the Settlement Measures have been taken with regard to the securities pertaining to the Short Selling, the person shall not provide brokerage services for the entrustment of the Short Selling.

(3) A person who applies for entrustment or the brokerage for entrustment of Short Selling to be conducted on a financial instruments exchange market shall clearly indicate to the counterparty of the application for entrustment or brokerage for entrustment of the Short Selling that the Settlement Measures have been taken with regard to the securities pertaining to the Short Selling.

(4) If the Settlement Measures have not been taken with regard to the securities pertaining to the Short Selling to be conducted on a financial instruments exchange market on the own account of a Member, etc. of the financial instruments exchange, the Short Selling shall not be conducted.

(5) The provisions of the preceding paragraphs shall not apply to the transactions set forth in Article 2, paragraph (21), item (i) of the Act or any other transactions specified by a cabinet office ordinance.

(6) The provisions of the preceding paragraphs shall apply *mutatis mutandis* to a sale of Over-the-Counter Traded Securities conducted on an Over-the-Counter Securities Market established by an authorized financial instruments firms association. In this case, the phrase "the transactions set forth in Article 2, paragraph (21), item (i) of the Act or any other transactions specified by a cabinet office ordinance" in the preceding paragraph shall be deemed to be replaced with "the transactions specified by a cabinet office ordinance."

Article 26-3 (Indication and Confirmation in the Cases of Short Selling)

(1) A Member, etc. of a financial instruments exchange shall, with regard to the sales of securities to be conducted on the own account of the Member, etc. or the sales of the securities for which the Member, etc. has accepted the entrustment of sales

(excluding the acceptance of entrustment of brokerage for clearing securities, etc.) or the Entrustment of Brokerage for Clearing Securities, etc. to be conducted on a financial instruments exchange market established by the financial instruments exchange, clearly indicate to the financial instruments exchange whether the sales of securities or Entrustment of Brokerage for Clearing Securities, etc. are Short Selling or not.

(2) A Member, etc. of a financial instruments exchange shall, with regard to the acceptance of entrustment of sales of securities (excluding the acceptance of entrustment of brokerage for clearing securities, etc.) to be conducted on a financial instruments exchange market established by the financial instruments exchange, confirm with the entrusting person of the sales of securities whether the sales of securities are Short Selling or not.

(3) A person who has accepted brokerage for entrustment of sales of securities to be conducted on a financial instruments exchange market shall confirm with the applicant for the brokerage for entrustment whether the sales of securities are Short Selling or not.

(4) A person who applies for entrustment or brokerage for entrustment of sales of securities (excluding the entrustment of brokerage for clearing securities, etc.) to be conducted on a financial instruments exchange market shall clearly indicate to the counterparty of the application for the entrustment or brokerage for entrustment whether the sales of securities are Short Selling.

(5) The provisions of the preceding paragraphs shall not apply to the transactions set forth in Article 2, paragraph (21), item (i) of the Act or any other transactions specified by a cabinet office ordinance.

(6) The provisions of the preceding paragraphs shall apply *mutatis mutandis* to a sale of Over-the-Counter Traded Securities conducted on an Over-the-Counter Securities Market established by an authorized financial instruments firms association. In this case, the phrase "the transactions set forth in Article 2, paragraph (21), item (i) of the Act or any other transactions specified by a cabinet office ordinance" in the preceding paragraph shall be deemed to be replaced with "the transactions specified by a cabinet office ordinance."

Article 26-4 (Price in the Cases of Short Selling)

(1) Where a Member, etc. of a financial instruments exchange intends to conduct Short Selling on the own account of the Member, etc. or Short Selling of which the Member, etc. has accepted the entrustment to be conducted on a financial instruments exchange market established by the financial instruments exchange, the Member, etc. shall not conduct the Short

Selling at a price lower than the price of the securities pertaining to the Short Selling on the financial instruments exchange market that has been publicly announced by the financial instruments exchange immediately before the Short Selling (where the price formation method is a method other than the method of auction and specified by a cabinet office ordinance, the price specified by a cabinet office ordinance; hereinafter referred to as the "Latest Publicly Announced Price" in this Article). However, this shall not apply to the Short Selling conducted at the Latest Publicly Announced Price where the Latest Publicly Announced Price exceeds the different price publicly announced by the financial instruments exchange immediately before the public announcement of the Latest Publicly Announced Price on the financial instruments exchange market (where the price formation method is a method other than the method of auction and specified by a cabinet office ordinance, the price specified by a cabinet office ordinance; in the following paragraph, the same shall apply).

(2) A person who applies for entrustment or brokerage for entrustment of Short Selling to be conducted on a financial instruments exchange market shall not instruct the counterparty of the application for the entrustment or brokerage for entrustment of the Short Selling to conduct the Short Selling at a price lower than the Latest Publicly Announced Price of the securities pertaining to the Short Selling. However, this shall not apply to the instructions given for Short Selling conducted at the Latest Publicly Announced Price where the Latest Publicly Announced Price exceeds the different price publicly announced by the financial instruments exchange immediately before the public announcement of the Latest Publicly Announced Price on the financial instruments exchange market.

(3) In the cases under the preceding two paragraphs, where Short Selling is conducted after the securities pertaining to the Short Selling have become ex-dividends or ex-rights and the Latest Publicly Announced Price of the securities pertaining to the Short Selling is the price publicly announced before the ex-dividend date or ex-right date, the price set forth in the preceding two paragraphs shall be calculated, with regard to the securities pertaining to the Short Selling, by deducting the amount of dividends or rights from the Latest Publicly Announced Price.

(4) The provisions of paragraphs (1) and (2) shall not apply to the transactions set forth in Article 2, paragraph (21), item (i) of the Act or any other transactions specified by a cabinet office ordinance.

(5) The provisions of the preceding paragraphs shall apply *mutatis mutandis* to a sale of Over-the-Counter Traded Securities conducted on an Over-the-Counter Securities Market established by an authorized financial instruments firms association.

In this case, the phrase "the transactions set forth in Article 2, paragraph (21), item (i) of the Act or any other transactions specified by a cabinet office ordinance" in the preceding paragraph shall be deemed to be replaced with "the transactions specified by a cabinet office ordinance."

Article 26-5 (Provision, etc. of Information on Short Selling)

(1) When a Member, etc. of a financial instruments exchange conducts the Short Selling set forth in the following items on a financial instructions exchange market established by the financial instruments exchange with regard to the securities designated by the Commissioner of the Financial Services Agency as having the risk to impair fair price formation due to the large volume of Short Selling thereof (hereinafter such securities are referred to as the "Designated Securities" in this Article), the Member, etc. shall, pursuant to the provisions of a cabinet office ordinance, provide the financial instruments exchange with the information specified in the following items:

(i) Short Selling conducted on the own account of the Member, etc.—Information on Short Selling Balance (meaning the information specified by a cabinet office ordinance as the information on Short Selling balance; hereinafter the same shall apply in this Article) of the Member, etc. pertaining to the Designated Securities for which the Short Selling was conducted; or

(ii) Short Selling conducted under the entrustment of customers—Information on Short Selling Balance of the customer pertaining to the Designated Securities for which the Short Selling was conducted.

(2) A person who has accepted brokerage for entrustment of Short Selling of the Designated Securities to be conducted on a financial instruments exchange market shall, pursuant to the provisions of a cabinet office ordinance, provide the counterparty of the brokerage for entrustment of Short Selling with the Information on Short Selling Balance of the person who has applied for the brokerage for entrustment pertaining to the Designated Securities.

(3) A person who has applied for entrustment or brokerage for entrustment of Short Selling of the Designated Securities to be conducted on a financial instruments exchange market shall, pursuant to the provisions of a cabinet office ordinance, provide the counterparty of the application for the entrustment or brokerage for entrustment of the Short Selling with the person's own Information on Short Selling Balance pertaining to the Designated Securities.

(4) A financial instruments exchange shall, pursuant to the provisions of a cabinet office ordinance, compile the Information on Short Selling Balance provided pursuant to the provision of paragraph (1), and publicly announce the details thereof.

(5) The provisions of the preceding paragraphs shall apply *mutatis mutandis* to a sale of Over-the-Counter Traded Securities conducted on an Over-the-Counter Securities Market established by an authorized financial instruments firms association.

Article 27 (Securities Excluded from the Securities of a Listed Company, etc.)

What is specified by a cabinet order as being excluded from the securities mentioned in Article 163, paragraph (1) of the Act shall be, among the securities of the category set forth in Article 2, paragraph (1), item (v) of the Act, those specified by a cabinet office ordinance as the securities where Specified Assets (meaning Specified Assets as defined in Article 2, paragraph (1) of the Asset Securitization Act; hereinafter the same shall apply in this Article) are to be acquired by money obtained from the issuance of those securities and the obligations of those securities are to be performed by money obtained from the administration and disposition of the Specified Assets (excluding Specified Company Bond Certificates).

Article 27-2 (Scope of Securities of Which the Issuer Is a Listed Company, etc.)

The securities set forth in Article 2, paragraph (1), item (v), (vii) or (ix) of the Act (excluding those set forth in the preceding Article) that are listed on a financial instruments exchange or fall under the category of Over-the-Counter Traded Securities or Tradable Securities, or any other securities specified by a cabinet order, as mentioned in Article 163, paragraph (1) of the Act, shall be as follows:

(i) securities of the category set forth in Article 2, paragraph (1), item (v), (vii) or (ix) of the Act (excluding those set forth in the preceding Article; hereinafter the same shall apply in this Article) that are listed on a financial instruments exchange or fall under the category of Over-the-Counter Traded Securities or Tradable Securities;

(ii) Securities Trust Beneficiary Certificates whose Entrusted Securities are securities of the category set forth in Article 2, paragraph (1), item (v), (vii) or (ix) of the Act (excluding those set forth in the preceding item), which are listed on a financial instruments exchange or fall under the category of Over-the-Counter Traded Securities or Tradable Securities;

(iii) among the securities or certificates issued by a foreign person, those that have the characteristics of securities of the category set forth in Article 2, paragraph (1), item (v), (vii) or (ix) of the Act and that are listed on a financial instruments exchange or fall under the category of Over-the-Counter Traded Securities or Tradable Securities;

(iv) Securities Trust Beneficiary Certificates whose Entrusted Securities are, among the securities or certificates issued by a foreign person, those that have the characteristics of securities of the category set forth in Article 2, paragraph (1),

item (v), (vii) or (ix) of the Act (excluding those set forth in the preceding item) and that are listed on a financial instruments exchange or fall under the category of Over-the-Counter Traded Securities or Tradable Securities; and

(v) securities or certificates issued by a person to whom, among the securities or certificates issued by a foreign person, those that have the characteristics of securities of the category set forth in Article 2, paragraph (1), item (v), (vii) or (ix) of the Act (excluding those set forth in the preceding two items) have been deposited in a state other than the state wherein the deposited securities or certificates had been issued, which indicate the rights pertaining to the deposited securities or certificates and which are listed on a financial instruments exchange or fall under the category of Over-the-Counter Traded Securities or Tradable Securities.

Article 27-3 (Scope of Specified Securities)

The securities of the category set forth in Article 2, paragraph (1), item (v), (vii) or (ix) of the Act (excluding those prescribed by Article 27) and other securities specified by a cabinet order, as mentioned in Article 163, paragraph (1) of the Act (in the following Article to Article 27-6 and Article 28-2, item (xii), referred to as "Specified Securities"), shall be as follows:

(i) securities of the category set forth in Article 2, paragraph (1), item (v), (vii) or (ix) of the Act (excluding those set forth in Article 27);

(ii) among the securities or certificates issued by a foreign person, those that have the characteristics of securities of the category set forth in the preceding item and that are listed on a financial instruments exchange or fall under the category of Over-the-Counter Traded Securities or Tradable Securities;

(iii) among the securities or certificates issued by a foreign person, those that have the characteristics of the securities set forth in item (i) (excluding those of the category set forth in the preceding item) and the Securities Trust Beneficiary Certificates whose Entrusted Securities are those securities are listed on a financial instruments exchange or fall under the category of Over-the-Counter Traded Securities or Tradable Securities; and

(iv) among the securities or certificates issued by a foreign person, those that have the characteristics of the securities set forth in item (i) (excluding those of the category set forth in either of the preceding two items) and securities of the category set forth in Article 2, paragraph (1), item (xx) of the Act that indicate the rights pertaining to those securities or certificates are listed on a financial instruments exchange or fall under the category of Over-the-Counter Traded Securities or Tradable Securities.

Article 27-4 (Scope of Related Securities)

The securities of the category set forth in Article 2, paragraph (1), item (xix) of the Act that indicate the Options pertaining to the Specified Securities of the relevant listed company, etc. and other securities specified by a cabinet order, as mentioned in Article 163, paragraph (1) of the Act (in the following Article and Article 27-6, referred to as "Related Securities"), shall be as follows:

(i) securities of the category set forth in Article 2, paragraph (1), item (x) of the Act that pertain to an Investment Trust (meaning an Investment Trust as defined in Article 2, paragraph (3) of the Act on Investment Trusts and Investment Corporations; in Article 32-2, item (ii) and Article 33-2, item (i), the same shall apply) of which the basic terms and conditions provide that the trust property shall only be invested in the Specified Securities of the relevant listed company, etc., or to a Foreign Investment Trust (meaning a Foreign Investment Trust as defined in Article 2, paragraph (22) of that Act; in Article 32-2, item (ii) and Article 33-2, item (i), the same shall apply) similar thereto;

(ii) securities of the category set forth in Article 2, paragraph (1), item (xi) of the Act that are issued by an Investment Corporation (meaning an Investment Corporation as defined in Article 2, paragraph (12) of the Act on Investment Trusts and Investment Corporations; in Article 32-2, item (iii) and Article 33-2, item (ii), the same shall apply) of which the certificate of incorporation provides to the effect that the assets shall only be invested in the Specified Securities of the relevant listed company, etc., or by a Foreign Investment Corporation similar thereto;

(iii) securities of the category set forth in Article 2, paragraph (1), item (xix) of the Act that indicate the Options pertaining to the Specified Securities of the relevant listed company, etc.;

(iv) securities of the category set forth in Article 2, paragraph (1), item (xx) of the Act that indicate the rights pertaining to the Specified Securities of the relevant listed company, etc.;

(v) Securities Trust Beneficiary Certificates whose Entrusted Securities are the Specified Securities of the relevant listed company, etc.;

(vi) company bond certificates (excluding company bond certificates with share options) issued by a company other than the relevant listed company, etc. with a special provision that allows the redemption of the company bond certificates through the Specified Securities of the listed company, etc. (limited to those where the person who holds the company bond certificates has the right to have the issuer company of the company bond certificates redeem the company bond certificates through Specified Securities); and

(vii) securities or certificates issued by a foreign person that have the characteristics of securities of the category set forth in the preceding item.

Article 27-5 (Scope of Purchase, etc. of Specified Securities, etc.)

The purchase of Specified Securities or Related Securities (in the following Article, referred to as "Specified Securities, etc.") and other transactions specified by a cabinet order, as mentioned in Article 163, paragraph (1) of the Act, shall be as follows:

(i) the purchase of Specified Securities;

(ii) the purchase of Related Securities (with regard to the Related Securities that indicate Options pertaining to the sale and purchase of Specified Securities, limited to those wherein the person who exercises the Options acquires the position as a buyer in the sale and purchase through the exercise of the Options);

(iii) the sale of Related Securities that indicate Options pertaining to the sale and purchase of Specified Securities wherein the person who exercises the Options acquires the position as a seller in the sale and purchase through the exercise of the Options; and

(iv) any other transactions specified by a cabinet office ordinance as being equivalent to the transactions set forth in the preceding three items.

Article 27-6 (Scope of Sale, etc. of Specified Securities, etc.)

The sale of Specified Securities, etc. and other transactions specified by a cabinet order, as mentioned in Article 163, paragraph (1) of the Act, shall be as follows:

(i) the sale of Specified Securities;

(ii) the sale of Related Securities (with regard to the Related Securities that indicate Options pertaining to the sale and purchase of Specified Securities, limited to those wherein the person who exercises the Options acquires the position of a buyer in the sale and purchase through the exercise of the Options);

(iii) the purchase of Related Securities that indicate Options pertaining to the sale and purchase of Specified Securities wherein the person who exercises the Options acquires the position as a seller in the sale and purchase through the exercise of the Options; and

(iv) any other transactions specified by a cabinet office ordinance as being equivalent to the transactions set forth in the preceding three items.

Article 27-7 (Scope of Specified Transactions)

The transactions specified by a cabinet order, as mentioned in Article 165, item (i) of the Act, shall be as follows:

(i) the transactions set forth in items (i) to (iii) of the preceding Article; and

(ii) any other transactions specified by a cabinet office ordinance as being equivalent to the transactions set forth in the preceding item.

Article 27-8 (Associations Similar to Partnerships)

What is specified by a cabinet order, as mentioned in Article 165-2, paragraph (1) of the Act, shall be associations established under the laws and regulations of a foreign state that are similar to the following partnerships:

(i) a partnership established based on the partnership agreement specified in Article 667, paragraph (1) of the Civil Code;

(ii) the investment limited partnership specified in Article 2, paragraph (2) of the Limited Partnership Act for Investment (Act No. 90 of 1988); and

(iii) the limited liability partnership specified in Article 2 of the Limited Liability Partnership Act (Act No. 40 of 2005).

Article 28 (Material Facts Pertaining to the Decisions Made by the Organ Responsible for Making Decisions on the Execution of Operations of a Listed Company, etc.)

The matters specified by a cabinet order, as mentioned in Article 166, paragraph (2), item (i), sub-item (o) of the Act, shall be as follows:

(i) a business alliance or cancellation of a business alliance;

(ii) the transfer or acquisition of shares or equity involving changes in a Subsidiary Company (meaning a Subsidiary Company as defined in Article 166, paragraph (5) of the Act; hereinafter the same shall apply in this Article to Article 30);

(iii) the transfer or acquisition of Fixed Assets (meaning Fixed Assets as defined in Article 2, item (xxii) of the Corporation Tax Act; in Article 29, item (iii), the same shall apply);

(iv) the suspension or abolition of business in whole or in part;

(v) an application for the delisting of share certificates (including Preferred Equity Investment Certificates; in the following item and item (vii), the same shall apply) filed with a financial instruments exchange;

(vi) an application for rescission of the share certificates' registration filed with an authorized financial instruments firms association;

(vii) an application for rescission of the Designation as Tradable Securities (meaning an authorized financial instruments firms association's designation of the securities as the Tradable Securities pursuant to the rules thereof; in item (xii) of the following Article, Article 30, paragraph (1), item (ii) and Article 43-3, paragraph (4), the same shall apply) for the

share certificates that are the Tradable Securities filed with an authorized financial instruments firms association;

(viii) the filing of a petition for the commencement of bankruptcy proceedings, rehabilitation proceedings or reorganization proceedings;

(ix) the commencement of new business (including the commercialization of the sale of new commodities or the provision of new services; in Article 29, item (vi), the same shall apply);

(x) a request specified in Article 166, paragraph (6), item (iv) or Article 167, paragraph (5), item (v) of the Act; and

(xi) a report under Article 74, paragraph (5) of the Deposit Insurance Act.

Article 28-2 (Material Facts Pertaining to Facts That Have Occurred in a Listed Company, etc.)

The facts specified by a cabinet order, as mentioned in Article 166, paragraph (2), item (ii), sub-item (d) of the Act, shall be as follows:

(i) that an action pertaining to a claim based on a property right has been filed, or a judgment regarding such an action has been rendered or a suit pertaining to such an action has been concluded in whole or in part other than by judicial decision;

(ii) that a petition seeking an injunction against the business or a provisional disposition order seeking any other disposition equivalent thereto has been filed, or a judicial decision regarding such a petition has been rendered or the procedures regarding such a petition have been concluded in whole or in part other than by judicial decision;

(iii) a rescission of license, suspension of business and any other disposition equivalent thereto given under laws and regulations by an administrative agency;

(iv) a change in a Parent Company (meaning a Parent Company as defined in Article 166, paragraph (5) of the Act; in item (vii), the same shall apply);

(v) an application for or a notice of the commencement of bankruptcy proceedings, rehabilitation proceedings or reorganization proceedings, or the exercise of an enterprise mortgage by the creditor or persons other than the listed company, etc. (in items (vii) and (viii) and Article 29-2, items (iv), (vi) and (vii), referred to as an "Application, etc. for Commencement of Bankruptcy Proceedings");

(vi) dishonor of a negotiable instrument or check (limited to dishonor due to the shortage of funds necessary for payment) or a disposition of the suspension of a transaction given by a clearinghouse (in item (viii) and Article 29-2, items (v) and (vii), referred to as "Dishonor, etc.");

(vii) the filing of an Application, etc. for Commencement of Bankruptcy Proceedings concerning a Parent Company;

(viii) that due to Dishonor, etc., filing of an Application, etc. for Commencement of Bankruptcy Proceedings or occurrence of any other facts equivalent thereto with regard to the obligor or the principal obligor of the guarantee obligations, a risk of default has arisen with regard to the accounts receivable, loaned money and any other claims held against the obligor, or the rights to obtain reimbursement held against the principal obligor where the guarantee obligations have been performed;

(ix) a suspension of a transaction with the Major Trading Partner (meaning the trading partner for which the sales or purchases of the previous business year are not less than ten percent of the total amount of sales or purchases; in Article 29-2, item (viii), the same shall apply);

(x) exemption from obligations by the creditor, or assumption or performance of obligations by a third party;

(xi) discovery of resources; and

(xii) a fact that shall be the cause for rescission of the Designation as Tradable Securities for Specified Securities or Options pertaining to Specified Securities.

Article 29 (Material Facts Pertaining to the Decisions Made by the Organ Responsible for Making Decisions on the Execution of Operations of a Subsidiary Company of a Listed Company, etc.)

The matters specified by a cabinet order, as mentioned in Article 166, paragraph (2), item (v), sub-item (h) of the Act, shall be as follows:

(i) a business alliance or cancellation of a business alliance;

(ii) the transfer or acquisition of shares or equity involving changes in a Second-Tier Subsidiary Company (meaning a company specified by a cabinet office ordinance as a company that is controlled by a Subsidiary Company; in item (vi) of the following Article, the same shall apply);

(iii) the transfer or acquisition of Fixed Assets;

(iv) the suspension or abolition of business in whole or in part;

(v) the filing of a petition for the commencement of bankruptcy proceedings, rehabilitation proceedings or reorganization proceedings;

(vi) the commencement of new business;

(vii) a report under Article 74, paragraph (5) of the Deposit Insurance Act; and

(viii) payment of dividends of surplus (limited to the shares issued by a listed company, etc. as defined in Article 163, paragraph (1) of the Act that pertain to a specified Subsidiary Company regarding the shares provided in the articles of corporation of the listed company, etc. that the payment of dividends of surplus thereof shall be decided based on the payment of dividends of surplus of the specified Subsidiary Company).

Article 29-2 (Material Facts Pertaining to Facts That Have Occurred in a Subsidiary Company of a Listed Company, etc.)

The facts specified by a cabinet order, as mentioned in Article 166, paragraph (2), item (vi), sub-item (b) of the Act, shall be as follows:

(i) that an action pertaining to a claim based on a property right has been filed, or a judgment regarding such an action has been rendered or a suit pertaining to such an action has been concluded in whole or in part other than by judicial decision;

(ii) that a petition seeking an injunction against the business or a provisional disposition order seeking any other disposition equivalent thereto has been filed, or a judicial decision regarding such an petition has been rendered or the procedures regarding such an petition have been concluded in whole or in part other than by judicial decision;

(iii) a rescission of license, suspension of business and any other disposition equivalent thereto given under laws and regulations by an administrative agency;

(iv) the filing of an Application, etc. for Commencement of Bankruptcy Proceedings by creditors or persons other than the Subsidiary Company;

(v) Dishonor, etc.;

(vi) the filing of an Application, etc. for Commencement of Bankruptcy Proceedings pertaining to a Second-Tier Subsidiary Company;

(vii) that due to Dishonor, etc., filing of an Application, etc. for Commencement of Bankruptcy Proceedings or occurrence of any other facts equivalent thereto with regard to the obligor or the principal obligor of the guarantee obligations, a risk of default has arisen with regard to the accounts receivable, loaned money and any other claims held against the obligor, or the rights to obtain reimbursement held against the principal obligor where the guarantee obligations have been performed;

(viii) a suspension of a transaction with the Major Trading Partner;

(ix) exemption from obligations by the creditor, or assumption or performance of obligations by a third party; and

(x) discovery of resources.

Article 29-3 (Parent Company)

The company specified by a cabinet order as having control over another company, as mentioned in Article 166, paragraph (5) of the Act, shall be the company stated or recorded as a parent company in the latest of the statements under Article 5, paragraph (1) of the Act, the Annual Securities Report under Article 24, paragraph (1) of the Act, the Quarterly Securities Report under Article 24-4-7, paragraph (1) or (2) of the Act, or the Semiannual Securities Report under Article 24-5,

paragraph (1) of the Act that has been submitted by another company (including a Cooperative-Structured Financial Institution) and made available for public inspection pursuant to the provision of Article 25, paragraph (1) of the Act, the specified information on securities as defined in Article 27-31, paragraph (1) of the Act that has been publicly announced pursuant to the provision of paragraph (2) of that Article, or the issuer information as defined in Article 27-32, paragraph (1) of the Act that has been publicly announced pursuant to the provision of paragraph (1) or paragraph (2) of that Article.

Article 30 (Measures for Public Announcement)

(1) The circumstances where the measures specified by a cabinet order as those for making information available to a large number of persons are being taken by a listed company, etc. or a Subsidiary Company of the listed company, etc., or the tender offeror and others, as mentioned in Article 166, paragraph (4) or Article 167, paragraph (4) of the Act, shall be where any of the following measures have been taken:

(i) that a director or executive officer who is to represent a listed company, etc. as defined in Article 163, paragraph (1) of the Act or a Subsidiary Company of the listed company, etc. (including officers who are to represent a Cooperative-Structured Financial Institution; hereinafter the same shall apply in this paragraph), a person who has been entrusted by the director or executive officer to disclose a Material Fact, etc. (meaning a material fact pertaining to business or other matters specified in Article 166, paragraph (1) of the Act pertaining to a listed company, etc. as mentioned in paragraph (4) of that Article, the decisions made by the organ responsible for making decisions on the execution of the operations of a listed company, etc., the amount of sales, etc. or the dividends specified in sub-item (g) of item (i) of paragraph (2) of that Article of a listed company, etc., the amount of sales, etc. of the corporate group to which the listed company, etc. belongs, the decisions made by the organ responsible for making decisions on the execution of the operations of the Subsidiary Company of the listed company, etc., or the amount of sales, etc. of the Subsidiary Company of the listed company, etc.; hereinafter the same shall apply in this paragraph), the tender offeror and others as defined in Article 167, paragraph (1) of the Act (where the tender offeror and others are juridical persons (including an organization without judicial personality for which the representative person or administrator has been designated), a person who is to represent the juridical person or the administrator thereof), or a person who has been entrusted by the tender offeror and others to

disclose a Fact Concerning Tender Offer, etc. as defined in paragraph (3) of that Article (hereinafter referred to as a "Fact Concerning Tender Offer, etc." in this paragraph) has disclosed the Material Fact, etc. or the Fact Concerning Tender Offer, etc. to journalistic organizations including two or more of the following journalistic organizations, and the period necessary for the disclosed Material Fact, etc. or the Fact Concerning Tender Offer, etc. to become known has elapsed:

(a) newspaper publishers engaged in the sales of daily newspapers that collectively report matters on current affairs in Japan in the course of trade, and the communications agencies engaged in the comprehensive transmission of matters on current affairs to those newspaper publishers in the course of trade;

(b) newspaper publishers engaged in the sales of daily newspapers that report on general industrial and economic matters in Japan in the course of trade; or

(c) NHK (Japan Broadcasting Corporation) and Private Broadcasters;

(ii) that a listed company, etc. as defined in Article 163, paragraph (1) of the Act has given notification, pursuant to the provisions of the rules of each financial instruments exchange on which the listed company, etc. lists the securities issued thereby (where the securities are Over-the-Counter Traded Securities, the rules of each authorized financial instruments firms association that registers the securities, and where the securities are Tradable Securities, the rules of each authorized financial instruments firms association that makes the Designation as Tradable Securities of the securities; hereinafter the same shall apply in this paragraph), of a Material Fact, etc. or a Fact Concerning Tender Offer, etc. (limited to those pertaining to the Tender Offer as defined in Article 27-22-2, paragraph (1) of the Act of Listed Share Certificates, etc. (meaning Listed Share Certificates, etc. as defined in Article 24-6, paragraph (1) of the Act; in the following item and Article 33, the same shall apply); hereinafter the same shall apply in this paragraph) to the relevant financial instruments exchange, and the notified Material Fact, etc. or Fact Concerning Tender Offer, etc. has been made available for public inspection at the relevant financial instruments exchange in Japanese, pursuant to the provisions of a cabinet office ordinance; or

(iii) that a listed company, etc. as defined in Article 163, paragraph (1) of the Act that is the person set forth in sub-item (a) or (b) has given notification, pursuant to the provisions of the rules of each financial instruments

exchange on which the listed company, etc. lists the securities issued thereby, of the facts set forth in sub-item (a) or (b) to the relevant financial instruments exchange, and the notified facts have been made available for public inspection at the relevant financial instruments exchange in English, pursuant to the provisions of a cabinet office ordinance:

(a) a person who issues securities of the category set forth in the items of Article 27-2 that are all Securities Only for Professional Investors—the Material Facts, etc.; or

(b) a person who issues Listed Share Certificates, etc. that are all Securities Only for Professional Investors—the Facts Concerning Tender Offer, etc.

(2) The period necessary for the disclosed facts to become known, as mentioned in item (i) of the preceding paragraph, shall be 12 hours from the time when the relevant facts are disclosed to at least two of the journalistic organizations among the journalistic organizations set forth in sub-item (a), (b) or (c) of that item.

Article 31 (Acts Equivalent to a Tender Offer)

The acts specified by a cabinet order as being equivalent to a Tender Offer, as mentioned in Article 166, paragraph (6), item (iv) and Article 167, paragraph (1) of the Act, shall be, with regard to the person who buys up share certificates, share option certificates, company bond certificates with share options (including securities or certificates issued by a foreign person that have the characteristics of those securities and excluding those specified by a cabinet office ordinance) or any other securities specified by a cabinet office ordinance (hereinafter referred to as "Share Certificates, etc." in this Article) issued by a company that is the issuer of share certificates (including securities or certificates issued by a foreign person that have the characteristics of share certificates) that are listed on a financial instruments exchange or fall under the category of Over-the-Counter Traded Securities or Tradable Securities (where there is another person who jointly buys up the Share Certificates, etc. with the former person, the person who jointly buys up the Share Certificates, etc. shall be included; hereinafter the same shall apply in this Article), and where the total Number of Voting Rights Pertaining to the Relevant Share Certificates, etc. (meaning, with regard to share certificates (including securities or certificates issued by a foreign person that have the characteristics of share certificates), the number of voting rights pertaining to the shares (including the voting rights pertaining to the shares that may not be asserted against the issuer thereof pursuant to the provision of Article 147, paragraph (1) or Article 148, paragraph (1) of the Act on Book-Entry Transfer of Company Bonds, Shares, etc.), and with regard to other securities, the number of voting rights pertaining to the shares calculated by the conversion pur-

suant to the provisions of a cabinet office ordinance; hereinafter the same shall apply in this Article) bought up by that person in his/her own name or another person's name (or under a fictitious name; hereinafter the same shall apply in this Article) is not less than five percent of the number of Voting Rights Held by All Shareholders, etc. of the company that is the issuer of the relevant Share Certificates, etc., the act of buying up Share Certificates, etc. (hereinafter such an act shall be referred to as "Buying Up" in this Article). However, where the Share Certificates, etc. Owning Rate (meaning the rate obtained by dividing the total Number of Voting Rights Pertaining to the Relevant Share Certificates, etc. owned in his/her own name or another person's name by the number of Voting Rights Held by All Shareholders, etc. of the company; hereinafter the same shall apply in this Article) of the person who buys up the Share Certificates, etc. immediately prior to the commencement of the Buying Up is less than five percent, the Buying Up shall be limited to those pertaining to the part preceding five percent of the Share Certificates, etc. Owning Rate.

Article 32 (Securities Excluded from Being Subject to Transactions of Specified Securities, etc. by Corporate Insiders, etc.)

The securities specified by a cabinet order, as mentioned in Article 166, paragraph (6), item (iv)-2 of the Act, shall be as follows:

(i) share certificates (including securities or certificates issued by a foreign person that have the characteristics of share certificates; hereinafter the same shall apply in this Article);

(ii) securities of the category set forth in Article 2, paragraph (1), item (xx) of the Act that indicate rights pertaining to share certificates; and

(iii) Securities Trust Beneficiary Certificates whose Entrusted Securities are share certificates.

Article 32-2

The securities specified by a cabinet order, as mentioned in Article 166, paragraph (6), item (vi) of the Act, shall be as follows:

(i) company bond certificates (including those issued by a mutual company and excluding company bond certificates with share options; hereinafter the same shall apply in this Article);

(ii) among the securities of the category set forth in Article 27-4, item (i), those that pertain to an Investment Trust of which the basic terms and conditions provide to the effect that the trust property shall only be invested in company bond certificates of the listed company, etc., or to a Foreign Investment Trust similar thereto;

(iii) among the securities of the category set forth in Article 27-4, item (ii), Investment Securities, etc. issued by an Investment Corporation of which the certificate of incorporation provides to the effect that the assets shall only be

invested in company bond certificates of the listed company, etc., or by a Foreign Investment Corporation similar thereto;

(iv) among the securities of the category set forth in Article 27-4, item (ii), investment corporation bond certificates specified in the Act on Investment Trusts and Investment Corporations and foreign investment securities that are similar to investment corporation bond certificates; and

(v) among the securities of the category set forth in Article 27-4, item (v), those whose Entrusted Securities are company bond certificates of the listed company, etc.

Article 33 (Scope of Specified Share Certificates, etc.)

The share certificates, company bond certificates with share options and other securities specified by a cabinet order issued by a company that is the issuer of Listed or Other Share Certificates, etc., or Listed Share Certificates, etc., as mentioned in Article 167, paragraph (1) of the Act (hereinafter referred to as "Specified Share Certificates, etc."), shall be as follows:

(i) share certificates, share option certificates, and company bond certificates with share options;

(ii) among the securities or certificates issued by a foreign person, those that have the characteristics of securities of the category set forth in the preceding item and that are listed on a financial instruments exchange or fall under the category of Over-the-Counter Traded Securities or Tradable Securities;

(iii) among the securities or certificates issued by a foreign person, those that have the characteristics of securities of the category set forth in item (i) (excluding those of the category set forth in the preceding item), and the Securities Trust Beneficiary Certificates whose Entrusted Securities are those securities are listed on a financial instruments exchange or fall under the category of Over-the-Counter Traded Securities or Tradable Securities; and

(iv) among the securities or certificates issued by a foreign person, those that have the characteristics of securities of the category set forth in item (i) (excluding those of the category set forth in the preceding two items), and the securities set forth in Article 2, paragraph (1), item (xx) of the Act that indicate the rights pertaining to those securities or certificates are listed on a financial instruments exchange or fall under the category of Over-the-Counter Traded Securities or Tradable Securities.

Article 33-2 (Scope of Related Share Certificates, etc.)

Securities of the category set forth in Article 2, paragraph (1), item (xix) of the Act that indicate Options pertaining to the Specified Share Certificates, etc. and other securities specified by a cabinet order, as mentioned in Article 167, paragraph (1) of the Act (hereinafter referred to as "Related Share Certificates, etc."), shall be as follows:

(i) securities of the category set forth in Article 2, paragraph (1), item (x) of the Act that pertain to an Investment Trust of which the basic terms and conditions provide that the trust property shall only be invested in the Specified Share Certificates, etc. pertaining to the tender offer, etc., or to a Foreign Investment Trust similar thereto;

(ii) securities of the category set forth in Article 2, paragraph (1), item (xi) of the Act that are Investment Securities, etc. issued by an Investment Corporation of which the certificate of incorporation provides that the assets shall only be invested in the Specified Share Certificates, etc. pertaining to the tender offer, etc., or by a Foreign Investment Corporation similar thereto;

(iii) securities of the category set forth in Article 2, paragraph (1), item (xix) of the Act that indicate Options pertaining to the Specified Share Certificates, etc. pertaining to the tender offer, etc.;

(iv) securities of the category set forth in Article 2, paragraph (1), item (xx) of the Act that indicate rights pertaining to the Specified Share Certificates, etc. pertaining to the tender offer, etc.;

(v) Securities Trust Beneficiary Certificates whose Entrusted Securities are the Specified Share Certificates, etc. pertaining to the tender offer, etc.;

(vi) company bond certificates (excluding company bond certificates with share options) issued by a company other than the issuer company of the Specified Share Certificates, etc. pertaining to the tender offer, etc. with a special provision that allows the redemption of the company bond certificates through the Specified Share Certificates, etc. pertaining to the tender offer, etc. (limited to those where the person who holds the company bond certificates has the right to have the issuer company of the company bond certificates redeem the company bond certificates through the Specified Share Certificates, etc.); and

(vii) securities or certificates issued by a foreign person that have the characteristics of securities of the category set forth in the preceding item.

Article 33-3 (Scope of Purchase, etc. of Share Certificates, etc.)

The purchase of Specified Share Certificates, etc. or Related Share Certificates, etc. (in the following Article, referred to as "Share Certificates, etc.") and other transactions specified by a cabinet order, as mentioned in Article 167, paragraph (1) of the Act, shall be as follows:

(i) the purchase or other type of acceptance of transfer for value of Specified Share Certificates, etc.;

(ii) the purchase or other type of acceptance of transfer for value of Related Share Certificates, etc. (with regard to the Re-

lated Share Certificates, etc. that indicate Options pertaining to the sale and purchase of Specified Share Certificates, etc., limited to those wherein the person who exercises the Options acquires the position as a buyer in the sale and purchase through the exercise of the Options);

(iii) the sale or other type of transfer for value of Related Share Certificates, etc. that indicate Options pertaining to the sale and purchase of Specified Share Certificates, etc. wherein the person who exercises the Options acquires the position as a seller in the sale and purchase through the exercise of the Options; and

(iv) any other transactions specified by a cabinet office ordinance as being equivalent to the transactions set forth in the preceding three items.

Article 33-4 (Scope of Sale, etc. of Share Certificates, etc.)

The sale of Share Certificates, etc. and other transactions specified by a cabinet order, as mentioned in Article 167, paragraph (1) of the Act, shall be as follows:

(i) the sale or other type of transfer for value of Specified Share Certificates, etc.;

(ii) the sale or other type of transfer for value of Related Share Certificates, etc. (with regard to the Related Share Certificates, etc. that indicate Options pertaining to the sale and purchase of Specified Share Certificates, etc., limited to those wherein the person who exercises the Options acquires the position as a buyer in the sale and purchase through the exercise of the Options);

(iii) the purchase or other type of acceptance of transfer for value of Related Share Certificates, etc. that indicate Options pertaining to the sale and purchase of Specified Share Certificates, etc. wherein the person who exercises the Options acquires the position as a seller in the sale and purchase through the exercise of the Options; and

(iv) any other transactions specified by a cabinet office ordinance as being equivalent to the transaction set forth in the preceding three items.

[Article 33-5 to the last Article: translation omitted.]

Chapter KR

Securities Regulation in Korea

By Andrew Jen-Guang Lin

I. OVERVIEW OF LEGAL SYSTEM AND SECURITIES REGULATORY SYSTEM

§ KR:1 Korea's Civil Law System
§ KR:2 History and Development of Korea's Securities Regulatory System
§ KR:3 Intra-National Securities Regulation by States, Provinces, etc.
§ KR:4 Financial Regulatory Reform After Asian Financial Crisis of 1997; Consolidation of Financial Regulators into the Financial Services Commission (FSC) in 1998
§ KR:5 Securities and Exchange Act (KSEA) was Consolidated into the Financial Investment Services and Capital Market Act in 2007
§ KR:6 Presidential Decrees and FSC/FSS Regulations
§ KR:7 Commercial Act 1962
§ KR:8 Capital Market Promotion Law of 1968 (CMPL)
§ KR:9 Securities Investment Trust Business Act (KSITBA)—Integrated into Capital Market Act
§ KR:10 Foreign Exchange Transactions Act (FOREX Act) and Foreign Investment Promotion Act (FIPA)

II. ORGANIZATIONS INVOLVED IN SECURITIES REGULATION

A. OVERVIEW

§ KR:11 National Securities Regulators and Self-Regulatory Organizations

B. PUBLIC SECURITIES MARKET

§ KR:12 Market Climate
§ KR:13 Primary Market; Issuer Transactions—Equity Market
§ KR:14 —Bond Market
§ KR:15 Secondary Market; Trading Transactions

C. KOREA STOCK EXCHANGE (KSE)

§ KR:16 Overview

§ KR:17 Features
§ KR:18 Trading Hours
§ KR:19 Trading Procedure
§ KR:20 Order Handling and Execution
§ KR:21 Margin Transaction
§ KR:22 Clearing and Settlement

D. OTC MARKET—KOSDAQ SYSTEM

§ KR:23 Overview
§ KR:24 KOSDAQ Listed Securities; Listing Criteria

E. INVESTORS AND MARKET PROFESSIONALS

§ KR:25 Overview
§ KR:26 Individual Investors
§ KR:27 Financial Institutions and Corporate Investors
§ KR:28 Foreign Investors

III. REGULATIONS REGARDING SUBSTANTIVE SECURITIES MATTERS

A. ESTABLISHMENT, REGULATION AND ORGANIZATION OF SECURITIES REGULATORY ORGANIZATIONS

1. Ministry of Finance and Economy (MOFE), the Securities and Exchange Commission (KSEC) and the Securities Supervisory Board (KSSB) before 1998

§ KR:29 Establishment of the Korea Stock Exchange (KSEC) and the Korea Securities Supervisory Board (KSSB)
§ KR:30 Organizational Structure and Functions of the KSEC and the KSSB
§ KR:31 Relationship Between the Ministry of Finance and Economy (MOFE) and the Korea Stock Exchange (KSEC)
§ KR:32 Political Culture of the MOFE and KSEC in Regulating the Stock Market

2. Regulatory Reform

§ KR:33 Creation of the Financial Supervisory Commission (FSC), Financial Supervisory Service (FSS) and the Securities and Futures Commission (SFC)
§ KR:34 Self-Regulatory Organizations (SROs)
§ KR:35 Korean Exchange (KRX)
§ KR:36 Korea Financial Investment Association (KOFIA)
§ KR:37 Korea Securities Depository (KSD)

B. DEFINITION OF SECURITIES

§ KR:38 KSEA Definition of Securities (Prior to Capital Market Act)

§ KR:39 Definition Under the Capital Market Act

C. PUBLIC OFFERINGS AND EXEMPTED OFFERINGS IN THE PRE-CAPITAL-MARKET-ACT ERA

1. Public Offerings

§ KR:40 Registration Requirements for Public Offering
§ KR:41 Basic Information Package
§ KR:42 Definition and Procedure of Public Offering
§ KR:43 Pre-Filing Period
§ KR:44 Pre-Effective Period
§ KR:45 Post-Effective Period
§ KR:46 Timing and Other Considerations of a Public Offering
§ KR:47 Reviewing of the Public Offering Application
§ KR:48 Underwriting
§ KR:49 Exemptions from Registration

2. Public Offering Regulation under the Capital Market Act

§ KR:50 Registration Requirement
§ KR:51 Investment Prospectus
§ KR:52 Liability for Fraudulent Documents
§ KR:53 —Measurement of Damages
§ KR:54 —Statute of Limitations

D. CONTINUING DISCLOSURE REQUIREMENTS OF PUBLIC COMPANIES

§ KR:55 Periodical Business Reports
§ KR:56 Material Facts Report
§ KR:57 Civil liabilities for Damages Caused by Misrepresentation or Omission of Business Report or Material Facts Report

E. FRAUD, MANIPULATION AND INSIDER TRADING

§ KR:58 General
§ KR:59 Market Manipulation
§ KR:60 Misleading Others About Market Booming or Making Wrong Judgment
§ KR:61 Disseminating Rumors or Misleading Information
§ KR:62 Price Fixing or Stabilization
§ KR:63 Other Market Manipulation Conduct
§ KR:64 Liabilities for Damages Caused by Market Price Manipulation
§ KR:65 Insider Trading
§ KR:66 Reporting of Shareholding by Executives and Significant Shareholders
§ KR:67 Short-Swing Trading
§ KR:68 Insider Trading While in Possession of Nonpublic Material Information

§ KR:69 Liabilities for Damages Arising from Insider Trading

F. TENDER OFFERS, TAKEOVERS AND OTHER CORPORATE COMBINATIONS

§ KR:70 General
§ KR:71 Tender Offers

IV. REFORM OF FINANCIAL MARKET REGULATION IN KOREA: THE FINANCIAL INVESTMENT SERVICES AND CAPITAL MARKETS ACT

§ KR:72 Overview
§ KR:73 Accounting and Auditing
§ KR:74 Commercial Code
§ KR:75 Capital Market Act
§ KR:76 Audit

V. INTERNATIONAL SECURITIES TRANSACTIONS

§ KR:77 Foreign Investment in Korea
§ KR:78 Foreign Securities Companies in Korea
§ KR:79 Foreign Companies Listed on the KRX
§ KR:80 Korean Companies Listed on Foreign Stock Exchanges
§ KR:81 Korean Investors Investing in Foreign Securities
§ KR:82 Participation in International Securities Organizations

VI. INVESTMENT COMPANIES AND INVESTMENT ADVISERS

§ KR:83 Historical Development of Investment Companies
§ KR:84 Collective Investment Business Under the Capital Market Act
§ KR:85 Investment Advisory Business Under the Capital Market Act

VII. BROKERAGE AND DEALING BUSINESSES

§ KR:86 Historical Development
§ KR:87 Investment Brokerage Business Under the Capital Market Act
§ KR:88 Investment Trading Business Under the Capital Market Act

VIII. RECENT TRENDS AND DEVELOPMENTS

§ KR:89 Financial Regulatory Reform
§ KR:90 Financial Crisis and Foreign Investment
§ KR:91 Disclosure Requirements
§ KR:92 Establishment and Supervision of Financial Holding Companies

§ KR:93 Financial Industry Reform

Appendix KR-1. Commercial Act (Republic of Korea)

Appendix KR-2. Securities and Exchange Act

I. OVERVIEW OF LEGAL SYSTEM AND SECURITIES REGULATORY SYSTEM

§ KR:1 Korea's Civil Law System

The Republic of Korea (South Korea) is a civil law country. Its legal system was heavily influenced by the law of Ming Dynasty of China in Korea's Yi Dynasty (1392-1910).[1] Confucian philosophy is still an important aspect of Korean society and culture, which helps and influences the establishment of the legal norm.[2] During the period of "forced annexation of Korea by Japan" between 1910 and 1945, Korea was in effect ruled by the Japanese legal system.[3] Notwithstanding the existence of different opinions as to whether the introduction and reform of the Japanese legal system into Korea was used as a tool by the Japanese government to extend its control over Korea, or to rescue and promote national development, the Japanese legal system continued to have a influence even after Korea became an independent country recognized by the United Nation in 1948.

The modern Korean legal system since the First Republic has demonstrated influences from the European and Japanese law in the civil and criminal law field. Additionally, the Anglo-American law also influenced Korea in the area of "individual rights" and financial laws.[4] According to a Korean scholar, the traditional Korean legal system, which existed until the 19th century, ceased to be applied in the modern legal system except for some area of family law.[5]

Statutory law is the primary source of law in South Korea.[6] The Constitution of the Republic of Korea is the highest law of the nation and was promulgated on July 12, 1948. Korean laws are enacted by the National Assembly, which is the legislative branch in Korea. Although the legislature is an independent government branch, it is not immune from the influence of the ruling political party as well as the executive branch. Until very recently, the law-making process demonstrated the "loyalty" of the ruling-party-controlled legislature to the

---

[Section KR:1]

[1]Supreme Court of Korea, Judicial System of Korea 8 (1988).

[2]*See generally*, William Shaw, Legal Norms in a Confucian State (1981).

[3]Supreme Court of Korea, Judicial System of Korea 10 (1988).

[4]Supreme Court of Korea, Judicial System of Korea 11 (1988).

[5]Pak Pyong-Ho, *Characteristics of Traditional Korean Law*, in LEGAL SYSTEM OF KOREA 13 (Chun Shin-yong ed al., 1982).

[6]*See* SANG HYUN SONG ED., INTRODUCTION TO THE LAW AND LEGAL SYSTEM OF KOREA 185-212 (1983).

President of South Korea.[7] Another phenomenon is that the executive department of the government is heavily involved in the process of legislation. In most cases, legislation was initiated by the executive branch. The function of the legislature was not limited to but usually involved the approval or disapproval of bills drafted by the executive department. It is important to mention the Korea Legislation Research Institute (KLRI), established in 1990, an NGO where 80% of the budget is funded by the government.[8] The KLRI's major mission is to help the government conduct research to formulate national policy in all kinds of legislation.

Korea incorporates many concepts from the US Constitution, such as "separation of powers," "the presidential system," "judicial independence," but the structure of the court system continues to be similar to the Japanese style.[9] The modern judicial system was established in 1895 when the first edition of Court Organization Act was enacted, modeled after the German Court Organization Act.[10] The current Korean court system was basically established according to the Court Organization Act enacted on September 26, 1949. The judicial system comprises a three-level court system, including one Supreme Court, which is the highest level of court in Korea, three appellate courts, and several district courts. Each district court and appellate court has its own territorial jurisdiction. Trials and judgments are conducted and rendered solely by a single judge in the district court level and by multiple judges in some cases at the district court level and in most cases at the appellate court level. In the past, the trial was conducted without the participation of jury. However, the jury system was introduced into Korea in 2007.[11] The jury trial was implemented during 2008 and 2012 on a trial or temporary basis on certain criminal cases.[12] Korea will assess the jury system in 2012 and decide whether to implement it permanently.

Disputes relating to securities law issues were rarely brought to courts prior to the Asian financial crisis that occurred in 1997. The

---

[7]DAE-KYU YOON, LAW AND POLITICAL AUTHORITY IN SOUTH KOREA 92 (1990).

[8]The Korea Legislation Research Institute (KLRI) was established according to the "Promulgation and Enforcement of the Korea Legislation Research Institute Act", enacted on December 21, 1989, and the "Promulgation and Enforcement of the Act on the Establishment, Operation and Fosterage of Government-Invested Research Institutions, enacted on January 29, 1999.

[9]"Promulgation and Enforcement of the Korea Legislation Research Institute Act," at 110.

[10]Supreme Court of Republic of Korea, Korean Legal System 1 (1967).

[11]Valerie P. Hans, Introduction: Citizens as Legal Decision Makers: An International Perspective, 40 CORNELL INT'L L.J. 303, 303–04 (2007).

[12]Ryan Y. Park, The Globalizing Jury Trial: Lessons and Insights from Korea, 58 AM. J. COMP. L. 525, 531–32 (2010).

first shareholder derivative suit was brought by shareholders of the Korea First Bank against directors.[13]

Korea encountered financial crisis at the end of 1997. Korea accepted financial support from the International Monetary Fund (IMF) in 1998, and its regulatory framework on the financial industry has been influenced by the IMF. The amendment to securities regulation was part of the financial reform plan. The financial regulators were consolidated in 1998 by establishing the Financial Supervisory Commission (renamed as Financial Services Commission in 2008) and the Financial Supervisory Service in 1999. Securities regulation was integrated into other laws related to the capital market when the Parliament passed the Financial Investment Services and Capital Market in 2007 and became effective in 2009. These will be discussed in more detailed in following sections.

§ KR:2 History and Development of Korea's Securities Regulatory System

The first modern securities transactions in Korea can be traced back to 1948 when Korean government issued the Farmland Compensation Bonds and the Kunkuk Government Bonds.[1] A formal stock exchange did not exist until the establishment of the Daehan Stock Exchange on February 11, 1956. Trading on the Daehan Stock Exchange began on March 3, 1956. At its inception, there were only 12 listed companies. Trading in listed stocks was very sparse. Trading activities were concentrated on government bonds at that time.

To promote the First Five-year Economic Development Plan (1962–1966), the Securities and Exchange Act (KSEA) was enacted in January 1962 to activate the market so that the government could finance funds for the economic plan through the securities market.[2] The Stock Exchange was reorganized into a joint-stock corporation in 1962. After the reorganization of the Stock Exchange, trading on the stock market became very active. Nevertheless, owing to speculative trading activities and a series of settlement defaults, the market soon crashed and was closed for 57 days.[3]

In order to prevent these mistakes from occurring again, stricter regulation was imposed in the amendment of the KSEA in April 1963. The Daehan Stock Exchange was accordingly reorganized into a

---

[13]Bernard Black, Corporate Governance in Korea at the Millennium: Enhancing International Competitiveness, 26 J. CORP. L. 537, 540 (2001).

[Section KR:2]

[1]KOREA STOCK EXCHANGE, KOREA STOCK EXCHANGE 1 (Sept. 1992) [hereinafter KOREA STOCK EXCHANGE]. Right after the foundation of South Korea in 1948, Korean government issued Farmland Compensation Bonds in exchange for the landowners' farmland for the purposes of farmland reform. The issuance of Kunkuk Government Bonds is to cover government expenditures.

[2]KOREA STOCK EXCHANGE, *supra,* at 1.

[3]KOREA STOCK EXCHANGE, *supra,* at 1.

government-run, non-profit corporation and was renamed the Korea Stock Exchange (KSE) on May 3, 1963. Notwithstanding the government's efforts to save the stock market, the market remained very inactive and most companies were therefore unable to finance their needs from the stock market and were forced to borrow money from banks or other sources such as the curb market—the underground financial market which normally charges higher interest rates for borrowing.

Since then, the Korean government has made several measures to revive the market as well as to enhance its soundness. The following principal measures were introduced: (1) The enactment of the Law on Fostering the Capital Market in November 1968 to increase the number of the listed companies; (2) The establishment of the Korea Investment Corporation in December 1968 to activate the primary market; (3) The issuance of the Presidential Emergency Decree for Economic Stability and Growth, and the enactment of the Public Corporation Inducement Law in 1972, which were designed to help corporations finance themselves at a lower cost via issuing equities instead of private loans; (4) The issuance of the Presidential Special Instruction to the Cabinet in 1974 to attract private companies to go public; (5) The establishment of the Korea Investment Trust Company in 1974 to manage investment funds, allowing individual investors to use professionals to handle their investment, which henceforth brought more investment trust companies into the market.[4]

In 1976, the KSEA was overhauled to enhance the supervision of the securities industry and provide investor protection. Flowing from the 1976 securities law amendment, the watchdog of the securities market, the Securities and Exchange Commission (KSEC) and the Securities Supervisory Board (KSSB) were established in February 1977. The KSEC and the KSSB, under the supervision of the Ministry of Finance (MOF), have since become the official regulators of the securities industry.[5] The MOF was later merged with the Economic Planning Board to become the Ministry of Finance and Economy (MOFE) in 1994.

In 1981, Korea introduced a plan to internationalize the Korean stock market. The internationalization plan can roughly be divided into three stages. The first stage was from 1981 to 1988. Several major activities were observed during this stage. Foreign capital was introduced into the Korean securities market via international investment trusts and Korean country funds. Moreover, companies were allowed to issue overseas convertible bonds, bonds with warrants, and global depositary receipts in 1985. The second stage was from 1989 to

---

[4]KOREA STOCK EXCHANGE, *supra*, at 2.

[5]The Ministry of Finance and Economy (MOFE) of Korea is the highest authority to regulate the securities market. The MOFE was formed in December 1994 by combining the former Ministry of Finance and the Economic Planning Board. *Despite Reshuffle Major Economic Policies to be Unchanged*, KOREA ECON. DAILY, Dec. 27, 1994, *available in* WESTLAW, KOREAECON Database.

1992 during which time the scope of indirect investment was expanded. The third country fund, Korea Asia Fund was established in 1990 to attract Asian capital to invest in Korean stocks. In the same year, Matching Funds were created to invest in both domestic and foreign markets. Qualified foreign securities firms were, in 1991, allowed to conduct securities business in Korea in the form of branch activities or by creating a joint-venture company. These foreign securities firms have been allowed to apply for membership on the Korea Stock Exchange since June 1991.[6] Jardine Fleming joined the KSE on February 27, 1995 and became the first foreign member of the KSE. The final stage to fully open the stock market began on January 3, 1992 when foreign investors were initially permitted to invest directly in the Korean stock market.

The Korean bond market was opened to foreign investors in July 1994. However, the bond market has not been very active. In May 1996, foreign companies were allowed to issue and list their securities on the KSE. From the above historical development of Korean securities market, there is a trend for the Korean securities market to internationalize a moderate and gradual pace.

In late 1997, Korea encountered the most severe financial crisis in its history. Both public and private sectors had accumulated huge foreign debt which placed Korea's financial system in a critical and fragile situation. Many financial institutions were forced to close and many companies, including some big business conglomerates called *Chaebols*, went bankrupt. The Korean currency depreciated more than 100 percent in less than one month. From the figures released by the IMF and Korean government on December 30, 1997, Korea's total external debt reached US$156.9 billion at the end of November 1997. The short-term external debt amounted US$92.2 billion, which was 58.76 percent of total external debt at the end of November 1997. Because of the accumulation of huge external debt, Korea was technically in default to repay its debt. Korea was forced to request help from the International Monetary Fund (IMF). In this financial crisis, the IMF along with other international organizations and Korea's neighboring countries put together more than US$65 billion in an emergency rescue fund to help Korea restructure its financial system and rebuild its economy. As part of the IMF rescue package, Korea was obligated to restructure its financial system, close troubled financial institutions, open its market to foreigners, and comply with many other conditions. Korea has partially implemented several policies, such as wider opening its securities market to foreigners. The Korea Futures Exchange was opened and began operation in April 1999.

The securities and futures market in Korea, formerly operated by three different institutions, were consolidated into the Korea

[6]Foreign securities firms may apply for annual memberships in the KSE. An annual membership is distinguished from a regular membership in its rights, duties, and membership fees.

Exchange (KRX) in January 2005. The KRX was created through the integration of the Korea Stock Exchange, Korea Futures Exchange and KOSDAQ Stock Market according to the Korea Stock & Futures Exchange Act.[7] Currently, these three different markets are operated as three divisions of the KRX.[8] The purpose of the Korea Exchange, as stated in the Financial Investment and Capital Markets Act is, "to fix and stabilize fair prices in transactions of securities and exchange-traded derivatives as well as to facilitate the stability and efficiency of other transactions."[9] The KRX is a stock company with a capital of not less than 100 billion won and has its office located in Busan Metropolitan City and may establish other branches.[10]

The Financial Investment Services and Capital Markets Act also assigns the following duties to the Exchange: 1) Establishment and operation of the securities market, the KOSDAQ and the derivatives market; 2) Transactions of securities and exchange-traded derivatives; 3) Transaction confirmation, debt acquisition, deduction, confirmation of settlement securities, and other settlement matters; 4) Delivery of items subsequent to transactions of exchange-traded derivatives and the payment of money; 5) Listing of securities; 6) Deciding types of transactions of exchange-traded derivatives and items thereof; 7) Report and disclosure of a listed corporation; 8) Surveillance of abnormalities in trading prescribed by Presidential Decree, including fluctuation of prices or volumes of securities or exchange-traded derivatives, and the investigation of members; 9) Auction of securities; 10) Self-resolution of disputes arising from transactions in the securities market, the KOSDAQ and the derivatives market; 11) Duties incidental to the establishment of the securities market, the KOSDAQ and the derivatives market; 12) Other duties assigned by the Act as well as other duties prescribed by the articles of incorporation.[11]

§ KR:3 Intra-National Securities Regulation by States, Provinces, etc.

Korea has national securities laws. There are no state or provincial securities laws. The Securities and Exchange Act and other securities regulations apply to all securities matters in Korea.

---

[7]For the history of the Korea Exchange, visit KRX website: http://eng.krx.co.kr/m9/m9_1/m9_1_3/UHPENG09001_03.html (last visited on Mar. 22 2013).

[8]Among these three different markets, the securities market include Korea Stock Exchange, the market for listed shares, and the KOSDAQ Market, an OTC market. Capital Market Act, § 9 (13).

[9]Capital Markets Act, § 373.

[10]Capital Markets Act, § 375.

[11]Capital Markets Act, § 377.

§ KR:4 Financial Regulatory Reform After Asian Financial Crisis of 1997; Consolidation of Financial Regulators into the Financial Services Commission (FSC) in 1998

The first set of securities regulation in Korea was the Securities and Exchange Act, which was the major source of the securities laws in Korea prior to the enactment of the Capital Market Act.[1] Similar to the securities laws of Japan and Taiwan, the KSEA was heavily influenced by U.S. securities regulation. In addition, because of a close geographic and economic relationship, Japanese securities law also had a strong influence on the KSEA. The KSEA includes provisions governing both the primary and secondary market. However, the KSEA sets forth only general principles. It is supplemented with Presidential Decrees and the Ministry of Finance and Economy Regulations (MOFE Regulations), which are promulgated under the authorization of the KSEA. In addition to the Presidential Decrees and the MOFE regulations, rules and regulations promulgated by the Korean Securities and Exchange Commission (KSEC) and Securities Supervisory Board (KSSB) also help enforce the provisions of the KSEA. This regulatory framework was changed after the Korean financial crisis in late 1997.

The first major change after 1997 was to consolidate financial regulators. Based on the recommendation of the Presidential Committee on Financial Reform, the National Assembly, on December 29, 1997, enacted the Act for the Establishment of Financial Supervisory Organizations, legislation enabling the consolidation of competent authorities in the financial and securities markets.[2] The then existing four financial regulators, including the Office of Banking Supervision, the Securities Supervisory Board (KSSB), the Insurance Supervisory Board, and the Non-bank Supervisory Authority, were consolidated. Under the new financial regulatory framework, all financial institutions, including banks, securities companies, insurance companies, non-bank and other financial institutions are subject to supervision of a single regulator, namely the Financial Supervisory Commission (FSC), which was established in April 1998.[3] The FSC's executive arm, the Financial Supervisory Service (FSS), was established in

---

[Section KR:4]

[1]Korea Securities and Exchange Act (KSEA) was enacted on January 15, 1962 (Act No. 972), wholly amended by Act No. 2920 on Dec. 22, 1976, and last amended by Act No. 8985 on Mar. 21, 2008. The KSEA was later integrated into the Capital Market Act enacted in 2007 and came into effect in February 2009.

[2]The Korean Government established the Presidential Committee on Financial Reform in early 1997, aiming to reform the financial regulatory framework. A draft bill titled "the Act for the Establishment of Financial Supervisory Organizations" was sent to the National Assembly on August 23, 1997, and this bill turned into law in December 1997.

[3]Enforcement Decree of the Act on the Establishment, etc. of Financial Services Commission (Presidential Decree No. 15751, Apr. 1, 1998) (last amended by Presidential Decree No. 23760, May 1, 2012).

January 1999 to help the FSC.[4] The function of the former 4 financial regulators, including the Office of Bank Supervision, the Securities Supervisory Board, the Insurance Supervisory Board, the Non-bank Supervisory Authority, were officially consolidated into the FSS.

With regard to the supervision of the securities market, the Securities and Futures Commission (SFC) was established under the FSC to investigate misconduct in the securities market to ensure the fairness and integrity of the market.[5] The Financial Supervisory Commission was restructured and renamed as Financial Services Commission in 2008 according to the Act for the Establishment of Financial Services Commission enacted in February 2008.[6] The purpose for creating (or renaming) the Financial Services Commission is to integrate the financial policy function of the Ministry of Finance and Economy and the financial market supervisory function of the Financial Supervisory Commission.

The former Securities and Exchange Act contains 215 articles which are divided into 12 chapters.[7] On January 21, 2000, the KSEA was overhauled again to accommodate regulatory reform after the 1997 financial crisis. Chapter I contains general provisions that declare the purpose of the KSEA and define terms which are used in the statute. Chapter II requires that certain types of corporations should be registered with the KSEC. Chapter III imposes registration requirements on making public offering of new issues or outstanding securities. Tender offers for securities are regulated under Chapter IV. Chapter V sets forth licensing and other rules on securities businesses, including brokerage, dealing, underwriting. Chapter V-2 regulates investment advisory business. Chapter VI governs the

---

[4]The Financial Supervisory Service (FSS) was established according to the Act on the Establishment, etc. of Financial Supervisory Organization (amended and renamed as Act on the Establishment, etc. of Financial Services Commission in 2008). The relevant provisions are set forth in Chapter III (Financial Supervisory Service) of the Act.

[5]The Financial Services Commission is composed of a chairperson, vice chairperson, standing commissioners, non-standing commissioners, and four ex-officio commissioners, including the Vice Minister of Strategy and Finance, the Deputy Governor of the Bank of Korea, the President of the Korea Deposit Insurance Corporation, and the Governor of the Financial Services Commission. The Securities and Futures Commission is composed of the chairperson, a standing commissioner, and three non-standing commissioners, recommendation by the FSC Chairperson.

[6]Act on the Establishment, etc. of Financial Services Commission, § 1 (Act No. 8863, Feb. 29, 2008). § 1 of this Act was wholly amended by Act 11407 (Mar. 21, 2012).

[7]The KSEA was overhauled in 1976. Major amendments are stated as follows:

1. The establishment of the KSEC and KSSB.
2. The securities business licenses were divided into broker, dealer and underwriter categories. Securities firms may apply to operate different securities services on the basis of their paid-in capital.
3. The adoption of Corporate Registration System. *See* discussion at § KR:40.
4. Insider trading regulation consolidated.
5. Takeover system introduced.

operation and supervision of the Korea Stock Exchange. Chapter VII, regarding the Securities and Exchange Commission and the Securities Supervisory Board, was deleted.[8] Chapter VIII governs other securities-related organizations, such as securities finance corporations, securities dealers associations, clearing corporations, brokerage firms and transfer agents. Chapter IX comprises provisions regarding control of listed companies. Chapters X and XI are supplementary rules and penal provisions. Although the KSEA does not exist anymore, the above information provides a general picture of securities law in Korea before the Capital Market Act.

§ KR:5 Securities and Exchange Act (KSEA) was Consolidated into the Financial Investment Services and Capital Market Act in 2007

In addition to the consolidation of financial regulators, another major change after 1997 was the consolidation of the laws related to the capital market. After the Asian financial crisis of 1997, financial regulatory reform has become a major task of the Korean government aiming to stabilize the financial market and to improve the efficiency and transparency of the market. These efforts were further pursued with the enactment of the latest Financial Investment Services and Capital Markets Act in August 2007 (Capital Market Act) which became effective in February 2009.[1] This Act consolidates several pieces of legislation that formerly regulated the Korean capital market, including the Securities and Exchange Act, the Futures Trading Act, the Trust Business Act, the Merchant Banks Act, the Indirect Investment Assets Management Business Act, and the Korea Securities and Futures Exchange Act.[2] The Capital Market Act's stated purpose is to "contribute to the development of the national economy by facilitating financial innovation and fair competition in the capital market, protecting investors, fostering the development of the financial investment business, and heightening the fairness, reliability, and efficiency of the capital market."[3]

The structure of this Act is as follows:

Financial Investment Services and Capital Markets Act
Part I. General Provisions

---

[8]Chapter VII, containing Articles 118 through 144, was deleted by Act No. 5498 on January 8, 1998. The regulatory function of the KSEC and the KSSB were replaced by the Financial Supervisory Commission.

[Section KR:5]

[1]Financial Investment Services and Capital Markets Act, Act No. 8635 (Aug. 3, 2007). It has been amended 8 times with last amendment on Aug. 4, 2011 by Act No. 11040 [hereinafter Capital Market Act].

[2]Capital Market Act, Addenda, art. 2.

[3]Financial Investment Services and Capital Markets Act, Part I General Provisions, Article 1.

Part II Financial Investment Business
Chapter 1: Authorization and Registration of Financial Investment Business
Section 1 Requirements and Procedure for Authorization
Section 2 Requirements and Procedure for Registration
Chapter 2: Governance of Financial Investment Business
Chapter 3: Maintenance of Sound Business Management
Section 1 Supervision over Soundness in Business Management
Section 2 Restriction on Trading with Major Shareholders
Chapter 4: Business Conduct Rules
Section 1 Common Rules of Business Conduct
Sub-Section 1 Duty of Good Faith, etc.
Sub-Section 2 Investment Recommendations, etc.
Sub-Section 3 Prohibition of Use of Job-related Information, etc.
Section 2 Rules on Business Conduct by Financial Investment Business Entities
Sub-Section 1 Rules on Business Conduct by Investment Traders and Investment Brokers
Sub-Section 2 Rules on Business Conduct by Collective Investment Business Entities
Section 3 Rules on Business Conduct by Investment Advisory Business Entities and Discretionary Investment Business Entities
Section 4 Rules on Business Conduct on Trust Business Entities
Part III Issuance and Circulation of Securities
Chapter 1: Registration Statement
Chapter 2: Systems Related to Corporate Acquisitions
Section 1 Public Tender Offer
Section 2 Report on Stocks, etc. Held in Bulk
Section 3 Restriction on Solicitation to Exercise Voting Right by Proxy
Chapter 3a: Listed Corporation's Business Report, etc.
Chapter 3b: Special Cases Concerning Stock-Listed Corporations
Chapter 4: Over-the-Counter Trading, etc.
Part IV Regulation of Unfair Trading
Chapter 1: Insider Trading, etc.
Chapter 2: Market Price Manipulation, etc.
Chapter 3: Unfair Trading, etc.
Part V Collective Investment Scheme

Chapter 1: General Provisions
Chapter 2: Organization, etc. of Collective Investment Schemes
Section 1 Investment Trust
Section 2 Collective Investment Scheme in Form of Company
5.2.2.1 Investment Company
5.2.2.2 Investment Limited Liability Company
5.2.2.3 Investment Limited Partnership Company
Section 3 Collective Investment Scheme in Form of Association
5.2.3.1 Investment Association
5.2.3.2 Undisclosed Investment Association
Chapter 3: Types, etc. of Collective Investment Schemes
Section 1 Types of Collective Investment Schemes
Section 2 Collective Investment Schemes in Extraordinary Form
Chapter 4: Redemption of Collective Investment Securities
Chapter 5: Assessment and Accounting
Chapter 6: Safekeeping and Management of Collective Investment Property
Chapter 7: Special Provisions for Privately Placed Funds, etc.
Chapter 8: Supervision and Inspection
Chapter 9: Companies Related to Collective Investment Schemes
Chapter 10: Special Cases Concerning Private Equity Funds
Chapter 11: Special Cases Concerning Foreign Collective Investment Securities
Part VI Financial Services-Related Institutions
Chapter 1: Korea Financial Investment Association
Chapter 2: Korea Securities Depository
Section 1 Establishment and Supervision
Section 2 Systems Related to Deposit of Securities
Chapter 3: Securities Finance Company
Chapter 4: Merchant Banks
Chapter 5: Fund Brokerage Company
Chapter 6: Short-Term Finance Company
Chapter 7: Transfer Agent
Chapter 8: Financial Services-Related Organization
Part VII Korea Exchange
Chapter 1: General Provisions
Chapter 2: Organization, etc.
Chapter 3: Markets

Chapter 4: Market Supervision and Dispute Resolution
Chapter 5: Regulations on Ownership
Chapter 6: Supervision
Part VIII Supervision and Disciplinary Action
Chapter 1: Order and Approval
Chapter 2: Inspection and Dispositions
Chapter 3: Investigation, etc.
Chapter 4: Penalty Surcharge
Part IX Supplementary Provisions

ADDENDA

Chapter I contains general provisions that declare the purpose of the KSEA and define terms which are used in the statute. Chapter II requires that certain types of corporations should be registered with the KSEC. Chapter III imposes registration requirements on making public offering of new issues or outstanding securities. Chapter IV deals with the regulation of unfair trading. Chapter V sets forth provisions for collective investment schemes. Chapter VI discusses various financial services-related institutions, including the Korea Financial Investment Association and the Korea Securities Depository, amongst others. Chapter VII deals with the Korea Exchange. Chapter VIII covers supervision and disciplinary actions, including investigation, penalties and penal provisions.

§ KR:6 Presidential Decrees and FSC/FSS Regulations

The President of the Republic of Korea has the power to issue decrees to implement the laws and policies. To implement the Capital Market Act, the Enforcement Decree of the Capital Market Act was promulgated.[1] The Presidential Decree can be amended from time to time by another Presidential Decree. The purpose of the Enforcement Decree of the Capital Market Act is to enforce and carry out the mission authorized by the Capital Market Act.[2] There are several other important Presidential Decrees relevant to the capital market and these decrees can be further amended by presidential decrees. For example:

[Section KR:6]

[1]The Enforcement Decree of the Financial Investment Services and Capital Market Act, promulgated on Jul. 29, 2008 (Presidential Decree No. 20947), last amended by Presidential Decree No. 23924 of Jun. 29, 2012 [hereinafter the Capital Market Act Enforcement Decree].

[2]To accommodate the implementation of the Capital Market Act, the Enforcement Decree repealed 6 subordinated presidential decrees, including (1) The Enforcement Decree of the Securities and Exchange Act; (2) The Enforcement Decree of the Futures Trading Act; (3) The Enforcement Decree of the Indirect Investment Asset Management Business Act; (4) The Enforcement Decree of the Trust Business Act; (5) The Enforcement Decree of the Merchant Banks Act; (6) The Enforcement Decree of the Korea Securities and Futures Exchange Act. Capital Market Act Enforcement Decree, Addenda, § 2. The Enforcement Decree contains 389 provisions.

(1) Enforcement Decree of the Act on the Establishment, Etc. of Financial Services Commission.[3]
(2) Enforcement Decree of the Act on External Audit of Stock Companies.[4]
(3) Enforcement Decree of the Certified Public Accountant Act.[5]
(4) Enforcement Decree of the Registration of Bonds and Debentures Act.[6]
(5) Enforcement Decree of the Asset-Backed Securitization Act.[7]
(6) Enforcement Decree of the Act on Real Name Financial Transactions and Confidentiality.[8]

In addition to the Presidential Decrees, the FSC and FSS are delegated powers to promulgate rules and regulations to administer and enforce the laws relevant to the capital market and other sections of financial markets. For example, with the delegation of powers from the Capital Market Act and the Presidential Decree, the FSC promulgated the "Enforcement Rule of the Financial Investment Services and Capital Markets Act" (Capital Market Act Enforcement Rule) to implement the Capital Market Act.[9]

The provisions of the Capital Market Act are enforced with the supplemented rules of the Presidential Decree and the Prime Minister Ordinance. In order to offer equity securities to the public, it is required to register with the Financial Services Commission.[10] Article 119 (1) of the Capital Market Act requires that a securities offering with size reaching or exceeding "the amount prescribed by Presidential Decree" shall file a registration statement with the Financial Services Commission. Article 120 (1), subparagraph 1 of the Capital Market Act Enforcement Decree sets forth that if "the aggregate value of securities . . . reaches or exceeds one billion won," a registration statement must be filed with the FSC. According to Article 120 (1) of the Capital Market Act, the registration shall become effective on the

---

[3]Enacted by Presidential Decree No. 15751 on Apr. 1, 1998, last amended by Presidential Decree No. 23760 on May 1, 2012.

[4]Enacted by Presidential Decree No. 12939, Mar. 3, 1990, last amended by Presidential Decree No. 23496 on Jan. 12, 2012.

[5]Last amended by Presidential Decree No. 23884 on Jun. 27, 2012.

[6]Enacted by Presidential Decree No. 5543, Mar. 4, 1971, last amended by Presidential Decree No. 24140 on Oct. 15, 2012.

[7]Enacted by Presidential Decree No. 16769, Apr. 1, 2000, last amended by Presidential Decree No. 23488 on Jan. 6, 2012.

[8]Enacted by Presidential Decree No.15604 on Dec. 31, 1997, lasted amended by Presidential Decree No. 21928 on Dec. 30, 2009.

[9]Enforcement Rule of the Financial Investment Services and Capital Markets Act [hereinafter the Capital Market Act Enforcement Rule], last amended by the Prime Minister Ordinance No. 973 on Mar. 2, 2012. The rule was issued via the Ordinance of the Prime Minister and can be amended from time to time by another Ordinance.

[10]Capital Market Act, § 119.

day "after the expiration of the time period prescribed by Ordinance of the Prime Minister. . ." The Enforcement Rule sets forth that the effective date of a stock offering registration shall be "Fifteen days for public offering or public sale of equity securities" or "ten days for public offering or public sale of stocks of a stock-listed corporation. . ."[11]

§ KR:7 Commercial Act 1962

The Commercial Act, enacted in 1962, regulates commercial transactions, such as sales, partnership and agency; companies, insurance, and maritime commerce.[1] The Commercial Act is related to the regulation of securities market because Part III of the Commercial Act is called the Company Law which sets forth provisions regarding corporate governance, the formation of corporate capital and issuance of securities.[2] The Company Law comprises provisions regarding various types of companies. Among the four types of companies covered by the Commercial Act, only *Chusik-Hoesa*, a business corporation or share companies, can issue stocks and corporate bonds.

In Korea, incorporation of a company is regulated by the Commercial Act. A business corporation's capital divided by shares can be incorporated in one of the following methods: one is "Fa-Chi Sher-Li" (Promotive Incorporation), and the other is the "Mu-Chi Sher-Li" (Subscriptive Incorporation).[3] To form a business corporation, there must be at least three persons as promoters.[4] The promoters shall prepare, sign, and seal the articles of incorporation which shall include the object, the trade name, the total number of the shares authorized to be issued by the company, the amount of each share, the total number of the shares authorized to be issued at the time of incorporation, the location of the principal office, the manner in which the company is to give its public notices, and the full name and permanent residence of each promoter.[5] The total number of the shares authorized to be issued at the time of incorporation are required to be at least one-fourth of the total number of the shares authorized to be issued by the corporation.[6] If the total number of shares to be issued at the time of incorporation are fully subscribed by the promoters, it is

---

[11]Capital Market Act Enforcement Rule, § 12 (1), subparagraph 2.

[Section KR:7]

[1]Korea Commercial Act, enacted on Jan. 20, 1962 (Act No. 1000), lasted amended on May 23, 2011 (Act No. 10696).

[2]Part III of the Korea Commercial Act defines and regulate four different types of companies (*HOESA*). Commercial Act, Part III Companies (*HOESA*). The four types of business organizations include General Commercial Partnership (*Hapmyong-Hoesa*), Limited Partnership (*Hapcha-Hoesa*), Business Corporation (*Chusik-Hoesa*) and Private Limited Company (*Yuhan-Hoesa*).

[3]Korea Commercial Act, arts. 295 & 301.

[4]Korea Commercial Act, art. 288. The minimum promoters required for the incorporation of a stock corporation was changed from 7 to 3 in the 1995 amendment.

[5]Korea Commercial Act, art. 289(1).

[6]Korea Commercial Act, art. 289(2).

called "Promotive Incorporation." However, if the promoters do not subscribe the total number of shares in the first issue at the time of incorporation, the remaining shares may be offered to the public, which is so called "Subscriptive Incorporation." The latter method is more popular because the law gives more leeway for incorporation by means of offering. For the former type of incorporation, the law has stricter restrictions.

A company must register with the Registrar Department of the Court when it incorporates and when it changes its capital structure or by-laws or articles of incorporation. In practice, the Registrar does not do a merit review of the registration.[7] It is routine work. Although investors can obtain basic corporate information from the Registrar, the registration process has become a formality and the Registrar does not check on the merit of the registrant to determine whether to permit establishment of the company. The registration of incorporation with the Registrar is not designed to protect the investors.

The mission to protect investors is embraced in the Capital Market Act. If a company intends to make a public offering, the Capital Market Act requires the issuer to register with the Financial Services Commission (FSC) when issuing shares to the public exceeding a certain amount prescribed by the FSC.[8] Under the Capital Market Act, the FSC does not have the power to make a merit review of the application for public offering.[9] The competent authority can deny an application if it thinks the company's shares are not suitable for public investment.

With regard to the par value of the stock, the Commercial Act allows a corporation to determine whether to issue par value shares or no par value shares.[10] However, the company has to choose to issue either par value shares or no par value shares. When issuing no par value shares, the board of director must determine the amount of the paid-in capital out of the total issuing amount.[11] When issuing par value shares, the issuance price cannot be set below the par value.[12] However, a listed company may issue shares at a price below the par value if approved by the shareholders' meeting.[13]

The recent changes to the Commercial Code mainly focus on enhanc-

---

[7]Interview with Professor Kim Kon Sik, Professor of Law of Seoul National University, in Seoul (Nov. 3, 1994).

[8]See § KR:40.

[9]Capital Market Act, § 9.

[10]Commercial Act, § 329.

[11]Commercial Act, § 416. Before the incorporation, the decision of the amount of paid-in capital is to be decided by the promoters when issuing no par value shares.

[12]Commercial Act, § 417.

[13]Capital Market Act, § 165-8. The voting requirement for a shareholders' meeting adopting an issuing price less than par value is the same as amending the articles of incorporation, i.e., "affirmative votes of no less than two thirds of the voting rights of the shares present at the general meeting of shareholders and of at least one third of the total issued and outstanding shares. Commercial Act, § 434."

ing the protection of minority shareholders' rights. Major changes include the following:

1. Minority shareholders who hold more than three percent of the outstanding shares have a right to propose an agenda to be discussed in the shareholders' meeting.[14]
2. From July 1999, unless prohibited by the articles of incorporation, minority shareholders with more than three percent of the outstanding shares may request to elect directors by cumulative voting.
3. In a merger transaction, the merger plan normally must be approved by the shareholders' meeting of both companies. However, if the merger is on a small scale that does not materially affect the operation or the shareholders' benefits of the acquiring company, such merger plan is exempt from the approval from the shareholders' meeting of the acquiring company. In the acquiring company, only approval from the board of directors is required. It needs only the approval from the merged company.
4. A corporate transaction similar to spin-offs or split-offs is introduced as part of the plan to amend the corporate reorganization or restructuring mechanism.
5. A corporation may issue dividends twice a year.

§ KR:8 Capital Market Promotion Law of 1968 (CMPL)[1]

The Capital Market Promotion Law of 1968 (CMPL) is one of the earliest pieces of law that promotes the securities market. The CMPL was largely amended in November 1987 to include important provisions of the Public Corporation Inducement Law.[2] One of the important measures provided by the CMPL is that the KSEC may recommend companies to go public, which is called "designated public offering."[3] This allows the KSEC to select large capital sized companies to go public to promote the domestic capital market and allow investors more investing opportunities. In addition, the CMPL also entitles the employees of a company the right to subscribe up to twenty

[14]In the case of listed companies, minority with more than one percent of the outstanding shares may exercise this right.

[Section KR:8]

[1]Capital Market Promotion Law, Law No. 2046 of Nov. 22, 1968 [hereinafter CMPL]. This Law was substantially amended in 1987 and 1993.

[2]Public Corporation Inducement Law, Law No. 2420 of Dec. 30, 1972. This Law is also referred as the Going Public Encouragement Act. *See* THE KOREA SECURITIES DEALERS ASSOCIATION, 1987 KOREAN SECURITIES MARKET 18 [hereinafter 1987 KOREA SECURITIES MARKET].

[3]The KSEC no longer has the power to recommend companies to go public since 1993 as the CMPL was amended.

percent of the offered shares if the company makes a public offering.[4] As stated, one of the major purposes of the CMPL is to encourage or designate companies to go public. Because there have been adequate number of public companies, there is no longer need to designate companies to go public. As a result, the KSEC no longer has such power to designate companies to go public. The CMPL was therefore repealed. Part of the provisions of the CMPL were incorporated into the 12th amendment of the KSEA in 1997.

The consolidation of the financial supervisory system of Korea in 1997 helped provide intensive restructuring of the financial industry to put the financial system back on track after the Asian financial crisis of 1997. Based on a series of recommendations by the International Monetary Fund as well as the Korean government's Presidential Committee on Financial Reform, the government of Korea passed a bill in December 1997 to consolidate the four main supervisory bodies—the Banking Supervisory Authority, Securities Supervisory Board, Insurance Supervisory Board, and the Non-bank Deposit Insurance Corporation- into one integrated financial supervisory body. In 1998, the FSC (Financial Supervisory Commission) was established as Korea's top financial regulator. It was later renamed Financial Services Commission (by which name it is called today); it also took over the policy-making authority from the Finance Ministry. In January 1999, the Financial Supervisory Service (FSS) was also established. The FSS is directed by the FSC.

The FSS (Financial Supervisory Service) is the executive supervisor for the FSC, and works to carry out the examination of financial institutions, enforcement and other oversight activities as directed by the FSC. The purpose of the Financial Supervisory Service is to contribute to the growth of the national economy by 1) promoting the advancement of the financial industry and the stability of financial markets; 2) establishing sound credit order and fair financial transaction practices; and 3) protecting financial consumers, such as depositors. (Article 1, Act on the Establishment, etc. of Financial Services Commission).[5]

§ KR:9 Securities Investment Trust Business Act (KSITBA)[1]—Integrated into Capital Market Act

This law establishes the basic framework for securities investment trust businesses which links huge domestic savings into a more productive investment in the securities industry. An investment trust

---

[4]CMPL, *supra*, art. 17(1); Sang-Hyun Song, *Law and Policy of Securities Regulation in Korea*, 4 PACIFIC RIM L. & POLICY J. 757, 763 (July 1995).

[5]Act on the Establishment, etc. of Financial Services Commission, § 1.

[Section KR:9]

[1]Securities Investment Trust Business Act, Law No. 2129 of Aug. 4, 1969. It was overhaul on December 29, 1995 by Law No. 5044 and was last amended on Jan. 21, 2000 [hereinafter KSITBA].

company must be in the form of joint-stock company with a minimum capital of 30 billion Won (US$30 million).[2] The Financial Supervisory Commission is the competent authority to license and supervise the securities investment trust business. With more investment trust companies entering the stock market, the infusion of the capital from these companies has increased liquidity and efficiency in the stock market. It also provides small investors more opportunities to choose professional portfolio managers to handle their investment.

Previously, Korea explicitly prohibited foreign companies from selling investment trusts to Korean investors.[3] The reason for the prohibition was to protect the immature domestic investment trust industry.[4] With an effort to consolidate the "fragmented financial sector" and attract experienced and qualified foreign investment trust companies, reform packages were introduced in 1995 to restructure the investment trust industry.[5] In the domestic part, the reform made securities companies eligible to enter into the investment trust business while existing investment trust companies were allowed to convert into a securities company.[6] Financial institutions were eligible to enter into brokerage and investment trust business in the form of a joint venture.[7]

With regard to foreign fund management companies, foreign investors were allowed to hold a stake in Korea's domestic investment trust business beginning on December 1, 1996.[8] Under the reform package, total foreign ownership may not exceed 49 percent of an

---

[2]KSITBA, *supra*, art. 9(1).

[3]Robert C. Pozen, *Let U.S. Fund Managers Into Asian Markets*, ASIAN WALL ST. J., Nov. 6, 1991, at 10. As of November 1991, there were about 400 investment trusts with around 25 million unit holders. *Id.*

[4]Robert C. Pozen, *Let U.S. Fund Managers Into Asian Markets*, ASIAN WALL ST. J., Nov. 6, 1991, at 10.

[5]*Korea Details Restructuring of Trust Market*, ASIAN WALL ST. J., Nov. 28, 1995, at 4; *Overhaul of Securities Industry by Seoul Aims at Consolidation*, ASIAN WALL ST. J., Aug. 14, 1995, at 15 (discussing restructuring of domestic investment trust industry).

[6]In the reform, domestic securities companies were allowed to engage in investment trust business via subsidiaries or affiliates. *Overhaul of Securities Industry by Seoul Aims at Consolidation*, *supra*. A securities company may establish a securities investment trust company on its own with ownership of 50 percent or more, or via the form of joint venture with four or more major shareholders. *Id.* However, in order to prevent the *Chaebols* to dominate the investment trust business, the securities companies associated with big business conglomerates can only establish investment trust companies in a consortium with other companies. *Id.* A new established investment trust company was required to have at least 30 billion won (US$39.5 million) of capital. *Id.* Under the reform package, newly established investment trust companies can only manage funds without sales of products or funds. *Id.* Existing investment trust companies may convert into a securities firms after spinning off their investment trust business. *Id.* After spinoff, the capital of the securities unit must have at least 100 billion won (US$131.6 million). *Id.*

[7]The purpose if to increase the competitiveness in the securities industry. *Id.*; *Korea Details Restructuring of Trust Market*, *supra* note 70.

[8]*Korea Details Restructuring of Trust Market*, *supra*, at 4.

investment trust company's capital in the first two years and may expand to own 100 percent. A single investor can own up to 30 percent of the equity in an investment trust company. In order to hold a large stake in a Korean investment trust company, a foreign fund management company must have engaged in the investment business for more than ten years and have assets of more than 14 trillion won (US$14 billion). As the KSITBA was overhauled in December 1995, effective on December 1, 1996, a foreign investment management company may also establish an office in Korea which can be upgraded into a branch after one year. The 1995 amendment of the KSITBA allows foreign investment fund management company to set up a branch or business office with permission from the MOFE.[9] The KSITBA was last amended in January 2000.

The regulation of securities investment business is now incorporated into the Capital Market Act. The Capital Market Act has dramatically changed the regulatory philosophy of the financial market not by the types of institutions but by the function of the institution. It defines the "financial investment business" to include six types of business, including (1) Investment trading business; (2) Investment brokerage business; (3) Collective investment business; (4) Investment advisory business; (5) Discretionary investment business; and (6) Trust business.[10] To operate financial investment business, the entity must register or be authorized to engage the financial investment business.[11]

A new invention in the Capital Market Act is the distinction of ordinary investors from professional investors. However, a professional investor may give a notice to the financial investment business entity that he or she wants to be treated as an ordinary investor and the entity must consent to such notice.[12]

§ KR:10 Foreign Exchange Transactions Act (FOREX Act) and Foreign Investment Promotion Act (FIPA)

Foreign exchange control is another concern for both local and foreign investors to move capital inward and outward of the market. The foreign exchange control also affects local people and local firms in the movement of their capital inward and outward of the country. The Korean government has set a plan to liberalize its foreign exchange market. Currently, foreign exchange transactions are governed by the Foreign Exchange Transactions Act[1] and the Enforcement Decree of the Foreign Exchange Transactions Act.

In the foreign exchange liberalization plan, the first phase, begin-

---

[9]KSITBA, *supra*, Chapter IV Business of Foreign Management Company.

[10]Capital Market Act, § 6.

[11]Capital Market Act, § 8.

[12]Capital Market Act, § 9(5).

[Section KR:10]

[1]Foreign Exchange Transactions Act (Act No. 5550, Sept. 16, 1998, last amended by Act No. 9374 on Jan. 30, 2009).

ning in April 1999, converted regulations on capital account transactions into a negative system, lifting most restrictions. The MOFE launched the second phase in January 2001 and this provides a more liberal foreign exchange system.

Foreign direct investment is regulated under the FIPA and the Foreign Exchange Transactions Act.[2] The FIPA is the first and still the most important law regulating foreign investment and the introduction of foreign capital into Korea. Foreign investors may apply for direct investment by means of acquiring newly issued shares, or outstanding shares of a Korean company. They may also conduct direct investment via merger with a Korean company. In order to make foreign direct investment, foreign investors must obtain prior approval from the Ministry of Knowledge Economy (MOKE). The MOKE when giving its authorization, shall consult with the relevant competent authority.[3]

Although the FIPA is designed to liberalize foreign investment policy and promote foreign investment, there are certain restrictions. The general restrictions are set forth in Article 2 (4) of the FIPA.[4] Generally, the current policy toward foreign investment in Korea is to make advance report to the Ministry of Finance and Economic (MOFE). The MOFE establishes the Foreign Investment Commission to deal with foreign investment policy and other relevant matters.[5] However, to invest in defense industry companies, the foreigner must obtain permission from the Minister of Commerce, Industry and Energy.[6] In order to provide protection to foreign investors, Korea Trade and Investment Promotion Agency established the Foreign Investment Support Center.[7]

---

[2]Foreign Investment Promotion Act (enacted on September 16, 1998 as Act No. 5559, last amended Act No. 10339, June 4, 2010) [hereinafter FIPA] was to repeal the former Foreign Investment and Foreign Capital Inducement Act.

[3]Enforcement Decree of the Foreign Investment Promotion Act (Presidential Decree No. 22426, Oct. 5, 2010). For example, if the target company of the foreign direct investment belongs to the defense industry, the Ministry of Commerce, Industry and Energy will consult with the Ministry of National Defense. Enforcement Decree of the Foreign Investment Promotion Act, art. 8.

[4]The following investment is restricted: (1) it threatens national safety and public order; (2) it has harmful effects on public hygiene or the environmental preservation or against Korean morals and customs; and (3) it violates the Law of the Republic of Korea. FIPA, § 4(2).

[5]FIPA, § 27.

[6]FIPA, § 6(3).

[7]FIPA, § 15(1).

II. ORGANIZATIONS INVOLVED IN SECURITIES REGULATION

A. OVERVIEW

§ KR:11 National Securities Regulators and Self-Regulatory Organizations

The securities laws are administered by two tiers of regulatory bodies. The first tier is the competent authority of the securities industry, the, i.e., national securities regulators. Before the establishment of the Financial Supervisory Commission (FSC), the competent authorities were the Ministry of Finance and Economy (MOFE), the Securities and Exchange Commission (KSEC) and the Securities Supervisory Board (KSSB). This structure was changed to accommodate the need for financial reform after the financial crisis in late 1997. The functions of the KSEC and the KSSB were consolidated into a new government agency, the FSC, under which the Securities and Futures Commission (KSFC) and the Financial Supervisory Service (KFSS) were created. In 2008, the MOFE and the Ministry of Planning and Budget (MPB) merged into the Ministry of Strategy and Finance (MOSF) which is currently Korea's sole fiscal policy-making government agency. The financial policy regarding the financial market was transferred to the Financial Services Commission (formerly the Financial Supervisory Commission).

The second tier regulators are self-regulatory organizations, including the Korea Exchange (KRX) (discussed above), Korea Securities Dealers Association (KSDA), Assets Management Association of Korea, Korea Futures Association, and Korea Financial Investment Association and the Korea Financial Investment Association, which was created for "the purposes of maintaining business practice between members, assuring fair trade, protecting investors, and promoting the sound development of financial investment services."[1] Rules of the second-tier self-regulatory bodies must be approved by the competent authority.

B. PUBLIC SECURITIES MARKET

§ KR:12 Market Climate

As of the end of April 2002, the total population of 15 years and over in the South Korea was 38.76 million.[1] The population reached

---

[Section KR:11]

[1]Capital Markets Act, Part VI Financial Services-Related Institutions, Chapter I Korea Financial Investment Association.

[Section KR:12]

[1]NATIONAL STATISTICAL OFFICE, REPUBLIC OF KOREA, MONTHLY STATISTICS OF KOREA (May 2002).

50 million on June 23, 2012.[2] The economically active population was estimated 24.97 million in February 2013 according to Statistics Korea.[3] The unemployment rate had always been kept between 3.2 percent and 2.3 percent prior to the 1997 financial crisis. However, the low unemployment rate increased to 6.8 percent in 1998 because of the financial crisis at the end of 1997. As of May 2002, jobless persons were around 661,000 or around 2.9 percent. Affected by the financial crisis, many companies, including some big business conglomerates, became insolvent. Also, under the prescription of the International Monetary Fund, which provided more than US$60 billion of rescue funds to help Korea solve its financial crisis, further layoffs were inevitable. Traditionally, layoffs were not common in Korea. In fact, it is almost impossible to lay off an employee in Korea. However, in order to stimulate the economy, on February 6, 1998, the Tripartite Commission, composed of the representatives from labor groups, business groups and the government, reached an agreement which allowed layoffs in emergent business conditions of a company or in the case of business combinations such as mergers and acquisitions.[4] This was the reason the unemployment rate increased in the first couple of years after the 1997 financial crisis. The unemployment rate increased again after the global financial crisis in 2008. The unemployment rate reached 3.9 in June 2009 and 4% in February 2013 respectively.[5]

Korea's gross national income (GNI) per capital was US$8,900 at the end of 2001. Gross domestic product (GDP) grew to US$504.58 billion as of the end of 2001 compared to US$357.51 billion in 1998. It grew to US$1,049.24 billion in 2007 and back off to US$834.06 owing to the global financial crisis. The GDP was US$1,116.25 billion in 2011.[6] Korea's gross national savings were 31.825% of the GDP in 2011.[7] Foreign currency reserves reached US$109.6 billion at the end of May 2002 from US$74 billion in 1999.[8] The amount of foreign currency reserves reached US$316.43 billion in February 2013.[9] Korea, similar to Taiwan, is an export-oriented country, whose economy has been growing rapidly since the 1990s because of the rapid growth of

---

[2]"Population Projections (2010~2060).

[3]Statistics Korea, Economically Active Population Survey in February 2013 (Mar. 13, 2013).

[4]KIEP, Tripartite Commission Reaches Agreement on Layoffs, Unofficial Summary Translation, Feb. 7, 1998.

[5]Statistics Korea, Economically Active Population Survey in June 2009 (July 15, 2009); Economically Active Population Survey in February 2013 (Mar. 13, 2013).

[6]IMF, World Economic Outlook Database, October 2012.

[7]IMF, World Economic Outlook Database, October 2012.

[8]209 SECURITIES SUPERVISORY BOARD MONTHLY REVIEW, at Statistics 10, Table (1) Principal Economic Indicators. The exchange rate of Won to U.S. Dollar was 827.4 at the end of 1984 and 805.5 at the end of June, 1994.

[9]Bank of Korea Economic Statistics System (ECOS), last searched on March 27, 2013, available at http://ecos.bok.or.kr/flex/EasySearch_e.jsp.

its exports. Korea kept an average real growth rate of 7.6 percent during the period from 1985 to 1995. The average inflation rate during the same period was 6.8 percent. Thanks to the steady growth rate and moderate inflation rate coupled with a series of reforms in the securities industry during the last decade, the stock market has become one of the most popular sources for corporations to raise capital to accommodate their future development. The GDP growth rate was minus 5.7 (–5.7%) in 1998 owing to the Asian financial crisis. Korea had moderate GDP growth rates between 2002 to 2012 except for 2008 and 2009 as influenced by the global financial crisis. (*See* TABLE Korea-1).

Although the stock market has become a popular source of corporate finance, many Korean companies still rely heavily on bank loans in addition to raising funds from the public. Two reasons explain why companies rely heavily on bank loans. The first reason is the government's long-term economic policy to promote exports that has been implemented for more than twenty years. Under this economic plan, exporting companies can obtain low-interest loans. It is necessary to note that until now, most Korean banks operate under the direction of the government or are heavily influenced by government policies, including interest rates and whether to extend loans to certain type of companies. This is how the government can plan and implement economic policies. The second reason is that the parent-subsidiary guarantee system enables many companies to obtain bank loans easily. A company can easily obtain bank loans if its parent or affiliate companies provide a guarantee to the bank. This system has been abused by many companies and has caused many bad loan problems. It even caused some *Chaebols*, such as KIA to become insolvent. Because of over use of bank loans, many Korean companies became highly leveraged. Many companies went bankrupt in 1996 and 1997. Statistics show that the number of bankrupt companies in 1997 was equal to 10 percent of the listed companies of the KSE.

The market capitalizations of the KOSPI and KOSDAQ stock markets were KR Won 1,042 trillion and KR Won 106 trillion respectively at the end of 2011. (TABLE Korea-2)

TABLE Korea-1
Principal Economic Indicators

Date	**GDP At current prices (Billion US$)**	Per Capita GNI at current prices **(US$)**	**Gross National Savings Ratio to GDP**	**GDP Growth Rate**
1997	532.30	11,505.00	34.60%	5.80%
1998	358.20	7,606.00	36.60%	–5.70%
1999	461.60	9,778.00	34.60%	10.70%
2000	533.50	11,292.00	33.00%	8.80%
2001	504.60	10,63.00	31.10%	4.00%

Date	**GDP At current prices (Billion US$)**	Per Capita GNI at current prices **(US$)**	**Gross National Savings Ratio to GDP**	**GDP Growth Rate**
2002	575.90	12,100.00	30.507%	7.20%
2003	643.60	13,460.00	32.309%	2.80%
2004	722.40	15,082.00	34.412%	4.60%
2005	844.70	17,531.00	31.890%	4.00%
2006	951.10	19,691.00	31.103%	5.20%
2007	1,049.30	21,632.00	31.502%	5.10%
2008	930.90	19,161.00	31.554%	2.30%
2009	834.40	17,041.00	30.209%	0.30%
2010	1,014.70	20,562.00	32.424%	6.20%
2011	1,114.70	22,451.00	31.825%	3.6%
2012	1,129.20	22,708.00	30.975%	N/A

Source: Bank of Korea Economic Statistics System (Data retrieved on March 28, 2013)

Table 2
Market Capitalization
(in Billion Won)
(US$1 = KR Won 1110 at March 2013)

Year	Market Cap.
2000	188,041
2001	255,850
2002	258,680
2003	355,362
2004	412,588
2005	655,075
2006	704,588
2007	951,918
2008	576,928
2009	887,935
2010	1,141,885
2011	1,041,999

Source: Korea Stock Exchange, see online statistics at http://eng.krx.co.kr/m2/m2_4/m2_4_1/m2_4_1_1/JHPENG02004_01_01.jsp.

The number of listed companies was 776 as of December 1997, compared to only 66 in 1972 and 389 at the end of 1987.[10] The number of public companies has increased to 2,733 as of August 1994 from 1600 at the end of 1987.[11] The number of listed companies was 791 in KOSPI Market and 1,031 in KOSDAQ Market at the end of 2011.[12]

In 1997, the total trading volume for listed stocks was 12,125 million shares, with the daily average of 41.5 million shares;[13] that trading volume is a 71.6 percent increase from 1992. Total trading value

[10]209 SECURITIES SUPERVISORY BOARD MONTHLY REVIEW, at Statistics 16, Table (6) Listed companies by Capital Size; Data from Korea Stock Exchange.

[11]209 SECURITIES SUPERVISORY BOARD MONTHLY REVIEW, at Statistics 16, Table (5) Registration of corporations (Sept. 1994).

[12]KRX Fact Book 2011, at 10.

[13]209 KOREA SSB MONTHLY REVIEW, at Statistics 41, Table (23): Key Statistics for Listed Stocks; data from Korea Stock Exchange. Initial fears that foreigners moved into Korea stock market would make a quick kill has been proved to be groundless. The financial authorities conceded that market opening has had a very beneficial impact on the local market. "We found that the financial authorities were very quick to amend the regulations where necessary," said Philip Smiley, managing director of Jardine Fleming in Seoul. Kim Chong-Tae, *Happy Bulls*, KOREA ECONOMIC REPORT, January 1994, vol. 9, no. 1, at 31. Since the opening of the Seoul bourse in January 1992, foreigners' net equity capital amounted to US$5.4 billion in 1993, showing a 160% increase from the previous year. Their net purchase totaled 4.1 trillion won (US$4.1 billion). The flood of foreign money represents 5.3% of the market capitalization, which does not include foreign equity holdings in foreign-invested companies. Foreigners' investment in offshore funds established by Korean investment and trust companies amounts to about US$1 billion. *Id.* at 32. Foreign acquisition amounts to 8.5% of the total shares listed on the Korea Stock Exchange. Such a percentage is

in 1993 totaled 169,918 billion Won (US$ 169.92 billion), up from 90,624 billion Won in 1992. The daily average trading amount was 574,048 million Won (US$574.05 million).[14] The total trading value reached the all-time high of 229,772 billion Won in 1994 and decreased to 162,281 billion Won in 1997. The change in the trading value matches the trend of KOSPI stock index which climbed to a high of 1,027 point in 1994 from 678 point in 1992 and declined to 376 point at the end of 1997, the record low since 1988. In 2011, the trading value of KOSPI Market was 1,702,060 billion Won; the average daily trading value was 6,863 billion Won; and the trading volume was 87,732 million shares in 2011. The trading value of KOSDAQ Market was 588,007 billion Won; the average daily trading value was 2,250 billion Won; and the trading volume was 134,765 million shares.[15]

§ KR:13 Primary Market; Issuer Transactions—Equity Market

Common shares are the most popular type of equity issued by Korean companies. Although the Commercial Act grants companies rights to determine whether to issue par value shares or non-par value shares, listed companies' shares are required to have a par value of 5,000 Won or more.[1] In Korea, new shares are issued mainly because of a need for additional capital or for issuing stock dividends. Capital may be increased with or without consideration. Capital increase with consideration is the regular way that companies issue new shares to obtain new funds for the company to expand business, to maintain operation, or pay off high interest debt financing. In contrast, there is no cash infusion in the case of capital increase without consideration. The typical example of capital increase without consideration is the transfer of reserve fund into stated capital. New shares are issued without cash payment in the following situations: (i) transfer of capital surplus, (ii) transfer of earned surplus, (iii) revaluation surplus to capital stock.[2] In addition, if new shares are issued to pay dividend to shareholders, the company's capital is not increased

---

even relatively higher than in Japan, which is fully open to foreign investors. Still, foreign ownership in Japanese stocks is as low as 6% of the total. Although the economy had not fully recovered, the average prices of stocks jumped more than 50% due to decreased interest rate in 1993 which shows that stock market performance and the economy are not always co-related. *Id.*

[14]209 KOREA SSB MONTHLY REVIEW, at Statistics 41, Table (23): Key Statistics for Listed Stocks.

[15]KRX Fact Book 2011, at 10.

[Section KR:13]

[1]Korea Commercial Act, art. 329(4). All listed shares currently have a par value of 5,000 Won.

[2]A company is required to set aside at least 10% of "dividend amount of profit" as earned surplus reserve at each period until the earned surplus reserve reaches 50% of the stated capital. Korea Commercial Act, art. 458. A company shall set aside the following amount as capital surplus reserve: (i) when the shares have issued above the face value, the amount exceeding the face value; (ii) in the case of capital

and no cash is infused into the company.[3] When a company issues new shares for the purpose of transferring funds from the reserve fund into capital, or for the payment of dividend, the shares are issued to the existing shareholders in the proportion to the number of shares they own.

Public offerings were not popular in Korea in the past. Korean companies rely more heavily on bank financing than equity offerings. Most public offerings are initial public offerings (IPOs) or a means to privatize government-owned businesses. There was an increasing number of public offerings in the past decade because of increasing number of companies going public. Except in the case of going public, companies prefer rights offerings to public offerings when issuing new shares to increase capital. In 1980s to 1990s, public offerings have been used frequently in the privatization of state-run enterprises. 1988 and 1989 had the most IPO cases. There were 112 companies going public, raising 1,049 billion Won (US$1.05 billion), in 1988, and 126 companies going public, raising 3,051 billion Won (US$3.05 billion), in 1989, (TABLE Korea-3). The public offerings and the stock market have since cooled down. In 1992, only 8 companies went public raising 81,680 million Won (US$81.68 million) from the public, (TABLE Korea-3). The number of companies went public was increased to 40 during 1996, raising 1,391 billion Won. During 1997 and 1999, 41 went public and were listed on the KSE. Since 2000, the KSE has not admitted any new companies. From 2000 to April 2001, 191 companies went public and were listed on the KOSDAQ market raising more than 2,650 billion Won.

For the KOSPI stock market, there were 784 listed companies at the end of 2012 compared with 791 at the end of 2011. The total number of shares listed on the KOSPI Market were around 35,823

---

reduction, if the reduced capital exceeds the amount needed for the retirement of the shares and the amount used for making deficiencies good, such amount in excess; (iii) in the case of merger, if the value of assets succeeded exceeds the amount of the obligations succeeded, and the amount refunded to the shareholders of the company or companies which ceased to exist, plus the amount of the increased capital of the company after merger, the amount in excess; and (iv) other surplus from capital transactions. Korea Commercial Act, art. 459. The earned surplus reserve and capital reserve may be transferred into the stated capital by a resolution of the board of directors or by the general meeting of shareholders if the articles of incorporation specifies. Korea Commercial Act, art. 461.

[3]The Commercial Act provides that a company can issue stock dividend up to 50 percent of the total announced dividend. Korea Commercial Act, art. 462-2(1). That is to say, according to Commercial Act, when a company announces a dividend, it must distribute at least 50 percent of the announced dividend in cash. The Notwithstanding the limitation, in practice, listed companies may distribute 100% of the dividend in the form of new shares. 1993 KOREA SECURITIES MARKET, at 17.

million shares.[4] As for KOSDAQ, there were 1,005 listed companies at the end of 2012 compared with 1,031 at the end of 2011.[5]

It is important to note that Korea's OTC market restructured and set up KOSDAQ in 1997. Twenty-six companies went public in 1997, including 23 companies listed on the KSE and 3 companies listed on the KOSDAQ. In 1999, there were 116 IPO cases, including 15 KSE IPOs raising 1,720 billion Won, and 101 KASDAQ IPOs raising 2,103 billion Won. In the year 2000, there were 179 IPO cases raising 2,551 billion Won. All of these 179 companies were listed on the KOSDAQ. Because of the severe impact of the global financial crisis in 2008, the total number and amount of public offerings declined dramatically but began to recover from 2009. The total amount of IPOs and seasoned offerings of KRX Stock Market was 1,778.7 billion Won in 2008, compared with 12,005.2 billion Won in 2007. (See TABLE Korea-3)

TABLE Korea-3
IPOs and Seasoned Offerings of KRX Stock Market
(Unit: Billion KR Won)

Year	Large Corporations				Small & Medium-Sized Companies				TOTAL	
	IPOs		Seasoned Offerings		IPOs		Seasoned Offerings			
	Nos.	Amt.	Nos.	Amt.	Nos.	Amt.	Nos.	Amt.	Nos.	Amt.
2007	7	1,395.3	39	10,121.7	2	130.0	26	358.2	74	12,005.2
2008	2	214.1	13	1,078.3	3	106.3	25	390.0	43	1,788.7
2009	7	360.6	34	5,130.3	3	112.1	40	529.6	84	6,132.6
2010	17	2,772.6	22	2,918.0	4	166.0	13	220.7	56	6,077.3
2011	13	1,358.9	28	8,754.0	0	0.0	6	49.3	47	10,162.2

Source: Financial Services Commission, Financial Information Statistic System, KRX Stock Market Initial Public Offerings and Seasoned Equity Offerings by Company Size (Mar. 2013).

§ KR:14 Primary Market; Issuer Transactions—Bond Market

The total balance of listed issues amounted to 224,116.59 billion Won (US$224.116 billion) (US$1=WON1000) as of the end of 1997 compared to 12,001 billion Won (US$12.001 billion) at the end of 1985, (TABLE Korea-4). The statistical number shows that public bonds, including Monetary Stabilization Bonds account for 61.6 percent of the total listed bonds at the end of 1997, (TABLE Korea-4). The balance are corporate bonds. The amount of listed bonds issued by companies has increased over the past 15 years. This indicates that companies have increased the use of corporate debt in addition to the offering of equity securities. In fact, the total value of outstanding

[4]Financial Services Commission, Financial Information Statistic System, Summary Statistics of KOSPI Market (Mar. 2013).

[5]Financial Services Commission, Financial Information Statistic System, Summary Statistics of KOSDAQ Market (Mar. 2013).

listed corporate debts was three times of the total market value of listed stocks at the end of 1997.

The major players in the bond market are institutional investors.[1] Although more than 80 percent of bonds outstanding are listed on the KSE, most bond transactions take place in the KSDA OTC market. About 99 percent of bond trading volume occurred in the OTC market in 1992. Trading of small-lots of public bonds was centralized in the KSE in October 1995. In the meantime, Asian Development Bank's bonds denominated in Korean won were also listed on the KSE. A unique feature of the Korean bond market is that the term of maturity is very short. For example, in 1991, about 92.3 percent of debt issues have maturities less than three years.[2] Although the total value of listed corporate bonds is three times of the total market value of listed stocks at the end of 1997, the total trading value on listed stocks is 40 times more than the total trading value on corporate bonds in 1997.

The obstacles for developing the Korean debt securities market can be explained in the following manner.[3] First, the issuing prices of public bonds are normally controlled by the government. Although the Korean government has made efforts to introduce a market-driven distribution system in recent years, the government still controls the issuing prices of government bonds. Second, the investor base is very weak and the market lacks liquidity. Third, there is no real time quotation system for bond trading. Furthermore, the Korean bond market is not fully open to foreign investors for direct investment.[4] The government's major concern is that if the bond market is fully opened, Korea's high interest rate would attract inflows of huge amount of funds that could damage Korea's currency system.[5] In July, 1995, the MOFE liberalized the domestic debt market allowing companies to issue commercial paper with maturities over seven, ten, or thirteen years.[6]

[Section KR:14]

[1]KOREAN FINANCIAL REVIEW: QUARTERLY ANALYSIS & FORECAST, vol. 3, no. I, at 10 (Spring, 1993).

[2]KOREAN FINANCIAL REVIEW: QUARTERLY ANALYSIS & FORECAST, vol. 3, no. I, at 10 (Spring, 1993).

[3]KOREAN FINANCIAL REVIEW: QUARTERLY ANALYSIS & FORECAST, vol. 3, no. I, at 10 (Spring, 1993).

[4]*South Korea: 3.3 Portfolio Investment*, EIU FINANCING FOREIGN OPERATIONS, Feb. 1, 1995, *available in* LEXIS, ASIAPC Library, SKOREA File.

[5]Michael Schuman, *Fulfilling Pledges: OECD's Nod to Korea Spurs Hopes for Quick Reform*, ASIAN WALL ST. J., Oct. 14, 1996, at 1. As of October 1996, foreigners can only invest in Korean bond market via the Korea Bond Fund listed on the NYSE and the Korea Europe Bond Fund listed on the London Stock Exchange. *See Korea Plans Band Fund for Europe*, ASIAN WALL ST. J., Mar. 14, 1996, at 24.

[6]As of July 1995, more than 95 percent of Korea's US$210 billion debt securities market was composed of notes with maturities less than five years. *South Korea Plans Measures to Modernize Bond Market*, ASIAN WALL ST. J., July 24, 1995, at 18. In

In July 1994, foreigners were initially allowed to directly invest in non-guaranteed convertible bonds of small-and-medium-sized Korean companies. The aggregate and individual investment ceiling was set at 30 percent and 5 percent respectively. Additionally, in June 1997, foreigners were allowed to invest in Korean non-guaranteed long-term bonds issued by small-and-medium-sized companies and non-guaranteed convertible bonds issued by large listed companies. For foreign investment on non-guaranteed long-term bonds issued by small-and-medium-sized companies, there was an aggregate limit of 50 percent of the listed amount but no individual limit. The investment ceiling on non-guaranteed convertible bonds of listed companies was initially set at 30 percent and 6 percent for aggregate and individual investment limits. Because of the 1997 financial crisis, in order to attract foreign capital and ease the pressure of shortage of dollars, the investment ceiling on Korean government bonds as well as corporate bonds has totally been abolished. Currently, there is no limit on foreign investment in Korean bonds.

As of the end of 2012, there were 585 companies with total of 5560 issues of corporate bond listed on the KRX. The total amount of the listed bond was 330,885 billion won at the end of 2012. The trading value of the listed bond was 7,247.1 billion won in 2012.

---

the reform package, bonds with a value of 50 million won (US$50,000) or less would be traded on the KSE. *Id.* Bond traders would be granted tax incentives and access to information via an information network established by the Korea Securities Dealers Association. *Id.*

TABLE Korea-4
Listed Bonds
(Billion Won)

Year	Government Bonds		Corporate Bonds			Total
	No. of Listed Issues	Listed Amount	No. of Compa-nies	No. of Listed Issues	Listed Amount	Listed Amount
1985	979	4,737.8		2,749	7,263.3	12,001.0
1990	2,648	29,049.1		4,243	22,068.2	51,117.3
1994	3,712	56,620.7		7,590	45,876.4	102,497.1
1997	7,717	138,092.4		8,170	82,064.2	224,116.6
2001	5,587	362,313.2		2,328	141,524.1	503,837.3
2002	3,776	353,768.3		4,786	209,411.4	563,179.7
2003	3,823	403,487.3		5,095	202,951.2	606,438.6
2004	3,716	483,075.7		4,920	176,232.4	659,308.0
2005	3,728	552,100.0		4,627	168,339.0	720,439.0
2006	3,725	592,527.2		4,446	185,376.3	777,903.5
2007	3,987	622,049.1		4,573	208,053.5	830,102.6
2008	4,517	636,049.1	851	4,772	228,563.9	865,102.6
2009	4,489	750,153.2	781	5,036	263,812,.7	1,013,965.9
2010	4,586	848,032.4	673	4,940	270,158.0	1,118,190.3
2011	4,513	901,166.8	619	5,282	301,421.5	1,202,588.3
2012	4,610	960,353.7	582	5,606	330,855.0	1,304,125.5

Source: Financial Services Commission, Financial Information Statistic System, Summary Statistics of Listed Bonds (Mar. 2013) Korea Stock Exchange, Summary of Bond Market, accessible online at http://eng.krx.co.kr/m5/m5_6/m5_6_1/JHPENG05006_01.jsp.

In 1999, there were 486 cases for issuing stocks, raising 41,114 billion Won, while there were 803 cases for issuing corporate bonds, raising 30,671 billion Won. In 2000, 515 stock offerings occurred, raising 14,349 billion Won, while 886 cases were issuing corporate bonds, raising 58,663 billion Won. The figure indicates that Korean companies are using more corporate debt than equity for fund raising purposes.

TABLE Korea-5
Offering of Corporate Bonds by Company Size

During	Large Corporation						Small and Medium Sized Companies					
	KRX Listed Companies				un-listed Companies		KRX Listed Companies				un-listed Companies	
	Stock Market		Kosdaq Market				Stock Market		Kosdaq Market			
	Nos.	Amt.	Nos.	Amt.	Nos.	Amt.	Nos.	Amt.	Nos.	Amt.	Nos.	Amt.
2008	494	32,297.9	22	795.9	620	31,010.1	20	758.5	23	140.3	18	756.0
2009	443	41,103.1	13	457.7	952	53,111.5	15	340.1	35	359.1	9	430.0
2010	510	43,087.2	14	560.0	1,125	57,367.1	7	127.5	17	215.8	14	438.2
2011	545	52,308.0	32	1,355.0	1,169	63,286.7	3	193.1	9	88.9	23	662.0
2012		Won		Won	Won	Won		Won		Won		Won
201201	24	2,767.8	9	475.0	106	6,943.8	0	0.0	2	12.0	4	45.0
201202	47	5,426.4	4	95.0	51	4,655.9	1	8.0	0	0.0	4	55.0
201203	53	4,360.0	2	40.0	79	6,316.7	0	0.0	0	0.0	0	0.0
201204	40	3,522.8	3	96.9	61	5,167.5	0	0.0	0	0.0	0	0.0
201205	26	2,098.2	4	120.0	68	4,425.1		Won	1	5.0		Won
201206	43	3,805.0	6	170.0	84	5,032.8	0	0.0	0	0.0	2	50.0
201207	52	5,082.8	8	275.0	73	5,769.3	0	0.0	0	0.0	1	9.9
201208	48	4,322.0	2	45.0	60	3,353.2	0	0.0	1	7.0	0	0.0
201209	54	4,500.0	5	160.0	64	5,059.6	0	0.0	3	32.8	1	40.0
201210	58	4,375.0	5	304.4	96	6,994.0	0	0.0	1	10.0	0	0.0
201211	55	3,852.0	1	20.0	66	4,718.2	1	15.0	0	0.0	1	100.0
201212	34	2,434.0	1	30.0	56	3,043.0	0	0.0	0	0.0	0	0.0
201301	24	2,698.0	0	0.0	70	3,966.6	0	0.0	0	0.0	0	0.0

Source: Financial Services Commission, Financial Information Statistic System, Summary Statistics of Listed Bonds (Mar. 2013).

§ KR:15 Secondary Market; Trading Transactions

The securities trading market in Korea can be divided into the exchange market and the over-the-counter (OTC) market. After a company goes public, its securities are normally listed on the Korea Stock Exchange (the KSE or the KOSPI Market) or traded on the Korea Securities Dealer Automated Quotations (KOSDAQ), the OTC market. The KSE, the KOSDAQ and the Korea Futures Exchange merged into the Korea Exchange (KRX) in January 2005 but continue to operate separately as divisions of the KRX.

C. KOREA STOCK EXCHANGE (KSE)

§ KR:16 Overview

The Korea Stock Exchange located in Yeouido-dong, Yeongdeungpo-gu, Seoul is the only securities exchange in Korea. It was established as a non-profit organization in February 1956. Similar to the New York Stock Exchange, the KSE adopts a membership system.[1] As of the end of 1997, the KSE had 38 securities firms as members (excluding Coryo Securities Corporation, which went bankrupt on December 5, 1997). The KSE has two subsidiaries which help the KSE to perform its functions. One is the Korea Securities Depositary Corporation (KSD) and the other is Korea Securities Computer Corporation (KOSCOM). There was a major reform in the Korea stock market in the early 2000s. The plan to consolidate the three market operators, i.e. the KSE, the KOSDAQ and the Korea Futures Exchange, was implemented in January 2005. Currently, these three markets operate under the roof of Korea Exchange (KRX).

§ KR:17 Features

The KSE provides two types of stock price indices. The first type is the Composite Stock Price Index (KOSPI), which is based on the market capitalization.[1] Before 1983, the KOSPI was calculated under the price-weighted method. The current method, which multiplies the market price of each stock with the number of shares listed on the KSE and then aggregates them, was adopted in 1983. KOREA STOCK

[Section KR:16]

[1]The KSE has experienced three periods of structural change. When the stock exchange was first established in 1956 with the name of the "Daehan Stock Exchange," it was funded by joint contribution of banks, insurance companies and securities firms. THE KSE, KOREA STOCK EXCHANGE, *supra*, at 1. The trading began on March 3, 1956. *See id.* The Daehan Stock Exchange was reorganized into a join-stock company followed the enactment of the KSEA in 1962. *Id.* On May 3 of 1963, the stock exchange was reorganized as a non-profit, government-owned corporation and was renamed as Korea Stock Exchange. *Id.*

[Section KR:17]

[1]The Korea Composite Stock Price Index (KOSPI) is computed under the following formula:

$$\frac{\text{Current Aggregate Market Value}}{\text{Base Aggregate Market Value}} \times 100$$

EXCHANGE, 1994 FACT BOOK 16 (Apr. 1994) [hereinafter 1994 KSE FACT BOOK]. The KOSPI is announced every minute during the trading session. The second type is the Adjusted Stock Price Average (KASPA), which is a derivative of Dow Jones Average.

As of the end of May 2002, six hundred and sixty-nine companies were listed on the KSE, with a total market value of 309,158.8 billion Won.[2] These 669 listed companies had issued 852 different stocks with total of about 20,705 million shares listed on the KSE.[3] These listed stocks were owned by 1,467,785 persons, comprising various types of investors, including government bodies, financial institutions, securities companies, insurance companies, investment trust companies, individuals and foreigners, at the end of 1997.[4] As of the end of 2012, there were 784 companies listed on the KSE (KOSPI) with total market value of 1,154,294 billion Won.[5]

The KRX has the following product market: (1) the stock market; (2) the collective investment securities of ETF market; (3) the subscription warrant market; (4) the subscription right certificate market; (5) the ELW (Equity Linked Warrant) market; (6) the beneficiary certificate market; and the debt securities market.[6]

Trading in these listed securities may be suspended by the KSE when certain situations occur. For example, if a company or its securities meet any of the following conditions, the KSE may suspend the trading for a period of time:[7]

(1) when a listed company meets any of the delisting criteria, for example, fail to submit annual report, semi-annual report, quarter reports on time;[8]
(2) when forged or altered securities certificates of a company's securities are found in the market;
(3) when a listed company requests its shareholders to submit stock certificates for the purpose of a stock split; or
(4) when the KSE deems it necessary for the interest of the public and for the maintenance of an orderly market.

The KSE's automated trading system was brought into operation on March 3, 1988 after a four-year development beginning 1984.[9] The trading became fully computerized on September 1, 1997. In addition to stocks, bonds, and beneficial certificates, stock index futures became available on the KSE in May 1996. The KSE introduced stock index options in July 1997. A market for warrant trading was opened in

---

[2]Data from Korea Stock Exchange (2003).

[3]Data from Korea Stock Exchange (2003).

[4]Data from Korea Stock Exchange (2003).

[5]KRX, Summary Statistics of Stock Market—KOSPI (Mar. 2013).

[6]KRX, KOSPI Market Business Regulation, § 4(1).

[7]KRX, KOSPI Market Listing Regulation, § 95.

[8]KRX, KOSPI Market Listing Regulation, § 95, § 75(1) item 1.

[9]KOREA STOCK EXCHANGE, *supra*, at 47.

July 2000. In January 2002, equity options market was launched by the KSE. In December 2005, the equity linked warrants (ELW) market was launched. In 2007, Korean market was further internationalized by listing foreign company and foreign ETF for the first time.[10]

§ KR:18 Trading Hours

The trading hours on the KSE are divided into a regular session and an off-hours sessions. Regular trading hours begin at 9:00 a.m. and end at 15:00 p.m., Monday through Friday. The stock and ETF markets have off-hours sessions, including the post-market trading session from 15:10 to 18:00 and pre-market trading session from 7:30 to 9:00.[1] In the after-hours trading, orders are executed at the closing price of the regular trading session. For block trades, bid and ask prices quoted in the off-hour trading session shall be in the price range of the regular session.[2] In the case a listed company selling its treasure shares in the off-hour sessions, the member shall place the quotation within five percent from the closing price.[3]

§ KR:19 Trading Procedure

In order to trade listed stocks, an investor must open an account with a brokerage firm or a financial investment business entity which is a member of the KRX.[1] Foreign investors first need to use their real name to register with the Financial Supervisory Service to obtain a registration card and take the card to open an account with the securities firm.

Before entering a buy order to the broker, the former KSE rules require an investor to make a "good-faith deposit" of a certain percentage of the value of buy order with the brokerage firm. The purpose of the good-faith deposit requirement is to prevent or reduce the risk of settlement default. The good-faith deposit is set at a rate higher than 30 percent of the specific transaction value.[2] The ratio of the deposit used to be 40 percent. In April 1998, the KSE Rules were amended to abolish the requirement. Instead, it became the risk of management and industry autonomy of the securities companies. Cur-

---

[10]The first foreign company was approved to be listed on the KRX on August 17 and the first foreign ETF was listed on the KRX on October 10, 2007.

[Section KR:18]

[1]KRX, KOSPI Market Business Regulation, § 4(3).

[2]KRX, KOSPI Market Business Regulation, § 35(2).

[3]KRX, KOSPI Market Business Regulation, § 35(5).

[Section KR:19]

[1]The KSE promulgated the Entrustment Contract Rules to require its members to comply with the rules when they receive applications for opening an account or placing an order. Foreign investors first need to register with the Securities Supervisory Board to obtain a registration card and take the card to open an account with the securities firm. KOREA STOCK EXCHANGE, *supra*, at 44.

[2]KSE Entrustment Contract Rules; KOREA STOCK EXCHANGE, *supra*, at 46.

rently, member firms of the KRX can autonomously decide the ratio and method of the deposit. The deposit can be in cash or securities. In the case of 40 percent deposit, if an investor wants to buy 100 shares of X company's shares at the price of 10,000 Won per share, the total proceeds for the proposed transaction is 1 million Won. The investor must deposit at least 400,000 Won or substitute securities to the brokerage firm before he can place a buy order. However, institutional investors such as banks, insurance companies and investment trust funds may be exempted from the deposit requirement.[3] After the money has been deposited, the investor can place an order with his brokerage firm. The member firms usually require retail customers to deposit 30% to 40% of the value of bid orders and require customers must have the security in order to enter sell order. However, brokerage firm may exempt the requirement to apply to institutional customers with high credibility.[4] If a customer is using substitute securities to fulfill the good faith deposit requirement, the following securities can be used: Stocks (including KDRs), ETFs, debt securities, beneficiary certificates.

In July 1975, Korea implemented full-scale book-entry delivery for securities transactions. In November 1987, the securities deposit system was codified into the Korean Securities and Exchange Act.[5] Currently, securities are deposited in the Korea Securities Depository and are immobilized. The transfer of securities is via book-entry system. When an investor places a sell order, the brokerage firm will check from its client's account whether he owns that securities.

After the investor's buy or sell order is accepted by the securities company, the order is then transmitted to the KRX. Only a member firm of the KRX is able to transfer the order into the KSE computer system.[6] If the securities company is not a member of the KRX, it must arrange with another KRX member firm to process the order.

---

[3]KSE Entrustment Contract Rules; KOREA STOCK EXCHANGE, *supra*, at 46.

[4]Korea Exchange, Introduction to Trading at KRX Stock Market 2011 [hereinafter 2011 Intro. KRX Trading] 15.

[5]THE 1995 KSD HANDBOOK 146, at 6–9. For discussion and information of Korea's securities depository system, *see* discussion *infra* part 4.(3).a.(vii), at 40; *see generally* THE 1995 KSD HANDBOOK.

[6]Securities firms that satisfy the minimum capital requirement may apply a license from the MOFE. As of the end of November 1994, there are 32 Korean securities firms and 8 branches of foreign securities companies. Securities firms with a license may apply for a membership in the KSE. There are two types of membership in the KSE. One is the regular membership which enjoys the voting right and properties of the KSE. Regular members pay the basic and special admission fees. All 32 Korean securities companies are regular members of the KSE. 1994 KSE FACT BOOK, at 51–52. The second type is annual membership which pays annual membership fee instead of basic admission fee for using the KSE facilities. *Id.* at 52. To increase the accessibility of foreign investors to the Korean stock market, the MOFE eased the rules for foreign securities firms in May 1995. *South Korea Eases Rules for Foreign Securities Firms*, ASIAN WALL ST. J., May 15, 1995, at 22. The reform package was to allow foreign securities firms, with more than two years of business experience in Korea, without losses in the past two years, and without being sanctioned for irregulari-

The order first goes to the KRX Trading System for validation. The KRX Trading system no longer checks the "good-faith deposit" where the old SOT system will check that because of the former KSE requirement.[7] For foreign investors, the order will need to by-pass the FSS (Financial Supervisory Service) Foreign Investors Management System for foreign investors' share-holding cap check on certain issues. After the order is checked and accepted by the SOT System, the order is then transmitted to the Stock Market Automatic Trading System (SMATS) where it is matched with an order from the other side.[8] There are no specialists or market makers in the KSE market. The buy order is executed only when its price is crossed with that of a sell order. When the order is executed, the SMATS creates a transaction report and sends it to the securities firms and the Stock Market Information System.[9]

§ KR:20 Order Handling and Execution

Before the introduction of after-hours trading on November 25, 1996, all orders entered into the KSE were limit orders. Buy orders and sell orders which are not immediately executed were stored in the limit order book under the SMATS by stock, price and time. Since September 2000, all transactions are handled electronically. Orders are matched via a computer assisted auction system. A buy order with the highest bid price will be matched with the sell order with the lowest ask price when the bid and ask prices cross. Moreover, the orders are matched according to two general rules: price priority and time priority. A buy order with higher bid price will be executed prior to other buy orders. If the bid price of two or more buy orders are the same, the order which is entered earlier has the priority for execution. If two orders are entered in the same time with the same limit price, the order of larger size has priority to be executed. How can two orders be entered in the same time? The KSE treats orders that are entered

---

ties by regulators to establish new branches. *Id.* The capital requirement for establishing a branch has been reduced to 5 billion won (US$5 million) from 10 billion won for each sector of business the branch wants to engage. *Id.* For example, if the new branch applies for only brokerage business, it must have at least 5 billion won while it must have 15 billion won if it wants to operate brokerage, dealing and underwriting business. Foreign securities companies can also form a joint venture with Korean securities firms. For example, Salomon Brothers of the U.S. formed a joint venture in brokerage business with five Korean securities firms in July 1995, in which Salomon Brothers controlled 49% stake of the joint venture. *Korea Gives Approval for Salomon Venture*, ASIAN WALL ST. J. July 13, 1995, at 20.

[7]The former SOT System can automatically check whether the order contains required information (validation check) and whether the client has made deposit (deposit check). After the validation and deposit check, the SOT System sort the orders into groups by stock code. Interview with Mr. Young-Guk Choi, Deputy Manager, Electronic System Office, the KSE, at 1:30 p.m. on Nov. 9, 1994. *See also* KOREA STOCK EXCHANGE, *supra*, at 46.

[8]The SMATS subsorts the orders from group into individual stock and matches them.

[9]Vendors of the stock market information need to pay fees to the KOSCOM.

before the open of the each trading session and during the last ten minutes of one trading day's last trading session as entered in the same time. All orders entered into the KRX Trading System compete with one another.

On November 25, 1996, along with the introduction of the after-hours trading session, two new order forms were introduced by the KSE. In addition to the existing limit order, investors can now place market orders and limit-or-market-on-close orders. A market order will be executed at the most favorable current market price instantly. A limit-or-market-on-close order will be executed at the price limited by the investor. If it is not executed during trading hours, it will be executed at the market price when the market closes, i.e., the close price of that trading session. The introduction of market orders will increase the liquidity of the market though it might also increase the volatility of the market. In the after-hours trading session, orders are executed at the market-closing price. Large block orders are allowed to be executed within two ticks above or below the closing price.

Similar to Taiwan and Japan, the KSE employs limits on the daily price movement limit.[1] In order to prevent excessive price fluctuation, the KSE imposes daily price movement limits based on the previous trading day's closing price. The current limits are set at 15 percent, which means that the trading range cannot go above or below 15 percent of the prior day's closing price.[2]

§ KR:21 Margin Transaction

The margin transaction is to purchase or sell securities with credit extended by securities companies or other financial institutions permitted to extend credit in connection with securities transactions. Korea introduced margin trading in 1977. Margin trading was introduced to create temporary supply and demand of stocks and to stabilize the stock price.[1] The KSEA authorizes the securities companies and Korea Securities Finance Corporation to engage in money lending and securities lending business in connection with securities transactions.[2] The Scope of the securities finance business is now defined under Article 326 of the Capital Market Act.[3]

The supply of the stocks is temporarily increased when an investor

---

[Section KR:20]

[1]KOREAN FINANCIAL REVIEW: QUARTERLY ANALYSIS & FORECAST, *supra*, at 9.

[2]Korea Exchange, KOSPI Market Business Regulation, § 20(2) (Oct. 17, 2012).

[Section KR:21]

[1]1993 KOREA STOCK EXCHANGE, at 38.

[2]KSEA, arts. 49 & 147(3)–(4). Article 49 authorizes securities companies and article 147 authorizes the Korea Securities Finance Corporation to extend credits in the form of money or securities in connection to securities transactions.

[3]The following businesses are considered as securities finance business: (1) to lend money or securities to a broker or dealer in relation to purchasing or selling financial investment products, issuing or underwriting securities, or soliciting an of-

sells the stocks short, and the demand is temporarily increased when an investor purchases stock on credit. Normally, the demand and supply of stocks in the market depends on investors' buy and sell activities in cash. Before the introduction of margin trading, investors could purchase and sell stocks only with cash. After margin trading became available, the investors' buying power increased because they can use the borrowed credit to buy more stocks which would be unavailable without the margin trading system. The demand for stocks is therefore increased because of margin trading. By the same token, an investor can sell stocks he does not own by borrowing shares from the securities company. Without margin trading system, the investor could sell only the stocks he owns. The supply of stocks increases because investors can sell the borrowed securities. This additional supply would not exist if margin trading were not allowed.

The supply and demand of stocks from margin trading are temporary compared to the regular trading because those who sell stocks short need to buy the stocks back at some point to cover their short position, and those who take long position will sell the stocks to repay the margin loan. Unlike those who trade stocks on their cash account, those who trade stocks on margin are paying interest to trade securities. Therefore, no matter whether their transaction is profitable or not, margin traders are paying interest on the borrowed securities or credits before they cover their short position or pay back the margin loan. To avoid paying too much interest, margin traders normally look for short term investments. Therefore, margin trading only creates the temporary supply or demand of stocks because investors will not wait too long to buy back the stocks to cover their short position or sell the stocks to repay the margin loan.[4]

On the other hand, margin transactions are speculative to some extent and may have an adverse impact on the stock market if they involve large volume of margin buying or short selling. In order to prevent abusive use of the margin trading system and to prevent investors from borrowing too much credit without the ability to repay their borrowing or cover their position, the both former KSEC and now the FSC imposes margin requirements. In order to engage in margin transactions, investors are required to open a margin account with the securities firms and deposit a certain percentage of money into the margin account against the credit borrowed for the purchase or sale of the securities. If an investor wants to trade securities on margin, he is required to deposit as the "initial margin," a certain percentage of the transaction value, in his margin account of his broker-

---

fer, offering, and accepting an offer; (2) to lend money or securities necessary for the transactions on the securities market and derivatives market through the Exchange, which is a clearing house under Article 378 (1); (3) to loan money by taking securities as collateral; and (4) other business approved by the Financial Services Commission. Capital Market Act § 326(1).

[4]The total number of outstanding stocks do not increase or decrease because of margin trading. However, securities lending and credit extension do increase the possibility of demand and supply of stocks in the market.

age firm. The margin may be in cash or marginable securities. The KSE also sets the minimum maintenance requirement which requires that margins must always be maintained at the same level as that of the initial margin, and the securities company which extends the credit has right to dispose the securities held as collateral when its customer cannot meet the margin call.[5] The initial margin requirement is currently set at minimum 40% of the transaction value; the margin level can be varied according to the decision of the KSEC.[6]

From the securities company's viewpoint, a securities company can extend credit for up to 150 percent of its shareholders' equity and loan securities for up to 50 percent of its shareholders' equity to its customers. The KSEC has limited the margin buy and short-selling so as not to exceed 20 percent and 10 percent of a listed company's outstanding shares respectively. The securities companies may obtain the cash from their customers' short sale transactions or securities from the margin-buy transactions as collateral. The value of the collateral from a customer must be maintained at or above 130 percent and up to the level between 160 percent and 170 percent of the total credits extended to that customer. The ratios are set by the individual securities company that extends credit. If the value of the collateral falls below 130 percent of the total extended credits, the securities company may make a margin call. When a margin call is made, the customer must make up the deficiency to bring the ratio above 130 percent. If a customer fails to respond to the margin call, the securities company may liquidate the collateral. Since 1990, short sales have been temporarily prohibited on the KSE.[7] Margin-buy trading was banned in 1988 and was reinstated in April 1995.[8] The initial margin requirements are between 50 percent and 60 percent of the trading value set by individual securities company.

According to the new regulatory regime, a securities finance company may engage one of the following businesses in addition to the securities finance business:[9]

1. Business prescribed by Presidential Decree among brokerage and dealing;
2. Trust service;

---

[5]Interview with Mr. Jae-Il Kim, Manager of International Relations Department of the Korea Stock Exchange, in Seoul (Nov. 9, 1994). For more information about margin requirements, *see generally* YOUNG MOO SHIN, SECURITIES REGULATIONS IN KOREA: PROBLEMS AND RECOMMENDATIONS FOR FEASIBLE REFORMS 270–285 (1983) [hereinafter SHIN, SECURITIES REGULATIONS IN KOREA].

[6]The KSEC requires a minimum of 40% of the purchase price of eligible securities bought on margin or 40% of the proceeds of short sales.

[7]KOREAN FINANCIAL REVIEW: QUARTERLY ANALYSIS & FORECAST, *supra* note 106, at 9.

[8]Kim Soo-Mi, *South Korea Relaxes Regulations Over Trading, Issuing of Stocks*, ASIAN WALL ST. J., Apr. 11, 1995, at 15. The "loans-on-credit" system was banned in 1988 owing to the concerns of overheating stock market. *Id.* The margin trading was re-introduced to the market to foster the competitiveness of Korea's financial industry. *Id.*

[9]Capital Market Act, § 326(2).

3. Custody and management of collective investment properties;
4. Lending and borrowing of securities;
5. Lock-up business; or
6. Other business approved by the Financial Services Commission.

§ KR:22 Clearing and Settlement

For the stock market, the Korea Exchange acts as the clearing institution. The KRX performs "transaction confirmation, debt acquisition, deduction, confirmation of settlement securities, settlement item, and settlement amount, settlement execution guarantee, follow-up measures on settlement failure, or settlement instruction as a result of transactions on the securities market and the derivatives market."[1]

The settlement of securities transactions are now performed by the Korea Securities Depository (KSD), the only central securities depository (CSD) in Korea.[2] The KSD performs its major function to settle securities transactions executed on the KSE and on the OTC run by the Korea Securities Dealers Association.

At the heart of the CSD is the full operation of the securities deposit system. Under this system, the rights are transferred and the pledges are effected by means of book-entries.[3] The participants of the KSD, including securities firms, banks and other financial institutions, redeposit their clients' securities in the KSD. The KSD provides custody service of securities on a fungible basis. The clients may claim ownership of the deposited securities but they may not request the withdrawal of the same securities certificates they deposited.[4] The KSD is the sole nominal holder of the deposited securities. However, only the beneficial owners may exercise the shareholder's right.

The KSD provides also settlement services for transactions made on the Korea Stock Exchange and the OTC market. For KSE transactions, the KSE clears transactions and the KSD provides settlement services according to the agreement with the KSE. Settlement procedures include confirmation of trades, preparation of clearing data, delivery of settlement statements to pertinent parties, and settlement.[5] The KSE's computer system automatically determines the number of shares and the amount of funds netted out on a multilateral netting basis for compared trades.[6] In other words, by the settlement day, a securities company needs to deliver (or to wire of

---

[Section KR:22]

[1]Capital Market Act, § 378(1).

[2]Capital Market Act, §§ 294(1), 303; Regulations on Settlement Service for Securities, Etc., § 1. (Dec. 28, 2012).

[3]THE 1995 KSD HANDBOOK, at 13.

[4]The KSD will return the securities of the same kind and issue. Regulation on Deposit Service for Securities, Etc., § 21(2).

[5]THE 1995 KSD HANDBOOK, at 45.

[6]THE 1995 KSD HANDBOOK, at 47.

money) to the KSD only the amount of money of the total purchase (buy orders from its customers) deducting the total sale (sell orders from its customers). If amount of the total sale is larger than that of the total purchase, the securities company will receive credit. The transfer of securities is done via book entry. The settlement information, showing the quantity of securities and the amount of money to be received or delivered, will be sent out to each member of the KSE.

The settlement date for securities transactions in Korea is the second business day after the trading date (T+2).[7] The settlement is on a delivery-versus-payment (DVP) basis. After receiving clearing data from the KSE, the KSD verifies the balance of each participant and settles the trades by book-entry into the KSE's settlement account. In the mean time, the KSD transfers the money it received from the buying securities firms to the selling securities firms.[8]

D. OTC MARKET—KOSDAQ SYSTEM

§ KR:23 Overview

The OTC market was established on April 1, 1987 by the Korea Securities Dealers Association (KSDA).[1] The OTC market in Korea is for those securities that are not listed on the KSE. There are two types of companies whose shares may be registered and traded on the OTC market: Companies whose shares have been delisted from the KSE and companies that do not yet meet the listing requirement of the KSE were discussed earlier. Normally a company will first offer its shares on the OTC market before it seeks to list its shares on the KSE. Most companies registered with the KSDA are small and medium enterprises. Small and medium companies are traditionally handicapped in borrowing money from banks or raising fund from the stock market. In order to eliminate the difficulties in direct financing of small and medium-sized companies, it is important to boost the OTC market. The OTC market system was substantially restructured in February and July, 1988.[2] An electronic trading and information services, the KOSDAQ system, was launched by the KSDA on October

---

[7]THE 1995 KSD HANDBOOK, at 47. Settlement should be made before 4 p.m. on weekdays and before 1 p.m. on Saturday for regular T+2 transactions. *Id.* For spot transactions, the trades should be settled by 1 p.m. for morning session transactions and 4 p.m. for afternoon session transactions. *Id.*

[8]THE 1995 KSD HANDBOOK, at 47.

[Section KR:23]

[1]1993 THE KOREA SECURITIES MARKET, at 63.

[2]The amendments include: (1) requirement of distribution of stocks when stocks are registered with the KSDA OTC system; (2) individual account transactions by securities companies permitted; (3) price fluctuation limits established; (4) substitute stocks for OTC stocks permitted; (5) OTC registered companies allowed to increase capital by public offering; (6) qualified OTC registered stocks allowed to be listed directly on the KSE. THE 1995 KSD HANDBOOK, at 63.

22, 1991 to improve the transparency of the OTC market.[3] In 1996, the KOSDAQ Securities Company was established to enhance the features and efficiency of the OTC market.

Generally speaking, securities which are not traded on a stock exchange are traded on the over-the-counter market. Unlike the NASDAQ in the U.S., many countries' OTC markets are still not organized and investors have difficulty to obtain information regarding the OTC market. There is no central place for the OTC market and the securities transactions that take place on the OTC market are not reported to one central agency or the medium.[4]

The situation in Korea is different. Since 1987, Korea has developed its OTC market into a more concentrated and organized market by the Korea Securities Dealers Association (KSDA). Only the shares of qualified companies registered with the KSDA are traded on the OTC market. The OTC market is regulated and supervised by the KSDA which is under the supervision of the KSEC and the MOFE. The KSDA has improved the OTC market by incorporating a registration system, a disclosure system and an electronic information services and trading system (KOSDAQ system) which was introduced on October 22, 1991.[5] All of these aspects distinguish the current Korean OTC market from the traditional sense of OTC market. The KOSDAQ Market consolidated with the Korea Stock Exchange and the Futures Exchange in 2004 and is now operating under the Korea Exchange.

§ KR:24 KOSDAQ Listed Securities; Listing Criteria

Stocks traded over the counter involve more risk than the listed stocks because these companies are smaller in size and have a shorter business history than those listed on the KSE. In order to minimize risk and for the purpose of investor protection, the KOSDAQ market has its own listing rules aside from the KSE Listing Requirements. Domestic companies intending to initially list or relist their shares on the KOSDAQ are required to submit application to the KRX for the eligibility screening review.[1] Foreign companies intending to list their shares or Korean Depository Receipts (KDRs) on the KOSDAQ must follow similar procedures.[2]

In order to be listed on the KOSDAQ, an applicant must meet the following listing criteria:

1. Capital Requirements

In terms of the business size, the applicant must have a minimum

---

[3]KSE. THE 1995 KSD HANDBOOK, at 63.

[4]LEO M. LOLL, JR. & JULIAN G. BUCKLEY, THE OVER-THE-COUNTER SECURITIES MARKETS: A REVIEW GUIDE 142–143 (2nd ed., 1967).

[5]1993 THE KOREA SECURITIES MARKET, at 63.

[Section KR:24]

[1]KOSDAQ Market Listing Regulation, § 4.

[2]KOSDAQ Market Listing Regulation, § 4-2.

paid-in capital of KR Won 3 billion.[3] In addition, the base market capitalization shall be more than KR Won 9 billion.[4]

2. Going Concern and Profitability

The company must have operated without interruption for three years since its incorporation.[5] There shall be no impairment to the equity capital as of the most recent fiscal year.[6] In the review of listing application, the applicant financial statement, or consolidated financial statement as required by law, must show a net income before tax.[7] The applicant must also show in the financial statement or consolidate financial statement to meet with the following profitability requirement:[8]

(1) The return on equity (ROE) as of the end of the most recent fiscal year shall be at least 10%.

(2) The net income of the most recent fiscal year shall be KR Won 2 billion or more.

(3) The sales amount of the most recent fiscal year shall be KR Won 10 billion or more and the market capitalization shall be KR Won 30 billion or more.

3. Ownership Distribution

The ownership distribution must meet one of the following requirements:

(1) (i) The applicant company must have at least 500 minority shareholders. If total number of stocks owned by the minority shareholders is less than 25% of the outstanding stocks or common stocks at listing application date, the applicant must conduct public offering or distribution of shares before the listing. The total number of stocks and common stocks publicly offered or distributed shall be at least 10% of each of the totals;[9]

(ii) If total number of stocks and common stocks owned by the minority shareholders is more than 25% of the outstanding stocks and common stocks as of the application date respectively, total number of stocks publicly and common stock offered shall be at least 5% of the total and the amount of public offering or distribution

[3]KOSDAQ Market Listing Regulation, § 6(1)2(a).

[4]KOSDAQ Market Listing Regulation, § 6(1)2(b).

[5]KOSDAQ Market Listing Regulation, § 6(1)1.

[6]KOSDAQ Market Listing Regulation, § 6(1)4.

[7]KOSDAQ Market Listing Regulation, § 6(1)5.

[8]KOSDAQ Market Listing Regulation, § 6(1)6.

[9]KOSDAQ Market Listing Regulation, § 6(1)3(a).

shall be more than the amount specified in [§ 120(1)1] of the Enforcement Decree of the Act.[10]

(2) While the applicant has 500 or more minority shareholders for the initial listing, and each of total number of stocks and common stocks publicly offered or distributed shall be at least 10% of the total shares and total common stocks issued, any of the following requirements shall also be satisfied:[11]

(i) On the basis of paid-in capital at the application date, the applicant must also meet one of the following condition:

a) Companies with paid-in capital between KR Won 50 billion and KR Won 100 billion: 1 million shares or more;

b) Companies with paid-in capital between KR Won 100 billion and KRW 250 billion: 2 million shares or more.

c) Companies with the equity capital of KR Won 250 billion or higher: 5 million shares or more

(ii) On the basis of base market capitalization as of the application date for listing eligibility review, it shall come under the followings:

a) Companies with market capitalization of KR Won 100 billion or higher but less than KR Won 200 billion: 1 million shares or more;

b) Companies with base market capitalization of KR Won 200 billion or higher but less than KR Won 500 billion: 2 million shares or more;

c) Companies with more than KR Won 500 billion market capitalization: 5 million shares or more.

(3) As of the application date, there shall be 500 or more minority shareholders, and total shares obtained by those minority shareholders through offerings shall be 25% or more of the outstanding shares, or at least 10% while satisfying the distribution requirement of KOSDAQ Market Listing Regulation, § 6(1)3(b) stated above.[12] However, the offering made within 6 months prior to the application would not be used in determining the numbers of minority shareholders and their shareholding.

(4) Public offering or distribution of shares during the period after the completion of the listing application review and before listing constitutes 25% of the outstanding shares at

[10]The value prescribed in the Enforcement Decree is KR Won 1 billion. Enforcement Decree of Capital Market Act, § 120(1)1.

[11]KOSDAQ Market Listing Regulation, § 6(1)3(b).

[12]KOSDAQ Market Listing Regulation, § 6(1)3(c).

the date of submitting the listing application, and the minimum number of minority shareholders is 500.[13]

(5) If public offering or distribution is made in Korea and overseas at the same time, the total number of shares publicly offered or distributed after the listing application shall be at least 20% of the outstanding shares at the date of the listing application and the number of minority shareholders is 500 or more, and the number of shares publicly offered or distributed in Korea shall be 300,000 or more.[14]

4. Par Value of the Stock

To be listed on the KOSDAQ, the applicant company must set the par value of its stock in the amount of KR Won 100, KR Won 200, KR Won 500, KR Won 1,000, KR Won 2,500 or KR Won 5,000.[15]

5. Restriction of Transfer of Shares

The applicant cannot restrict the freedom of transfer of shares in the article of incorporation.[16]

As of the end of 1992, there were 126 firms registered with the KSDA with a total capital of 1.47 billion Won (US$1.47 million).[17] The number of companies registered with the KSDA increased to 331 at the end of 1996 with registered capital of 31 billion Won (US$31 million).[18] The market capitalization was 22 billion Won (US$22 million) as of the end of 1992 and has increased to 76 billion Won (US$76 million) as of the end of 1996. The trading volume and trading value of the KSDA OTC market 1992 were 14.6 million shares and 101.5 billion Won (US$101.5 million) respectively in 1992.[19] The trading volume increased 140 percent to 35 million shares in 1996 since 1992. Trading value increased 427 percent to 535 million Won in 1996 compared with the trading value in 1992.

As of the end of 2012, there were 1,005 companies listed on the KOSDAQ Market with market capitalization of KR Won 109,122 billion.[20] The total trading volume in 2012 was 146,477.8 million shares with daily average volume of 590.6 million shares.[21] The total trading value was KR Won 528,028.2 billion with average daily trading value of KR Won 2,129.1 billion. The turnover ratio was 686.55% based on the trading volume in 2012.3.2.2 Trading Procedures.

---

[13]KOSDAQ Market Listing Regulation, § 6(1)3(d).

[14]KOSDAQ Market Listing Regulation, § 6(1)3(e).

[15]KOSDAQ Market Listing Regulation, § 6(1)16; Enforcement Rules of KOSDAQ Market Listing Regulation, § 6.

[16]KOSDAQ Market Listing Regulation, § 6(1)14.

[17]1996 KSEC ANN. REP., at 21.

[18]1996 KSEC ANN. REP. at 21.

[19]1993 THE KOREA SECURITIES MARKET, at 65.

[20]KRX, Summary Statistics of KOSDAQ Market (Dec. 2012).

[21]KRX, Summary Statistics of KOSDAQ Market (Dec. 2012).

KOSDAQ stocks can be traded at all securities firms. There are three different ways to transact the KOSDAQ stocks. First, the most popular way is to have the stocks executed through the KOSDAQ system. Second, the securities companies can serve as an agent to match the trades for their clients. Third, the securities companies can be a principal in the transaction and trade with their clients.

Trading via KOSDAQ system is divided into the regular session and Off-hour trading session. The regular session is from 9:00 to 15:00 but the auction-based block trading is from 9:00 to 14:30.[22] The off-hour session is further divided into the post-market trading session and pre-market trading session. The post-market trading session is from 15:10 to 18:00 and the pre-market trading session is from 7:30 to 9:00.[23]

E. INVESTORS AND MARKET PROFESSIONALS

§ KR:25 Overview

The major players in the KRX include institutional investors and individual investors. Institutional investors include government, investment trust companies, securities companies, privately placed fund, insurance companies, banks, merchant banks and pension funds.[1] Today, both domestic and foreign individual investors can investor in Korea stock market. On August 12, 1993, Korea implemented the Real-name Financial Transaction System (Real-name System).[2] Before the introduction of the Real-name System, many large shareholders used false or borrowed names to trade securities and take profit or to protect their managerial rights. Since the introduction of the Real-name System, investors must use only real names to engage all financial transactions.

In late 1990s, arbitrage trading was rare because only very few Korean stocks were listed in overseas stock exchanges. Using stock index futures to arbitrage stock investment is also not common partly because the KOSPI-200 stock index futures was introduced on May 3, 1996 and partly because there are many restrictions such as foreign investment ceiling in index futures.[3]

According to the statistics, there were 5.28 million persons invest-

---

[22]KOSDAQ Market Business Regulation, § 4(3)1.

[23]KOSDAQ Market Business Regulation, § 4(3)2.

[Section KR:25]

[1]KRX, Trading Activities by Investors (Dec. 2012).

[2]THE KSE, KOREA STOCK EXCHANGE ANNUAL REPORT 1993 [hereinafter THE 1993 KSE ANN. REP.] 9 (April, 1994).

[3]The KOSPI-200 is based on 200 KSE listed companies. Andrew Browne, *S. Korea to Launch Index Futures, Foreigners Wary*, REUTERS WORLD SERVICE, Apr. 30, 1996, *available in* LEXIS, ASIAPC Library, KOREA File; *S. Korea to Expand Foreign Ceiling in Index Futures*, REUTERS FINANCIAL SERVICE, Oct. 15, 1996, *available in* LEXIS, ASIAPC Library, KOREA File. Korean government plans to raise the foreign investment ceiling in index futures to "30 percent of average daily open interest in the previous three trading months" from November 1, 1996. *Id.* Many traders have

ing in the KRX stock market, among them 4.37 million persons investing in KOSPI Market and 2.38 million persons investing in the KOSDAQ Market as of the end of 2011.[4] If we classify investors into different types of groups, the individual investor group constitutes 99% by the number of shareholders as of the end of 2011.[5] If calculated by shares owned by different type of investor group, individual investors own 48.44% of the KRX listed companies' shares (including KOSPI and KOSDAQ Markets) while foreign investors own 11.86% and "other corporations" own 25.61% of listed shares as of the end of 2011.[6] If calculated by market capitalization, individual investors own 24.4%, foreign investors own 30.6%, "other corporation" own 29.64%, and financial institutions (including banks, securities companies, insurance companies, assets management companies, pension funds, and merchant and mutual savings banks) own 12.97%.[7]

§ KR:26 Individual Investors

Individual investors are the majority players who dominate the Korean stock market. About 36.3% of KOSPI shares are owned by individual investors while 15.89% of KOSPI shares are owned by foreign investors. (See TABLE Korea-5) In the KOSDAQ Market, 68.17% of listed shares are owned by individual investors while foreign investors own only 5.32% of KOSDAQ shares. In terms of market capitalization, individual investors own 20.66% of KOSPI stocks, while foreigners own 32.91% and other corporations own 30.9%.

§ KR:27 Financial Institutions and Corporate Investors

Major players on the KSE are securities firms, financial trust companies, insurance companies, and banks. The investment decisions of these institutional investors are obviously influential on the movement of the market. However, institutional shareholding represents a relatively small portion of 35 percent of total market capitalization. Beginning in April 1995, investment trust companies have been permitted to invest up to 10 percent of their managed fund's capital in any single company's shares while securities companies have been permitted to invest up to 40 percent of their capital in other companies.[1] With the increase of investment trust funds in recent years, it is expected that institutional investors will play a more important role in the stock market.

---

expressed that permitted investment ceiling is "not enough to hedge investment risk." *Id.*

[4]KRX, Statistics, Shareholding_Investing Population 2000–2012 (Dec. 2012).

[5]KRX, Shareholding by Investor Group (Number of Shareholders) (Dec. 2012).

[6]KRX, Shareholding by Investor Group (Number of Shares) (Dec. 2012).

[7]KRX, Shareholding by Investor Group (Market Capitalization) (Dec. 2012).

[Section KR:27]

[1]Kim Soo-Mi, *South Korea Relaxes Regulations over Trading*, *supra*. Before April 1995, an investment trust company was allowed to invest only 5% of fund's capital in a single company; a securities company was allowed to invest 20% of its capital in

As of the end of 2011, major financial institutions, including banks, securities companies, insurance companies, assets management companies, pension funds, and merchant and mutual savings banks, own 13.62% of the KOSPI stocks (by market capitalization) and 15.87% of KOSPI stocks (by number of shares).

§ KR:28 Foreign Investors

Before 1992, foreign investors could invest in Korean stock market only indirectly via overseas investment funds, such as the Korea Fund which is listed on the NYSE. Foreign investors were initially allowed to enter Korean market in January 1992. However, there has been a limit on foreign investment since the opening of the market to foreign investors. In January 1992, the ceiling of aggregate foreign shareholding in one Korean company was set at 10 percent; a single foreign investor can invest up to 3 percent of one company's share.[1] The ceiling for aggregate foreign ownership in a Korean company was raised to 20 percent on October 1, 1996 and was scheduled to be gradually raised to 29 percent in 1999 and was totally lifted in the year of 2000.[2] The government announced that there would be no limitation of foreign ownership by one individual or institutional investor from January 1997.[3] This foreign shareholding restriction was to be liberalized gradually as it is government policy to open Korea's financial market for foreign investors.[4]

However, because of the financial crisis at the end of 1997, the

---

other companies. *Id.*

[Section KR:28]

[1]Steven E. Levingston, *Asian Economic Survey: Financial Deregulation Advances in Asia—Market-Opening Moves Provide Financing Options, Boost for Equities*, ASIAN WALL ST. J., Oct. 16, 1991, at 1. For some sensitive industries, such as telecommunications, transportation, and financial industries, the limit on foreign ownership is lower.

[2]Yeom Yoon-jeong, *Seoul Bourse Awaits Fresh Foreign Fund Inflow*, REUTER ASIA-PACIFIC BUSINESS REPORT, Nov. 29, 1994, *available in* LEXIS, NEWS Library, CURNWS File; John O'Callanghan, *Asian Markets ride Higher on Wall Street Rally*, REUTERS WORLD SERVICES, June 1, 1995, *available in* LEXIS, NEWS Library, CURNWS File. Korean government raised the ceiling to 12% in Nov. 1994, 15% on July 1, 1995, 18% on Apr. 1, 1996, 20% on Oct. 1, 1996 and plans to gradually raise the foreign investment ceiling to 29% in 1999 and evaluates whether it is feasible to abolish the limit. *Korea May End Holdings Curb on Foreigners*, ASIAN WALL ST. J., June 18, 1996, at 17; Choi Tae-ryong, *How Much Would Foreign Funds Bring in?*, KOREA ECON. DAILY, Sept. 20, 1996, *available in* WESTLAW, KOREAECON Database.

[3]This policy was announced on Jan. 5, 1994. W. K. Cho, *Korea—Korean Stock Market*, MARKET REPORTS, Sept. 8, 1995, *available in* LEXIS, ASIAPC Library, SKOREA File; *South Korea Will Alter Rules on Investment*, ASIAN WALL ST. J., May 23, 1996, at 17.

[4]The foreign investment ceiling on Korean stocks was raised from 15% to 18% effective on Apr. 1, 1996 and is expected to be raised to 23 % by the end of 1997. *South Korea Stock Ownership*, ASIAN WALL ST. J., Feb. 26, 1996, at C18; Yoo Choon-sik, *Seoul Unveils Steps to Open Wider Financial Sector*, REUTERS FINANCIAL SERVICE, June 17, 1996, *available in* LEXIS, ASIAPC Library, KOREA File. The MOFE also an-

Korean government was forced to open its market to foreigners at a faster pace. In the stock market, the aggregate foreign investment ceiling on a single Korean company more than doubled from 26 percent in November to 55 percent in December, 1997. The individual foreign investment ceiling was increased from 6 percent in November to 50 percent in December, 1997. In terms of the investment in a public company, the aggregate foreign investment was raised from 18 percent in November to 25 percent in December, 1997, while the individual foreign investment ceiling was raised from 1 percent to 3 percent. The raising of the foreign investment ceiling allows foreign investors to invest more flexibly in arranging their investment portfolio and hopefully attract more foreign investment.

Foreign investors must first register with the KSSB before they can begin to trade Korean securities. According to the KSE statistics, as of the end of 1997, there were 6,541 foreigners registered with the KSSB. About 70 percent of the registered foreign investors are institutional investors. Among these institutional investors, 3,196 or 70 percent of the total foreign institutional investors were investment funds. The second largest number of foreign institutional investors were pension funds (471), followed by securities companies (250) and banks (243). If counting the registrants by their nationality, the biggest number of foreign investors come from the United States (2,364) followed by the United Kingdom (898), Japan (513) and Taiwan (509).

Foreign investors' demand for Korean stocks is often larger than supply. Because the foreign investment ceiling on many blue chip stocks has been reached, many foreign investors are not able to purchase the shares of those blue chip companies from the KSE. Because of the high demand on blue chip companies' shares, an unofficial OTC market was created for foreigners to trade Korean equity securities among themselves.[5] For the same stocks, the trading prices at this OTC market are usually higher than the stock prices at the KSE. Foreigners buying shares at this OTC market must pay a premium to the stock price at the KSE.[6] The investment ceiling was eased in 1997 when the Korean economy was in trouble. The foreign investment ceiling has been raised gradually since then. As a result, as of the end of 1997, only 9 out of the 950 total listed issues whose investment ceiling was reached. From the record, foreign investment in the Korean stock market, excluding the OTC trade, accounts about

---

nounced Korea's commitment to gradually raise the ceiling on foreign ownership. In addition, it also eased the restriction of foreign ownership of the so-called "strategically important entities," such as Korea Electric Power Corp, from 10% to 12% effective on Apr. 1, 1996. *Id.*

[5]*South Korea: OTC Buying by Foreign Investors Rebounds*, KOREA ECONOMIC DAILY, Dec. 9, 1994; *South Korea: 10% Limit Causes Overseas Investors to Look to OTC*, KOREA ECONOMIC DAILY, Apr. 14, 1994.

[6]Some blue chip stocks were traded at a premium rate exceeding 30 percent at the OTC market. *Id.*

2.5 percent in the year of 1993 and 1994[7] (See TABLE Korea-7). This number was increased to 6.7 percent in 1997.

Foreign investors have taken up more than 30% of the market capitalization of Korean stock market. As of the end of 2011, foreign investors owned 30.6% down from 31.2% a year earlier.[8]

---

[7]The data was from Bank of Korea found in W. K. Cho, *Korea—Korean Stock Market*, *supra*.

[8]Korea Financial Supervisory Service 2011 Annual Report [hereinafter FSS 2011 Ann. Rept.] 14.

TABLE Korea-5
Distribution of Stock Ownership by Type of Investors for KRX KOSPI (Not Including KOSDAQ)
(thousands of shares; %)

Year	Government & Public Bodies (thous shr)	Institution (thous shr)	Other Corporations (thous shr)	Individual (thous shr)	Foreigners (thous shr)	Total (thous shr)
	Per.(%)	Per.(%)	Per.(%)	Per.(%)	Per.(%)	Per.(%)
2011	1,111,993	5,479,364	9,924,430	12,541,561	5,491,330	34,548,678
	3.22	15.86	28.73	36.30	15.89	100.00
2010	1,533,864	4,794,534	9,109,096	12,012,671	5,416,240	32,866,405
	4.67	14.59	27.72	36.55	16.48	100.00
2009	464,986	4,885,392	5,220,016	15,613,359	5,094,218	31,277,971
	1.49	15.62	16.69	49.92	16.29	100.00
2008	1,305,783	2,037,949	7,567,301	13,112,340	4,618,138	28,641,511
	4.56	7.12	26.42	45.78	16.12	100.00
2007	1,236,482	4,369,558	6,982,615	10,325,194	5,347,905	28,261,754
	4.38	15.46	24.71	36.53	18.92	100.00
2006	1,201,623	4,232,989	5,099,907	8,862,948	5,563,050	24,960,517
	4.81	16.96	20.43	35.51	22.29	100.00
2005	1,149,329	4,324,228	4,490,159	7,937,097	5,334,930	23,235,743
	4.95	18.61	19.32	34.16	22.96	100.00
2004	1,487,120	4,432,206	4,441,122	7,912,261	5,154,190	23,426,899
	6.35	18.92	18.96	33.77	22.00	100.00
2003	1,595,126	3,899,648	5,129,525	8,778,668	4,259,130	23,662,097
	6.74	16.48	21.68	37.10	18.00	100.00
2002	1,961,129	6,508,109	5,564,505	9,375,051	3,054,589	26,463,383
	7.41	24.59	21.03	35.43	11.54	100.00
2001	1,431,590	3,758,601	3,977,635	7,541,247	2,869,223	19,578,296
	7.31	19.20	20.32	38.52	14.66	100.00
2000	2,447,241	3,057,863	3,866,484	7,300,727	2,670,211	19,342,526
	12.65	15.81	19.99	37.74	13.80	100.00

Source: Korea Exchange, KOSPI Shareholding by Investor Group (Number of Shares).

TABLE Korea-6
Number of Shareholders by Types of Investors Who Own KRX Listed Shares

Year	Government & Public Bodies (persons)	Institution (persons)	Other Corporations (persons)	Individual (persons)	Foreigners (persons)	Total (persons)
	(%)	(%)	(%)	(%)	(%)	(%)
2011	84	876	16,504	5,232,894	33,630	5,283,988
	0.00	0.02	0.31	99.03	0.64	100.00
2010	27	490	15,435	4,740,056	31,060	4,787,068
	0.00	0.01	0.32	99.02	0.65	100.00
2009	26	403	20,766	4,618,577	25,458	4,665,230
	0.00	0.01	0.45	99.00	0.55	100.00
2008	19	329	11,602	4,590,557	24,494	4,627,001
	0.00	0.01	0.25	99.21	0.53	100.00
2007	12	303	13,148	4,403,946	23,498	4,440,907
	0.00	0.01	0.30	99.17	0.53	100.00
2006	19	550	12,656	3,579,394	20,635	3,613,254
	0.00	0.02	0.35	99.06	0.57	100.00
2005	12	293	10,825	3,507,243	18,499	3,536,872
	0.00	0.01	0.31	99.16	0.52	100.00
2004	13	299	10,632	3,735,250	16,899	3,763,093
	0.00	0.01	0.28	99.26	0.45	100.00
2003	13	302	10,805	3,910,423	15,335	3,936,878
	0.00	0.01	0.27	99.33	0.39	100.00
2002	14	297	10,760	3,948,952	13,729	3,973,752
	0.00	0.01	0.27	99.38	0.35	100.00
2001	16	307	10,733	3,864,324	12,860	3,888,240
	0.00	0.01	0.28	99.38	0.33	100.00
2000	11	441	11,315	3,280,951	11,748	3,304,466
	0.00	0.01	0.34	99.29	0.36	100.00

Source: Korea Stock Exchange, Accessible Online At http://eng.krx.co.kr/m2/m2_4/m2_4_5/m2_4_5_2/JHPENG02004_05_02.jsp (Index Series = All, Market = No. of Shareholder, Period = 2000-2011).

III. REGULATIONS REGARDING SUBSTANTIVE SECURITIES MATTERS

A. ESTABLISHMENT, REGULATION AND ORGANIZATION OF SECURITIES REGULATORY ORGANIZATIONS

1. Ministry of Finance and Economy (MOFE), the Securities and Exchange Commission (KSEC) and the Securities Supervisory Board (KSSB) before 1998

§ KR:29 Establishment of the Korea Stock Exchange (KSEC) and the Korea Securities Supervisory Board (KSSB)

Before 1976, the Ministry of Finance (now the Ministry of Finance and Economy), the Korea Stock Exchange and the Korea Investment Company (KIC) were the government agencies that regulated the securities market.[1] Because of the need to have a special organization in charge of the securities regulation, the Korea Stock Exchange (KSEC) and the Korea Securities Supervisory Board (KSSB) were created in February, 1977. The KSEC and the KSSB are under the control of the MOFE. The KSEC is the policy-making body. The KSSB, under the supervision of the KSEC, serves as the executive body to implement the KSEC's policies, and makes rules within its power delegated by the KSEA, the Presidential Decree, and the MOFE Regulations.[2]

§ KR:30 Organizational Structure and Functions of the KSEC and the KSSB

The KSEC is composed of nine commissioners with three being ex-officio commissioners, the Governor of the Bank of Korea, the Chairman and CEO of the Korea Stock Exchange, and the Vice Minister of Finance and Economy.[1] The other six commissioners are recommended by the MOFE and appointed by the President of the Republic of Korea for a term of three years.[2] If one commissioner is appointed to fill a vacancy prior to the expiration of the term of his predecessor, he shall serve for the remainder of such term only. Three of the recommended

---

[Section KR:29]

[1]1993 KOREA SECURITIES MARKET, at 22. The Korea Investment Corporation (KIC) was create by the Capital Market Promotion Act of 1968. The KIC was a government-owned company to "facilitate the issuance, distribution and underwriting of securities and to stabilize securities price. 1993 KOREA SECURITIES MARKET at 20. The KIC was abolished in 1977. 1993 KOREA SECURITIES MARKET at 20."

[2]*See* The Securities and Exchange Act, Law No. 972, promulgated in January 15, 1962, amended in 1976 (Law No. 2920), 1982 (Law No. 3541), 1987 (Law No. 3945), 1991 (Law No. 4469), 1994 (Law No. 4701), 1995 (Law No. 5041), 1997 (Law No. 5254), lasted amended on Jan. 21, 2000 (Law No. 6176) [hereinafter KSEA], Chapter VII, Section 2.

[Section KR:30]

[1]KSEA, art. 119.

[2]KSEA, art. 123.

commissioners serve as part-time commissioners; the other three serve as standing commissioners. Among the three standing commissioners, one is elected to be the Chairman of the KSEC, who also serves as the Governor of the KSSB.

The KSSB is composed of one Governor, one Deputy Governor, three Assistant Governors, sixteen divisions and six offices.[3] The KSSB does not have authorized capital.[4] The KSSB is the executive body of the KSEC. It carries out the policies and decisions of the KSEC, and supervises the primary and secondary market and securities-related entities under the direction of the KSEC.[5]

The KSEC and the KSSB's missions are as follows:[6]

1. to maintain a fair and orderly trading market;
2. to review registration statements and control over listed companies;
3. to regulate margin trading;
4. to regulate proxy solicitation;
5. to regulate market opening and over-the-counter market;
6. to supervise and inspect securities institutions and investigate insider trading;
7. to conduct business analysis and disclosure regarding the registered corporations and the listed corporations; and
8. to maintain a high standard of accounting and auditing practices.

§ KR:31 Relationship Between the Ministry of Finance and Economy (MOFE) and the Korea Stock Exchange (KSEC)

The MOFE is the highest authority in regulating and setting up the overall policies for the securities industry. Under the supervision of the MOFE, the KSEC and the KSSB were created by the KSEA in 1976 to regulate the securities market. The KSEC claims that it is an independent regulatory body. It is true that the KSEC has decision-making power in administering the securities laws. However, it is arguable whether the KSEC is truly an independent securities regulator. Some Korean scholars think that, unlike the Securities and Exchange Commission in the United States, the KSEC is not an independent securities regulator.[1] If we look into the KSEA, it also suggests that the KSEC is not a truly independent regulator because it is subject to the supervision of the MOFE.

---

[3]KSEA, art. 133.

[4]KSEA, art. 131.

[5]Sang-Hyun Song, *supra*, at 760.

[6]KSEA, art. 135; 1993 SSB ANN. REP., at 19.

[Section KR:31]

[1]Sang-Hyun Song, *Law and Policy of Securities Regulation in Korea, supra*, at 760.

Under the KSEA, the KSEC must report all of its decisions to the MOFE.[2] The MOFE can repeal the decisions or suspend an action of the KSEC if the MOFE finds them illegal or inappropriate in terms of the public interest. The MOFE's securities regulation functions are carried out by its Securities Bureau. The Securities Bureau consists of a Securities Policy Division, Securities Issuance Division, Securities Administration and Audit Division and Money Market Division.[3] The Securities Bureau makes final decisions related to the following matters: (i) to establish major policies on securities with considerations of other financial institutions; (ii) to supervise and examine the KSEC, the KSSB and other securities institutions; (iii) to approve the appointments of major posts of the KSEC, the KSSB and other securities institutions; and (iv) to grant securities business.[4]

In reality, the KSEC and the KSSB make and implement policies in the area of securities regulation. Every resolution of the KSEC must be adopted by an affirmative vote of at least two-thirds of the commissioners present at a KSEC meeting, provided that they represent over two-thirds of the total number of the commissioners in office.[5] Although the KSEC has the power to regulate the securities industry, the KSEC must immediately report its actions to the MOFE and the MOFE reserves the right to repeal or modify the decision made by the KSEC or to order the KSEC to take any necessary measures if the MOFE finds that the resolution of the KSEC is "in violation of law or excessively unfair in the public interest or for the protection of investors."[6] However, although the MOFE has superior power over the KSEC, it is necessary to mention that in practice the MOFE gives the KSEC very high level of decision making power with much intervention.

§ KR:32 Political Culture of the MOFE and KSEC in Regulating the Stock Market

There are some articles discussing the modern bureaucracy in South Korea. However, no articles directly discuss Korea's political culture in regulating the securities market. A Korean scholar, Professor Chung-hyun Ro devoted one chapter of his book titled "[t]he Modern South Korean Bureaucratic Elite: Their Origin & Value System" to discuss the Korean bureaucracy.[1] In the discussion, Professor Ro indicates that the traditional bureaucracy is very conservative. For example, administrators overemphasize rituals and forms and forget

---

[2]KSEA, 126.

[3]THE 1993 KSE ANN. REP., *supra*, at 18.

[4]THE 1993 KSE ANN. REP., *supra*, at 18.

[5]KSEA, art. 125(2).

[6]KSEA, art. 126.

[Section KR:32]

[1]CHUNG-HYUN RO, PUBLIC ADMINISTRATION & THE KOREAN TRANSFORMATION—CONCEPTS, POLICIES, AND VALUE CONFLICTS 63 (1993).

practical factors. They emphasize the existing legal format rather than how to solve the problem. Most administrators are inclined to maintain the status quo without trying to suggest new ideas. The discussion of these problems can also be found in another study, in which the Korean author explains the cultural background of traditional bureaucracy and the obstacles to improve the administrative system.[2] The attitudes of Korean Bureaucrats are influenced by the mix of fatalism, authoritarianism, emotional humanism, ritualism, and anti-materialism.[3]

---

[2]*See generally*, WANKI PAIK, KOREAN ADMINISTRATIVE CULTURE (1990).

[3]"Fatalism" is one of the most traditional and widespread values shared among Korean people. The life of fatalism-oriented people is governed by "secret, latent, and extra-human forces" rather than "open, manifest, and predictable forces." WANKI PAIK, KOREAN ADMINISTRATIVE CULTURE, *supra*, at 22 (1990). A person who has the fatalistic attitude, no matter he is a leader or a follower, "lacks not only a fighting spirit to attack difficulties, but lacks also determination to pursue any goal persistently." WANKI PAIK, KOREAN ADMINISTRATIVE CULTURE, *supra*, at 29. These kinds of people usually rely on routine, regulations, or formulas to avoid new, unsettling problems and to preserve a comfortable, secure and bureaucratic nest. They are more oriented toward "Being" than toward "Doing." WANKI PAIK, KOREAN ADMINISTRATIVE CULTURE, *supra* note 135, at 30.

Dr. Paik defines "authoritarianism" as "a lack of toleration for different opinions of others, a willingness to dominate other people, and inclination to oppress junior classmates and younger people." *Id.* at 46. The authoritarianism is derived from the Confucian ideology that emphasizes superior and inferior relationships. *Id.* at 49. The characters of administrative behaviors derived from authoritarianism can be summarized as follows:

(1) There is absence of responsible government or administration for the common people. Government worker in Korean society were traditionally regarded as superior to the common people. Their power was not to be questioned by the common people. *Id.* at 51–52.

(2) The superior are not inclined to tolerate that his subordinate opposes his idea. People accept the idea of those above them in the power hierarchy and reject the opinions of their superior "ordinarily carries with it the weight of moral correctness simply by virtue of the superior's position. *Id.* at 52.

(3) Most of the decision are likely to be made at the top of the administrative hierarchy, and decision making is heavily influenced by the political philosophy and outlook of the decision-maker himself. *Id.* at 52.

(4) There is relatively little room for an incremental approach to solving problems. If the decision-maker has such black or white attitude, it increases the danger of arbitrary and dogmatic judgments, and an inclination either to accept or reject a policy totally. *Id.* at 54.

"Emotional Humanism" mainly focuses on keeping proper relations with other people. *Id.* at 57. Some anomalies may occur if administrative behaviors are derived from emotional humanism. It may reduce the rationality in decision making because the administrators are more emotional and intuitive in making decisions. *Id.* at 63. In addition, many important administrative matters such as promotion and the administrator's future are generally determined chiefly by how firm a relationship the bureaucrat is able to establish with his superiors. "Therefore, whether the subordinate likes his supervisors or not, he must try desperately to get along with them because their attitudes toward him greatly influence the destiny of his administrative career." *Id.* at 63.

"Ritualism" is defined as "the disposition of an individual to stick to traditional customs, precedents, rituals and ceremonies in order to maintain one's social status

Although the situation has been improved,[4] the old phenomenon still exists because the process for the transition is very slow. A survey of the incentives to become a civil servant shows that about 70 percent of civil servants come from urban areas with education of high school or better.[5] The urban raised young people seek wealth and good life. The survey shows that more than 80 percent of those surveyed persons value reputation and power as their primary motivation for entering the civil service. Dr. Paik indicated that the bureaucracy is still perceived by civil servants "as a means of climbing the ladder of power and prestige" rather than "furthering public service."[6]

The opinion that most people pursue power and reputation as the major motivation for entering the civil service was further substantiated by the author in the process of interviewing people in both the private and public sectors of the securities related institutions. However, from the author's observation, the problems associated with the traditional bureaucracy are less serious in the securities industry partly because the staff of the securities regulatory bodies has higher levels of education than other administrative departments of the Government. In addition, Korean government has adopted several measures to improve the administrative system, such as the implementation of "Real Name Financial Transaction System."[7] This system was introduced to reform the financial system as well as to prevent

---

and dignity or in order to save face." *Id.* at 70. To abide by the forms and other external requirement is therefore very important to Korean people. The administrative behaviors derived from ritualism treat legal procedures as the most important among all considerations. *Id.* at 74. Administrators seem to believe that all problems can be solved by existing regulations or rules. Because they highly value the formality and legalistic views in their execution of administration, "the task of the administrative service becomes that of maintaining procedures, not solving problems and making decisions." *Id.* at 75.

"Anti-materialism" is defined as "the attitude that places more emphasis on spiritual values, such as honor, prestige, integrity and virtue, than on material values such as money, wealth, physical comforts and affluence." *Id.* 81–82. Administrators influenced by anti-materialism are likely to base their policy-making on sacred and subjective value premises instead of assessment of objective and factual premises. *Id.* at 86. Although anti-materialism to some extent helps to encourage good manner and prevent bad conduct especially from a moral point of view, it could produce an imbalanced human personality if one excessively emphasizes on moral behavior and ignores the importance of material needs for human being. *Id.* at 87.

[4]Recently, the government is adding young scholars who have studied in western countries to the staff. Ro, *supra*, at 137.

[5]RO, *supra*, at 137–138.

[6]RO, *supra*, at 137–138.

[7]*Real Names in Action: Key Points of Kim's Decree*, KOREA ECON. REP., Sept. 1993, vol. 8, no. 9, at 35. The real-name system applies to all financial dealings including deposits, installment savings, checks, certificates of deposit (CD), securities and bonds. The following are some important measures under the real-name system. (1) All people having accounts at banks or other financial institutions must show proof of their real name. Withdrawal of money from any account will not be allowed without such proof; (2) Payment of principal on loans and withdrawals of less than one million won using cash cards are excluded from the above identification requirement; (3) Anyone caught violating or attempting to circumvent the real-name confirmation pro-

corruption. Big shareholders are prohibited from using borrowed names and false names to make securities transactions which could create false image of active trading market and which are used to manipulate the market. This system will also prevent big shareholders from protecting their managerial rights. This system will also prevent government officers from using false names to create an account for the purpose of transferring a received bribe. Although the result of this system is still under observation, it does have some positive responses from society.[8]

The regulatory structure discussed in this section was

---

cedure will be fined up to 5 million won; (4) People having financial assets under aliases must register their real names within two months of August 12; (5) Investigations into sources of wealth will be excluded for those possessing financial assets of 50 million won or less under aliases. The maximum limit will be 15 million won for minors aged 15 or younger; (6) Up to 60% of the penalty will be levied on those converting aliases to real names after the two-month deadline; (7) For financial assets registered under aliases, the government will impose heavy penalties in the form of taxes amounting to 96.75% on interest and dividends earned; (8) Tax authorities will conduct a special tax probe on those withdrawing money exceeding 30 million won from financial institutions during the designated two-month period; (9) To protect the personal privacy of financial transactions, information about financial transactions will be made available only to those who hold court-issued writs or tax officials investigating financial transactions in accordance with the pertinent tax laws; (10) The information about financial transactions may be exchanged between financial institutions only when deemed necessary at the discretion of the Finance Ministry and the Office of Bank Supervision; (11) The demand for information about financial transactions, even if necessary, must be made by documents on a bank branch basis to prevent possible abuse of the information; (12) Those found in violation of the regulations could face up to three years in prison and a fine of 20 million won; (13) To avoid any after-effects of the implementation of the real-name accounting system, tax authorities will conduct an extensive probe into those suspected of real estate speculation to prevent money from flowing into such speculative areas as real estate. They will expand the districts subject to prior approval for land transaction or the areas designated by the Office of National Tax Administration, if necessary; (14) The government will keep a list of those who have sent more than US$3,000 overseas and also investigate those who own real estate overseas in a bid to keep money from flowing abroad by disguising it as commercial transactions or remittances by individuals; (15) The bank of Korea will form a special team to help small and medium-size firms that are expected to face difficulties in financing. The legal credit guarantee ceiling of the Korea Credit Guarantee Fund will be doubled; (16) As a means of stabilizing the stock market, the government will implement short-term measures to prop up stock prices such as expanded purchasing by institutional investors. No taxes will be imposed on profits arising from stock transactions during the current five-year economic plan; (17) A government committee is to be created for smooth implementation of the real-name financial system, while a working-level crops will be operated at the Finance Ministry. *Real Names in Action: Key Points of Kim's Decree*, KOREA ECON. REP., Sept. 1993, vol. 8, no. 9, at 35.

[8]*Real-Name System, Real Success?*, KOREA ECON. REP, Sept. 1994, vol. 9, no. 9, at 24. One year after the implementation of the real-name system, it has not had as strong an impact on the financial system that the government had hoped. *Id.* The purpose of this system is to "cut the illegal financial links between corporate slush funds and government officials." "It was also intended to bring the nation's underground economy out into the light and to prevent the nation's large business conglomerates—or chaebols—from making shady financial deals." *Id.* This system is still being tested on whether or not these objectives have been satisfactorily achieved.

changed because of the introduction of the Financial Supervisory Commission that replaces the previously existed financial regulators. Currently, the KSEC and KSSB have been abolished. The regulatory reform and regulatory structure led by the Financial Supervisory Commission will be discussed in § KR:33.

2. Regulatory Reform

§ KR:33 Creation of the Financial Supervisory Commission (FSC), Financial Supervisory Service (FSS) and the Securities and Futures Commission (SFC)

In the recent regulatory reform in the securities and financial markets, one of the most important measures was the merger of financial regulators into a single new regulatory agency, i.e., the Financial Supervisory Commission, under which an administrative arm, the Financial Supervisory Service was created to help the FSC conducting examination and relative administrative matters. In addition, the Securities and Futures Commission was also created under the supervision of the FSC.[1] The establishment of the SFC was designed to focus on the regulation and supervision of the securities and futures industry. The Financial Supervisory Commission was renamed to the Financial Services Commission in 2008 to accommodate the implementation of the Capital Market Act.

Under the current regulatory structure, the Ministry of Finance and Economy, which was formerly the highest government agency responsible for the financial regulatory policies, has transferred the financial policy-making function to the Financial Services Commission since 2008. The FSC is the competent authority for making rules and regulations on supervision of securities industry and other financial industries.

§ KR:34 Self-Regulatory Organizations (SROs)

The self-regulatory organizations, such as Korea Stock Exchange, Korea Securities Dealers Association, and Korea Securities Depository, are under close supervision of the MOFE and the FSC.

Outside observers such as Korea University Professor Lee Phil Sang, an outspoken critic of the system's progress, feel that the system has not yet reached the goals that were set for it. *Id.* Central to Lee's critique of the system is the fact that—although false names are now outlawed—many people are using borrowed or stolen names when conducting financial transactions. *Real-Name System, Real Success?*, KOREA ECON. REP, Sept. 1994, vol. 9, no. 9, at 25. The only way to stop this practice, Lee argues, is to introduce a global taxation system so that the real identities of the users of such accounts could be brought to light when taxes are levied. *Real-Name System, Real Success?*, KOREA ECON. REP, Sept. 1994, vol. 9, no. 9, at 25.

[Section KR:33]

[1]The Act for the Establishment of the Financial Supervisory Organization was enacted on December 31, 1997 to integrate the supervisory authorities into the Financial Supervisory Commission.

§ KR:35 Korean Exchange (KRX)

The KRX was a consolidation of three market operators, including the Korea Stock Exchange, the KOSDAQ Market and the Korea Futures Exchange, who worked out the merger agreement in July 2004 and officially announced the next month. The KRX was officially established in January 2005 and began operation. The consolidation serves the purpose to efficiently manage and regulate the capital market under the same roof. In effect, three markets are now operating under the KRX but still run separately. However, the KRX can manage and review the operations continuously. The KRX has a general meeting of shareholders. The operation of the KRX is mainly by the Board of Directors. Under the current board structure, the board of directors is composed of 15 directors, including a Chairman, who is also the chief executive officer (CEO), a Chairman of the Market Oversight Commission, 5 standing directors and 8 outside directors (5 public directors and 3 directors representing the interest of members).[1] The Chairman of the KRX is produced through a very formal procedure which involved consideration of the expertise and experience in the industry and relationship with the government. The candidates of the CRX Chairman are nominated by the Officer Nomination Committee, upon the recommendation made by the Financial Services Commission following the resolution of the general shareholders' meeting and appointed by the President of the Republic of Korea.[2]

The major function of the KRX is to maintain a centralized marketplace for securities and futures trading, to regulate its member firms, and to list and administer securities. With regard to the stock market, the KRX maintains the separate operation of the KOSPI market run by the former KSE and the KOSDAQ market. There are separate sets of listing rules, and business regulations, and trading rules for the KOSPI market and the KOSDAQ market.

§ KR:36 Korea Financial Investment Association (KOFIA)

The Korean Securities Dealers Association (KSDA) was the only securities dealers association in Korea. The KSDA was established in 1953 as an SRO. Unlike the securities firms in Taiwan, in order to do securities business in Korea, securities firms are not required by law to join the KSDA. However, all securities firms have joined the KSDA. The disadvantage of not joining the KSDA is that without membership in the KSDA a firm cannot carry out certain securities activities in Korea.[1] As of October 1994, the KSDA had 40 Korean securities

---

[Section KR:35]

[1]CRX Articles of Incorporation, § 17(1).

[2]CRX Articles of Incorporation, § 19(1).

[Section KR:36]

[1]In order to issue overseas securities such as Euro bonds, a company needs to

firms as regular members and 47 securities-related institutions such as banks and investment trust companies as associate members.[2]

The KSDA, the Asset Management Association of Korea, and Korea Futures Association were consolidated into a newly created Korea Financial Investment Association (KOFIA) in February 2009 to accommodate the implementation of the Capital Market Act.[3] The KOFIA is an important SRO to regulate the financial investment industry. It maintains a Self-regulation Committee to adopt and enforce the self-regulation. KOFIA also sets the guidelines in the financial investment industry, such as the standard of underwriting.[4] It also conducts preliminary reviews of the advertising of financial investment products and the business activities of financial investment firms.[5] To help solve disputes in the financial investment industry, the KOFIA operates dispute settlement center to arbitrate the disputes.

§ KR:37 Korea Securities Depository (KSD)

In 1974, the Korea Securities Settlement Corporation (KSSC), the predecessor of the Korea Securities Depository (KSD), was established to manage the settlement of stock transactions. One of the KSSC's important contribution was to introduce a beneficial owner system in 1987, which improved Korea's securities deposit and settlement system.[1] The KSSC's efforts to serve as the nation's central securities depository had been eroded because of its perceived status as a profit-seeking corporation and the lack of neutrality.[2]

The KSD was established on April 25, 1994 as a special public corporation to succeed the KSSC's business according to the 1993 KSEA amendment.[3] The primary function of the KSD was to promote the orderly circulation of securities by receiving collective deposits of securities from its participants, making book-entry deliveries among

---

contract with a securities firm which is a member of the KSDA because the issuing of overseas securities is controlled by the KSDA. (Interview with Mr. Byung-Yoon Kang, Assistant Manager, International Affairs Department, Korea Securities Dealers Association, at 2:00 p.m. on Nov. 10, 1994.)

[2]These 40 members include 32 Korean securities firms and 8 branches of foreign securities firms. 1993 KOREA STOCK EXCHANGE, at 82.

[3]Capital Market Act, § 283.

[4]*See e.g.,* Regulations on Securities Underwriting Business, Etc., § 1.

[5]*See e.g.*, Regulations on Business Conduct and Services of Financial Investment Companies, § 1.

[Section KR:37]

[1]KOREA SECURITIES DEPOSITORY, THE KSD HANDBOOK 1 (3rd ed., 1995) [hereinafter THE 1995 KSD HANDBOOK].

[2]The KSSC was organized as a joint stock company under the Commercial Act as a wholly owned subsidiary of Korea Stock Exchange. THE 1995 KSD HANDBOOK, *supra*, at 2.

[3]THE 1995 KSD HANDBOOK, *supra*, at 2. The KSD has 109 shareholders and 645 employees. KOREA SECURITIES DEPOSITORY, GENERAL INFORMATION 4 (1994).

their accounts instead of delivering the physical securities certificates associated with the settlement of securities transactions, and facilitating the execution of rights of deposited securities.[4]

Upon the legislation of the Capital Market Act, the KSD was appointed as the settlement organization for the KOSPI and KOSDAQ stock markets.[5] The operation of the KSD is under the supervision of the Financial Services Commission.

B. DEFINITION OF SECURITIES

§ KR:38 KSEA Definition of Securities (Prior to Capital Market Act)

In Korea, securities were defined to include the following items:

(1) government bonds;
(2) municipal bonds;
(3) bonds issued by a corporation organized under special legislation;
(4) corporate bonds;
(5) certificates of contribution issued by a corporation organized under special legislation;
(6) stock certificates or instruments which represent a preemptive right;
(7) certificates or instruments issued by a foreign government, or a foreign corporation, having the same nature as those referred to in Items 1 through 6 above, which are designated by the Minister of Finance and Economy; or
(8) other certificates or instruments designated by Presidential Decree which are similar to or related to those referred to in Items 1 through 7 above.[1]

Under an amendment of the KSEA in January 1997, the definition of securities was expanded to include stock options, stock index options, stock index futures options; depositary receipts; beneficiary certificates; and commercial papers issued by listed companies. Some of these items were previously designated by the Presidential Decree as securities and are now defined as securities under the KSEA.

§ KR:39 Definition Under the Capital Market Act

The Capital Market Act was enacted to overhaul the previous industry-based regulation and change to so called functional

---

[4]KSEA, art. 173.

[5]Capital Market Act, § 294.

[Section KR:38]

[1]KSEA, art. 2(1). The Presidential Decree designated beneficial certificates issued under the Trust Business Law or the Securities Investment Trust Business Law are "securities." KOREA STOCK EXCHANGE , *supra*, at 12. Depositary receipts are also considered as securities. However, certificates of deposit (CDs) and other money market instruments are not securities in Korea.

regulation. The Act first defines the term "financial investment instrument" as "a right acquired by an agreement to pay, at a specific time in the present or in the future, money or any other valuable thing (hereinafter referred to as 'money or similar'), with an intention to earn a profit or avoid a loss, where there is a risk that the total amount of such money or similar, paid or payable, for the purpose of acquiring such right. . ."[1] The financial investment instrument in the Capital Market Act is further classified into securities and derivatives.[2] The Capital Market Act first gives a general description of what the term "securities" means. The term "securities" is a financial investment instrument where the investors' sole obligation is to pay at the time of acquiring such instrument and nothing further.[3] The Act further classify the securities into the following types:[4]

(1) Debt securities;
(2) Equity securities;
(3) Beneficiary certificates;
(4) Investment contract securities;
(5) Derivatives-combined securities; and
(6) Securities depositary receipts.

C. PUBLIC OFFERINGS AND EXEMPTED OFFERINGS IN THE PRE-CAPITAL-MARKET-ACT ERA

1. Public Offerings

§ KR:40 Registration Requirements for Public Offering

In Korea, there are two types of registration systems relating to the public offering. One is the "corporate registration system" (C/R System) and the other is the "securities registration system" (S/R System).[1] Although most information required to be disclosed and documents to be submitted in both systems are similar, there are some distinctions between these two registration systems. First, they apply to different situations. Second, there are some differences in the content of disclosure between the two registration systems. Furthermore, in order to offer shares to the public, a company must first register with the KSEC under the C/R System. After that, it can file a securities registration statement (S/R Statement) for the proposed public offering under the S/R System. To fully understand the disclosure

---

[Section KR:39]

[1]Capital Market Act, § 3(1).

[2]Capital Market Act, § 3(2).

[3]Capital Market Act, § 4(1).

[4]Capital Market Act, § 4(2). The Act further defines those different types of securities in the following subparagraphs § 4(3) to § 4(8).

[Section KR:40]

[1]The corporate registration system began operation in 1976 when the KSEA was amended. 1993 SSB ANN. REP., *supra*, at 22.

system in Korea, it is important to understand these two types of registration systems.

The C/R System is the registration of the company with the KSEC. This registration is different from the registration with the Registrar of Companies when a company is incorporated. The C/R System is not common in other countries. Companies which have registered with the KSEC are said to be "in the preliminary stage of listing."[2] Corporations that belong to any of the following categories are required to register with the KSEC: (i) corporations wishing to list their securities on the Korea Stock Exchange; (ii) non-listed corporations intending to make a public offering of new issues or outstanding securities; (iii) non-listed corporations intending to have business consolidation with a listed company; (iv) non-listed corporations intending to have their securities traded on the KOSDAQ, the OTC market, organized by the Korea Securities Dealers Association; or (v) other corporations designated by the KSEC that meet the criteria prescribed by the Presidential Decree regarding the paid-in capital and designated by the KSEC.[3] Investment trust companies are not required to register with the KSEC. As amended in January 1997, the KSEC's power to designate companies to go public has been removed. Companies intending to issue non-equity related corporate debt are not required to register either. The total number of companies registered with the KSEC under the C/R System was 604 as of June 1997.[4] The purposes of the C/R System are to encourage disclosure of corporate information and to encourage companies going public. The benefit for registering with the KSEC under the C/R system is that a company will be subject to less stringent requirements when it applies to go public or list its shares on the KSE or registered with the KSDA.

In contrast, the S/R System requires the filing of the S/R Statement with the KSEC for the issues of securities to the public. Companies registered under the C/R System need not issue securities while companies file registration under the S/R System are those who plan to issue securities to the public. Under the S/R System, unless it is otherwise exempt, the issuer must file its registration with the KSEC in the following situations: (i) the offer for sale of new securities or outstanding securities to the public; (ii) the issuance of new shares by listed companies; or (iii) the offer for sale (resale) of existing securities to the public by large shareholders.[5] If the issuance of securities to the public is in the size of 1 billion Won or more, the issuer must file a S/R statement with the KSEC. Securities issued to more than 50 persons are considered a public offering and are required to register with the KSEC. Only those companies that have registered with the KSEC under the C/R System can file a public offering application under the S/R System.

---

[2]1993 SSB ANN. REP., *supra*, at 22.

[3]KSEA, 3.

[4]In-Kie Hong, *Securities Laws in Korea and Regulations on Foreign Investment*, 10 COLUMBIA J. ASIAN L. 159, app. n.10 (Spring, 1996).

[5]KSEA, art. 8.

§ KR:41 Basic Information Package

The registration and disclosure requirements under the C/R System are satisfied by filing with the KSEC the Articles of Incorporation of the company, financial statements, and information regarding the company's general condition and property it owns. Article 4 of the KSEA also requires the registered companies to report material information to the KSEC. Registered companies continue to submit financial reports for the purpose of records and public disclosure. The information provided by the registrants is available to the public for at least two years. In practice, the C/R System benefits the securities regulators much more than the investing public because this system allows the regulators to have the records of these companies which might or plan to make public offerings in the future. Normally investors wish to know the companies only after they have finalized and announced their public offering plans.

After registering under the C/R System, a company may file an S/R Statement under the S/R System for the proposed public offering. Offering of securities to the public for sale is prohibited unless the S/R Statement of the securities to be offered has been filed and accepted by the KSEC.[1] The basic disclosure information that should be included in the S/R Statement contains the following items as prescribed by the KSEC:[2]

1. a brief description of the corporation;
2. an outline of the offering plan;
3. intended use of proceeds obtained from new issue;
4. a description of the issuer's business;
5. certain financial matters;
6. an auditor's opinion;
7. matters to be heeded by investors;
8. other matters to be described in the prescribed registration statement form;
9. opinions of underwriters concerning the securities involved;
10. matters regarding facilities;
11. financial statements prepared before and after any merger during the last three-year period;
12. changes in the price of major products and raw materials;
13. list of affiliated companies;
14. matters regarding stock;
15. directors' and statutory auditors' prior career backgrounds and shareholding;
16. matters regarding directors, statutory auditors and employees; and

---

[Section KR:41]

[1]KSEA, art. 8(1).

[2]*See* KSEA, art. 8, ¶ 2; Regulations on Filing Registration Statements of Public Offering of Securities, art. 2.

17. transactions entered into with any interested party.

Korea's registration statement does not require the issuer to provide as much information as is required in the United States. The following information is required to be disclosed in the United States but not in Korea: discussion of the corporate operation by segment discussion, discussion of risk factors that would affect the future operation, management discussion and analysis of company's financial condition, operation results and a detailed discussion of legal proceedings involved by the company.[3]

§ KR:42 Definition and Procedure of Public Offering

An issuer of securities to the public is required to file registration with the KSEC if the offering value is more than 1 billion Won. Prior the 1997, an offering size above 100 million Won was required to file registration with the KSEC. A public offering of "new issues" and "outstanding securities" are separately defined in the KSEA. Article 2 (3) of the KSEA defines the term "public offering of new issues" as a solicitation for an offer to acquire newly issued securities as against many and unspecified persons, under uniform terms and conditions. Article 2 (4) of the KSEA defines the term "public offering of outstanding securities" as an offer to sell or a solicitation of an offer to buy outstanding securities as against many and unspecified persons, under uniform terms and conditions. For convenience to determine whether an offering constitutes a public offering, the KSEC promulgated a guideline which prescribed that an offer to more than fifty persons will be considered as a public offering.[1]

To protect investors, a company which plans to issue securities to the public is required to file a registration statement with the KSEC to disclose corporate information so that investors can make an informed investment decision. The KSEA also empowers the KSEC to set the waiting period during which the registration statement will be reviewed by the KSEC to ensure that the issuer has provided adequate information. Only after the the waiting period has lapsed will the registration statement become effective. Therefore, before the registration statement becomes effective, a company cannot issue shares to the public. The following is a standardized procedure for public offering of new shares:[2]

1. Planning of a public offering—Corporation (Board of Directors)

---

[3]*See* Sang-Hyun Song, *Law and Policy of Securities Regulation in Korea*, *supra*, at 767.

[Section KR:42]

[1]KSEC Regulation on Filing Registration Statements of Public Offering of Securities, promulgated on Apr. 6, 1982, art. 2(1) [hereinafter KSEC Filing Regulation]; KSEA Enforcement Decree, *supra*, art. 2–4.

[2]THE 1993 KSE ANN. REP., *supra* note 109, at 25. The process for the application of an IPO in Korea is quite standardized. Several large securities companies, such as Hyundai Securities Co. and Daewoo Securities Co., have been following this proce-

2. Resolution on issuing new shares—Meeting of shareholders or board of directors
3. Application for underwriting to a securities firm—Securities analysis
4. Conclusion of an underwriting agreement—Formation of an underwriting syndicate
5. Filing of a registration statement—KSEC & KSSB
6. Taking effect of the registration statement
7. Road show—Investors
8. Subscribing—Investors
9. Allotment of shares
10. Payments for the subscriptions
11. Delivery of the certificates
12. Listing of the issue—KSE
13. Market making of the issue—Underwriters

Steps 1 to 4 indicate what the issuer should do before it can file the registration statement. Steps 7 to 13 occur after the registration becomes effective.

§ KR:43 Pre-Filing Period

An issuer who intends to make a public offering should find a securities firm that can guide the issuer through the whole procedure. This securities firm normally will become the lead underwriter. The issuer needs to work out a plan of a public offering with the consulting securities firm. The plan for issuing new shares must be adopted by resolution of the shareholders' meeting or board of directors' meeting. After a resolution to make the public offering is adopted, the issuer must find a securities firm to be the lead underwriter of the public offering and an underwriting contract will be signed between them. Because underwriting involves risks, not every company can obtain a securities firm to be its underwriter.

In practice, it is easier for big companies or an affiliated company of the *Chaebols* to obtain a securities firm to be its underwriter. The situation has been that a small company will need to apply to a securities firm for underwriting its shares. The securities firm will then evaluate this company and its securities to be underwritten. It is easier for a large company to find a securities firm to underwrite its shares. However, because of the fierce competition in underwriting business in recent years, securities firms have become more active in maintaining a good relationship with their clients. The securities firms actively search for prospective candidates to establish good relationship. Most of the candidates come from personal contact of the managers as well as employees of the securities firms. Another source of candidates comes from the business group which the securities firm

---

dure to handle the IPO business.

belongs to. Most of the securities firms are established by a "*chaebol*."[1] For example, the largest securities firm, Daewoo Securities, is established by Daewoo conglomerate; Hyundai Securities is established by Hyundai business group; Lucky Securities is established by Lucky-Goldstar business group. When a subsidiary or an affiliate of a business group is going public, the underwriting business will go to the securities firm established by that business group.

The lead underwriter will then form an underwriting syndicate. The issuer and the lead underwriter work very closely to prepare the required registration materials, including application forms, financial statements, and prospectus. The issuer must first file a public offering proposal to the KSEC before it files the registration statement.[2] The KSEC will make comments after reviewing the proposal.[3] After the issuer has made changes according to the KSEC's comment, the issuer may file the registration statement and materials with the KSEC.

§ KR:44 Pre-Effective Period

Can the issuer begin any promoting activities or can it make an offer to sell or solicit an offer to purchase the new issues or outstanding securities after the issuer has filed the registration statement with the KSEC? Before 1997, the KSEA imposed different treatments upon listed companies and non-listed companies. Such different treatment was abolished in 1997. Both listed companies and non-listed companies must comply with the registration requirements.

Article 8 (1) of the KSEA prohibits any person from making a public offering of a new issue or outstanding securities unless a registration statement is "filed with" and "accepted by" the KSEC. Article 9 of the KSEA states that the registration statement will become effective after the lapse of the waiting period after the registration statement has been accepted by the KSEC. So basically, no offer or solicitation to purchase the publicly offered securities can be made until the registration statement has become effective.

An issue here is to determine when the registration statement is accepted by the KSEC so that we can begin to count the waiting period. From the language of the KSEA as well as the official translation of the KSEA and other articles written by Korean authors, "accepted" is

---

[Section KR:43]

[1]Interview with Mr. Kyung-Suk Choi, Deputy Manager of Strategic Planning Team of International Management Department of Daewoo Securities Co., Ltd. (at 10:00 a.m. on Nov. 10, 1994); Interview with Mr. Hwang-Sang Lee Manager of Corporate Finance Dept./M & A of Daewoo Securities Co., Ltd. (at 10:00 a.m. on Nov. 25, 1994); Interview with Mr. Dong-Bae Kim, General Manager of Credit Analysis Team, C.P.A., and Mr. Ju-Shik Park, Hyundai Securities Co., Ltd. (at 9:00 a.m. on Nov. 25, 1994).

[2]Sang-Hyun Song, *Law and Policy of Securities Regulation in Korea*, *supra*, at 763.

[3]Sang-Hyun Song, *Law and Policy of Securities Regulation in Korea*, *supra*, at 763.

used instead of "received" or "approved."[1] "Accepted" is not defined in the KSEA or any other article. After carefully reading the provisions and consulting with the staff of the Securities Supervisory Board, the meaning of "accepted" in this context does not mean "received," nor does it mean "approved." "Accepted," according to a Korean judge's opinion, is properly used here because it means something more than "accepted."[2] The word "accepted" means that the administrative agency has the authority or discretion to decide whether it will accept or will not accept the registration after checking with the formality of the registration statement. Article 11 of the KSEA empowers the KSEC to issue an order to file an amended statement if the KSEC deems the registration statement is not complete or inadequate in the form or any material information. If an order to file an amendment statement is issued by the KSEC, the registration statement shall be construed not to be accepted by the KSEC. If an amendment statement is filed, whether it is voluntary or compulsory, the registration is deemed to be accepted when the amendment statement is accepted.[3]

The issue is how to decide the date when the registration statement is accepted. The KSEC does not issue a letter or any document approving the registration statement. Instead, the KSEC issues an order to file amended statement if the KSEC finds the registration statement is incomplete in its form or inadequate in any required information. The issuance of the order to file amended statement indicates that the registration statement is not accepted by the KSEC. The KSEC also has the power to request the issuer or underwriter to submit a report or materials for reference, or direct staff of the Securities Supervisory Board to inspect the accounting books and related materials of the issuer, underwriter, or other associated persons.[4] If the statement contains untrue statements or omission of material information, the KSEC has the power to order the issuer to amend the statement or to suspend or prohibit the issuance of the securities in question.[5] Therefore, the proper interpretation of the term "the registration statement is accepted" is that the KSEC after the review of the registration statement does not issue an order to file amended statement or a rejection letter. In this case, the time of acceptance shall be construed to be the time when the registration statement is filed. If an amended statement is filed and the KSEC does not reject or issue any other order to file amendment, the registration is deemed to be accepted at the time when the amended statement is filed. The

---

[Section KR:44]

[1]*See* KSEA, arts. 8(1), 9(1), 11(5); Joon Park, *Internationalization of the Korean Securities Market*, INT'L TAX & BUS. LAWYER, vol. 7, at 1, 16 (1989); 1993 SSB ANN. REP., at 23–24.

[2]Interview with Mr. Chiyong Rim, Korean District Court Judge, in Durham, N.C. (Nov. 4, 1995).

[3]KSEA, art. 11(5).

[4]KSEA, art. 19(1).

[5]KSEA, art. 20.

determination of the time of acceptance is crucial as to the calculation of the effective date of the registration statement, which is on the date that the time period fixed by the MOF (waiting period) elapses after the registration is accepted by the Commission.[6] In practice, the issuer and the underwriters normally will consult with the KSEC or KSSB staff to minimize the chances of being required to file amendment to the registration statement.

An important change of the KSEA in 1997 is that a preliminary prospectus may be used to offer securities for sale during the waiting period. Article 13 (2) of the KSEA allows the issuer to use a preliminary prospectus to invitate offer for sale of the securities before the registration statement takes effect. In order to use the preliminary prospectus, the issuer must satisfy conditions prescribed by the KSEC.

§ KR:45 Post-Effective Period

The issuer is required to submit the prospectus to the KSEC and copies of prospectuses should be placed in the issuer's offices, the KSEC, the KSE and securities firms for public inspection at the effective date of the registration statement.[1] However, the issuer is not required to deliver the prospectus to the purchasers or prospective subscribers. If the purchaser or prospective purchaser does not request the prospectus, the issuer need not deliver the prospectus to the purchaser in advance of sale.[2] The opinion of market professionals is that the prospectus does not play an important role in the individual investor's decision-making process to purchase the securities.[3]

The registration statement becomes effective by the passage of a prescribed time period (waiting period) from the date of acceptance of the registration statement by the KSEC.[4] The current schedule for calculating the waiting period from the date of acceptance of the registration is as follows: (i) 20 days for IPO shares; (ii) 10 days for a public offering of new shares by a listed company; (iii) 7 days for unsecured bond that has been issued before and for rights offerings through allotment of new shares to shareholder or third persons by a listed company; (iv) 15 days for a public offering of unsecured

---

[6]KSEA, art. 9(1).

[Section KR:45]

[1]KSEA, art. 12; 1993 KOREA SECURITIES MARKET, at 16.

[2]KSEA, art. 13.

[3]Interview with Mr. Kyung-Suk Choi, Deputy Manager of Strategic Planning Team of International Management Department of Daewoo Securities Co. Ltd., in Seoul (at 10:00 on Nov. 10, 1994); Interview with Mr. Hwang-Sang Lee, Manager of Corporate Finance Dept./M & A of Daewoo Securities Co., Ltd., in Seoul (at 10:00 on Nov. 25, 1994).

[4]KSEA, art. 9.

corporate bonds; and (v) 5 days for public offering of mortgage bonds and guaranteed bonds, collectively secured bonds.[5]

§ KR:46 Timing and Other Considerations of a Public Offering

Companies prefer to make public offerings when the market climate is good. However, although there was no official announcement or articles regarding the intervention of public offering by securities regulators, it is said that in practice the KSEC or the KSSB sets the schedule to control the maximum amount of money that can be raised by public offerings.[1] Therefore, a company will need to discover whether its public offering application is within the KSEC's schedule and decide a proper time to submit the application. In practice, the securities firms contact the KSSB to inquire as to the possibility and time schedule to submit the public offering application.

Listed companies are subject to different procedure when issuing new securities. Formerly, listed companies had to go through an coordination procedure arranged by the Right Issues Committee of the Korea Listed Companies Association. The purpose of the coordination procedure is to prevent the oversupply of securities on the securities market.[2] Currently, when a listed company issues new shares, it no longer needs to go through the coordination procedure. After the coordination system was removed, a company needed to consult with its underwriter to discover the market conditions of stock demand and supply and then decide a proper time to submit the application. In practice, the securities firms contact the KSSB to ascertain the information because all public offerings must go through the KSSB.

§ KR:47 Reviewing of the Public Offering Application

Apart from some exemptions contained in Article 7 of the KSEA, a company must register with the KSEC before it can make a public offering.[1] The KSEC reviews the registration statements and other required documents as to form and substance. The KSEC will issue an order requiring the applicant to submit an amendment to the registration statement if the registration statement is found to be

---

[5]THE 1996 KSEC ANN. REP., at 51.

[Section KR:46]

[1]Interview with Mr. Hwang-Sang Lee, Manager of the Corporate Finance Dept. / M & A, DAEWOO SECURITIES CO., LTD, in Seoul, Korea (at 10:00 on Nov. 25, 1994).

[2]1996 KSEC ANN. REP., at 51.

[Section KR:47]

[1]Exempted securities include government bonds, municipal bonds, and bonds or certificates of contribution issued by a corporation that is incorporated under special statute. *See* KSEA, arts. 7 & 2(1) items 1-3, 5.

incomplete or inaccurate in any material respect.[2] If the KSEC issues an order, the registration statement is deemed not to have been accepted as of the date of the order.[3] If the applicant has filed an amendment, the registration statement is deemed to be accepted on the date when the amendment is filed.[4]

The KSEC may order the applicant, underwriter or other related persons to submit a report or other relevant records or may inspect the books, records or other relevant matters, if the KSEC deems it necessary to protect investors or the public interest.[5] The KSEC may also issue a stop order to temporarily or permanently suspend the registration statement if the registration statement contains omission or misrepresentation of material information.[6] However, it is very rare that the KSEC issues an official order to disapprove the application. In practice, the registration statement is not formally filed until the KSEC has informally reviewed and approved.[7]

The Korean stock market exhibits strong government intervention. As discussed before, the issue of new shares, including IPOs and rights offerings by listed companies, must obtain approval from the KSSB. More critically, the KSSB controls the number of companies and new shares that can be listed on the KSE. The purpose of the regulator's intervention in the public offering business is to control the supply of securities into the market to avoid sluggishness of the market due to oversupply of securities and lack of investment incentive.[8] The reviewing process of the public offering application has not been transparent and the regulation has been criticized for allowing the bureaucracy "arbitrary control over the stock market."[9] One flaw under the current practice is that the system could foster corruption.[10] A proposal was announced on July 12, 1996 by the MOF

---

[2]KSEA, art. 11(1).

[3]KSEA, art 11(2).

[4]KSEA, art. 11(4).

[5]KSEA, art. 19(1).

[6]KSEA, art. 20.

[7]Interview with Mr. Choon-Won Lee, Deputy Director of the Department of Registration of Corporation, Securities Supervisory Board, KSEC, in Seoul, Korea (at 3:00 p.m., Nov. 11, 1994).

[8]One of the securities regulator's concern is that too many public offerings, which increase the supply of shares, will force many investors to sell off shares on the KSE to invest in IPO shares and cause the stock exchange market to decline. *See e.g.*, *South Korea: Excessive Supply Worries Stock Market Watchers*, KOREA ECONOMIC DAILY, Aug. 1, 1994.

[9]Michael Schuman, *Korea Proposes to Ease Rules for Its Bourse*, ASIAN WALL ST. J., July 15, 1996, at 1. The KSSB may influence the stock market performance by controlling the amount of new shares that can be offered to the market. Michael Schuman, *Korea Proposes to Ease Rules for Its Bourse*, ASIAN WALL ST. J., July 15, 1996, at 1.

[10]Michael Schuman, *Korea Proposes to Ease Rules for Its Bourse*, ASIAN WALL ST. J., July 15, 1996, at 1. There has been a scandal that the former director-general of

to change the current policy.[11] The proposal will allow the issuers and underwriters to decide when to make the offering and what price the shares will be offered.[12]

§ KR:48 Underwriting

Institutions participating in underwriting activities are categorized into three groups: the managing underwriters, the underwriting syndicate and the sales group. The managing underwriters directly contract with the issuer to decide the issuing price, assume the risk of any unsold securities and make a market for the newly listed securities. The underwriting syndicate is formed by the managing underwriters to conduct underwriting activities, such as promotion and advertisement activities. The sales group is designated by the managing underwriters to perform the distribution of securities to the public investors.

The KSEA recognizes three kinds of underwriting: firm-commitment underwriting, stand-by underwriting and best-effort underwriting.[1] In practice, only firm-commitment underwriting is employed.[2] The managing underwriters purchase all shares from the issuer and resell them to the investors. Although the underwriting is on the firm-

---

the Ministry of Finance and Economy, the former governor, the assistant deputy governor and the deputy director of the Securities Supervisory Board were arrested and charged with taking bribes from companies in connection with public offerings. *S. Korea Arrests Two More Stock Watchdog Officials*, REUTERS FINANCIAL SERVICE, June 18, 1996, *available in* LEXIS, ASIAPC Library, SKOREA File.

[11]Charles S. Lee, *More Like a Whimper*, FAR EASTERN ECON. REV., Aug. 1, 1996, at 53; Michael Schuman, *Korea Proposes to Ease Rules for Its Bourse*, ASIAN WALL ST. J., July 15, 1996.

[12]Before this proposal becomes a formal policy, the current practice is that the Securities Supervisory Board (SSB) control "the number of companies and the value of new rights issues to be listed on the Korea Stock Exchange each quarter." Michael Schuman, *Korea Proposes to Ease Rules for Its Bourse*, ASIAN WALL ST. J., July 15, 1996. "The SSB decides when companies will be allowed to sell shares by using a cryptic set of state-determined criteria based on the size and business of the company." *Id.* As of July 1996, there were 200 companies waiting for the SSB's approval to list on the KSE. *Id.* Only 36 companies were approved to be listed in 1995. Michael Schuman, *Korea Proposes to Ease Rules for Its Bourse*, ASIAN WALL ST. J., July 15, 1996.

[Section KR:48]

[1]Similar to Taiwan's underwriting system, there are three types of underwriting in Korea. In a firm-commitment underwriting case, the underwriters acquire all shares from the issuer and distribute them to the public investors. In a stand-by underwriting case, the underwriters agree to acquire the unsold portion of the underwritten securities from the issuer. In a best-effort underwriting case, the underwriters, acting as agent, sell the public offering securities for the issuer on the commission basis. KOREA STOCK EXCHANGE, *supra*, at 34; Interview with Mr. Choon-Won Lee, Deputy Director, Department of Registration of Corporation, SSB, KSEC, in Seoul, Korea (at 3:00 p.m., Nov. 11, 1994).

[2]Interview with Mr. Choon-Won Lee, Deputy Director, Department of Registration of Corporation, Securities Supervisory Board, Securities and Exchange Commission, in Seoul (Nov. 11, 1994).

commitment basis, the strange situation is that underwriters do not make money from the spread between the price they pay to the issuer and the price they receive from public subscribers according to the KSEC's information.[3] Instead, they receive commission from the issuer. The reason for using only the firm-commitment underwriting is to impose a burden on securities firms as to encourage them to be more careful when they accept an issuing company. It is intended to ensure the quality of the underwritten shares. After the underwritten shares are listed on the stock exchange, the managing underwriters are responsible for market making of the issue for three months after listing.[4]

Under current rules, about 60 percent of the total public offering is available for public subscription; 20 percent of the offered shares is reserved for institutional investors and 20 percent is offered to the employee stock ownership association.[5]

§ KR:49 Exemptions from Registration

Generally, a company which intends to list its shares on the KSE or intends to have its shares traded on the OTC market or is designated by the KSEC must first register the company with the KSEC.[1] Thereafter, when it is going to make a public offering, the company is required to file registration statement with the KSEC regarding the proposed public offering.[2] However, some types of companies and transactions are exempt from the above requirements.

According to Article 5-3 of the KSEA Enforcement Decree, the following companies and transactions are exempt from registration:

(1) Beneficiary certificates issued by trust companies according to the Trust Business Act;
(2) Beneficiary certificates issued by securities investment trust companies according to the Securities Investment Trust Business Law;
(3) Beneficiary certificates issued by foreign securities investment trust companies;
(4) Debt securities issued by securities companies;
(5) Securities issued by national and local government;
(6) Issuance of bonds by a corporation incorporated under special legislation, such as bonds issued by the Korea Securities Finance Corporation;
(7) Issuance of certificates of capital contribution by a corporation incorporated under special legislation;

---

[3]1996 KSEC ANN. REP., at 52.

[4]1996 KSEC ANN. REP., at 52.

[5]1996 KSEC ANN. REP., at 53.

[Section KR:49]

[1]KSEA, art. 3.

[2]KSEA, art. 8.

(8) Stock index options.

The above securities offerings are exempt for different reasons. The issuance of beneficiary certificates is exempt from registering with the KSEC but is regulated by different laws. Local and central governments, corporations incorporated under special legislation, and some government invested institutions are exempt from registration requirements when they issue securities because they are backed by the government and do not have the concern for investors' protection.

Private placements are not officially exempt. However, since the KSEA imposes the registration requirement only on issuers intending to make public offerings, private placement is exempt from registration. It is necessary to note that this exemption is not available for listed companies because the KSEA explicitly requires listed companies to file registration when they issue new shares.[3]

If the offering amount is in a small size that does not exceed the amount prescribed by the Regulation of the MOFE, the offering is exempt.[4] Currently, an offering amount under 1 billion Korean Won is exempt from registration. The following cases are also exempt from registration: (1) new shares are issued for the conversion of reserves into new capital; (2) new shares issued as stock dividends; (3) new shares issued for the conversion of convertible bonds; (4) new shares issued upon exercise of warrants attached to bonds; (5) new shares issued as the consideration of a merger or business consolidation; or (6) new shares issued as a result of stock split or other events which do not require payment for the new shares.[5]

2. Public Offering Regulation under the Capital Market Act

§ KR:50 Registration Requirement

Any company intend to publicly offer securities must file registration statement with and be accepted by the Financial Services Commission.[1] A company may file a universal shelf registration statement with the FSC if the issuer plan to publicly offer the securities over a period of time.[2] The registration statement will become effective on the day that the expiration of the time period prescribed by the Prime Minister and the time schedule varies depending on the type of securities offered.[3]

---

[3]KSEA, art. 8.

[4]KSEA, art. 8(1).

[5]KSEA, art. 8(1) & KSEA Decree, art. 5-2.

[Section KR:50]

[1]Capital Market Act, § 119(1).

[2]Capital Market Act, § 119(2).

[3]Capital Market Act, § 120(1). The general rule is 7 days for the debt securities and 15 days for the equity securities. Enforcement Rule of the Financial Investment Services and Capital Market Act, 12(1) (Ordinance of the Prime Minister No. 973,

§ KR:51 Investment Prospectus

The issuer shall prepare investment prospectus in advance and file together with the registration statement to the FSC. The content of the prospectus shall not be different from the content of the registration statement.[1] Before the issuer accepts the subscription of securities from investors, the issuer or underwriter must first deliver the investment prospectus or the electronic version of prospectus to the investors.[2]

§ KR:52 Liability for Fraudulent Documents

Persons causing the misrepresentation or omission of material information in the registration statement or investment prospectus are liable to the subscribers of the securities publicly offered by the issuer. There are exceptions for persons involved in the process of producing fraudulent offering documents. First, the person will not be held liable if he or she has exercised due care and still could not discover the misrepresentation or omission in the offering documents. Second, the person will not be held liable either if the subscriber of securities knew the fact when he or she made the offer to subscribe the shares.[1] The Capital Market Act provides a list of people typically will be the potential defendants in the litigation for misrepresentation or omission of material information in the offering documents:[2]

(1) Promoters if the public offering is made before the incorporation;
(2) Directors of the issuer;
(3) Persons who instructed or executed the preparation of the registration statement;[3]
(4) Experts, such as the certified public accountant, the certified appraiser, or the credit rating specialist, who certified with

---

Mar. 2, 2012).

[Section KR:51]

[1]Capital Market Act, § 123.

[2]Capital Market Act, § 124.

[Section KR:52]

[1]Capital Market Act, § 125(1)1.

[2]Capital Market Act, § 125(1).

[3]The following persons are considered as directors and will be held liable if they instruct or execute the preparation of the fraudulent registration statement:

(1) A person who instructs a director to conduct business by using his/her influence over the company;
(2) A person who conducts business in person under the name of a director;
(3) A person other than a director who conducts the business of the company by using a title which may give the impression he/she is authorized to conduct the business of the company, such as honorary chairman, chairman, president, vice-president, executive director, managing director, director, or others. Korean Commercial Act, § 401-2(1); Capital Market Act, § 125(1)2.

his/her signature that the registration statement or the supplements are true and correct;
(5) A person who agree to include his/her statement of evaluation, analysis, or verification in the registration;
(6) Underwriters;
(7) Persons who prepared or delivered the investment prospectus;
(8) Securities holders who file the registration statement for secondary offering;

The aforementioned persons may be exempted from liability in the following circumstances:

(1) The statement is a forecast information;
(2) The grounds for the forward looking statement were clearly stated;
(3) The representation at issue was made in good faith on the basis of reasonable basis; and
(4) A warning clause is included to indicate that representation at issue may different from other estimates or actual outcomes.

§ KR:53 Liability for Fraudulent Documents—Measurement of Damages

In the primary market, in the case of fraudulent registration statement, the claimants who subscribe shares from the issuer or purchase securities from the secondary offering shall claim the damages from the persons prescribed in Article 125 of the Capital Market. The Act provides guidance in how to estimate the amount of damages. The amount of damages is estimated by subtracting any of the following items from the amount paid by the subscriber or purchaser of the securities:[1]

(1) The market price of the securities at the closing of the litigation;
(2) The disposal price if the securities are disposed prior to the closing of the litigation.

The causation that the damages are caused by the fraudulent registration statement is presumed by the Act. However, the defendants may rebut the presumption by proving that the damages sustained by the plaintiffs are not caused by the misrepresentation or omission of the registration statement.[2]

§ KR:54 Liability for Fraudulent Documents—Statute of Limitations

The claim seeking for damages in the fraudulent registration state-

---

[Section KR:53]

[1]Capital Market Act, § 126(1).

[2]Capital Market Act, § 126(2).

ment litigation must be brought within one year after the uncovering of the fraudulent registration statement or within three years after the effective date of the registration statement.[1]

D. CONTINUING DISCLOSURE REQUIREMENTS OF PUBLIC COMPANIES

§ KR:55 Periodical Business Reports

A listed company is required to file periodical business reports, including the annual business report, half-year business report, and first and third quarterly business report with the Financial Services Commission.[1] There is a timetable for filing the business reports:

(1) Annual Business Report: 90 days after the close of the fiscal year;
(2) Half-Year Business Report: 45 days after the close of the first six months of the fiscal year;
(3) 1st and 3rd Quarterly Business Report: 45 days after the close of the first and third quarter of the fiscal year.

For a listed company that needs to provide consolidated financial report, the timetable for filing the business reports is as follows:

(1) Annual Business Report: 120 days after the close of the fiscal year;
(2) Half-Year Business Report: 60 days after the close of the first six months of the fiscal year;
(3) 1st and 3rd Quarterly Business Report: 60 days after the close of the first and third quarter of the fiscal year.

The business reports shall include the following information:[2]

(1) Signatures of the representative directors;
(2) An overview of the company;
(3) Matters concerning the organizational structure of the company, including the board of directors, and its affiliated companies;
(4) Matters concerning shareholders;
(5) Mattes concerning executives and employees;
(6) Details of transactions with major shareholders (including their specially related persons), executives, or employees of the company;
(7) Financial Statements;
(8) The accounting auditor's audit opinion;
(9) Other matters specified and publicly notified by the Financial

---

[Section KR:54]

[1]Capital Market Act, § 127.

[Section KR:55]

[1]Capital Market Act, §§ 159–160.

[2]Enforcement Decree of the Capital Market Act, § 168(2).

Services Commission as those of which it is necessary for investors to be informed.

§ KR:56 Material Facts Report

A company that is required to submit the business report must submit the Material Facts Report if any of the following events occurs:[1]

(1) Bounced checks issued by the corporation or accounts suspended by the bank;
(2) Business activities are partially or wholly suspended;
(3) Corporate reorganization or bankruptcy under the Debtor Rehabilitation and Bankruptcy Act;
(4) Any event or cause triggering the dissolution of the corporation according to the Capital Market Act, Commercial Act or any other Act;
(5) Capital increase or reduction plan adopted by the board of directors;
(6) Sale or transfer of essential business or assets of the corporation;
(7) A resolution for the sale or acquisition of the treasure shares;
(8) The occurrence of cause or event having significant impact on the management or assets of the corporation;
(9) When a corporation acquires 100% shares of another corporation or establishes a complete parent company based on an all-inclusive share swap transaction according to Article 360-2 and Article 360-15of the Commercial Act;
(10) A merger plan adopted by the shareholders' meeting;
(11) Division and merger after division of a company according to Article 530-2 of the Commercial Act.

The material fact report must be filed with the Financial Services Commission by the next day after the occurrence. The FSC shall forward the material fact report to the KRX promptly after the receipt of the report.[2]

§ KR:57 Civil liabilities for Damages Caused by Misrepresentation or Omission of Business Report or Material Facts Report

Similar to the civil liabilities for making false disclosure in the registration statement, the Capital Market Act makes a list of persons

---

[Section KR:56]

[1]Capital Market Act, § 161(1).

[2]Capital Market Act, § 161(5).

who may be held liable for the misrepresentation or omission of the material information in the business report and annexed statements:[1]

(1) A person who filed the business report and the directors of the corporation at the time of the filing;
(2) A person who gave direction or prepared the business report;
(3) Experts, such as a certified public accountant, an appraiser, a specialist in credit rating and the credit rating agency, who certified the information of the business report and the documents attached thereto, were true and correct; and
(4) A person who consented to include the evaluations, analyses, or confirmations in the business report or the attached document.

Those potential responsible persons for the false business reports and annexed statements may escape the liabilities by exercising the due diligence defense to prove that he/she was unable to know the misrepresentation or omissions though he/she had exercised reasonable care. Those potential responsible may also escape the liabilities if the purchasers or sellers of the securities knew the misrepresentation or omissions of material information at the time of making the trading.[2]

E. FRAUD, MANIPULATION AND INSIDER TRADING

§ KR:58 General

In a 1997 amendment, the Securities and Exchange Act included a new section to prohibit unfair securities transactions. Activities that are prohibited include the short-term sale and short-selling by insiders, the use of non-public corporate information to trade securities, and the manipulation of the market.[1] Article 188-4 of the KSEA prohibits the use of match orders or false transactions to create a false image of active trading or to cause any other person to make a wrong judgment on the trading of listed securities. Match orders are prohibited because this type of transactions are pre-arranged by the buyer and seller to enter their buy and sell orders at the same time and at the same price that would create an image of active trading on listed securities and would cause investors to make wrong judgment based on that false image. Although the language of this provision prohibits unfair trading on listed securities, it also applies to the registered securities which are traded on the KSDA OTC market. Article 188-4 also prohibits any person from evoking transactions to create a misleading image of active trading or to manipulate the price of such securities for the purpose of inducing others to buy or sell

---

[Section KR:57]

[1]Capital Market Act, § 162(1).

[2]Capital Market Act, § 162(1).

[Section KR:58]

[1]KSEA, arts. 188, 188-2, 188-4.

securities. It is illegal to spread a rumor that the price of particular securities will be manipulated. It is also unlawful if one intentionally misrepresents material facts about the trading of particular securities.

After the implementation of the Capital Market Act, unfair trading, manipulation and insider trading continue to be the focus to ensure a fair playing field of the capital market. The provisions regulating unfair trading are set forth in Part IV of the Capital Market Act.

§ KR:59 Market Manipulation

Capital Market Act regulates market price manipulation conduct in Part IV Chapter II. Market price manipulation is considered a type of fraudulent conduct misleading others to make wrong judgment in securities trading. The following conduct is considered market price manipulation and is prohibited:

§ KR:60 Misleading Others About Market Booming or Making Wrong Judgment

The following conduct is considered misleading others about the booming of the market or misleading others into wrong judgment:[1]

(1) Selling listed securities or exchange-traded derivatives in conspiracy with another person to sell the listed securities or exchange-traded derivatives at the same price at the same time;

(2) Purchasing listed securities or exchange-traded derivatives in conspiracy with another person who sells the listed securities or exchange-traded derivatives at the same price at the same time;

(3) Trading listed securities or exchange-traded derivatives without intention to transfer the interests or right therein;

§ KR:61 Disseminating Rumors or Misleading Information

Any person is prohibited from making the following acts to attract another person into trading the listed securities or exchange-traded derivatives:[1]

(1) Misleading others to cause misunderstanding about the market and purchasing or selling of securities in order to cause market price fluctuations;

(2) Dissemination of rumors that the market price fluctuation is caused by his/her or another person's market manipulation activities;

(3) Making false representations about the trading in the listed securities or exchange-traded derivatives.

[Section KR:60]

[1]Capital Market Act, § 176(1).

[Section KR:61]

[1]Capital Market Act, § 176(2).

§ KR:62 Price Fixing or Stabilization

It is prohibited to engage in a series of securities trading with an intention to fix the price or stabilize the price of a securities or exchange-traded derivatives.[1] However, price stabilization in connection with the public offering by the investment traders or the issuer in accordance with the Presidential Decree or to perform the function of a market maker is not prohibited.[2]

§ KR:63 Other Market Manipulation Conduct

There are several types of trading activities that are considered as market manipulation and are prohibited:[1]

(1) Conduct causing the fluctuation of or fixing the market price of underlying securities of certain exchange-traded derivatives for the purpose of making unjust profit from the trading of such exchange-traded derivatives for himself/herself or a third person;

(2) Conduct causing the fluctuation of or fixing the market price of exchange-traded derivatives for the purpose of making unjust profit from the trading of such exchange-traded derivatives or the underlying securities for himself/herself or a third person;

(3) Conduct causing a fluctuation of or fixing the market price of securities linked to certain securities specified by the Presidential Decree for the purpose of making unjust profits from trading of such securities for himself/herself or a third person.

§ KR:64 Liabilities for Damages Caused by Market Price Manipulation

Any person who engages in manipulation conducts as prescribed by Article 176 of the Capital Market Act shall be liable to the persons who trade listed securities or exchange-traded derivatives during the period affected by the market manipulation conducts.[1] There is a statute of limitation for making the claim. The injured traders must bring up the claim within one year after becoming aware of the market manipulation conduct and no claim can be brought up after the lapse of three years after the market manipulation conduct.[2]

[Section KR:62]

[1]Capital Market Act, § 176(3).

[2]Enforcement Decree of Capital Market Act, §§ 203–206.

[Section KR:63]

[1]Capital Market Act, § 176(4).

[Section KR:64]

[1]Capital Market Act, § 177(1).

[2]Capital Market Act, § 177(2).

§ KR:65 Insider Trading

The Capital Market Act prohibits two types of insider trading activities. The first type is short-swing trading activities and the second type is trading in possession of nonpublic material information. Insiders who engaged in short-swing trading are subject to disgorgement of short-swing trading profit but are not a crime. In contrast, those who engaged in securities trading while in possession of nonpublic material information are subject to by civil and criminal liabilities.

§ KR:66 Reporting of Shareholding by Executives and Significant Shareholders

The major targeted persons of insider trading regulation are corporate insiders and significant shareholders. Therefore, the first requirement associated with the insider trading regulation is the reporting requirement on the corporate executives and significant shareholders of listed companies. The executive or significant shareholder is required to report his/her shareholding to the KSFC and the KRX within 5 days after becoming the corporate executive or significant shareholder, or any changes of the shareholding.[1] The KSFC shall keep the records for three years for public inspection. Corporate insiders holding exchange-traded derivatives having the underlying assets of the corporate securities beyond certain amount are also required to report to the Financial Services Commission and the KRX.[2]

§ KR:67 Short-Swing Trading

Corporate executives, employees, and significant shareholders who buy and then sell or sell and then buy the stocks, bonds, depositary receipts of the corporation, exchangeable bonds issued by any person that can be exchanged with the securities of the corporation, or financial investment instruments based on underlying assets composed of the aforementioned securities within 6 months are liable to disgorge the short-swing trading profit to the corporation.[1] Shareholders may demand the corporation to claim the short-swing trading profits from the insiders who engage in short-swing trading activities. If the corporation fails to make the claim within 2 months after receiving the demand from shareholders, the shareholders may make the claim on behalf of the corporation.[2] Shareholders who file a lawsuit to claim the short-swing trading profits on behalf of the

---

[Section KR:66]

[1]Capital Market Act, § 173(1).

[2]Capital Market Act, § 173-2.

[Section KR:67]

[1]Capital Market Act, § 172(1).

[2]Capital Market Act, § 172(2).

corporation may be reimbursed of any cost associated with such claim.[3] If the Securities and Futures Commission (KSFC) is aware that insiders have derived short-swing trading profits, the KSFC may request the corporation to disclose the content in the website of the corporation.[4]

§ KR:68 Insider Trading While in Possession of Nonpublic Material Information

An insider may not use non-public information or tip other persons such information and authorize them to trade the company's securities.[1] In order to hold a person guilty of insider trading, several constituents must be proved. First, the person must fall within the definition of insider. He must be an officer, employee, or large shareholder, or other persons listed under the Capital Market Act. Second, he must have obtained material nonpublic information and have used such information or authorized other persons to trade the company's securities. Whether or not the insider has profited from such trading will not affect his guilt for committing the insider trading crime.

(1) In addition to criminal charges, an insider who trades the company's securities with material non-public information may also be subject to civil liabilities. The Capital Market Act prohibits anyone from trading the corporate securities if he/she is aware of material non-public information. However, the Act also prescribes the following situations as conditions for incurring the liabilities:[2] The corporation and its affiliated companies who becomes aware of the material nonpublic information in the course of performance of business;

(2) Executive, employee, or agent, who becomes aware of the material nonpublic information in the course of performance of business;

(3) A significant shareholder who becomes aware of the material nonpublic information in the course of exercising his/her rights;

(4) A de facto director or shadow director, having authority to grant authorization, give instructions; or supervise the corporation, who becomes aware of the material nonpublic information in the course of exercising the power or authority;

(5) A person who has entered into or is negotiating a contract with the corporation becomes aware of the material nonpublic information in the course of entering into, negotiating, or performing the contract;

---

[3]Capital Market Act, § 172(4).

[4]Capital Market Act, § 172(3).

[Section KR:68]

[1]Capital Market Act, § 174(1).

[2]Capital Market Act, § 174(1).

(6) An agent, servant or employee of a natural person or corporate entity that falls into the aforesaid subparagraphs (3) to (5) becomes aware of the material nonpublic information in connection with his/her job.
(7) A tippee: a person who received the material nonpublic information from the aforesaid persons.

In the context of a tender offer, there is a restriction on trading of the securities of the corporations involving in the tender offer. The following persons are prohibited from trading in specific securities when they are aware of the material nonpublic information regarding the initiation or discontinuance of the tender offer for stocks:[3]

(1) A tender offeror, its affiliated companies, an executive, employee, or agent of the tender offeror;
(2) A significant shareholders of the tender offeror;
(3) A person having authority to grant permission or authorization, give instructions or supervise the tender offeror, such as the de facto director or shadow director;
(4) A person who has entered into a contract w or is negotiating the contract with the tender offeror;
(5) An agent of a person who is in the scope of subparagraphs (2) to (4);
(6) A tippee who received the material nonpublic information regarding the initiation or discontinuance of the tender offer from the tender offeror or any other person who fall into the scope of subparagraph (1) to (5).

§ KR:69 Liabilities for Damages Arising from Insider Trading

Any person who violates insider trading law as prescribed by Article 174 of the Capital Market Act is liable to the persons who sustain damages from trading the specific securities at issue.[1] The statute of limitation for bringing law suit against the insider trading violator is within one year after knowing the violation or within three years from the day of the violation.[2]

F. TENDER OFFERS, TAKEOVERS AND OTHER CORPORATE COMBINATIONS

§ KR:70 General

Korean companies are allowed to take over other Korean or foreign companies. However, foreigners have been prohibited from acquiring Korean companies through merger and acquisition (M&A). In order to take over another firm, the acquiring company must hire a securities

[3]Capital Market Act, § 174(2).

[Section KR:69]

[1]Capital Market Act, § 175(1).

[2]Capital Market Act, § 175(2).

company to value the company's assets and work out the takeover transaction.[1] Business combinations through mergers and acquisitions may create a more competitive and viable business entity. However, a special concern in Korea is that M&A enables the *Chaebols*, the giant business conglomerate, to enhance their economic power, while small and medium businesses find it hard to expand their business. Another concern is that the expansion of business without focus by acquiring other firms has exposed the phenomenon that many family-owned businesses, including *Chaebols*, lack professional management.[2]

The rules of M&A have been relaxed since December 1997 when Korea encountered financial crisis. The purpose for relaxing the rules of M&A is to help the exit of financially troubled companies and to stimulate efficient management of Korean corporations. The new and proposed rules for M&A will be discussed in the following paragraphs. The tender offer regulation is currently set forth under Part III Chapter II Section I of the Capital Market Act.

§ KR:71 Tender Offers

Tender offers were first introduced in 1976 by the KSEA. Since its introduction, there has been very few tender offer cases because of cultural and business traditions. Under Korean culture and traditional business practice, to make tender offers to acquire another company was considered unethical. According to an article of the Chairman of the KSE, there were only five tender offers from 1994 to 1996.[1]

A tender offer is defined as any offer to purchase or any solicitation to sell securities outside the securities market as against unspecified persons. Tender offers can occur only outside the securities market i.e., outside the Korea Exchange market. The offeror may make a tender offer in cash or by issuing securities in exchange of the target company's securities or combine both means.

The tender offer provisions of the KSEA were substantially amended in January, 1997. Under the new KSEA, the tender offer provisions apply to shares, rights which may be used to purchase new shares, convertible bonds, bonds with warrants, and exchangeable bonds issued by both KOSPI and KOSDAQ companies.[2] However, the tender offer rules do not apply to companies registered with the KSFC but not listed on the KOSPI or quoted on the KOSDAQ. Previously, the tender offer provisions apply only to stocks, rights, and convertible

---

[Section KR:70]

[1]*South Korea: Company Valuation Required for M and A Transactions*, KOREA ECON. DAILY, Apr. 8, 1991.

[2]Yoon-jeong Yeom, *South Korea: Brisk South Korea Growth Spurs Merger Activity*, REUTER NEWS SERVICE—FAR EAST, Sept. 8, 1994.

[Section KR:71]

[1]Hong, *supra*, at 182.

[2]KSEA Enforcement Decree, art. 10.

bonds issued by listed companies. The amended KSEA expands the scope of securities that can become the target of tender offers and expands the application of tender offer provision to KOSDAQ companies. The tender offer provisions of the Capital Market Act apply to both the KOSPI and KOSDAQ companies. Any person intends to acquire shares of a target company outside the stock market shall make a tender offer if he/she together with his/her specially related persons will hold more than 5% of the outstanding shares of the target company.[3]

To make a tender offer, the tender offeror must first make a public notice of the tender offer through two or more newspapers circulated nationwide.[4] The public notice must contain the following information:

(1) The acquirer of the tender offer;
(2) The target company of the tender offer;
(3) The purpose of the tender offer;
(4) The class and number of stocks subject to the tender offer;
(5) The terms and conditions of the tender offer, including the period, price, and payment date of the tender offer; and
(6) The source of funding other matters prescribed by Presidential Decree as necessary for the protection of investors.[5]

Once the public notice of the tender offer has issued, the tender offeror must file the tender offer statement with the Financial Services Commission and the KRX on the same day or the next business day if the date of the public notice is a holiday.[6] After the offeror has submitted the tender offer statement to the FSC and KRX, a copy of the tender offer statement must be delivered to the target company before the statement becomes effective.[7] The target company does not have the obligation to express the opinion regarding the tender offer. However, the target company may present his opinion.[8] If he decides to deliver opinion regarding the tender offer, he must file a statement with the FSC regarding the content of the opinion.[9] The FSC will also check whether the offeror has deposited adequate funds into a designated financial institution to guarantee the completion of the tender offer.

In addition to the tender offer registration statement, the offeror must prepare a prospectus of the tender offer and make it available

---

[3]Capital Market Act, § 133(3).

[4]Capital Market Act, § 134(1). The public notice shall be published through two or more newspapers circulated nationwide among ordinary daily newspapers or specialized in economy under the Act on the Promotion of Newspapers. Enforcement Decree of Capital Market Act, § 145(1).

[5]Capital Market Act, § 134(1); Enforcement Decree of Capital Market Act, § 145(4).

[6]Capital Market Act, § 134(2).

[7]Capital Market Act, § 135.

[8]Capital Market Act, § 138(1).

[9]Capital Market Act, § 138(2).

for public inspection.[10] Once the tender offer statement becomes effective, the offeror must make a public announcement promptly. In practice, the tender offeror shall publish the required information, including the name of the offeror, the tender offer period, the purchasing price and the number of shares to be tendered, on at least two local major newspapers.

From the above discussion, a tender offer may not begin unless and until the following conditions have been met: (1) the tender offeror has filed a tender offer statement with the Financial Services Commisison and the statement has taken effect; (2) a notice of the tender offer has been delivered to the issuer of the securities (target company); (3) a written explanation has been made available for public inspection; (4) the tender offeror has made the public announcement and published the required information on major newspapers immediately after the tender offer statement takes effect; (5) a copy of the tender offer statement has been submitted to the KRX.

During the specified period of the tender offer, the offeror and persons specially related to him are prohibited from purchasing securities by any means other than the tender offer.[11] Therefore, the offeror may not purchase the securities from the stock market during the period of the tender offer. The tender offer period must be at least 20 days and no more than 60 days after the tender offer statement takes effect.[12]

Exceptionally, there are two situations that the offeror need not register with the KSEC. The first situation is where the total number of shares acquired under the tender offer is less than 10 percent of the outstanding shares. The second situation is when a company buys back its own securities from shareholders.

IV. REFORM OF FINANCIAL MARKET REGULATION IN KOREA: THE FINANCIAL INVESTMENT SERVICES AND CAPITAL MARKETS ACT

§ KR:72 Overview

The Financial Investment Services and Capital Markets Act (hereinafter the Capital Markets Act) became effective on February 4, 2009. The enactment of the Capital Markets Act effectively repealed the following laws:[1]

(1) Securities and Exchange Act
(2) Futures Trading Act
(3) Indirect Investment Asset Management Business Act

---

[10]Capital Market Act, § 137(1).

[11]Capital Market Act, § 140(1).

[12]Enforcement Decree of Capital Market Act, § 146(3).

[Section KR:72]

[1]Financial Investment Services and Capital Markets Act, Addenda, Article 2 (Repealed Acts), pp. 849–175.

(4) Trust Business Act
(5) Merchant Bank Act
(6) Securities and Futures Exchange Act

The Capital Markets Act consolidated the contents of these six repealed laws and added new principles to create a new regulatory framework. Because of the consolidation of financial investment services and capital market related laws, financial investment services and financial investment products are broadly defined to cover as comprehensively as possible. The scope of financial investment services is much broader than the securities defined under the previous KSEA. The purposes of the Capital Market Act were to further develop the securities, futures, and other financial services industry and to allow corporations to fully utilize the capital market and to support the innovation of new financial products.[2]

The Capital Market Act has changed the way the financial investment industry is regulated. In the past, different financial investment industries were regulated by separate laws and regulations. However, the Capital Market Act adopts the principle of "functional regulation" such that "each activity that has the same economic substance should, in principle, be regulated equally, no matter which financial institution is handling the matter."[3] The Capital Market Act categorizes the financial investment business into the following types:[4]

1. Investment trading business;
2. Investment brokerage business;
3. Collective investment business;
4. Investment advisory business;
5. Discretionary investment business; or
6. Trust business.

§ KR:73 Accounting and Auditing

The requirements that a company should keep accounts can be found in both the Commercial Code as well as in the Securities and Exchange Act.

§ KR:74 Commercial Code

The Commercial Code requires the directors of the stock companies to prepare the financial statements. Article 447 of the Commercial Code requires that a balance sheet, a statement of profit and loss, and a statement of earned surplus distribution or deficits disposal must be prepared. These documents must be submitted to the internal auditors six weeks prior to the annual general meeting. After receiving

[2]Joon Park, Consolidation and Reform of Financial Market Regulation in Korea, NTU L. REV., Vol. 6, No. 1, at 96–97 (2011).

[3]Joon Park, *supra*, at 98.

[4]Capital Market Act, § 6.

the financial statements, the auditors must submit their audit statement to the directors within four weeks. It is important to note that these auditors are elected and appointed by shareholders at the general meeting of shareholders. The appointment is for a term of three years. The establishment of the board of auditors is to monitor the performance of directors. Therefore, an auditor cannot be a director concurrently. Article 448 of the Commercial Code requires directors to keep the financial statements and the audit statements in the head office for public inspection for five years.

§ KR:75 Capital Market Act

Listed companies are required to file a business report to the Financial Services Commission and Korea Exchange within 90 days after the close of the business year.[1] Additionally, the half-year business report, and the first quarter and third quarter business reports shall be filed within 45 days after the close of each term.[2] For companies that are required to file a consolidated report, the half-year report, the first and third quarter business report shall be filed within 60 days after the close of each term.[3]

The business report shall include the purpose, trade name, details of the business, the remuneration of executives, and the matters regarding finance.[4] Other matters prescribed by the Presidential Decree, must also be included in the business report:[5]

1. Signatures of the representative director and the director responsible for submitting the report under Article 159(7) of the Act on the matters under subparagraphs of Article 169;
2. An overview of the company;
3. Matters concerning the organization of the company, including the board of directors, and its affiliated companies;
4. Matters concerning shareholders;
5. Matters concerning executives and employees;
6. Details of transactions with major shareholders (including their specially related persons), executives, or employees of the company;
7. Matters concerning financial affairs and annexed statements;
8. The accounting auditor's audit opinion;
9. Other matters specified and publicly notified by the Financial Services Commission as those of which it is necessary for investors to be informed.

[Section KR:75]

[1]Capital Market Act, § 159(1).

[2]Capital Market Act, § 160.

[3]Capital Market Act, § 160.

[4]Capital Market Act, § 159(2). Remuneration of executives means "total amount of remuneration paid to all executives during the pertinent business year." Enforcement Decree of Capital Market Act, § 168(1).

[5]Capital Market Act, § 159(2); Enforcement Act of Capital Market Act, § 168(2).

§ KR:76 Audit

In Korea, listed companies are required to submit only annual and semi-annual financial reports but not quarterly reports. When preparing the financial statements, such as balance sheets, income statements and statements of cash flow, these financial accounting documents must be audited by a certified auditor according to the Act on External Audit of Stock Companies.[1] Only the annual financial report must be audited. The audited financial reports are submitted to and reviewed by the Securities and Futures Commission.[2] A company which is required to appoint an external auditor according to Article 2 of the Act on External Audit of Stock Companies must obtain the approval from the shareholders' meeting.[3] In order to control the quality of accounting and auditing practices, the Enforcement Decree on External Audit of Stock Companies, was enacted.[4] Under the Enforcement Decree, the Securities and Futures Commission (under the request of the Financial Supervisory Commission) is responsible for the regulation and supervision of the accounting and auditing practices, including the surveillance of the audit reports. The SFC may take necessary follow-up measures if evidences show any violation of the Act has occurred.[5] The SFC has the power to designate or to replace the auditor of a stock list corporation in auditing the financial statement.[6] If the auditor forged, altered, damaged or destructed the protocol of an audit in violation of the Article 14-2(3) of the Act on External Audit of Stock Companies, he/she can be punished for up to five years in prison or fine for up to KR Won 30 million.[7]

V. INTERNATIONAL SECURITIES TRANSACTIONS

§ KR:77 Foreign Investment in Korea

Korea established its internationalization of stock market plan in January 1981. Indirect foreign investment in Korean stock market became possible through the establishment of international investment trusts and international funds. The international investment trusts are managed by Korean investment trust companies based in

---

[Section KR:76]

[1]Act on External Audit of Stock Companies, last amended by Act No. 10303 on May 17, 2010.

[2]Act on External Audit of Stock Companies, art. 15.

[3]Commercial Code, art. 365.

[4]Enforcement Decree on External Audit of Stock Companies (last amended by Presidential Decree No. 22493, Nov. 15, 2010).

[5]Enforcement Decree on External Audit of Stock Companies, art. 52. For example, penalties may be imposed on the accounting firm or the audit team in case of violation of the Act on External Audit of Stock Companies. Regulation on External Audit of Corporations, art. 53.

[6]Enforcement Decree on External Audit of Stock Companies, §§ 3(2), 4(4).

[7]Act on External Audit of Stock Companies, § 20(2)2.

Korea. These investment trusts are approved by the government and are available only for foreign investors. The first two international investment trusts, the Korea International Trust and the Korea Trust, were established in November 1981. Eleven additional international investment trusts were established through the year of 1990. These investment trusts are all open-end funds, managed by three Korean investment trust companies, namely Korea Investment Trust Company, Daehan Investment Trust Company, and Citizens Investment Management Trust Company, which are available for non-residents to indirectly invest in Korean securities.

Another type of investment instrument available for foreign investors is the international fund. The international funds, such as Korea Fund, Korea-Europe Fund, and Korea Asia Fund, were authorized by the Korean government. However, these funds were established according to foreign laws and were technically treated as foreign investment companies. Most of these international funds are closed-end funds and are listed on foreign stock exchanges. Investors must buy and sell the shares of these funds through the stock exchange. For instance, the Korea Fund was established according to the US Investment Act of 1940. Its shares were initially listed on the New York Stock Exchange (NYSE) in August 1984. The Korea-Europe Fund was established according to the UK law and is listed on the London Stock Exchange.

As of the end of 1997, there were 4 closed-end mutual funds (Fidelity Advisor Korea Fund, Korea Equity Fund, Korea Fund, and Korean Investment Fund) listed on the NYSE and one open-end mutual fund (Matthews Korea Fund) engage in portfolio investment solely on Korean securities. These funds are authorized by the Korean government and are established according to the US law. The reason for allowing the establishment of only closed-end mutual funds for foreign investors is concerning capital flow, monetary policy, and domestic money supply. Unlike open-end mutual fund, a closed-end fund's size is fixed; its authorized and outstanding investment units cannot be increased or decreased. Beneficiary owner of closed-end funds must purchase or redeem their beneficiary units from the open market. The money of a closed-end fund is invested and will stay in the Korean market for a longer period of time. In contrast, an open-end mutual fund can increase and decrease its fund size when investors or beneficiary owners purchase or redeem their beneficiary units. When investors redeem their shares, the open-end fund manager will have to sell part of its portfolio exchange them from Korean won to a foreign currency to repay the redemption. Therefore, the foreign open-end mutual fund increases the capital flow in and out of Korea. If amount of currency conversion is huge, it would cause the unstable exchange rate and government's control over money supply and inflation.

The Korean stock market was open to foreign investors for direct investment in January 1992. Foreign individual as well as institutional investors must register with the Securities Supervisory Board (KSSB) before they can make investment. Foreign investors are not

required to designate a standing proxy but are highly recommended to designate a standing proxy to one of the Korean securities companies, banks, or the Korean Securities Depository (KSD), which can help process investment registration and other investment related activities, such as collection of dividend. According to the statistics published by the Korea Stock Exchange, the total fund brought into Korea was US$12.6 billion in 1996 and the total inflow of investment capital amounted US$51.3 billion during the period of 1992 to September 1997. After the remittance of US$32.6 billion, a net inflow of capital for US$18.7 billion remains. From the historical number, foreign investors left most of their investment funds in Korea stock market during 1992 and 1993 and began to repatriate most of their investment capital from Korea since 1994. There were 2,745 registered foreign investors, with 1,092 individuals and 1,653 institutions at the end of 1993. Among them, investors from the United States (983), the United Kingdom (478), and Taiwan (353) account 66 percent of total registered foreign investors in Korea. The number of foreign investors in October 1997 was more than double than that in 1993. Total registered foreign investors reached 6,255 at the end of October 1997 while 1,833 were individuals. Types of foreign institutional investors include investment fund (3,101), pension fund (458), bank (234), securities company (240), insurance company (138), and others (201).

Prior to January 1992, foreign investors could invest in Korean securities only through the international investment trusts and the three international funds approved by the Korean government. Since the opening of the Korean stock market for foreign direct investment, foreign investors have more channels to invest in Korean securities. In addition to the above mentioned international investment trusts and international funds authorized by Korean government, foreign investors may choose other open-end mutual funds managed by other foreign investment trust companies or may optionally choose to invest directly by themselves.

Korea has set an investment ceiling for foreign investment since the opening of Korean stock market for direct foreign investment in January 1992. The ceiling was first set at 10 percent for aggregate foreign investment and 3 percent for individual investment. The 10 percent aggregate foreign investment ceiling means that total foreign investment in a single local company cannot exceed 10 percent of its outstanding shares. The 3 percent ceiling is to prohibit any single foreign investors from investing more than 3 percent of any single Korean company's outstanding shares. The investment ceiling has been gradually raised since 1992. The ceiling was raised to 23 percent and 6 percent for aggregate and individual foreign investment respectively in May 1997. Because of the financial crisis at the end of 1997, Korea signed a Memorandum of Understanding with the International Monetary Fund (IMF), in which the IMF agreed to extend emergency loan to Korea and Korea agreed to reform its financial structure and accelerate the opening of its capital market. As a result of the agreement between Korea and the IMF, Korea raised

its aggregate foreign investment ceiling to 50 percent and no limits on the amount that an individual foreigner may invest.

Korea completed the IMF bailout program in August 2001.[1] The Korea Stock Exchange, KOSDAQ, and the Korea Futures Exchange agreed to consolidate in 2004 and launched Korea Exchange (KRX) in January 2005. Korea Stock Exchange is currently operating as a division of the KRX.

§ KR:78 Foreign Securities Companies in Korea

As part of the open-market policy, foreign securities companies can establish branches or representative offices in Korea. This door was first opened to foreign securities firms in March 1991. In June 1991, foreign securities firms were allowed to apply for KSE membership. As of the end of 1997, there were 19 branches and 18 representative offices establish foreign securities companies or investment banks. The top two foreign branches with highest operating capital were established by Bankers Trust International and CS First Boston Ltd.

In addition to establishing a branch or representative office, foreign securities companies with minimum capital of 300 billion won may establish a joint venture securities company with Korean companies which do not belong to any of the 30 major business conglomerates (Chaebols). The minimum capital requirement for a joint venture securities company is 50 billion won. To form a joint venture securities company, the foreign company must contribute between 40 to 50 percent of the joint venture's total capital. If there are more than one foreign company participating the joint venture, at least one of the foreign companies must have at least 300 billion won of capital and contribute more than 20 percent of the total capital in the joint venture. There were three joint venture securities companies as of the end of 1996. These three joint ventures are all regular members of the KSE.

§ KR:79 Foreign Companies Listed on the KRX

Foreign companies were not allowed to issue securities in Korea before 1995. In 1995, international financial institutions were allowed to issue won-denominated bonds. The Asian Development Bank was the first international financial institution that issued won-denominated bonds (Arirang Bonds) valued US$100 million in Korea in October 1995. International Bank for Reconstruction and Development (IBRD) issued US$100 million worth of Arirang Bonds in April 1997; European Bank for Reconstruction and Development (EBRD) issued the same value of Arirang Bonds in May of the same year. Foreign companies were not allowed to issue securities and list their shares in Korea until May 1996. According to the KRX, the first

---

[Section KR:77]

[1]KRX Fact Book 2011, at 4.

foreign company applying listing on the Korea Stock Exchange occurred in July 2007.[1]

In order to be listed in the KOSPI Stock Market, a foreign company must first apply to the KRX for review of the eligibility.[2] After the KRX notifies the foreign company eligible for listing, the foreign company shall submit initial listing application to the KRX.[3] The foreign must meet the following requirements so that it can list the foreign stocks or the depositary receipts (DRs) of the foreign stocks:[4]

1. The period of operation must be at least three years;
2. Size of Business: The number of foreign stocks or DRs to be listed shall be at least 1,000,000 shares or units;
3. Stock Distribution Requirements: specified in [§ 32(1)4];
    a. If the foreign applicant has listed its shares on a foreign exchange, only [§ 32(1)4c] shall apply. In this case, the number of minority shareholders shall be determined on the basis of number of foreign stocks or DRs of foreign stocks publicly offered or distributed in Korea; and
    b. Pursuant to [§ 7-2], the number of shares acquired by the listing sponsor shall be excluded from the total number of shares issued.
4. Financial and Business Performance Requirement: Same as the requirement for domestic listing companies specified in § 32(1)5;
5. Auditor's Audit Opinion: There should be at least three fiscal years' financial statements that the auditor's audit opinions in the audit reports are unqualified.

§ KR:80 Korean Companies Listed on Foreign Stock Exchanges

The Korean government encourages well established blue chip companies to seek listing on major foreign stock exchanges. As of the end of 1997, there were three Korean companies listed on the New York Stock Exchange, twelve listed on the London Stock Exchange, and twelve listed on the Luxembourg Stock Exchange. Samsung was the first Korean company listed on the foreign stock exchange (Luxembourg Stock Exchange) on December 19, 1990. The first Korean company listed on the NYSE was Pohang Iron and Steel Company (POSCO) on October 14, 1994. These companies issued depositary receipt on the foreign stock markets when they were listed.

Before December 1997, only companies listed on the KSE were allowed to issue securities in foreign markets. On November 14, 1997, this policy changed. Companies registered with the KSDA and traded

---

[Section KR:79]

[1]KRX Fact Book 2011, at 5.

[2]KOSPI Market Listing Regulation, § 14.

[3]KOSPI Market Listing Regulation, § 19.

[4]KOSPI Market Listing Regulation, § 34.

on the KOSDAQ market have been allowed to issue securities overseas since December 1997.

§ KR:81 Korean Investors Investing in Foreign Securities

Since 1985, Korean investors have been allowed to invest in foreign securities. However, there have been restrictions applied to both individual and institutional investors. For example, Korean investors were allowed to invest only limited amounts of money in foreign securities. Before 1995, the most popular way for Korean investors to invest in foreign securities was to invest indirectly in foreign securities via investment funds managed by Korean securities investment trust companies. Korean investors hold the beneficiary certificates issued by the investment trust companies that manage portfolio investment in foreign securities. In February 1995, the restrictions on institutional investors were totally lifted. The investment restrictions on individuals were also vacated in April 1996. Currently, Korean investors can freely invest in securities listed on any foreign stock exchanges.

§ KR:82 Participation in International Securities Organizations

One of the important steps toward internationalization of local stock market is the participation in international securities organizations where members of the international organization may exchange information and learning experiences from other members. Korea has exploited this rich resource by joining the International Organization of Securities Commission (IOSCO) and the International Federation of Stock Exchanges (FIBV).

The IOSCO is an organization, whose members are securities regulatory bodies and self-regulatory organizations. Members of the IOSCO and its various Committees are benefitted from creating close linkage with other members, sharing information and experiences with other members, and establishing cooperative program to promote a more efficient, sound and transparent market domestically and internationally. The Korean Securities and Exchange Commission is the regular member of the IOSCO. The KSEC is also a member of the Emerging Markets Committee and a member of the Asia-Pacific Regional Committee under the IOSCO. The Korea Stock Exchange and the Korea Securities Dealers' Association are members of the SRO Consultative Committee.

The World Federation of Exchanges (WFE), formerly the FIBV, is a trade organization composed of 58 securities, futures, and options exchanges all over the world. Its members constitute about 97 percent of the world stock exchanges capitalization. The FIBV create a platform for its member to exchange information and experiences which will help members to develop their own stock market. Korea Stock Exchange is a member of the WFE.

VI. INVESTMENT COMPANIES AND INVESTMENT ADVISERS

§ KR:83 Historical Development of Investment Companies

There is no such entity called an investment company under the KSEA. Instead, it is commonly known as the securities investment trust company. Formerly, the securities investment trust companies were not regulated by the KSEA but by the Securities Investment Trust Business Law. In order to engage in securities investment trust business, the fund manager must obtain a license from the MOFE. The minimum capital requirement for establishing an investment trust company is 30 billion won. The first investment trust company was established in August 1974. At the end of 1996, there were 23 investment trust companies and 17 investment banking firms licensed to operate securities investment trust business. The total number of mutual funds run by these licensed companies totaled 2,866 with 7.1 million unit-holders.

Investment advisory business is carried by companies which have registered with the MOFE according to Article 70-2 of the KSEA. Individuals are not allowed to engage in investment advisory business. The investment advisory company can provide investment advice but is prohibited from being entrusted with the power to make investment decision for its client. Article 70-6 of the KSEA also prohibits an investment advisory company from engaging in any securities business, such as dealing, brokerage, and underwriting, other than the advisory business. The first investment advisory company was established in March 1988. As of the end of 1996, there were 16 investment advisory companies in Korea.

§ KR:84 Collective Investment Business Under the Capital Market Act

The Capital Market Act defines the "collective investment scheme" in the various forms of business entities. It can be in the form of trust called an investment trust.[1] It can also be in various forms under the Commercial Act and the Civil Act. It can be in the form of stock corporation (called investment company); limited liability company (called investment limited liability company); limited partnership company (called investment limited partnership company); association (called investment association); undisclosed association (called undisclosed investment association).[2] It can also be in the form of a limited partnership company investing and managing its fund in

---

[Section KR:84]

[1]Capital Market Act, § 9(18)1.

[2]Capital Market Act, § 9(18)2-6.

equity securities by issuing equity securities through private placement which is called private equity fund.[3]

A collective investment business entity shall first register with the Financial Services Commission and the FSC shall decide whether to approve the registration within 20 days.[4] Detailed rules regarding various forms of collective investment business entities are set forth in Part V (Collective Investment Schemes) Chapter II (Organization, etc. of the Collective Investment Schemes) of the Capital Market Act.

§ KR:85 Investment Advisory Business Under the Capital Market Act

An investment advisory business is defined as "a business providing advice on the value of financial investment instruments or related judgments."[1] The investment advisory business is a type of financial investment business. To engage in the investment advisory business and other types of financial investment business, a business entity must register with and authorized by the Financial Services Commission.[2] In registration, an entity must specify the following items in addition to its intention to engage in investment advisory business: (1) the range of financial investment instruments, i.e., securities, exchange traded derivatives, or over the counter traded derivatives); and (2) the class of investors.[3] An investment advisory business must retain professional advisors for investment recommendations. According to the Enforcement Decree, there must be at least one full-time executive or employee for most forms of invest advisory business entities but the minimum is four if a merchant bank is involved.[4]

VII. BROKERAGE AND DEALING BUSINESSES

§ KR:86 Historical Development

In order to conduct brokerage business in Korea, a person must obtain a license from the Ministry of Finance and Economy. Only stock corporations recommended by the Korea Stock Exchange are eligible to apply for a brokerage license. In other words, only securities companies which have met the capital and other requirements and obtained a brokerage license may engage in brokerage business. A securities company may apply for a license for a general securities company which may engage in brokerage, dealing and underwriting businesses. It may apply for any or all of the above three businesses depending on its capital strength.

---

[3]Capital Market Act, § 9(18)7.

[4]Capital Market Act, § 182(1) & (4).

[Section KR:85]

[1]Capital Market Act, § 6(6).

[2]Capital Market Act, §§ 11 & 12(1).

[3]Capital Market Act, § 18(1).

[4]Capital Market Act, § 18(2)3(a); Enforcement Decree of Capital Market Act, § 21(3).

Before April 1, 1997, in order to incorporate a securities company, disregarding the category of businesses it operates, a company must have a minimum paid-in capital of 50 billion Won (US$50 million). Beginning on April 1, 1997, a securities company is still required to have more than 50 billion Won to undertake all three types of securities businesses. However, to engage in both brokerage and dealing businesses, a securities company needs only 30 billion Won (US$30 million) of paid-in capital. The government plans to permit the establishment of a small scale of brokerage company which is required to have a minimum paid-in capital of 10 billion Won (US$10 million) beginning in April 1999. As of July 1, 1997, there were 38 licensed brokerage firms which were the members of the Korea Stock Exchange. The brokerage firms must be members of the KSE and be supervised by the KSE.

Foreigners may invest in a Korean securities company or form a joint venture with a Korean securities company as long as foreign ownership does not exceed 50 percent of the joint venture's paid-in capital. A foreign securities company may also establish a representative office or a branch to undertake securities businesses in Korea with prior approval from the MOFE. The proposed rule suggests that the restriction on foreign ownership in a Korean securities company will be removed. The proposed rule allows friendly takeover of Korean securities companies by foreigners.

§ KR:87 Investment Brokerage Business Under the Capital Market Act

The term "investment brokerage business" is defined as "a business making transactions in financial investment instruments, inducing offers, offering, and accepting offers for such instruments, or inducing offers, offering, and accepting offers for the issuance and acceptance of securities on another person's account in whosever named."[1] To engage in the investment brokerage business, the entity must register with and obtain approval from the Financial Services Commission.[2]

§ KR:88 Investment Trading Business Under the Capital Market Act

The term "investment trading business" is defined as "a business making transactions in financial investment instruments, issuing and underwriting securities, inviting offers, offering, and accepting offers for securities on its own account no matter whose name in whosever

---

[Section KR:87]

[1]Capital Market Act, § 6(3).

[2]Capital Market Act, § 12(1).

named."[1] To engage in the investment trading business, the entity must register with and obtain approval from the Financial Services Commission.[2]

VIII. RECENT TRENDS AND DEVELOPMENTS

§ KR:89 Financial Regulatory Reform

A lot of changes have occurred since the Asian financial crisis of 1997–1998. The most significant is financial regulatory reform. To better the efficiency of regulatory system and appropriate supervision of the financial market, the Korean government has restructured its financial regulatory system consolidating several regulators into one single financial regulator. The regulatory reform is designed to solve the problems that exist in the industry-specific regulatory system, i.e., lack of efficient cooperation and inconsistent regulatory philosophies among different regulators. For the above reasons, the Financial Supervisory Commission (FSC) was established on April 1, 1998. The FSC consolidated four financial regulators, the Office of Bank Supervision, the Securities Supervisory Board, the Insurance Supervisory Board, and the Non-bank Supervisory Authority. Several pieces of legislation were revised or enacted to accommodate the regulatory reform. The Bank of Korea Act was revised and the Act for the Establishment of Financial Supervisory Organizations was enacted on December 29, 1997 and the new regulatory system was created. The FSC, as the single financial regulator in Korea, currently supervises all financial institutions, including securities, banking, insurance and non-bank industries.

Under the structure of the FSC, the Securities and Futures Commission (SFC), a sub-committee, was established to supervise the securities and futures markets with the following major functions:[1]

(1) To investigate unfair trading and market manipulation in the securities and futures markets;
(2) To regulate financial accounting and auditing standards;
(3) To formulate policies regarding regulation and supervision of securities and futures markets to be reviewed and resolved by the FSC; and

---

[Section KR:88]

[1]Capital Market Act, § 6(2).

[2]Capital Market Act, § 12(1).

[Section KR:89]

[1]The Financial Supervisory Commission (FSC) has promulgated the Rules on Operation of the Securities and Futures Commission (SFC), effective on April 1, 1998 [hereinafter the SFC Operational Rules]. The SFC is composed of the Vice Chairman of the Financial Supervisory Commission and four members, who are recommended by the Chairman of the FSC and appointed by the President of the Republic of Korea. In the cases of urgent circumstance as prescribed by section 12 (1) of the SFC Operational Rules, the SFC may delegate certain powers and tasks to the Financial Supervisory Service.

(4) To administer, regulate and supervise matters regarding the securities and futures markets empowered by the FSC.

In the financial market, Korean banks were attempting to provide universal banking services. In order to prevent another financial crisis from impacting Korea's financial system, since January 2002, Korea introduced the new BIS Capital Adequacy standards to improve the soundness of the financial institutions. Under the new BIS Standard, to determine the risk of the assets of financial institutions, market risk factors, such as the exchange rate risk and interest rate risk will be considered. Governmental supervision on the financial institutions, including securities and futures companies, insurance companies, banks and other financial institutions, has also been enhanced by the promulgation of the Regulation on Examination and Sanctions against Financial Institutions.[2] The purpose for enhancing the examination on financial institutions is to "induce sound management of financial institutions, maintain fair financial transaction order and protect customers of financial institutions."[3] The examination and sanction are conducted by the Governor of the Financial Supervisory Commission. Depending on the types of misconduct, sanctions following the examination could be against the officers or the employees of the financial institutions.[4] In order to impose sanctions against a financial institution, its officer, or its employee, the Governor of the FSC must establish a committee for deliberation on the sanctions.

In 2007, the Capital Market Act, consolidating several pieces of legislations regulating the capital markets, was enacted and implemented in 2009. The regulatory reform of the capital market is an ongoing agenda. The FSC, SFC, and FSS have been actively studying the issues arising from the regulatory system and have closely cooperated with international organizations in improving the capital regulatory system.[5]

---

[2]The Regulation on Examination and Sanctions against Financial Institutions was enacted on December 29, 2000 by the FSC (FSC 2000-131), amended on February 28, 2001 (FSC 2001-10). The purpose of this Regulation is to provide rules on how to examine the financial institutions, how to process the examination results, and what sanctions shall be followed. *See* Regulation on Examination and Sanctions against Financial Institutions, section 1.

[3]Regulation on Examination and Sanctions against Financial Institutions, section 4(1).

[4]The sanctions against the officers of the financial institutions could be dismissal from office, suspension of business execution, severe disciplinary warning or disciplinary warning. Regulation on Examination and Sanctions against Financial Institutions, section 18. The sanctions against the employees of the financial institutions could be dismissal from office, suspension of office, salary reduction, and reprimand. Regulation on Examination and Sanctions against Financial Institutions, section 19.

[5]For example, Korea has been actively participating in the global regulatory reform led by the International Organization of Securities Commission and contributing to the international regulatory cooperation, joining the survey conducted by and submitting recommendations to the OECD, World Bank, IOSCO, etc. FSS 2011 ANN.

§ KR:90 Financial Crisis and Foreign Investment

The Korean stock market turmoil in the late 1997 and early 1998 was caused by unhealthy economic conditions. Many companies, commercial banks, securities companies and the government accumulated huge debt liabilities which put them into an insolvent position. For example, Coryo Securities Corporation went into bankruptcy on December 5, 1997. Many companies are highly leveraged because of heavy borrowing from banks. Problems could not be discovered and solved earlier because of the non-transparency of corporate governance.

After the Korean financial crisis in late 1997, the expectation of investors as well as the obligation of regulators is that the MOFE will formulate and implement policies that will increase the visibility and transparency of the stock market as well as the corporate governance system. Before Korea signed the agreement with the International Monetary Fund regarding the emergency loan in December 1997, foreigners were prohibited from owning more than 26 percent of a single Korean company and 21 percent in a public company; any foreign individual was prohibited from investing more than 7 percent of a company's outstanding shares or 1 percent of a public company's outstanding shares. This restriction has been eased since then. The ceiling on aggregate foreign investment in a single Korean company is now increased to 55 percent, and 25 percent for aggregate foreign investment in a public company. An individual foreign investor can own up to 50 percent in a Korean company and 3 percent in a public company. The foreign investment ceiling is expected to be further relaxed. Currently, except for limited types of companies still imposes various investment ceiling, such as telecommunication companies, most restrictions have been eased.

In the wake of unsound and non-transparent managerial practices of many Korean corporations which contributed to the financial crisis in 1997–98 and in order to rescue and restructure the corporate governance system, the corporate and securities laws have passed several tremendous improvements by the amendments of the Commercial Act as well as the introduction of the Capital Market Act in 2007. To enhance corporate governance, the Commercial Act was amended to lower the threshold for shareholders to bring derivative suits against directors and officers who conduct wrongdoings or breach of fiduciary duties. Although the Commercial Act permits derivative suit when it was enacted in 1962, shareholders have rarely brought derivative suits because of the 5% shareholding requirement for bringing the suit and lack of incentives for investors. In the wake of financial crisis and new provisions in Commercial Act, the requirement for shareholders of a listed company to bring the derivative suit

---

REP. 67.

is to hold at least 0.01 percent for a minimum of 6 months.[1] For non-listed companies, the threshold is to hold 1 percent of the outstanding shares.[2] These amendments have dramatically changed the landscape of the derivative litigation and improved the corporate governance because more suits are brought against of directors and officers.

§ KR:91 Disclosure Requirements

A company intending to make public offering must file registration statement with and accepted by the FSC.[1] After a company has publicly offered its shares, it is subject to periodical disclosure requirements. Under the new Capital Market Act, publicly traded companies are subject to periodical disclosure requirements. Previously, only annual and semi-annual business reports, including financial statements, were required to disclose. Now, a publicly traded corporation must submit the first and third quarterly business report in addition to the previous requirements.[2]

§ KR:92 Establishment and Supervision of Financial Holding Companies

As the operation and management of Korea's financial institutions are moving toward universal financial services that provide one-stop shopping for consumers on financial products and financial services, Korea has promoted the establishment of the financial holding companies. The Financial Holding Companies Act (FHCA) was enacted in October, 2000.[1] The purpose of the FHCA is to promote the sound management of the financial holding companies and their subsidiaries and to prevent the possible side effect of risk-shifting or over expansion of the financial conglomeration and the universal banking of financial companies.[2]

§ KR:93 Financial Industry Reform

In order to balance the development and to enhance the competitiveness of the financial institutions, Korea enacted the Act on the Structural Improvement of the Financial Industry, which includes

---

[Section KR:90]

[1]Korea Commercial Act, § 542-6, para. 6.

[2]Korea Commercial Act, § 403, para. 1.

[Section KR:91]

[1]Capital Market Act, § 119.

[2]Capital Market Act, § 159 (annual business report and consolidated financial statements); § 160 (semi-annual and quarterly business reports).

[Section KR:92]

[1]Financial Holding Companies Act, enacted by Act No. 6274 (Oct. 23, 2000). Enforcement Decree of Financial Holding Companies Act was enacted by Presidential Decree 17014 on Dec. 20, 2000.

[2]Financial Holding Companies Act, § 1.

merger, conversion, and reorganization of financial institutions in 2000.[1] Financial institutions covered by this Act include banks established according to the Banking Act, long-term credit banks established according to the Long-Term Credit Bank Act, securities companies and investment advisory companies established according to the KSEA, management companies established according to the Securities Investment Trust Business Act, insurance companies, trust companies, merchant banking corporations, etc.[2] Currently, the Capital Market Act has consolidated major pieces of legislations of the capital market. Banks and insurance companies are regulated separately by the Banking Act and the Insurance Act. However, the capital market, banking industry and the insurance industry are all under the supervision of the Financial Services Commission and the Financial Supervisory Service.

[Section KR:93]

[1]Act on the Structural Improvement of the Financial Industry was enacted on January 21, 2000 (Act No. 6178).

[2]Act on the Structural Improvement of the Financial Industry, art. 2.

APPENDIX KR-1

Commercial Act (Republic of Korea)

Ministry of Legislation

Table of Contents

INTRODUCTION
Details of Enactment and Amendment
Main Contents
- PART III COMPANIES
  - CHAPTER I COMMON PROVISIONS
  - CHAPTER II PARTNERSHIP COMPANY
    - SECTION 1 Incorporation
    - SECTION 2 Internal Relationship of a Company
    - SECTION 3 External Relationship of a Company
    - SECTION 4 Retirement of Members
    - SECTION 5 Dissolution of Company
    - SECTION 6 Liquidation
  - CHAPTER III LIMITED PARTNERSHIP COMPANY
  - CHAPTER IV STOCK COMPANY
    - SECTION 1 Incorporation
    - SECTION 2 Shares
      - Sub-Section 1 Shares and Share Certificates
      - Sub-Section 2 All-inclusive Share Exchange
      - Sub-Section 3 All-inclusive Transfer of Shares
    - SECTION 3 Organs of Company
      - Sub-Section 1 General Shareholders' Meeting
      - Sub-Section 2 Directors and Board of Directors
      - Sub-Section 3 Auditors and Audit Committee
    - SECTION 4 Issuance of New Shares
    - SECTION 5 Amendment of the Articles of Incorporation
    - SECTION 6 Reduction of Capital
    - SECTION 7 Accounting of Company
    - SECTION 8 Bonds
      - Sub-Section 1 Common Provisions
      - Sub-Section 2 Meetings of Bondholders
      - Sub-Section 3 Convertible Bonds

Sub-Section 4 Bonds with Warrants to Subscribe for New Shares
SECTION 9 Dissolution
SECTION 10 Merger
SECTION 11 Division of Company
SECTION 12 Liquidation
CHAPTER V LIMITED LIABILITY COMPANY
SECTION 1 Incorporation
SECTION 2 Rights and Duties of Members
SECTION 3 Management of Company
SECTION 4 Amendment of Articles of Incorporation
SECTION 5 Merger and Change of Organization
CHAPTER VI FOREIGN COMPANIES
CHAPTER VII PENAL PROVISIONS

INTRODUCTION

Details of Enactment and Amendment

Enactment: The Commercial Act is a law that regulates the existence and the relationships of the enterprises that have the purpose of profit-making, is composed of five parts, such as General Provisions, Commercial Activities, Companies, Insurance, and Maritime Commerce, was enacted on January 20, 1962 as Act No. 1000, and entered into force on January 1, 1963.

Amendment: This Act has arrived at its present form as the result of being amended eleven times, and the latest amendment was on December 29, 2001.

Main Contents

Companies are grouped into four categories: *hapmyong-hwesa* (partnership companies), *hapja-hwesa* (limited partnership companies), *joosik-hwesa* (stock companies) and *yuhan-hwesa* (limited liability companies).

A *hapmyong-hwesa* (partnership company) shall be incorporated jointly by at least two members, and no member of a *hapmyong-hwesa* may, without the consent of the other members, transfer his shares to other persons, effect any transaction which falls within the class of business carried by the company, or become a member with unlimited liability at, or a director of, another company whose business purpose is the same kind of business as the company. If no managing member is designated, each member shall represent the company, and if the assets of the company are insufficient to fully satisfy all its obligations, each member shall be jointly and severally liable to discharge the obligations. With the consent of all of the members the company

may be transformed into a *hapja-hwesa* (limited partnership company).

A *hapja-hwesa* (limited partnership company) shall be composed of members with limited liability and members with unlimited liability. Members with limited liability may not provide personal services or credits as a form of contributions, and every member with unlimited liability shall have the responsibility and duty to manage the affairs of the company unless otherwise provided in the articles of incorporation. A member with limited liability may effect a transaction which falls within the class of business carried on by the company without the consent of the other members and become a member with unlimited liability, or a director, of another company of which the business purpose is the same kind of business as the company. Also, he may transfer shares to other persons with the consent of all of the members with unlimited liability and be transformed into a *hapmyong-hwesa* (partnership company) with the consent of all of the members the company,.

A *joosik-hwesa* (stock company) shall be incorporated jointly by at least one person, and the total number of shares authorized to be issued, the par value per share, and the total number of shares to be issued at the time of incorporation shall be determined. The number of shares to be issued at the time of incorporation shall be no less than one fourth of the total number of shares authorized to be issued by the company, and the capital shall be no less than fifty million won. The par value per share shall be at least one hundred won, and shares may be transferred. A *joosik-hwesa* shall have a general shareholders' meeting, directors and the board of directors, auditors and an audit committee. The general shareholders' meeting shall be the highest organ, and the minority shareholders (shareholders who hold no less than three hundredths of the total issued and outstanding shares) may propose certain matters as issues to be resolved at the general shareholders' meeting. Directors and the board of directors shall manage the affairs of the company.

A *yuhan-hwesa* (limited liability company) shall be incorporated jointly by at least one member, the total number of members of which shall not exceed fifty, total amount of capital of which shall be at least ten million won, and the amount of each unit of contribution to which shall be no less than five thousand won and shall be equal. The liability of a member shall be limited to the amount of his contribution to the company. A member may transfer his shares pursuant to the resolution of a general members' meeting, and the company shall have one or more directors who shall represent the company.

** The Commercial Act originally consists of 5 parts, 998 articles. Due to limited space, we are forced to print only part 3 "companies", which contains the key points of the Korean corporate law. You can download the context in full at the Korea Legislation Research Institute homepage.

(http://www.klri.re.kr)

JAN. 20, 1962 ACT NO. 1000

AMENDED BY DEC. 12, 1962 ACT NO. 1212

APR. 10, 1984 ACT NO. 3724

MAY 31, 1991 ACT NO. 4372

DEC. 31, 1991 ACT NO. 4470

DEC. 22, 1994 ACT NO. 4796

DEC. 29, 1995 ACT NO. 5053

DEC. 28, 1998 ACT NO. 5591

FEB. 5, 1999 ACT NO. 5809

DEC. 31, 1999 ACT NO. 6086

JUL. 24, 2001 ACT NO. 6488

DEC. 29, 2001 ACT NO. 6545

PART III
COMPANIES

CHAPTER I
COMMON PROVISIONS

Article 169
Definition

The term "company" as used in this Act means an association incorporated for the purpose of engaging in commercial activities and/or any other profitmaking activities.

Article 170
Kinds of Companies

Companies are categorized into four kinds, namely, partnership companies, limited partnership companies, stock companies and limited liability companies.

Article 171
Company as Juristic Person and Domicile of Company

(1) A company shall be a juristic person.
(2) The domicile of a company shall be at the place of its principal office.

Article 172
Incorporation of Company

A company shall come into existence upon the registration of its incorporation at the place of its principal office.

Article 173
Restriction on Legal Capacity

A company shall not become a member with unlimited liability of another company.

Article 174
Merger of Companies

(1) A merger of companies shall be permissible.
(2) In case where one side of the constituent companies of a merger is a stock company or a limited liability company or both sides of them are stock companies or limited liability companies, the surviving company or the newly incorporated company in consequence of the merger shall be a stock company or a limited liability company.
(3) A company after its dissolution may be involved in a merger only where it is merged into an existing company and the latter company survives after the merger.

Article 175
Idem-Incorporators

(1) In case where a new company is to be incorporated in consequence of a merger, the execution of its articles of incorporation and the performance of any other activities relating to its incorporation shall be effected jointly by incorporators appointed by each of the constituent companies.
(2) Articles 230, 434 and 585 shall apply *mutatis mutandis* to the appointment under paragraph (1).

Article 176
Dissolution Order against Company

(1) The court may, upon the application by an interested person or by the public prosecutor or *ex officio,* order that a company be dissolved, in any of the following cases:
    1. Where the company was incorporated for an illegal purpose;

2. Where a company, without justifiable reasons, failed to commence its business within one year after its establishment or discontinued its business for a period of at least one year; or
3. In case where a director or a member managing the affairs of the company violated acts or subordinate statutes or the articles of incorporation of the company, as a result of which it is deemed impermissible for the company to continue its existence.

(2) In case where an application mentioned in paragraph (1) has been filed, the court may, at the request of an interested person or of the public prosecutor or *ex officio,* appoint an administrator or take any other necessary measures for the preservation of the company' properties, even before issuing the dissolution order.

(3) In case where an application mentioned in paragraph (1) has been filed by an interested person, the court may, upon the request of the company, order the applicant to furnish adequate security.

(4) In order to make the request mentioned in paragraph (3), the company shall meet the minimal showing with respect to the fact that the application was filed in bad faith.

Article 177
Starting Point of Reckoning of Registration Period

If any matter to be registered in accordance with this Part requires permission or authorization of government authorities, the period within which the registration should be made shall commence to run from the date of the arrival of the document of such permission or authorization.

CHAPTER II
PARTNERSHIP COMPANY

SECTION 1
Incorporation

Article 178
Execution of Articles of Incorporation

In order to incorporate a partnership company, articles of incorporation shall be executed jointly by at least two members of the company.

Article 179
Absolute Particulars to Be Entered in Articles of Incorporation

The articles of incorporation of a partnership company shall contain the following items and all members shall write their names and affix their seals or shall sign thereon:

1. Purpose;
2. Trade name;
3. Name, resident registration number and domicile of each member;
4. Subject-matter, value, or the basis for valuation of the contribution to be made by each member;
5. Place of the principal office; and
6. Date of execution of the articles of incorporation.

Article 180
Registration of Incorporation

The registration of incorporation of a partnership company shall contain the following particulars:

1. Matters set forth in subparagraphs 1 through 3 and 5 of Article 179 and the place of a branch office, if any: *Provided,* That if a member representing the company was designated, the domicile of other members shall be excluded;
2. Subject-matter of the contribution of each member and, in case of a contribution in kind, its value and the part already effected;
3. Period of duration or the reasons for dissolution, if such period or such reasons were determined;
4. Name of the member representing the company, if such member was designated; and
5. A provision, if any, to the effect that the company are represented jointly by two or more members.

Article 181
Registration of Establishment of Branch Office

(1) If a branch office is established simultaneously with the incorporation of the company, matters set forth in Article 180 (excluding the places of other branch offices) shall be registered at the place of such branch office within two weeks after the registration of incorporation.

(2) If a branch office is established after the incorporation of the company, the place and establishment date of such branch office shall be registered within two weeks at the place of the principal office, and the matters set forth in Article 180 (excluding the places of other branch offices) shall be registered within three weeks at the place of such branch office.

(3) Deleted.

Article 182
Registration of Transfer of Principal Office and Branch Office

(1) If a company transfers its principal office, the new place and

the transfer date shall be registered within two weeks at the previous place and the matters set forth in Article 180 (excluding the places of other branch offices) shall be registered within two weeks at the new place.

(2) If a company transfers its branch office, the new place and the transfer date shall be registered within two weeks at the place of the principal office and at the previous place of such branch office and the matters set fort in Article 180 (excluding the places of other branch offices) shall be registered within two weeks at the new place.

(3) Deleted.

Article 183
Registration of Alteration

If an alteration has occurred in any of the matters mentioned in Article 180, such alteration shall be registered within two weeks at the place of the principal office and within three weeks at the place of each branch office.

Article 183-2
Registration of Temporary Disposition, etc. on Suspension of Business Management

Where a temporary disposition to suspend the employees' business management or to appoint an agent for business management is made, or the temporary disposition is altered or revoked, the registration thereof shall be made at the registry office in a place where the head and branch offices are located.

Article 184
Action for Nullification or Revocation of Incorporation

(1) The nullity of the incorporation of a company may be asserted only by a member of the company and the revocation of the incorporation of a company may be asserted only by a person who has the right to revoke the incorporation, in both cases only by means of an action to be filed within two years after the date of the incorporation.

(2) Article 140 of the Civil Act shall apply *mutatis mutandis* to the revocation of the incorporation mentioned in paragraph (1).

Article 185
Action for Revocation of Incorporation by Creditors

If a member has incorporated a company with the knowledge that he would thereby prejudice his creditors, the creditors may demand the revocation of the incorporation of the company by means of an action filed against the member and the company.

Article 186
Exclusive Jurisdiction

The actions mentioned in Articles 184 and 185 shall be subject to the exclusive jurisdiction of the district court governing the place of the principal office of the company.

Article 187
Public Notice of Filing of Action

If an action has been filed for nullification or revocation of the incorporation of a company, the company concerned shall give public notice thereof without delay.

Article 188
Combined Hearing of Actions

If two or more actions have been filed for nullification or revocation of the incorporation of a company, the court shall hear the actions jointly.

Article 189
Correction of Defects and Dismissal of Action

The court may dismiss an action for nullification or revocation of the incorporation of a company, if the defects which were the cause for such action have been remedied in the course of the hearing and the court considers it improper to nullify or revoke the incorporation of the company in light of the present condition of the company and all other circumstances.

Article 190
Effect of Judgment

A judgment affirming the nullification or revocation of the incorporation of a company shall be effective against any third person: *Provided,* That it shall not affect the rights and duties which have arisen between any member of the company and any third person before the judgment becomes final and conclusive.

Article 191
Liability of Plaintiff who Lost

If the plaintiff in an action for nullification or revocation of the incorporation of a company has lost in such action and it is found that he willfully or by gross negligence filed such action, he shall be jointly and severally liable for damages incurred by the company.

Article 192
Registration of Nullification or Revocation of Incorporation

In case where a judgment affirming the nullification or revocation

of the incorporation of a company has become final and conclusive, such fact shall be registered at the place of the principal office and branch offices of the company.

Article 193
Effect of Judgment Affirming Nullification or Revocation of Incorporation

(1) In case where a judgment affirming the nullification or revocation of the incorporation of a company has become final and conclusive, the company shall be liquidated as if the company had been dissolved.
(2) In case of paragraph (1), the court may appoint a liquidator upon the application by any member of the company and by any other interested person.

Article 194
Nullification or Revocation of Incorporation and Continuance of Company

(1) If a judgment affirming the nullification or revocation of the incorporation of a company has become final and conclusive and the cause for such nullification or revocation involves only a particular member, the company may continue to exist with the unanimous consent of all the other members.
(2) In case of paragraph (1), the member in respect of whom the cause for the nullification or revocation involves shall be deemed to have retired from the company.
(3) Article 229 (2) and (3) shall apply *mutatis mutandis* to the cases under paragraphs (1) and (2) above.

SECTION 2
Internal Relationship of a Company

Article 195
Applicable Provisions

Unless otherwise *provided* by the articles of incorporation or by this Act, the provisions concerning partnerships of the Civil Act shall apply *mutatis mutandis* to the internal relationship of a partnership company.

Article 196
Contribution of Claim Rights

A member who has contributed a claim right shall be responsible for the performance of such claim, if the obligor fails to perform the obligation thereof by the time for performance. In this case, the member shall not only pay for the interests but also shall be liable for any damages sustained thereby.

Article 197
Transfer of Share

No member shall, without the consent of all the other members, transfer all or a part of his share in the company to another person.

Article 198
Prohibition of Competitive Business by Members

(1) No member shall, without the consent of all the other members, effect for his own account or for the account of a third person, any transaction which falls within the class of business carried on by the company or become a member with unlimited liability or a director of another company whose business purpose is the same kind of business as the company.

(2) In case where any member has effected a transaction violating paragraph (1), the company may regard such transaction as effected for the account of the company if such transaction was effected for such member's own account, and the company may demand such member to transfer any profit accrued therefrom if such transaction was effected for the account of a third person.

(3) Paragraph (2) shall not affect any claim for damages by the company against the member concerned.

(4) The rights mentioned in paragraph (2) shall be exercised by a resolution of the majority of other members of the company and shall lapse after the passage of two weeks from the date on which any one of other members has become aware of such transaction or after the passage of one year from the date on which such transaction was effected.

Article 199
Self-Transaction of Members

A member may effect a transaction with the company for his own account or for the account of a third person only if a resolution approving such transaction has been adopted by the majority of other members of the company. In this case, Article 124 of the Civil Act shall not apply.

Article 200
Right and Duty of Management of Affairs

(1) Unless otherwise *provided* by the articles of incorporation, each member has the right and duty to manage the affairs of the company.

(2) If other members raise an objection with respect to the management of affairs by a member, the member shall immediately cease such act and follow the decision by the majority of all the members.

Article 200-2
Authority of Agent for Business Management

(1) Except as otherwise stipulated in the temporary disposition order, an agent for business management under Article 183-2 shall not perform any act which does not fall under regular business of a corporation: *Provided,* That the same shall not apply to any case where a permit has been obtained from the court.

(2) Where an agent for business management has committed an act in contravention of the provisions of paragraph (1), the company shall be liable to a third person acting in good faith for any act.

Article 201
Managing Members

(1) If one or more members are designated by the articles of incorporation as managing members, those members shall have the right and duty to manage the affairs of the company.

(2) If other managing members raise an objection with respect to the management by a managing member, the managing member shall immediately cease such act and follow the decision of the majority of all the managing members.

Article 202
Joint Managing Members

In case where several members are designated by the articles of incorporation to jointly manage the affairs of the company, any act of management shall not be taken without the consent of all such joint managing members: *Provided,* That this shall not apply if there is a fear of delay.

Article 203
Appointment and Dismissal of Manager

Unless otherwise *provided* by the articles of incorporation, the appointment and dismissal of a manager shall be decided by a majority of all the members, even where managing members have been designated.

Article 204
Amendment of Articles of Incorporation

The consent of all the members shall be required in order to amend the articles of incorporation.

Article 205
Adjudication of Forfeiture of Power against Managing Member

(1) If a managing member is clearly unfit for performing his duties

or he has breached his material duties, the court may, upon the application of a member, adjudicate the forfeiture of the power against such managing member.

(2) When a judgment mentioned in paragraph (1) has become final and conclusive, such fact shall be registered at the place of the principal office and branch offices of the company.

Article 206
Applicable Provision

Article 186 shall apply *mutatis mutandis* to an action mentioned in Article 205.

SECTION 3
External Relationship of a Company

Article 207
Representation of Company

If a company has not designated managing members in charge of the management of affairs by the articles of incorporation, each of the members shall represent the company. If several managing members have been designated to take charge of the management, each of them shall represent the company: *Provided,* That the company may specifically designate a person who shall represent the company from among such managing members, by the articles of incorporation or with the unanimous consent of all the members.

Article 208
Joint Representation

(1) A company may, either by the articles of incorporation or with the unanimous consent of all the members, provide that two or more members shall jointly represent the company.

(2) Even in case of paragraph (1), any declaration of intention made by a third person to the company shall be effective by giving such declaration of the intention to any one of the joint representative members.

Article 209
Authorities of Representative Member

(1) The representative member is authorized to do all judicial or extra-judicial acts relating to the business of the company.

(2) Any restriction placed on the authorities mentioned in paragraph (1) may not be asserted against a third person acting in good faith.

Article 210
Liability for Damages

In case where the representative member has caused damages to another person by his act of the business administration of the company, the company and such representative member shall be jointly and severally liable for such damages.

Article 211
Representation in Legal Actions between Company and Members

If no representative member exists in case of an action filed by a company against its member or an action filed by a member of a company against the company, a member who shall represent the company on such action shall be selected by a resolution of a majority of all the other members.

Article 212
Liability of Members

(1) If the assets of a company are insufficient to fully satisfy its obligations, all the members shall be jointly and severally liable for the performance of the obligations.
(2) Paragraph (1) shall also apply if a compulsory execution of judgement on the company's assets has proved ineffective.
(3) Paragraph (2) shall not apply if any member proves that the company is capable of performing its obligations and that the execution can easily be effected.

Article 213
Liability of Incoming Members

A member admitted to a company after its establishment shall assume the same liability as other members with respect to the obligations of the company incurred prior to his admission.

Article 214
Defenses of Members

(1) In case where a claim is raised against a member with respect to the company's obligations, the member may raise, against the claimant, any defense which the company might have asserted.
(2) If the company has a right of set-off, cancellation or rescission against the claimant, the member may refuse performance in respect of a claim under paragraph (1).

Article 215
Liability of a self styled Member

In case where a person who is not a member of a company has

acted in a manner to induce others to misconceive him as a true member, he shall assume the same liability as if he were a true member against any person who has effected a transaction with the company due to such misconception.

Article 216
Applicable Provisions

Articles 205 and 206 shall apply *mutatis mutandis* to the representative members of a company.

SECTION 4
Retirement of Members

Article 217
Member's Right to Retire from Company

(1) In case where the articles of incorporation of a company do not fix the duration of the company or they provide that the company shall continue to exist during the life of a particular member, any member may retire at the end of any business year: *Provided,* That he shall give an advance notice six months prior to the retirement.

(2) In case where unavoidable reasons exist, any member may retire at any time.

Article 218
Reasons for Retirement of Members

In addition to Article 217, a member shall retire from the company for any of the following reasons:

1. Occurrence of any event specified in the articles of incorporation;
2. Consent of all the members;
3. Death;
4. Incompetency;
5. Bankruptcy; or
6. Expulsion.

Article 219
Notice of Succession of Rights at Death of Member

(1) In case where the articles of incorporation provide that if a member dies, his successor may succeed to the deceased member's rights and duties against the company to become a member, the successor shall dispatch a notice of either succession or renunciation to the company within three months from the date on which he has become aware of the commencement of succession.

(2) If three months have elapsed without the successor's notice mentioned in paragraph (1), the successor shall be deemed to have renounced the right to become a member.

Article 220
Adjudication of Expulsion

(1) If any of the following reasons exists in respect of a member, the company may, by a resolution of the majority of all the other members, demand that the court adjudicate the expulsion of such member:
1. Where such member has failed to perform a duty to contribute;
2. Where such member has acted in violation of Article 198 (1);
3. Where such member has committed a dishonest act with respect to the management of the affairs or the representation of the company, or where such member has managed the affairs of the company or represented the company without authority; or
4. Where there is any other important reason.

(2) Articles 205 (2) and 206 shall apply *mutatis mutandis* to the cases under paragraph (1).

Article 221
Settlement of Accounts between Expelled Member and Company

The settlement of accounts between the expelled member and the company shall be effected according to the status of the company's property when an action for expulsion was filed, and legal interest shall accrue therefrom.

Article 222
Refund of Share

A retired member shall be entitled to refund of his share even where his contribution was in the form of personal services or credit: *Provided,* That this shall not apply if provided otherwise by the articles of incorporation.

Article 223
Seizure of Share

A seizure of a member's share of the company shall be effective with regard to his right to demand a dividend and a refund on the share for the future.

Article 224
Demand of Retirement of Member by Creditor who Seized Member's Share

(1) A creditor who seized a member's share in the company may cause the member to retire at the end of a business year: *Provided,* That he shall give an advance notice to the company and the member concerned six months prior to the retirement.

(2) The advance notice mentioned in the proviso of paragraph (1) shall lose its effect when the member concerned performs his obligations or furnishes an adequate security.

Article 225
Liability of Retired Member

(1) A retired member shall be liable, as if he continued to be a member, for the obligations of the company incurred before the registration of his retirement has been effected at the place of the principal office, for the period of two years subsequent to the above registration.

(2) Paragraph (1) shall apply *mutatis mutandis* to a member who has transferred his share in the company to other persons.

Article 226
Retired Member's Right to Demand Change in Trade Name

In case where the name of a retired member has been used in the company's trade name, such member may demand the company to cease the use of such name.

SECTION 5
Dissolution of Company

Article 227
Reasons for Dissolution

A company shall be dissolved for any of the following reasons:

1. Expiration of the duration of the company or occurrence of any events specified in the articles of incorporation;
2. Consent of all the members;
3. Where there is only one member left;
4. Merger;
5. Bankruptcy; or
6. Order or judgment of the court.

Article 228
Registration of Dissolution

In case of the dissolution of a company for reasons other than

merger or bankruptcy, such fact shall be registered within two weeks at the place of the principal office and within three weeks at the place of each branch office, both period starting from the date on which the reason for dissolution comes into existence.

Article 229
Continuance of Company

(1) In cases of subparagraphs 1 and 2 of Article 227, the company may continue to exist with the consent of all or some of the members: *Provided,* That the dissenting members shall be deemed to have retired.

(2) In case of subparagraph 3 of Article 227, the company may continue to exist by admitting a new member.

(3) In case of paragraphs (1) and (2), if the registration of dissolution was already effected, the continuance of existence of a company shall be registered within two weeks at the place of the principal office and within three weeks at the place of each branch office.

(4) Article 213 shall apply *mutatis mutandis* to the liabilities of an incoming member pursuant to paragraph (2).

Article 230
Resolution of Merger

The consent of all the members shall be required for a merger of a company.

Article 231
Deleted

Article 232
Objections by Creditors

(1) Within two weeks from the date of the resolution on a merger, the company shall give to its creditors a public notice demanding the submission of an objection, if any, against the merger within a specified period of time and shall give a peremptory notice to the respective creditors known to the company. In this case, the said period shall be no less than one month.

(2) A creditor who fails to raise an objection within the period set forth in paragraph (1) shall be deemed to have approved the merger.

(3) If a creditor has raised an objection, the company shall perform its obligations to the creditor or furnish adequate security, or entrust a property of reasonable value to a trust company to the same purpose.

Article 233
Registration of Merger

In case of a merger, the registration of alteration by the surviving company, the registration of dissolution by the merged company and the registration of incorporation by the newly incorporated company in consequence of a merger shall be effected within two weeks at the place of the principal office and within three weeks at the place of each branch office.

Article 234
Effective Date of Merger

A merger of companies shall take effect when the surviving company or the newly incorporated company in consequence of a merger has effected registration set forth in Article 233 at the place of its principal office.

Article 235
Effect of Merger

The surviving company or the newly incorporated company in consequence of a merger shall succeed to the rights and duties of the merged company.

Article 236
Filing of Action for Nullification of Merger

(1) The nullification of a merger of companies shall be asserted only by means of an action, which may be brought by the members, liquidators, trustee in bankruptcy of each company or by those creditors of each company who do not approve such merger.
(2) The action under paragraph (1) shall be filed within six months from the date of the registration under Article 233.

Article 237
Applicable Provisions

Article 176 (3) and (4) shall apply *mutatis mutandis* where the creditors of a company have filed an action under Article 236.

Article 238
Registration of Nullification of Merger

When a judgment affirming the nullification of merger has become final and conclusive, the registration of alteration by the surviving company, the registration of restitution by the merged company and the registration of dissolution by the newly incorporated company shall be effected at the place of the principal office and each branch office.

Article 239
Final Judgment of Nullification and Reversion of Rights and Duties of Companies

(1) When a judgment affirming the nullification of merger has become final and conclusive, the companies which have effected a merger shall be jointly and severally liable to perform any obligation that the surviving company or the newly incorporated company in consequence of the merger has incurred after the merger.

(2) Any property which has been acquired after the merger by the surviving company or the newly incorporated company in consequence of the merger shall be owned in common by the companies which have effected the merger.

(3) If, in case of paragraphs (1) and (2), the companies have failed to determine the proportions of assumption of liabilities or the proportions of the common ownership, the court shall, upon the application of such companies, determine those proportions, by taking into account the status of the property of each company as of the time of the merger and all other circumstances.

Article 240
Applicable Provisions

Articles 186 through 191 shall apply *mutatis mutandis* to the action for nullification of merger.

Article 241
Demand for Dissolution by Members

(1) Where unavoidable reasons exist, any member may apply to the court for dissolution of the company.

(2) Articles 186 and 191 shall apply *mutatis mutandis* to the case under paragraph (1).

Article 242
Change of Organization

(1) With the consent of all the members a partnership company may be transformed into a limited partnership company either by making a particular member become a member with limited liability or by admitting a new member with limited liability.

(2) Paragraph (1) shall apply *mutatis mutandis* to the continuance of existence of a company pursuant to Article 229 (2).

Article 243
Registration of Change of Organization

When a partnership company has been transformed into a limited

partnership company, the registration of dissolution by the partnership company and the registration of incorporation by the limited partnership company shall be effected within two weeks at the place of the principal office and within three weeks at the place of each branch office.

Article 244
Liability of Person who Has Become Member with Limited Liability in Consequence of Change of Organization

A person who has been a member of a partnership company but now becomes a member with limited liability in accordance with Article 242 (1) shall not be relieved of the unlimited liability with respect to the obligations of the company which had been incurred before the registration under Article 243 was effected at the place of the principal office, for the period of two years subsequent to the said registration.

SECTION 6
Liquidation

Article 245
Company in Process of Liquidation

To the extent of the objectives of the liquidation, a company shall be deemed to continue to exist even after its dissolution.

Article 246
Where Several Successors of Share Exist

In case where there are two or more successors upon the death of a member after dissolution of a company, they shall designate one person from among themselves to exercise the rights of a member in connection with the liquidation. If there is no such designation, the company's notice or peremptory notice made upon any one of the successors shall be effective upon all the successors.

Article 247
Voluntary Liquidation

(1) The method of disposal of the properties of a dissolved company may be determined by the articles of incorporation or with the consent of all the members. In this case, an inventory and a balance sheet shall be prepared within two weeks from the date on which the reason for dissolution occurred.
(2) Paragraph (1) shall not apply in case of the dissolution of a company pursuant to subparagraph 3 or 6 of Article 227.
(3) Article 232 shall apply *mutatis mutandis* to the case under paragraph (1).
(4) If, in case of paragraph (1), there is any person who has seized

a member's share in the company, the consent of such person shall be required.

(5) The company under paragraph (1) shall register the completion of liquidation within two weeks at the place of its principal office and within three weeks at the place of its branch office after the disposal of properties is completed.

Article 248
Voluntary Liquidation and Protection of Creditors

(1) If a company has harmed its creditors by disposing of its properties in violation of Article 247 (3), the creditors may apply to the court for the revocation of such disposal.

(2) Article 186 of this Act and the proviso of Article 406 (1), Articles 406 (2) and 407 of the Civil Act shall apply *mutatis mutandis* to the application for the revocation mentioned in paragraph (1).

Article 249
Protection of Creditors who Have Seized Share

If a company has disposed of its properties in violation of Article 247 (4), the creditor who has seized a member's share in the company may demand that the company pay an amount equivalent to the value of such share. In this case, Article 248 shall apply *mutatis mutandis.*

Article 250
Legal Liquidation

If the method of disposal of the properties of a dissolved company has not been determined pursuant to Article 247 (1), liquidation shall be carried out in accordance with Articles 251 through 265 except for the cases of a merger or a bankruptcy.

Article 251
Liquidator

(1) In case of the dissolution of a company, a liquidator shall be appointed by a resolution of the majority of all the members.

(2) When a liquidator has not been appointed, the managing member shall become a liquidator.

Article 252
Liquidator Appointed by Court

In case of the dissolution of a company pursuant to subparagraph 3 or 6 of Article 227, the court shall appoint a liquidator on the application of any member, any interested person or the public prosecutor or *ex officio.*

Article 253
Registration of Liquidators

(1) The following particulars shall be registered within two weeks at the place of the principal office and within three weeks at the place of each branch office, which periods shall commence to run from the date of appointment of a liquidator if a liquidator has been appointed or from the date of the dissolution if the managing member has become a liquidator:
   1. Name, resident registration number and address of the liquidator: *Provided,* That if a representative liquidator has been appointed from among several liquidators, addresses of liquidators other than the representative liquidators shall be excluded;
   2. Name of the representative liquidator if such has been appointed; and
   3. Provisions to the effect that two or more liquidators shall jointly represent the company, if so determined.

(2) Article 183 shall apply *mutatis mutandis* to the registration under paragraph (1).

Article 254
Duties and Powers of Liquidators

(1) A liquidator shall have the following duties:
   1. To wind up pending affairs;
   2. To collect claims and to perform obligations;
   3. To dispose of assets for realization; and
   4. To distribute surplus assets.

(2) In case where there are two or more liquidators, acts in connection with the duties of liquidation shall be determined by a resolution of the majority of the liquidators.

(3) The representative liquidator is authorized to do all judicial or extra-judicial acts in connection with the duties mentioned in paragraph (1).

(4) Article 93 of the Civil Act shall apply *mutatis mutandis* to a partnership company.

Article 255
Representation of Company by Liquidator

(1) In case where the managing member has become a liquidator, he shall represent the company as heretofore provided.

(2) In case the court appoints two or more liquidators, the court may designate one who is to represent the company or may decide upon joint representation by several of them.

Article 256
Duties of Liquidator

(1) A liquidator shall, without delay after his inauguration, investigate the status of the company's properties, prepare an inventory list and a balance sheet and deliver copies thereof to respective members.

(2) A liquidator shall report on the progress of the liquidation at any time that any member requests him to do so.

Article 257
Transfer of Business

In case where a liquidator intends to transfer all or part of the business of a company, a resolution of a majority vote of all the members shall be required.

Article 258
Impossibility of Full Satisfaction of Obligations and Demand for Contribution

(1) If the existing properties of a company are insufficient to fully satisfy its obligations, a liquidator may demand the members to make their contributions irrespective of the time for performance.

(2) The amount of contribution in paragraph (1) shall be determined in proportion to the ratio of the share by each member.

Article 259
Performance of Obligations

(1) A liquidator may perform the obligations of the company which have not yet come due.

(2) In case of paragraph (1), an obligation in respect of which no interest was stipulated, the amount of the obligation deducted by the legal interest up to the time for performance shall be paid.

(3) Paragraph (2) shall apply *mutatis mutandis* to an obligation in respect of which the stipulated interest is less than the legal interest rate.

(4) In case of paragraph (1), conditional obligations, obligations with uncertain duration and any other obligations whose value is uncertain shall be performed according to the valuation of an expert appointed by the court.

Article 260
Distribution of Surplus Assets

A liquidator shall not distribute the properties of the company to its members until all the obligations of the company have been performed

completely: *Provided,* That he may distribute the surplus assets after reserving the properties necessary for the performance of such obligation in dispute.

Article 261
Dismissal of Liquidator

A liquidator appointed by the members may be dismissed by a resolution of a majority vote of all the members.

Article 262
Idem

If a liquidator is clearly unfit for performing his duties or he has breached his material duties, the court may, upon the application of a member or any interested person, dismiss such liquidator.

Article 263
Termination of Duties of Liquidator

(1) When the duties of a liquidator have been completed, he shall without delay prepare a statement of account and deliver a copy thereof to each member for approval.

(2) If a member who has received the statement of account in paragraph (1) has failed to raise an objection thereto within one month, he shall be deemed to have approved it: *Provided,* That this shall not apply where a liquidator has committed some dishonest act.

Article 264
Registration of Completion of Liquidation

Upon the completion of liquidation, a liquidator shall register such fact within two weeks at the place of the principal office and within three weeks at the place of each branch office from the date of approval of all the members in accordance with Article 263.

Article 265
Mutatis Mutandis *Applicable Provisions*

The provisions of Articles 183-2, 199, 200-2, 207, 208, 209 (2), 210, 382 (2), 399 and 401 shall apply *mutatis mutandis* to liquidators.

Article 266
Preservation of Books and Documents

(1) The books and records as well as important documents relating to the business and liquidation of a company shall be preserved for ten years after the completion of liquidation is registered at the place of the principal office: *Provided,* That the slips or similar documents shall be preserved for five years.

(2) In case of paragraph (1), the custodian and the method of preservation shall be determined by a resolution of a majority vote of all the members.

Article 267
Extinction of Member's Liability

(1) A member's liability under Article 212 shall extinguish when five years have elapsed from the date of the registration of dissolution at the place of the principal office.

(2) Even after the lapse of the period mentioned in paragraph (1) if there remains surplus assets which have not been distributed, creditors of a company may demand the performance of obligations in respect of such surplus assets.

CHAPTER III
LIMITED PARTNERSHIP COMPANY

Article 268
Organization of Company

A limited partnership company shall be composed of members with unlimited liability and members with limited liability.

Article 269
Applicable Provisions

Unless otherwise provided in this Chapter, the provisions governing partnership companies shall apply *mutatis mutandis* to limited partnership companies.

Article 270
Absolute Particulars to Be Entered in Articles of Incorporation

The articles of incorporation of a limited partnership company shall state all the particulars mentioned in Article 179 and shall additionally specify whether the liability of each member is limited or unlimited.

Article 271
Matters to Be Registered

With respect to the registration of incorporation of a limited partnership company, it shall be registered whether each partner's liability is limited or not, in addition to the matters as set forth in Article 180.

Article 272
Contribution by Member with Limited Liability

Members with limited liability shall not contribute personal credits or services.

Article 273
Right and Duty of Management of Affairs

Unless otherwise provided by the articles of incorporation, each member with unlimited liability shall have the right and duty to manage the affairs of the company.

Article 274
Appointment and Dismissal of Manager

The appointment and dismissal of a manager shall be decided by a resolution of a majority vote of members with unlimited liability even where managing members have been designated.

Article 275
Freedom to Engage in Competitive Business by Member with Limited Liability

A member with limited liability may, without the consent of the other members, effect for his own account or for the account of a third person any transaction which falls within the class of business carried on by the company or become a member with unlimited liability or a director of another company whose business purpose is the same kind of business as the company.

Article 276
Transfer of Share of Member with Limited Liability

With the consent of all the members with unlimited liability, a member with limited liability may transfer to another person the whole or part of his share in the company. The same shall apply even where such transfer is to be accompanied by an amendment of the articles of incorporation.

Article 277
Right to Monitor by Member with Limited Liability

(1) A member with limited liability may, at the end of each business year but only during business hours, inspect the account books, balance sheets and other documents of the company and may investigate its business and the state of its property.

(2) In case where any material reason exists, a member with limited liability may, with the permission of the court, conduct the inspection and investigation mentioned in paragraph (1) at any time.

Article 278
Prohibition on Management and Representation by Member with Limited Liability

A member with limited liability shall neither manage the affairs of the company nor represent the company.

Article 279
Liability of Member with Limited Liability

(1) A member with limited liability shall be liable to perform the obligations of the company to the extent of the amount of his contribution deducting the amount which has been already paid.

(2) If any dividends have been distributed, notwithstanding the fact that the company accrued no profit, such amount shall be added in determining the liability for performance.

Article 280
Liability in Case of Decrease in Contribution

In case where the contribution of a member with limited liability has been reduced, he shall not be relieved of the liabilities under Articles 279 with regard to any obligation of the company which has been incurred prior to the registration of such reduction at the place of the principal office, for the period of two years after such registration.

Article 281
Liability of a Self-Styled Member with Unlimited Liability

(1) In case where a member with limited liability has acted in a manner to induce others to misconceive him as a member with unlimited liability, he shall assume the same liability as if he were a member with unlimited liability against any person who has effected a transaction with the company due to such misconception.

(2) Paragraph (1) shall apply *mutatis mutandis* where a member with limited liability has acted in a manner to mislead others as to the extent of his liability.

Article 282
Liability of Member whose Liability Has Been Changed

Article 213 shall apply *mutatis mutandis* where a member with limited liability has become a member with unlimited liability and Article 225 shall apply *mutatis mutandis* where a member with unlimited liability has become a member with limited liability.

Article 283
Death of Member with Limited Liability

(1) Upon the death of a member with limited liability, his successor shall succeed to the share of the deceased in the company and shall become a member.

(2) Where, in case of paragraph (1), there are two or more successors, they shall appoint from among themselves one person who shall exercise the right of the member. If there is no such

appointment, the company's notice or peremptory notice made upon any one of the successors shall be effective upon all the successors.

Article 284
Incompetence of Member with Limited Liability

A member with limited liability shall not be subject to retirement, even if he is adjudged incompetent.

Article 285
Dissolution and Continuance of Company

(1) A limited partnership company shall be dissolved if either all the members with unlimited liability or all the members with limited liability have retired from the company.
(2) The members, either with unlimited liability or with limited liability, remaining in case of paragraph (1), may, with the unanimous consent among themselves, continue the company by admitting a member with limited liability or a member with unlimited liability.
(3) Articles 213 and 229 (3) shall apply *mutatis mutandis* to the cases under paragraph (2).

Article 286
Change of Organization

(1) With the consent of all the members, a limited partnership company may transform its organization to a partnership company and continue to exist.
(2) In case where all the members with limited liability have retired from the company, the members with unlimited liability may, with the unanimous consent among themselves, transform its organization to a partnership company and continue to exist.
(3) In cases of paragraphs (2) and (3), the registration of dissolution shall be effected by the limited partnership company, and the registration of incorporation shall be effected by the partnership company, within two weeks at the place of the principal office and within three weeks at the place of each branch office.

Article 287
Liquidator

A liquidator of a limited partnership company shall be appointed by a resolution of the majority of the members with unlimited liability. If there is no such appointment, the managing member who has been in charge of the management shall become a liquidator.

CHAPTER IV
STOCK COMPANY

SECTION 1
Incorporation

Article 288
Promoters

In order to incorporate a stock company, the promoters shall prepare the articles of incorporation.

Article 289
Preparation of Articles of Incorporation, Absolute Particulars to Be Entered Therein

(1) Each promoter shall prepare, write his name and affix his seal or sign on, the articles of incorporation, in which the following particulars shall be contained:
   1. Purpose;
   2. Trade name;
   3. Total number of shares authorized to be issued;
   4. Par value per share;
   5. Number of shares to be issued at the time of incorporation;
   6. Place of principal office;
   7. Method of public notice;
   8. Name, residence registration number and address of each promoter; and
   9. Deleted.

(2) The number of shares to be issued at the time of incorporation shall be no less than a fourth of the total number of shares authorized to be issued by the company.

(3) Public notices by a company shall be given by inserting them in the Official Gazette or in a daily newspaper in which matters relating to current events are published.

Article 290
Particulars of Abnormal Incorporation

The following matters shall be effective by being stated in the articles of incorporation:

1. Any special benefits to be received by promoters and names of such promoters;
2. Name of the person who is to make a contribution in kind, the type, quantity and value of the subject-matter of such contribution in kind and the class and number of shares to be given in consideration thereof;

3. The class, number and value of the property which has been agreed to be transferred to the company after its incorporation and the name of the transferor; and
4. The expenses for incorporation which are to be borne by the company and the amount of promoter's compensation.

Article 291
Determination of Matters Concerning Issuance of Shares at Time of Incorporation

Unless otherwise provided in the articles of incorporation, the following matters in connection with the shares to be issued at the time of incorporation shall be determined with the unanimous consent among the promoters:

1. Class and number of shares; and
2. If the company is to issue shares at the price higher than the par value, the number of such shares and the price.

Article 292
Authentication of Articles of Incorporation

The articles of incorporation shall take effect upon authentication by a notary public.

Article 293
Subscription of Shares by Promoters

Each promoter shall subscribe for shares in writing.

Article 294
Deleted

Article 295
Payment of Subscription Price and Performance of Contribution in Kind in Promotion of Incorporation

(1) In case where the promoters have subscribed for all of the shares to be issued at the time of incorporation, they shall without delay make full payment of the subscription price. In this case, they shall designate the bank or other financial institution at which the subscription price is to be paid and the place of payment.

(2) A promoter who is to make a contribution in kind shall, without delay, on the date fixed for the payment of the subscription price, deliver the pertinent property and, if registration, recording or the creation or transfer of a right is required, the promoter shall completely prepare the documents thereon and deliver them to the company.

Article 296
Appointment of Officers in Promotion of Incorporation

(1) When the payment of subscription price and the performance of contribution in kind have been completed in accordance with Article 295, the promoters shall without delay appoint the directors and auditors by a majority vote.

(2) The promoters shall have one vote per each share which they have subscribed for.

Article 297
Preparation of Minutes by Promoters

The promoters shall prepare and write their names and affix their seals or sign on the minutes of the meeting, in which the proceedings of deliberation and the results thereof shall be entered.

Article 298
Investigation and Reporting by Director and Auditor, and Request for Appointment of Inspector

(1) The director and auditor shall, without delay after their appointment, investigate whether or not all matters concerning the incorporation of the company have complied with the relevant acts, subordinate statutes and the articles of incorporation, and report the results thereof to the promoters.

(2) Any director and auditor who was a promoter, or is now a contributor in kind or a party to a contract whereby the company is to take over a property after its incorporation shall not participate in the investigation and reporting mentioned in paragraph (1).

(3) If all of the directors and auditors are subject to paragraph (2), the directors shall have a notary public make the investigation and reporting mentioned in paragraph (1).

(4) In case where the articles of incorporation provide for any matter set forth in Article 290, the directors shall request the court to appoint an inspector for the purpose of conducting the investigation on such matter: *Provided,* That this shall not apply to the case of Article 299-2.

Article 299
Investigation and Reporting by Inspector

(1) The inspector shall investigate any matter set forth in Article 290 and whether or not the contribution in kind has been performed pursuant to Article 295 and shall report the results thereof to the court.

(2) The inspector shall, without delay after he has prepared a report of investigation under paragraph (1), deliver a copy of it to each promoter.

(3) Where any statement in the report of investigation is contrary to the true fact, the promoters may submit an explanatory note thereon to the court.

Article 299-2
Certification of Contribution in Kind, etc.

With respect to the matters set forth in subparagraphs 1 and 4 of Article 290 the investigation and reporting by a notary public may substitute for the investigation of the inspector mentioned in Article 299 (1) and with respect to the matters set forth in subparagraphs 2 and 3 of Article 290 and the performance of contribution in kind pursuant to Article 295, the appraisal by a certified appraiser may substitute for the investigation of the inspector mentioned in Article 299 (1). In this case, the notary public or appraiser shall report on the results of the investigation or appraisal to the court.

Article 300
Disposition of Alteration by Court

(1) If the court has found any of the matters falling under Article 290 to be improper after examining the investigation reports by an inspector or notary public or the results of appraisal by an appraiser and an explanatory note by the promoters, it may alter such matters and notify each promoter thereof.
(2) A promoter who disagrees to an alteration under paragraph (1) may revoke the subscription of his shares. In this case, the procedures for the incorporation may be continued by amending the articles of incorporation.
(3) If no promoter revokes the subscription of his shares within two weeks after receiving the notification from the court, the articles of incorporation shall be deemed to have been amended in accordance with the notification.

Article 301
Offer of Shares in Case of Subscriptive Incorporation

Where the promoters do not subscribe for all the shares issued at the time of incorporation, they shall offer shares for subscription.

Article 302
Offer of Share Subscription and Particulars to Be Entered in Subscription Form

(1) A person who intends to subscribe for shares shall complete two copies of subscription form, in which the class and number of shares for which he is to subscribe and his address are stated, and shall write his name and affix his seal or shall sign thereon.
(2) The promoters shall prepare the subscription form, in which the following particulars shall be stated:

1. Date on which the articles of incorporation were authenticated, and the name of the notary public;
2. Matters set forth in Articles 289 (1) and 290;
3. Duration or reasons for dissolution of the company, if determined;
4. Class and number of shares subscribed by promoters;
5. Matters set forth in Article 291;

5-2. A provision that transfer of shares shall be subject to the approval of the board of directors, if so determined;

6. Distribution of interest prior to the commencement of business, if determined;
7. Redemption of shares out of profits to be distributed to shareholders, if determined;
8. A statement to the effect that the subscription of shares may be cancelled if the inaugural general meeting is not closed by a fixed date;
9. Bank and any other financial institution in charge of the payment of the subscription price and the place of payment; and
10. Name, address and business office of a transfer agent, if any.

(3) The proviso of Article 107 (1) of the Civil Act shall not apply to the offer of share subscription.

Article 303
Duties of Subscribers

A person who has subscribed for shares shall be responsible for the payment of the subscription price in accordance with the number of shares allotted to him by the promoters.

Article 304
Notice or Peremptory Notice to Subscribers, etc.

(1) Any notice or peremptory notice to a person who has subscribed for shares or who has applied for subscription for shares may be delivered to his address stated in the certificate of the share subscription or the subscription form for shares or to the address notified to the company by such person.

(2) The notice or peremptory notice under paragraph (1) shall be deemed to have delivered at the time when it would normally have arrived.

Article 305
Payment of Subscription Price for Shares

(1) When all the shares to be issued at the time of incorporation have been subscribed for, the promoters shall without delay have the subscription price be fully paid by the subscribers.

(2) The payment under paragraph (1) shall be made at the place as prescribed in the subscription form for shares.

(3) Article 295 (2) shall apply *mutatis mutandis* to the cases under paragraph (1).

Article 306
Change of Depository, etc. of Payment

A change of the depository at which the subscription price shall be kept and of the place of payment shall be subject to approval of the court.

Article 307
Procedures for Forfeiture of Subscriber's Rights

(1) In case where a person who has subscribed for shares fails to make the payment in accordance with Article 305, the promoters shall fix a certain date and shall, before two weeks prior to such date, give such person a notice to the effect that such person's right shall be forfeited if he fails to make the payment by such date.

(2) If the person who has received the notice under paragraph (1) fails to perform the payment by such date, his rights shall be forfeited. In this case, the promoters may again offer such shares for subscription.

(3) Paragraphs (2) and (3) shall not affect any claim for damages against the person concerned who has subscribed for shares.

Article 308
Inaugural General Meeting

(1) In case where the payment pursuant to Article 305 and the performance of the contribution in kind have been completed, the promoters shall without delay convene an inaugural general meeting.

(2) Articles 363 (1) and (2), 364, 368 (3) and (4), 368-2, 369 (1), 371 (2), 372, 373, 376 through 381 and 435 shall apply *mutatis mutandis* to the inaugural general meeting.

Article 309
Resolutions at Inaugural General Meeting

At the inaugural general meeting, resolutions shall be adopted by affirmative votes of at least two-thirds of the total votes of attending subscribers and also by affirmative votes representing a majority of the total number of shares which have been subscribed.

Article 310
Investigation in Case of Abnormal Incorporation

(1) If any matter set forth in Article 290 has been determined by

the articles of incorporation, the promoters shall request the court for the appointment of an inspector to investigate such matters.

(2) A written report of the inspector mentioned in paragraph (1) shall be submitted to the inaugural general meeting.

(3) The proviso of Article 298 (4) and Article 299-2 shall apply *mutatis mutandis* to the investigation under paragraph (1).

Article 311
Reporting by Promoters

(1) The promoters shall report in writing on the matters relating to the incorporation of the company, at the inaugural general meeting.

(2) The written report under paragraph (1) shall specify the following:

1. General circumstances concerning subscription of shares and payment of subscription price; and
2. Actual conditions regarding matters mentioned in Article 290.

Article 312
Election of Officers

At the inaugural general meeting, directors and auditors shall be elected.

Article 313
Investigation and Reporting by Directors and Auditors

(1) The directors and auditors shall, without delay after their inauguration, investigate whether all matters concerning the incorporation of the company have complied with the relevant acts, subordinate statutes and the article of incorporation and shall report the results thereof to the inaugural general meeting.

(2) Article 298 (2) and (3) shall apply *mutatis mutandis* to the investigation and reporting under paragraph (1).

(3) Deleted.

Article 314
Alteration of Matters Concerning Abnormal Incorporation

(1) If the inaugural general meeting finds any of the matters falling under Article 290 to be improper, it may alter them.

(2) Article 300 (2) and (3) shall apply *mutatis mutandis* to the cases under paragraph (1).

Article 315
Claim for Damages against Promoters

Article 314 shall not affect any claim for damages against the promoters.

Article 316
Resolution for Amending Articles of Incorporation and Abandoning Incorporation

(1) At the inaugural general meeting, a resolution calling for amending the Articles of incorporation or abandoning the incorporation of the company may be adopted.

(2) A resolution under paragraph (1) may be adopted even where such matter has not been stated in the convocation notice for the meeting.

Article 317
Registration of Incorporation

(1) The registration of incorporation of a stock company shall be effected within two weeks from the date on which the procedures in accordance with Articles 299 and 300 have been completed, in case where the promoters subscribed for all the shares issued at the time of incorporation, and within two weeks from the date on which the inaugural general meeting has been closed or from the date on which the procedures in accordance with Article 314 have been completed, in case where the promoters have offered shares for subscription.

(2) For the registration under paragraph (1), the following matters shall be registered:

1. Matters set forth in Article 289 (1) 1 through 4, 6 and 7;
2. Total amount of the capital;
3. Total number and class of the outstanding shares and contents and number of each class of shares;
3-2. Provision that the transfer of shares shall be subject to the approval of the board of director, if so determined;
3-3. Provision under which stock option is granted, if determined;
3-4. Places of branch offices;
4. Duration or reasons for dissolution of the company, if determined;
5. Dividend of interest prior to the commencement of business, if determined;
6. Redemption of shares out of profits to be distributed to shareholders, if determined;
7. Matters set forth in Article 347, if convertible shares are issued;
8. Name and residence registration number of each director and auditor;

9. Name, residence registration number and address of the representative director;
10. Provision that two or more representing directors shall jointly represent the company, if so determined;
11. Trade name and the principal office of a transfer agent, if any; and
12. Name and resident registration number of each auditor of the audit committee, if such committee has been set up.

(3) Matters set forth in paragraph (2) 1, 4, 9 and 10 shall be included in the registration to be made in case of establishing a new branch or transferring a branch, at the place of such newly established branch or the changed place of such transferred branch.

(4) Articles 181 through 183 shall apply *mutatis mutandis* to the registration of a stock company.

Article 318
Certification and Liability by Depository for Paid Subscription Price

(1) A bank and other financial institution which have had the custody of the subscription price paid shall deliver the certificate as to the amount of money which are in its custody on demand by a promoter or a director.

(2) The bank and other financial institution under paragraph (1) may not assert, in respect of the amount of money duly certified to be in its custody, non-performance, in whole or in part, of such payment or any restriction upon the return of such amount against the company.

Article 319
Transfer of Rights Deriving from Share Subscription

The transfer of any right deriving from the subscription of shares shall not be effective against the company.

Article 320
Restrictions on Asserting Nullity or Revocation of Share Subscription

(1) After the company comes into existence, no subscriber of shares may assert the nullity of his subscription by reason of defects in any requirement for the subscription form for shares, nor may revoke his subscription on the ground of fraud, duress or mistake.

(2) The same shall apply even before the company comes into existence, if the subscriber has attended, and has exercised his rights at, the inaugural general meeting.

Article 321
Promoter's Warranty Liability for Subscription and Payment

(1) In case where, after the company comes into existence, any shares issued at the time of incorporation of the company have not been subscribed or the subscription for certain shares has been revoked, the promoters shall be deemed to have subscribed for such shares jointly.

(2) In case where, after the company comes into existence, shares upon which payment of the subscription price in accordance with Article 295 (1) or 305 (1) has not been completed, the promoters shall make such payment jointly and severally.

(3) Article 315 shall apply *mutatis mutandis* to the cases under paragraphs (2) and (3).

Article 322
Promoter's Liability for Damages

(1) If promoters have neglected to perform their duties in connection with the incorporation of the company, they shall be jointly and severally liable for damages to the company.

(2) If promoters have failed to perform their duties willfully or by gross negligence, they shall be jointly and severally liable for damages to third persons.

Article 323
Joint and Several Liability of Promoters and Officers

If directors or auditors have neglected to perform their duties under Article 313 (1) and are thereby liable for damages to the company or to third persons and if promoters are also liable therefor, the directors, auditors and promoters shall be liable for such damages jointly and severally.

Article 324
Release of Promoter's Liability and Derivative Suits by Shareholders

Articles 400, and 403 through 406 shall apply *mutatis mutandis* to promoters.

Article 325
Inspector's Liability for Damage

If an inspector appointed by the court has failed to perform his duties willfully or by gross negligence, he shall be liable for damages to the company or to third persons.

Article 326
Promoter's Liability where Company Fails to Come into Existence

(1) If the company fails to come into existence, the promoters shall be jointly and severally liable for all acts conducted in connection with the incorporation of the company.
(2) In case of paragraph (1), the promoters shall be responsible for any expenditures incurred in connection with the incorporation of the company.

Article 327
Liability of Self-styled Promoter

A person who has consented to have his name and any statement indicating his participation in the incorporation of the company entered in the application form for subscription and/or in any other documents which have been issued in connection with the offering of shares for subscription shall assume the same liability as that of a promoter.

Article 328
Action for Nullity of Incorporation

(1) The nullity of the incorporation of a company may be asserted only by the shareholders, directors or auditors and only by means of an action which shall be filed within two years from the date on which the company comes into existence.
(2) Articles 186 through 193 shall apply *mutatis mutandis* to the action mentioned in paragraph (1).

SECTION 2
Shares

Sub-Section 1 Shares and Share Certificates

Article 329
Formation of Capital and Par Value per Share

(1) The capital of a stock company shall be no less than fifty million won.
(2) The capital of a stock company shall be divided into shares.
(3) The par value per share shall be equal.
(4) The par value per share shall be at least one hundred won.

Article 329-2
Share Split

(1) A company may split shares by a resolution of a general meeting of shareholders in accordance with Article 434.

(2) In case of paragraph (1), the par value per share after the split shall not be less than the amount under Article 329 (4).

(3) The provisions of Articles 440 through 444 shall apply *mutatis mutandis* to a share split under paragraph (1).

Article 330
Restriction on Issuance of Share, Below Par

Shares may not be issued at a price less than the par value: *Provided,* That this shall not apply to the case of Article 417.

Article 331
Liability of Shareholder

The liability of a shareholder shall be limited to the subscription price which he has paid for his shares.

Article 332
Liability of Person who Subscribed for Shares under Fictitious Name or Another Person's Name

(1) A person who has subscribed for shares either in the name of a fictitious person or in the name of another person without such another person's consent shall assume the liability as a subscriber.

(2) A person who has subscribed for shares in the name of another person with such another person s consent shall have joint and several liability with such another person for the payment of subscription price for shares.

Article 333
Ownership of Shares in Common

(1) Persons who have subscribed for shares jointly shall be jointly and severally liable for the payment of the subscription price.

(2) In case where a share belongs to an ownership in common of two or more persons, they shall designate one from among themselves who is to exercise the rights of a shareholder.

(3) In case where no one is designated to exercise the rights of a shareholder, a notice or peremptory notice required to be given to the owners in common may be given to any one of them.

Article 334
Prohibition of Set-off by Shareholder against Company

A shareholder may not assert a set-off against the company with respect to payment of the subscription price for shares.

Article 335
Transferability of Shares

(1) Shares may be transferred to other persons: *Provided,* That

the articles of incorporation may subject the transfer of shares to be approved by the board of directors.

(2) The transfer of shares which is not approved by the board of directors in contravention of the proviso of paragraph (1) shall have no effect against the company.

(3) The transfer of shares made before the issuance of share certificates shall have no effect against the company: *Provided,* That it shall not be the case if six months have passed after the existence of the company or the date of the payment of the subscription price for new shares.

Article 335-2
Request for Approval of Transfer

(1) In case where the transfer of shares requires the approval of the board of directors, the shareholder intending to transfer his shares may request in writing the company to approve the transfer, by specifying the contemplated transferee and the class and number of the shares to be transferred.

(2) The company shall notify in writing the shareholder of whether or not it approves the transfer, within one month after the request under paragraph (1) is made.

(3) If the company fails to notify the shareholder of its refusal within the period set forth in paragraph (2), the board of directors shall be deemed to have approved the transfer of shares.

(4) The shareholder who has received the notification of the refusal to approve the transfer in accordance with paragraph (2) may request the company to designate the alternative transferee or to purchase the shares, within twenty days after receiving the notification.

Article 335-3
Request for Designation of Alternative Transferee

(1) If a shareholder requests the company to designate an alternative transferee, the board of directors shall designate one and notify in writing the shareholder and the designated person thereof, within two weeks after the request is made.

(2) If the board of directors fails to notify the shareholder of the designation of the alternative transferee within the period set forth in paragraph (1), the board of directors shall be deemed to have approved the transfer of shares.

Article 335-4
Claim for Sale by Designated Transferee

(1) Any person designated as the alternative transferee in accordance with Article 335-3 (1) may request in writing the shareholder who made the request for such designation to sell the shares to him within ten days after he receives the notification of such designation.

(2) Article 335-3 (2) shall apply *mutatis mutandis* to the case where the person designated as the alternative transferee fails to make the request for sale within the period set forth in paragraph (1).

Article 335-5
Determination of Sale Price

(1) In case of Article 335-4, the sale price of the shares concerned shall be determined through a negotiation between the shareholder and the person requesting the sale.

(2) In case where a negotiation under paragraph (1) is not effected within 30 days from the date of receiving the request under Article 335-4 (1), the provisions of Article 374-2 (4) and (5) shall apply *mutatis mutandis*.

Article 335-6
Right of Shareholders to Request Purchase of Share

Article 374-2 (2) through (5) shall apply *mutatis mutandis* where the shareholder requests the company to purchase the shares in accordance with Article 335-2 (4).

Article 335-7
Request for Approval by Transferee of Shares

(1) In case where the transfer of shares is subject to the approval of the board of directors, any person who has acquired the shares may request the company in writing to approve such acquisition, by specifying the class and number of the acquired shares.

(2) Article 335-2 (2) through (4), and 335-3 through 335-6 shall apply *mutatis mutandis* to the cases under paragraph (1).

Article 336
Method of Transfer of Shares

(1) Share certificates shall be delivered for the transfer of shares.

(2) A possessor of a share certificate shall be presumed to be a due holder thereof.

Article 337
Requirements for Setting up of Transfer of Registered Shares against Company

(1) The transfer of a registered share shall not be asserted against the company, unless the name and address of the transferee have been entered in the register of shareholders.

(2) A company may designate a transfer agent in accordance with the articles of incorporation. In this case, if the transfer agent

has entered the name and address of the transferee in the register of shareholders, the entry of a change of shareholders under paragraph (1) shall be deemed to have been duly effected.

Article 338
Pledging of Registered Shares

(1) In order to have a registered share pledged, the share certificate shall be delivered to the pledgee.

(2) Unless the pledgee possesses the share certificate, he shall not assert his pledge right against third persons.

Article 339
Subrogation of Pledge

In case of redemption, consolidation, split or conversion of shares, a pledge over the original shares may be extended to the money or shares which the original shareholder is to receive in consequence thereof.

Article 340
Registered Pledge on Registered Shares

(1) If, with respect to a pledge created over a registered share, the company has, at the request of the pledgee, entered the name and address of the pledgee in the register of shareholders and entered his name in the share certificate, the pledgee may receive from the company the dividends of profits or interest, the distribution of surplus assets or money mentioned in Article 339, and may apply them to the satisfaction of his claims due to him in preference to other creditors.

(2) Article 353 (3) of the Civil Act shall apply *mutatis mutandis* to the case under paragraph (1) above.

(3) A pledgee under paragraph (1) may demand that the company deliver the share certificate of the share mentioned in Article 340.

Article 340-2
Stock Option

(1) The company may, in accordance with the articles of incorporation, grant by the resolution of the general shareholders' meeting in accordance with Article 434 the option to purchase new shares or shares it owns (hereinafter referred to as "stock option") at a fixed price established in advance(hereinafter referred to as "fixed price for stock option") to its directors, auditors or other employees who have contributed or will be able to contribute to the promotion of its incorporation and management, technological innovation and the like. *Provided,*

That, in case the fixed price for the stock option is lower than the current price of the stock concerned, the company may compensate for the difference between the two prices with cash or its own shares which are equivalent to the difference. In this case, the current stock price shall be appraised as of the date of the exercise of the stock option.

(2) The stock option mentioned in paragraph(1) shall not be granted to persons who fall under any of the following subparagraphs:
   1. A shareholder who holds 10/100 or more of the total outstanding shares of the company excluding the shares without voting rights;
   2. A person who in reality exercises his influence over important matters relating to the management of the company such as the appointment or dismissal of directors and auditors and the like; and
   3. The spouse, lineal ascendants or descendents of the person falling under subparagraph 1 or 2.

(3) The number of new shares to be issued or the company's own shares to be assigned under paragraph(1) shall not exceed 10/100 of the total outstanding shares of the company.

(4) The fixed price for the stock option shall be no less than the prices mentioned in the following subparagraphs:
   1. In the case of issuing new shares, either their current price or their face value, whichever is higher as of the date of the granting of the stock option
   2. In the case of assigning the company's own shares, their current price as of the date of the granting of the stock option.

Article 340-3
Granting of Stock Option

(1) The following particulars shall be entered in the provisions of the articles of incorporation concerning the stock option under paragraph(1) of Article 340-2:
   1. A statement to the effect that stock option may be granted in specified cases;
   2. Classes and number of shares to be issued or assigned in consequence of the exercise of stock option;
   3. Qualifications of a person who may be granted stock option;
   4. Period within which stock option may be exercised; and
   5. A statement to the effect that the granting of the stock option may be revoked by the resolution of the board of directors under certain conditions.

(2) In adopting a resolution concerning the granting of stock option at the general shareholders' meeting, the following matters shall be determined:

1. Names of persons who are to be granted the stock option;
2. Method by which the stock option is granted;
3. Matters concerning a fixed price for stock option and an adjustment thereof;
4. Period within which the stock option may be exercised; and
5. Classes and number of shares to be issued or assigned to each of the persons to be granted the stock option in case he exercises the stock option.

(3) The company shall enter into contract with the optionee who has been granted the stock option and prepare a written contract thereon within a reasonable time frame.

(4) The company shall keep the written contract as set forth in paragraph(3) at its principal office until the expiration of the period within which the stock option may be exercised in order that its shareholders may inspect the contract during its office hours.

Article 340-4
Exercise of Stock Option

(1) The stock option under Article 340-2(1) may be exercised only when the stock optionee has been in the service of the company for two years or more from the date when the matters relating to subparagraphs of Article 340-3(2) were determined by the resolution of the general shareholders' meeting.

(2) The stock option under Article 340-2(1) shall not be transferable to another person: *Provided,* That, in the case of the death of the optionee entitled to exercise the stock option under Article 340-2(1), his heir thereto may exercise it.

Article 340-5
Applicable Provisions

Article 350(2), the latter part of article 350(3), Articles 351 and 516-8(1), (3) and (4), and the former part of Article 516-9 shall apply *mutatis mutandis* where new shares are to be issued in consequence of the exercise of the stock option.

Article 341
Acquisition of Company's Own Shares

A company may not acquire its own shares on its own account, except in the following cases:

1. In case of the redemption of shares;
2. In case of a merger of companies or an acquisition of the entire business of another company;
3. Where it is necessary to do so for achieving the objective in the course of exercising the rights of the company;

4. Where it is necessary to deal with the fractional shares; and
5. Where a shareholder exercises the right to request the company to purchase his shares.

Article 341-2
Acquisition of Its Own Shares for Granting of Stock Option

(1) In the case of the acquisition of its own shares either for the purpose of assigning them under Article 340-2(1) or by the transfer of shares from its outgoing directors, auditors or other employees, the company may, on its account, acquire such shares of its own within the limits not exceeding 10/100 of the total outstanding shares: *Provided,* That the total amount to be paid for the acquisition shall be within such limits as shall not affect the availability of dividends to shareholders in accordance with Article 462(1).

(2) In case the company, under paragraph(1), acquires its own shares for value from a shareholder who holds shares exceeding 10/100 of the total outstanding shares, a resolution in accordance with Article 434 shall be adopted in the general shareholders' meeting with respect to the matters set forth in the following subparagraphs. In this case, the company shall acquire the foregoing shares of its own within six months after the resolution by the general shareholders' meeting:
   1. Name of the shareholder who desires to assign his shares;
   2. Classes and number of shares to be acquired; and
   3. Amount to be paid for the acquisition of its own shares.

(3) In case of the acquisition of its own shares under paragraph(1), the company shall dispose of the shares within a reasonable period of time.

(4) Article 433(2) shall apply *mutatis mutandis* to the general shareholders' meeting under paragraph(2).

Article 341-3
Receipt of Company's Own Shares as Pledge

A company may not take its own shares as an object of a pledge in excess of a twentieth of the total number of outstanding shares: *Provided,* That such limit shall not apply in case of subparagraph 2 or 3 of Article 341.

Article 342
Disposition of Company's Own Shares

In case of subparagraph 1 of Article 341, the company shall, without delay, cancel the shares, and in the cases of subparagraphs 2 through 5 of Article 341, and the proviso of Article 341-3, it shall dispose of the shares or the pledge within reasonable period.

Article 342-2
Acquisition of Parent Company's Shares by Subsidiary Company

(1) In case where a company (hereinafter referred to as "the parent company") holds more than 50/100 of the total outstanding shares of another company (hereinafter referred to as "the subsidiary company"), the subsidiary company may not acquire shares of the parent company, except in the following cases:
   1. In case of the all-inclusive exchange and all-inclusive transfer of stocks, the merger of companies or the acquisition of the entire business of another company; and
   2. Where it is necessary to do so for achieving the objective in the course of exercising the rights of the company.

(2) In case of respective subparagraphs of paragraph (1), the subsidiary company shall dispose of the shares of the parent company within six months after its acquisition.

(3) If a parent company and its subsidiary company in aggregate hold, or a subsidiary company by itself holds, more than 50/100 of the total outstanding shares of another company, such another company shall be deemed to be subsidiary company of the parent company for the purpose of the application of this Act.

Article 342-3
Acquisition of Another Company's Shares

If a company acquires more than 10/100 of the total outstanding shares in another company, it shall without delay notify such another company thereof.

Article 343
Retirement of Shares

(1) Shares may be retired only in accordance with the provisions of this Act relating to the reduction of capital: *Provided,* That this shall not apply to the case of the retirement of shares effected out of profits to be distributed to shareholders in accordance with the articles of incorporation.

(2) Articles 440 and 441 shall apply *mutatis mutandis* in case of the retirement of shares.

Article 343-2
Retirement of Shares by Resolution of General Meeting

(1) A company may retire the shares after purchasing them under a resolution of the regular general meeting pursuant to Article 434, in addition to a case under Article 343.

(2) The kind and total number of shares to be purchased, the total sum of acquired values and the available period for share

purchases shall be determined by a resolution at the general meeting under paragraph (1).

(3) In case of paragraph (2), the total sum of acquired values of shares to be purchased shall not exceed the amount obtained by subtracting the amount under each subparagraph of Article 462 (1) from the net assets value on the balance sheet.

(4) In case of paragraph (2), the available period for share purchase shall not pass the closing date of the general meeting regarding the first period of settlement of accounts after the resolution under paragraph (1).

(5) A company shall not purchase shares under paragraph (1) in case where it is feared that the net assets value on the balance sheet for the period of settlement of accounts in the relevant business year falls short of the total sum of each subparagraph of Article 462 (1).

(6) Notwithstanding the net assets value on the balance sheet for the period of settlement of accounts in the relevant business year falls short of the total sum of each subparagraph of Article 462 (1), if a company retires the shares after purchasing them under paragraph (1), the directors are jointly and severally liable to indemnify the company against the relevant insufficient amount. In such case, the provisions of Article 462-3 (4) (proviso) shall apply *mutatis mutandis*.

Article 344
Different Classes of Shares

(1) A company may issue two or more classes of shares which are different in respect of their particulars as to the dividends of profits or interest or the distribution of the surplus assets.

(2) In case of paragraph (1), the articles of incorporation shall provide for the contents and number of each class of shares and shall also provide the minimum dividend rate with respect to a class of shares having any preferential right as to the dividend of profits.

(3) If the company issues different classes of shares, special provisions may be made from class to class with respect to the subscription for new shares, the consolidation, split, or redemption of shares or the allotment of shares in consequence of a merger or split of companies, even where no such matters have been provided in the articles of incorporation.

Article 345
Redeemable Shares

(1) In case of Article 344, the company may provide that a class of shares, having preferential right as to a dividend may be redeemed out of profits.

(2) In case of paragraph (1), the price, time and method of the

redemption of shares and the number of redeemable shares shall be stated in the articles of incorporation.

Article 346
Issuance of Convertible Shares

(1) If a company issues different classes of shares, the articles of incorporation may provide that a shareholder may demand the shares subscribed by the shareholder to be converted into shares of another class. In this case, the conditions of conversion, the period within which the conversion may be demanded, and the number and contents of the shares to be issued in consequence of the conversion shall be prescribed.

(2) The number of shares to be issued in consequence of the conversion shall be reserved in each class of shares under Article 344 (2) within the period mentioned in paragraph (1).

Article 347
Procedures of Issuance of Convertible Shares

In case of Article 346 (1), the following particulars shall be stated in the subscription form for shares or the certificate of preemptive rights to new shares:

1. A statement to the effect that the shares concerned may be converted into shares of another class;
2. Conditions of conversion;
3. Contents of the shares to be issued in consequence of the conversion; and
4. Period within which the conversion may be demanded.

Article 348
Issue Price of Shares to be Issued in Consequence of Conversion

If shares are to be issued in consequence of the conversion, the issue price of such new shares shall be that of the shares which existed before the conversion.

Article 349
Demand for Conversion

(1) A person demanding the conversion shall submit to the company two copies of written demand together with the share certificates.

(2) The written demand mentioned in paragraph (1) shall contain the class and number of shares to be converted and the date of the demand. The shareholder demanding conversion shall write his name and affix his seal or sign on it.

(3) Deleted.

Article 350
Effective Date of Conversion

(1) Conversion of shares shall take effect at the time when it is demanded.

(2) Any shareholder of the shares converted during the period mentioned in Article 354 (1) may not exercise the voting right at the general shareholders' meeting held during such period.

(3) With regard to a dividend of profit or interest to be distributed to the shares converted pursuant to paragraph (1), the conversion shall be deemed to have been effected at the end of the business year in which the conversion is demanded. However, the articles of incorporation may provide that with respect to a dividend of profit or interest to be distributed to the new shares, the conversion shall be deemed to have been effected at the end of the business year immediately before the business year in which the conversion is demanded.

Article 351
Registration of Conversion

The registration for changes caused by the conversion of shares shall be made at the place of the principal office, within two weeks from the last day of the month in which the conversion is demanded.

Article 352
Particulars to Be Entered in Register of Shareholders

(1) In case where registered shares are issued, the following particulars shall be entered in the register of shareholders:
   1. Name and address of each shareholder;
   2. Class and number of shares held by each shareholder;
   2-2. Serial number of the share certificates when the share certificates have been issued for shares held by each shareholder; and
   3. Date of acquisition of each share.

(2) If bearer share certificates are issued, the register of shareholders shall state the class, number, serial number and issuance date of such certificates.

(3) If, in case of paragraphs (1) and (2), convertible shares are issued, the register of shareholder shall also contain the particulars set forth in Article 347.

Article 353
Effect of Register of Shareholders

(1) Any notice or peremptory notice to a shareholder or a pledgee may be effective if sent to the address entered in the register of shareholders or other address notified to the company by such person.

(2) Article 304 (2) shall apply *mutatis mutandis* to the notice or peremptory notice under paragraph (1).

Article 354
Suspension of Alteration of Register of Shareholders and Record Date

(1) In order to determine the person who shall exercise the voting right, receive dividends or exercise other rights as a shareholder or a pledgee, the company may suspend the alteration of entry in the register of shareholders for a specified period or it may deem any shareholder or pledgee whose name appears in the register of shareholders on a specified date to be the shareholder or pledgee who shall be entitled to exercise such rights.

(2) The period mentioned in paragraph (1) shall not exceed three months.

(3) The date mentioned in paragraph (1) shall be determined to be a day within three months prior to the date on which the person may exercise the rights as a shareholder or pledgee.

(4) If a company has determined the period or the date mentioned in paragraph (1), it shall give public notice thereof two weeks in advance: *Provided,* That this shall not apply where such period or date has been determined by the articles of incorporation.

Article 355
Time to Issue Share Certificates

(1) A company shall without delay issue share certificates after it has come into existence or after the date of payment on new shares.

(2) No share certificate may be issued before the existence of the company or the date of payment for new shares.

(3) Share certificates issued in contravention of paragraph (2) shall be null and void: *Provided,* That this shall not affect any claim for damages against those who have issued them.

Article 356
Particulars to Be Entered in Share Certificates

Each share certificate shall contain the following particulars and a serial number and the representative director shall write his name and affix his seal or shall sign thereon:

1. Trade name of the company;
2. Date on which a company has come into existence;
3. Total number of shares authorized to be issued by the company;
4. Par value per share;

5. If the shares are issued after the existence of the company, date of issuance of such certificates.
6. Class and contents of shares, if there are different classes of shares;
6-2. Provision that any transfer of shares shall be subject to the approval of the board of directors, if determined;
7. Matters set forth in Article 345 (2), if redeemable shares have been issued; and
8. Matters set forth in Article 347, if convertible shares have been issued.

Article 357
Issuance of Bearer Share Certificates

(1) A bearer share certificate may be issued only if it is so provided in the articles of incorporation.
(2) A shareholder may at any time demand of the company that a bearer share certificate be converted into a registered share certificate.

Article 358
Exercise of Rights by Shareholders Holding Bearer Share Certificates

The owner of a bearer share certificate may not exercise his rights as a shareholder unless he deposits his share certificate with the company.

Article 358-2
Non-bearing of Share Certificates

(1) Unless otherwise provided in the articles of incorporation, any shareholder may declare to the company that he will not bear share certificates as to his registered shares.
(2) Upon receiving the declaration mentioned in paragraph (1), the company shall without delay enter in the register of shareholders and part of a set thereof its statement that it will not issue the share certificates and notify the shareholder thereof. In this case, the company may not issue the share certificates concerned.
(3) In case of paragraph (1), any share certificates issued previously shall be submitted to the company and the company shall invalidate them or deposit them with a transfer agent.
(4) Notwithstanding paragraphs (1) through (3), a shareholder may demand at any time that the company issue or return the share certificates.

Article 359
Bona Fide Acquisition of Share Certificates

Article 21 of the Check Act shall apply *mutatis mutandis* to share certificates.

Article 360
Judgment of Nullification and Re-issuance of Share Certificates

(1) A share certificate may be invalidated by undergoing the procedures of public summons.

(2) A person who has lost his share certificates shall not request the company to re-issue them, unless he has obtained a judgment of nullification with respect thereto.

Sub-Section 2 All-inclusive Share Exchange

Article 360-2
Incorporation of Complete Parent Company by All-inclusive Exchange of Shares

(1) A company may become the company (hereinafter referred to as the "complete parent company") possessing the total number of issued shares of another company by an all-inclusive share exchange under the provisions of this Sub-Section. In such case, the said another company shall be called the "complete subsidiary".

(2) The shares owned by the shareholders of the company becoming the complete subsidiary by an all-inclusive share exchange (hereafter in this Sub-Section, referred to as the "share exchange") shall be transferred to the company becoming the complete parent company by the share exchange on the day of share exchange; and the shareholders of the company becoming the said complete subsidiary shall become the shareholders of the company becoming the said complete parent company by receiving the allocation of new shares to be issued by the company becoming the said complete parent company for the share exchange.

Article 360-3
Preparation of Contract for Share Exchange and Approval of Shareholders' General Meeting

(1) A company which intends to make a share exchange shall prepare a contract for share exchange and obtain an approval of the shareholders' general meeting.

(2) The resolution for an approval under paragraph (1) shall be governed by the provisions of Article 434.

(3) Matters falling under any of the following subparagraphs shall be entered on the share exchange contract:
1. Where the company becoming a complete parent company alters the articles of incorporation due to the share exchange, the relevant provisions;
2. Matters on the total number and kinds of new shares to be issued by the company becoming a complete parent company, and the number of such shares by kind, and on the allocation of new shares to the shareholders of the company becoming a complete subsidiary;
3. Matters on the amount of capital to be increased for the company becoming a complete parent company, and on the capital reserves;
4. Where the amount to be paid to the shareholders of the company becoming a complete subsidiary is determined, the relevant provisions;
5. Date of the shareholders' general meeting of each company to make a resolution under paragraph (1);
6. Date to make a share exchange;
7. Where each company pays a dividend not later than the date of share exchange or makes a payment of dividend in cash under Article 462-3, the relevant limit amount;
8. Where a company transfers its own stocks under Article 360-6, the total number and kinds of stocks to be transferred, and the number of such stocks by kind; and
9. Where the directors, auditors or members of audit committee who are to be appointed by the company becoming a complete parent company are determined, their names and resident registration numbers.

(4) A company shall enter the matters falling under any of the following subparagraphs on the notification and public notice under Article 363:
1. Major details of a share exchange contract;
2. Details and exercising methods of the appraisal right under Article 360-5 (1); and
3. Where one company has a regulation in its articles of incorporation to the effect that a share transfer requires an approval of the board of directors, and the articles of incorporation of other company do not carry such regulations, the purport thereof.

Article 360-4
Public Notification of Share Exchange Contract, etc.

(1) The directors shall keep the documents falling under any of the following subparagraphs at the head office from two weeks prior to the meeting day of the shareholders' general meeting under Article 360-3 (1) to the date on which six months elapse since the date of share exchange:

1. Contract for share exchange;
2. Documents carrying the reasons for an allocation of stocks to the shareholders of the company becoming a complete subsidiary; and
3. Final balance sheets and profit and loss statements of each company making a share exchange prepared on a certain date within six months prior to the meeting day of the shareholders' general meeting under Article 360-3 (1) (in a case of simplified share exchange under Article 360-9, the date on which the public notice or notification is made under paragraph (2) of the same Article).

(2) The provisions of Article 391-3 (3) shall apply *mutatis mutandis* to the documents under paragraph (1).

Article 360-5
Appraisal Right of Opposing Shareholders

(1) The shareholders opposed to a resolution of the board of directors on the matter to be approved under Article 360-3 (1) may, if they informed in writing the company of their intents to oppose to the said resolution prior to the shareholders' general meeting, claim to the company for the purchase of shares owned by them in writing, indicating the kind and number of such shares, within 20 days since the date of resolution of such general meeting.

(2) The shareholders informed the company in writing of their intents to be opposed to the share exchange within two weeks since the date of public notice or notification under Article 360-9 (2) may claim to the company for the purchase of shares owned by them in writing, indicating the kind and number of such shares, within 20 days since the expiration of such period.

(3) The provisions of Article 374-2 (2) through (5) shall apply *mutatis mutandis* to the claims for purchase under paragraphs (1) and (2).

Article 360-6
Transfer of Treasury Shares Substituting Issue of New Shares

The company becoming a complete parent company may transfer the treasury shares owned by it substituting an issue of new shares in making a share exchange, which are to be disposed of in a considerable period under Article 342, to the shareholders of the company becoming a complete subsidiary.

Article 360-7
Maximum Limit of Capital Increase of Complete Parent Company

(1) The capital of the company becoming a complete parent

company shall not be increased in excess of the amount obtained by subtracting the amount falling under each of the following subparagraphs from the current net assets amount of the company becoming a complete subsidiary on the date of share exchange:

1. Amount to be paid to the shareholders of the company becoming a complete subsidiary; and
2. Total sum of book values of the shares to be transferred to the shareholders of the company becoming a complete subsidiary under Article 360-6.

(2) In case where the company becoming a complete parent company already owns the shares of the company becoming a complete subsidiary prior to share exchange, the capital of the company becoming the complete parent company shall not be increased in excess of the limit of amount obtained by subtracting the amount falling under each subparagraph of paragraph (1) from the amount derived from multiplying the current net assets value of the company becoming the complete subsidiary on the date of share exchange by the rate of the number of shares to be transferred to the company becoming the complete parent company due to a share exchange with the total number of shares issued by the relevant company.

Article 360-8
Procedures for Invalidation of Share Certificates

(1) The company becoming a complete subsidiary due to a share exchange shall, where its shareholders' general meeting has made an approval under Article 360-3 (1), make a public notice on the matters falling under each of the following subparagraphs one month before the date of share exchange, and notify the shareholders listed in the share register and the pledgees respectively:

1. Purport of an approval under Article 360-3 (1);
2. Purport that the share certificates shall be submitted to the company not later than the day preceding the date of share exchange; and
3. Purport that the share certificates shall become invalid on the date of share exchange.

(2) The provisions of Articles 442 and 444 shall apply *mutatis mutandis* to the case where an approval is made under Article 360-3 (1),

Article 360-9
Simplified Share Exchange

(1) In case where there exists a consent by all shareholders of the company becoming a complete subsidiary or where the company becoming a complete parent company owns 90/100 or

more of the total number of shares issued by the company becoming the complete subsidiary, an approval of the shareholder's general meeting of the company becoming the complete subsidiary may substitute for an approval of the board of directors.

(2) The company becoming a complete subsidiary shall, in the case of paragraph (1), make a public notice to the effect that a share exchange is to be made without obtaining an approval of the shareholders' general meeting within two weeks since the preparation of a share exchange contract, or notify the shareholders thereof: *Provided,* That this shall not apply to the case where there exists a consent of all shareholders.

Article 360-10
Small-Scale Share wap

(1) In case where the total number of new shares issued for a share swap by the company becoming a complete parent company is not in excess of 5/100 of the total number of shares issued by the relevant company, an approval of the shareholders' general meeting under Article 360-3 (1) of the relevant company may substitute for an approval of the board of directors: *Provided,* That this shall not apply to the case where the amount to be paid to the shareholders of the company becoming a complete subsidiary, if so determined, is in excess of 2/100 of the current net assets value of the company becoming the complete parent company on its final balance sheet as provided in Article 360-4 (1) 3.

(2) The shares to be transferred to the shareholders of the company becoming a complete subsidiary under Article 360-6 shall be deemed the new shares to be issued for a share exchange, in applying the provisions of paragraph (1).

(3) In a case of the text of paragraph (1), the share exchange contract shall include the purport that the company becoming a complete parent company may make a share exchange without obtaining an approval of the shareholders' general meeting under Article 360-3 (1), and shall not include the matters listed in paragraph (3) 1 of the said Article.

(4) The company becoming a complete parent company shall make a public notice on the business title and head office of the company becoming a complete subsidiary, the date of share exchange and the purport that a share exchange is to be made without obtaining an approval under Article 360-3 (1), or notify the shareholders thereof, within two weeks since the preparation of a share exchange contract.

(5) In case where the shareholder possessing the shares equivalent to 20/100 or more of the total number of shares issued by the company becoming a complete parent company notifies of his intent to be opposed to the share exchange under the text

of paragraph (1), the share exchange under this Article shall not be made.

(6) In a case of the text of paragraph (1), where the provisions of Article 360-4 (1) is applicable to the company becoming a complete parent company, the term "two weeks prior to the meeting days of shareholders" general meeting under Article 360-3 (1)" in other portions than each subparagraph of the same paragraph of same Article, and "the meeting days of shareholders" general meeting under Article 360-3 (1)" in subparagraph 3 of the same paragraph of same Article shall be "the date of a public notice or notification under paragraph (4) of this Article", respectively.

(7) In a case of the text of paragraph (1), the provisions of Article 360-5 shall not be applicable.

Article 360-11

Mutatis Mutandis *Application of Regulations for Fractional Shares*

(1) The provisions of Article 443 shall apply *mutatis mutandis* to the case of share exchange of a company.

(2) The provisions of Articles 339 and 340 (3) shall apply *mutatis mutandis* to the pledge for the shares of the company becoming a complete subsidiary in a case of share exchange.

Article 360-12

Post Public Notice of Documents Carrying Matters on Share Exchange

(1) The directors shall keep the documents carrying the matters falling under each of the following subparagraphs at the head office for six weeks from the date of share exchange:

1. Date of share exchange;
2. Current net assets value of the company becoming a complete subsidiary on the date of share exchange;
3. Number of shares of a complete subsidiary transferred to a complete parent company due to a share exchange; and
4. Other matters on the share exchange.

(2) The provisions of Article 391-3 (3) shall apply *mutatis mutandis* to the documents under paragraph (1).

Article 360-13

Tenure of Director and Auditor of Complete Parent Company

The directors and auditors of the company becoming a complete parent company due to a share exchange who have taken office before the share exchange shall retire from office on the closing date of the general meeting on the first period of settlement of accounts after the date of the share exchange.

Article 360-14
Litigation over Invalidation of Share Exchange

(1) Any shareholder, director, auditor, member of audit committee or liquidator of each company may claim the invalidation of share exchange by only a litigation within six months since the date of such share exchange.

(2) The litigation under paragraph (1) shall be under an exclusive jurisdiction of the district court having jurisdiction over the location of head office of the company becoming a complete parent company.

(3) When the judgment invalidating a share exchange becomes final, the company becoming a complete parent company shall transfer the shares of the company becoming a complete subsidiary, which have been owned by it, to holders of new shares issued for a share exchange or shares transferred under Article 360-6.

(4) The provisions of Articles 187 through 189, 190 (text), 191, 192, 377 and 431 shall apply *mutatis mutandis* to the litigation under paragraph (1), and those of Articles 339 and 340 (3) to the case of paragraph (3), respectively.

Sub-Section 3 All-inclusive Transfer of Shares

Article 360-15
Establishment of Complete Parent Company due to All-inclusive Share Transfer

(1) A company may establish a complete parent company due to an all-inclusive share transfer under this Sub-Section (hereafter in this Sub-Section, referred to as the "share transfer"), and become a complete subsidiary.

(2) The shares of a company becoming a complete subsidiary due to the share transfer, which are owned by its shareholders, shall be transferred to a complete parent company established due to the share transfer, and the shareholders of the relevant complete subsidiary shall become the shareholders of the relevant complete parent company by receiving an allocation of shares issued by the relevant complete parent company for the share transfer.

Article 360-16
Approval of Share Transfer by Shareholders' General Meeting

(1) A company intending to transfer the shares shall prepare a plan for share transfer stating matters falling under each of the following subparagraphs, and obtain an approval of the shareholders' general meeting:

1. Provisions of the articles of incorporation of a complete parent company to be established;

2. Kind and number of the shares issued for a share transfer by a complete parent company to be established, and matters on the share allocation to the shareholders of a company becoming a complete subsidiary;
3. Matters on the equity capital value and capital reserves of a complete parent company to be established;
4. Where the amount to be paid to the shareholders of a company becoming a complete subsidiary is determined, the provisions therefor;
5. Time of the share transfer;
6. Where a company becoming a complete subsidiary distributes profits not later than the date of share transfer, or makes the profit distribution by cash under Article 462-3, the relevant limit;
7. Names and resident registration numbers of the directors, auditors or the members of the audit committee of a complete parent company to be established; and
8. Where a company jointly establish a complete parent company due to the share transfer, the purport thereof.

(2) The resolution for an approval under paragraph (1) shall be governed by Article 434.

(3) The provisions of Article 360-3 (4) shall apply *mutatis mutandis* to the approval of shareholders' general meeting in the case of paragraph (1).

Article 360-17
Public Notice of Documents Such as Plans for Share Transfer, etc.

(1) The directors shall keep the documents falling under any of the following subparagraphs at the main office from two weeks prior to the meeting days of shareholders' general meeting under Article 360-16 (1) to the date on which six months elapse since the date of share transfer:
1. Plans for share transfer under Article 360-16 (1);
2. Documents stating the reasons for share allocation to the shareholders of a company becoming a complete subsidiary; and
3. Final balance sheet and profit and loss statement of a company becoming a complete subsidiary which are prepared on a certain date within six months prior to the meeting days of shareholders' general meeting under Article 360-16 (1).

(2) The provisions of Article 391-3 (3) shall apply *mutatis mutandis* to the documents under paragraph (1).

Article 360-18
Limit of Equity Capital of Complete Parent Company

The equity capital of a complete parent company to be established

shall not exceed the amount obtained by subtracting the amount to be paid to the shareholders of a company becoming a complete subsidiary on the date of share transfer from the current net assets value of the said company.

Article 360-19
Procedures for Invalidation of Share Certificates

(1) The company becoming a complete subsidiary due to share transfer shall, where it has made a resolution under Article 360-16 (1), publicly notify the matters falling under each of the following subparagraphs, and notify the shareholders and pledgees listed in the share registry, respectively:
   1. Purport that a resolution has been made under Article 360-16 (1);
   2. Purport that the share certificates shall be submitted to a company within the period specified for over one month; and
   3. Purport that the shares shall become invalid on the date of share transfer.

(2) The provisions of Articles 442 and 444 shall apply *mutatis mutandis* to the case where a resolution under Article 360-16 (1) has been made.

Article 360-20
Registration due to Share Transfer

Where a share transfer is made, the matters provided in Article 317 (2) shall be registered within two weeks at the location of main office of the established complete parent company, and within three weeks at the location of its branch offices.

Article 360-21
Effective Period of Share Transfer

Any transfer of shares shall become effective by a registration under Article 360-20 by the complete parent company established due to such transfer at the location of its main office.

Article 360-22
Mutatis Mutandis *Application of Share Transfer Provisions*

The provisions of Articles 360-5, 360-11 and 360-12 shall apply *mutatis mutandis* to the case of share transfer.

Article 360-23
Litigation over Invalidation of Share Transfer

(1) Any shareholder, director, auditor, member of audit committee or liquidator of each company may claim the invalidation of share transfer by only a litigation within six months since the date of share transfer.

(2) The litigation under paragraph (1) shall be under an exclusive jurisdiction of the district court having jurisdiction over the location of head office of the company becoming a complete parent company.

(3) When the judgment invalidating a share transfer becomes final, the company becoming a complete parent company shall transfer the shares of the company becoming a complete subsidiary, which have been owned by it, to such shareholders of new shares issued for a share transfer.

(4) The provisions of Articles 187 through 193 and 377 shall apply *mutatis mutandis* to the litigation under paragraph (1), and those of Articles 339 and 340 (3) to the case of paragraph (3), respectively.

SECTION 3
Organs of Company

Sub-Section 1 General Shareholders' Meeting

Article 361
Power of General Shareholders' Meeting

At general shareholders' meetings, resolutions may be adopted as to matters provided by this Act or the articles of incorporation.

Article 362
Decision of Convocation

The convocation of a general meeting shall be determined by the board of directors unless otherwise provided by this Act.

Article 363
Notice and Public Notice of Convocation

(1) The notice for convocation of a general meeting shall be dispatched in writing or by an electronic documents to each shareholder at least two weeks prior to the date set for such meeting: *Provided,* That if such notice has not arrived at the address of a shareholder entered on the register of shareholders consecutively for three years, the company shall not be required to give such notice to that shareholder.

(2) The written notice under paragraph (1) shall state the subject-matters of the meeting.

(3) If the company has issued bearer share certificate, it shall give public notice stating its intention that the general meeting is to be held and the subject-matters of the meeting, at least three weeks prior to the date set for such meeting.

(4) Paragraphs (1) through (3) shall not apply with respect to the shareholders who are not entitled to vote.

Article 363-2
Shareholders' Right to Make Proposal

(1) Shareholders who hold no less than 3/100 of the total outstanding shares other than nonvoting shares may propose to make a matter a subject matter of a general shareholders meeting (hereinafter referred to as "a shareholders' proposal") to directors in writing at least six weeks prior to the date set for such meeting.

(2) Shareholders under paragraph (1) may request in writing that directors record the summary of the proposal submitted by the shareholders in addition to the subject-matters of the meeting in a notice and public notice under Article 363 at least six weeks prior to the date set for such meeting.

(3) Where there is a shareholders' proposal under paragraph (1), directors shall report to the board of directors, which shall accept the proposal as a subject-matter of the general meeting of shareholders, unless its contents are in breach of the relevant acts, subordinate statutes or the articles of incorporation. In this case, the shareholders who made the proposal shall, on their request, be given an opportunity to explain the proposal at the general meeting.

Article 364
Place of Convocation

Unless otherwise provided in the articles of incorporation, a general meeting shall be convened at the place of the principal office or at some place adjacent thereto.

Article 365
Convocation of General Meeting

(1) An ordinary general meeting shall be convened at least once a year at a fixed time.

(2) In case where a company has determined the settlement of accounts to take place more than two times in a year, a general meeting shall be convened with respect to each of such period for the settlement of accounts.

(3) An extraordinary general meeting shall be convened from time to time whenever necessary.

Article 366
Demand for Convocation by Minority Shareholders

(1) Shareholders who hold no less than 3/100 of the total outstanding shares may demand the convocation of an extraordinary general meeting, by submitting to the board of directors a written statement of the proposed subject-matters of the meeting together with the reasons for the proposed convocation.

(2) If the steps for the convocation of a general meeting are not taken promptly after the demand mentioned in paragraph (1), the shareholder who made such demand may convene such meeting with the permission of the court.

(3) At a general meeting held in accordance with paragraphs (1) and (2), an inspector may be appointed to investigate the affairs of the company and the status of its property.

Article 366-2
Maintenance of Order of General Meeting

(1) The president of the general meeting shall be elected at the general meeting unless otherwise provided by the articles of incorporation.

(2) The president of the general meeting shall maintain the order and control the proceedings of the general meeting.

(3) The president of the general meeting may order anyone, who obviously gives rise to disorder by attempting a filibuster, to stop speaking or to leave the meeting hall.

Article 367
Appointment of Inspector

At a general meeting, an inspector may be appointed to examine the documents submitted by the directors and the report of the auditors.

Article 368
Method of Adopting Resolutions and Exercise of Voting Rights

(1) Unless otherwise provided by this Act or articles of incorporation, resolutions shall be adopted at the general meetings by affirmative votes of the majority of the voting rights of shareholders present thereat and of at least 1/4 of the total outstanding shares.

(2) Persons holding bearer share certificates shall deposit them with the company one week prior to the date set for the meeting.

(3) A shareholder may have a proxy exercise the voting rights on his behalf. In this case, the proxy shall submit a document proving his power of representation at the general meeting.

(4) A person who has special interest in the resolution of a general meeting may not exercise his voting rights thereupon.

Article 368-2
Exercise of Voting Right in Disunity

(1) If a shareholder has two or more votes, he may exercise them in disunity. In this case, he shall notify the company in writing of his intention to do so and the reasons therefor three days prior to the date set for the meeting.

(2) The company may reject an exercise of vote in disunity by a shareholder, unless he has accepted a trust of shares or he holds the shares on behalf of another person.

Article 368-3
Exercise of Voting Right in Writing

(1) Shareholders may exercise their voting rights in writing in lieu of attending the general meeting.

(2) Notice for the convocation of the general meeting shall be accompanied by reference materials and documents necessary for shareholders to exercise their voting rights under paragraph(1).

Article 369
Votes

(1) A shareholder shall have one vote for each share.

(2) The company shall not be entitled to vote in respect of its own shares.

(3) In case where a company, its parent company and its subsidiary company together or its subsidiary company alone holds more than 1/10 of the total outstanding shares of another company, the shares of the company or of the parent company held by such another company shall not be entitled to vote.

Article 370
Non-voting Shares

(1) In case where a company issues different classes of shares, the articles of incorporation may provide that a shareholder of a certain class of shares having preferential rights as to the dividend of profits shall not be entitled to vote: *Provided,* That such shareholder shall be entitled to vote from the general meeting subsequent to the general meeting where a resolution disallowing the preferred dividend as provided in the articles of incorporation is adopted until the time of closing of the general meeting where a resolution allowing such dividend is adopted.

(2) The total number of non-voting shares mentioned in paragraph (1) shall not exceed 1/4 of the total outstanding shares.

Article 371
Calculation of Quorum and Number of Votes

(1) With respect to resolutions of a general meeting, the number of non-voting shares shall be excluded from the calculation of the total number of the issued and outstanding shares.

(2) With respect to resolutions of a general meeting, the number of votes which cannot be exercised in accordance with Article

368 (4) shall be excluded from the calculation of the number of votes of the shareholders present at the meeting.

Article 372
Resolution to Postpone or Continue General Meeting

(1) A general meeting may adopt a resolution to postpone or continue the meeting.
(2) In case of paragraph (1), Article 363 shall not apply.

Article 373
Minutes of General Meeting

(1) Minutes shall be prepared for the proceedings of a general meeting.
(2) The minutes shall record the summary of proceedings of the meeting and the results thereof and the president as well as the directors who were present at the meeting shall write their names and affix their seals or shall sign thereon.

Article 374
Resolution for Transfer, Takeover or Lease of Business

(1) A resolution in accordance with Article 434 shall be required for a company to effect the following acts:
   1. Transfer of the whole or an important part of the business of the company;
   2. Conclusion, alteration or rescission of a contract for leasing the whole business for giving a mandate to manage such business or for sharing with another person the entire profits and losses from the business or of a similar contract; and
   3. Takeover of the whole business of another company.
   4. Takeover of parts of business of another company which significantly affect the company's business.
(2) In a notice or public notice of the convocation of the general shareholders' meeting for any act under paragraph (1), the contents and exercising method of rights under Article 374-2 (1) and (2) shall be specified.

Article 374-2
Rights of Dissenting Shareholders to request the purchase of shares

(1) If a shareholder who dissents from the subject-matters of resolution set forth in Article 374 has notified the company in writing of his intention of such dissent before the general shareholders' meeting, he may request the company in writing to purchase the shares owned by him, which request shall be

made within twenty days after the resolution is adopted at the general meeting and shall specify the class and number of such shares.

(2) The company shall purchase the shares within two months after receiving the request under paragraph (1).

(3) The purchase price of the shares pursuant to paragraph (2) shall be determined through a negotiation between the shareholder and the company.

(4) Where the negotiation under paragraph (3) has not been attained within 30 days since the receipt of a request under paragraph (1), the company or the shareholder requesting for the purchase of shares may request the court to determine the purchase price.

(5) Where a court makes a decision on the purchase price of shares under paragraph (4), the said court shall compute it by a fair value in view of the assets status of the company and other situations.

Article 375
Ex Post Facto Incorporation

Article 374 shall apply *mutatis mutandis* to a contract whereby a company acquires, within two years from its existence, a certain property which existed prior to its existence and is to be continuously used for purposes of its business, for value of no less than 5/100 of the capital.

Article 376
Action for Revocation of Resolution

(1) If the procedures for the convocation of a general meeting or the manner of a resolution are in violation of the relevant acts, subordinate statutes or the articles of incorporation or are remarkably unfair or if the substantive contents of a resolution are contrary to the articles of incorporation, the shareholders, directors or auditors may file an action for revocation of the resolution, within two months from the date of such resolution.

(2) Articles 186 through 188, the main sentence of Article 190 and Article 191 shall apply *mutatis mutandis* to the actions under paragraph (1).

Article 377
Duty to Furnish Security by Shareholder Filing Action

(1) If a shareholder files an action for revocation of a resolution, the court may, upon request of the company, order him to furnish an appropriate security, unless he is a director or auditor of the company.

(2) Article 176 (4) shall apply *mutatis mutandis* to the request mentioned in paragraph (1).

Article 378
Registration of Revocation of Resolution

If the matters with respect to which a resolution was adopted have been registered and a judgment revoking such resolution has become final and conclusive, registration thereof shall be effected at the place of the principal office and each branch office.

Article 379
Dismissal of Action by Court at Discretion

The court may dismiss an action for revocation of a resolution if it considers the revocation would be improper by taking into consideration the contents of the resolution, the current status of the company and all other circumstances.

Article 380
Action for Affirming Nullity and Non-existence of Resolution

Articles 186 through 188, 190 (the main sentence), 191, 377, and 378 shall apply *mutatis mutandis* to an action for affirming the nullity of a resolution on the grounds that the contents of the resolution adopted at a general meeting are contrary to Acts and subordinate statutes and to an action for affirming the nonexistence of a resolution on the grounds that such material defects exist in the procedures for the convocation of a general meeting or in the method of resolution that no resolution of the general meeting is deemed to have been existed.

Article 381
Action for Revocation or Alteration of Improper Resolution

(1) In case where a remarkably improper resolution is adopted at a general meeting in which a certain shareholder was unable to vote in accordance with Article 368 (4) and the adoption of such resolution could have been avoided if he had exercised the voting right, the shareholder may file an action for the revocation or alteration of such resolution within two months from the date of such resolution.

(2) Articles 186 through 188, 190 (the main sentence), 191, 377 and 378 shall apply *mutatis mutandis* to the action under paragraph (1).

Sub-Section 2 Directors and Board of Directors

Article 382
Election, Relationship with Company

(1) Directors shall be elected at a general shareholders' meeting.

(2) Provisions relating to mandates shall apply *mutatis mutandis* to the relationship between the company and the directors.

Article 382-2
Concentrated Vote

(1) In case where a general meeting of a company is convened to elect two directors or more, shareholders who hold no less than 3/100 of the total outstanding shares other than nonvoting shares may request that the company elect directors by means of a concentrated vote, except as otherwise provided by the articles of incorporation.

(2) A request under paragraph (1) shall be made in writing at least seven days prior to the date set for the meeting.

(3) In case where there is a request under paragraph (1), each shareholder shall have voting rights per share in the same number as the number of directors to be elected, with respect to a resolution for election of directors, and the voting rights may be exercised by means of a concentrated vote for one or several candidates for directors.

(4) In case where directors are to be elected by a vote under paragraph (3), the directors shall be elected in the order of candidates who obtain the most votes.

(5) In case where there is a request under paragraph (1), the president of the meeting shall inform the members thereof.

(6) A written request under paragraph (2) shall be kept at the principal office until the general meeting is completed and offered for the inspection of the shareholders during the business hours.

Article 382-3
Duties of Directors to be Faithful

Directors shall perform their duties faithfully for the good of the company in accordance with the relevant acts, subordinate statutes and the articles of incorporation.

Article 382-4
Duties of Directors to Keep Secret

Directors shall not divulge the business secret of the company, which has come to his knowledge during his duties, not only while in office but also after the retirement.

Article 383
Number, Term of Office

(1) Directors shall be at least three in number: *Provided,* that in case of a company of which the total capital is less than five hundred million won, the number of the directors may be one or two.

(2) The terms of office of directors may not exceed three years.

(3) The terms of office under paragraph (2) may be extended by

the articles of incorporation up to the closing of the ordinary general shareholders' meeting convened in respect of the last period for the settlement of accounts within their terms of office.

(4) In case where the number of a director is one under the proviso of paragraph (1), in the provisions of Articles 302 (2) 5-2, 317 (2) 3-2, 335 (1) (proviso) and (2), 335-2 (1) and (3), 335-3 (1) and (2), and 335-7 (1), subparagraph 5 of Article 340-3(1), subparagraph 6-2 of Article 356, and Articles 397 (1) and (2), 398, 416 (main sentence), 461 (1) (main sentence) and (3), 462-3 (1), 464-2 (1), 469, 513 (2) (main sentence), and 516-2 (2) (main sentence) (including where this provision shall apply *mutatis mutandis),* the term "board of directors" shall be read as "general meeting of shareholders' respectively, and in the provisions of Article 522-3 (1), the term "where the board of directors has made a resolution" shall be read as "where the notice for convocation of a general meeting has been made under Article 363 (1)".

(5) In case where the number of a director is one under the proviso of paragraph (1), Articles 390 through 392, 393 (2), 399 (2), 526 (3), 527 (4), 527-2, 527-3 (1), and 527-5 (2) shall not apply.

(6) In case where the number of a director is one under the proviso of paragraph (1), the director shall represent the company and perform the functions of the board of directors under Articles 362, 363-2 (3), 366 (1), 393 (1), and 412-3 (1).

Article 384
Deleted

Article 385
Dismissal

(1) A director may be dismissed from office at any time by a resolution at a general shareholders' meeting in accordance with Article 434: *Provided,* That in case where the term of office of a director was fixed and he is dismissed without cause before the expiration of such term, he may claim for damages caused thereby.

(2) If the dismissal of a director is rejected at a general shareholders' meeting notwithstanding the existence of dishonest acts or any grave fact in violation of the relevant acts, subordinate statutes or the articles of incorporation in connection with his duties, any shareholder who holds no less than 3/100 of the total outstanding shares may demand the court to dismiss the director, within one month from the date on which the above resolution of the general meeting was made.

(3) Article 186 shall apply *mutatis mutandis* in case of paragraph (2).

Article 386
Vacancy

(1) A director retiring from office due to the expiration of his term of office or due to resignation shall continue to have the rights and duties as a director until newly elected director inaugurates office, if the directors remaining in office would otherwise become fewer than the minimum number provided by law or by the articles of incorporation,

(2) The court may, if deemed necessary in case of paragraph (1), appoint a person who is to temporarily perform the duties of a director, upon application by a director, auditor or any other interested person. In this case, registration thereof shall be effected at the place of the principal office.

Article 387
Qualification Shares

If the articles of incorporation provide that any director shall have a certain number of shares, the directors shall deposit such number of share certificates with the auditors, unless otherwise provided by the articles of incorporation.

Article 388
Remuneration for Director

If the amount of remuneration to be received by directors has not been determined by the articles of incorporation, it shall be determined by a resolution at a general shareholders' meeting.

Article 389
Representative Director

(1) A company shall appoint, by the resolution of the board of directors, a director who shall represent the company: *Provided,* That the articles of incorporation may provide that such representative director shall be elected at a general shareholders' meeting.

(2) In the event of paragraph (1), it may be provided that two or more representative directors shall jointly represent the company.

(3) Articles 208 (2), 209, 210 and 386 shall apply *mutatis mutandis* to the representative directors.

Article 390
Convocation of Board Meeting

(1) A meeting of the board of directors shall be convened by each director: *Provided,* That this shall not apply where the board of directors has designated the director who is to convene such meeting.

(2) Any directors who have not been designated as eligible to convene the board under the proviso of paragraph (1) may request the director so designated to convene it. Where the director so designated refuses the convocation of board meeting without any justifiable reasons, other directors may convene it.

(3) In convening a meeting of the board of directors, the date of such meeting shall be fixed and a notice of convocation shall be dispatched to each director and auditor at least one week prior to such date: *Provided,* That the above period may be shortened by the articles of incorporation.

(4) When all the directors and auditors agree, a meeting of the board of directors may be held at any time without undergoing the procedures set forth in paragraph (3).

Article 391
Method of Resolution by Board of Directors

(1) A resolution of the board of directors shall be adopted by the presence of the majority of directors in office and the affirmative votes of the majority of directors present at the meeting: *Provided,* That the voting requirement may be increased by the articles of incorporation.

(2) The board of directors may, unless otherwise provided by the articles of incorporation, allow all its directors to join in discussion on the adoption of a resolution by means of a communication system transmitting and receiving visual images and sounds simultaneously without the personal attendance of all or part of them. In this case the director or directors concerned shall be deemed to have attended the meeting.

(3) Articles 368 (4) and 371 (2) shall apply *mutatis mutandis* to the cases under paragraph (1) above.

Article 391-2
Auditor's Power to Attend Board Meeting and State Opinion

(1) Auditors may attend meetings of the board of directors and state his opinion thereat.

(2) When any auditor deems that a director acts or is likely to act in contravention of the relevant acts, subordinate statutes or the articles of incorporation, the auditor shall report such act to the board of directors.

Article 391-3
Minutes of Board of Directors

(1) Minutes shall be prepared with regard to the proceedings of a meeting of the board of directors.

(2) There shall be recorded in the minutes the agenda, the summary of the proceedings of the meeting, the results thereof,

dissenters and reason for their objection. Directors as well as auditors present at the meeting shall write their names and affix seals or sign thereon.

(3) Shareholders may, during office hours, make a request either for their perusal of the minutes of the board of directors or for the copy thereof.

(4) The company may reject the request under paragraph (3) explaining reasons therefor. In this case shareholders may, with the permission of the court, read or copy the minutes of the board of directors.

Article 392
Postponement and Continuation of Board Meeting

Article 372 shall apply *mutatis mutandis* to meetings of the board of directors.

Article 393
Authorities of Board of Directors

(1) The management of affairs such as the disposal and transfer of important properties, the borrowing of large-scale assets, the appointment or dismissal of managers and the establishment, transfer or abolition of branch offices shall be made by the resolution of the board of directors.

(2) The board of directors shall supervise the performance of duties by the directors.

(3) Directors may request that the representative director file a report on the affairs of other directors or employees with the board of directors.

(4) Directors shall file a report on the progress of his duties with the board of directors more than once in every three months.

Article 393-2
Committees in Board of Directors

(1) The board of directors may, under the conditions as set forth in the articles of incorporation, establish committees within the board.

(2) The board of directors may delegate to the committees its power other than the matters set forth in the following subparagraphs:

1. Proposal of matters subject to the approval of the general shareholders' meeting;
2. Appointment or dismissal of the representative director;
3. Establishment of committees and appointment or dismissal of their members; and
4. Any other matters as set forth by the articles of incorporation.

(3) The committee shall be composed of no less than two directors.
(4) The committee shall notify each of directors of the resolutions it has adopted. In this case, any of the directors may, upon receipt of the notification, request the convocation of a meeting of the board of directors and in the meeting the resolutions of the committee may be subject to the decision of the board of directors.
(5) Articles 386(1), 390, 391, 391-3 and 392 shall apply *mutatis mutandis* to the committees.

Article 394
Representation in Action between Company and Directors

(1) When a company files an action against a director or vice versa, the auditors shall represent the company in connection with such action. The same shall apply where a claim is made upon a company in accordance with Article 403 (1).
(2) In case a member of the audit committee is a party to an action against the company and vice versa, the audit committee or a director of the committee shall request the court to elect a person to represent the company in the action.

Article 395
Acts by Apparent Representative Director and Liability of Company

A company shall be liable to a third person acting in good faith for any act done by a director who has used any title such as president, vice president, executive director, managing director, etc. from which it may be assumed that such director has an authority to represent the company even where such director has no such authority.

Article 396
Obligation to Keep Articles of Incorporation, etc. and Open to Public Access

(1) Directors shall keep the articles of incorporation and the minutes of the general shareholders' meetings at the principal office and each branch office and shall keep the register of shareholders, the register of bonds at the principal office. If there is a transfer agent, the register of shareholders and the register of bonds or the parts of a set thereof may be kept in the business office of the transfer agent.
(2) Any shareholder or any creditor of the company may demand, at any time during business hours, to inspect or copy the documents mentioned in paragraph (1).

Article 397
Prohibition of Competitive Business

(1) No director shall, without the approval of the board of direc-

tors, effectuate for his own account or for the account of a third person any transaction which falls within the class of businesses of the company or become a member with unlimited liability or a director of any other company whose business purposes are the same as those of the company.

(2) If any director has effectuated a transaction for his own account in contravention of paragraph (1), the company may, by the resolution of the board of directors, deem such transaction as effectuated for the account of the company and if he has effectuated a transaction for the account of a third person in contravention of paragraph (1), the company may demand the pertinent director to transfer any profit accrued therefrom.

(3) The rights under paragraph (2) shall be extinct with the lapse of one year after the date on which such transaction has been effectuated.

Article 398
Transaction between Director and Company

A director may effectuate a transaction with the company for his own account or for the account of a third person only if he has obtained the approval of the board of directors. In this case, Article 124 of the Civil Act shall not apply.

Article 399
Liability to Company

(1) If directors have acted in violation of any Acts and subordinate statutes or the articles of incorporation or has neglected to perform their duties, they shall be jointly and severally liable for damages to the company.

(2) If any act mentioned in paragraph (1) has been done in accordance with the resolution of the board of directors, the directors who have assented to such resolution shall be subject to the same liability.

(3) The directors who have participated in the resolution mentioned in paragraph (2) and whose dissenting opinion has not been entered in the minutes shall be presumed to have assented to such resolution.

Article 400
Release of Liability to Company

The liability of directors under Article 399 may be released by the consent of all shareholders.

Article 401
Liability to Third Persons

(1) If directors have neglected to perform their duties wilfully or

by gross negligence, they shall be jointly and severally liable for damages to third persons.

(2) Article 399 (2) and (3) shall apply *mutatis mutandis* in case of paragraph (1).

Article 401-2
Liability of Person who Instructs Another Person to Perform Duties

(1) A person who falls under any of the following subparagraphs shall be deemed to be a director in the application of Articles 399, 401, and 403 with respect to the duties which he instructs or conducts:

1. A person who instructs a director to perform duties by using his influence on the company;
2. A person who performs duties in person under the name of a director; and
3. A person other than a director who performs the duties by using a title which may be recognized as authorized to perform the duties, such as honorary chairman, chairman, president, vice-president, executive director, managing director, or director.

(2) In case of paragraph (1), a director who is liable for damages to a company or third person shall be jointly and severally liable therefor with the person under paragraph (1).

Article 402
Right to Injunction

If a director commits an act in contravention of the relevant acts, subordinate statutes or the articles of incorporation and the act is likely to cause irreparable damage to the company, the auditor or a shareholder who holds no less than 1/100 of the total outstanding shares may demand on behalf of the company that the director stop such act.

Article 403
Derivative Suit by Shareholders

(1) Any shareholder who holds no less than 1/100 of the total outstanding shares may demand that the company file an action against directors to enforce their liability.

(2) The demand under paragraph (1) shall be made in writing and shall state the reasons thereof.

(3) If the company has failed to file such action within 30 days from the date of the receipt of the demand under paragraph (2), the shareholder mentioned in paragraph (1) may immediately file such action on behalf of the company.

(4) If irreparable damage may be caused to the company with the

lapse of the period set forth in paragraph (3), the shareholder mentioned in paragraph (1) may immediately file such action notwithstanding paragraph (3).

(5) The effect of commencement of an action shall not be prejudiced even where the number of shares held by a shareholder who files an action under paragraphs (3) and (4) comes to be less than 1/100 of the total outstanding shares after the commencement of the action (excluding where he no longer holds the issued shares).

(6) In case where an action is filed under paragraphs (3) and (4), the parties concerned shall not withdraw the action, renounce or admit the claim, or compromise, without permission from a court.

(7) Articles 176 (3) and (4), and 186 shall apply *mutatis mutandis* to the action under this Article.

Article 404
Derivative Suit and Intervention, Notice of Action

(1) The company may intervene in the actions under Article 403 (3) and (4).

(2) The shareholder who has filed an action under Article 403 (3) and (4) shall immediately effect a notice of an action to the company.

Article 405
Rights and Duties of Shareholder Filing Action

(1) If the shareholder who has filed an action pursuant to Article 403 (3) and (4) wins the case, he may demand the reimbursement by the company for the action cost and a reasonable amount of other expenses disbursed for the action. In such case, the company which has paid the expenses for action shall have a right to indemnity against the directors or auditors.

(2) If the shareholder who has filed an action in accordance with Article 403 (3) and (4) loses the case, he shall not be liable for damages to the company, unless he has acted in bad faith.

Article 406
Derivative Suit and Action for Retrial

(1) In case where the plaintiff and defendant in an action mentioned in Article 403 have caused a certain judgment to be rendered by their collusion for the purpose of prejudicing the right of the company, which is the cause of the action, the company or shareholders may file an action for retrial against the final and conclusive judgment.

(2) Article 405 shall apply *mutatis mutandis* to the action under paragraph (1).

Article 407
Suspension of Exercise of Duties and Appointment of Acting Directors

(1) In case where an action for nullifying or revoking a resolution for election of a director or for dismissing a director is filed, the court may, upon the application by the parties concerned, render a provisional injunction suspending the exercise of duties by such director or appointing an acting director. Such injunction may be rendered even before the principal suit is filed, if urgent circumstances exist.

(2) The court may, upon the application by the parties concerned, alter or revoke the provisional injunction mentioned in paragraph (1).

(3) If any injunction set forth in paragraphs (2) and (3) has been issued, registration thereof shall be effected at the place of the principal office and each branch office.

Article 408
Powers of Acting Director

(1) Acting directors under Article 407 may not perform any act falling outside the ordinary course of business of the company, unless otherwise provided in the order of provisional injunction: *Provided,* That this shall not apply where permission has been obtained from the court.

(2) The company shall be liable to a third person acting in good faith, even if acting directors have violated paragraph (1).

Sub-Section 3 Auditors and Audit Committee

Article 409
Election

(1) Auditors shall be elected at a general shareholders' meeting.

(2) Any shareholder who holds more than 3/100 of the total outstanding shares, exclusive of non-voting shares, may not exercise his vote in respect of the shares in excess of the above limit, in the election of auditors under paragraph (1).

(3) The articles of incorporation may provide for a lower ratio than that mentioned in paragraph (2).

Article 409-2
Right to State Opinion in Removal of Auditor

An auditor may state his opinion on the dismissal of an auditor at a general shareholders' meeting.

Article 410
Term of Office

The term of office of an auditor shall expire upon the closing of the ordinary general shareholders' meeting convened in respect of the last period for the settlement of accounts within three years after his inauguration.

Article 411
Prohibition of Concurrently Assuming Offices

An auditor may not concurrently assume the office of a director, a manager or an employee of the company or its subsidiary company.

Article 412
Duty and Authority to Demand Reports and to Investigate

(1) Auditors shall audit directors' performance of duties.
(2) Auditors may at any time demand the directors to report on the business and may investigate the affairs and the financial status of the company.

Article 412-2
Director's Duty to Report

If a director finds any fact that is likely to inflict a substantial loss on the company, he shall immediately report such fact to the auditors.

Article 412-3
Request for Convocation of General Meeting

(1) An auditor may request the board of directors to convene an extraordinary general shareholders' meeting by presenting a written statement specifying the proposed subject-matters of the meeting and the reason for the convocation.
(2) Article 336 (2) shall apply *mutatis mutandis* where an auditor convenes a general shareholders' meeting.

Article 412-4
Authority to Investigate Subsidiary Company

(1) An auditor of the parent company may demand the subsidiary company to report on its business, if it is necessary for carrying out his duties.
(2) If, in case of paragraph (1), the subsidiary company fails to make a demanded reporting without delay or it is necessary to verify the contents of such reporting, an auditor of the parent company may investigate the affairs of the subsidiary company and the status of its property.
(3) The subsidiary company may not refuse the reporting set forth in paragraph (1) or the investigation set forth in paragraph (2), unless there is any justifiable reason.

Article 413
Duty to Examine and Report

Auditors shall examine the agenda and documents to be submitted by directors to a general shareholders' meeting and shall at the general shareholders' meeting state his opinion as to whether such agenda or documents include any matter contrary to the relevant acts, subordinate statutes or the articles of incorporation or any remarkably unfair matter.

Article 413-2
Preparation of Audit Record

(1) Auditors shall prepare a record of the audit.
(2) The summary of audit process and the results thereof shall be recorded in the audit record. The auditors who have carried out such audit shall write their names and affix their seals or shall sign thereon.

Article 414
Liability of Auditor

(1) If auditors have neglected any of their duties, they shall be jointly and severally liable for damages to the company.
(2) If auditors have neglected their duties wilfully or by gross negligence, they shall be jointly and severally liable for damages to third persons.
(3) If, in case where auditors are liable for damages either to the company or to third persons, directors are likewise liable therefor, the auditors and the directors shall be jointly and severally liable for the damages.

Article 415
Applicable Provisions

Articles 382 (2), 382-4, 385, 386, 388, 400, 401, and 403 through 407 shall apply *mutatis mutandis* to auditors.

Article 415-2
Audit Committee

(1) The company may, in accordance with the articles of incorporation, establish an audit committee constituted by the committee under Article 393-2, in place of auditors. In the case of the establishment of an audit committee, the company shall not appoint any auditors.
(2) Notwithstanding Article 393-2(3), the audit committee shall consist of not less than three directors: *Provided,* That persons falling under any of the following subparagraphs shall not exceed 1/3 of the total members of the committee.

1. Any director or employee in the active service of the company or any person who was a director or employee thereof within the period of two years before the date of appointment as a member of the committee;
2. In case the largest shareholder of the company is an individual, the individual himself, his spouse, his lineal ascendants or descendants;
3. In case the largest shareholder is a corporation, any director, auditor or employee of the corporation;
4. Spouse of any director of the company, his lineal ascendants or descendants;
5. Any director, auditor or employee in the service of the parent or a subsidiary company with which the company is affiliated;
6. Any director, auditor or employee of a corporation which has an important interest in the company including the business relations; and
7. Any director, auditor or employee of another company in which a director or an employee of the company serves concurrently as a director of such other company.

(3) A resolution of the board of directors for the dismissal of a member of the audit committee shall require the affirmative votes of two thirds or more of the total members of the board of directors.

(4) The audit committee shall, from among its members, elect a member to represent the committee. In this case more than one member may be elected to jointly represent the committee.

(5) The committee may use professional assistance at the expense of the company.

(6) Articles 296, 312, 367, 387, 391-2(2), 394(1), 400, 402 through 407,412 through 414, 447-3, 447-4, 450 and 527-4, subparagraph 9 of Article 530-5 (1), subparagraph 10 of Article 530-6(1) and Article 534 shall apply *mutatis mutandis* to the audit committee. In this case the term "auditor" as prescribed in the subparagraph 9 of Article 530-5(1) and subparagraph 10 of Article 530-6(1) shall be read as "member of audit committee".

SECTION 4
Issuance of New Shares

Article 416
Determination of Particulars for Issuance

In case where a company issues shares after its existence, the following matters, which are not provided by the articles of incorporation, shall be determined by the board of directors: *Provided,* That this shall not apply if it is otherwise provided by this Act or the articles of incorporation provide that they shall be determined at a general shareholders's meeting:

1. Class and number of new shares;
2. Issue-price of new shares and the date set for the payment thereof;
3. Method of subscribing for new shares;
4. Name of the persons who are to make contributions in kind and the type, quantity, value of such property and the class and number of shares to be given therefor;
5. Transferability of the shareholder's preemptive rights; and
6. Statement that a certificate of preemptive right is to be issued only upon request of the shareholder and the period within which such request may be made.

Article 417
Issuance of Shares at Price Below Par

(1) In case where a company issues shares after two years have elapsed since its existence, the company may issue shares at a price which is less than the par value with a resolution of the general shareholders' meeting in accordance with Article 434 and with the permission of the court.

(2) The minimum issue-price of shares shall be determined by the resolution of the general shareholders' meeting mentioned in paragraph (1).

(3) The court may render the permission after altering the minimum issueprice by taking into account the present conditions of the company and all the circumstances. In this case, the court may appoint an inspector to investigate the status of the company's property and any other necessary matters.

(4) The shares mentioned in paragraph (1) shall be issued within one month from the date on which the authorization of the court has been obtained. The court may extend the above period in its authorization.

Article 418
Contents of Preemptive Rights, Designation and Public Notice of Record Date for Allotment

(1) Each shareholder shall be entitled to the allotment of new shares in proportion to the number of shares which he holds.

(2) The company may make an allotment of new shares to other per sons than the shareholders under the provisions of articles of incorporation, notwithstanding the provisons of paragraph (1): *Provided,* That in such case, it shall be limited to the case necessary for the achieve-ment of the company's operational objectives, such as an introduction of new technology, improvement of financial structures, etc.

(3) The company shall fix a certain record date and shall, at least two weeks before such record date, give public notice to the ef-

fect that shareholders entered on the register of shareholders as of such record date shall be entitled to the rights under paragraph (1) and to the effect that such preemptive rights are transferable: *Provided,* That if the above record date is within the period set forth in Article 354 (1), the public notice shall be given at least two weeks before the first day of such period.

Article 419
Peremptory Notice to Holders of Preemptive Rights

(1) The company shall notify the holders of preemptive rights of the class and number of shares subject to such preemptive rights and the statement that their rights shall be forfeited if they fail to apply for the subscription for new shares on or before a fixed date. In this case, if the matters set forth in subparagraphs 5 and 6 of Article 416 have been determined, the contents thereof shall also be notified.

(2) If the company has issued bearer share certificates, a public notice on matters set forth in paragraph (1) shall be given.

(3) The notification under paragraph (1) and the public notice under paragraph (2) shall be given at least two weeks before the date set forth in paragraph (1).

(4) In case where a holder of preemptive rights fails to apply for the subscription for new shares on or before the specified date notwithstanding the notification under paragraph (1) or the public notice under paragraph (2), his rights shall be forfeited.

Article 420
Subscription Form for Shares

Directors shall prepare a subscription form for shares, in which the following matters shall be contained:

1. Particulars set forth in Article 289 (1) 2 through 4;
2. Matters set forth in Article 302 (2) 7, 9 and 10;
3. Matters set forth in subparagraphs 1 through 4 of Article 416;
4. If the company issues shares in accordance with Article 417, the conditions of such issuance and the amount yet to be amortized pursuant to Article 455;
5. Restrictions on the preemptive rights of shareholders or a provision that the preemptive rights are to be given to a particular third person, if applicable; and
6. Date of the resolution on the issuance of shares.

Article 420-2
Issuance of Certificates of Preemptive Rights

(1) In case where a company has provided for the matters set forth in subparagraph 5 of Article 416, the company shall issue certificates of preemptive rights in accordance with

subparagraph 6 of Article 416, if applicable or issue them at least two weeks before the date under Article 419 (1), as the case may be.

(2) Certificates of preemptive rights shall contain the serial number in addition to the following and the directors shall write their names and affix their seals or shall sign thereon:
1. Manifestation of certificates of preemptive rights;
2. Matters set forth in Article 420;
3. Class and number of shares subject to the preemptive rights; and
4. A statement to the effect that the rights shall be forfeited if the subscription for shares is not applied for on or before the specified date.

Article 420-3
Transfer of Preemptive Rights

(1) Preemptive rights shall be transferred only by the delivery of certificates thereof.

(2) Article 336 (2) of this Act and Article 21 of the Cheques Act shall apply *mutatis mutandis* to certificates of preemptive rights.

Article 420-4
Application for Subscription by Certificates of Preemptive Rights

(1) If certificates of preemptive rights have been issued, the subscription for shares shall be applied for by use of the certificates. In this case, Article 302 (1) shall apply *mutatis mutandis.*

(2) A person who has lost certificates of preemptive rights may apply for the subscription for shares by the subscription form for shares: *Provided,* That such offer shall become ineffective if the application for subscription for shares is made by certificates of preemptive rights.

Article 421
Payment for New Shares

Directors shall have the person who has subscribed for new shares pay the full subscription price with respect to each share allotted to him on or before the date set for such payment.

Article 422
Investigation on Contribution in Kind

(1) In case of a contribution in kind, directors shall request the court for the appointment of an inspector who is to investigate the particulars set forth in subparagraph 4 of Article 416. In

this case, an appraisal by a certified appraiser may substitute for the investigation by an inspector.

(2) If the court considers the particulars set forth in paragraph (1) to be improper after examining the report on investigation prepared by the inspector or the results of appraisal conducted by an appraiser, it may give necessary alteration and inform directors and the person who has made the contribution in kind of such alteration.

(3) If the person who has made the contribution in kind has an objection to the alteration mentioned in paragraph (2), he may cancel his subscription for shares.

(4) If the person who has made the contribution in kind does not cancel his subscription for shares within two weeks after the court informed him of alteration, the particulars set forth in paragraph (1) shall be deemed to have been altered accordingly.

Article 423
Time to Become Shareholder, Effect of Failure of Payment

(1) If a person who has subscribed for new shares pays for the subscription price or performs the contribution in kind, he shall have the rights and duties of a shareholder from the day after the date set for the payment. In this case, the second sentence of Article 350 (3) shall apply *mutatis mutandis*.

(2) If a person who has subscribed for new shares fails to pay for the subscription price or to perform the contribution in kind on or before the date set for the payment, his right shall be forfeited.

(3) Paragraph (2) shall not affect any claim for damages against the person who has subscribed for new shares.

Article 424
Right to Injunction

If a company is to issue shares in violation of the relevant acts, subordinate statutes or the articles of incorporation or in a remarkably unfair manner and shareholders are likely to suffer disadvantages thereby, such shareholders may demand that the company stop such issuance.

Article 424-2
Liability of Subscriber of Shares at Unfair Price

(1) A person who has subscribed for shares at a remarkably unfair issue price in collusion with the directors shall be liable to pay to the company the amount equivalent to the difference between such issue price and the fair price.

(2) Article 403 through 406 shall apply *mutatis mutandis* to an action for payment pursuant to paragraph (1).

(3) Paragraphs (1) and (2) shall not affect the directors' liability to compensate for damage to the company or shareholders.

Article 425
Applicable Provisions

(1) Article 302 (1) and (3), 303, 305 (2) and (3), 306, 318, and 319 shall apply *mutatis mutandis* to the issuance of new shares.
(2) Article 305 (2) shall apply *mutatis mutandis* where certificates of preemptive rights are issued.

Article 426
Registration of Amount Yet to Be Amortized

If shares were issued in accordance with Article 417, the registration of alteration thereby shall contain the amount yet to be amortized pursuant to Article 455.

Article 427
Restrictions on Assertion of Nullification or Revocation of Subscription

After one year has elapsed from the date of the registration of alteration concerning the issuance of new shares, no person who has subscribed for new shares may assert the nullity of his subscription by reason of defects in the requirements as to the subscription form for shares or certificates of preemptive rights or revoke his subscription by reason of fraud, duress or mistake. The same shall apply where he has exercised his rights with respect to such shares.

Article 428
Director's Warranty Liability for Subscription

(1) In case where shares have not yet been subscribed or the subscription of shares has been revoked after the registration of alteration concerning the issuance of new shares, directors shall be deemed to have jointly subscribed for such shares.
(2) Paragraph (1) shall not affect any claim for damages against directors.

Article 429
Action for Nullification of Issuance of New Share

The nullity of the issuance of new shares may be asserted only by means of an action which shall be brought only by shareholders, directors or auditors within six months from the date of the issuance of such new shares.

Article 430
Applicable Provisions

Articles 186 through 189, the main sentence of Article 190, Articles 191, 192 and 377 shall apply *mutatis mutandis* to the action under Article 429.

Article 431 Effect of Judgment Nullifying Issuance of New Shares

(1) When a judgment nullifying the issuance of new shares becomes final and conclusive, such new shares shall be invalidated for the future.

(2) In case of paragraph (1), the company shall without delay give public notice that the new share certificates shall be surrendered to the company within a fixed period and shall separately notify each shareholder and pledgee entered in the register of shareholders of the same: *Provided,* That such period shall be at least three months.

Article 432
Judgment of Nullification and Refund to Shareholders

(1) When a judgment nullifying the issuance of new shares becomes final and conclusive, the company shall refund to each shareholder the amount paid by him for new shares.

(2) If the amount mentioned in paragraph (1) is remarkably unreasonable in view of the status of the company's property as of the time when the judgment mentioned in Article 431 (1) becomes final and conclusive, the court may order either the increase or decrease in such amount, upon the application of the company or such shareholder mentioned in paragraph (1).

(3) Articles 339 and 340 (1) and (2) shall apply *mutatis mutandis* in case of paragraph (1).

SECTION 5
Amendment of the Articles of Incorporation

Article 433
Method of Amendment of Articles of Incorporation

(1) The articles of incorporation shall be amended by a resolution of the general shareholders' meeting.

(2) The summary of agenda relating to the amendment of the articles of incorporation shall be stated in the notice and public notice under Article 363.

Article 434
Special Resolution for Amendment of Articles of Incorporation

The resolution set forth in Article 433 (1) shall be adopted by the affirmative votes of no less than 2/3 of the voting rights of the shareholders present at the general meeting and of no less than 1/3 of the total outstanding shares.

Article 435
General Meeting of Shareholders of Certain Class of Shares

(1) If a company has issued two or more classes of shares and a certain class of shareholders is to be prejudiced by the amendment of the articles of incorporation, the resolution of a general meeting of such specific class of shareholders shall be required for effecting such amendment in addition to that of a general shareholders' meeting.

(2) The resolution under paragraph (1) shall be adopted by the affirmative votes of no less than 2/3 of the voting rights of the shareholders present at the general meeting and of no less than 1/3 of the total outstanding shares of such class.

(3) The provisions relating to a general shareholders' meeting shall apply *mutatis mutandis* to the general meeting mentioned in paragraph (1), except for those provisions relating to non-voting shares.

Article 436
Idem-*General Meeting of Shareholders of Certain Class of Shares*

Article 435 shall apply *mutatis mutandis* where special provisions are to be made with regard to each class of shares in accordance with Article 344 (3) and where the shareholders of certain classes are to be prejudiced by the exchange or transfer of shares or the merger of the company.

Article 437
Deleted

SECTION 6
Reduction of Capital

Article 438
Resolution for Reduction of Capital

(1) In order to reduce capital, the resolution in accordance with Article 434 shall be required.

(2) The summary of agenda relating to the reduction of capital shall be stated in notices and public notices in accordance with Article 363.

Article 439
Method of Reduction of Capital, its Procedures

(1) In the resolution for reduction of capital, the method of effecting such reduction shall be determined.

(2) Article 232 shall apply *mutatis mutandis* to the reduction of capital.

(3) Any objection by bondholders may be raised subject to the resolution of a meeting of bondholders. In this case, the court may, upon the application of any interested person, extend in favor of the bondholders the period within which such objection shall be raised.

Article 440
Procedures of Consolidation of Shares

If shares are to be consolidated, the company shall determine a period of no less than one month and shall give public notice to the effect that shares shall be consolidated and that share certificates shall be submitted to the company within such period and shall separately give notice to such effect to each of the shareholders and the pledgees who are entered in the register of shareholders.

Article 441
Idem-*Procedures of Consolidation of Shares*

The consolidation of shares shall take effect upon the expiration of the period mentioned in Article 440: *Provided,* That if the procedures set forth in Article 232 have not been completed, it shall take effect upon the completion of such procedures.

Article 442
Delivery of New Share Certificates

(1) If, in case of the consolidation of share, there is any person who cannot submit his old share certificates, the company may, upon the application of such person, determine the period of no less than three months and give public notice to the effect that any interested person shall raise his objection, if any, to such old share certificates within such period and the company may deliver new share certificates to such person after the lapse of such period.

(2) Expenses for the public notice mentioned in paragraph (1) shall be borne by the applicant.

Article 443
Disposition of Fractional Shares

(1) If there are shares the number of which is unfit for the consolidation, the new share issued for such portion unfit for the consolidation shall be sold by means of auction the proceeds from which shall be delivered to the former shareholders in proportion to the number of their shares: *Provided,* That the shares which are transacted on an exchange at the price quoted thereat may be sold through such exchange and shares without an exchange quotation may be sold in a manner other than auction with the permission of the court.

(2) Article 442 shall apply *mutatis mutandis* to the case of paragraph (1).

Article 444
Idem-Disposition of Fractional Shares

Article 443 shall apply *mutatis mutandis* to bearer share certificates which have not been submitted in accordance with Article 440.

Article 445
Action for Nullifying Reduction of Capital

The nullity of reduction of capital may be asserted only by means of an action which shall be brought only by a shareholder, director, auditor, liquidator, bankruptcy trustee or creditor disapproving such reduction of capital, within six months from the date on which the registration of alteration due to such reduction of capital has been effected.

Article 446
Applicable Provisions

Articles 186 through 189, the main sentence of Article 190, Articles 191, 192 and 377 shall apply *mutatis mutandis* to the action under Article 445.

SECTION 7
Accounting of Company

Article 447
Preparation of Financial Statements

Directors shall prepare, at each period for the settlement of accounts, the following documents and supplementary schedules and obtain the approval of the board of directors:

1. Balance sheet;
2. Profit and loss statement; and
3. Statements of appropriation of earned surplus or statements of disposition of deficit.

Article 447-2
Preparation of Business Report

(1) Directors shall prepare, at each period for the settlement of accounts, a business report and shall obtain the approval of the board of directors.

(2) The business report shall include important matters concerning the business as set forth in the Presidential Decree.

Article 447-3
Submission of Financial Statement

Directors shall submit to auditors the documents set forth in Articles 447 and 447-2 six weeks before the date of the ordinary general meeting.

Article 447-4
Audit Report

(1) Auditors shall submit to directors an audit report within four weeks from the date on which he receives the documents under Article 447-3.

(2) The audit report under paragraph (1) shall include the followings:

1. Outline of audit method;
2. If the matters required to be entered in the account books are not recorded or are recorded falsely or the entry into the balance sheet or profit and loss statement does not coincide with that of the account books, a statement to such effect;
3. If the balance sheet and the profit and loss statement show exactly the status of the company's financial conditions and the company's profits and losses according to the relevant acts, subordinate statutes and the articles of incorporation, a statement to such effect;
4. If the balance sheet or the income statement fails to show exactly the situation of the company's property holding and the company's profits and losses, in contravention of the relevant acts, subordinate statutes and the articles of incorporation, a statement to such effect and the reasons therefor;
5. Whether it is proper or not to change the accounting method relating to the preparation of the balance sheet or the profit and loss statement and, if so, the reasons therefor;
6. Whether or not the business report shows exactly the situation of the company in accordance with the relevant acts, subordinate statutes or the articles of incorporation;
7. Whether or not the statements of appropriation of earned surplus or the statements of disposition of deficit is prepared in conformity with the relevant acts, subordinate statutes and the articles of incorporation;
8. If the statements of appropriation of earned surplus or the statements of disposition of deficit is obviously improper in the light of the company's financial conditions and other circumstances, a statement to such effect;
9. If the supplementary schedules mentioned in Article 447 does not include the matters required to be stated or

includes incorrect record therein or includes what does not conform with the account books, the balance sheet, the profit and loss statement or the business report, a statement to such effect;

10. If a dishonest act or an act of conduct which is in material contravention of the relevant acts, subordinate statutes or the articles of incorporation is found with regard to a director's performance of duties, a statement to such effect; and
11. If an investigation necessary for the audit could not be carried out, a statement to such effect and the reasons thereof.

Article 448

Keeping and Public Inspection of Financial Statements, etc.

(1) Directors shall keep the documents set forth in Articles 447 and 447-2 as well as the audit report at the principal office of the company for five years from one week prior to the date of the ordinary general meeting and shall keep copies thereof at the branch offices for three years.

(2) Any shareholder or creditor of the company may, at any time during business hours, inspect the documents set forth in paragraph (1) and may demand the delivery of copies or abstracts of such documents by paying such fees as fixed by the company.

Article 449

Approval and Public Notice of Financial statements, etc.

(1) Directors shall submit to the ordinary general meeting the documents mentioned in subparagraphs 1 through 3 of Article 447 and shall demand the the approval of the ordinary general meeting.

(2) Directors shall submit to the ordinary general meeting the documents set forth in Article 447-2 and shall report on the contents thereof.

(3) If directors have obtained the approval of the general meeting in respect of documents set forth in paragraph (1), they shall give, without delay, public notice of the balance sheet.

Article 450

Release of Liability of Directors and Auditors

If any contrary resolution has not been adopted within two years after the ordinary general meeting at which the approval mentioned in Article 449(1) was given, the company shall be deemed to have released the directors and auditors from their liability: *Provided,* That this shall not apply where any of the directors or auditors has committed some dishonest act.

Article 451
Capital

Unless otherwise provided in this Act, the capital of a company shall be equal to the total sum of the par value of total outstanding shares.

Article 452
Method for Valuation of Assets

Assets to be entered in the account books of a company shall be valued in the following manner, in addition to the application of subparagraph 2 of Article 31:

1. Current assets shall be valued at aquisition cost or at manufacturing cost thereof: *Provided,* That they shall be valued at the current price if the current price is remarkably lower than the acquisition price or the manufacturing cost;
2. Deleted;
3. Monetary claims shall be valued at the amount of claim. If, however, the monetary claims have been acquired at the price lower than the amount of claims or in any other similar case, a reasonable reduction may be effected. In case of monetary claims the collection of which might be impossible, the estimated amount of uncollectable credits shall be deducted;
4. Bonds having exchange quotations shall be valued by the average price during one month prior to the period for the settlement of accounts and bonds having no exchange quotations shall be valued at acquisition cost: *Provided,* That if the acquisition cost is different from the face amount of bonds, the reasonable increase or decrease may be effected. The latter part of subparagraph 3 shall apply *mutatis mutandis* to the bonds the collection of which might be impossible. This shall apply to any other things similar to bonds;
5. Shares having exchange quotations shall be valued at the acquisition cost: *Provided,* That they shall be valued at the current price if the average price during one month prior to the period for the settlement of accounts is lower than the acquisition cost. Shares which were acquired for long-term holding because of transactional or other necessity shall be valued at acquisition cost, irrespective of whether or not they have exchange quotations: *Provided,* That the status of property of the issuing company has been remarkably deteriorated, the reasonable deduction of the amount shall be effected. The same shall apply to the valuation of contributions made into a limited liability company or any other entity; and
6. In case of goodwill of business, the acquisition cost may be entered, only if it has been acquired by succession for value. In this case, at least an equal portion out of the above-mentioned cost shall be amortized at each period for the settlement of ac-

counts within five years after the acquisition of goodwill of business.

Article 453
Account of Organization Cost

(1) The costs defrayed in accordance with subparagraphs 4 of Article 290 and any amount of tax paid for the registration of incorporation may be accounted on the assets side of the balance sheet.

(2) If it has been determined that interest shall be distributed after the incorporation of the company or before the commencement of the operation of a business, at least equally divided portion out of such accounted amount under paragraph (1) shall be amortized at each period for the settlement of accounts within five years after the distribution of such interest.

Article 453-2
Account of Pre-operating Cost

(1) Any cost disbursed for commencement of the operation of a business may be accounted on the assets side of the balance sheet.

(2) At least an equal portion out of such accounted amount under paragraph (1) shall be amortized at each period for the settlement of accounts within three years after the commencement of the operation of business.

Article 454
Account of New Share Issue Cost

(1) If new shares are issued, the cost disbursed for such issuance may be accounted on the assets side of the balance sheet.

(2) At least an equal portion out of such accounted amount under paragraph (1) shall be amortized at each period for the settlement of accounts within three years after the company has issued the new shares.

Article 455
Account of Discount on Share Issuance

(1) If shares are issued in accordance with Article 417, the amount of discount below the par value may be accounted on the assets side of the balance sheet.

(2) At least an equal portion out of such accounted amount under paragraph (1) shall be amortized at each period for the settlement of accounts within three years after the company has issued the shares.

Article 456
Account of Bonds Margins

(1) If, in case of the offering of bonds, the total amount which is to be paid on redemption exceeds the actual amount received from such offering, the balance may be accounted on the assets side of the balance sheet.

(2) At least an equal portion out of such accounted amount under paragraph (1) shall be amortized at each period for the settlement of accounts within the period set for the redemption of the bonds.

(3) Article 454 shall apply *mutatis mutandis* to the case of new bonds issue cost.

Article 457
Account of Accrued Interest Dividend During Construction

(1) Any amount distributed in accordance with Article 463 may be accounted on the assets side of the balance sheet.

(2) If the dividend is made after the commencement of the operation of business at the rate higher than six percent per annum, a sum no less than the amount in excess of six percent shall be amortized out of such accounted amount under paragraph (1).

Article 457-2
Account of Research and Development Cost

(1) The cost incurred specially in connection with the research on or development of any new products or new technology may be accounted on the assets side of the balance sheet.

(2) At least an equal portion out of such accounted amount under paragraph (1) shall be amortized at each period for the settlement of accounts within five years after disbursement thereof.

Article 458
Earned Surplus Reserve

A company shall accumulate, as the earned surplus reserve, the amount of at least 1/10 of the cash dividend at each period for the settlement of accounts until reserve reaches half of the company's capital.

Article 459
Capital Surplus Reserve

(1) The company shall accumulate the following, as the capital surplus reserve:

1. If shares are issued at the price higher than the par value, such amount in excess;

1-2. If, in case of an all-inclusive share exchange, the limit of capital increase under Article 360-7 exceeds the increased equity capital of a complete parent company, such amount in excess;

1-3. If, in case of an all-inclusive transfer of shares, the limit of capital under Article 360-18 exceeds the increased equity capital of the established complete parent company, such amount in excess;

2. If, in case of reduction of capital, the reduced amount exceeds the amount used for the redemption of shares, for the refund of share prices and/or for recovery of deficit, such amount in excess;

3. If, in case of a merger of companies, the value of property succeeded to from the company which ceased to exist exceeds the amount of the obligation succeeded to from such company, the amount refunded to the shareholders of such company and the amount of the increase in the capital of the surviving company or the amount of the capital of the newly incorporated company in consequence of the merger, as the case may be, such amount in excess;

3-2. If the value of property which is invested in a company newly incorporated or a surviving company due to division or merger through division under Article 530-2 exceeds the amount of the obligation inherited from the investment company, the amount refunded to the shareholders of such company, and the amount of the capital of the newly incorporated company or the amount of the increase in the capital of the surviving company, such amount in excess; and

4. Any other surplus in the capital transaction

(2) Out of the excess amount under paragraph (1) 3 and 3-2, the earned surplus reserve and other legal reserves of the company which ceased to exist or has been divided may be succeeded to by the surviving company or the newly incorporated company due to a merger, division, or merger through division.

Article 460
Use of Legal Reserve

(1) The legal reserve set forth in Articles 458 and 459 shall not be disposed of, except for recovery of deficit of the capital.

(2) The capital surplus reserve shall not be used for recovery of deficit of the capital, unless the earned surplus reserve is fully used for recovery of deficit.

Article 461
Capitalization of Reserves

(1) A company may capitalize the whole or a part of the reserve

subject to a resolution of the board of directors: *Provided,* That this shall not apply where the articles of incorporation provide that such shall be determined at a general shareholders' meeting.

(2) In case of paragraph (1), the company shall issue the shares to the shareholders in proportion to the number of shares which they hold. In this case, Article 443 (1) shall apply *mutatis mutandis* to fractional shares.

(3) When a resolution is made by the board of directors in accordance with paragraph (1), the company shall fix a date and give public notice two weeks before such date to the effect that new shares under paragraph (2) shall be allotted to the shareholders entered on the register of shareholders on such date: *Provided,* That if such date falls within the period under Article 354 (1), the public notice shall be given two weeks before the first day of such period.

(4) In case of the proviso of paragraph (1), the shareholders shall become those of new shares under paragraph (2) from the date of the resolution of the general shareholders' meeting.

(5) When the shareholders become those of new shares pursuant to paragraph (3) or (4), directors shall immediately notify the shareholders to whom such new shares are allotted and the pledgees entered on the register of shareholders of the class and number of such shares. If bearer share certificates have been issued, a public notice of the contents of resolution under paragraph (1) shall be given.

(6) The latter part of Article 350 (3) shall apply *mutatis mutandis* to the case of paragraph (1).

(7) Article 339 shall apply *mutatis mutandis* to the issuance of shares pursuant to paragraph (2).

Article 462
Dividends

(1) A company may pay dividends within the limit of the amount of net assets stated on the balance sheet after deducting the followings:

1. Amount of the capital;
2. Total amount of the capital surplus reserve and the earned surplus reserve which are accumulated till the pertinent period for the settlement of accounts of the company; and
3. Amount to be accumulated as the earned surplus for the pertinent period for the settlement of accounts of the company.

(2) If dividends have been paid in violation of paragraph (1), any creditors of the company may demand that such dividends be returned to the company.

(3) Article 186 shall apply *mutatis mutandis* to an action relating to the demand under paragraph (2).

Article 462-2
Stock Dividends

(1) A company may pay dividends by means of issuing new shares, subject to a resolution of the general shareholders' meeting: *Provided,* That such stock dividends may not exceed half of the total amount of dividends.

(2) The dividends under paragraph (1) shall be made based on the par value of the shares and if the company have issued different classes of shares, such dividend may be made in the same classes of shares, respectively.

(3) Article 443 (1) shall apply *mutatis mutandis* where, out of the total amount of dividend to be made by means of stock, there remains a fraction which is less than the par value of a share.

(4) A shareholder who has received stock dividend shall become a shareholder of the new shares from the closing of the general shareholders' meeting at which the resolution mentioned in paragraph (1) is adopted. In this case, the latter part of Article 350 (3) shall apply *mutatis mutandis.*

(5) When the resolution under paragraph (1) has been adopted, directors shall notify, without delay, the shareholders entitled to receive the stock dividends and the pledgees entered on the register of shareholders of the class and number of shares to be distributed to them. If bearer share certificates have been issued, a public notice of the contents of the resolution under paragraph (1) shall be given.

(6) The right of a pledgee under Article 340 (1) shall extend to the shares to be received by a shareholder pursuant to paragraph (1). In this case, Article 340 (3) shall apply *mutatis mutandis.*

Article 462-3
Interim Dividend

(1) A company which has set one period for settlement of accounts per a year may determine in the articles of incorporation that the company may pay a dividend (hereinafter in this Article referred to as "the interim dividend") by means of money to the shareholders as of a specified date which has been set by a resolution of the board of directors only one time during a business year.

(2) The interim dividend shall be made within the limit of the amount of net asset on the balance sheet of the immediately previous period for settlement of accounts, after deducting the following:

1. The amount of capital of the previous period for settlement of accounts;
2. The total amount of the capital surplus reserve and earned surplus reserve accumulated until the previous period for settlement of accounts;

3. The amount which is to be distributed as a profit or paid at the regular general meeting of the previous period for settlement of accounts; and
4. The earned surplus reserve which is to be accumulated in the pertinent period for settlement of accounts in connection with the interim dividend.

(3) If it is deemed that the amount of net asset on the balance sheet of the pertinent period for settlements of account is unlikely to reach the total sum of the amounts under respective subparagraphs of Article 462 (1), the company shall not pay the interim dividend.

(4) In case where, although the amount of net asset on the balance sheet of the pertinent period for settlements of account fails to reach the total sum of the amounts under respective subparagraphs of Article 462 (1), the interim dividend has been paid, the directors shall be jointly and severally liable to compensate for the balance (where the dividend is less than the balance, the dividend) to the company: *Provided,* That the same shall not apply where it is proved that the directors did not neglect their care in judging on paragraph (3).

(5) With respect to the application of Articles 340 (1), 344 (1), 350 (3) (including where this shall apply *mutatis mutandis* under Articles 423 (1), 516 (2), and 516-9; hereinafter in this paragraph the same shall apply), 354 (1), 370 (1), 457 (2), 458, and 464 and subparagraph 3 of Article 625, the interim dividend shall be deemed to be the dividend under Article 462 (1), and with respect to the application of Article 350 (3), a specified date under paragraph (1) shall be deemed to be the end of the business year.

(6) Articles 399 (2) (3) and 400 shall apply *mutatis mutandis* with respect to the liability of directors under paragraph (4), and Article 462 (2) and (3), with respect to the interim dividend made in violation of paragraph (3).

Article 463
Accrued Interest Dividend during Construction

(1) If it is deemed impossible, in view of the nature of the undertaking which forms the company's purpose, to commence the whole of the business for more than two years after its incorporation, the company may provide in the articles of incorporation that a certain amount of interest shall be distributed to the shareholders of certain shares during a specified period prior to the commencement of the whole of business: *Provided,* That the rate of such interest shall not exceed five percent per annum.

(2) The provisions of the articles of incorporation mentioned in paragraph (1) or amendment thereof shall require the authorization of the court.

Article 464
Standard for Distribution of Profits, etc.

The distribution of profits or interest shall be made in proportion to the number of shares owned by each shareholder: *Provided,* That this shall not apply to the case of Article 344 (1).

Article 464-2
Time for Payment of Dividends

(1) A company shall pay dividends under Article 464 no later than one month after the date of approval under Article 449 (1) or a resolution under Article 462-3 (1): *Provided,* That this shall not apply where the time for payment of dividend is differently determined at the general meeting under Article 449 (1) or the board of directors under Article 462-3 (1).

(2) The claim for dividends under paragraph (1) shall be extinguished if it is not exercised within five years.

Article 465
Deleted

Article 466
Shareholder's Right to Inspect Account Books

(1) Any shareholder who hold no less than 3/100 of the total outstanding shares may demand, in writing with the reasons therefor specified, to inspect or copy the account books and related documents.

(2) A company shall not refuse the shareholder's demand mentioned in paragraph (1) unless it proves that such demand is improper.

Article 467
Inspection on Affairs and Status of Company's Property

(1) If there is any reason to suspect of dishonest act or of material fact in contravention of any relevant acts, subordinate statutes or the articles of incorporation in connection with the management of affairs, any shareholder who holds no less than 3/100 of the total outstanding shares may apply to the court for the appointment of an inspector to investigate the affairs of the company and the status of its property.

(2) The inspector shall report on the results of the investigation to the court.

(3) If the court deems it necessary according to the report mentioned in paragraph (2), it may order the representative director to convene a general shareholders' meeting. In this case, Article 310 (2) shall apply *mutatis mutandis.*

(4) Directors and auditors shall examine without delay whether

or not the report of the inspector mentioned in paragraph (3) is accurate and shall report on the results thereof to the general shareholders' meeting.

Article 467-2
Prohibition against Granting Benefit

(1) A company may not grant to any person a proprietary benefit in connection with the exercise of rights as a shareholder.

(2) If a company has given gratuitously any proprietary benefit to a specified shareholder, such benefit shall be presumed to have given in connection with the exercise of a shareholder's rights. If a company has given for value any proprietary benefit to a specified shareholder but if the benefits obtained by the company is remarkably less than such benefit granted to the shareholder, the same shall be applicable.

(3) If a company has granted any proprietary benefit in contravention of paragraph (1), the person who has received such benefit shall return it to the company. In this case, if the person has paid to the company anything in compensation for such benefit, the company may return it to him.

(4) Articles 403 through 406 shall apply *mutatis mutandis* to an action for the return of benefit under paragraph (3).

Article 468
Right to Preferential Payment of Employee

A person who has a claim for the return of money as a guarantee for fidelity of an employee or any other claim arising out of the relations of employment between a company and its employees shall be entitled to preferential payment from the company's whole property: *Provided,* That such right shall not have priority over the pledge or mortgage.

SECTION 8
Bonds

Sub-Section 1 Common Provisions

Article 469
Offering of Bonds

A company may offer bonds for subscription subject to a resolution of the board of directors.

Article 470
Limitation on Total Amount

(1) The total amount of bonds shall not exceed four times the

amount of net assets of the company stated in the latest balance sheet.

(2) Deleted.

(3) If the offering of bonds are made for the purpose of redeeming old bonds, the amount of the old bonds shall not be included in calculation of the total amount of the bonds. In this case, the old bonds shall be redeemed within six months from the payment date of new bonds or from the first payment date if such payment is to be made in installments.

Article 471
Restrictions on Offering of New Bonds

A company shall not offer new bonds for subscription until the amount of bonds previously offered for subscription has been fully paid.

Article 472
Face Amount of Bond

(1) The face amount of each bond shall not be less than ten thousand won.

(2) The face amount of each bond shall, in respect of the same class of bonds, either be equal or be such as is an integral multiple of the minimum amount of the bond of the same class.

Article 473
Restrictions on Redemption in Excess of Par Value

If a decision is made to repay to bondholders an amount in excess of the par value of the bond, such amount in excess shall be paid at an equal rate for each bond.

Article 474
Public Offering, Subscription Form for Bonds

(1) A person who intends to subscribe for bonds shall prepare two copies of subscription forms, stating the number of bonds for which he intends to subscribe and his address, and shall write his name and affix his seal or sign thereon.

(2) The subscription form for bonds shall be prepared by the directors and contain the following:

1. Trade name of the company;
2. Total amount of the capital and the reserve;
3. Amount of the net assets of the company as shown by the latest balance sheet;
4. Total amount of the bonds;
5. Face amount of each bond;
6. Issue-price or minimum issue-price of each bond;
7. Rate of interest payable on each bond;

8. Method and time of redemption of the bonds and the payment of interest;
9. Amount and time of each payment for the subscription price of bonds, if payments are to be made in installments;
10. If a determination is made to restrict the bonds certificates either in bearer form or in registered form, a statement to that effect;
11. If bonds have been previously issued, the amount yet to be redeemed;
12. If an offering of bonds for the purpose of redeeming old bonds are made in excess of the limits prescribed in Article 470 (1), a statement to that effect;
13. If there is a company which has been commissioned to offer bonds for subscription, the trade name and address of such company;
14. If the company mentioned in subparagraph 13 has undertaken to subscribe for any portion of the total amount of the bonds which has not been subscribed for through the offering, a statement to that effect; and
15. If a transfer agent is designated, his full name, address and business office.

(3) In case where the minimum issue-price has been determined, the subscriber for bonds shall state in the subscription form the amount at which he intends to subscribe for.

Article 475
Subscription for All Bonds

Article 474 shall not apply where all the bonds are subscribed for under a contract. The same shall apply to such part of the bonds as may be subscribed for by a company which has been commissioned to offer bonds for subscription.

Article 476
Payment

(1) When the subscription for all the bonds has been completed, the directors shall, without delay, have any person who has subscribed for bonds make the full payment or the first installment payment on each bond.

(2) A company commissioned to offer bonds for subscription may in its own name perform the acts set forth in Article 474 (2) and 475 on behalf of the company.

Article 477
Deleted

Article 478
Issuance of Bond Certificates

(1) No certificate may be issued for a bond until its full amount has been paid up.

(2) Each bond certificate shall contain the following particulars and the representative director shall write his name and affix his seal or shall sign thereon:

1. Serial number of each bond; and
2. Particulars set forth in Article 474 (2) 1, 4, 5, 7, 8, 10 and 13.

Article 479
Transfer of Registered Bonds

(1) Transfer of registered bonds shall not be asserted against the company or any third person unless the name and address of the transferee have been entered in the register of bonds and his full name is entered in the bond certificates.

(2) Article 337 (2) shall apply *mutatis mutandis* to the transfer of registered bonds.

Article 480
Exchange between registered Certificate and Bearer Certificate

A bondholder may at any time request the company to change a registered certificate into a bearer certificate and, otherwise, a bearer certificate into a registered certificate: *Provided,* That this shall not apply where the form of the bond certificate is restricted to either in registered or bearer form.

Article 481
Resignation of Commissioned Company

A company which has been commissioned to offer bonds for subscription may resign with the consent of the issuing company and a meeting of bondholders. It may do so with the permission of the court where there are unavoidable reasons therefor.

Article 482
Dismissal of Commissioned Company

If a company which has been commissioned to offer bonds for subscription is unfit for dealing with the business or if there exists any other justifiable cause, the court may dismiss such company at the request of the issuing company or a meeting of bondholders.

Article 483
Successor to Business of Commissioned Company

(1) If, in case of Articles 481 and 482, the company which has been commissioned to offer bonds for subscription does not exist, a successor to its business may be appointed by agreement between the issuing company and a meeting of bondholders.

(2) If unavoidable reasons exist, any interested person may demand the court to appoint such successor to the business.

Article 484
Authority of Commissioned Company

(1) A company which has been commissioned to offer bonds for subscription shall have authority to do on behalf of the bondholders all judicial or extra-judicial acts which are necessary for the redemption of bonds.

(2) When the company under paragraph (1) is requested to redeem the bonds, it shall without delay give public notice thereof and give a separate notice to each bondholder known to the company.

(3) In case of paragraph (2), bondholders may demand the payment of the redemption price in exchange for their bond certificates.

Article 485
Authority and Duty in Case of Two or more Commissioned Company

(1) If two or more companies have been commissioned to offer bonds for subscription, all acts within the scope of their authority shall be jointly performed.

(2) In case of paragraph (1), each company shall be jointly and severally liable to the bondholders to pay redemption price.

Article 486
Missing Coupon

(1) If, in case of redemption of bearer bonds to which coupons are attached, any coupon is missing, a sum equal to the amount of the coupon shall be deducted from the redemption price.

(2) Any holder of the coupon mentioned in paragraph (1) may at any time demand the payment of such deducted amount in exchange for such coupon.

Article 487
Extinctive Prescription for Right to Demand Redemption

(1) The right to demand redemption of the bonds shall be extinguished if it is not exercised within ten years.

(2) The same shall apply to the right under Article 484 (3).
(3) The right to demand payment of interest of the bonds and the rights mentioned in Article 486 (2) shall be extinguished, if it is not exercised within five years.

Article 488
Register of Bonds

The register of bonds shall be prepared by the company and the following particulars shall be entered in such register:

1. Name and address of each bondholder;
2. Serial number of each bond certificate;
3. Particulars set forth in Article 474 (2) 4, 5, 7 through 9 and 13;
4. Amount paid in for each bond and date of each payment;
5. Date of issuance of the bond certificates;
6. Date of acquisition of each bond; and
7. In case of issuance of bearer bonds, the class, number, serial number and date of issuance

Article 489
Applicable Provisions

(1) Article 353 shall apply *mutatis mutandis* to notices and peremptory notices to subscribers for bonds and to bondholders.
(2) Article 333 shall apply *mutatis mutandis* where bonds belong to ownership in common of two or more persons.

Sub-Section 2 Meetings of Bondholders

Article 490
Matters Subject to Resolution

Unless otherwise provided in this Act, a meeting of bondholders may adopt resolutions, with the permission of the court, in respect of any matter which seriously affects the interests of bondholders.

Article 491
Person Authorized to Convene

(1) A meeting of bondholders shall be convened by the issuing company which issued the bonds or by a company which has been commissioned to offer bonds for subscription.
(2) Bondholders representing at least 1/10 of the total amount of the bonds may demand the convocation of a meeting of bondholders by submitting to either of the companies mentioned in paragraph (1) a written application containing the proposed subject-matters of the meeting and the reasons for convening such meeting.
(3) Article 366 (2) shall apply *mutatis mutandis* in case of paragraph (1).

(4) The holder of bearer bond certificates may not exercise the right under paragraphs (2) and (3) unless he has deposited his bond certificates.

Article 492
Votes

(1) Each bondholder shall have one vote for each minimum face amount of the bonds.
(2) The holder of bearer bond certificates may not exercise his voting rights unless he has deposited his bond certificates at least one week prior to the date set for the meeting.

Article 493
Attendance of Representative of Issuing or Commissioned Company

(1) The issuing company or the company which has been commissioned to offer bonds for subscription may have its representative attend a meeting of bondholders or may produce its opinion in writing.
(2) The convocation of a meeting of bondholders shall be notified to the companies mentioned in paragraph (1).
(3) Article 363 (1) and (2) shall apply *mutatis mutandis* to the notification under paragraph (2).

Article 494
Right to Demand Issuing Company to Make its Representative Attend

A meeting of bondholders or the person who has convened such meeting may, if deemed necessary, demand the issuing company to have its representative attend the meeting.

Article 495
Method of Resolution

(1) Article 434 shall apply *mutatis mutandis* to the resolutions of a meeting of bondholders.
(2) The consent or demand mentioned in Articles 481 through 483 and 494 may, notwithstanding paragraph (1) above, be decided by the majority of the votes of the bondholders present.

Article 496
Application for Approval of Resolution

Persons who have convened a meeting of bondholders shall apply to the court for the approval of the resolutions within one week from the date on which such resolutions have been adopted.

Article 497
Reasons for Non-Approval of Resolution

(1) The court shall not approve the resolution of a meeting of bondholders in the following cases:
   1. If the procedures for convening the meeting of bondholders or the manner of adopting the resolution was in contravention of any relevant acts, subordinate statutes or of any statement contained in the prospectus for offering of bonds;
   2. If the resolution was adopted in an improper manner;
   3. If the resolution was remarkably unfair; and
   4. If the resolution was contrary to the interests of the bondholders in general.

(2) In case of paragraph (1) 1 and 2, the court may approve such resolution by taking into account the details of the resolution and all other circumstances.

Article 498
Effect of Resolution

(1) A resolution of a meeting of bondholders shall take effect subject to the approval of the court.

(2) A resolution of a meeting of bondholders shall be effective against all the bondholders.

Article 499
Public Notice of Approval or Non-Approval of Resolution

When a decision has been made either to approve or not to approve a resolution of a meeting of bondholders, the company which issued the bonds shall without delay give public notice thereof.

Article 500
Representatives of Meeting of Bondholders

(1) A meeting of bondholders may elect one or more representatives from among the holders of bonds representing no less than 1/500 of the total amount of the bonds and may delegate him or them to decide subject matters which are to be dealt with in the meeting.

(2) If there are two or more representatives, the decision under paragraph (1) shall be made by the majority of their votes.

Article 501
Execution of Resolution

The resolution of a meeting of bondholders shall be executed either by a company commissioned to offer bonds for subscription or, in the absence of any such company, by the representatives mentioned in Article 500: *Provided,* That this shall not apply where a person has been appointed to execute by a resolution of a meeting of bondholders.

Article 502
Two or more Representatives of Meeting or Executors of Resolution

Article 485 (1) shall apply *mutatis mutandis* where there are two or more representatives or executors.

Article 503
Execution of Resolution relating to Redemption

Articles 484, 485 (2) and 487 (2) shall apply *mutatis mutandis* where either the representatives of meeting or the executors of the resolution execute a resolution relating to the redemption of the bonds.

Article 504
Dismissal of Representative of Meeting or Executor of Resolution, etc.

The meeting of bondholders may at any time dismiss any representative of the meeting or executor of the resolution and may alter details of any matter delegated to such person.

Article 505
Acceleration

(1) If a company has neglected to pay interest on the bonds or has neglected to redeem them where a part of the bonds are to be redeemed within a fixed period, the bondholders may by a resolution of a meeting of bondholders give notice to the company to the effect that payment thereof must be made within a fixed period of time and that if the company fails to make payment within such period, it shall accelerate payment of the whole amount of the bonds: *Provided,* That such period shall not be shorter than two months.

(2) The notice mentioned in paragraph (1) shall be given in writing.

(3) If a company fails to pay within the period mentioned in paragraph (1), it shall accelerate the payment of the whole amount of the bonds.

Article 506
Public Notice and Notice of Acceleration

When a company is subject to acceleration in accordance with Article 505, the person who executes of the resolution under Article 505 (1) shall without delay give public notice to that effect and give a separate notice to each bondholders known to such person thereof.

Article 507
Remuneration and Expenses for Commissioned Company

(1) Unless otherwise provided in the contract made with the issu-

ing company, any remuneration payable to a company commissioned to offer bonds for subscription, representatives or executors or any expenses necessary for the execution of their duties may be borne by the company, with the permission of the court.

(2) Any company commissioned to offer bonds for subscription, any representative of a meeting or executor of a resolution may receive remuneration and expenses mentioned in paragraph (1) out of the redemption amount, in preference to bondholders.

Article 508
Expenses relating to Meetings of Bondholders

(1) Any expenses relating to meetings of bondholders shall be borne by the issuing company.

(2) Any expenses relating to the demand under Article 496 shall be borne by the company. The court may, however, upon the application of any interested person or *ex officio,* specially determine a person who shall bear such expenses in whole or in part.

Article 509
Meetings of Certain Classes of Bondholders

If two or more classes of bonds have been issued, a meeting of bondholders shall be convened for each class of bonds respectively.

Article 510
Applicable Provisions

(1) Articles 363, 368 (3) and (4), 369 (2), and 371 through 373 shall apply *mutatis mutandis* to a meeting of bondholders.

(2) The minutes of meetings of bondholders shall be kept by the issuing company at its principal office.

(3) A company commissioned to offer bonds for subscription and any bondholder may, at any time during business hours, demand inspection of the minutes mentioned in paragraph (2).

Article 511
Action for Revocation by Commissioned Company

(1) If payment, settlement or any other act effected by a company to a certain bondholder is remarkably unfair, a company commissioned to offer bonds for subscription may demand the revocation thereof, only by means of action to court.

(2) The action mentioned in paragraph (1) shall be brought within six months from the date on which the company becomes aware of the facts constituting a cause for revocation or within one year from the date when such acts have been effected.

(3) Article 186 of this Act and the proviso of Article 406 (1) and Article 407 of the Civil Act shall apply *mutatis mutandis* to the action mentioned in paragraph (1).

Article 512
Action for Revocation by Representative, etc.

When a resolution has been adopted by a meeting of bondholders, any representative of a meeting or executor of a resolution may also bring the action mentioned in Article 511 (1): *Provided,* That such action shall be brought within one year from the date when such acts have been effected.

Sub-Section 3 Convertible Bonds

Article 513
Issuance of Convertible Bonds

(1) A company may issue convertible bonds.

(2) In case of paragraph (1), any of the following matters not provided for in the articles of incorporation shall be determined by the board of directors, unless the articles of incorporation provides that it shall be determined by a general meeting of shareholders' meeting:

1. Total amount of convertible bonds;
2. Conditions of conversion;
3. Contents of the shares to be issued upon conversion;
4. Period during which a claim for conversion may be demanded;
5. Effect that the preemptive rights to subscribe for convertible bonds is granted to shareholders, and the amount of convertible bonds subject to such rights; and
6. Particulars as to the issuance of convertible bonds to the persons other than shareholders, and the amount of such convertible bonds to be issued.

(3) If, in case where convertible bonds are issued to those who are not shareholders of the company, the articles of incorporation do not provide for the amount of convertible bonds to be issued, conditions of conversion, contents of the shares to be issued upon conversion and the period during which the conversion may be demanded, such matters shall be determined by resolution pursuant to Article 434. In such case, the proviso of Article 418 (3) shall apply *mutatis mutandis*

(4) In case of resolution in accordance with paragraph (3), the summary of agenda relating to the issuance of convertible bonds shall be stated in the notice and public notice under Article 363.

Article 513-2
Rights of Shareholders to Subscribe for Convertible Bonds

(1) Any shareholder who has a right to subscribe for convertible bonds shall be entitled to bonds in proportion to the number of shares which he holds: *Provided,* That this shall not apply to an fractional bond the amount of which is less than the minimum face amount of each convertible bond.

(2) Article 418 (2) shall apply *mutatis mutandis* where a shareholder has a right to subscribe for the convertible bonds.

Article 513-3
Peremptory Notice to Shareholders Having Right to Subscribe for Convertible Bonds

(1) If shareholders have the preemptive right to subscribe for convertible bonds, the company shall notify each shareholder of the amount of convertible bonds which he is entitled to subscribe for, issue price, conditions of conversion, contents of the shares to be issued upon conversion, period within which he may demand conversion and a statement to the effect that if he fails to subscribe for the convertible bonds on or before a specified date, he shall lose his right.

(2) Article 419 (2) through (4) shall apply *mutatis mutandis* in case of paragraph (1).

Article 514
Procedures for Issuance of Convertible Bonds

(1) With respect to convertible bonds, the following particulars shall be stated in the subscription form for bonds, the bond certificates and the register of bonds:

1. A statement to the effect that the bonds may be converted into shares;
2. Conditions of conversion;
3. Contents of the shares to be issued upon conversion;
4. Period during which conversion may be demanded; and
5. Provision that the transfer of shares should be subject to the approval of the board of directors, if determined.

(2) Deleted.

Article 514-2
Registration of Convertible Bonds

(1) When a company has issued convertible bonds, the company shall register them at the place of its principal office within two weeks from the date when the payment in accordance with Article 476 is completed.

(2) The particulars to be registered in accordance with paragraph (1) shall be as follows:

1. Total amount of convertible bonds;
2. Face amount of each convertible bond;
3. Amount paid for each convertible bond; and
4. Matters set forth in subparagraphs 1 through 4 of Article 514.

(3) Article 183 shall apply *mutatis mutandis* to the registration mentioned in paragraph (2).

(4) If, in case where convertible bonds have been issued overseas, the matters to be registered take place in a foreign country, the period within which registration shall be made shall start to run from the date when the notification thereof has arrived.

Article 515
Demand for Conversion

(1) Any person who demands conversion shall submit to the company two copies of a written application form together with the bond certificates.

(2) The written application form mentioned in paragraph (1) shall state the bonds to be converted and the date of application and contain a name and a seal or signature of the person demanding conversion.

Article 516
Applicable Provisions

(1) Articles 346 (2), 424 and 424-2 shall apply *mutatis mutandis* to the issuance of convertible bonds.

(2) Articles 339, 348, 350 and 351 shall apply *mutatis mutandis* to the conversion of bonds.

Sub-Section 4 Bonds with Warrants to Subscribe for New Shares

Article 516-2
Issuance of Bonds with Warrants

(1) A company may issue bonds with warrants to subscribe for new shares.

(2) In case of paragraph (1), any of the following matters which are not provided for in the articles of incorporation shall be determined by the board of directors, unless the articles of incorporation provide that it shall be determined by a general of shareholders meeting:

1. Total amount of bonds with warrants;
2. Details of the warrants vested in such bonds;
3. Period within which the warrants are to be exercised;
4. A statement on the transferability of only the warrants;

5. A statement to the effect that upon request of the person who intends to exercise his warrant rights, the issue price of the bonds with warrants shall be deemed as payment under Article 516-8 (1), in lieu of the redemption of such bonds;
6. Deleted;
7. A statement to the effect that the pre-emptive right to subscribe for the bonds with warrants is granted to shareholders and the amount of bonds subject to such rights; and
8. Details on issuance of bonds with warrants to persons other than shareholders and the amount of such bonds with warrants to be issued.

(3) The total amount of issue price of the shares to be issued upon the exercise of warrant rights vested to each bonds shall not exceed the total amount of such bonds with warrant.

(4) If, in case where the bonds with warrants are issued to those who are not shareholders, the articles of incorporation do not provide for the amount of such bonds, contents of the warrant rights and the period within which the warrant rights are to be exercised, such matters shall be determined by a resolution in accordance with Article 434. In such case, the proviso of Article 418 (3) shall apply *mutatis mutandis*.

(5) Article 513 (4) shall apply *mutatis mutandis* to the case of paragraph (4).

Article 516-3
Peremptory Notice to Shareholders Having Right to Subscribe for Bonds with Warrants

(1) If shareholders have the preemptive rights to subscribe for bonds with warrants, the company shall notify each shareholder of the amount of bonds with warrants which he is entitled to subscribe for, the issue price, the particulars of warrant rights, the period within which he may exercise his warrant rights and a statement to the effect that if he fails to subscribe for the bonds with warrants on or before the specified date, he will lose his right. In this case, if the matters set forth in Article 516-2 (2) 4 or 5 have been determined, the details of such matters shall also be notified.

(2) Article 419 (2) through (4) shall apply *mutatis mutandis* to the case of paragraph (1).

Article 516-4
Particulars to Be Entered in Subscription Form for Bonds, Bond Certificates and Register of Bonds

The following matters shall be entered in the subscription form for bonds, the bond certificates and the register of bonds in case of bonds

with warrants: *Provided,* That when the company issues the certificates of warrants set forth in Article 516-5 (1), it shall not be required to enter them in the bond certificates:

1. A statement to the effect that they are bonds with warrants;
2. Particulars set forth in Article 516-2 (2) 2 through 5;
3. The banks and other financial institutions that will be responsible to receive the payment according to Article 516-8 and the places where such payments are to be made; and
4. Provision that the transfer of shares should be subject to the approval of the board of directors, if determined.

Article 516-5
Issuance of Certificates of Warrants

(1) If a company has determined the particulars set forth in Article 516-2 (2) 4, it shall issue the certificates of warrants in addition to the bond certificates.

(2) Certificates of warrants shall contain the following particulars in addition to the serial number and directors shall write their names and affix their seals or shall sign thereon:

1. A statement to the effect that it is a certificate of warrant;
2. Trade name of company;
3. Matters set forth in Article 516-2 (2) 2, 3 and 5;
4. Matters set forth in subparagraph 3 of Article 516-4; and
5. Provision that the transfer of shares should be subject to the approval of the board of directors, if determined.

Article 516-6
Transfer of Warrant Rights

(1) If certificates of warrants have been issued, transfer of the warrant rights shall be made only by the delivery of such certificates of warrants.

(2) Articles 336 (2) and 360 of this Act and Article 21 of the Cheques Act shall apply *mutatis mutandis* to the certificates of warrants.

Article 516-7
Registration of Bonds with Warrants

(1) When a company has issued bonds with warrants, it shall register the following:

1. A statement to the effect that they are bonds with warrants;
2. Total amount of issue price of the shares to be issued upon the exercise of warrant rights;
3. Face amount of each bond with warrants;
4. Amount paid in for each bond with warrants; and
5. Matters set forth in Article 516-2 (2) 1 through 3.

(2) Article 514-2 (1), (3) and (4) shall apply *mutatis mutandis* to the registration under paragraph (1).

Article 516-8
Exercise of Warrant Rights

(1) Any person who intends to exercise his warrant right shall submit to the company two copies of a written application form therefor and shall pay the total amount of issue price of the new shares.
(2) When written application forms are submitted pursuant to paragraph (1), the certificates of warrants, if they have been issued, shall be submitted together with the application forms, but if such certificates have not been issued, the bond certificates shall instead be presented.
(3) The payment under paragraph (1) shall be made to the banks or other financial institutions stated in the bond certificates or in the certificates of warrants.
(4) Article 302 (1) shall apply *mutatis mutandis* to the written application forms mentioned in paragraph (1) and Articles 306 and 318 shall apply *mutatis mutandis* to the banks and other financial institutions responsible for receipt of payment mentioned in paragraph (3).

Article 516-9
Time of Becoming Shareholder

A person who has exercised his warrant rights in accordance with Article 516-8 (1) shall become a shareholder at the time when he makes payment in accordance with the above Article. In this case, Article 350 (2) and (3) shall apply *mutatis mutandis*.

Article 516-10
Applicable Provisions

Article 351 shall apply *mutatis mutandis* to the exercise of warrant rights and Articles 513-2 and 516 (1) shall apply *mutatis mutandis* to bonds with warrants.

SECTION 9
Dissolution

Article 517
Reasons for Dissolution

A stock company shall be dissolved for any of the following reasons:

1. Reasons set forth in subparagraphs 1, 4 through 6 of Article 227;
1-2. Division or merger through division of a company under Article 530-2; and

2. A resolution of a general shareholders' meeting.

Article 518
Resolution for Dissolution

The resolution for dissolution shall be adopted in accordance with Article 434.

Article 519
Continuance of Company

In case where a company has been dissolved by reason of the expiration of the duration, the occurrence of any other events specified in the article of incorporation or the resolution of a general shareholders' meeting, the company may continue to exist by such resolution in accordance with Article 434.

Article 520
Judgment for Dissolution

(1) If, in the cases mentioned below, there exist unavoidable reasons, any shareholder who holds shares representing no less than 10/100 of the total outstanding shares may apply to the court for the dissolution of the company:
   1. When the company's business operation continues to be remarkably in deadlock and as a result irreparable injury to the company is suffered or threatened; and
   2. When the managing or disposing of the company's property is remarkably improper and the existence of the company is thereby in danger.

(2) Articles 186 and 191 shall apply *mutatis mutandis* to the application under paragraph (1).

Article 520-2
Dissolution of Dormant Company

(1) If, in case where the administrator of the Office of Court Administration has given a public notice in the Official Gazette that any company whose last registration was made five years ago shall make a report to the effect that it has not yet closed its business to the court that has the jurisdiction over the place of its principal office, a company for which five years has already lapsed since its last registration as of the date of public notice fails to report within two months from the date of public notice in accordance with the Presidential Decree, the company shall be deemed to have been dissolved at the expiration of the period set for such report: *Provided,* That this shall not apply if the company has effected a registration during the period.

(2) In case of a public notice under paragraph (1), the court shall

also send to the company concerned a separate notice informing that such public notice has been given.

(3) A company which is deemed to have been dissolved pursuant to paragraph (1) may continue to exist by a resolution under Article 434 within three years thereafter.

(4) If a company which is deemed to have been dissolved pursuant to paragraph (1) fails to continue to exist as a company in accordance with paragraph (3), it shall be deemed to have been liquidated when the period of the three years mentioned in paragraph(3) has lapsed.

Article 521
Notice and Public Notice of Dissolution

Upon the dissolution of a company, except in the case of bankruptcy, the directors shall without delay dispatch notice thereof to the shareholders and, in cases where bearer share certificates have been issued, shall give public notice thereof.

Article 521-2
Provisions to be Applied Mutatis mutandis

The provisions of Articles 228 and 229 (3) shall apply *mutatis mutandis* to the dissolution of a stock company.

SECTION 10
Merger

Article 522
Written Agreement of Merger and Resolution of Approval

(1) In order to effect a merger of companies, a written agreement for merger shall be prepared and be approved by a general shareholders' meeting.

(2) The summary of the written agreement of a merger shall be stated in notices and public notices under Article 363.

(3) The resolution of approval mentioned in paragraph (1) shall be adopted in accordance with Article 434.

Article 522-2
Public Notice of Written Agreement of Merger

(1) Directors of a company shall keep the following documents in its principal office from two weeks before the date on which the general shareholders' meeting is to be held under Article 522 (1) until six months after the merger.

1. A written agreement of such merger;
2. A document specifying the reasons for the allotment of shares which are issued to the shareholders of a company which ceases to exist in consequence of a merger; and

3. The latest balance sheet and statement of profit and loss of each company.

(2) Any shareholder or creditor of the company may, at any time during business hours, request the inspection of a document under any subparagraph of paragraph (1) or request the delivery of the copies or abstracts of them, by paying the cost as determined by the company.

Article 522-3
Rights of Shareholders Dissenting Merger to Request the Purchase of Shares

(1) If, in case where the board of directors has made a resolution on the matters set forth in Article 522 (1), a shareholder dissenting from such resolution has notified in writing the company of his intention of dissent before the general meeting, he may demand in writing that the company purchase his shares, with the class and number of such shares specified in the written demand, within twenty days after the general meeting has adopted the resolution.

(2) A shareholder who made a written notification of the intention of dissent from a merger to the company within two weeks from the date on which a public notice or notice under Article 527-2 (2) has been made may demand that the company purchase his own shares in a written statement specifying the class and number of shares within 20 days after the period passed.

Article 523
Written Agreement of Merger

If one of the constituent companies of a merger survives after the merger, the written agreement of such merger shall contain the following particulars:

1. If the surviving company which is to continue to exist increases, due to the merger, the total number of shares authorized to be issued, the total number of shares authorized to be increased, the class and the number;
2. Total amount of the capital and the reserve of the surviving company to be increased;
3. Total number, class, number per class of shares to be issued by the surviving company at the time of the merger as well as any other particulars relating to the allotment of new shares to the shareholders of the company which is to cease to exist;
4. The amount which is to be paid by the surviving company to the shareholders of the merged company, if determined;
5. Date set for the general members' meeting or general shareholders' meeting at which the resolution of the approval for the merger shall be adopted;

6. Date on which the merger is to be effected; and
7. Matters on the amendment of the articles of incorporation which is to be effected by the surviving company in consequence of the merger, if determined.
8. The limit where each company makes a profit distribution due to the merger or the profit distribution in cash under Article 462-3 (1); and
9. Where the directors, auditors or members of the audit committee who are to take office in the company surviving after the merger are determined, their names and resident registration numbers.

Article 524
Written Agreement of Consolidation

If a new company is to be incorporated due to a merger, the written agreement of such merger shall contain the following particulars:

1. With regard to the company to be incorporated, the matters set forth in Article 289 (1), 1 through 4, the class and the number if different classes of shares are to be issued and the place of the principal office;
2. Total number, class, number per class of shares which are to be issued by the company to be incorporated as well as any other particulars relating to the allotment of shares to the shareholders of each constituent company;
3. Total amount of the capital and the reserve of the company to be incorporated;
4. The amount to be paid to the shareholders of each constituent company, if determined;
5. Particulars set forth in subparagraphs 5 and 6 of Article 523; and
6. Where the directors, auditors or members of the audit committee who are to take office in the company formed by a merger are determined, their names and resident registration numbers.

Article 525
Written Agreement of Merger of Partnership Company or Limited Partnership Company

(1) If, in case where the surviving company or the newly incorporated company is a stock company, either or both of the constituent companies are a partnership company or limited partnership company, the written agreement of such merger shall be prepared subject to the consent of all the members.

(2) Articles 523 and 524 shall apply *mutatis mutandis* to the written agreement of a merger mentioned in paragraph (1).

Article 526
General Meeting for Reporting in Case of Merger

(1) If one of the constituent companies survives after the merger, its directors shall without delay convene a general shareholders' meeting at which they shall make a report on matters relating to the merger, after the procedures set forth in Article 527-5 has been completed, or after the consolidation of shares has taken effect if shares have been consolidated in consequence of the merger, or after disposal set forth in Article 443 has been effected by the surviving company if there are shares which are not fit for consolidation, or, in case of a small-scale merger, after the procedures under Article 527-3 (3) and (4) has been completed.

(2) A person who has subscribed for the new shares issued at the time of merger shall have the same rights as a shareholder at the general shareholders' meeting under paragraph (1).

(3) In case of paragraph (1), the board of directors may make a public notice in lieu of a report to the general shareholders' meeting.

Article 527
Inaugural General Meeting in Case of Consolidation

(1) If a new company is to be incorporated due to a merger, members of the organizing committees shall without delay convene an inaugural general meeting after the procedures set forth in Article 527-5 have been completed, or after the consolidation of shares has taken effect if shares have been consolidated in consequence of the merger, or after the disposal mentioned in Article 443 has been effected if there are shares which are not fit for consolidation.

(2) At the inaugural general meeting, a resolution for the amendment of the articles of incorporation may be adopted: *Provided,* That the resolution may not contradict the agreement of such merger.

(3) Articles 308 (2), 309, 311, 312 and 316 (2) shall apply *mutatis mutandis* to the inaugural general meeting mentioned in paragraph (1).

(4) In case of paragraph (1), the board of directors may make a public notice in lieu of a report to the general shareholders' meeting.

Article 527-2
Simplified Merger

(1) In case where one of the constituent companies of a merger survives, if there is the agreement of the total shareholders of a company to be extinguished due to the merger or if 90/100 or more of the total outstanding shares in such company are to

be held by the surviving company, the approval of the general shareholders' meeting of the company to be extinguished may be replaced by the approval of the board of directors of such company.

(2) In case of paragraph (1), a company to be extinguished due to a merger shall give public notice or make notification to the shareholders that the company shall be merged without approval by the general meeting of shareholders within two weeks after the written agreement of such merger has been prepared: *Provided,* That the same shall not apply where the consents of the total shareholders have been obtained.

Article 527-3
Small-Scale Merger

(1) In case where the total number of new shares to be issued by the surviving company due to a merger does not exceed 5/100 of the total issued shares of the surviving company, the approval of the general shareholders' meeting of the company may be replaced by the approval of the board of directors of such company: *Provided,* That where there is a fixed amount to be paid to shareholders of a company to be extinguished in consequence of the merger, if the amount exceeds 2/100 of the amount of net assets existing on the latest balance sheet of the surviving company, this shall not apply.

(2) In case of paragraph (1), the written agreement of the merger of the surviving company shall include that the merger shall be effected without approval of the general meeting of shareholders.

(3) In case of paragraph (1), the surviving company shall make a public notice or notification to the shareholders of the trade name and address of the principal office of the company to be extinguished, the date of the merger, and the statement that the merger shall be effected without approval of the general meeting of shareholders within two weeks after the written agreement of the merger has been prepared.

(4) In case where shareholders who hold no less than 20/100 of the total outstanding shares of the surviving company which continues to exist after a merger notify, in writing, the company of their intention of dissent from the merger under paragraph (1) within two weeks after they received a public notice or notification under paragraph (3), the merger shall not be effected under the main sentence of paragraph (1).

(5) Article 522-3 shall not apply in case of the main sentence of paragraph (1).

Article 527-4
Terms of Office of Director and Auditor

(1) In case where one of the constituent companies of a merger

survives, a director or auditor of the surviving company who took office before the merger shall be retired when the ordinary general meeting, held in the period for settlement of accounts which comes first after the merger, is closed, except as otherwise provided by the written agreement of the merger.

(2) Deleted.

Article 527-5
Procedures for Protection of Creditors

(1) Within two weeks after a resolution of approval by the general meeting of shareholders is adopted under Article 522, a company shall give its creditors a public notice that an objection, if any, against the merger should be raised within a period of no less than one month and shall give a separate peremptory notice to the creditors known to the company.

(2) In the application of paragraph (1), a resolution of approval by the board of directors shall, in case of Articles 527-2 and 527-3, be deemed to be that by the general meeting of shareholders.

(3) The provisions of Article 232 (2) and (3) shall apply *mutatis mutandis* in case of paragraphs (1) and (2).

Article 527-6
Ex Post Facto Notice of Documents on Merger

(1) Directors shall keep in the principal office written documents stating the progress of procedures under Article 527-5, the date of merger, the value of property and amount of debts succeeded to from a company which ceases to exist due to the merger, and other matters concerning the merger, for six months from the date of the merger.

(2) Article 522-2 (2) shall apply *mutatis mutandis* to documents under paragraph (1).

Article 528
Registration of Merger

(1) In case of a merger, the registration of alteration by the surviving company, the registration of the dissolution by the company which ceases to exist in consequence of the merger or the registration set forth in Article 317 by the newly incorporated company, shall be effected within two weeks at the place of the principal office and within three weeks at the place of each branch office, from the date of the closing of the general shareholders' meeting or the date of a public notice in lieu of a report under Article 526, or from the date of the closing of the inaugural general meeting or the date of a public notice in lieu of a report under Article 527, as the case may be.

(2) If a surviving company or a company which is newly incorporated in consequence of a merger succeeds to convertible bonds

or bonds with warrants, the registration of bonds shall be effected simultaneously with the registration under paragraph (1).

Article 529
Action for Nullification of Merger

(1) The nullity of a merger may be asserted only by means of an action which shall be filed by each company's shareholder, director, auditor, liquidator or bankruptcy trustee or creditor who has opposed the merger.

(2) The action under paragraph (1) shall be brought within six months from the date on which the registration under Article 528 has been effected.

Article 530
Applicable Provisions

(1) Deleted.

(2) Articles 234, 235, 237 through 240, 329-2, 374 (2), 374-2 (2) through (5) and 439 (3) shall apply *mutatis mutandis* to the merger of a stock company.

(3) Articles 440 through 444 shall apply *mutatis mutandis* to the consolidation or split of shares by reason of a merger of companies.

(4) If shares are not to be consolidated, Articles 339 and 340 (3) shall apply *mutatis mutandis* to the pledges created over the shares of the company which ceases to exist in consequence of a merger.

SECTION 11
Division of Company

Article 530-2
Division and Merger through Division of Company

(1) A company may incorporate one or several new companies by means of division.

(2) A company may merge with one or several existing companies by means of its division (hereinafter referred to as "the merger through division").

(3) A company may be divided to incorporate one or several new companies, which, in succession, may merge with other existing companies.

(4) A company after dissolution may be divided or merged through division only when an existing company becomes the surviving company or when a new company is to be incorporated by such division or merger through division.

Article 530-3
Approval for Division Plan and Written Agreement of Merger through Division

(1) A company which is to be divided or merged through division shall prepare a division plan or a written agreement of a merger through division, which shall be approved by the general meeting of shareholders.

(2) A resolution of approval under paragraph (1) shall be adopted in accordance with Article 434.

(3) With respect to a resolution under paragraph (2), a shareholder mentioned in Article 370 (1) shall also have a voting right.

(4) A summary of a division plan or a written agreement of a merger through division shall be entered in a notice and public notice under Article 363.

(5) In case where a company which issued several classes of shares comes to inflict a loss to a certain class of shareholders due to division or a merger through division, the division or merger through division shall be subject to a resolution of the general meeting of such class of shareholders under Article 435.

(6) In case where the liability of shareholders of each constituent company of division or a merger through division is to be increased due to such division or merger through division, such division or merger through division shall be subject to an consent from all of such shareholders in addition to a resolution under paragraphs (2) and (5).

Article 530-4
Incorporation of Company by Division

(1) Section 1 of this Chapter concerning the incorporation of a company shall apply *mutatis mutandis* to the incorporation of a company under Article 530-2.

(2) Notwithstanding paragraph (1), a company to be incorporated through division may be so incorporated only by the contribution of the company to be divided. In this case, Article 299 shall not apply where the shares of the company to be incorporated are issued to the shareholders of the company to be divided in proportion to their shares.

Article 530-5
Particulars to be Entered in Division Plan

(1) In case where a company is to be incorporated through division, the following matters shall be entered in the division plan:

1. Trade name, objective, and address of the principal office of the company to be incorporated, and the method of public notice;

2. Total number of shares which are to be issued by the company to be incorporated, and the par value per share;
3. Total number, classes, and number per class of shares which are to be issued by the company to be incorporated at the time of such division;
4. Matters concerning the allotment of shares by the company to be incorporated to the shareholders of a company to be divided, and the merger or split of shares in connection with to such allotment, if determined;
5. Amount to be paid to the shareholders of a company to be divided, if determined;
6. Matters concerning the capital and reserve of the company to be incorporated;
7. Property to be transferred to the company to be incorporated and the value thereof;
8. Matters determined pursuant to Article 530-9 (2), if any;
9. Name and resident registration number of the director and auditor of the company to be incorporated, if determined; and
10. Other matters to be entered in the articles of incorporation of the company to be incorporated.

(2) In case where a company continues to exist after its division, the following matters shall be entered in the division plan with respect to the surviving company:

1. Amount of the capital and reserve to be decreased;
2. Method of the decrease of capital;
3. Property to be transferred due to the division and the value thereof;
4. Total number of shares issued after the division;
5. If the total number of shares authorized to be issued by the company is decreased, the total number, classes, and number per class of shares to be decreased; and
6. Other matters which cause any amendment in the articles of incorporation.

Article 530-6
Particulars to be Entered in Written Agreement of Merger through Division

(1) In case where part of a company to be divided merges with another company and such another company (hereinafter referred to as "the other party to merger through division") survives, the following matters shall be entered in the written agreement of the merger through division:

1. If the other party to merger through division increases the total number of shares authorized to be issued due to the merger through division, the total number, classes, and number per class of such shares to be increased;

2. The total number, classes, and number per class of new shares to be issued by the other party to merger through division at the time of such merger;
3. Matters concerning the allotment of shares by the other party to merger through division to the shareholders of the company to be divided, and the merger or split of shares pursuant to such allotment, if determined;
4. The amount to be paid by the other party to merger through division to the shareholders of the company to be divided, if determined;
5. Matters concerning the total amount of the capital and the reserve of the other party to merger through division to be increased;
6. Property to be transferred by the company to be divided to the other party to merger through division and the value thereof;
7. The matters determined pursuant to Article 530-9 (3), if so determined;
8. The date of the general meeting of shareholders on which the companies concerned are to make a resolution under Article 530-3 (2);
9. The date on which a merger through division is to be effected;
10. Name and resident registration number of the director and auditor of the other party to merger through division, if determined; and
11. Other matters which cause the amendment of the articles of incorporation of the other party to merger through division.

(2) In case where part of a company to be divided merges with another company or part of another company through division to incorporate a company, the following matters shall be entered in the written agreement of the merger through division:

1. Matters provided for in Article 530-5 (1) 1, 2, and 6 through 10;
2. The total number, classes, and number per class of shares to be issued by the company to be incorporated at the time of the merger through division;
3. Matters concerning the allotment of shares by the company to be incorporated to the shareholders of the constituent companies, and provisions concerning the merger or split of shares in connection with such allotment, if determined;
4. Property to be transferred respectively by each constituent company to the company to be incorporated and the value thereof;
5. The amount to be paid respectively by each constituent company to its shareholders, if determined;
6. The date of the general meeting of shareholders on which

the companies concerned are to make a resolution under Article 530-3 (2); and

7. The date on which the merger through division is to be effected.

(3) Article 530-5 shall apply *mutatis mutandis* to an entry in the written agreement of merger through division, concerning any part which is not the object of the merger through division in case of paragraphs (1) and (2).

Article 530-7
Public Notice of Division Balance Sheet

(1) The director of a company to be divided shall keep the following documents in the principal office from two weeks before the general meeting of shareholders has been held under Article 530-3 (1), until six months after the registration of division or the merger through division:

1. A division plan or written agreement of a merger through division;
2. A balance sheet concerning the part to be divided;
3. In case of a merger through division, the balance sheet of the other party to merger through division; and
4. A document stating reasons for the allotment of shares to be issued to the shareholders of a company to be divided.

(2) The director of the other party to merger through division under Article 530-6 (1) shall keep the following documents in the principal office from two weeks before the opening day of the general meeting of shareholders which has approved the merger through division, until six months after the registration of the merger through division:

1. A written agreement of the merger through division;
2. A balance sheet concerning the divided part of a company to be divided; and
3. A document stating reasons for the allotment of shares to be issued to the shareholders of a company to be divided.

(3) The provisions of Article 522-2 (2) shall apply *mutatis mutandis* to a document mentioned in paragraphs (1) and (2).

Article 530-8
Account concerning Division and Merger through Division

In case where a company which is incorporated due to a division or a merger through division or the other party to such merger through division acquires goodwill of business, the acquisition value may be counted in the assets side of the balance sheet. In this case, at least an equally divided portion out of such amount shall be amortized in each period for settlement of accounts within five years after the registration of incorporation or merger through division.

Article 530-9
Liability of Company after Division and Merger through Division

(1) Companies which are incorporated or continue to exist due to a division or a merger through division shall be jointly and severally liable for the performance of the obligation of the company before the division or merger through division.

(2) Notwithstanding paragraph (1), where a company to be divided incorporates another company by means of division upon a resolution under Article 530-3 (2), it may be determined that the incorporated company bears only the obligations related to property contributed thereto from among the debts of the company to be divided. In this case, if the company to be divided continues to exist after the division, the company shall bear only the obligations which the company incorporated due to the division fails to take over.

(3) In case of a merger through division, a company to be divided may, upon a resolution under Article 530-3 (2), determine that the existing company bears only the debts, from among those of the company to be divided, related to property contributed due to the merger through division invests. In this case, the provisions of the latter part of paragraph (2) shall apply *mutatis mutandis*.

(4) Articles 439 (3) and 527-5 shall apply *mutatis mutandis* in case of paragraph (2).

Article 530-10
Effect of Division or Merger through Division

A company which is incorporated or continues to exist due to a division or a merger through division shall succeed to the rights and duties of the company to be divided in accordance with a division plan or written agreement of merger through division.

Article 530-11
Applicable Provisions

(1) Articles 234, 237 through 240, 329-2, 440 through 444, 526, 527, 528, and 529 shall apply *mutatis mutandis* to division or a merger through division: *Provided,* That a member of the organizing committee under Article 527 shall be the representing director.

(2) Articles 374 (2), 439 (3), 522-3, 527-2, 527-3 and 527-5 shall apply *mutatis mutandis* to a merger through division.

Article 530-12
Real Division

This Section shall apply *mutatis mutandis* where a company to be

divided acquires the total number of shares of a company to be incorporated due to a division or a merger through division.

SECTION 12
Liquidation

Article 531
Appointment of Liquidators

(1) Upon the dissolution of a company, except for the cases of a merger, division, merger through division, or bankruptcy, directors shall become the liquidators: *Provided,* That this shall not apply if otherwise provided in the articles of incorporation or if other persons have been appointed at a general shareholders' meeting.

(2) If there is no liquidator pursuant to paragraph (1), the court shall appoint a liquidator upon the application of any interested person.

Article 532
Liquidator's Report

The liquidator shall make a report on the following matters to the court within two weeks from the date on which he has assumed office:

1. Reason and date of dissolution; and
2. Name, residence registration number and address of the liquidator.

Article 533
Liquidator's Duty to Investigate Company's Property and to Report

(1) After the liquidator has assumed office, he shall without delay investigate the status of the company's property and shall prepare an inventory list and a balance sheet and submit them to a general shareholders' meeting for approval.

(2) The liquidator shall without delay submit the inventory and balance sheet to the court after he has obtained the approval set forth in paragraph (1).

Article 534
Submission, Audit, Disclosure and Approval of Balance Sheet, Business Report and Supplementary Schedules

(1) The liquidator shall prepare a balance sheet, supplementary schedules and a business report four weeks before the date of the ordinary shareholders' general meeting and submit them to the auditor.

(2) The auditor shall submit to the liquidator the audit report on

the documents set forth in paragraph (1) one week before the date of the ordinary general shareholders' meeting.

(3) The liquidator shall keep the documents set forth in paragraph (1) and the audit report set forth in paragraph (2) at the principal office of the company from one week before the date of the ordinary general shareholders' meeting.

(4) Article 448 (2) shall apply *mutatis mutandis* to the documents set forth in paragraph (3).

(5) The liquidator shall submit the balance sheet and business report to the ordinary general shareholders' meeting for approval.

Article 535
Peremptory Notice to Creditors

(1) The liquidator shall give peremptory notice to creditors of the company, by means of a public notice, at least two times within two months after he has assumed office, to the effect that the creditors present their claims within a fixed period and that any creditor failing to do so will be excluded from the liquidation: *Provided,* That such period shall be no less than two months.

(2) The liquidator shall give a peremptory notice demanding the presentation of claims separately to each creditor known to the company, and such creditor shall not be excluded from the liquidation, even if he has failed to present his claim.

Article 536
Performance During the Period for Presenting Claims

(1) The liquidator shall not effect performance in favor of creditors during the period for presenting their claims pursuant to Article 535 (1): *Provided,* That the company shall not be relieved of any such liability for damages as may be caused by the delay of performance.

(2) Notwithstanding paragraph (1), the liquidator may, with the permission of the court, effect performance in respect of small claims, secured claims or any claims the performance for which is not likely to prejudice any other creditors.

Article 537
Performance to Excluded Creditors

(1) Creditors who have been excluded from the liquidation may demand performance only out of the surplus assets which have yet to be distributed.

(2) If distribution has been made to a part of shareholders, property which is necessary for distribution to other shareholders in equal proportion thereto shall be excluded from the surplus assets mentioned in paragraph (1).

Article 538
Distribution of Surplus Assets

The surplus assets shall be distributed among the shareholders in proportion to the number of shares held by each shareholder: *Provided,* That this shall not apply in case of Article 344 (1).

Article 539
Dismissal of Liquidator

(1) A liquidator, except for when he has been appointed by the court, may be dismissed at any time by a resolution of a general shareholders' meeting.

(2) If a liquidator is remarkably unfit for administrating the affairs of liquidation or has acted in contravention of his material duties, any shareholder who holds no less than 3/100 of the total outstanding shares may apply to the court for dismissal of such liquidator.

(3) Article 186 shall apply *mutatis mutandis* to the action relating to the application under paragraph (2).

Article 540
Completion of Liquidation

(1) When the affairs of liquidation have been completed, the liquidator shall without delay prepare a statement of the settlement of accounts and submit it to a general shareholders' meeting for approval.

(2) When the approval under paragraph (1) has been given, the company shall be deemed to have released the liquidator from his liability: *Provided,* That this shall not apply where the liquidator have committed any dishonest act.

Article 541
Preservation of Documents

(1) The books of a company and all important documents relating to its business and liquidation shall be kept for ten years from the registration of the completion of liquidation at the place of the principal office: *Provided,* That the slips and similar documents shall be kept for five years.

(2) With regard to the preservation set forth in paragraph (1), the court shall appoint the custodian and shall determine the method of preservation, upon the application of the liquidator or any other interested person.

Article 542
Applicable Provisions

(1) Articles 245, 252 through 255, 259, 260 and 264 shall apply *mutatis mutandis* to a stock company.

(2) Articles 362, 363-2, 366, 367, 373, 376 and 377, 382 (2), 386, 388 through 394, 396, 398 through 408, 411 through 413, 414 (3), 449 (3), 450 and 466 shall apply *mutatis mutandis* to the liquidator.

CHAPTER V
LIMITED LIABILITY COMPANY

SECTION 1
Incorporation

Article 543
Preparation of Articles of Incorporation and Absolute Particulars to Be Entered Therein

(1) Members shall prepare the articles of incorporation for the establishment of a limited liability company.

(2) The articles of incorporation shall contain the following particulars and each member shall write his name and affix his seal or shall sign thereon:

1. Matters set forth in subparagraphs 1 through 3 of Article 179;
2. Total amount of capital;
3. Amount of each contribution unit;
4. Number of contribution units by each member; and
5. Place of the principal office.

(3) Article 292 shall apply *mutatis mutandis* to a limited liability company.

Article 544
Particulars concerning Abnormal Incorporation

The following particulars shall be effective upon being stated in the articles of incorporation:

1. Name of the persons who is to make a contribution in kind and the type, quantity and value of the subject-matter of the contribution and the number of contribution units to be given in consideration thereof;
2. Type, quantity and value of the property which was agreed to be transferred to the company after its incorporation and name of the transferor; and
3. Expenses of incorporation which are to be borne by the company.

Article 545
Limit Action on Total Number of Members

(1) The total number of members of a company shall not exceed fifty: *Provided,* That this shall not apply if the authorization of

the court has been obtained where any special circumstances exist.

(2) Paragraph (1) shall not apply where the number of members is altered by succession or testamentary gift.

Article 546
Limit Action on Total Amount of Capital and Amount of Each Contribution Unit

(1) The total amount of capital of a company shall be at least ten million won.

(2) The amount of each contribution unit shall be no less than five thousand won and shall be equal.

Article 547
Appointment of First Directors

(1) Where the directors have not been designated by the articles of incorporation, a general members' meeting shall be convened before the incorporation of the company and such directors shall be elected at such meeting.

(2) Each member may convene a general meeting mentioned in paragraph (1).

Article 548
Payment for Contribution

(1) Directors shall have the members pay the full amount of contributions or furnish the whole of the property which is the subject-matter of the contributions in kind.

(2) Article 295 (2) shall apply *mutatis mutandis* to the contributions in kind made by members.

Article 549
Registration of Incorporation

(1) The registration of incorporation of a limited liability company shall be effected within two weeks from the date on which payment for contribution or performance of the contribution in kind set forth in the Article 548 has been performed.

(2) In connection with the registration under paragraph (1), the following particulars shall be registered:

1. Particulars set forth in subparagraphs 1, 2 and 5 of Article 179 and the place of branch office, if any;
2. Particulars set forth in Article 543 (2) 2 and 3;
3. Name, residence registration number and address of each director: *Provided,* That if the director representing the company is appointed, addresses of other directors shall be excluded;

4. Name of the representative director, if any;
5. Provisions pertaining to the joint representation of the company by two or more directors, if any;
6. Duration or any other reason of dissolution of the company if any; and
7. Name and residence registration number of auditors, if any.

(3) In connection with the registration to be made at the place of the branch office or new branch office in the event that a limited liability company establishes or transfers a branch office, the matters mentioned in paragraph (2) 1 and 3 through 6 shall be registered.

(4) Articles 181 through 183 shall apply *mutatis mutandis* to the registration of a limited liability company.

Article 550
Liability of Members as of Incorporation concerning Contribution in Kind

(1) If the actual value of the property mentioned in subparagraphs 1 and 2 of Article 544 as of the incorporation of a company is remarkably less than the value stated by the articles of incorporation, members as of incorporation shall be jointly and severally liable to pay such shortage to the company.

(2) The liability of members set forth in paragraph (1) may not be exempted.

Article 551
Liability of Members as of Incorporation concerning Unpaid Amount of Contribution

(1) If it is found after the incorporation of the company that the payment of the amount of contributions and the performance of contributions in kind has not been completed, the members, directors and auditors as of incorporation shall be jointly and severally liable to pay the amount unpaid or the value of property which has not been contributed to the company.

(2) The liability of members set forth in paragraph (1) may not be exempted.

(3) The liability of directors and auditors set forth in paragraph (1) may not be exempted without the consent of all members.

Article 552
Action for Nullification or Revocation of Incorporation

(1) The nullity of incorporation of a company may be asserted only by means of an action which shall be brought only by the members, directors or auditors and the revocation of incorporation of a company may be asserted only by means of an action

which may be brought only by the persons having the right of revocation, within two years from the date on which the company has come into existence.

(2) Articles 184 (2) and 185 through 193 shall apply *mutatis mutandis* to the action under paragraph (1).

SECTION 2
Rights and Duties of Members

Article 553
Liability of Member

Unless otherwise provided in this Act, the liability of a member shall be limited to the amount of his contribution to the company.

Article 554
Share of Member

Each member shall have share in the company in proportion to the number of his contribution units.

Article 555
Instruments of Share

A limited liability company may not issue instruments to order or bearer instruments with regard to the respective share of members.

Article 556
Transfer of Share

(1) A member may transfer the whole or a part of his share to any other person only if a resolution of a general members' meeting is made pursuant to Article 585: *Provided,* That the restriction on transfer may be aggravated by the articles of incorporation.

(2) If the total number of members exceeds the limit mentioned in Article 545, such transfer shall not be effective except in case of testamentary gift.

(3) Notwithstanding paragraph (1), the articles of incorporation may provide otherwise with regard to the transfer of share between members.

Article 557
Requirement for Asserting Transfer of Share against Company and Third Person

The transfer of share shall not be asserted against the company and third persons unless the full name and address of the transferee and the number of contribution units subject to the transfer have been entered in the register of members.

Article 558
Ownership in Common of Share

Article 333 shall apply *mutatis mutandis* where share belongs to the ownership of two or more persons in common.

Article 559
Pledging of Share

(1) Share may be pledged.
(2) Articles 556 and 557 shall apply *mutatis mutandis* to the pledge of share.

Article 560
Applicable Provisions

(1) Articles 339, 340 (1) and (2), 341, 341-3, 342 and 343 (1) shall apply *mutatis mutandis* to the share of members.
(2) Article 353 shall apply *mutatis mutandis* to the notice or peremptory notice to members.

SECTION 3
Management of Company

Article 561
Directors

A limited liability company shall have one or more directors.

Article 562
Representation of Company

(1) A director shall represent the company.
(2) If there are two or more directors, the director who is to represent the company shall be elected at a general members' meeting unless otherwise provided in the articles of incorporation.
(3) It may be determined by the articles of incorporation or a general members' meeting that two or more directors shall jointly represent the company.
(4) Article 208 (2) shall apply *mutatis mutandis* to the cases under paragraph (3).

Article 563
Representation in Action between Director and Company

If a company files an action against any of its directors or where a director files an action against the company, a person who shall represent the company with regard to such action shall be elected at a general members' meeting.

Article 564
Decision on Management of Business, Transactions between Director and Company

(1) If there are several directors, management of the company's business, appointment or dismissal of a manager and establishment, transfer or closure of branch offices shall be determined by a majority vote of the directors, unless otherwise provided by the articles of incorporation.
(2) Manager may be elected or dismissed at a general members' meeting, notwithstanding paragraph (1).
(3) A director may enter into transactions with the company for his account or for the account of a third person only if he has obtained approval from the auditor or, in case of absence of auditor, from the general members' meeting. In this case, Article 124 of the Civil Act shall not apply.

Article 564-2
Right to Injunction

In case a director acts in violation of Acts and subordinate statutes or the articles of incorporation and thereby an irreparable damage is likely to be caused to the company, the auditor or any member who holds contribution units representing no less than 3/100 of the total amount of capital may demand on behalf of the company that the director stop such an act.

Article 565
Derivative Suits by Members

(1) Any member who holds contribution units representing no less than 3/100 of the total amount of the capital may demand that the company institute an action to enforce the liability of a director.
(2) Articles 403 (2) through (7) and 404 through 406 shall apply *mutatis mutandis* in case of paragraph (1).

Article 566
Keeping and Inspection of Documents

(1) Directors shall keep at the principal office and at each branch office copies of the articles of incorporation and the minutes of the general members' meetings and shall keep the register of members at the principal office.
(2) The full name and address of members and number of contributions unit shall be entered in the register of members.
(3) Any member or creditor of the company may demand, at any time during business hours, the inspection or copying of the documents set forth in paragraph (1).

Article 567
Applicable Provisions

Articles 209, 210, 382, 385, 386, 388, 395, 397, 399 through 401, 407 and 408 shall apply *mutatis mutandis* to directors of a limited liability company. In this case, the term "board of directors" in Article 397 shall be read as "the general members' meeting".

Article 568
Auditors

(1) A limited liability company may have one or more auditors in accordance with the articles of incorporation.
(2) Article 547 shall apply *mutatis mutandis* where the articles of incorporation provide that the company shall have auditors.

Article 569
Auditor's Authority

An auditors may at any time investigate the status of property and the affairs of the company and may request directors to report on the business operation.

Article 570
Applicable Provisions

Articles 382, 385 (1), 386, 388, 400, 407, 411, 413, 414 and 565 shall apply *mutatis mutandis* to auditors.

Article 571
Convocation of General Members' Meeting

(1) A general members' meeting shall be convened by directors unless otherwise provided in this Act: *Provided,* That an extraordinary general members' meeting may be convened by auditor.
(2) In convening a general meeting, a notice in writing shall be dispatched to each member at least one week prior to the date set for such meeting: *Provided,* That this period may be shortened by the articles of incorporation.
(3) Articles 363 (2) and 364 shall apply *mutatis mutandis* to the convocation of a general members' meeting.

Article 572
Demand for Convocation of General Meeting by Minority Members

(1) Any member who holds contribution units representing no less than 3/100 of the total amount of the capital may demand the convocation of a general meeting by filing with directors a written application which states the proposed subjectmatters of such meeting and the reasons for which it is to be convened.

(2) Paragraph (1) may be provided otherwise by the articles of incorporation.

(3) Article 366 (2) and (3) shall apply *mutatis mutandis* in case of paragraph (1).

Article 573
Omission of Convocation Procedures

A general meeting may be convened without the procedures set forth in Article 572, with the consent of all the members.

Article 574
Quorum of General Meeting and Method of Resolution

Unless otherwise provided by the articles of incorporation or this Act, all resolutions of a general members' meeting shall be adopted with the attendance of members holding a majority of votes and by the majority of affirmative votes of the members present.

Article 575
Member's Right to Vote

Each member shall have one vote for each contribution unit: *Provided,* That the articles of incorporation may provide otherwise with regard to the number of votes.

Article 576
Transfer of Business and Ex Post Facto Incorporation

(1) A resolution of a general meeting under Article 585 shall be required for a limited liability company to effect the matters set forth in subparagraphs 1 through 3 of Article 374.

(2) paragraph (1) shall apply *mutatis mutandis* where a limited liability company enters, within two years from its coming into existence, into an agreement to acquire, for value equivalent to no less than 1/20 of the capital, a property existing prior to its incorporation, which is purported to be continuously used for purposes of its business.

Article 577
Resolution in Writing

(1) If a resolution of a general meeting is required, resolution in writing may be adopted, with the consent of all the members.

(2) If all the members have consented in writing to the matters constituting the subject-matter of a resolution, such resolution shall be deemed to have been adopted in writing.

(3) A resolution in writing shall have the same effect as a resolution of a general meeting.

(4) The provisions regarding the general meeting shall apply *mutatis mutandis* to the resolutions in writing.

Article 578
Applicable Provisions

Articles 365, 367, 368 (3) and (4), 369 (2), 371 (2), 372, 373 and 376 through 381 shall apply *mutatis mutandis* to general members' meeting.

Article 579
Preparation of Financial Statements

(1) Directors shall, at each period for the settlement of accounts, prepare the following documents and annexed statements thereto:
   1. Balance sheet;
   2. Loss and profit statement; and
   3. Statement of appropriation of earned surplus or statements of disposition of deficit.

(2) If there are auditors, directors shall submit to auditors the documents under paragraph (1) four weeks before the date set for the ordinary general meeting.

(3) Auditors shall submit an audit report to directors within three weeks from the date on which they receive the documents under paragraph (2).

Article 579-2
Preparation of Business Report

(1) Directors shall prepare a business report at each period for the settlement of accounts.

(2) Article 579 (2) and (3) shall apply *mutatis mutandis* to the business report under paragraph (1).

Article 579-3
Keeping and Public Notice of Financial Statements

(1) Directors shall keep the documents under Articles 579 and 579-2 and the business report at the principal office of the company for five years from a week before the date set for the ordinary general meeting.

(2) Article 448 (2) shall apply *mutatis mutandis* to the documents under paragraph (1).

Article 580
Standard for Dividend

Unless otherwise provided in the articles of incorporation, a dividend shall be made in proportion to the number of contribution units of each member.

Article 581
Member's Right to Inspect Account Books

(1) Any member who hold contribution units representing no less than 3/100 of the total amount of the capital may demand the inspection or copying of the account books and related documents.

(2) A company may provide in the articles of incorporation that any member may make the demand under paragraph (1). In this case, the supplementary schedules need not be prepared, regardless of Article 579 (1).

Article 582
Inspection of Business Affairs and Status of Property

(1) If there is any dishonest act or any material fact in contravention of any relevant acts, subordinate statutes or the articles of incorporation in connection with the management of the company's affairs, any member who holds contribution units representing no less than 3/100 of the total amount of the capital may apply to the court for the appointment of an inspector to investigate the affairs of the company and the status of its property.

(2) The inspector shall report in writing on the results of the investigation to the court.

(3) The court may, if it deems it necessary after examining the report mentioned in paragraph (2), order auditors, or directors in the absence of auditors, to convene a general members' meeting. In this case, Article 310 (2) shall apply *mutatis mutandis*.

Article 583
Applicable Provisions

(1) Articles 449 (1) and (2), 450, 452, 453, 453-2, 457-2, 458 through 460, 462, 462-3 and 466 shall apply *mutatis mutandis* to the accounting of a limited liability company.

(2) Article 468 shall apply *mutatis mutandis* to the claim rights arising out of the relations of employment between a limited liability company and its employees.

SECTION 4
Amendment of Articles of Incorporation

Article 584
Method of Amendment of Articles of Incorporation

In order to amend the articles of incorporation, a resolution of a general members' meeting is required.

Article 585
Special Resolution for Amendment of Articles of Incorporation

(1) The resolution mentioned in Articles 584 shall be adopted by the affirmative votes of the majority number of all the members as well as of no less than 3/4 of the total votes.

(2) In the application of paragraph (1), a member who is not allowed to exercise his vote shall not be included to the number of all the members and the vote which may not be exercised shall not be included to the number of the total votes.

Article 586
Resolution for Capital Increase

Even where the articles of incorporation does not provide for the following matters, they may be determined by a resolution for capital increase:

1. Name of the persons who is to make contribution. Type and the class, quantity and value of the subject-matter of such contribution in kind and the number of contribution units to be given in consideration thereof;
2. Type, quantity and value of the property which was agreed to be transferred to the company after the capital increase is effected and the name of the transferor; and
3. Name of the persons to whom the preemptive right to the capital contribution is granted and the substance of such right.

Article 587
Granting of Preemptive Right in Case of Capital Increase

If a limited liability company promises to give a specified person the preemptive right to the capital contribution in case of the capital increase in the future, the resolution set forth in Article 585 shall be required.

Article 588
Member's Preemptive Right to Capital Contribution

A member is entitled to subscribe for capital contribution with respect to the capital increase, in proportion to his share: *Provided,* That this shall not apply where certain persons who shall subscribe for the capital contribution have been determined by the resolutions mentioned in Articles 586 and 587.

Article 589
Method of Subscription for Capital Contribution

(1) In case of the capital increase, any person who intends to subscribe for the capital contribution shall enter the number of contribution units to be subscribed for and his address on a

document certifying such subscription and he shall write his name and affix his seal or shall sign.

(2) A limited liability company shall not offer the capital contributions in public for subscription by means of advertisement or otherwise.

Article 590
Status of New Subscribes of Contribution

In case of the capital increase, the person who has subscribed for the capital contribution shall have the same rights as the existing member with regard to the dividend from the time of payment for the capital contribution or the transfer of property which is the subject-matter of the contribution in kind.

Article 591
Registration of Capital Increase

A limited liability company shall effect the registration of alteration due to the capital increase within two weeks at the place of the principal office, from the date on which the payment for the capital contribution or the performance of the contributions in kind in connection with such capital increase has been completed.

Article 592
Effective date of Capital Increase

The increase in the capital shall take effect when the registration under Article 591 is effected at the place of the principal office.

Article 593
Member's Liability concerning Contribution in Kind

(1) If the actual value of the property mentioned in subparagraphs 1 and 2 of Article 586 as of the capital increase is remarkably less than the value determined by the resolution for the capital increase, the members who have agreed to the resolution shall be jointly and severally liable to pay such shortage to the company.

(2) Articles 550 (2) and 551 (2) shall apply *mutatis mutandis* in case of paragraph (1).

Article 594
Liability of Directors, etc. concerning Unsubscribed Capital Contributions, etc.

(1) If there are contributions which have not yet been subscribed for after the capital increase, directors and auditors shall be deemed to have subscribed for such contributions jointly.

(2) If full payment of the capital contributions or the transfer of

property which is the subject-matter of contribution in kind has not been completed after the capital increase, directors and auditors are jointly and severally liable to pay such incomplete amount or the value of property yet to be transferred.

(3) Article 551 (3) shall apply *mutatis mutandis* in case of paragraph (1).

Article 595
Action for Nullifying Capital Increase

(1) The nullity of an capital increase may be asserted only by means of an action which shall be brought only by members, directors or auditors within six months from the date on which the registration under Article 591 has been effected at the place of the principal office.

(2) Articles 430 through 432 shall apply *mutatis mutandis* in case of paragraph (1).

Article 596
Applicable Provisions

Articles 334, 548, and 576 (2) shall apply *mutatis mutandis* to the increase in the capital.

Article 597
Applicable Provisions

Articles 439 (1) and (2), 443, 445 and 446 shall apply *mutatis mutandis* to the reduction of the capital.

SECTION 5
Merger and Change of Organization

Article 598
Method of Merger

A resolution of the general members' meeting pursuant to Article 585 shall be required for a merger involving a limited liability company.

Article 599
Appointment of Members of Organizing Committee

The members of the organizing committee pursuant to Article 175 shall be appointed by a resolution of a general members' meeting set forth in Article 585.

Article 600
Merger of Limited Liability Company and Stock Company

(1) A merger between a limited liability company and a stock

company, as a result of which a stock company survives or is newly incorporated, shall not take effect unless it has obtained the authorization of the court.

(2) In case of a merger between a limited liability company and a stock company which has not completed the redemption of the bonds, the surviving company or the company which is to be newly incorporated shall not be a limited liability company.

Article 601
Subrogation

(1) In case of a merger between a limited liability company and a stock company as a result of which a limited liability company survives or is newly incorporated, Article 339 shall apply *mutatis mutandis* to the pledge created over the pre-existing shares of the stock company.

(2) In case of paragraph (1), a pledge over share shall not be asserted against the company or any other third person unless the number of contribution units and the name and address of the pledgee have been entered in the register of members.

Article 602
Registration of Merger

In case of a merger involving a limited liability company, the registration of alteration by the limited liability company surviving after the merger, the registration of dissolution by the limited liability company which ceases to exist in consequence of the merger and/or the registration pursuant to Article 549 (2) by the limited liability company which is newly incorporated in consequence of the merger shall be effected within two weeks at the place of the principal office and within three weeks at the place of each branch office, from the date of the closing of the general members' meeting held pursuant to Article 526 or 527, which are applied *mutatis mutandis* by Article 603.

Article 603
Applicable Provisions

Articles 232, 234, 235, 237 through 240, 443, 522 (1) and (2), 522-2, 523, 524, 526 (1) and (2), 527 (1) through (3), and 529 shall apply *mutatis mutandis* to the merger of a limited liability company.

Article 604
Change of Organization of Stock Company to Limited Liability Company

(1) By a resolution adopted at a general meeting by the unanimous consent of all the shareholders, a stock company may change its organization into a limited liability company: *Pro-*

vided, That this shall not apply where the redemption of the bonds has not been completed.

(2) In case of the change of organization mentioned in paragraph (1), the total amount of capital shall not exceed the amount of net assets existing in the company.

(3) The articles of incorporation and any other particulars necessary for the change of organization shall be determined by the resolution mentioned in paragraph (1).

(4) Article 601 shall apply *mutatis mutandis* to the change of the organization under paragraph (1).

Article 605
Liability of Directors and Shareholders for Shortage in Amount of Net Assets

(1) If, in case of change of the organization under Article 604, the amount of net assets which exists in the company is less than the total amount of the capital, directors and shareholders at the time of the resolution mentioned in Article 604 (1) shall be liable to pay jointly and severally such amount of shortage to the company.

(2) Articles 550 (2), and 551 (2) and (3) shall apply *mutatis mutandis* in case of paragraph (1).

Article 606
Registration of Change of Organization

When a stock company has changed its organization in accordance with Article 604, the registration of the dissolution by the stock company and the registration pursuant to Article 549(2) by the limited liability company shall be effected within two weeks at the place of the principal office and within three weeks at the place of each branch office.

Article 607
Change of Organization of Limited Liability Company to Stock Company

(1) By a resolution adopted at a general meeting by the unanimous consent of all the members, a limited liability company may change its organization into a stock company.

(2) In case of paragraph (1), the total amount of the issue price of shares which are to be issued at the time of change of the organization shall not exceed the amount of net assets existing in the company.

(3) The change of organization under paragraph (1) shall not take effect unless it obtains the authorization of the court.

(4) If, in the case of a change of organization mentioned in paragraph (1), the amount of net assets which exists in the

company is less than the total amount of the issue-price of shares which are issued at the time of the change of organization, directors, auditors and members of the company at the time of the resolution under paragraph (1) shall be jointly and severally liable to pay such amount of shortage to the company. In this case, Article 550 (2), and 551 (2) and (3) shall apply *mutatis mutandis.*

(5) Articles 340 (3), 601 (1), 604 (3) and 606 shall apply *mutatis mutandis* to the change of organization under paragraph (1).

Article 608
Applicable Provisions

Article 232 shall apply *mutatis mutandis* to the change of organization under Articles 604 and 607. SECTION 6 Dissolution and Liquidation

Article 609
Reasons for Dissolution

(1) A limited liability company shall be dissolved for any of the following reasons:
   1. Reasons set forth in subparagraphs 1, and 4 through 6 of Article 227; and
   2. A resolution of a general members' meeting.

(2) A resolution mentioned in paragraph (1) 2 shall be adopted in accordance with Article 585.

Article 610
Continuance of Company

(1) Where a company has been dissolved for any of the reasons mentioned in subparagraph 1 of Article 227 or Article 609 (1) 2, the company may continue to exist by such resolution of the general members' meeting as set forth in Article 585.

(2) Deleted.

Article 611
Applicable Provisions

Article 229 (3) shall apply *mutatis mutandis* to the continuance of a company under Article 610.

Article 612
Distribution of Surplus Assets

Unless otherwise provided in the articles of incorporation, the surplus assets shall be distributed among the members in proportion to the number of contribution units of each member.

Article 613
Applicable Provisions

(1) Articles 228, 245, 252 through 255, 259, 260, 264, 520, 531 through 537, 540 and 541 shall apply *mutatis mutandis* to a limited liability company.

(2) Articles 209, 210, 366 (2) and (3), 367, 373 (2), 376, 377, 382 (2), 386, 388, 399 through 402, 407, 408, 411 through 413, 414 (3), 450, 466 (2), 539, 562 and 563, 564 (3), 565, 566, 571, 572 (1) and 581 shall apply *mutatis mutandis* to the liquidator of a limited liability company.

CHAPTER VI
FOREIGN COMPANIES

Article 614
Appointment of Representative, Establishment of Business Office and Registrations thereof

(1) A foreign company intending to engage in business in the Republic of Korea shall appoint a representative in the Republic of Korea and shall establish a business office.

(2) In case of paragraph (1), such foreign company shall, in respect of the establishment of its business office, effect the same registration as that of a branch office of a company incorporated in the Republic of Korea either of the same kind or of the kind which it most closely resembles.

(3) For the registration under paragraph (1), such foreign company shall register the governing law under which it was incorporated and the name and address of its representative in the Republic of Korea.

(4) Articles 209 and 210 shall apply *mutatis mutandis* to the representative of a foreign company.

Article 615
Starting Point of Registration Period

If the matters required to be registered in accordance with Article 614 (2) and (3) has taken place in a foreign country, the period for registration shall start to run from the date on which a notice thereof has arrived.

Article 616
Prohibition of Conducting Continuous Transactions before Registration

(1) A foreign company shall not engage in continuous transactions at the place of its business office before it has effected the registration set forth in Article 614.

(2) Any person who has engaged in transactions in contravention of paragraph (1) shall be jointly and severally liable with the company for such transactions.

Article 617
Applicable Laws

A company incorporated in a foreign country shall, if it has established its principal office in the Republic of Korea or its main purpose is to engage in business in the Republic of Korea, be subject to the same provisions as a company incorporated in the Republic of Korea.

Article 618
Applicable Provisions

(1) Articles 335 through 338, 340 (1), 355 through 357, 478 (1), 479 and 480 shall apply *mutatis mutandis* to the issuance of share certificates or certificates of bonds and to the transfer or pledging of such shares or the transfer of bonds conducted in the Republic of Korea by a foreign company.

(2) In case of paragraph (1), the first business office established in the Republic of Korea by a foreign company shall be deemed as its principal office.

Article 619
Order to Close Business Office

(1) In case where a foreign company has established its business office, the court may order such business office to be closed, on the application of any interested person or public prosecutor, for any of the following reasons:

1. If the objective of establishment of such business office is illegal;
2. If such business office has, without justifiable reasons, failed to commence business within one year after the registration of establishment thereof, discontinued business for a period of no less than one year or if it has suspended payment without justifiable reasons; or
3. If the representative of such foreign company or any other person managing the affairs thereof has violated Acts and subordinate statutes or good morals and other social orders.

(2) Article 176 (2) through (4) shall apply *mutatis mutandis* in case of paragraph (1).

Article 620
Liquidation of Properties Existing in Republic of Korea

(1) If the court has ordered a business office of a foreign company

to be closed in accordance with Article 619 (1), it may order the commencement of proceedings for liquidation in respect of the whole of the company's property existing in the Republic of Korea, upon the application of any interested person or *ex officio*. In this case, the court shall appoint a liquidator.

(2) Articles 535 through 537 and 542, except for those which are by nature inapplicable, shall apply *mutatis mutandis* to the liquidation under paragraph (1).

(3) Paragraphs (1) and (2) shall apply *mutatis mutandis* where a foreign company has voluntarily closed its business office.

Article 621
Status of Foreign Company

In connection with the application of other acts, a foreign company shall be deemed to be a same kind or most similar kind of company which comes into existence in the Republic of Korea, unless otherwise provided by acts.

CHAPTER VII
PENAL PROVISIONS

Article 622
Crimes of Special Misappropriation by Promoters, Directors, and Other Officers, etc.

(1) If a promoter, managing member, director, member of audit committee, auditor or acting director under Article 386 (2), 407 (1), 415 or 567, manager or other employee commissioned to undertake a certain class of matters or specified matters related to the business affairs of the company has obtained, or made another person obtain, any pecuniary benefit by acting in breach of his duty and has thereby inflicted loss on the company, he shall be subject to an imprisonment not exceeding ten years or to a fine not exceeding thirty million won.

(2) The same shall apply where a liquidator, acting liquidator under Article 542 (2) and incorporator under Article 175 have committed an act mentioned in paragraph (1).

Article 623
Crimes of Special Misappropriation by Representatives of Meeting of Bondholders, etc.

If a representative of a meeting of bondholders or a person who was authorized to execute the resolutions thereof has obtained, or made another person obtain, any pecuniary benefit by acting in breach of his duty and has thereby inflicted loss on the bondholders, he shall be subject to an imprisonment not exceeding seven years or to a fine not exceeding twenty million won.

Article 624
Attempted Crimes of Special Misappropriation

An attempt to commit any of the acts set forth in Articles 622 and 623 shall be punishable.

Article 625
Crimes of Endangering Company's Property

If any person set forth in Article 622 (1), inspector, notary public mentioned in Article 298 (3), 299-2, 310 (3) or 313 (2) (including managing attorney of an incorporated law firm and of a joint law & notary office; the same shall apply hereinafter in this Chapter) or appraiser mentioned in Article 299-2, 310 (3), or 422 (1) has committed any of the following offenses, he shall be subject to an imprisonment not exceeding five years or to a fine not exceeding fifteen million won:

1. Making of a false report to, or concealing facts from, the court, the general meeting or promoters in respect of the subscription for shares or capital contribution, payment therefor, performance of contributions in kind, or any matter set forth in Article 290, subparagraph 4 of Article 416, or Article 544;
2. Wrongful acquisition of the ownership of share or shares in the company or of the pledge right with respect thereto, for the account of the company, irrespective of the name they have used in doing so;
3. Distribution of profits or interests in contravention of the relevant acts, subordinate statutes or the articles of incorporation; and
4. Disposal of the company's property for speculative transactions, outside the ordinary course of the company's business.

Article 625-2
Crimes of Violating Share Acquisition Restriction, etc.

If a person set forth in Article 635 (1) has violated Article 342-2 (1) or (2), he shall be subject to a fine not exceeding twenty million won.

Article 626
Crimes of False Reporting

If a director, auditor or acting director under Article 386 (2), 407 (1), 415 or 567 has made a false reporting to, or has concealed facts from, the court or the general meeting with respect to the amount of net assets under Article 604 (2) or 607 (2) in case of a change of organization pursuant to Article 604 or 607, he shall be subject to an imprisonment not exceeding five years or to a fine not exceeding fifteen million won.

Article 627
Crimes of Using Documents Containing Misstatements

(1) If a person set forth in Article 622 (1), representative of a

foreign company or person who is commissioned to offer shares or bonds has used the subscription forms for shares or bonds, prospectus, advertisements or any other documents relating to an offering of shares or bonds, which contained misstatements as to material facts in connection with such offering, he shall be subject to an imprisonment not exceeding five years or to a fine not exceeding fifteen million won.

(2) The same shall apply where a persons who offers shares or bonds for sale has used documents related to such sale containing misstatements as to material facts pertaining to such sale.

Article 628
Crimes of Disguised Payment

(1) If a person set forth in Article 622 (1) has committed an act of disguising the payment for the subscription price or the fulfillment of the contribution in kind, he shall be subject to an imprisonment not exceeding five years or to a fine not exceeding fifteen million won.

(2) The same shall apply to a person who have consented to or has mediated an act mentioned in paragraph (1).

Article 629
Crimes of Excessive Issuance

If promoters, directors or acting directors under Article 386 (2) or 407 (1) have issued shares in excess of the total number of shares authorized to be issued by the company, they shall be subject to an imprisonment not exceeding five years or to a fine not exceeding fifteen million won.

Article 630
Crimes of Corruption in Office by Promoters, Directors or Other Officers

(1) If a person set forth in Articles 622 and 623, inspector or notary public under Article 298 (3), 299-2, 310 (3) or 313 (2) or appraiser under Article 299-2, 310 (3), or 422 (1) has received, demanded or promised any pecuniary benefit, in response to unlawful solicitation in connection with their duties, he shall be subject to an imprisonment not exceeding five years or to a fine not exceeding fifteen million won.

(2) The same shall apply to a person who has promised, delivered or manifested an intention for delivery of pecuniary benefits mentioned in paragraph (1).

Article 631
Crimes of Bribery in Relation to Disturbing Exercise of Rights, etc.

(1) If any person has received, demanded or promised pecuniary

benefits in response to unlawful solicitations in connection with the following matters, he shall be subject to an imprisonment not exceeding one year or to a fine not exceeding three million won:

1. Making a statement or exercising voting rights at the inaugural general meeting, general members' meetings, general shareholders' meetings or meetings of bondholders;
2. Bringing an action set forth in Part 3 or exercising the rights of shareholders representing no less than 1/100 or 3/100 of the total outstanding shares, the rights of bondholders representing no less than 10/100 of the total amount of the bonds or the rights of members having contribution units representing no less than 5/100 of the capital; and
3. Exercising any right set forth in Article 402 or 424.

(2) The same shall apply to a person who has promised, delivered or manifested an intention for delivery of pecuniary benefits mentioned in paragraph (1).

Article 632
Concurrent Imposition of Imprisonment and Fine

Punishments of Imprisonment and fine set forth in Articles 622 through 631 may be concurrently imposed.

Article 633
Confiscation and Additional Collection

In case of Article 630 (1) or 631 (1), the benefits received by the offender shall be confiscated. If it is wholly or partly impossible to confiscate such, the value thereof shall be collected from the offender.

Article 634
Crimes of Evading Liability for Payment on Shares

If a person who has subscribed for shares or contribution units by using another person' name or a fictitious name in order to evade the liability for payment of the subscription price, he shall be subject to an imprisonment not exceeding one year or to a fine not exceeding three million won.

Article 634-2
Crimes of Granting Benefits in Connection with Exercise of Shareholder's Rights

(1) If a director, auditor, acting director under Article 386 (2), 407 (1) or 415, manager or other employee has granted pecuniary benefits on the company's account in connection with the exercise of shareholder's rights, he shall be subject to an imprisonment not exceeding one year or to a fine not exceeding three million won.

(2) The same shall apply to a person who has received, or made another person deliver, the benefits under paragraph (1).

Article 635
Offences Subject to Fine for Negligence

(1) If a promoter, incorporator, managing member, director, auditor, member of audit committee, representative of a foreign company, inspector, notary public under Article 298 (3), 299-2, 310 (3) or 313 (2), appraiser under Article 299-2, 310 (3), or 422 (1), manager, liquidator, transfer agent, company which was commissioned to offer bonds for subscription, its successor or acting director under Article 386 (2), 407 (1), 415, 542 (2) or 567 has committed any of the following offenses, he shall be subject to a fine for negligence not exceeding five million: *Provided,* That this shall not apply where a criminal penalty is imposed against such an act:

1. Neglecting to effect any of the registrations set forth in this Part;
2. Neglecting to give any public notices or any other notices prescribed in this Part or making a dishonest public or other notices;
3. Disturbing any inspection or investigation pursuant to this Part;
4. Refusal to permit the inspection or copying of documents or to deliver a transcript or an abstract thereof in contravention of this Part, without justifiable reason;
5. Making a false reporting to, or concealing facts from, the government authorities, general meetings or meetings of bondholders;
6. Failure to state in share certificates, certificates of bonds or certificates for preemptive rights any of the required particulars or making a misstatement therein;
7. Failure to effect entry of a change of holders in the register of shareholders, without justifiable reason;
8. Neglecting to take procedure for the appointment of directors and auditors, if the remaining directors or auditors in office become fewer than the minimum number prescribed in the Acts or in the articles of incorporation;
9. Failure to state any particulars required to be stated in the articles of incorporation, the register of shareholders or the part of a set thereof, the register of members, the register of bonds or the part of a set thereof, the minutes, the property list, the balance sheet, the business report, the operation report, the income statements, the statements of appropriation of retained earnings or the statements of disposition of deficits, the reports on the settlement of accounts, account books,

the supplementary schedules mentioned in Articles 447, 534, 579 (1) or 613 (1) or the audit report or making miss statements therein;

10. Neglecting or refusing to hand over the business undertaking to a liquidator appointed by the court;
11. Fixing the unduly prolonged period set forth in Article 247 (3), 535 (1) or 613 (1), for the purpose of delaying the completion of liquidation;
12. Neglecting to apply for an adjudication of bankruptcy in contravention of Article 254 (4), 542 (1) or 613 (1);
13. Inviting public subscriptions for contribution in contravention of Article 589 (2);
14. Merger, division, or merger through division of companies, change of organization, disposal of the company's property or reduction of its capital, in contravention of Article 232, 247 (3), 439 (2), 527-5, 530 (2), 530-9 (4), 530-11 (2), 597, 603 or 608;
15. Distribution of the properties of a company in contravention of Article 260, 542 (1) or 613 (1);
16. Failure to prepare subscription forms for shares or bonds, certificates of preemptive rights or to state therein the required particulars or making misstatements therein, in contravention of Article 302 (2), 347, 420, 420-2, 474 (2) or 514 (1);
17. Neglecting to take the procedures for cancellation of shares or contribution units or to effect the disposition of pledge rights over the shares or contribution units, in contravention of Article 342 or 560 (1);
18. Retirement of shares or contribution units in contravention of Article 343 (1) or 560 (1);
19. Issuance of share certificates in contravention of Article 355 (1) and (2) or 618;

19-2. Failure to enter in the register of shareholders, in contravention of Article 358-2 (2);

19-3. Failure to make a subject-matter of the general meeting of shareholders the matters which shareholders propose, in contravention of Article 363-2 (1) or 542 (2);

20. Failure to convene a general meeting in contravention of an order of the court rendered in accordance with Article 365 (1) and (2), 578, 467 (3) or 582 (3) or convening a general meeting at a place other than that set forth in the articles of incorporation or convening such meeting in contravention of Article 363, 364 or 571 (2) and (3);

20-2. Failure to give the notice or public notice on the contents and method of exercise of the appraisal right or giving a false notice or public notice, in contravention of Article 374 (2), 530 (2), or 530-11 (2);

21. Failure to keep books or documents in contravention of Article 396 (1), 448 (1), 510 (2), 522-2 (1), 527-6 (1), 530-7, 534 (3), 542 (2), 566 (1), 579-3, 603 or 613;
21-2. Refusal of the investigation of the auditor or the member of audit committee without any justifiable reason, in contravention of Article 412-4 (3);
22. Failure to set aside a reserve or misuse thereof, in contravention of Articles 458 through 460 or 583;
22-2. Failure to pay the dividend within the period set forth in Article 464-2 (1);
23. Offeringbonds or failure to redeem old bonds, in contravention of Article 470;
24. Issuance of bond certificates in contravention of Article 478 (1) or 618;
25. Discharge of any obligation in contravention of Article 536 or 613 (1);
26. Failure to comply with an order of the court rendered pursuant to Article 619 (1); and
27. Issuance of instruments in bearer or non-bearer form with respect to contribution units, in contravention of Article 555.

(2) The same shall apply where a promoter or director has transferred any right deriving from the subscription of shares.

Article 636
Business in Name of Company prior to its Registration, etc.

(1) A person who has engaged in business in the name of a company before its incorporation shall be subject to a fine for negligence equivalent to two times the sum of the registration tax for the registration of incorporation of the company.
(2) paragraph (1) shall apply *mutatis mutandis* where a person has violated Article 616 (1).

Article 637
Application of Penal Provisions to Juristic Person

If any person set forth in Article 622, 623, 625, 627, 628 or 630 (1) is a juristic person, the penal provisions under this Chapter shall apply to the directors or auditors who have committed such acts or other members or managers who has managed the affairs of the company.

ADDENDA

Article 1
Mandatory Provisions

The scope of petty merchants shall be determined by a Cabinet Order.

Article 2
Idem

The lakes, rivers, ports and bays under Article 125 shall be determined by a Cabinet Order.

Article 3
Deferment of Giving Public Notice on Commercial Registration

(1) The provisions relating to the public notices mentioned in Article 36 shall no longer apply after a reasonable period. Such period shall be determined by the Supreme Court Regulations.

(2) If, in the case of the preceding paragraph, the registration has been effected in the period mentioned in the preceding paragraph, public notice shall be deemed to have been made.

Article 4
Prohibition on Issuance of Share Certificate in Bearer Form Company to be Organized only by Nationals of Republic of Korea

The stock company which should be organized by only nationals of the Republic of Korea in accordance with the Acts and subordinate statutes, and a stock company having special rights. on the condition that it is to be organized by only nationals of the Republic of Korea, shall not issue share certificates in bearer from. If the above mentioned provisions have been contravened, such share certificates shall be null and void and the last non-bearer shareholder shall be a shareholder.

Article 5
Deleted

Article 6
Qualification of Company Commissioned to Offer Bonds for Subscription

No person other than a bank, trust or securities company shall be commissioned to offer bonds for subscription or become a successor of the business under Article 483.

Article 7
Method to Deposit Bearer Bond Certificate by Holder thereof

If the holder of bearer bond certificates has not deposited his bond certificates with the public official who is in charge of deposit in accordance with the provisions of Articles 491 (4) and 492 (2) or provisions to be applied *mutatis mutandis,* he shall deposit such bond certificates in the bank or trust company which is to be designated by the Chief Justice of the Supreme Court.

Article 8
Manner of Public Notice relating to Meetings of Bondholders

The public notice with regard to convocation of meeting of bondholders, payment of redemption amount or execution of resolution of meeting of bondholders relating to payment of redemption amount shall be given of public notice determined by Articles of incorporation of issuing company according to the manner.

Article 9
Mandatory Provisions

The Form of the inventory of equipments mentioned in Article 742 shall be determined by a Cabinet Order.

Article 10
Idem

The scope of coastal navigations mentioned in the proviso of Article 839 (2) shall be determined by a Cabinet Order.

Article 11
Idem

The matters concerning the enforcement of this Act shall be determined by separate Act.

Article 12
Enforcement Date and Effect of Old Act

(1) This Act shall enter into force on Jan. 1, 1963.
(2) The Commercial Act, Limited Liability Company Act, Act on Implemention Commercial Act, Act for Enforcement of Amendment of the Commercial Act applied in accordance with Article 1 of the Chosun Civil Affairs Ordinance shall be effective until the date of enforcement of this Act.

ADDENDUM

This Act shall enter into force on January 1, 1963.

ADDENDA

Article 1
Enforcement Date

This Act shall enter into force on September 1, 1984.

Article 2
Principles of Transitional Measures

Except as otherwise *Provided,* this Act shall be applicable to the matters which have taken place before the enforcement of this Act:

Provided, That any effect given by the previous provisions shall not be affected.

Article 3
Transitional Measures as to Trade Books, etc.

The previous provisions shall apply with respect to trade books and supplementary schedules, which a person who is a merchant when this Act enters into force should prepare before the fixed time under the revised provisions of Article 30 (2) (for the company, this date means the period for settlement of accounts; hereinafter referred to as the same in this Article), to the accounts to be made before and at the fixed time.

Article 4
Transitional Measures as to Minimum Amount of Capital of Stock Company

(1) A company which has been formed as a stock company before the enforcement of this Act, and the capital of which is less than fifty million won at the enforcement date of this Act, shall increase its capital to fifty million won or more, or alter its organization into a limited liability company within three years from the enforcement date of this Act.

(2) If the company fails to take such a procedure in the period as prescribed in paragraph (1), it shall be regarded as being dissolved.

(3) The companies which are as considered to have been dissolved under paragraph (2) but the liquidation of which is not closed, may continue their operation by a special resolution as prescribed in Article 434, according to the procedure in paragraph (1) within one year from the enforcement date of this Act.

Article 5
Transitional Measures as to Par Value of Shares

(1) With respect to the par value of shares of stock company issued formed before the enforcement of this Act, the previous provisions shall be applicable for three years from the enforcement date of this Act regardless of the revised provisions of Article 329 (4).

(2) A stock company formed before the enforcement of this Act shall consolidate the shares by a resolution under Article 434, in order to make the shares the par value of which is less than five thousand won into those above five thousand won, within three years from the enforcement date of this Act. In this case, the provisions of Articles 440 through 444 shall be applicable *mutatis mutandis.*

Article 6
Transitional Measures as to Transfer of Shares before Issuing Share Certificates

The revised provisions of the proviso of Article 335 (2) shall also be applicable to a transfer of shares which has been made without issuing the share certificates before the enforcement of this Act.

Article 7
Transitional Measures as to Transfer of Shares by Delivery of Share Certificates

(1) With respect to a transfer or acquisition of shares before the enforcement of this Act, the previous provisions of Articles 336 and 359 shall be applicable even after the enforcement of this Act: *Provided,* That with regard to a possession of share certificates after the enforcement of this Act, the revised provisions of Article 336 (2) shall be applicable.

(2) Even though a person who has, after the enforcement of this Act acquired share certificates issued before the enforcement of this Act, has not investigated as to the uninterrupted series of endorsements or the propriety of instrument for conveyance, the failure of such investigation shall not be considered as an act of bad faith or gross negligence, for the purpose of application of the revised provisions of Article 359.

Article 8
Transitional Measures as to Transfer Agent

(1) A transfer agent who was appointed before the enforcement of this Act, under Article 11-6 of the Capital Market Promotion Act, shall be regarded to have been appointed under the revised provisions of Article 337 (2) of this Act.

(2) The qualification of the transfer agent under this Act shall be determined by a Presidential Decree.

Article 9
Transitional Measures as to Acquirement of Shares of Parent Company by Subsidiary Company

(1) If a subsidiary company which is subject to Article 342-2, has the shares of a parent company which is subject to the said Article, at the time this Act enters into force, the former shall dispose of such shares within three years from the enforcement date of this Act.

(2) The provisions of Article 625-2 shall be applicable *mutatis mutandis* to the case of non-disposition of shares in contravention of the provisions of paragraph (1).

Article 10
Transitional Measures as to Non-bearing of Share Certificates

A measure pertaining to the non-issue of share certificates, which was taken before the enforcement of this Act, under the provisions of Article 11-7 of the Capital Market Promotion Act, shall be considered to have been taken under the revised provisions of Article 358-2 of this Act.

Article 11
Transitional Measures as to Period of Closure of Register of Shareholders and Record Date

If a day within two weeks from the day of enforcement of this Act is determined as the period of closure of shareholders' register or the record date, the previous provisions shall be applicable.

Article 12
Transitional Measures as to Exercise Vote in Disunity

The revised provisions of Article 368-2 (including the cases to which this Article is applied *mutatis mutandis* by Articles 308 (2) and 527 (3)) shall not be applicable to the exercise of a vote at a general shareholders' meeting or inaugural general meeting which is held on a day within two weeks from the enforcement date of this Act.

Article 13
Transitional Measures as to Action for Affirming Non-existence of Resolution of General Meeting

The revised provisions of Article 380 (including the cases to which this Article is applied *mutatis mutandis* by Articles 308 (2) and 578) shall also be applicable to the cases pending to the court at the time when this Act enters into force: *Provided,* That the effect of an action brought before the enforcement of this Act shall not be affected.

Article 14
Transitional Measures as to Term of office of Directors and Auditors

With respect to the term of office of directors and auditors of a stock company who are in office at the time this Act enters into force, the previous provisions shall be applicable, regardless of the revised provisions of Articles 383 (2) and 410.

Article 15
Transitional Measures as to Duty and Power of Auditors

With respect to the duty and power of an auditor of a stock company appointed before the enforcement of this Act, and is in office before closing of a ordinary general meeting relating to the period for the

settlement of accounts which arrives first after the enforcement of this Act, the previous provisions shall be applicable.

Article 16
Transitional Measures as to Representative of Company for Action between Company and Directors

With respect to the person who is to represent a company in an action brought by a stock company against a director (including a liquidator, and hereinafter referred to the same in this Article) and vice versa, the previous provisions shall be applicable until the ordinary general meeting relating to the period for the settlement of accounts which arrives first after the enforcement of this Act, is closed.

Article 17
Transitional Measures as to Allotment of New Shares

When a resolution to issue new shares is adopted before the enforcement of this Act, the revised provisions of Article 418 (2) shall not be applicable.

Article 18
Transitional Measures as to Time of Effecting New Shares

When a resolution to issue new shares is made before the enforcement of this Act, the time when a person becomes a shareholder shall be determined according to the previous provisions, regardless of the revised provisions of Article 423.

Article 19
Transitional Measures as to Reduction of Capital

When a resolution concerning the reduction of capital is made before the enforcement of this Act, the fractional shares shall be disposed of according to the previous provisions, regardless of the revised provisions of Article 443 (1).

Article 20
Transitional Measures as to Time to Pay Dividend

The revised provisions of Article 464-2 shall not be applicable to the dividend which has been decided to be paid by a resolution under Article 449 (1) before the enforcement of this Act.

Article 21
Transitional Measures as to Issuance of Convertible Bonds

When a resolution to issue convertible bonds has been made before the enforcement of this Act, such bonds shall be issued according to the previous provisions.

Article 22
Transitional Measures as to Prohibition against Granting Benefits

The revised provisions of Article 467-2 shall not be applicable to an act performed before the enforcement of this Act.

Article 23
Transitional Measures as to Disclosure of Balance Sheet for Merger

The revised provisions of Article 522-2 (including the cases to which this Article is applied *mutatis mutandis* by Article 603) shall not be applicable to a case where the general shareholders' meeting under paragraph (1) of the said Article is to be held on a day within two weeks after the enforcement of this Act.

Article 24
Transitional Measures as to Total Amount of Capital of Limited Liability Companies

(1) A company which was a limited liability company before the enforcement of this Act, and whose total amount of capital and amount of one contribution unit at the time of enforcement of this Act are less than the amount as prescribed in the revised provisions of Article 546, shall raise the amount, in the case of the total amount of capital, to ten million won or more, and, in the case of the amount of contribution unit, to five thousand won or more, within three years from the enforcement date of this Act.

(2) The company which fails to raise its total amount of capital within the period as prescribed in paragraph (1) shall be deemed to have been dissolved.

(3) The companies which as considered to have been dissolved under paragraph (2), but the liquidation of which is not completed, may continue their operation by a special resolution as prescribed in Article 585, according to the procedure as referred to in paragraph (1) within one year from the enforcement date of this Act.

Article 25
Revision of Relevant Acts and Relations with Other Acts

(1) through (7) Omitted.

(8) In the cases where the previous provisions of the Commercial Act are cited in the Acts other than those prescribed in paragraphs (1) through (7), at the time this Act enters into force, if the provisions corresponding to them are included in this Act, such corresponding provisions of this Act shall be considered to have been cited in lieu of the previous provisions.

ADDENDUM

This Act shall enter into force on the date of its promulgation.

ADDENDA

Article 1
Enforcement Date

This Act shall enter into force on January 1, 1993.

Article 2
Transitional Measures

(1) The provisions of Part IV of this Act shall also be applicable to any insurance contract concluded before this Act enters into force: *Provided,* That the effect given by the previous provisions shall not be affected.

(2) The provisions of Part V of this Act shall not be applicable to any obligation on damages caused by any accident taken place before this Act enters into force, but the previous provisions shall be applicable.

Article 3
Transitional Measures concerning Application of Limitation Tonnage

In application of Article 751, the gross tonnage shall be applicable in lieu of the international gross tonnage to a ship which is engaged in an international navigation, and fails to be delivered an international tonnage certificate or written international tonnage confirmation by the Administrator of the Korea Maritime and Port Administration under Article 13 of the Vessels Act.

Article 4
Relation with Other Acts

In case where other Acts cite the previous provisions of the Commercial Act at the time this Act enters into force, if the provisions corresponding to them are included in this Act, such corresponding provisions of this Act shall be considered to have been cited in lieu of the previous provisions.

ADDENDA

Article 1
Enforcement Date

This Act shall enter into force on January 1, 1995.

Articles 2 through 4
Omitted

ADDENDA

Article 1
Enforcement Date

This Act shall enter into force on October 1, 1995.

Article 2
Principles of Transitional Measures

Except as provided otherwise by this Act, this Act shall also apply to the matters taken place before this Act enters into force: *Provided,* That it shall not affect any effect taken pursuant to the previous provisions.

Article 3
Transitional Measures concerning Trade Books, etc.

The previous provisions shall apply with respect to trade books and supplementary schedules, which a person who is a merchant at the time this Act enters into force should prepare before the fixed time under the revised provision of Article 30 (2) (for the company, this date means the period for settlement of accounts; hereinafter referred to as the same in this Article) which arrives for the first time after the enforcement of this Act, and to the accounts to be made before and at the fixed time.

Article 4
Transitional Measures concerning Class of Shares Having Preferential Rights

Any class of shares having preferential rights, issued before this Act enters into force, shall be subject to the previous provisions.

Article 5
Transitional Measures concerning Term of Office of Auditor

The term of any auditor of a stock company, who is in office at the time this Act enters into force, shall be subject to the previous provisions.

Article 6
Relation with Other Acts

In case where other Acts cite the provisions of the previous Commercial Act at the time this Act enters into force, if the provisions corresponding to them are included in this Act, such corresponding provisions of this Act shall be considered to have been cited in lieu of the previous provisions.

ADDENDA

Article 1
Enforcement Date

This Act shall enter into force on the date of its promulgation: *Provided,* That the amended provisions of Article 382-2 shall enter into force six months after its promulgation.

Article 2
Principles of Transitional Measures

Except as otherwise prescribed by this Act, this Act shall also apply to matters which took place before this Act enters into force: *Provided,* That it shall not affect any effect taken pursuant to the previous provisions.

Article 3
Transitional Measures concerning Merger

With respect to a merger effected pursuant to a merger contract concluded prior to the enforcement of this Act, the previous provisions shall continue to apply even after this Act enters into force: *Provided,* That the period of institution of an objection by creditors under Articles 232 and 527-5 shall apply to that publicly notified on or after the enforcement date of this Act.

Article 4
Transitional Measures concerning Application of Penal Provisions

The application of penal provisions to an act conducted prior to the enforcement of this Act, and to acts conducted after the enforcement of this Act which are subject to the previous provisions under Article 3, shall follow the previous provisions.

Article 5
Omitted

ADDENDA

Article 1
Enforcement Date

This Act shall enter into force six months after its promulgation. (Proviso Omitted.)

Articles 2 through 6
Omitted

ADDENDA

Article 1
Enforcement Date

This Act shall enter into force on the date of its promulgation.

Article 2
Principles of Transitional Measures

Except as otherwise *Provided,* this Act shall also apply to the matters which occurred before the enforcement of this Act: *Provided,* That this shall be without prejudice to any effect given by the previous provisions.

Article 3
Transitional Measures concerning Division

The previous provisions shall continue to govern even after the enforcement of this Act with respect to the division of a corporation effected under a division agreement that was concluded before this Act enters into force.

Article 4
Omitted

ADDENDA

(1) (Enforcement Date) This Act shall enter into force on the date of its promulgation.
(2) (Application Examples for Request for Action Cost by Shareholders Instituting Action Who Won the Case) The amended provisions of Article 405 (1) shall apply also to the pending case at the court at the time of enforcement of this Act.
(3) (General Transitional Measures) This Act shall apply also to the case occurred prior to the enforcement of this Act unless otherwise prescribed by this Act: *Provided,* That this shall not affect the validity accrued by the previous provisions.

ADDENDUM

This Act shall enter into force on July 1, 2002.
Source: http://www.moleg.go.kr/ Access time: 05/08/2003

APPENDIX KR-2

Securities and Exchange Act

Act No. 6176, Jan. 21, 2000

CHAPTER I
GENERAL PROVISIONS

Article 1
(Purpose)

The purpose of this Act is to contribute to the development of the national economy by achieving wide and orderly circulation of securities and by protecting investors through the fair issuance, purchase, sale or other transactions of securities.

Article 2
(Definitions)

(1) The term "securities" in this Act shall mean any of the following:
1. Government bonds;
2. Municipal bonds;
3. Bonds issued by a corporation that are established under a special act;
4. Corporate bonds;
5. Certificates of contribution issued by a corporation that are established under a special act;
6. Stock certificatesor instruments that represent preemptive rights;
7. Certificates or instruments issued by a foreign corporationthat have the same nature as those referred to in subparagraphs 1 through 6 of this paragraph;
8. Securities depository receipts that a person designated by Presidential Decree issues based on underlying certificates or instruments issued by a foreign corporation, etc.; and,
9. Other certificates or instruments designated by Presidential Decree that are similar or related to those referred to in subparagraphs 1 through 8 of this paragraph.

(2) Such rights that should be stated in the securities referred to in each subparagraph of paragraph (1) shall be regarded as belonging to such securities, even if certificates of such securities have not been issued.

(3) The term "public offering of new securities" in this Act shall mean a solicitation of an offer to acquire securities that are newly issued as prescribed by Presidential Decree.

(4) The term "public offering of outstanding securities" in this Act shall mean a solicitation of an offer to sell or an offer to buy outstanding securities as prescribed by Presidential Decree.

(5) The term "issuer" in this Act shall mean a person who has issued or intends to issue any securities: *Provided,* That in issuing securities prescribed in paragraph (1) 8, the term "issuer" shall mean a person who has issued or intends to issue certificates or instruments that are the basis of such issuance.

(6) The term "underwriting" in this Act shall mean any of the following acts:

1. In connection with the issuance of securities to acquire from an issuer all or a part of securities with a view to distributing;
2. In connection with the issuance of securities to make a contract to acquire the unsold portion of the securities no one else acquires; and,
3. For the purpose of a commission, on behalf of an issuer to make arrangements for a public offering of new or outstanding securities or to participate directly or indirectly in a public offering of new or outstanding securities.

(7) The term "underwriter" in this Act shall mean a person who conducts any of the activities referred to in subparagraphs of paragraph (6).

(8) The term "securities business" in this Act shall mean a business that conducts any of the following acts:

1. To buy and sell securities;
2. To buy and sell securities on consignment;
3. To act as an intermediary or agent with respect to the purchase or sale of securities;
4. To act as an intermediary, make arrangements or act as an agent with respect to an entrustment of transactions to be executed on a securities market, an association brokerage market, or a similar market in a foreign country similar to those;
5. To underwrite securities;
6. To make a public offering of outstanding securities; and,
7. To arrange for a public offering of new or outstanding securities.

(9) The term "securities company" in this Act means a company that conducts securities business in accordance with this Act.

(10) The term "investment advisory business" and the term "discretionary investment business" in this Act shall mean the relative businesses of the following subpragraphs:

1. The investment advisory business: The business of offer-

ing advice orally or in writing, or in any other manner, with respect to the value of securities or the investment judgment on securities (referring to the judgment on the kinds, items, quantity, price, and the classification, method and time of trading the securities subject to investment; hereinafter the same shall apply): Provided, That any advice made through publications, etc., provided for the general public and is prescribed by Presidential Decree shall be exempted.

2. The discretionary investment business: The business of making investments for customers after being entrusted by such customers with the whole or part of the investment judgment based on an analysis of the value, etc., of securities.

(11) The term "investment advisory company" in this Act shall mean a company that conducts the investment advisory business or investment discretionary business under this Act.

(12) The term "securities market" in this Act shall mean a market that is established by the Korea Stock Exchange (hereinafter referred to as "Stock Exchange") under the provisions of Article 71 for the transaction of securities.

(13) The terms "listed corporation," "unlisted corporation," "stock-listed corporation" and "stock-unlisted corporation" in this Act shall mean any of the following:

1. Listed corporation: an issuer of securities listed on the securities market;
2. Unlisted corporation: an issuer of securities not listed on the securities market;
3. Stock-listed corporation: a corporation that has issued stocks listed on the securities market; and,
4. Stock-unlisted corporation: a corporation that has issued stocks not listed on the securities market.

(14) The term "association brokerage market" in this Act shall mean a market operated by the Korea Securities Dealers Association (hereinafter referred to as the "Association") established under Article 162 for the purpose of intermediating transactions of securities as prescribed by Presidential Decree.

(15) The term "association-registered corporation" in this Act shall mean a corporation that is registered with the Association pursuant to Article 172-2.

(16) The term "foreign corporation" shall mean a foreign government, foreign local government, foreign public institution, foreign enterprise established under foreign laws, international finance organization established under a treaty, or a person who is so designated by Ordinance of the Ministry of Finance and Economy.

(17) The term "securities-related institution" in this Act shall mean any of the following persons:

1. An institution that has been established, licensed to do operations or business, or registered under this Act;
2. A management company or trustee company under the Securities Investment Trust Business Act; and,
3. An asset management company or asset deposit company under the Securities Investment Company Act.

(18) The term "employee stock ownership association" in this Act means an organization established under the requirements prescribed by Presidential Decree to promote the welfare of employees and enhance their economic status through the acquisition and management by employees of the stocks of such corporation.

(19) The term "outside directors" in this Act means directors who do not work for a company on a regular daily basis.

Article 2-2
(Presumption of the Securities Index as Securities)

(1) A stockprice index or other securities indexes that comprehensively indicate the price levels of many types of stock certificates or other securities according to their classification and that is designated by the Stock Exchange (hereinafter referred to as the "securities index") shall be deemed securities.

(2) Any transactions that make an agreement to receive and give money calculated by the margin between the value of the securities index determined in advance by the parties according to the standards and procedures as determined by the Stock Exchange and the value of the securities index that actually arises at a given time in the future (hereinafter referred to as "futures transaction of the securities index") shall be deemed as sales transactions of securities.

(3) In applying this Act to futures transactions of the securities index, the value of the securities index shall be the securities price.

CHAPTER II
REGISTRATION OF ISSUER OF SECURITIES

Article 3
(Registration of Issuer of Securities)

Any of the following issuers shall be registered with the Financial Supervisory Commission so as to provide for fair issuance of securities and public disclosure of information by business corporations: *Provided,* That the same shall notiy to securities as prescribed in Article 2 (1) 1 through 3, 4 (limited to corporate bonds as prescribed by Presidential Decree) and 5, and to an issuer of securities as determined by Presidential Decree:

1. A corporation that intends to list its securities on the securities market;

2. An unlisted corporation that intends to make a public offering of new or outstanding securities;
3. A stock-unlisted corporation that intends to merge with a stock-listed corporation;
4. An unlisted corporation that intends to have its securities traded on the Association's brokerage market;
5. A corporation under incorporation that intends to make a public offering of new securities; and
6. A corporation that intends to grant stock option rights to officers and employees of such corporation pursuant to Article 189-4.

Article 4
(Documents for Registration)

An issuer of securities who applies for registration pursuant to the provisions of Article 3 shall file documents as determined by the Financial Supervisory Commission, such as the general situation and property conditions, etc., of the company, with the Financial Supervisory Commission. In case any significant matters stated in the filed documents are amended, such information shall also be filed with the Financial Supervisory Commission.

Article 5
(Disclosure of Documents Filed for Registration)

The Financial Supervisory Commission may offer the documents filed pursuant to Article 4 for public inspection.

Article 6
(Administration of Registered Corporation)

With respect to a corporation that has registered with the Financial Supervisory Commission pursuant to the provisions of Article 3 (hereinafter referred to as a "registered corporation"), the Financial Supervisory Commission may prescribe criteria for the sound management of the registered corporation, such as for corporate finance and improvement of financial structure, etc., and may also make necessary recommendations.

CHAPTER III
REGISTRATION STATEMENT

Article 7
(Scope of Application)

No provisions of this Chapter shall apply to the securities referred to in Article 2 (1) 1 through 3, 5 and as prescribed by Presidential Decree.

Article 8
(Registration of Public Offering)

(1) Where the total price of a public offer of new or outstanding securities exceeds the amount prescribed by Ordinance of the Ministry of Finance and Economy, public offering of such securities may not be made unless the issuer files a registration statement of such securities with the Financial Supervisory Commission and the registration statement is accepted by the Financial Supervisory Commission: *Provided,* That if the issuer establishes a period in which the issuer is to issue securities pursuant to an Ordinance of the Ministry of Finance and Economy, and files *en bloc* a registration statement of securities to be offered publicly during the period (hereinafter referred to as a "shelf registration statement") with the Financial Supervisory Commission, and the shelf registration statement is accepted by the Financial Supervisory Commission, the issuer shall not be required to file separately the registration statement on securities to be offered publicly in such period.

(2) Matters on the predictions or prospects for the issuer's future financial status or results of operation that fall under any of the following subparagraphs (hereinafter referred to as "predicted information") may be entered or provided in a registration statement under paragraph (1). In this case, the entry or provision of predicted information shall be made through the methods as prescribed in Article 14 (2) 1, 2 and 4:
   1. Matters on the issuer's results of operation such as size in sales and revenues, or other predictions or prospects on the results of operation;
   2. Matters on the predictions or prospects for the issuer's financial status such as the size in capital stock and fund flows;
   3. Matters on the issuer's results of operation or changes in financial status, and targeted levels at a certain point due to the occurrence of a particular event or the establishment of a particular plan; and,
   4. Other matters on the predictions or prospects of the issuer's future as prescribed by Presidential Decree.

(3) Where a registration is filed under paragraph (1) and the matters to be entered in such registration or accompanying documents are the same as stated in those documents that have been filed in advance, the Commission may allow the issuer to substitute the documents referring to the same information that was filed in advance for the above documents.

(4) Matters to be entered in the registration statement or for the necessary matters accompanying documents as referred to in paragraphs (1) through (3) shall be prescribed by Presidential Decree.

Article 9
(Effective Date of Registration Statement, etc.)

(1) A statement pursuant to the provisions of Article 8 (1) (hereinafter referred to as "registration statement") shall become effective on such date after the time period prescribed by Ordinance of the Ministry of Finance and Economy elapses following the acceptance thereof by the Financial Supervisory Commission.

(2) The effect taken pursuant to the provisions of paragraph (1) shall not be to recognize the truth or accuracy of such matters stated in the registration statement (has been recognized on its face value), nor does it have the effect that the Government guarantees or approves such value of the securities in the registration statement.

(3) In case an issuer of securities intends to withdraw a registration statement of securities, an issuer shall file a registration statement of withdrawal with the Financial Supervisory Commission before such registration statement takes effect under the conditions as determined by Presidential Decree.

Article 10
(Restrictions on Transactions)

(1) In case there is an offer to acquire or purchase securities, unless a registration statement has taken effect pursuant to the provisions of Article 9, no issuer or seller of such securities specified therein nor agent thereof shall accept such offer.

(2) No issuer who has filed a shelf registration statement pursuant to the proviso of Article 8 (1) shall accept any offer for acquisition or purchase of securities, unless the issuer files additional documents of shelf registration statement as determined by Presidential Decree at each time that person makes a public offering of new or outstanding securities.

Article 11
(Amendment Statement)

(1) If it appears to the Financial Supervisory Commission that a registration statement is incomplete in its form or inadequate in any material information required to be stated therein, the Financial Supervisory Commission may, with presenting the reasons thereof, issue an order to file an amendment statement.

(2) In case an order is issued pursuant to the provisions of paragraph (1), the registration statement concerned shall be construed not to be received by the Commission after the date on which the order is issued.

(3) A person who has filed a registration statement may file an amendment statement, if there occurs any modification in mat-

ters entered in the registration statement before the day of subscription as provided in the statement commences. In this case, if important matters as determined by Ordinance of the Ministry of Finance and Economy are modified, the amendment statement thereof shall be filed.

(4) A person who has filed a shelf registration statement as prescribed in the proviso of Article 8 (1), notwithstanding the provisions of paragraph (3), may file an amendment statement before the predetermined issue period terminates. In this case, the predetermined issue amount and period may not be revised.

(5) If an amendment statement is filed pursuant to the provisions of paragraph (1), (3) or (4), a registration statement on securities shall be regarded as filed and received on the day of receipt of the amendment statement.

Article 12
(Preparation and Disclosure of Prospectus)

(1) When an issuer of securities makes a public offering of new or outstanding securities pursuant to Article 8, such issuer shall prepare a prospectus under the conditions as determined by Ordinance of the Ministry of Finance and Economy, and make it available for public inspection at a place as determined by Presidential Decree.

(2) In the prospectus as prescribed in paragraph (1), particulars different from the contents mentioned in the registration statement (including additional documents of shelf registration statement as prescribed in Article 10 (2); hereinafter the same shall apply in this Chapter) shall not be mentioned, or any matters entered in the registration statement shall not be omitted: *Provided,* That the same shall not apply to matters as prescribed by Presidential Decree that are not appropriate for public inspection, when taking into consideration the management of the business, and balancing between the interests of maintaining secrecy and protecting investors.

Article 13
(Justifiable Use of Prospectus)

(1) Any person who receives a request from any other person for the acquisition of securities, the registration of which has taken effect, shall not be permitted to allow such person to acquire such securities or sell such securities to such person before a prospectus prepared in accordance with the provisions of Article 12 is given to the prospective buyer. In this case, when the prospectus is given in the form of a digitally recorded document in accordance with the provisions of Article 194-2, such prospectus shall be deemed to be given when requirements falling under each of the following subparagraphs are satisfied:

1. A person who receives or electronically receives a digitally recorded document (hereinafter referred to as the "recipient of a digitally recorded document") is required to agree to the receipt or electronic transmission of a prospectus in the form of a digitally recorded document;
2. The recipient of a digitally recorded document is required to designate the kind of electronically transferable media and a place that they can receive or electronically receives the digitally recorded document;
3. The recipient of a digitally recorded document is required to confirm the fact of receipt or electronic transmission of a digitally recorded document; and,
4. The digitally recorded document is required to be identical in content with the prospectus.

(2) Where any person intends to solicit subscriptions for securities subject to the registration under the provisions of Article 8 for the purpose of collecting or selling securities or executing other transactions, that person shall solicit such subscription in a manner falling under each of the following subparagraphs:

1. A manner in which the prospectus under the provisions of Article 12 is used after the registration of securities comes into force under Article 9(1);
2. A manner in which an issuer uses a preliminary prospectus (referring to the prospectus that additionally indicating the fact that the registration has yet to come into force) prepared under the conditions as prescribed by Presidential Decree before the registration of securities comes into force and after such registration has been accepted;
3. A manner in which an issuer uses a simple prospectus (referring to a document, a digitally recorded document and other devices or indications similar to them that includes parts of matters, partially omitted matters or extracted matters from among the matters to be entered in the prospectus) prepared under the conditions as prescribed by Presidential Decree through advertisements or through handbooks, publicity leaflets that use newspapers, broadcasts or magazines, etc., or the electronically transferable media after that persons's registration of securities is accepted under the provisions of Article 9 (1).

Article 14
(Liabilities for Compensation Due to False Statements)

(1) If a purchaser of securities suffers a loss because a registration statement or a prospectus (including a preliminary prospectus and a simple prospectus; hereinafter) of securities as prescribed in Article 12 includes false statements or indications or fails to state or indicate important matters, the following persons shall be liable to compensate for the loss: *Provided,*

That the same shall not apply where a person who may be liable for compensation proves that they could not know such false facts or omissions despite their exercise of due diligence, or where the purchaser of such securities knew such facts at the time of they offered to acquire such securities:

1. A registrant under the registration statement concerned and directors of the corporation concerned at the time of registration (if the registration statement is filed before the corporation is incorporated, its promoter);
2. Certified public accountants, appraisers or persons who specialize in credit ratings that have certified or signed that matters stated in the registration statement or documents attached thereto were true or correct;
3. A person who has made a contract to underwrite the securities with the issuer;
4. A person who has prepared or delivered the prospectus; and,
5. A holder of outstanding securities offered for sale at the time of registration for the public offering of the outstanding securities.

(2) Where predicted information is entered or indicated through the following methods, any person falling under the subparagraphs of paragraph (1), notwithstanding the provisions of paragraph (1), shall not be liable to compensate for the losses concerned: *Provided,* That this shall not apply where the purchaser of securities does not know the fact that there are false entries or indications in the predicted information or that material matters are not entered or indicated at the time they offer to acquire securities, and where the purchaser proves that any person falling under the subparagraphs of paragraph (1) deliberately or through gross negligence are responsible for such entries or indications:

1. The entry or indication concerned shall specify that it is predicted information;
2. The basis for the assumption or judgment for predictions or prospects shall be specified;
3. The entry or indication concerned shall be made in good faith on the basis of rational foundations or assumptions; and,
4. A warning phrase that predicted values and actual results may differ shall be specified in the entry or indication concerned.

(3) The provisions of paragraph (2) shall not apply where a corporation other than stock-listed corporations and Association-registered corporations submits a registration statement of securities for the first time for the public offering of new or outstanding securities.

Article 15
(Amount of Liability to be Compensated)

(1) The amount to be compensated for loss pursuant to the provisions of Article 14 shall be the difference between the amount actually paid by the claimant for the acquisition of securities and the amount that falls under any of the following subparagraphs:
   1. The market value of securities at the time of the closing of oral proceedings, if a legal action commences against the securities concerned (in case where no market value is available, an estimated value at which the securities would be disposed of); and,
   2. The value at which the securities were disposed of, in case where such disposition of securities has been made prior to the time of the closing of oral proceedings referred to in subparagraph 1 of this paragraph.

(2) Notwithstanding the provisions of paragraph (1), where a person liable for compensation for loss pursuant to the provisions of Article 14 proves that all or part of the loss incurred by the claimant was not caused by false entries or indications or by failure to ***enterer*** indicate material facts, that person is not bound to compensate for the loss of such parts.

Article 16
(Extinction of Claims)

The compensation liabilities for loss pursuant to the provisions of Article 14 shall be extinguished, unless the claimant exercises such right within one year from the date on which the claimant discovers the fact or within three years from the time when a registration statement has taken effect.

Article 17
(Securities Public Offering Results-Report)

An issuer of securities for which its registration statement has become effective shall file with the Financial Supervisory Commission a report on the results of public offerings of new or outstanding securities under the conditions as determined by the Financial Supervisory Commission.

Article 18
(Disclosure of Registration Statement and After-Report)

A registration statement of securities and pursuant to Article 17 (hereinafter referred to as "Securities public offering results-report") shall be kept in the Financial Supervisory Commission and made available for public inspection: *Provided,* That the same shall not apply to the matters as prescribed by Presidential Decree that are not

appropriate for public inspection, when balancing between such interests as maintaining the secrecy of the management of the business and protecting investors.

Article 18-2
(Offering and Sale Without Filing A Registration Statement)

Any issuer who offers and sells any securities without filing a registration statement in accordance with the provisions of Article 9 (1) shall disclose matters concerning the issuer's financial status and take such measures as prescribed by Presidential Decree to protect investors.

Article 19
(Report and Investigation)

(1) The Financial Supervisory Commission, if necessary for the public interest or protection of investors, may order a registrant of the registration statement, an issuer of securities, an underwriter thereof, and any other related persons to file a report or materials for reference, or may have the Governor of the Financial Supervisory Service which is established under the Act on the Establishment, etc. of Financial Supervisory Organization (hereinafter referred to as the "Financial Supervisory Service") investigate accounting books, documents and any other related materials thereof.

(2) A person who investigates pursuant to the provisions of paragraph (1) shall possess a certificate that proves their authority to investigate and shall present such certificate to persons concerned.

Article 20
(Disposition Right of Financial Supervisory Commission)

In the case of any of the following subparagraphs, the Financial Supervisory Commission, after showing reason therefor and making a public notice of such fact, shall order the issuer of securities concerned to make an amendment, and if necessary, the Financial Supervisory Commission may suspend or prohibit the issuance of such securities, public offering of new or outstanding such securities or other transactions with respect thereto or may take measures as prescribed by Presidential Decree. In this case, the Financial Supervisory Commission may determine procedures and criteria necessary for taking measures against the issuer of securities:

1. In case that a registration statement or Securities public offering resultsreport contains false statements or omits to state material information required to be entered therein;
2. In case that a prospectus does not comply with the provisions of Article 12 or 13;
3. In case that a violation of the provisions of Article 23 (2) is com-

mitted with respect to the offering, sales and other transactions of securities through a preliminary prospectus or a simple prospectus; and

4. In case that a violation of the provisions of Article 18-2 is committed.

CHAPTER IV
TENDER OFFER FOR SECURITIES

Article 21
(Applicable Object of Tender Offer)

(1) A person who intends to acquire voting stocks or any other securities as prescribed by Presidential Decree (hereinafter referred to as "stocks, etc.") through a purchase, exchange, bid or any other transfer for value (hereinafter referred to as "purchase, etc." in this Chapter) from persons not less than the number as prescribed by Presidential Decree outside the securities market or the Association brokerage market during the period as prescribed by Presidential Decree shall acquire the stocks, etc., through a tender offer, in case where the total number of the stocks, etc., held (including the cases prescribed by Presidential Decree as owning or its equivalent; hereinafter the same shall apply in this Chapter and Article 200-2) by such person and specially connected persons (refering to specially connected persons as prescribed by Presidential Decree; hereinafter the same shall apply) after the purchase, etc., is 5/100 or more of the total number of the stocks, etc. (including the case where such person and specially connected persons who have acquired 5/100 or more of the total number of the stocks, etc., make a purchase, etc., of the stocks, etc.,): *Provided,* That the same shall not apply with respect to a purchase, etc., as prescribed by Presidential Decree taking into consideration the type thereof and other circumstances.

(2) Deleted. *<by Act No. 5521, Feb. 24, 1998>*

(3) In this chapter, the term "tender offer" means making an offer to buy stocks, etc. (including exchange with other securities; hereinafter the same shall apply in this Chapter) or a solicitation of an offer to sell stocks, etc. (including exchange with other securities; hereinafter the same shall apply in this Chapter) to the general public, and buying them outside the securities market or Association brokerage market.

(4) Number of stocks, etc., and total number of stocks, etc., pursuant to the provisions of paragraph (1) shall be the number calculated by the method as prescribed by Ordinance of the Ministry of Finance and Economy.

Article 21-2
(Filing of Tender Offer Statement)

(1) A person who intends to make a tender offer shall file with the Financial Supervisory Commission a statement at contains the purpose of the tender offer, details of the funding for the purchase, the conditions such as the period, price and the settlement day of the purchase, and other matters as prescribed by Presidential Decree (hereinafter referred to as "tender offer statement").

(2) Purchase period pursuant to the provisions of paragraph (1) shall be within such period as prescribed by Presidential Decree.

(3) The provisions of Article 8 (2) shall apply *mutatis mutandis* to tender offer statements.

Article 21-3
(Restrictions on Voting Rights, etc.)

In case where a person has made a purchase, etc., of stock__, etc., in violation of the provisions of Article 21 (1) or 21-2 (1), that person may not exercise the voting rights on the stocks concerned (including stocks that are acquired through the exercise of rights related to the stocks, etc., concerned) during the period as prescribed by Presidential Decree, and the Financial Supervisory Commission may order the disposal of the stocks, etc., concerned (including stocks that are acquired through exercise of rights related to the stocks, etc., concerned).

Article 22
(Transmission of Copies of Tender Offer Statement)

(1) A person who has filed a tender offer statement (hereinafter referred to as a "tender offerer") shall transmit, without delay, a copy of such tender offer statement to an issuer of stocks, etc., pertaining to the tender offer concerned (in case of stocks, etc., as prescribed by Presidential Decree, this refers to a person as prescribed by Presidential Decree; hereinafter the same shall apply in this Chapter).

(2) When a tender offer statement has been filed, a tender offerer shall make a public notice of such information as prescribed by the Financial Supervisory Commission within the information contained in the tender offer statement and that person shall submit a copy of such statement to the Stock Exchange or the Association without delay.

Article 23
(Restrictions on Purchases by Tender Offerer)

(1) No tender offerer (including a person handling tender offer af-

fairs; hereinafter the same shall apply in this Article and Article 24) shall conduct a tender offer unless a tender offerer has made the public notice pursuant to Article 22 (2) and 7 days have passed from the date on which the tender offer statement has been filed.

(2) Except for cases as prescribed by Presidential Decree, no tender offerer (including a specially connected person) shall, during the period from the date on which tender offer is permitted pursuant to paragraph (1) to the date on which a tender offer expires, make any purchase, etc., of, such stock, etc., by any other means than a tender offer.

(3) Except for the case as prescribed by Presidential Decree, no person who has ever purchased the stocks, etc., concerned through a tender offer within 1 year of the date on which the tender offer statement as filed (including specially connected persons) shall purchase the stocks, etc., concerned through a tender offer.

(4) An issuer of stocks, etc., subject to a tender offer shall not, during the period as referred to in paragraph (2), commit an act as prescribed by Presidential Decree which may change the number of voting stocks.

Article 23-2
(Amended Statement etc.)

(1) In case a tender offeror intends to modify the terms for purchase, the tender offeror shall file an amendment statement by the date on which the tender offer expires: *Provided,* That a reduction of purchase price, decrease in the number of stocks, etc., that are intended to be purchased, extension of payment period for purchase amount and other purchase conditions as prescribed by Presidential Decree can not be modified.

(2) The provisions of Articles 11 (1), (2) and (5), 22 and 23 (1) shall apply *mutatis mutandis* to a modification of a tender offer statement.

Article 24
(Preparation and Use of Prospectus for Tender Offer)

(1) When a tender offeror intends to purchase securities through a tender offer, the tender offeror shall prepare a prospectus for such tender offer (hereinafter referred to as a "prospectus for tender offer") under the conditions as prescribed by Ordinance of the Ministry of Finance and Economy, and shall keep it at the place as prescribed by Ordinance of the Ministry of Finance and Economy in order to make it available for public inspection.

(2) The provisions of Article 13 shall apply *mutatis mutandis* to the use of a prospectus for tender offer.

Article 24-2
(Withdrawal of Tender Offer)

(1) A tender offerer may not withdraw a tender offer after it has become possible to make a tender offer pursuant to Article 23 (1): *Provided,* That in such case as prescribed by Presidential Decree, the tender offer may withdraw a tender offer until the last day of the tender offer period.

(2) In case a tender offerer intends to withdraw a tender offer pursuant to paragraph (1), a withdrawal statement shall be filed with the Financial Supervisory Commission and the Stock Exchange or the Association, whichever applies, and the contents thereof shall be publicly notify.

(3) A person who accepts an offer to buy stocks, etc., subject to a tender offer or makes an offer (hereinafter referred to as "tender") to sell them (hereinafter referred to as a "tendering stockholder"), may cancel such tender at any time during tender offer period. In this case, a tender offerer may claim damages or a penalty due to the cancellation of a tender by a tendering stockholder.

Article 25
(Presentation of Opinion on Tender Offer)

An issuer of stocks, etc., for which a tender offer statement has been filed, may present their opinion on the tender offer concerned under the conditions as prescribed by Presidential Decree. In this case, the issuer shall file a written statement describing the contents of such opinion without delay with the Financial Supervisory Commission and the Stock Exchange or the Association, whichever applies.

Article 25-2
(Conditions and Manners of Tender Offer)

(1) A tender offerer shall purchase without delay all the stocks, etc., tendered according to the purchase conditions and manners stated in the tender offer statement on and after the day following the expiration date of the tender offer period: *Provided,* That in case Presidential Decree prescribes, the same shall not apply.

(2) Price of a tender offer shall be uniform.

Article 25-3
(Liability for Damages of a Tender Offerer)

(1) The provisions of Article 14 (1) shall apply *mutatis mutandis* to damages that a person falling under any of the following subparagraphs causes to a tendering stockholder in connection with a tender offer statement and public notice thereof, an amendment statement and public notice thereof pursuant to Article 23-2, and a prospectus for tender offer:

1. A registrant stated in a tender offer statement and an amendment statement thereof (including specially connected persons of the registrant, and in case the registrant is a juristic person, including the directors of the juristic person) and its agent; and,
2. A person who prepares a prospectus for a tender offer and that person's agent.

(2) The provisions of Article 16 shall apply *mutatis mutandis* to liability for damages pursuant to the provisions of paragraph (1).

Article 26
(Public Notice of Statements, etc.)

The Financial Supervisory Commission, the Stock Exchange and the Association shall keep the tender offer statement, amendment statement pursuant to Article 23-2, withdrawal statement pursuant to Article 24-2 (2) and written statement pursuant to Article 25 for 2 years from the date on which such written statement has been received and shall make it available for public inspection.

Article 27
(Request for Materials to Tender Offerer)

The Financial Supervisory Commission, if necessary in the public interest or the protection of investors, may order any tender offerer, any person related to the tender offerer and any issuer of the securities concerned to file a report or material for reference.

Article 27-2
(Provisions to be Applied **Mutatis Mutandis)**

The provisions of Articles 17, 19 and 20 shall apply *mutatis mutandis* to the tender offer. In this case, the "Financial Supervisory Commission" as referred to in Article 17 shall be deemed to include the "Financial Supervisory Commission and Stock Exchange or Association".

CHAPTER V
SECURITIES BUSINESS

SECTION 1
License

Article 28
(License)

(1) A person who may be engaged in the securities business shall be a stock corporation that has obtained a license from the

Financial Supervisory Commission according to its type of business.

(2) The type of business referred to in paragraph (1) shall be as follows:
1. The business referred to in Article 2 (8) 1;
2. The business referred to in Article 2 (8) 2 through 4; and,
3. The business referred to in Article 2 (8) 5 through 7.

(3) The stated capital of a securities company shall be not less than one billion won and according to the scope of its business shall exceed an amount prescribed by Presidential Decree.

(4) Deleted. *<by Act No. 5254, Jan. 13, 1997>*

(5) The Financial Supervisory Commission may set the conditions needed to obtain a license as referred to in paragraph (1).

(6) Deleted. *<by Act No. 5254, Jan. 13, 1997>*

(7) Deleted. *<by Act No. 5736, Feb. 1, 1999>*

Article 28-2
(Securities Business by Foreign Securities Company)

(1) If a foreign securities company (this refers to a person engaged in the securities business in a foreign country pursuant to the relevant statutes of such country; hereinafter the same shall apply) intends to establish a branch office or any other business office in order to operate a securities business in the Republic of Korea, it shall obtain a license from the Financial Supervisory Commission by the type of business in accordance with the provisions of each subparagraph of Article 28 (2).

(2) The operating fund for the branch office or the business office under the provisions of paragraph (1) shall be not less than one billion won and according to the scope of its business shall exceed an amount prescribed by Presidential Decree

(3) A foreign securities company that has not obtained a license for the establishment of branch office, etc., pursuant to paragraph (1) shall not conduct securities business with domestic residents.

(4) The branch office or any other business office licensed pursuant to paragraph (1) shall be regarded as a securities company organized under this Act except for the provisions of Article 28 (3).

(5) If a domestic branch office or other business office of a foreign securities company goes into liquidation or becomes bankrupt, its domestic holding assets shall be appropriated preferentially (for a performance of)to fulfill the obligations to persons who are the (counterparts to of securities transactions and have a domicile or residence in Korea at the time of the transaction. In this case, the scope of the domestic holding assets shall be determined by Presidential Decree.

(6) If it is deemed inappropriate to perform the securities busi-

ness because a domestic branch office or other business office of a foreign securities company violate(d)s this Act, an order or disposition made under this Act, or foreign statutes or subordinate statutes, the Financial Supervisory Commission may revoke the license, suspend the business, or take other necessary measures for the purpose of protecting the public interest or investors. The same shall apply in case it is deemed appropriate to perform securities business of a domestic branch office or other business office of the foreign securities company because the foreign securities company violates foreign statutes or subordinate statutes, etc.

(7) The Financial Supervisory Commission may set the conditions needed to obtain a license as referred to in paragraph (1).

(8) Necessary matters relating to the operation of a securities company by a foreign securities company shall be prescribed by Presidential Decree.

Article 29
(Provisions Applicable to Persons Who Operate Securities Business as a Side Business)

(1) Deleted. *<by Act No. 5736, Feb. 1, 1999>*

(2) This Chapter shall apply to a person who has received a license to engage in the securities business pursuant to this Chapter ate and engages in the securities business as a side business to the extent of the license to engage in the business: *Provided,* That the provisions of Articles 28 (3), 33, 47, and 62 shall not apply.

Article 30
(Application for License)

(1) Any person who intends to obtain a license pursuant to the provisions of Article 28-2 (1) shall file an application with the Financial Supervisory Commission under the conditions as prescribed by Presidential Decree.

(2) The Financial Supervisory Commission may, where it receives an application under the provisions of paragraph (1) that is found to be insufficient, ask the applicant to supplement such application. In this case, the period required to supplement such application shall not be added to the period under the provisions of Article 31 (1).

Article 31
(Procedure of License)

(1) When the Financial Supervisory Commission receives a written application pursuant to the provisions of Article 30, it shall decide whether to grant a license within 30 days and

shall notify the applicant of such decision in writing without delay.

(2) Deleted. *<by Act No. 3945, Nov. 28, 1987>*

Article 32
(Requirements for License)

(1) Any person who intends to obtain a license for its securities business in accordance with the provisions of Article 28 (1) shall satisfy the requirements falling under each of the following subparagraphs:
   1. Satisfy the requirements under the provisions of Article 28 (3);
   2. Able to protect investors and have the necessary personnel, computer equipment and other physical facilities to carry out the securities business that person intends to operate;
   3. Have a proper and sound business plan; and,
   4. The major investor (in case that the investor is a corporation, any person who virtually exercises their influence over important matters concerning the management of such corporation and is prescribed by Presidential Decree shall be included) is required to have sufficient investment capability, sound financial standing and social standing.

(2) Any foreign stockbroker who intends to obtain a license for the establishment of its branch office or other business office pursuant to the provisions of Article 28-2 (1) shall meet the requirements falling under each of the following subparagraphs:
   1. Satisfy the requirements under the provisions of Article 28-2 (2);
   2. Have a property holdings, financial stability and sound business sufficient to engage in the securities business domestically and high international credit rating; and,
   3. Meet the requirements under paragraph (1) 2 and 3.

Article 32-2
(Publication of License)

The Financial Supervisory Commission shall, when it grants a license in accordance with the provisions of Article 28 (1) and Article 28-2 (1), promptly publish the grant of such license in the Official Gazette and make the grant of such license known to the public through computer communications and other means.

SECTION 2
Maintenance of Sound Business Order

Article 33
(Eligibility of Officers)

(1) Deleted. *<by Act No. 5736, Feb. 1, 1999>*

(2) Any person who falls under any of the following subparagraphs shall not be an officer of a securities company, and any officer of a securities company who falls under any of the following subparagraphs shall lose their office:

1. A minor, an incapacitated person or semi-incapacitated person;
2. A bankrupt person who has not been reinstated;
3. A person who has been sentenced to a punishment heavier than imprisonment without prison labor or to a punishment heavier than the imposition of a fine under this Act, any foreign statutes or subordinate statutes corresponding to this Act (hereinafter referred to as "foreign securities statutes or subordinate statutes") and other statutes or subordinate statutes that are related to finance as prescribed by Presidential Decree, and for whom 5 years have not elapsed since the execution of such punishment has completed (including the cases where the execution of such punishment is deemed to have been or exempt ion of such punishment;

3-2. A person who has been sentenced to a punishment heavier than imprisonment without prison labor and has been serving a suspended sentence;

4. Any person who was an officer or an employee of a corporation or a company (limited to any person who is directly or correspondingly responsible for the occurrence of the cause of their disqualification and prescribed by Presidential Decree) whose license or authorization, etc., was cancelled pursuant to this Act, any foreign securities statutes or subordinate statutes or finance-related Acts or any subordinate statues prescribed by Presidential Decree, and for whom 5 years have yet to elapse from the date on which the license or authorization of such corporation or such company was canceled; and,
5. A person who was discharged or dismissed from a securities company, and 5 years have not elapsed since the date of such discharge or dismissal under this Act, any foreign securities statutes or subordinate statutes or any other statutes or subordinate statutes that are related to finance as prescribed by Presidential Decree.

Articles 33-2 and 34
Deleted. <by Act No. 3945, Nov. 28, 1987>

Article 35
(Matters to be Authorized)

(1) When a securities company intends to merge with an other company, transfer all its business operations or acquire all the business operations from an other company (including equivalent cases), such securities company shall obtain authorization from the Financial Supervisory Commission with respect thereto. In this case, the provisions of Article 32 shall apply *mutatis mutandis*.

(2) The Financial Supervisory Commission shall, in determining whether to grant such authorization under the provisions of paragraph (1), take into account matters prescribed by Presidential Decree.

Article 36
(Matters to be Reported)

In case a securities company falls under any of the following subparagraphs, it shall report the fact to the Financial Supervisory Commission without delay:

1. When a securities company appoints or discharges any of its officers;
2. When a securities company newly establishes a branch office or other business office, or when it changes the location of its principal office, branch office or other business office, or when it suspends, resumes or discontinues the business of its principal office, branch office or other business office;
3. When a person who possesses the largest number of stocks of a securities company, together with their relatives and other specially related persons as prescribed by Presidential Decree (hereinafter referred to as the "specially related persons"), changes;
4. When a trade name of a securities company changes;

4-2. When a cause to dissolve a securities company occurs; and,

5. Situations as prescribed by Presidential Decree other than those under subparagraphs 1 through 4-2.

Article 37
(Public Notice of Discontinuance of Securities Business)

When a securities company intends to discontinue its securities business or the business of its branch office or any other business office, the securities company shall publish a public notice to that effect in two or more daily newspapers three or more times within 30 days from the date of discontinuance, and shall directly notify the creditors who are known to the securities company at the same time.

Article 38
Deleted. <by Act No. 4469, Dec. 31, 1991>

Article 39
Deleted. <by Act No. 5423, Dec. 13, 1997>

Article 40
(Reserve for Securities Transaction)

(1) A securities company shall set aside a reserve for securities transaction in proportion to the trading price of securities or the sales profit (including the appraisal profits of the securities as determined by the Financial Supervisory Commission) under the conditions as prescribed by Presidential Decree.

(2) The reserve for securities transaction referred to in paragraph (1) shall not be used for any purpose other than to make up for losses incurred from a purchase or sale of securities or other securities transaction: *Provided,* That this shall not apply in case the approval by the Financial Supervisory Commission has been obtained.

Article 41
(Liabilities for Branch Office or Other Business Office)

If a branch office or other business office of any securities company causes a loss to other persons in connection with the purchase and sale of securities or other securities transaction, such securities company shall be liable to compensate the losses of the injured person.

Article 42
(Restrictions on Officers' Securities Transaction)

No officer or employees of any securities company shall make or entrust securities transactions for their own account in any person's name except for securities savings through fixed payroll deduction plans and for other cases as prescribed by Presidential Decree.

Article 43
(Manifestation of Type of Transaction)

When any securities company receives an order from any customer for a securities transaction, such securities company shall clearly distinguish in advance to such customer as to whether it will act as the other party, or instead whether it will act as an intermediary, an agent, or a broker in effectuating such transaction.

Article 44
(Prohibition of Representation of the Other Party)

No securities company may concurrently act as a principal and as a

broker, an intermediary or an agent for the other party with respect to the same transaction.

Article 44-2
(Custody and Management of Customer Deposit Money by Securities Companies Specializing in Consignment Sales)

No securities company that is permitted to engage business as provided in Article 28 (2) 2 shall receive, have custody of, or manage customer deposit money (refering to money deposited by customers in relation to their purchase or sale of securities or other securities transactions; hereinafter the same shall apply) unless provided for in the following subparagraphs:

1. Where a customer deposits money as earnest money their purchase or sale of securities;
2. Where a customer deposits money as payment for purchases or sales; and,
3. Situations as prescribed by Presidential Decree other than those under subparagraphs 1 and 2.

Article 44-3
(Separate Deposit of Customer Deposit Money)

(1) A securities company (meaning a securities company other than those under Article 44-2; hereinafter the same shall apply in this Article) shall deposit customer deposit money separately from its own property in a securities finance corporation under Article 145 (hereinafter referred to as a "depositing agency").

(2) Where a securities company deposits customer deposit money in a depositing agency pursuant to paragraph (1), it shall specify that the money is the customers' property.

(3) A securities company that has received customer deposit money (hereinafter referred to as a "depositing securities company") pursuant to paragraph (1) shall not transfer or offer as security customer deposit money deposited in a depositing agency except as otherwise prescribed by Presidential Decree, and no person can set off or seize such money (including provisional seizure).

(4) A depositing securities company shall, where it falls under any of the following subparagraphs, withdraw customer deposit money deposited in a depositing agency and preferentially pay it to customers. In this case, the securities company concerned shall publicly announce the payment time and place of customer deposit money and other matters relating to the payment of customer deposit money in two daily newspapers or more within the period as prescribed by Presidential Decree:
   1. When it resolves to discontinue its business;
   2. When it receives an order for suspension of business;

3. When it has its license revoked;
4. When it resolves to dissolve itself;
5. When it has been declared bankrupt; and,
6. When any cause equivalent to those listed in subparagraphs 1 through 5 occurs.

(5) A depositing agency, where it falls under any subparagraph of paragraph (4), shall preferentially pay customer deposit money deposited to the depositing securities company.

(6) A depositing agency shall manage customer deposit money by the following methods:

1. Purchase of Government and municipal bonds;
2. Purchase of bonds whose payment is guaranteed by the Government, local governments or financial institutions; and,
3. Other methods recognized as being capable of safely managing customer deposit money as prescribed by Presidential Decree.

(7) The scope of customer deposit money to be deposited by a securities company in a depositing agency pursuant to paragraph (1), the ratio to be deposited, matters relating to withdrawal of customer deposit money, matters concerning the management of customer deposit money by a depositing agency or other matters necessary for the depositing of customer deposit money shall be prescribed by Presidential decree. In this case, the ratio to be deposited may be otherwise determined by the securities company, taking into account the securities company's financial status, etc.

Article 44-4
(Depositing of Securities Deposited by Customers)

(1) A securities company shall promptly deposit securities and instruments or deeds as prescribed by Presidential Decree that they come to hold (due to) through buying and selling by consignment or other transactions in the Korea Securities Depository established under Article 173 (hereinafter in this Article, referred to as the "Korea Securities Depository").

(2) A securities company shall deposit those securities, instruments, and deeds that they hold as a result of managing assets and as prescribed by Presidential Decree in the Korea Securities Depository without delay.

Article 45
Deleted. **<by Act No. 5736, Feb. 1, 1999>**

Article 46
(Notification of Transactions, etc.)

A securities company shall notify the customer concerned of the

purchase and sale by a customer's order and other transaction contents, etc., under the conditions as prescribed by Presidential Decree.

Article 46-2
(Exceptions to Acquiring Treasury Stocks)

A securities company may, in case the securities company has been entrusted by a customer, acquire treasury stocks less than the minimum trading unit used in the securities market or Association brokerage market from outside those markets. In this case, the acquired treasury stocks shall be disposed of within the period as prescribed by Presidential Decree.

Article 47
(Business Report)

(1) Any securities company shall compile business reports stating its business achievements, financial standing and other matters prescribed by Presidential Decree every 3 months, 6 months, 9 months and 12 months, respectively, from the date of the commencement of every business year and file such business reports with the Financial Supervisory Commission within one month from the date of expiration of such monthly periods.

(2) Such securities company shall keep the business reports referred to in paragraph (1) at its head office, branch office or business office and make such business reports available to the public for one year from the date on which such business reports are filed with the Financial Supervisory Commission.

(3) Detailed matters concerning the compilation of the business report under the provisions of paragraph (1) and other necessary matters shall be determined by the Financial Supervisory Commission.

Article 48
(Officers' Engaging in Other Business)

Where Presidential Decree determines that the interests of a full-time officer of a securities company will conflict with those of its customers or threaten to impair the sound management of the securities company, the officer can not engage in the regular business of another company or undertake any business of another company.

Article 49
(Credit Extension)

(1) Any securities company may extend credit in connection with securities as part of lending money or securities to a customer.

(2) The method and contents of the credit extension referred to in parasgraph (1) shall be prescribed by Presidential Decree.

(3) The Financial Supervisory Commission shall provide for regulations on the maximum amount of credit, the ratio of collaterals and method of receiving collaterals, etc.

(4) If a securities company sells such securities as underwritten thereby, the securities company shall not lend funds or extend any other credit with respect to the purchase of such securities, until three months have elapsed from the date of underwriting such securities.

Article 50
(Business of Securities Savings)

(1) A securities company may be engaged in the business of securities savings according to the regulations as prescribed by the Financial Supervisory Commission.

(2) The method and the contents of the securities savings business referred to in paragraph (1) shall be prescribed by Presidential Decree.

Article 51
(Restrictions on Engaging in Other Business)

(1) Any securities company shall be prohibited from concurrently engaging in any businesses other than the securities business falling under each of the following subparagraphs:

1. Business that is financial business (referring to the business prescribed by finance-related statutes or subordinate statutes: hereafter the same in this Article shall apply) and that is prescribed by relevant statutes or subordinate statutes as business that may be engaged in by securities companies;
2. Business that is financial business prescribed by Presidential Decree and that given its nature the Financial Supervisory Commission authorizes that may be concurrently engaged in by a securities company; and,
3. The business falling under each of the following subparagraphs, that is prescribed by Presidential Decree as a collateral business:
   (a) The business related to the securities business;
   (b) The business of utilizing personnel, assets or equipment, etc., owned by a securities company; and,
   (c) The business that does not require any permission, authorization, approval or registration under other statutes or subordinate statutes.

(2) Any financial business under the provisions of paragraph (1) 2 for which a securities company has obtained a license or authorization from the Financial Supervisory Commission or filed a registration with the Financial Supervisory Commission shall be deemed to be granted authorization by the

Financial Supervisory Commission in accordance with the provisions of paragraph (1) 2.

Article 52
(Prohibition of Unfair Solicitation, etc.)

A securities company, or officers and employees thereof shall not commit such acts as described in the following subparagraphs:

1. To solicit securities transactions by promising a customer to assume all or a part of the losses incurred as a result of the transaction concerned;
2. To provide, directly or indirectly, any benefit that has a property value to a customer in relation to the underwriting business of securities for the purpose attracting the customers, or to improperly use ones superior position in transactions restrict the business activities of customers; and,
3. Other than those acts referred to in subparagraphs 1 and 2, to commit such acts relating to the issuance, purchase and sale or other transactions of securities as prescribed by Ordinance of the Ministry of Finance and Economy that are detrimental to the protection of investors or fairness of transactions, or undermining the credibility of the securities industry.

Article 52-2
Deleted. **<by Act No. 4701, Jan. 5, 1994>**

Article 52-3
(Prohibition of Arbitrary Purchase and Sale)

Officers and employees of a securities company shall not, unless they have entrust(ed engage in the purchase and sale transactions of securities, by a customer or their agent, to engage in the purchase and sale transactions of securities with property deposited by customers.

Article 52-4
(Prohibition of Unfair Demands to Securities Company, etc.)

No person shall unfairly receive money, service or other financial interests from a securities company or officers and employees thereof in return for the payment of a commission relating to the business that a securities company operates, or may request a securities company or officers and employees thereof to furnish them or a third party with such money, service or other financial interests.

Article 53
(Inspection)

(1) A securities company shall be subject to inspection by the Governor of the Financial Supervisory Service (hereinafter

referred to as the "FSS Governor") with respect to its business conditions and property.

(2) The FSS Governor may, if deemed necessary for an inspection, request any securities company to report its business conditions or property, to submit material, to make witnesses available, or to present any testimony or opinions thereon.

(3) Anyperson who conducts an inspection pursuantto the provisions of paragraph (1) shall possess and present the persons concerned credentials that represents that person's authority to inspect.

(4) The FSS Governor shall, after the inspection referred to in paragraph (1), file a report on the results of the inspection with the Financial Supervisory Commission. In this case, if any securities company violate the provisions of this Act, other statutes or subordinate statutes relating to securities, any disposition taken under this Act or the regulations of the Financial Supervisory Commission, the Securities Futures Commission under the Act on the Establishment, etc. of Financial Supervisory Organization (hereinafter referred to as the "Securities Futures Commission") and the Stock Exchange, the FSS Governor shall add the written opinion as to how to (take actions against)resolve such violations.

(5) The Financial Supervisory Commission shall review the reports and the written opinions referred to in paragraph (4)and take the measures as prescribed in the following subparagraphs:

1. Where any securities company falls under each subparagraph of Article 55 (1), cancellation of the securities business license of the securities company concerned; and,
2. Where any securities company has, in the course of its business, committed unlawful or unfair acts other than those referred to in subparagraph 1, order to suspend the business in whole or in part, request for the discharge of officers concerned, or other measures as prescribed by Presidential Decree.

(6) The Financial Supervisory Commission may determine the method and procedure of inspection, the criteria for measuring the results of the inspection, and other necessary matters relating to the inspection.

Article 54
(Authority of Financial Supervisory Commission to Issue Orders)

The Financial Supervisory Commission may issue to a securities company such orders necessary for preventing excessively speculative securities transactions or for the protection of the public interest or investors under the conditions as prescribed by Presidential Decree.

Article 54-2
(Maintenance of Equity Capital Rate)

(1) Any securities company shall maintain a rate (hereinafter referred to as the "equity capital rate") higher than the rate prescribed by Presidential Decree, that is derived from dividing the total amount that results by deducting the following subparagraph 3 from the sum of the following subparagraphs 1 and 2 by the total risk amount (referring to the amount of risk calculated in terms of money that is involved in the business or that is in the assets and debts of such securities company):
   1. The amount obtained by deducting the total amount of debt from the total value of assets;
   2. The allowance for bad debts established in the floating assets, the posteriority borrowings and any other amount prescribed by Presidential Decree; and,
   3. The appraised value of fixed assets, the amount of prepayments and any other amount prescribed by Presidential Decree.

(2) Any securities company shall calculate its equity capital rate as of the last day of every quarter (hereinafter in this Article referred to as the "record day") and file a report thereof with the Financial Supervisory Commission within one month from the record day and keep such report at its head office, branch office and other business offices to make such report available to the public.

(3) Specific standards for calculating the equity capital rate shall be determined by the Financial Supervisory Commission.

Article 54-3
(Soundness of Asset Management)

Any securities company shall be prohibited from performing any acts falling under each of the following subparagraphs except as otherwise prescribed by Presidential Decree:

1. The act of owning securities issued by the largest shareholder (referring to the largest shareholder under the provisions of Article 54-5 (4) 2; here after the same shall apply in this paragraph) or the major shareholder of a relevant securities company (referring to the major shareholder under the provisions of Article 188 (1); hereafter the same shall apply in this paragraph);
2. The act of offering money or credit to the biggest shareholder (including any person prescribed by Presidential Decree from among specially-related persons; hereafter the same in this paragraph shall apply) or the major shareholder of a relevant securities company;
3. The act of directly or indirectly (warranting)guaranteeing the repayment of debts for other persons;

4. The act of owning stocks, bonds or commercial papers (referring to bills of exchange issued by the business for the purpose of raising funds) issued by the largest shareholder or the major shareholder of a relevant securities company; and,
5. Any act that may harm the sound management of assets of a securities company as prescribed by Presidential Decree other than acts in subparagraphs 1 through 4.

Article 54-4
(Internal Control Standards)

(1) Any securities company shall establish basic procedures and standards (hereinafter referred to as internal control standards") to be followed by its officers and employees when they perform their duties in order to observe statutes or subordinate statutes, operate the company's assets in a sound manner and protect its customers.

(2) Any securities company shall monitor whether the internal control standards are observed and appoint not less than one person (hereinafter referred to as the "compliance officer") assigned to inspect any violations of the internal control standards and report the results to the auditor or the audit committee.

(3) Necessary matters concerning the internal control standards under the provisions of paragraph (1) and the compliance officer under the provisions of paragraph (2) shall be determined by Presidential Decree.

Article 54-5
(Appointments of Outside Directors)

(1) Any securities company (limited to any securities company prescribed by Presidential Decree in the light of the size of its asset) shall have a board of directors in which the number of outside directors is at least half of the total number of such directors. In this case, at least three outside directors shall be seated on the board of directors.

(2) Any securities company under the provisions of paragraph (1) shall establish a committee (hereafter in this Article referred to as the "outside director candidate nominating committee") in accordance with the provisons of Article 393-2 of the Commercial Act to recommend candidates for outside directors. In this case, outside directors shall comprise at least half of the total members of the outside director candidate nominating committee.

(3) In case of a securities company under the provisons of paragraph (1), when a general meeting of shareholders of the securities company intends to appoint outside directors, it shall appoint such persons from among the candidates recom-

mended by the outside director candidate nominating committee.

(4) Any person falling under any of the following subparagraphs shall be prohibited from becoming an outside director of a securities company under the provisions of paragraph (1) and such a person shall be dismissed as an outside director when found to fall under any of the following subparagraphs:

1. A person who falls under Article 191-12 (3) 1 through 4;
2. A person who together with any specially related persons holds the largest number of stocks on the basis of the total number of stocks with voting rights of a particular securities company;
3. A person that has a special relationship with the largest shareholder;
4. The major shareholder (referring to the major shareholder under the provisions of Article 188 (1)) of the concerned company and that person's spouse and lineal ascendant and descendant;
5. A person who was an officer or an employee (referring to a person who worked full-time; hereafter the same shall apply in this paragraph) of the concerned company or its affiliate (affiliate as provided under the Monopoly Regulation and Fair Trade Act) or worked as an officer or employee for such relevant securities company within the preceding two years;
6. The spouse or lineal ascendant and descendant of an officer of the concerned company;
7. The officer or employee of a corporation that has an important business relationship prescribed by Presidential Decree with a relevant securities company, a competitive relationship or a cooperative relationship with such securities company or was an officer or employee for such corporation within the preceding two years;
8. The officers or employees of a company in which an officer or employee of the concerned company was a non-full-time director; and,
9. A person who has difficulty in faithfully performing their duties as an outside director or can affect the management of the company as prescribed by Presidential Decree.

(5) A securities company under the provisions of paragraph (1), when the resignation or death, etc., of an outside director makes it impossible for the outside directors to fill half of the members of the board of directors, the first general meeting of shareholders convened for the first time after the occurrence of such cause must resolve to meet the requirements of paragraph (1).

Article 54-6
(Audit Committee)

(1) Any securities company (limited to the securities company prescribed by Presidential Decree taking into account the size of its asset) shall establish an audit committee (hereinafter referred to the "audit committee") pursuant to the provisions of Article 415-2 of the Commercial Act.

(2) Not less than two thirds of the total members of the audit committee referred to in paragraph (1) shall consist of outside directors.

(3) Any members of the audit committee who are not outside directors shall not fall under the subparagraph of Article 191-12 (3): Provided, That any person who holds office not as a full-time auditor or as an outside director of the audit committee under the provisions of Article 191-12 (3) but as a member of the audit committee may become a non-outside-director member of the audit committee notwithstanding the provisions of Article 191-12 (3) 6.

(4) Where the securities company referred to in paragraph (1) is unable to fill the fixed number of outside directors of the audit committee due to such causes as resignation or death, etc., of an outside director, (a)the first general meeting of shareholders convened after the occurrence of such causemust resolve to meet the requirements of paragraph (2)

(5) The provisons of Article 415-2 (2) of the Commercial Act shall not apply to the composition of the audit committee under the provisions of paragraph (1).

Article 55
(Cancellation of License)

(1) In case that any securities company falls under any of the following subparagraphs, the Financial Supervisory Commission may show cause therefor and cancel the license of such securities company:

1. Where a securities company obtains its license for securities business by fraud or unfair means;
2. Where a securities company commits a violation of its licenseconditions or licenseterms or fails to commence its business within 6 months from the date on which its license was granted;
3. Where a securities company has accepted money or securities from another person in connection with its business by unfair means or when it has acquired money or securities that shall be delivered to other persons in connection with its business by unfair means;
4. Where a securities company having received an order to suspend its business pursuant to the provisions of Article

57 has not corrected the reason therefor within one month (where the correction period exceeds one month when ordering the suspension of a business, then such period) from the date on which such securities company has received such order;

5. Where a securities company violates any contract in connection with the purchase and sale or other transactions effected on the securities market or Association brokerage market, or when it does not fulfill a delivery with respect to such purchase and sale or other transactions;
6. Where a securities company violates of the provisions of Articles 35 (1), 54-2 (1), 54-3, 54-5, 54-6 or 63;
7. Where a securities company violates an order issued pursuant to the provisions of Article 54; and,
8. Where a securities company violates this Act, an order or disposition given under this Act other than subparagraphs 1 through 7, and it is deemed difficult for it to conduct business as a securities company.

(2) When a securities business license is canceled under paragraph 1, it shall dissolve itself.

(3) The provisions of Article 32-2 shall apply *mutatis mutandis* to the cancellation of licenses under the provisions of paragraph (1).

Article 56
(Consummation of Unsettled Business)

When a securities company has its license cancelled (including the cancellation of a license under Article 14 of the Act on the Structural Improvement of the Financial Institutions) pursuant to Article 55 or closes its business by itself, it shall consummate the purchase and sale of securities and other transactions that it has left unsettled. In this case, the securities company or the successor of such securities company shall be regarded as a securities company to the extent consistent with the purpose of consummating such unsettled purchase and sale of securities or other transactions.

Article 57
(Suspension of Business)

(1) In case any securities company falls under any of the following subparagraphs, the Financial Supervisory Commission may order the suspension of the whole or part of the business.

1. Where it violates the provisions of Articles 40, 42, 44, 44-2 through 44-4, 47 and 49 through 52 or 54-4;
2. Where it violates an order under Article 54;
3. Where it fails to comply with a request to discharge an officer referred to in paragraph (3) or Article 53 (5) 2 without any justifiable cause; and,

4. Where it resolves to discontinue its business or dissolve itself in order to protect public interests and investors.

(2) The provisions of Article 56 shall apply *mutatis mutandis* to the suspension of business referred to in paragraph (1).

(3) In case any securities company violates the provisions of Article 36, 43, 44, 46 or 48, or any of its officers violates the provisions of Article 52, the Financial Supervisory Commission may request such securities company to discharge the officer concerned after showing the therefor to such officer.

Article 58
(Liabilities of Officers)

(1) In case any director or auditor (referring to the members of the audit committee if such committee is established; hereinafter the same) of a securities company neglects to perform their duties on purpose or through negligence, or causes losses to a third person in the course of performing their duties for such securities company, such director or auditor, and the largest stockholder shall be jointly and severally liable to compensate for such losses: *Provided,* That the same shall not apply to the largest stockholder who proves that the act causing such losses to the third person was not committed based upon (his) the largest shareholders' request or consent.

(2) The provisions of paragraph (1) shall not affect the liabilities of the securities company concerned.

(3) In case of paragraph (1), the provisions of Articles 399 (2) and (3), and 414 (3) of the Commercial Act shall apply *mutatis mutandis* to the provisions of paragraph (1).

Article 59
(Prohibition of Offer or Divulgence of Information)

(1) Unless any officer or employee of a securities company receives written request or written consent from the customer who makes or intends to make a purchase and sale of securities through the securities company (including any person who participates in the securities savings referred to in Article 50; hereinafter the same shall apply), the officer or employee of such securities company shall not offer or divulge any information with respect to the customers' purchase and sale, or other securities transaction, or the money or securities deposited by such customer: *Provided,* That the same shall not apply where the securities company is inspected by a supervisory institution or where it is requested pursuant to the provisions of Article 60.

(2) Any person who acquires the information in the ordinary course of inspection by a supervisory institution shall not offer or divulge such information to any other person, or make use

of the information for any other purpose other than that of the inspection.

Article 60
(Prohibition of Request for Information)

(1) No person shall request any officer or employee of a securities company to offer the information referred to in Article 59 (1), except when a court issues an order to submit such information, a judge of a court issues a warrant, or other cases as prescribed by Presidential Decree.

(2) Even when the offer of such information is requested pursuant to the provisions of paragraph (1), the inquiry or investigation shall be limited within the necessary scope of the purpose.

Article 61
(Refusal of Illegal Investigation)

Any officer or employee of a securities company shall, by and after showing the reason therefor, refuse a request, inquiry or investigation that contravenes the provisions of Article 60.

Article 62
(Trade Name)

(1) A securities company shall include the term "securities" in its trade name. In this case, a securities company only permitted to do business as provided under Article 28 (2) 2 shall use the term "securities brokerage" therein.

(2) No person who is not a securities company shall include any term that represents a securities business in its trade name.

Article 63
(Prohibition of Lending Trade Name)

No securities company shall allow other persons to operate a securities business by lending its trade name.

Article 64
(Exercise of Minority Shareholder's Right of Securities Company)

(1) The provisions of Article 191-3 (1) through 5 shall apply *mutatis mutandis* to the requirements, etc., for the exercise of a minority shareholders' right of a securities company (limited to a securities company prescribed by Presidential Decree taking into account the size of its asset; hereafter the same shall apply in this Article). In this case, "not less than 1/10,000" in Article 191-13 (1) shall be deemed "not less than 5/10,000," "not less than 50/10,000" (25/10,000 in case of corporation

prescribed by Presidential Decree) in paragraph (2) of the same Article shall be deemed "not less than 250/100,000" (125/100,000 in case of a corporation prescribed by Presidential Decree), "not less than 10/1,000" (5/1,000 in case of a corporation prescribed by Presidential Decree) in paragraph 3 of the same Article shall be deemed to mean "not less than 50/10,000" (25/10,000 in case of a corporation prescribed by Presidential Decree) and "not less than 30/1,000"(15/1,000 in case of a corporation prescribed by Presidential Decree) in paragraph 4 of the same Article shall be deemed to mean"not less than 150/10,000"(75/10,000 in case of a corporation prescribed by Presidential Decree).

(2) The provisions of Article 191-14 (1) and (2) shall apply *mutatis mutandis* to the requirement, etc., for the exercise of the right by shareholders of a securities company to make proposals. In this case, "not less than 10/1,000" (5/1,000 in case of a corporation prescribed by Presidential Decree) in Article 191-14 (1) shall be deemed to mean"not less than 50/10,000 "(25/10,000 in case of a corporation prescribed by Presidential Decree).

Articles 65 through 69
Deleted. <by Act No. 5736, Feb. 1, 1999>

SECTION 3
Deleted

Articles 69-2 through 70
Deleted. <by Act No. 5736, Feb. 1, 1999>

CHAPTER V-2
INVESTMENT ADVISORY BUSINESS, ETC.

Article 70-2
(Registration, etc.)

(1) Any person who intends to operate an investment advisory business shall register their business with the Financial Supervisory Commission.

(2) Any person who intends to operate discretionary investment business shall be a company registered with the Financial Supervisory Commission.

(3) Deleted. *<by Act No. 5736, Feb. 1, 1999; Act No. 6176, Jan. 21, 2000>*

(4) The requirements and procedures for registration as referred to in paragraphs (1) and (2) and all other necessary matters shall be determined by Presidential Decree.

(5) No person may operate a discretionary investment business except for such cases as prescribed in this Act or other laws.

Article 70-3
(Restriction on Engaging in Other Business)

No investment advisory company shall be engaged in any business other than registered business: *Provided,* That the same shall not apply with respect to a business approved by the Financial Supervisory Commission that is a business directly related to the registered business.

Article 70-4
(Deposition of Business Guaranty Money)

(1) The investment advisory company shall deposit the business guaranty money with a financial institution under the conditions as prescribed by Presidential Decree. In this case, such investment advisory company shall be prohibited from transferring the business guaranty money or offering it as security.

(2) Any person who has concluded an investment advisory contract (including a discretionary investment contract; hereinafter the same shall apply) with an investment advisory companyshall be entitled to receive payment out of the investment business guaranty money as referred to in paragraph (1) in preference to other creditors with respect to any obligation that originated in connection with such contract.

Article 70-5
(Maintenance of Sound Business Order)

An investment advisory contract of an investment advisory company, the method of discretionary investments, notification of investment results for customers, fees, public notice of contents of business, advertisement for business, and other criteria necessary for maintaining a of sound business order shall be prescribed by Presidential Decree.

Article 70-6
(Prohibition of Securities Transaction, etc.)

An investment advisory company or its officers and employees shall not conduct any act falling under any of the following subparagraphs in connection with its business:

1. Acts as referred to in any subparagraph of Article 2 (8);
2. Receiving a custody or deposit of money or securities from customers;
3. Lending money or securities to customers, or intermediating, arranging or acting as an agent for lending money or securities of third person to customers;
4. Making a promise to guarantee certain profits or division of profits, or to bear the whole or part of loss with customers with respect to an investment in securities;

5. Giving advice without any justifiable ground for the purpose of obtaining any profit for themselves or a third person other than customers by taking advantage of fluctuations in the price of securities that result from the purchase and sale for customers who obtain such advice about such securities;
6. Circulating any false information and other rumors without any grounds; and,
7. Acts which may harm the fair transaction order and mislead an investment decision of investors and are designated by Presidential Decree.

Article 70-7
(Officers and Supervision)

The provisions of Articles 33 (2), 35, 37, 42, 47, 48, subparagraphs 2 and 3 of Article 52 and Articles 53, 54, 56 through 61, and 63 shall apply *mutatis mutandis* to the investment advisory company.

Article 70-8
(Report on Business Similar to Investment Advisory Business)

(1) A person who intends to operate a business that gives advice through publications, etc., for the general public under the provisions of the proviso of Article 2 (10) 1 and is prescribed by Presidential Decree shall report to the Financial Supervisory Commission according to the forms as prescribed by the Financial Supervisory Commission.

(2) The Financial Supervisory Commission may entrust the business of reporting pursuant to paragraph (1) to the FSS Governor.

(3) The provisions of Article 70-6 shall apply *mutatis mutandis* to a person who is liable to report pursuant to the provisions of paragraph (1), officers and personnel thereof, or other employees.

Article 70-9
(Business of Foreign Investment Advisory Businessperson)

(1) A foreign investment advisory businessperson (referring to a person who operates an investment advisory business in a foreign country pursuant to foreign statutes or subordinate statutes; hereinafter the same shall apply) shall, where that person intends to operate an investment advisory business or discretionary investment business directly or by establishing a branch office or other business place (hereinafter referred to as a "branch office of a foreign investment advisory business person") in Korea, register with the Financial Supervisory Commission.

(2) Matters necessary for registration pursuant to the provisions of paragraph (1) shall be prescribed by Presidential Decree.

(3) A branch office of a foreign investment advisory business person, etc., that has registered pursuant to the provisions of paragraph (1) shall be considered as an investment advisory company pursuant to this Act.

(4) The provisions of Article 28-2 (5) through (7) shall apply *mutatis mutandis* to a branch office of a foreign investment advisory businessperson, etc.

Article 70-10
(Trade Name)

(1) An investment advisory company (excluding a company that operates an investment advisory business or discretionary investment business as a side business) shall include the term "investment advisory" in its trade name.

(2) Those other than investment advisory companies shall not include the word "investment advisory" or "discretionary investment" in their trade names.

Article 70-11
(Cancellation of Registration)

Where an investment advisory company falls under any of the following subparagraphs, the Financial Supervisory Commission may cancel the registration of its investment advisory business or its discretionary investment business providing the reasons thereof:

1. Where it registers an investment advisory business or discretionary investment business by fraud or other illegal means;

1-2. Where it is impossible to maintain the registration requirements after registering the investment advisory business and the discretionary investment business;

2. Where it operates a discretionary investment business without registration;

3. Where it receives money or securities from other persons or acquires money or securities to be granted to other persons in connection with its business by illegal means;

4. Where it violates a selling and buying contract or other transactions in the securities markets or Association brokerage markets or fulfill the delivery of securities;

4-2. Where a violation of the provisions of Article 70-4 (1) is committed;

5. Where it has been ordered to suspend its business pursuant to Article 57 applied *mutatis mutandis* under Article 70-7 and fails to correct the conditions within one month (where the correction period exceeds one month when ordering the suspension of a business, from the date on which (it has received) such order is received;

6. Where it violates the provisions of Article 35 (1) or 63 applied *mutatis mutandis* under 70-7;

7. Where it violates an order under Article 54 applied *mutatis mutandis* under Article 70-7; and
8. Where it is deemed difficult to conduct its business operations in violation of this Act or an order or disposition under this Act other than subparagraphs 1 through 7.

CHAPTER VI
KOREA STOCK EXCHANGE

SECTION 1
Establishment and Organization

Article 71
(Establishment)

(1) The Stock Exchange shall be established for the purpose of providing a fair and stable market price for securities, and the wide and orderly circulation thereof.
(2) The Stock Exchange shall be a juristic person based on an organization of members.
(3) The Stock Exchange shall place its principal office in the Seoul Special Metropolitan City, and may establish its branch offices in such places as deemed necessary.
(4) The Stock Exchange shall come into existence by the registration of its incorporation at the location of its principal office.
(5) The registration referred to in paragraph (4) shall contain the matters prescribed in the following subparagraphs:
   1. Objectives;
   2. Name;
   3. Location of the principal office and branch office;
   4. Names and addresses of members;
   5. Names and addresses of officers;
   6. Method of public notice; and,
   7. Matters as prescribed by Presidential Decree other than those referred to in subparagraphs 1 through 6 of this paragraph.
(6) Deleted. *<by Act No. 3945, Nov. 28, 1987>*
(7) Matters necessary for the registration of the incorporation of the Stock Exchange other than those referred to in paragraphs (4) and (5) shall be prescribed by Presidential Decree.

Article 72
Deleted. <by Act No. 3945, Nov. 28, 1987>

Article 73
(Business)

(1) The Stock Exchange shall conduct such business as prescribed in the following subparagraphs in order to attain its objectives:
1. Establishment of the securities market (including futures markets);
2. Business relating to the purchase and sale transaction of securities;
3. Business relating to the listing of securities;
4. Business relating to the disclosure of a listed corporation;
5. Business relating to the supervision and control of members;
6. Business relating to the auction of securities;
7. Other business incidental to the establishment of the securities market; and,
8. Business as determined in the articles of association other than that as prescribed in subparagraphs 1 through 7.

(2) Deleted. *<by Act No. 5736, Feb. 1, 1999>*

Article 74
(Matters to be Provided for in Articles of Association)

(1) The articles of association of the Stock Exchange shall contain the following matters:
1. Objectives;
2. Name;
3. Location of the principal office, the branch offices and the securities market;
4. Matters relating to the amount of contributions;
4-2. Matters relating to members;
4-3. Matters relating to a security guarantee for the good conduct of members;
4-4. Matters relating to the transfer and return of shares of members;
5. Matters relating to officers;
6. Matters relating to the general meeting of members and board of directors;
7. Matters relating to the execution of business;
8. Matters relating to the accounting and apportionment of expenses; and,
9. Method of public notice.

(2) When the Stock Exchange intends to amend any provisions of its articles of association referred to in paragraph (1), it shall obtain the approval of the Minister of Finance and Economy.

Article 75
(Provisions of Civil Act Applied Mutatis Mutandis*)*

The provisions of the Civil Act relating to an incorporated association (excluding Article 39 of the Civil Act) shall apply *mutatis mutandis* to the Stock Exchange unless as otherwise provided for in this Article or any order pursuant to this Act. In such a case, members, a general meeting of members, and officers of the Stock Exchange shall be considered respectively as members, a general meeting of members, and directors or auditors of an incorporated association.

Article 76
(Prohibition of Establishment of Similar Facilities)

No person other than the Stock Exchange may establish a securities market or facilities similar thereto, or may conduct purchase and sale transactions of securities through similar facilities: *Provided,* That with respect to an Association brokerage market, the same shall not apply.

Article 76-2
(Qualification for Member)

Members of the Stock Exchange shall be securities companies satisfying such requirements as prescribed by the articles of association.

Article 76-3
(Contributions and Liability)

(1) Members shall make a contributions under the conditions as prescribed by the articles of association.

(2) Liability of members to the Stock Exchange shall be limited to their contributions except as prescribed by this Act and the articles of association.

Article 76-4
(Withdrawal of Member)

(1) Any member may withdraw with the approval of the Stock Exchange under the conditions as prescribed by the articles of association.

(2) If any of the following causes occurs, the member shall withdraw:
   1. Disqualification;
   2. Dissolution; or,
   3. Expulsion.

Article 76-5
(Transfer and Return of Share)

(1) A share of a member may be transferred after obtaining the

approval of the Stock Exchange only when the member intends to withdraw, under the conditions as prescribed by the articles of association.

(2) If a member withdraws from the Stock Exchange, the Stock Exchange shall return the member's entire shares under the conditions as prescribed by the articles of association.

(3) If it is deemed necessary to adjust the ratio of a member's share, the Stock Exchange may return a part of the member's share to the member under the conditions as prescribed by the articles of association.

Article 77
(General Meeting of Members)

(1) The general meeting of members shall resolve only the matters as provided for in this Act or the articles of association of the Stock Exchange.

(2) Deleted. *<by Act No. 5254, Jan. 13, 1997>*

(3) The matters that have been resolved in the general meeting of members shall be reported to the Minister of Finance and Economy.

Article 78
(Officers)

(1) The following officers shall be assigned to the Stock Exchange:
1. A chief director;
2. A managing director;
3. Nine or less directors (five or less directors shall be non-standing, and three or less of those directors shall be public interest representatives and the remaining shall be representatives of the members); and,
4. Two auditors (one of them shall be non-standing).

(2) The chief director shall be elected by the general meeting of members from among those who have extensive experience and knowledge of securities matters and have high moral virtue, and must be approved by the Minister of Finance and Economy.

(3) The managing and standing directors shall be appointed by the chief director with the approval of the Minister of Finance and Economy.

(4) The non-standing directors who are public interest representatives shall be appointed by the chief director.

(5) The non-standing directors who are representatives of the members shall be elected by a general meeting of members.

(6) Auditors shall be elected by a general meeting of members.

(7) The term of office of the chief director, managing director, other directors and auditor shall be three years, respectively.

(8) Deleted. *<by Act No. 5736, Feb. 1, 1999>*

(9) Deleted. *<by Act No. 5254, Jan. 13, 1997>*

Article 79
(Duties of Officers)

(1) The chief directors shall represent the Stock Exchange, take charge of its affairs and preside over the general meeting of members and the board of directors.
(2) The managing director shall assist the chief director, and if the chief director is absent due to an accident, the managing director shall act on behalf of the chief director.
(3) The standing directors shall assist the chief and managing directors and take charge of the affairs of the Stock Exchange.
(4) The auditors shall inspect the affairs and accounting of the Stock Exchange, and deliver their opinion at the general meeting of members.

Article 80
(Ineligibility of Officers)

Any person falling under any of the following subparagraphs shall not be an officer of the Stock Exchange, and any officer who falls under any of the following subparagraphs shall lose their office:

1. Any person who is not a national of the Republic of Korea, any officer who belongs to a corporation of the Republic of Korea of which fifty percent or more of the amount of stated capital or fifty percent or more of the total combined voting rights is owned by foreign persons or foreign corporations, etc., or any officer of a foreign corporation;
2. A minor, an incapacitated person or a semi-incacitated person;
3. A bankrupt person who has not been reinstated;
4. A person who has been sentenced to a punishment heavier than the imprisonment without prison labor or to a punishment heavier than imposition of a fine pursuant to this Act, foreign securities statutes or subordinate statutes, or other statutes or subordinate statutes relating to finance and banking as prescribed by Presidential Decree, and for whom five years have not elapsed since the execution of such punishment was terminated (including the cases where the execution is deemed to have been terminated) or exempted;

4-2. A person who has been sentenced to a punishment heavier than imprisonment without prison labor and has been serving a suspended sentence; or,

5. A person who has been dismissed or discharged from their office pursuant to this Act, foreign securities statutes or subordinate statutes, or other statutes or subordinate statutes relating to the finance and banking as prescribed by (the) Presidential Decree, and five years have not elapsed since such discharge or dismissal.

Article 81
(Request for Dismissal of Officer)

If an officer of the Stock Exchange violates the provisions of statutes or subordinate statutes or the disposition made by an administrative agency pursuant to statutes or subordinate statutes, the Financial Supervisory Commission may suspend the execution of that person's duties or request that person's dismissal.

Article 82
Deleted. <by Act No. 3945, Nov. 28, 1987>

Article 83
(Liabilities of Officers, etc.)

(1) Any person who is or was an officer or employee of the Stock Exchange shall not divulge or illicitly use secrets which that person may have acquired in the course of performing their duties.

(2) The provisions of Article 42 shall apply *mutatis mutandis* to officers and employee of the Stock Exchange.

(3) Officer and employee of the Stock Exchange shall not have a special interest relationship with any securities institutions by offering funds or sharing profits or losses or engaging in any other business.

SECTION 2
Transactions on Securities Market

Article 84
Deleted. <by Act No. 3945, Nov. 28, 1987>

Article 85
(Restrictions on Traders on Securities Markets)

(1) No person other than members of the Stock Exchange shall perform transactions on the securities market: *Provided,* That where the articles of association of the Stock Exchange determine that a person may sell and buy specific securities, that person may do so.

(2) A person is able to perform transactions on the securities market based on the proviso of paragraph 1 shall be deemed a member of the Stock Exchange in applying the provisions of Articles 73 (1) 5, 74 (1) 4-2 and 4-3, 76-3 (2), 76-4, 87, 94 (2) 5, 95 through 97, 99, 100, and 206-3 (5).

Article 86
Deleted. <by Act No. 5736, Feb. 1, 1999>

Article 87
(Completion of Transactions)

(1) When a member is suspended from transactions or loses its qualification, the Stock Exchange shall have the member or another member complete the transactions that have been initiated on the securities market by the member. In this case, the member who loses its qualification shall be regarded as having the qualification of a member within the objective of completing that transaction.

(2) In case the Stock Exchange has another member complete the transactions pursuant to paragraph (1), it shall be regarded as a trust contract has been forward between the member concerned and such other member.

Article 88
(Listing Regulations)

(1) Deleted. *<by Act No. 5254, Jan. 13, 1997>*

(2) The Stock Exchange shall adopt the Securities Listing Regulations (hereinafter referred to as the "Listing Regulations") in order to examine securities that are to be listed on the securities market and to administer the securities that have been listed on the securities market (hereinafter referred to as "listed securities").

(3) The Listing Regulations referred to in paragraph (2) shall provide for the following matters:

1. Matters relating to the listing standards for, listing examination of and delisting of securities;
2. Matters relating to suspending and releasing a suspension of securities transactions; and,
3. Matters necessary to the administration of listed securities other than those prescribed in subparagraphs 1 and 2 of this paragraph.

Article 89
Deleted. <by Act No. 4701, Jan. 5, 1994>

Articles 90 through 93
Deleted. <by Act No. 5254, Jan. 13, 1997>

Article 94
(Operating Regulations)

(1) Matters relating to securities transactions on the securities

market shall be determined by the operating regulations of the Stock Exchange. In this case, matters relating to futures markets may be determined by separate operating rules.

(2) The operating regulations referred to in paragraph (1) shall provide for the following matters:

1. Types of transactions and matters relating to consignment;
2. Matters relating to the opening, closing, suspending or temporary closing of the securities market;
3. Method of concluding a transaction contract and settlement thereof;
4. Matters relating to the regulation of a transaction such as the payment of deposit money;
5. Matters relating to the supervision over members and disciplinary action against members, officers and employees as a result of such supervision;
6. Matters relating to the qualification and registration of agents who are engaged in the transaction affairs on behalf of members on the securities market; and,
7. Matters necessary for a transaction in addition to those as referred to in subparagraphs 1 through 6.

Article 95
(Joint Compensation Fund for Loss Incurred from Contravention of Contracts)

(1) The member shall set aside a joint fund (hereinafter referred to as the "compensation fund") in the Stock Exchange in order to compensate for the losses incurred from any contravention of a trading contract on the securities market.

(2) The member shall, within the extent of the compensation fund referred to in paragraph (1), be jointly and severally liable for the losses incurred from any contravention of trading contract on the securities market.

(3) The rate of reserve, limit, use, management, repayment of the compensation fund referred to in paragraph (1), and other necessary matters relating to the operation of compensation fund shall be prescribed by Presidential Decree.

Article 96
(Appropriation of Deposit and Member's Guarantee Fund for Obligation)

If a member has not fulfilled its obligation based on transactions on the securities market for the Stock Exchange or other members, the Stock Exchange may appropriate the deposit and the member's guarantee fund for the payment of that obligation.

Article 97
(Compensation Liabilities of Stock Exchange)

(1) The Stock Exchange shall be liable to compensate for the loss incurred from contravention of a trading contract by any member.

(2) In case the Stock Exchange compensates for the loss under paragraph (1), the compensation fund set aside under the provisions of Article 95 shall be appropriated in preference.

(3) In case the Stock Exchange compensates for the loss under paragraphs (1) and (2), the Stock Exchange shall be entitled to the right to indemnification for the compensated amount and all expenses required to do so against the member who contravened the trading contract.

(4) The amount of money collected in accordance with paragraph (3) shall be, in preference, appropriated for such amount as the Stock Exchange has compensated with its own money and all expenses required to do so, and the remainder shall be held in reserve in the compensation fund.

(5) Matters with respect to the exercise of the right to indemnification referred to in paragraph (3) shall be prescribed by Presidential Decree.

Article 98
Deleted. **<by Act No. 3945, Nov. 28, 1987>**

Article 99
(Preferential Right of Stock Exchange over Other Creditor)

(1) The Stock Exchange shall have a right to be paid in preference to any other creditors with respect to the deposit, member's guarantee fund and money or securities paid for the delivery and settlement.

(2) When a member, in case the Stock Exchange delivers securities to the member prior to the settlement, causes loss to the Stock Exchange due to the unfulfillment of delivery or settlement by such member, the Stock Exchange shall have a right to be paid in preference to any other creditors with respect to property of such member: *Provided,* That the right shall not be in preference to obligations hypothecated by *a* right of a registered lease on a deposit basis, pledges or mortgages created prior to the expiration of settlement date.

Article 100
(Preferential Right of Entruster Due to Contravention of Contract by Entrustee and Right of Stock Exchange in Preference to Entruster)

(1) Any person who entrusts transaction on the securities market

to a member shall, in case the member entrusted with the transactions contravenes the entrustment contract, have a right to satisfy a claim based upon such contravention in preference to any other creditors with respect to the deposit and member's guarantee fund.

(2) The preferential right referred to in Article 99 shall be in preference to such preferential right as prescribed by the provisions of paragraph (1).

Article 101
(Prohibition of Transaction in Contravention to Contract)

Any securities company that has been entrusted transact on the securities market shall have such transactions executed without fail only through the securities market. In this case, the provisions of Article 44 shall not apply.

Article 102
Deleted. **<by Act No. 5254, Jan. 13, 1997>**

Article 103
(Publication of Quotations)

The Stock Exchange shall, under the conditions as prescribed by Presidential Decree, make public the quotations showing the daily trading volume, daily settled price, and the highest, lowest and closing prices of the securities on the securities market.

Article 104
Deleted. **<by Act No. 5736, Feb. 1, 1999>**

Articles 105 and 106
Deleted. **<by Act No. 5254, Jan. 13, 1997>**

Article 107
(Restriction on Discretionary Transactions)

(1) If a securities company is entrusted by a customer to make a securities transaction, the securities company may be given discretion to carry out such transaction only on the quantity, price and time of transaction. In this case, the types and items of securities, categories and methods of transaction shall be determined only according to a decision of the customer.

(2) If a securities company carries out a securities transaction pursuant to paragraph (1), it shall observe the conditions as prescribed by Ordinance of the Ministry of Finance and Economy.

Article 108
Deleted. <by Act No. 5423, Dec. 13, 1997>

SECTION 3
Entrustment with Transactions on Securities Market

Article 109
(Restrictions on Places of Entrustment)

(1) Deleted. *<by Act No. 5736, Feb. 1, 1999>*
(2) A securities company may be entrusted with securities transactions by means of electronic communication and other manners as prescribed by Presidential Decree.

Articles 110 and 111
Deleted. <by Act No. 5736, Feb. 1, 1999>

SECTION 4
Accounting and Supervision

Article 112
(Report and Inspection)

(1) The Financial Supervisory Commission may, if deemed necessary in the public interest or for the protection of investors, order the Stock Exchange to file reports or materials for reference with respect to its business and property, and have the FSS Governor inspect its business, status of property accounting books, records, and other related materials.
(2) The provisions of Article 53 (3) shall apply *mutatis mutandis* to the inspection referred to in paragraph (1).
(3) In case where the FSS Governor inspects according to the provisions of paragraph (1), the FSS Governor shall report the results of the inspection to the Financial Supervisory Commission.

Article 113
Deleted. <by Act No. 3945, Nov. 28, 1987>

Article 114
Deleted. <by Act No. 6176, Jan. 21, 2000>

Article 115
(Approval of Regulations)

(1) Where the Stock Exchange intends to adopt Business Regulations, Listing Regulations, Disclosure Regulations and other

regulations (including rules; hereinafter the same shall apply) relating to the business necessary for the administration of the securities market, the Stock Exchange shall obtain the approval of the Financial Supervisory Commission. The same shall apply in case of the amendment or repeal thereof.

(2) Where the Financial Supervisory Commission intends to grant approval referred to in paragraph (1), it shall consult in advance with the Minister of Finance and Economy.

Article 116
Deleted. <by Act No. 5254, Jan. 13, 1997>

Article 117
(Disposition in Emergency)

(1) Deleted. <*by Act No. 5736, Feb. 1, 1999*>

(2) When the Minister of Finance and Economy deems that transactions cannot be normally executed because of natural disaster, warfare, disturbance, sudden and significant change in economic conditions or other incidents similar thereto, the minister may order the temporary closing of the securities market or take other necessary measures.

CHAPTER VII
Deleted.

Articles 118 through 144
Deleted. <by Act No. 5498, Jan. 8, 1998>

CHAPTER VIII
ORGANIZATIONS CONCERNED WITH SECURITIES

SECTION 1
Securities Finance Corporation

Article 145
(Establishment)

(1) Any person who engages in the business referred to in Article 147 (hereinafter referred to as a "Securities Finance Corporation") shall be a stock corporation licensed by the Minister of Finance and Economy.

(2) Any person who intends to obtain a license referred to in paragraph (1) shall file a written application including such information as designated in the following subparagraphs with the Minister of Finance and Economy:

1. Name;

2. Location of business office; and,
3. Matters relating to stated capital and assets.

(3) A written application referred to in paragraph (2) shall be accompanied by such documents as designated in the following subparagraphs:

1. Articles of incorporation and the regulations relating to the business;
2. *Curriculum vitae* and certificate of identity of promoters;
3. Project planning statement and the estimated income and expenditure statement for a period of two years after its establishment; and,
4. Documents prescribed by the Minister of Finance and Economy other than those referred to in subparagraphs 1 through 3.

Article 146
(Amount of Stated Capital)

Amount of stated capital of a Securities Finance Corporation shall be two billion or more won.

Article 147
(Business)

A Securities Finance Corporation may change in any business referred to in the following subparagraphs:

1. To lend money for securities market making and money for underwriting to underwriters;
2. To lend through the account setting organ of the Stock Exchange such money or securities necessary for transactions on the securities market;
3. To lend money by collateralizing securities or lend securities;
4. To lend money to public investors through underwriters for purchasing stocks of public offerings;
5. To effect transactions of bonds to the extent as prescribed by Presidential Decree;
6. To undertake safekeeping in connection with securities; and,
7. Business approved by the Minister of Finance and Economy other than those referred to in subparagraphs 1 through 6.

Article 148
Deleted. **<by Act No. 5254, Jan. 13, 1997>**

Article 149
(Restrictions on Officers)

(1) Any officer who is engaged in the management of executive affairs of a Securities Finance Corporation (including a person who defacto performs the functions of an officer; hereinafter

the same shall apply) shall be a person other than the officers and employees of a securities company.

(2) The provisions of Articles 33 (2) and 80 shall apply *mutatis mutandis* to any officer of a Securities Finance Corporation: *Provided,* That the person falling under subparagraph 1 of Article 80 may be appointed as an officer of a Securities Finance Corporation, insofar as the officer is not engaged in the management of executive affairs thereof.

Article 150

Deleted. <by Act No. 3945, Nov. 28, 1987>

Article 151

(Report on Articles of Incorporation and Regulations)

(1) Any Securities Finance Corporation shall, when it amends its articles of incorporation, file a report thereof with the Financial Supervisory Commission.

(2) When a Securities Finance Corporation has adopted, amended or repealed the regulations relating to its business, it shall report such fact to the Financial Supervisory Commission.

(3) Deleted. *<by Act No. 5254, Jan. 13, 1997>*

Article 152

Deleted. <by Act No. 5254, Jan. 13, 1997>

Article 153

(Request to Discharge Officers)

When any officer of a Securities Finance Corporation is elected by illegal means, or violates this Act, the orders pursuant to this Act or the articles of incorporation of the Securities Finance Corporation, the Financial Supervisory Commission may request it to discharge such officer.

Article 154

(Liabilities of Officers)

The provisions of Articles 58 and 83 shall apply *mutatis mutandis* to a Securities Finance Corporation: *Provided,* That the provisions of Article 83 (3) shall not apply *mutatis mutandis* to officers who are not engaged in the management of executive affairs.

Article 155

(Dispositions against Violations of Statutes or Subordinate Statutes)

(1) The provisions of Article 55 (excluding subparagraphs 5 through 7 of the same Article (1)) shall apply *mutatis mutandis*

to the cancellation of a securities financial business license for Securities Finance Corporations. In this case, the "Financial Supervisory Commission" shall be deemed the "Minister of Finance and Economy."

(2) Where any Securities Finance Corporation falls under any of the following subparagraphs, the Financial Supervisory Commission may order the suspension of its business in whole or in part for a specified period not exceeding six months:

1. Where it does business without obtaining approval under subparagraph 7 of Article 147;
2. Where it fails to comply with a request to discharge its officer under Article 153 without any justifiable cause; and,
3. Where it violates the provisions of Article 154.

Article 156
Deleted. <by Act No. 5254, Jan. 13, 1997>

Article 157
(Inspection)

The provisions of Article 53 shall apply *mutatis mutandis* to a Securities Finance Corporation. In this case, the "cancellation of a securities business license" referred to in Article 53 (5) 1 shall be deemed a "request that the Minister of Finance and Economy cancel a license."

Article 158
(Discontinuance of Business and Dissolution)

A resolution by a Securities Finance Corporation to discontinue its business or dissolve itself shall be subject to the authorization of the Minister of Finance and Economy.

Article 159
Deleted. <by Act No. 5736, Feb. 1, 1999>

Article 160
(Issuance of Corporate Bonds)

(1) Notwithstanding the provisions of Article 470 of the Commercial Act, any Securities Finance Corporation may issue corporate bonds up to 20 times the aggregate amount of its stated capital and reserve.

(2) The corporate bonds issued by a Securities Finance Corporation pursuant to the provisions of paragraph (1) shall be considered to be bonds pursuant to the provisions of Article 2 (1) 1.

(3) Any Securities Finance Corporation may temporarily issue corporate bonds in excess of the limitto redeem corporate bonds issued in accordance with paragraph (1). In this case, the

corporate bonds that are issued must be redeemed within one month of their issuance.

(4) Matters necessary for the issuance of corporate bonds by a Securities Finance Corporation pursuant to the provisions of paragraph (1) shall be prescribed by Presidential Decree.

Article 161
(Deposit of Money)

(1) Any Securities Finance Corporation may receive a deposit of money from the Stock Exchange, a securities company, other securities institutions, and such persons as designated by Ordinance of the Ministry of Finance and Economy.

(2) Any Securities Finance Corporation may, if necessary for a deposit pursuant to paragraph (1), issue debt instruments under the conditions as prescribed by Ordinance of the Ministry of Finance and Economy.

(3) In case of paragraphs (1) and (2), the Bank of Korea Act and the Banking Act shall not apply.

SECTION 2
Korea Securities Dealers Association

Sub-Section 1 Establishment and Supervision

Article 162
(Establishment)

(1) The Korea Securities Dealers Association shall be established for the purpose of maintaining business orders between securities companies, assuring fair trading of securities, and protecting investors.

(2) The Association shall be a juristic person based on an organization of members.

(3) The Association shall place its principal office in the Seoul Special Metropolitan City, and may establish its branch offices in such places as deemed necessary.

(4) The Association shall come into existence by the registration of incorporation at the location of its principal office under the conditions as prescribed by Presidential Decree.

Article 162-2
(Business)

The Association shall do such business as described in the following subparagraphs:

1. Business relating to the maintenance of sound business order between members and for the protection of investors;

2. Business relating to the disclosure of the Association-registered corporation, supervision of members and other business relating to the operation of the association brokerage market;
3. Operation and management of fund managers in order to maintain sound order in business under Article 28 (2) 2;
4. Examination and research of the system relating to securities;
5. Business relating to the study and training with respect to securities;
6. Business incidental to that as referred to in subparagraphs 1 through 5; and,
7. Business as determined by the President Decree other than those as referred to in subparagraphs 1 through 6.

Article 163
(Matters to be Provided for in Articles of Association)

Matters to be provided for in the articles of association shall be prescribed by Presidential Decree.

Article 164
(Report on Regulations, etc.)

(1) Where the Association has adopted, amended or repealed regulations relating to its business, it shall report such fact to the Financial Supervisory Commission within ten days.

(2) The Association shall, where it intends to change matters prescribed by Presidential Decree in the articles of association, obtain approval from the Financial Supervisory Commission.

Article 165
(Membership Dues)

The Association may collect membership dues from members under the conditions as prescribed by the articles of association.

Article 166
Deleted. **<by Act No. 5423, Dec. 13, 1997>**

Article 167
Deleted. **<by Act No. 5254, Jan. 13, 1997>**

Article 168
(Order of Suspension of Business, etc.)

In case any event described in the following subparagraphs occurs, the Financial Supervisory Commission may order the Association to suspend its business or request it to discharge the officer concerned in the public interest and for the protection of investors:

1. When the Association has violated statutes or subordinate

statutes or a disposition taken by administrative authorities pursuant to statutes or and subordinate statutes; and,

2. When any officer of the Association has violated the articles of association or regulations relating to the business of the Association or has abused their authorities.

Article 169
(Officers and Supervision, etc.)

The provisions of Articles 33, 42, 53 and 117 shall apply *mutatis mutandis* to the Association.

Article 170
(Provisions of Civil Act Applied Mutatis Mutandis)

The provisions of the Civil Act relating to an incorporated association shall apply *mutatis mutandis* to the Association except otherwise provided for in this Act or the orders pursuant to this Act.

Article 171
(Prohibition of Use of Similar Name)

Any person other than the Korea Securities Dealers Association shall not use the name "Securities Dealers Association" or any other name similar thereto.

Article 172
(Securities Training Institute)

The Association may establish a Securities Training Institute in order to improve qualifications of persons who engage in securities business and to diffuse professional knowledge about securities.

Sub-Section 2 Securities Transactions on the Association Brokerage market

Article 172-2
(Registration with Association)

A juristic person who intends to have the securities as prescribed by Presidential Decree transacted at an Association brokerage market shall register with the Association through a securities company.

Article 172-3
(Adoption and Approval of Regulations)

(1) With respect to the operation of an Association brokerage market, the Association shall provide for the necessary regulations concerning the conditions and procedures for registration at the Association, securities transactions at such market, and other matters as prescribed by Presidential Decree.

(2) Where the Association intends to establish, alter or repeal the regulations referred to in paragraph (1), the Association shall obtain the approval of the Financial Supervisory Commission.

(3) Where the Financial Supervisory Commission intends to grant the approval referred to in paragraph (2), it shall consult in advance with the Minister of Economy and Finance.

SECTION 3
Korea Securities Depository

Article 173
(Establishment)

(1) The Korea Securities Depository (hereinafter referred to as the "Depository") shall be established in order to promote a concentrated deposition of securities, transfer between accounts, and harmonious trading.

(2) The Depository shall be a juristic person.

(3) The Depository shall come into existence by the registration of incorporation at the location of the principal office under the conditions as prescribed by Presidential Decree.

Article 173-2
(Business)

(1) The Depository shall carry on such business as prescribed in the following subparagraphs in order to attain its objective:

1. The business of concentrating the depositof securities;
2. The business of transferring securities between accounts;
3. The business of depositing securities and transferring securities between accounts through the opening of an account with a foreign juristic person (hereinafter referred to as "foreign depository institution") that carries on business similar to the Depository;
4. Securities transfer agency business (including the agency business for payment of dividend, interest, and redemption of securities and that for issuing securities);
5. Undertaking the safekeeping of securities;
6. Business other than that as referred to in subparagraphs 1 through 5, that is authorized under this Act and other Acts;
7. Business incidental to those as referred to in subparagraphs 1 through 6; and,
8. Businesses as determined by the articles of incorporation other than those as referred to in subparagraphs 1 through 7.

(2) Deleted. *<by Act No. 5736, Feb. 1, 1999>*

Article 173-3
(Prohibition of Carrying on Depositing Business)

No person other than the Depository may carry on any business receiving securities, and settling accounts by means of a transfer between accounts in lieu of giving and receiving such securities.

Article 173-4
(Matters Provided for in Articles of Association)

The articles of incorporation of the Depository shall include the following matters:

1. Objectives;
2. Name;
3. Location of a principal office;
4. Matters relating to stocks and stated capital;
5. Matters relating to the general meeting of stockholders and the board of directors;
6. Matters relating to officers;
7. Matters relating to accounting; and,
8. Method of public notice.

Article 173-5
(Provisions of Commercial Act Applied **Mutatis Mutandis)**

The provisions of the Commercial Act concerning the stock company shall apply *mutatis mutandis* to the depositor unless otherwise prescribed by this Act or any order issued pursuant to this Act.

Article 173-6
(Officers)

(1) The officers of the Depository shall be the president, managing director, director and auditor.

(2) The president shall be appointed by the general meeting of stockholders but the president shall be subject to approval of the Minister of Finance and Economy.

(3) The standing auditor shall be appointed by the general meeting of stockholders. Article 173-7 (Designation of Securities to be Deposited)

(1) The securities that may be deposited at the Depository (hereinafter referred to as "securities to be deposited") shall be designated by the Depository.

(2) Deleted. *<by Act No. 5736, Feb. 1, 1999>*

Article 173-8
(Notification, etc., on Details of Issuance and on Details of Securities Stolen, Lost or Destroyed)

(1) Where an issuer of securities to be deposited newly issues se-

curities, the issuer shall notify the type of such securities and other matters as prescribed by Ordinance of the Ministry of Finance and Economy to the Depository without delay.

(2) Where an issuer of securities to be deposited receives a report that the securities are stolen, lost or destroyed (including public summons and nullification judgments pursuant to the Civil Procedure Act), such issuer shall notify the type of such securities and other matters as prescribed by Ordinance of the Ministry of Finance and Economy to the Depository without delay.

(3) The Depository that has received the notifications pursuant to paragraphs (1) and (2) shall make public the details of such reports.

Article 174
(Deposition to Depository, etc.)

(1) Any person who intends to deposit securities to the Depository shall open an account in the Depository.

(2) Any person who has opened an account pursuant to paragraph (1) (hereinafter referred to as a "depositor") may deposit securities that they hold and securities that have been deposited by customers to the Depository with the consent of the customers.

(3) The Depository shall prepare and keep the depositors' account book in which the following matters are stated, but they shall distinguish between the portion owned by depositors and the portion deposited by customers:

1. Name and address of a depositor;
2. Type and number of securities that are deposited (hereinafter referred to as "deposited securities") and the name of an issuer; and,
3. Other matters as prescribed by Ordinance of the Ministry of Finance and Economy.

(4) The Depository may keep deposited securities in a integrated state by type and item.

(5) In case a depositor or its customer accepts or subscribes for securities or requests issuance of securities based on other grounds, an issuer of securities may, upon a request of the depositor or its customer, issue or register (this refers to a registration pursuant to the State Bond Act or the Registration of Bonds and Debentures Act; hereinafter the same shall apply) securities by the name of the Depository on their behalf.

Article 174-2
(Deposition, etc. to Depositor by Customers)

(1) Any depositor who redeposits securities deposited by a customer in the Depository shall prepare and keep a customers' account book in which the following matters are stated:

1. Names and addresses of customers;
2. Types and number of deposited securities, and names of issuers; and,
3. Other matters as prescribed by Ordinance of the Ministry of Finance and Economy.

(2) When a depositor has stated matters referred to in paragraph (1), the depositor shall deposit without delay securities in the Depository specifying that such securities are deposited for its customers.

(3) When a depositor has stated matters referred to in paragraph (1), the depositor shall keep the securities separately from the depositor's own securities until the depositor deposits them in the Depository pursuant to paragraph (2).

(4) The securities recorded in the customers account pursuant to paragraph (1) shall be considered deposited in the Depository at the time they are recorded.

Article 174-3
(Effect of Statement in Account Book)

(1) Any person recorded in the customer's account book and the depositors' account book.

(2) If a transfer between accounts is recorded in the customers' account book and the depositors' account book for the purpose of transfering or creating a pledge on securities, the statement of transfer shall have the same effect as if the securities had been delivered.

(3) Notwithstanding the provisions of Article 3 (2) of the Trust Act, a trust of deposited securities may withstand a challenge from a third person by stating that they are the trust properties.

(4) In case a transaction of stocks on a securities market or Association brokerage market is settled by means of a transfer between accounts in the customers' account book or the depositors' account book before the stock certificates thereof are issued, notwithstanding the provisions of Article 335 (3) of the Commercial Act, such stocks shall be effective against the issuing company.

Article 174-4
(Presumption of Right, etc.)

(1) Customers of a depositor and the depositor shall be presumed to have co-ownership share on the deposited securities according to the types, items and quantity of securities stated respectively in the customers' account book and the depositors' account book.

(2) Customers or pledgees of a depositor may request at any time that the depositor return the deposited securities correspond-

ing to the co-ownership share to the Depository. In this case, a consent of the pledgee shall be required with respect to the deposited securities that are the object of the right of pledge.

(3) The Depository may, where such causes as prescribed by Presidential Decree occur, restrict the return of the portion deposited by customers among deposited securities under the conditions as designated by Ordinance of the Ministry of Finance and Economy.

Article 174-5
(Liability for Coverage)

(1) Where the deposited securities becomes insufficient, the Depository and the depositor as prescribed in Article 174-2 (2) shall make up such insufficient portion according to the methods and procedure as prescribed by Presidential Decree. In this case, the Depository and the depositor may exercise a right to indemnification to persons who are liable for such insufficiency.

(2) The depositor as referred to in paragraph (1) shall be liabile for coverage pursuant to paragraph (1), even after closing an the account as prescribed in Article 174 (1) of this Act: *Provided,* That in case where five years has elapsed from the time at which the account is closed, the depositor's liability shall cease.

Article 174-6
(Exercise of Right to Deposited Securities)

(1) The Depository may exercise the right to the deposited securities according to a request by a depositor or customer. In this case, a request by a customer shall be made through the depositor.

(2) The Depository may request a change of entry in the register or a recordation in its own name with respect to the deposited securities.

(3) With respect to stocks for which the entry in the register is changed in the name of the Depository pursuant to paragraph (2), the Depository may exercise the right as a stockholder as to matters as prescribed in Article 358-2 of the Commercial Act, as to statements in the register of stockholders and as to stock certificates, even though there is no request by the depositor.

(4) In case a company issuing stock certificates makes a notification or public notice of a convening a general meeting of stockholders, stockholders holding stock certificates for which the entry in the register has been changed in the name of the Depository, the company shall also notify personally or publicly the particulars concerning how the Depository exercised its voting rights as referred to in paragraph (5).

(5) If a stockholder holding stock certificates for which the entry in the register has been changed in the name of the Depository fails to express their intention to exercise directly or by proxy or not to exercise their voting right to the Depository not later than five days before the date of the general meeting of stockholders, the Depository may exercise such voting right: *Provided,* That the same shall not apply to the following cases:
   1. Where a company issuing the stock certificates fails to make a notification or public notice on how the Depository exercised their voting rights pursuant to paragraph (4);
   2. Where a company issuing the stock certificates requests the Financial Supervisory Commission to prevent the Depository from exercising its voting right;
   3. Where subject matters of the general meeting of stockholders fall under any matters as prescribed in Articles 374, 438,518, 519, 522, 530-3 and 604 of the Commercial Act; and,
   4. Where a stockholder concerned exercises directly or by proxy its voting right at the general meeting of stockholders.

(6) Matters necessary for the notification to stockholders by the issuing company and the exercise of voting right by the Depository, etc., pursuant to paragraphs (4) and (5) shall be determined by Presidential Decree.

Article 174-7
(Exercise of Right by Beneficial Owner, etc.)

(1) Co-owners of stock certificates of deposited securities (hereinafter referred to as a "beneficial owner") shall be considered to hold stocks equivalent to the coownership shares as prescribed in Article 174-4 (1) in exercising their rights as a stockholder.

(2) A beneficial owner may not exercise the right as prescribed in Article 174-6 (3): *Provided,* That the same shall not apply with respect to a notification to stockholders by a company, and an inspection or copy of the stockholders' register as prescribed in Article 396 (2) of the Commercial Act.

(3) When a company issuing stock certificates of deposited securities has fixed a certain period or date pursuant to Article 354 of the Commercial Act, the company shall notify the Depository of such fact without delay; and the Depository shall notify the company issuing the stock certificates concerned or the company that act as an agent in changing the entry in the register of the matters referred to in the following subparagraphs with respect to beneficial owners on the first day of the period or on the date (hereinafter referred to as "fixed date for the closing of register of stockholders") without delay:
   1. Name and address; and,
   2. Types and number of stocks as prescribed in paragraph (1).

(4) The Depository may request a depositor as prescribed in Article 174-2 (1) of this Act to notify matters as referred to in subparagraphs of paragraph (3) with respect to beneficial owners on the fixed date for the closing of the stockholders' register. In this case, the depositor, upon receiving the request, shall notify it without delay.

(5) The provisions of paragraphs (3) and (4) shall apply *mutatis mutandis* where the issuer of stocks whose tender offer statement was submitted requests the Depository to communicate matters on beneficial owners in order to determine the stock ownership status on a specified date.

Article 174-8
(Preparation of Register of Beneficial Owners, etc.)

(1) Any issuing company or company that act as an agent in changing the entry in the register shall, upon receiving a notification pursuant to Article 174-7 (3) of this Act, prepare and keep a register of beneficial owners, stating therein the notified matters and the date of notification.

(2) Any statement in a register of beneficial owners relating to stocks certificates that are deposited in the Depository shall have the same effect as a statement in a stockholders' register.

(3) When an issuing company or a company that acts as an agent to change the entry in the register pursuant to the provisions of paragraph (1) deems that a person stated in a stockholders' register as a stockholder is the same as a person stated in a register of beneficial owners as a beneficial owner, the issuing company or the company that acts as an agent in changing the entry in the register shall combine the number of stocks on the register of stockholders and those on the register of beneficial owners for the exercise of rights as a stockholder.

Article 174-9
(Civil Execution)

Matters necessary for compulsory execution, execution of provisional seizure and provisional disposition, or auction with respect to the deposited securities, shall be determined by the Supreme Court Regulations.

Article 174-10
(Certificate of Beneficial Ownership)

(1) In case a depositor or a customer of depositor requests the Depository to issue a document certifying the deposition of securities (hereinafter referred to as "certificate of beneficial ownership") in order to exercise the right of a stockholder, the Depository may issue the certificate of beneficial ownership under the conditions as prescribed by Ordinance of the

Ministry of Finance and Economy. In this case, a request by a customer shall be made through the depositor.

(2) When issuing the certificate of beneficial ownership pursuant to paragraph (1), the Depository shall notify the issuing company concerned of such fact without delay.

(3) Where a Depository or a customer of depositor has filed the certificate of beneficial ownership that is issued pursuant to paragraph (1) to the issuing company, notwithstanding the provisions of Article 337 (1) of the Commercial Act, the depositor or the customer of depositor may withstand a challenge from the issuing company.

Article 174-11
(Special Treatment concerning Deposition in Foreign Depository Institutions)

The provisions of Articles 174-2, 174-5, 174-6 (4) through (6), 174-7 and 174-8 (3) shall not apply to foreign depository institutions: *Provided,* That this shall not apply where any foreign depository institution makes a request for its application.

Article 174-12
(Report and Confirmation, etc.)

The Depository may request a depositor to file a report or data concerning its depositing business, inspect the related accounting books, or confirm the status of custody, etc., of securities kept under the depositor's own custody.

Article 175
(Report on Regulations)

Where the Depository intends to make, change, or repeal the regulations relating to deposition and other business, it shall file a report thereof to the Financial Supervisory Commission.

Article 176
Deleted. <by Act No. 5736, Feb. 1, 1999>

Article 176-2
(Control of Securities Certificates)

(1) A listed corporation, Association-registered corporation and company that acts as an agent in changing the entry in the register (referred to a person who obtains a license pursuant to Article 180 (1); hereinafter the same shall apply) shall be subject to the Securities Certificates Handling Regulation as determined by the Depository with respect to printed forms, issuance, retirement, issuance for replacement, effacement, and other matters regarding control of securities certificates.

(2) The Depository may control the printed forms of securities certificates that any listed corporation or Association-registered corporation keeps as spares for issuance of securities (hereinafter referred to as "spare certificates").

(3) The Depository may, if it deems necessary, demand any listed corporation, Association-registered corporation and any company that acts as an agent in changing the entry in the register to submit data regarding its procedures for handling securities certificates and the control of spare certificates pursuant to paragraph (1) and may direct its employees to confirm the data.

(4) When an unlisted corporation intends to use printed forms pursuant to the Securities Certificates Handling Regulation of the Depository with respect to securities of the corporation concerned, it shall obtain the approval of the Depository. In this case, the provisions of paragraphs (1) through (3) shall apply *mutatis mutandis*.

(5) If any listed corporation becomes an unlisted corporation, the provisions of paragraphs (1) through (3) shall apply *mutatis mutandis* to such corporation until all printed forms pursuant to the Securities Certificates Handling Regulation of the Depository and the certificates issued by using the printed forms are entirely destroyed.

Article 177
Deleted. <by Act No. 3945, Nov. 28, 1987>

Article 178
(Officer and Supervision, etc.)

The provisions of Articles 59 through 61, 74 (2), 80, 81, 83, 117 and 157 shall apply *mutatis mutandis* to the Depository.

SECTION 4
Order Matching Company and Securities Transfer Agent, Etc.

Article 179
(Order Matching Company)

(1) Any person who conducts the business of matching orders of transactions on the securities market shall be a stock company that obtains a license from the Financial Supervisory Commission.

(2) Any person who obtains permission pursuant to paragraph (1) (hereinafter referred to as an "order matching company") may conduct the business of purchasing and selling of securities that is necessary to perform the function of matching orders on the securities market.

(3) Any order matching company shall be subject to inspection by the Stock Exchange with respect to its business and properties.

(4) The provisions of Articles 53, 149, 151 (1), 153, 154, 155 and 158 shall apply *mutatis mutandis* to an order matching company.

Article 180
(Securities Transfer Agent)

(1) A person who may act as a business of changing the entry in a register shall be a stock corporation registered with the Financial Supervisory Commission.

(2) A transfer agent may conduct the business of paying dividends, interests and redemption in connection with securities and issuing securities as an agent.

(3) The provisions of Articles 53, 70-2 (4), 70-11, 149, 151 (1), 153, 154, 155 (2), and 158 shall apply *mutatis mutandis* to a transfer agent.

Article 181
(License and Supervision of Other Organizations relating to Securities)

(1) Any person who intends to establish an organization that is composed of investors in securities, stock-listed corporations, or other persons prescribed by Presidential Decree for the purpose of assuring public interest, protecting investors or maintaining an orderly securities market, shall obtain a license from the Minister of Finance and Economy under the conditions as prescribed by Presidential Decree.

(2) The provisions of Articles 53, 151 (1) and 168 shall apply *mutatis mutandis* to organizations relating to securities that are established with a license pursuant to paragraph (1).

CHAPTER IX
CONTROL OF LISTED CORPORATIONS, ETC.

SECTION 1
Disclosure by Listed Corporations, Etc.

Article 182
Deleted. <by Act No. 5254, Jan. 13, 1997>

Articles 183 through 185
Deleted. <by Act No. 3541, Mar. 29, 1982>

Article 186
(Duty of Report and Disclosure of Listed Corporations, etc.)

(1) Where a listed corporation or a corporation registered with the Association falls under any of the following subparagraphs, such corporation shall notify the Financial Supervisory Commission, the Stock Exchange or the Association of such fact or of the contents of a resolution adopted at the meeting of the board of directors under the conditions as prescribed by Presidential Decree without delay:

1. Where any issued bill or check is dishonored, or when any transaction with a bank is suspended or prohibited;
2. Where the corporation's business is suspended in part or in whole;
3. Where the corporation files a petition for the reorganization (of the corporation) or where the reorganization procedure has actually commenced pursuant to the provisions of relevant laws;
4. Where the objective of the business changes;
5. Where the corporation suffers from enormous damages caused by a disaster;
6. Where a lawsuit that may have great influence upon the listed securities or the securities registered with the Association is filed against the corporation;
7. Where any of the events referred to in Articles 374, 522, 527-2, 527-3 and 530-2 of the Commercial Act occurs;
8. Where causes for dissolution pursuant to the provisions of relevant statutes occur;
9. Where there is a resolution of the board of directors on the increase or decrease of capital;
10. Where the operation is suspended or is unable to be continued due to special causes;
11. Where a correspondent bank assumes control of the corporation concerned;
12. Where there is a resolution of the board of directors, or a

decision of the representative director or other person who is prescribed by Presidential Decree with respect to the acquisition and disposal of treasury stocks; and,

13. Where a fact occurs, as prescribed by Presidential Decree that has serious effects on the management and properties, etc., of the corporation other than subparagraphs 1 through 12;

(2) The Stock Exchange or the Association may, if it is necessary for the fair transaction of securities and the protection of investors, request a listed corporation or a corporation registered with the Association to confirm as to whether a rumor and news concerning such listed corporation or such corporation registered with the Association is true or not; and the Stock Exchange may, if the price or the trading volume of securities issued by a listed corporation significantly changes, request a listed corporation to disclose as to whether there is important information as prescribed in Article 188- 2. In this case, such corporation shall comply with this request without delay, except where it is difficult to make such disclosure due to other statutes or subordinate statutes, natural disaster or by other reasons similar thereto.

(3) If a listed corporation fails to discharge faithfully the duty to report pursuant to paragraph (1) or to comply with a request for confirmation or disclosure pursuant to paragraph (2), the Stock Exchange shall inform this to the Financial Supervisory Commission so as to take measures as prescribed in the provisions of Article 193.

(4) The provisions of Articles 8 (2), 14 through 16 shall apply *mutatis mutandis* to reports pursuant to the provisions of paragraph (1).

(5) Where the Financial Supervisory Commission, the Stock Exchange or the Association deems it necessary to promptly inform an investor of the contents of the matters listed in paragraph (1) 1, 3, 6, 8 and 11 and matters requested to be confirmed or disclosed under paragraph (2) as they threaten to have important effects on the investors' judgement to invest, it may request any administrative agency or other related agencies to provide or exchange necessary information pursuant to Presidential Decree. In this case, the agency that receives such request shall cooperate with it unless there exists any special cause.

Article 186-2
(Submission of Annual Business Report, etc.)

(1) A stock-listed corporation, Association-registered corporation or corporations as prescribed by Presidential Decree shall submit an annual business report to the Financial Supervisory Commission and, the Stock Exchange or the Association, as

the case may be, within 90 days after the lapse end of each business year: *Provided,* That the same shall not apply to the case as prescribed by Presidential Decree.

(2) The objective, trade name, contents of business and matters concerning finance of a corporation and other matters as prescribed by Presidential Decree shall be stated in the annual business report as provided under paragraph (1).

(3) Where a corporation must submitan annual business report as provided under paragraph (1) for the first time, it shall promptly (by the time limit for submission, where a corporation is subject to submission of an annual business report during the period to submit the business report referred to in paragraph (1)) submit an annual business report of the immediately preceding business year to the Financial Supervisory Commission and the Stock Exchange or the Association: *Provided,* That this shall not apply where the corporation has already disclosed the matters equivalent to the annual business report of the immediately preceding business year through a registration statement, etc., of the securities.

(4) The annual business report pursuant to paragraph (1) shall be prepared in accordance with such method and form determined by Ordinance of the Financial Supervisory Commission by type and line of business.

(5) Where a corporation that has to submit an annual business report pursuant to paragraph (1) is a company affiliated with a conglomerate group that has to prepare conglomerate group combined financial statements pursuant to Article 1-3 of the Act on External Audit of Stock Companies, it shall submit conglomerate group combined financial statements as prescribed by subparagraph 3 of Article 1-2 of the same Act to the Financial Supervisory Commission and the Stock Exchange or the Association within six months from the end of a business year.

Article 186-3
(Submission of Semiannual Report)

A corporation that must submit an annual report pursuant to the provisions of Article 186-2 (1) shall submit a business report for 6 months from the beginning of a business year (hereinafter referred to as a "semiannual business report") and a business report for both 3 months and 9 months from the beginning of a business year to the Financial Supervisory Commission and the Stock Exchange or the Association, as the case may be, within 45 days after the end of the period.

Article 186-4
(Special Treatment concerning Foreign Corporations, etc.)

Notwithstanding the provisions of Articles 186-2 and 186-3, differ-

ent regulations, such as providing for different period of submission, etc., may apply with respect to a foreign corporation, etc., under the conditions as prescribed by Presidential Decree.

Article 186-5
(Provisions Applied Mutatis Mutandis)

The provisions of Articles 8 (2), 11 (1) through (3), 14 through 16, 18, 19 through 20 shall apply *mutatis mutandis* to the annual business report, semiannual business report, and quarterly business report.

Article 187
Deleted. <by Act No. 5254, Jan. 13, 1997>

SECTION 2
Prohibition of Unfair Trade, etc.

Article 188
(Disgorgement of Short Swing Profits of Insider, etc.)

(1) Officers, employees or major stockholders of a stock-listed corporation or Association-registered corporation (referring to those who hold stocks or contribution certificates of 10/100 or more of the total number of voting stocks issued and outstanding or contributions for their own account regardless of the title thereof, and those who are prescribed by Presidential Decree; hereinafter the same shall apply) shall not sell certificates of stocks (including contribution certificates), convertible bonds, bonds with warrants, warrants and securities as prescribed by Ordinance of the Ministry of Finance and Economy. (hereinafter referred to as "stock certificates, etc.") of a corporation listed on the Stock Exchange or registered with the Association, unless they own such stock certificates, etc.

(2) Where officers, employees or major stockholders of a stock-listed corporation or Association-registered corporation gain any profit by selling stock certificates, etc., of the corporation concerned within six months after purchasing them, or by purchasing such stock certificates within six months after selling them, the corporation concerned may request such officers, employees or major stockholders of a stock-listed corporation to give such profit to the corporation. In this case, necessary matters relating to standards for calculation of such profit and procedures for return, etc., shall be determined by Presidential Decree.

(3) Stockholders of the corporation concerned or the Securities Futures Commission may demand such corporation to make the request pursuant to the provisions of paragraph (2), and

such stockholders or the Securities Futures Commission may, unless the corporation concerned makes such request within two months after the date on which such stockholders or the Securities Futures Commission have demanded such request, make such request by subrogating the corporation concerned.

(4) When stockholders or the Securities Futures Commission instituting a legal action according to the provisions of paragraph (3) prevail, the Securities Futures Commission or such stockholders may claim the legal costs and other actual expenses actually incurred in the legal action against the corporation concerned.

(5) The right referred to in paragraphs (2) and (3) shall lapse, unless the right is exercised within two years after the date on which such profit is gained.

(6) Any officer or major stockholder of a stock-listed corporation or Associationregistered corporation shall report the situation of such stocks of the corporation concerned, that they hold for their own account regardless of the title thereof to the Securities Futures Commission, and the Stock Exchange or the Association under the conditions as designated by Presidential Decree within ten days after that person becomes an officer or major stockholder; and if the number of stocks held by that person changes, that person shall report such fact to the Securities Futures Commission and the Stock Exchange or the Association under the conditions as designated by Ordinance of the Ministry of Finance and Economy within the 10th day of the month following the month in which such change occurs is included.

(7) The Securities Futures Commission and the Stock Exchange or the Association shall keep the registration statement pursuant to paragraph (6), and shall make it available for public inspection.

(8) The provisions of paragraph (2) shall not apply in such case as prescribed by Presidential Decree taking into consideration of the nature of selling or purchasing that was carried out in the capacity of an officer, employee or major stockholder, and in such case where a major stockholder does not hold such capacity at a time when that person sells or purchases stocks.

(9) The provisions of paragraph (2) or (3) shall apply *mutatis mutandis* to a securities company that makes arrangements for a public offering of new or outstanding securities or underwrites stocks issued by a stock-listed corporation or Association-registered corporation during the period as determined by Presidential Decree.

Article 188-2
(Prohibition of Using Nonpublic Information)

(1) Any person who is informed of material nonpublic information

in relation with affairs, etc., of a listed corporation or Association-registered corporation (including corporations listed or registered with the Association within six months) in the course of performing their duties, from among those who fall under any of the following subparagraphs (including those for whom one year has not passed after they do not to fall under any of subparagraphs 1 through 5 of this paragraph), and those who are informed of such information from that person, shall not use or have another person use such information in connection with the sale and purchase or any other transaction of securities issued by the corporation concerned:

1. The corporation concerned and its officers, employees and agents;
2. Major stockholders of the corporation concerned;
3. A person who has the authority pursuant to statutes or subordinate statutes of permission, approval, direction, supervision or other authorities with respect to the corporation concerned;
4. A person who entered into a contract with the corporation concerned; and,
5. An agent and other employees of a person who falls under any of subparagraphs 2 through 4 (in case a person who falls under any of subparagraphs 2 through 4 is a corporation, officers, employees and agents of such corporation).

(2) The term "material nonpublic information" in paragraph (1) means information that may have an important effect on investors' judgment on investment and has not yet been yet to the public by the corporation concerned that a large number of persons may be informed thereof under the conditions as prescribed by Ordinance of the Ministry of Finance and Economy from among any information on facts, etc., falling under any subparagraph of Article 186 (1).

(3) The provisions of paragraphs (1) and (2) shall apply *mutatis mutandis* to the case of performing a tender offer pursuant to Article 21. In this case, the term "the corporation concerned" in the main sentence of paragraph (1) shall be considered as the term "issuer of securities that are subject to a tender offer"; the term "material information," as the term "information on carrying out or preventing a tender offer"; and the term "the corporation concerned" in each subparagraph of paragraph (1), as the term "tender offerer".

Article 188-3
(Liability for Damages against Using Undisclosed Information)

(1) Any person who violates the provisions of Article 188-2, shall be liable for damages that a person who has made a purchase of securities and sale or other transaction suffers from that transaction.

(2) The claim for damages pursuant to paragraph (1) shall be extinguished by prescription, unless a claimant exercises such claim for damages within one year after the claimant is informed of the fact that an act in violation of the provisions of Article 188-2 has been committed or within three years after the offense has taken place.

Article 188-4
(Prohibition of Unfair Transaction such as Market Manipulation)

(1) No person shall do any acts that fall under any of the following subparagraphs for the purpose of creating a misleading appearance of active trading or causing any person to make a false judgment with respect to the transaction of securities listed on the securities market or registered on the Association brokerage market:
   1. Selling securities after a person has conspired in advance with another person that the other person will purchase the securities at the same time and at the same price that the person sells the securities;
   2. Purchasing securities after a person has conspired in advance with another person that the other person will sell the securities at the same time and at the same price that the person purchases the securities;
   3. Fictitious transactions that do not accompany the transfer of ownership in a securities transaction; and,
   4. Entrusting or being entrusted with actions as prescribed in subparagraphs 1 through 3 of this paragraph.

(2) No person shall do any acts which fall under any of the following subparagraphs for the purpose of inducing the transaction on a securities market or Association brokerage market:
   1. To effect, to entrust or to be entrusted with, alone or in conspiracy with other persons, transactions in the securities, creating a false or misleading appearance of active trading or making the price of such securities fluctuate;
   2. Disseminatings rumors that the price of a concerned securities fluctuates as a result of their own or another person's market manipulation; and,
   3. Willfully making representations that are false or misleading with respect to important matters in selling or purchasing the concerned securities.

(3) No person shall effect, entrust or to be entrusted with, independently or jointly, transactions on the securities market or Association brokerage market for the purpose of pegging or stabilizing the price of securities in violation of the conditions as prescribed by Presidential Decree.

(4) With respect to purchases and sales or other transaction of se-

curities, no person shall commit an act that falls under any of the following subparagraphs:

1. Disseminating intentionally false quotations or untrue facts or other rumors or using a deceptive scheme for the purpose of gaining unjust benefits; and,
2. Intending to gain money or other benefits that has property value by inducing misunderstanding by other persons through false representations of any material facts or making use of documents in which a necessary fact is omitted.

Article 188-5
(Liability for Damages against Market Manipulation)

(1) A person who violates the provisions of Article 188-4 shall be liable for damages that a person who has effected a securities transaction or has entrusted a securities transaction on a securities market or Association brokerage market at the price formed due to such violative act suffers from such transaction or entrustment.

(2) The claim for damages pursuant to paragraph (1) shall be extinguished by prescription, unless a claimant exercises such claim for damages within one year after the claimant is informed of the fact that an act in violation of the provisions of Article 188-4 is committed or within three years after the offense has taken place.

SECTION 3
Special Treatment for Listed Corporation, Etc.

Article 189
Deleted. <by Act No. 5736, Feb. 1, 1999>

Article 189-2
(Acquisition of Treasury Stocks)

(1) Any stock-listed corporation or any corporation registered with the Association shall acquire treasury stocks (excluding the acquisition under the provisions of Article 341 of the Commercial Act) in a manner falling under any of the following subparagraphs under its name and for its own account. In this case, the acquisition amount shall be an amount as determined by Presidential Decree within the limit of allowing any dividend in accordance with the provisions of Article 462 (1) of the Commercial Act:

1. A manner in which the acquisition is made on the securities market or the Association brokerage market; and,
2. A manner in which the open purchase is made in accordance with the provisions of Chapter IV

(2) Where a stock-listed corporation or a corporation registered with the Association acquires treasury stocks through a money trust contract as prescribed by Presidential Decree, an amount calculated according to what is prescribed by Presidential Decree shall be deemed the acquisition amount as described in the provisions of the later part of paragraph (1).

(3) Where a stock-listed corporation or Association-registered corporation acquires treasury stock pursuant to paragraphs (1) and (2) or intends to dispose of treasury stock acquired pursuant to paragraphs (1) and (2), it shall report the matters relating to the acquisition or disposal of such treasury stock to the Financial Supervisory Commission and, the Stock Exchange or the Association according to the criteria as prescribed by Presidential Decree, such as the necessary conditions and procedures, etc.

(4) Where a stock-listed corporation or Association-registered corporation owns the treasury stock in excess of the limit as referred to in paragraph (1) due to a reduction of the limit to distribute the dividend, the stock-listed corporation shall dispose of the excessive portion within such period as prescribed by Presidential Decree from that day.

(5) The provisions of Articles 14 (1), 15, 16, 19 and 20 shall apply *mutatis mutandis* in the case of acquiring or disposing of treasury stock.

(6) The provisions of Article 341-2 (1) of the Commercial Act shall not apply to the case where a stock-listed corporation or a corporation registered with the Association acquires treasury stock pursuant to the provisions of paragraph (1).

Article 189-3
(Capital Increase by Public Offering)

(1) A stock-listed corporation or Association-registered corporation may issue new stocks by public offering as prescribed by Presidential Decree by a resolution of the board of directors in accordance with the articles of incorporation of the corporation.

(2) In case new stocks are issued by a public offering pursuant to paragraph (1), the price of new stock shall be not less than the price calculated by the methods as prescribed by Presidential Decree.

Article 189-4
(Stock Options)

(1) Notwithstanding the provisions of Article 340-2 through Article 340-5 of the Commercial Act, any stock-listed corporation or any corporation registered with the Association shall as prescribed by the articles of incorporation offer newly issued stocks at a pre-determined price or as prescribed by Presiden-

tial Decree grant the right to purchase its stocks in accordance with the provisions of this Article to its officers and employees (excluding any officer or employee prescribed by Presidential Decree) who have contributed or are able to contribute to the establishment, management and to the technological innovations, etc., of such corporation a resolution (hereinafter in this Article referred to as a "special resolution") adopted in accordance with the provisions of Article 433 of the Commercial Act.

(2) Any stock-listed corporation or a corporation registered with the Association (hereinafter referred to as the "stock option granting corporation") that intends to grant stock options shall enter matters falling under each of the following subparagraphs in its articles of incorporation:

1. The fact that a corporation may grant stock options in certain cases;
2. Types and total number of stocks to be issued through the exercise of stock options;
3. Qualifications of a person who is to be granted stock options; and,
4. The fact that a corporation may cancel stock options in certain cases.

(3) Total limit of stocks to be granted by special resolution and such other matters determined by such special resolution, including the names of persons who are granted stock options and the option price, shall be prescribed by Presidential Decree.

(4) stock options under paragraph (1) may be exercised after the lapse of three years from the date on which a resolution thereof is adopted, and stock options shall be exercisable against the corporation concerned during the period from the date of resolution to the date on which the exercise of stock options expires. In this case, any person who has been granted stock options may exercise such stock option only after that person holds office or works for not less than 2 years from the date of resolution under paragraph (1) except as otherwise prescribed by Ordinance of the Ministry of Finance and Economy.

(5) stock options shall not be transferred to other persons: *Provided,* That when a person who has been granted stock options dies, a successor of the person shall be deemed to be granted such option.

(6) The provisions of Articles 340-3 (3),350 (2), the latter part of 350 (3), 351, 516-8 (1), (3) (4) and the former part of 516-9 of the Commercial Act shall apply *mutatis mutandis* to the case in which new stocks are issued by the exercise of stock options.

(7) The Financial Supervisory Commission may give necessary recommendations to a corporation granting stock options under the conditions as prescribed by Presidential Decree.

(8) A corporation granting stock options shall, when making a

resolution pursuant to paragraph (1), report such fact to the Financial Supervisory Commission and the Stock Exchange under the conditions as prescribed by Presidential Decree, and the Financial Supervisory Commission and the Stock Exchange shall keep the registration statement during the period from the date of report to the end of the duration of the stock options and shall make it available for public inspection.

(9) Matters necessary for stock options other than those provided in paragraphs (1) through (8) shall be prescribed by Presidential Decree.

Article 190
(Merger of Stock-Unlisted Corporation)

In case of a merger between a stock-listed corporation and a stock-unlisted corporation, the approval by a general meeting of stockholders pursuant to Article 522 of the Commercial Act shall not take effect unless it is made after two months from the date on which the stock-unlisted corporation has registered pursuant to Article 3.

Article 190-2
(Merger, etc.)

(1) A stock-listed corporation or Association-registered corporation shall, where it intends to merge with other corporations, report to the Financial Supervisory Commission and the Stock Exchange or the Association. In this case, the stocklisted corporation shall report the matters relating to the merger according to standards for merger conditions such as the requirements and procedures as prescribed by Presidential Decree.

(2) The provisions of paragraph (1) shall apply *mutatis mutandis* where a stocklisted corporation or Association-registered corporation intends to spin-off or do a spin-off merger, or transfer or take over important business as prescribed by Presidential Decree.

(3) The provisions of Articles 8 (2), 14 through 16, 19 and 20 shall apply *mutatis mutandis* in case of a report under paragraphs (1) and (2).

Article 191
(Appraisal Rights of Stockholders)

(1) A stockholder (including stockholders who has no voting right pursuant to Article 370 (1) of the Commercial Act; hereinafter the same shall apply in this Article) who opposes a resolution made at the meeting of the board of directors of a stock-listed corporation with regard to the matters under Articles 374, 522, 527-2 and 530 of the Commercial Act (limited to a spin-off merger by referred to in Article 530-2 of said Act) may demand that the corporation concerned purchase the stocks that the

stockholder owns within twenty days after the date on which such resolution is made at the general meeting of stockholders (the date on which two weeks have passed since the public notice or notification referred to in Article 527-2 (2) of the Commercial Act for stockholders of a company to be extinguished referred to in Article 527-2 of the said Act) by a written request that states the class and number of stocks, only if the stockholder has made written notification that the stockholder opposes the resolution of the corporation concerned prior to the general meeting of stockholders (within two weeks from the date on which a public notice or notification under Article 527-2 (2) of the Commercial Act for stockholders of a company to be extinguished under Article 527-2 of the same Act).

(2) A stock-listed corporation that has received a demand pursuant to paragraph (1) shall purchase the stocks concerned within one month after the expiration of the period of the demand for purchase.

(3) The purchase price under paragraph (2) shall be determined by consultation between the stockholder concerned and the corporation concerned: *Provided,* That the purchase price shall, where a purchase agreement has not been concluded, be an amount calculated through the methods as prescribed by Presidential Decree based on the transaction values of the stocks concerned traded on the securities market prior to the date of the board of directors' resolution, and where the corporation concerned or 30/100 or more of the total number of stockholders who have demanded such purchase object to this purchase price, the Financial Supervisory Commission may adjust it. In this case, an application for adjusting the purchase price shall be made ten days prior to the date on which such a purchase is to be finalized pursuant to paragraph (2).

(4) A stock-listed corporation shall, where it purchases stock pursuant to paragraph (1), dispose of them within a period as prescribed by Presidential Decree.

(5) Where a stock-listed corporation makes notification or public notice for the convening of a general meeting of stockholders in order to resolve the matters prescribed in Articles 374, 522 and 530-3 of the Commercial Act (limited to spin-off mergers referred to in Article 530-2 of the said Act) or makes notification or public notice pursuant to Article 527-2 (2) of the Commercial Act under the conditions as prescribed by Article 363 of the Commercial Act, it shall specify the contents and exercising method of appraisal rights of stockholders pursuant to paragraph (1). In this case, a stock-listed corporation shall notify stockholders without voting rights pursuant to Article 370 (1) or give a public notice thereof to them.

Article 191-2
(Special Treatment of Nonvoting Stocks)

(1) In applying the limit on the number of nonvoting stocks pursuant to Article 370 (2) of the Commercial Act, where a stock-listed corporation (including a corporation that makes a public offering of new or outstanding stocks for the purpose of listing them initially) or an Association-registered corporation (including a corporation that makes a public offering of new or outstanding stocks for the purpose of trading them initially on the Association brokerage market) falls under any of the following subparagraphs, the nonvoting stocks issued by such corporation shall not be counted in the calculation of the limit:

1. Where such corporation issues stocks in a foreign country as prescribed by Ordinance of the Ministry of Finance and Economy or issues stocks as a result of the excercise of the rights upon convertible bonds, bonds with warrants or any other certificates or instruments related to stocks issued in a foreign country; and,
2. Where a corporation that is deemed necessary to issue nonvoting stocks in the public interest by the Financial Supervisory Commission and satisfies the criteria as prescribed by Presidential Decree from among corporations engaging in an important industry for the national economy, such as key national industries, issues stocks.

(2) The aggregate number of nonvoting stocks falling under any subparagraph of paragraph (1) and those pursuant to Article 370 (2) of the Commercial Act shall not exceed 1/2 of the total number of issued and outstanding stocks.

(3) A corporation of which the total number of nonvoting stocks exceeds 1/4 of the total number of issued and outstanding stocks may issue nonvoting stocks within that amount, by means of exercising preemptive rights, capitalization of reserve or stock dividend, etc., as prescribed by Presidential Decree.

Article 191-3
(Special Treatment of Stock Dividend)

(1) Notwithstanding the proviso of Article 462-2 (1) of the Commercial Act, a stocklisted corporation or Association-registered corporation may grant a dividend by newly issuing stock up to the limit of the total amount of dividend: *Provided,* That in case the current price of the concerned stock is less than par value thereof, the same shall not apply.

(2) The method of calculating the price of stock pursuant to paragraph (1) shall be prescribed by Presidential Decree.

Article 191-4
(Issuance of New Type Corporate Bonds)

(1) A stock-listed corporation or Association-registered corpora-

tion may issue new types of bonds that are different from those under Articles 513 (1) and 516-2 (1) of the Commercial Act such as bonds entitled to participate in dividends, bonds with rights to demand an exchange with stocks or other securities, or other bonds as prescribed by Presidential Decree.

(2) Necessary matters such as the contents or method of issuance of bonds issued pursuant to the provisions of paragraph (1) shall be prescribed by Presidential Decree.

Article 191-5
(Special Treatment of Issuance of Bonds)

The portion that can be converted into stocks or which preemptive rights can be exercised among the convertible bonds or bonds with warrants that are issued by a stock-listed corporation or Association-registered corporation shall not be subject to the limits of the issuance of bonds pursuant to the provisions of Article 470 of the Commercial Act.

Article 191-6
(Special Treatment of Dividend by Public Corporation)

(1) In paying dividend of profits or interest, a public corporation (referring to a public corporation pursuant to the provisions of Article 199 (2) of this Act) may, notwithstanding the provisions of Article 464 of the Commercial Act, pay all or part of the dividends to which the Government is entitled to persons who fall under any of the following subparagraphs from among stockholders of the concerned corporation under the conditions as prescribed by Presidential Decree:

1. Employees who are members of an employee stock ownership association of the corporation that issued the stocks concerned; and,
2. Any person as prescribed by Presidential Decree, taking into consideration their yearly income level and amount of property owned, etc.

(2) In capitalizing all or a part of a reserve, a public corporation may, notwithstanding the provisions of Article 461 (2) of the Commercial Act, issue stocks, to which the Government is entitled for all or in part to stockholders who hold stocks issued by the public corporation for a period as prescribed by Presidential Decree.

Article 191-7
(Preferential Allocation to Member of Employee Stock Ownership Association)

(1) In case a stock-listed corporation or a corporation that intends to list stocks publicly offers or sells its stocks, members of a employee stock ownership association of such corporation shall

have the right to be allocated preferentially such stocks within the limit of 20/100 of the total number of stocks to be offered or sold: *Provided,* That where it falls under any of the following subparagraphs, this shall not apply:

1. A case where a corporation as prescribed by Presidential Decree from among foreign-invested enterprises pursuant to the Foreign Investment Promotion Act issues stocks; and,
2. Other cases prescribed by Presidential Decree such as where preferential allocation to member of employee stock ownership association is difficult.

(2) Where the number of stocks owned by members of employee stock ownership association is more than 20/100 of the total number of stocks issued newly and stocks to have been issued already, paragraph (1) shall not apply.

(3) The Minister of Finance and Economy may determine the criteria necessary for the stock dividends for members of a employee stock ownership association pursuant to paragraph (1) and for the disposal of such stocks.

Article 191-8
(Payment of Deposit with Listed Securities, etc.)

(1) Deposit or deposit money as prescribed by Presidential Decree from among those which are to be paid to the State, a local government or a government-invested institution pursuant to the Framework Act on the Management of Government-Invested Institutions (hereinafter referred to as a "government-invested institution") may be paid with listed securities (including securities registered with the Association pursuant to Article 172-2; hereinafter the same shall apply in this Article).

(2) The State, a local government or a government-invested institution may not refuse a payment with listed securities pursuant to paragraph (1).

(3) The listed securities that are eligible for payment to the State, local government or government-invested institution pursuant to paragraph (1) and the valuation standard of such securities shall be prescribed by Presidential Decree.

Article 191-9
Deleted. **<by Act No. 6176, Jan. 21, 2000>**

Article 191-10
(Public Notice on Convocation of General Meeting)

(1) In case a stock-listed corporation or Association-registered corporation convenes a general meeting of stockholders, with respect to stockholders who hold stocks not more than the

number as prescribed by Presidential Decree, the notice of (convocation)convening pursuant to Article 363 (1) of the Commercial Act may be substituted by setting the date of a general meeting of stockholders under the conditions as prescribed by the articles of incorporation of the corporation and giving two or more public notices concerning the convening of a general meeting of stockholders and the subject matters of the meeting two or more daily newspapers at least two weeks before the date of the general meeting of stockholders.

(2) A stock-listed corporation or Association-registered corporation shall, in case it gives a notice of convocation of a general meeting of stockholders or a public notice thereof, give a notice or public notice of such (matters for reference)reference matters relating to the management of the corporation as prescribed by Presidential Decree or keep them at the place as determined by Ordinance of the Ministry of Finance and Economy.

Article 191-11
(Appointment and Dismissal of Auditor)

(1) Where the total number of voting stocks of a stock-listed corporation or Association-registered corporation owned by the largest shareholder and their specially related persons or other persons as prescribed by Presidential Decree exceeds 3/100 of the total number of issued and outstanding stocks of such corporation (in case the articles of incorporation of the corporation designates a ratio lower than 3/100, such ratio shall apply), such stockholders shall not exercise their voting rights for those stocks exceeding such ratio in the appointment or dismissal of an auditor or a member of the audit committee (limited to any member who is not an outside director).

(2) Where a stock-listed corporation or Association-registered corporation proposes to appoint an auditor or determine the remuneration of an auditor as an agenda matter for a general meeting of stockholders, they should propose and resolve such agenda matters separately from an appointment of a director or for determination of remuneration for a director.

(3) An auditor or a member of the audit committee of a stock-listed corporation or Association-registered corporation may, notwithstanding Article 447-4 (1) of the Commercial Act, submit an audit report to the directors until one week before the date of general meeting of stockholders.

Article 191-12
(Qualifications for Auditor)

(1) A stock-listed corporation or Association-registered corporation as prescribed by Presidential Decree shall appoint one or more standing auditors: Provided That the same shall not ap-

ply to the case in which an audit committee is established in accordance with this Act or other Acts.

(2) Deleted. *<by Act No. 5736, Feb. 1, 1999>*

(3) A person who falls under any of the following subparagraphs shall not become a standing auditor of a stock-listed corporation or Association-registered corporation, and any auditor of a stock-listed corporation who falls under any of the following subparagraphs shall lose their office:

1. A minor, an incapacitated person or quasi-incapacitated person;
2. A bankrupt person who has not been reinstated yet;
3. A person who has been sentenced to a punishment heavier than imprisonment without prison labor, and two years has not elapsed since the execution of such punishment has terminated or since the final judgment was rendered that the punishment on such person would not be executed;
4. A person who was discharged or dismissed from a stock-listed corporation, and two years has not elapsed since the date of such discharge or dismissal under this Act;
5. A major stockholder of the corporation concerned;
6. A full-time officer or employee of the corporation concerned or a person who has been a full-time officer or employee thereof in the last two years; and,
7. A person who is capable of having influence on the management of the corporation concerned other than those under subparagraphs 5 and 6 and who is prescribed by Presidential Decree.

Article 191-13
(Exercise of Minority Stockholders' Rights)

(1) A person who has *held* 1/10,000 or more of the total number of issued and outstanding shares of a stock-listed corporation or Association- registered corporation for six months *as prescribed by* Presidential Decree may exercise the stockholder's rights prescribed in Article 403 (including where it is applicable *mutatis mutandis* under Articles 324, 415, 424-2, 467-2 and 542 of the Commercial Act) of the Commercial Act.

(2) A person who has *held* 50/10,000 or more (in case of a corporation as prescribed by Presidential Decree, 25/10,000) of the total number of issued and outstanding shares of a stock-listed corporation or Association-registered corporation for six months *as prescribed by* Presidential Decree may exercise the stockholder's rights prescribed in Article 385 (including cases applied *mutatis mutandis* under Article 415 of the Commercial Act) of the Commercial Act.

(3) A person who has *held* 10/1000 or more (in case of a corporation as prescribed by Presidential Decree, 5/1000 or more)of

the total number of issued and outstanding shares of a stock-listed corporation or Association-registered corporation for six months *as prescribed by* Presidential Decree may exercise the stockholder's rights prescribed in Article 466 of the Commercial Act.

(4) A person who has *held* 30/1000 or more (in case of a corporation as prescribed by Presidential Decree, 15/1000 or more) of the total number of issued and outstanding shares of a stock-listed corporation or Association-registered corporation for six months *as prescribed by* Presidential Decree may exercise the stockholder's rights prescribed in Articles 366 and 467 of the Commercial Act. In this case, when a person exercises the stockholder's rights prescribed in Article 366 of the Commercial Act, the number of shares shall be calculated based on voting shares.

(5) When a stockholder pursuant to paragraph (1) of this Article institutes a legal action as prescribed in Article 403 (including where it is applicable *mutatis mutandis* under Articles 324, 415, 424-2, 467-2 and 542 of the Commercial Act) and prevails in such legal action, the stockholder may request the payment of the costs of the legal action and all other costs resulting from such legal action.

Article 191-14
(Stockholder's Proposal)

(1) A person who has 10/1000 or more (in case of a corporation as prescribed by Presidential Decree, 5/1000 or more) of the total number of issued and outstanding shares of a stock-listed corporation or Association-registered corporation for six months as prescribed by Presidential Decree may propose to the directors that such directors place certain matters as agenda matters of the general meeting of stockholders under the conditions as prescribed by Presidential Decree (hereinafter referred to as "stockholder's proposal").

(2) Any person who makes a proposal as a shareholder pursuant to the provisions of paragraph (1) may ask directors to enter the summary of their proposal in a publication and a notice thereof in accordance with the provisions of Article 363 of the Commercial Act in addition to matters to be placed on the agenda of a general meeting of shareholders on the conditions as prescribed by Presidential Decree.

(3) The board of directors shall submit stockholder's proposals before the general meeting of stockholders as the agenda matters thereof, except where the contents of the stockholder's proposal violate statutes or subordinate statutes, the articles of incorporation or in the case as prescribed by Presidential Decree, and where a person who makes a stockholder's proposal requests, the board of directors shall give that person an

opportunity to explain the concerned proposal at the general meeting of stockholders.

Article 191-15
(Special Cases for Issuance Below Par Value)

(1) Notwithstanding the provisions of Article 417 of the Commercial Act, a stocklisted corporation may issue stock below par value only by a resolution of the general meeting of stockholders under Article 434 of the Commercial Act without authorization of a court: *Provided,* That this shall not apply where the corporation concerned fails to complete a redemption under Article 455 (2) of the Commercial Act.

(2) The minimum issue value for stock shall be determined by a resolution of the general meeting of stockholders under paragraph (1). In this case, the minimum issue value shall be higher than the price calculated according to the methods as determined by Presidential Decree.

(3) Except as otherwise determined by the general meeting of stockholders, stockunder paragraph (1) shall be issued within one month from the date on which a resolution of the general meeting of stockholders is made.

Article 191-16
(Appointments of Outside Directors)

(1) Stock-listed corporations must make outside directors not less than one fourth of the total number of directors: Provided, That certain stock-listed corporations as prescribed by Presidential Decree must have not less than three outside directors, but must make the number of such outside directors not less than half of the total number of directors.

(2) The provisions of paragraph (1) shall not apply to a stocklisted corporation that is a securities investment company incorporated pursuant to the Securities Investment Company Act.

(3) The provisions of Article 54-5 (4) and (5) shall apply *mutatis mutandis* to any outside director of a stock-listed corporation referred to in paragraph (1) and the provisions of Article 54-5 (2) and (3) shall apply *mutatis mutandis* to the stocklisted corporation referred to in the proviso of paragraph (1).

(4) Any non-standing or any outside director appointed under the Act on the Improvement of Managerial Structure and Privatization of Public Enterprises, the Banking Act and other Acts shall be deemed to be appointed under this Act.

(5) Where any stock-listed corporation appoints any outside director or dismisses an outside directoror any outside director resigns prior to the expiration of their term of office, such stock-listed corporation shall file a report thereof to the

Financial Supervisory Commission and the Stock Exchange by the day following the day on which such appointment, dismissal or resignation occurs.

Article 191-17
(Audit Committee)

(1) Any stock-listed corporation prescribed by Presidential Decree shall establish an audit committee.

(2) The provisions of Article 54-6 (2) through (5) shall apply *mutatis mutandis* to the composition of the audit committee referred to in paragraph (1).

Article 192
(Standards for Financial Management of Stock-Listed Corporation)

(1) The Financial Supervisory Commission may, for the protection of investors and the establishment of a fair transaction order, prescribe the standards for financial management of any stock-listed corporation or any corporation registered with the Association and may give necessary recommendations, with respect to the matters falling under any of the following subparagraphs on the conditions as prescribed by Presidential Decree:

1. Matters relating to requirements for increases in paid-in capital;
2. Matters relating to reserves for the improvement of the financial structure;
3. Matters relating to dividends;
4. Matters relating to the issue of overseas securities prescribed by Presidential Decree; and,
5. Other matters that are corresponding to subparagraphs 1 through 4 and prescribed by Presidential Decree.

(2) A stock-listed corporation shall act in accordance with the standards for financial management referred to in paragraph (1).

Article 192-2
Deleted. **<by Act No. 5591, Dec. 28, 1998>**

Article 192-3
(Special Cases on Dividends)

(1) A stock-listed corporation or Association-registered corporation that which settles its accounts annually may pay profit dividends in cash (hereinafter referred to as "interim dividends") through a resolution of the board of directors to the stockholders only once during a business year by fixing a given

date under the conditions as determined by the articles of incorporation.

(2) A resolution of the board of directors listed in paragraph (1) shall be made not less than 45 days from the given date referred to in paragraph (1).

(3) The interim dividends referred to in paragraph (1) shall be paid not less than one month from the date on which the resolution of the board of direction has been made: *Provided,* That this shall not apply in case the articles of incorporation otherwise provide the time of paying the interim dividends.

(4) The interim dividends shall be within the limit of the net amount of property in a balance sheet in the immediately preceding term for the settlement of accounts:

1. The amount of capital in the immediately preceding term for the settlement of accounts;
2. The total amount of capital surplus reserve and earned surplus reserve accumulated until the immediately preceding term for the settlement of accounts;
3. The amount determined to pay profits at a regular general meeting in the immediately preceding term for the settlement of accounts; and,
4. The earned surplus reserve to be accumulated in the term for the settlement of accounts pursuant to interim dividends.

(5) Where the net amount of property in a balance sheet in the term for the settlement of accounts is likely to fall short of the total amount listed in subparagraphs of Article 462 (1) of the Commercial Act, no interim dividends shall be paid.

(6) Where the net amount of property in a balance sheet in the term for settlement of accounts falls short of the total amount listed in subparagraphs of Article 462 (1) of the Commercial Act, any directors' dividends shall be liable to compensate for the difference (where the interim dividends are smaller than the difference, the interim dividends) jointly against the corporation: *Provided,* That this shall not apply in case the director has proved that the director could not know that there was a concern listed in paragraph (5) even though the director had paid considerable attention to it.

(7) In applying the provisions of Articles 340 (1), 344 (1), 350 (3) (including where the provisions of Article 350 (3) are applicable *mutatis mutandis* under Articles 423 (1), 516 (2) and 516-9 of the Commercial Act), 354 (1), 370 (1), 457 (2), 458, 464 and subparagraph 3 of Article 625, interim dividends shall be deemed profit dividends referred to in Article 462 (1) of the Commercial Act, in applying the provisions of Article 350 (3) of the Commercial Act, a given date listed in paragraph (1) shall be deemed the end of a business year, and in applying the provisions of Article 635 (1) 22-2, the period listed in paragraph

(3) shall be the period listed in Article 464-2 (1) of the Commercial Act.

(8) The provisions of Articles 399 (3) and 400 of the Commercial Act shall apply where directors bear joint and several liability pursuant to paragraph (6) and the provisions of Article 642 (2) and (3) of the Commercial Act shall apply where interim dividends are paid in violation of paragraph (4).

Article 193
(Measures against Listed Corporation, etc.)

If any listed corporation or Association-registered corporation violates this Act, any orders or regulations pursuant to this Act or any orders of the Financial Supervisory Commission, the Financial Supervisory Commission may recommend to a general meeting of stockholders of such corporation that they terminate the directors or officers concerned, or may restrict the issuance of securities or take such measures as prescribed by Presidential Decree.

CHAPTER X
SUPPLEMENTARY PROVISIONS

Article 194
(Over-the-Counter Transactions)

(1) Transactions outside the securities market and an Association brokerage market, the method of settlement and other necessary matters shall be prescribed by Presidential Decree.

(2) Deleted. *<by Act No. 3945, Nov. 28, 1987>*

Article 194-2
(Report, etc. by Electronic Document)

Where a statement, report or other documents or data, etc., are filed with the Financial Supervisory Commission and the Securities Futures Commission, the Stock Exchange or the Association pursuant to this Act, such submission may be executed by electronic document under the conditions as prescribed by Presidential Decree.

Article 194-3
(Audit Certification by External Auditor)

(1) A person as prescribed by Presidential Decree who files financial documents with the Financial Supervisory Commission, the Stock Exchange or the Association pursuant to this Act, shall receive a financial accounting audit in accordance with the Act on External Audit of Stock Companies: *Provided,* That the same shall not apply in case Presidential Decree prescribes.

(2) The Financial Supervisory Commission may, if it deems neces-

sary to the public interest or the protection of investors, request that an external auditor pursuant to the Act on External Audit of Stock Companies who has conducted a financial accounting audit pursuant to paragraph (1) (hereinafter referred to as an "external auditor") or that such corporation that has been audited submit data a to report, and may take other necessary measures toward such external auditor or corporation.

(3) Where a foreign corporation, etc., receives a financial accounting audit based upon foreign securities statutes or subordinate statutes, and when the audit meets the standards as prescribed by Presidential Decree, it shall be considered that the foreign corporation, etc., has been audited pursuant to paragraph (1).

Articles 195 and 196
Deleted. <by Act No. 3541, Mar. 29,1982>

Article 197
(Compensation Liabilities of Auditors)

(1) The provisions of Article 17 (2) through (7) of the Act on External Audit of Stock Companies shall apply *mutatis mutandis* to the compensation liabilities of auditors toward *good faith* investors.

(2) The provisions of Article 15 shall apply *mutatis mutandis* in calculating the amount of compensation pursuant to paragraph (1).

(3) Deleted. *<by Act No. 5423, Dec. 13, 1997>*

Article 198
Deleted. <by Act No. 3541, Mar. 29,1982>

Article 199
(Restriction on Proxy Solicitation as to Voting Rights)

(1) No one shall solicit a proxy to exercise voting rights either through themselves or through other persons with respect to listed stocks or stocks registered in the Association in violation of the provisions of Presidential Decree.

(2) Where a listed corporation or registered corporation as prescribed by Presidential Decree engages in an important industry for the national economy, such as a national key industry, etc., (hereinafter referred to as a "public corporations"), only such public corporations may solicit a proxy to exercise the voting rights of its stocks under the conditions as prescribed by Presidential Decree.

Article 200
(Restriction, etc., on Ownership of Stocks Issued by Public Corporation)

(1) No one shall own for their account, regardless of whos(oever)e name it is in, stocks issued by a public corporation in excess of the criteria prescribed in the following subparagraphs. In this case, nonvoting stocks shall not be counted in the total number of issued and outstanding stocks, and stocks owned in the name of specially related persons shall be regarded as those owned for that person's account:

1. The rate of ownership at the time of the registration of the securities concerned with the Financial Supervisory Commission pursuant to Article 3, in case of stockholders who owned 10/100 or more of the total number of issued and outstanding stocks at such time; and,
2. The rate as determined by the articles of incorporation within the limit of 3/100 of the total number of issued and outstanding stocks, in case of persons other than stockholders pursuant to subparagraph 1.

(2) Notwithstanding the provisions of paragraph (1), if any person obtains the approval of the Financial Supervisory Commission on the rate limit of ownership, that person may own the stocks issued by a public corporation up to such limit.

(3) Any person whose beneficial ownership is in excess of the criteria referred to in paragraphs (1) and (2) shall not exercise voting rights on the stocks in excess, and the Financial Supervisory Commission may order such person to adjust their stockholding position so as to comply with the criteria concerned.

Article 200-2
(Report on Mass Holding, etc. of Stocks)

(1) Any person (excluding those who are prescribed by Presidential Decree) who holds voting stocks of a stock-listed corporation or Association-registered corporation in large quantities (this refers to such cases where the number of the stocks, etc., owned by the person himself and specially connected person is 5/100 or more of the total number of such stocks, etc.,), shall report the situation of their holdings to the Financial Supervisory Commission and the Stock Exchange (meaning the Association in case of an Association-registered corporation; hereinafter the same shall apply in this Article, within five days (the day as prescribed by Presidential Decree is not counted; hereinafter the same shall apply in this paragraph) from the day on which that person comes to hold such stocks, under the conditions as prescribed by Presidential Decree, and if the rate of that person's holding exceeds 1/100 of the total number of

stocks, etc., of such corporation (excluding such cases as prescribed by Presidential Decree), shall report the contents of such change to the Financial Supervisory Commission and the Stock Exchange, within five days after such change occurs, under the conditions as prescribed by Presidential Decree: *Provided,* That with respect to the institutional investors, etc., as prescribed by Presidential Decree, the time, contents, etc., of such report may be determined separately by Presidential Decree.

(2) The provisions of Article 21 (4) shall apply *mutatis mutandis* with respect to the method of calculating the number as prescribed in paragraph (1) and total number of stocks, etc.

(3) Where a report on a large holding of stocks, etc., or change therein is to be filed pursuant to paragraph (1), and (another) a new cause for a report occurs by the day immediately preceding the day on which the original report should be filed, such new change shall be reported together when the original large holding of stocks, etc., or a change therein has to be reported.

(4) The Financial Supervisory Commission and the Stock Exchange shall keep the reports as referred to in paragraph (1) and make them available for public inspection.

(5) If it is deemed necessary for protecting the public interest or investors, the Financial Supervisory Commission may order the reporter as referred to in paragraph (1), the company that has issued the stocks, etc., and other interested persons to file any report or materials for reference, or have the FSS Governor investigate any accounting books, documents and other matters.

(6) Any person who conducts the investigation as referred to in paragraph shall carry with them any credentials indicating their competence, and present it to any interested person.

Article 200-3
(Restriction on Exercise of Voting Rights of Stocks, etc.)

Any person who fails to report a large holding of stocks, etc., or a change therein (including a modification report thereof) in violation of the provisions of Article 200 (1) and (3) of this Act may not exercise the voting rights with respect to stocks held in violation of the provisions thereof that are held in excess of 5/100 of the total number of issued and outstanding voting stocks during the period as prescribed by Presidential Decree, and the Financial Supervisory Commission may order the disposal of the violating portion concerned.

Article 200-4
(Provisions to Apply mutatis mutandis*)*

The provisions of Articles 11 (1) through (3) and 20 shall apply *mutatis mutandis* to the case of reports on the situation of large holdings or reports on changes of the situation of large holdings.

Article 201
Deleted. <by Act No. 3541, Mar. 29, 1982>

Articles 202 and 202-2
Deleted. <by Act No. 5498, Jan. 8, 1998>

Article 203
(Restrictions on Acquisition of Securities by Foreigners)

(1) Acquisition of securities by a foreigner or foreign corporation, etc., may be restricted as prescribed by Presidential Decree.

(2) With respect to an acquisition of stocks of a public corporation by a foreigner or foreign corporation, etc., it may be restricted separately under the conditions as prescribed by the articles of incorporation of the public corporation in addition to the restriction pursuant to paragraph (1).

(3) Any person who has acquired stocks in contravention of the provisions of paragraph (1) or (2) may not exercise the voting rights to the stocks, and the Financial Supervisory Commission may order a correction to the person who acquired stocks in contravention of the provisions of paragraph (1) or (2).

(4) Deleted. *<by Act No. 5254, Jan. 13, 1997>*

Articles 204 through 206
Deleted. <by Act No. 5498, Jan. 8, 1998>

Article 206-2
(Delegation of Authority)

(1) The Financial Supervisory Commission may delegate part of its authority under this Act to the Securities Futures Commission under the conditions as prescribed by Presidential Decree.

(2) Where the Securities Futures Commission divides the matters delegated pursuant to paragraph (1), it shall make a report thereon without delay to the Financial Supervisory Commission.

(3) Where it is deemed that a decision by the Securities Futures Commission referred to in paragraph (2) is illegal, extremely unjust, or fails to protect the public interest or investors, the Financial Supervisory Commission may cancel all or part of such decision or suspend its execution.

(4) Matters under the authority of the Financial Supervisory Commission or the Securities Futures Commission under this Act that require urgent disposition may be delegated to the Chairman of the Financial Supervisory Commission or the Chairman of the Securities Futures Commission, respectively, and minor matters may be entrusted to the FSS Governor.

(5) Urgent matters and the scope of minor matters listed in

paragraph (4) shall be determined as prescribed by Presidential Decree.

Article 206-3
(Investigation by Financial Supervisory Commission and Securities Futures Commission)

(1) Where there is a violation of this Act or an order under this Act or, a violation of the regulations of or an order under the Financial Supervisory Commission, or where it is deemed necessary to protect the public interest or investors, the Financial Supervisory Commission (meaning the Securities Futures Commission for matters in violation of Articles 188, 188-2 and 188-4; hereinafter the same shall apply in this Article) may order a person concerned to submit a report or materials for reference or have the FSS Governor investigate books, documents or other matters.

(2) The Financial Supervisory Commission may demand the following matters from persons concerned in order to make an investigation referred to in paragraph (1):
1. Submission of a statement on the facts and situation concerning matters to be investigated;
2. Appearance for testimony concerning the matters to be investigated; and,
3. Submission of books, document or other matters necessary for an investigation.

(3) Where it is deemed necessary to make an investigation referred to in paragraph (1), the Financial Supervisory Commission may request a securities-related institution to submit documents necessary for an investigation under the conditions as determined by Presidential Decree.

(4) Where a violation of this Act or an order under this Act, or a violation of the regulations of or an order under the Financial Supervisory Commission has been established as a result of an investigation referred to in paragraph (1), the Financial Supervisory Commission may make an order for correction or take other measures as prescribed by Presidential Decree, and may determine the procedures and standards and other matters necessary for an investigation and for taking measures therein.

(5) Where the Stock Exchange or the Association suspects a violation of this Act or an order under this Act or a violation of the regulations of or an order under the Financial Supervisory Commission as a result of a member's supervision over an abnormal sale, it shall notify the Financial Supervisory Commission.

Article 206-4
(Exchange of Information with Foreign Securities Supervisory Agencies)

(1) The Financial Supervisory Commission may exchange information with foreign securities supervisory agencies.

(2) Where the Financial Supervisory Commission intends to exchange information under paragraph (1), it shall consult the Minister of Finance and Economy: *Provided,* That this shall not apply to cases as prescribed by Presidential Decree.

(3) The Financial Supervisory Commission (referring to the Securities Futures Committee in case of matters relating to a violation of the provisions of Article 188-2 and Article 188-4) may, where a foreign securities supervisory agency asks for its cooperation in conducting a survey or an inspection under this Act, and expressly gives its objective and scope, etc., of such survey or inspection, cooperate with such foreign securities supervisory agency.

Article 206-5
(Deliberation by Securities Futures Commission)

In a case falling under any of the following subparagraphs, the Financial Supervisory Commission shall pass deliberation by the Securities Futures Commission:

1. Where it provides for matters falling under any of the following:
   (a) Documents for registration referred to in Article 4;
   (b) Criteria for administration of registered corporations referred to in Article 6;
   (c) Procedures and criteria for taking measures referred to in Article 20 (including where it is applicable *mutatis mutandis* under Articles 27-2, 186-5, 189-2 (5), 190-2 (3) and 200-4);
   (d) Standards for financial management of listed corporations or corporations registered with the Association referred to in Article 192 (1); and,
   (e) Procedures and standards for investigation and measures taken by the Financial Supervisory Commission referred to in Article 206-3 (4).
2. Where it takes measures or issue orders falling under any of the following:
   (a) Measures referred to in Article 20 (including where it is applicable *mutatis mutandis* under Articles 27-2, 186-5, 189-2 (5), 190-2 (3) and 200-4);
   (b) Orders referred to in Article 54 (including where it is applicable *mutatis mutandis* under Article 70-7);
   (c) Adjustment of purchase price of stocks referred to in Article 191 (3);

(d) Approval of the issuance of nonvoting stocks referred to in Article 191-2 (1) 2;
(e) Measures referred to in Article 193;
(f) Approval of stockholding rate limit referred to in Article 200 (2);
(g) Measures pursuant to the results of investigation referred to in Article 206-3 (4);
(h) Disposition to impose penalties referred to in Article 206-11; and,
(i) Disposition to impose a fine for negligence referred to in Article 213 (3).

3. Matters other than those listed in subparagraphs 1 and 2 that the Financial Supervisory Commission deems deliberation by the Securities Futures Commission to be necessary.

Article 206-6
(Direction and Supervision, etc. over FSS Governor)

Where the Financial Supervisory Commission or the Securities Futures Commission deems it necessary in order to exercise its powers under this Act, it may supervise the FSS Governor and have the FSS governor change the governor's method of executing the governor's duties or give other supervisory orders.

Article 206-7
(Duties of Financial Supervisory Service)

The Financial Supervisory Service shall carry out the following duties under the direction and supervision of the Financial Supervisory Commission or the Securities Futures Commission:

1. Matters regarding the registration of issuers of securities;
2. Matters regarding the registration statement;
3. Matters regarding the lender offer of securities;
4. Matters regarding the inspections of institutions that are subject to inspection by the FSS Governor under this Act;
5. Matters regarding the administration of listed corporations;
6. Matters regarding the public notification of the analysis and substance of business of registered corporations and listed corporations;
7. Matters regarding the supervision over transactions of securities on markets other than a securities market or Association brokerage market;
8. Business entrusted by the Government;
9. Business assigned under this Act other than those listed in subparagraphs 1 through 8; and,
10. Business incidental to those listed in subparagraphs 1 through 9.

Article 206-8
(Contributions)

(1) Any person falling under any of the following subparagraphs shall bear part of the working expenses of the Financial Supervisory Service:
   1. Securities companies that charge commissions from customers;
   2. Issuers who submit a report to the Financial Supervisory Commission pursuant to Article 8;
   3. Institutions that are subject to inspection by the FSS Governor under this Act; and
   4. Registered corporations.

(2) The amount and limit of the contribution referred to in paragraph (1) and other matters necessary for the payment of contributions shall be prescribed by Presidential Decree.

Article 206-9
(Liabilities of Members and Officers, etc., of the Financial Supervisory Commission, Securities Futures Commission and Financial Supervisory Service)

The provisions of Article 83 shall apply *mutatis mutandis* to the liabilities of those falling under any of the following subparagraphs:

1. Members and public officials of the Financial Supervisory Commission;
2. Members of the Securities Futures Commission; or,
3. Governor, Vice-Governor, Assistant Vice-Governor, auditor and employees of the Financial Supervisory Service.

Article 206-10
(Hearing)

Where the Minister of Finance and Economy or the Financial Supervisory Commission intends to take a disposition falling under any of the following subparagraphs, it shall hold a hearing:

1. Cancellation of a license or registration of securities companies, investment advisory companies, and transfer agencies under Article 55 or 70-11 (including where the provisions of Article 70-11 are applicable *mutatis mutandis* under Article 180 (3)); and,
2. Cancellation of a license of securities financial companies and brokerage companies referred to in Article 155 (1) (including where it is applicable *mutatis mutandis* under Article 179 (4)).

CHAPTER X-II
IMPOSITION AND COLLECTION OF PENALTIES

Article 206-11
(Penalties)

(1) The Financial Supervisory Commission may impose penalties of up to 3/100 of the subscription or sales value on a statement of securities (five hundred million won where the price exceeds five hundred million won) on a person falling under any subparagraph of Article 14 (1) where that person falls under any of the following subparagraphs:

1. Where that person makes a false entry or indication or fails to enter or indicate important matters in any registration statement, prospectus, or other documents to be submitted under Article 8, 11 or 12; and,
2. Where that person fails to submit a registration statement, prospectus, or other documents to be submitted under Article 8, 11 or 12.

(2) The Financial Supervisory Commission may impose penalties of up to 3/100 of the total estimated amount for a tender offer stated in a tender offer statement on a person falling under any subparagraph of Article 25-3 (1) where that person falls under any of the following subparagraphs. In this case, a total estimated amount for a tender offer shall be an amount calculated by multiplying the tender offer price per stock by the number of stocks:

1. Where that person makes a false entry or indication or fails to enter or indicate important matters in any statement, prospectus, or other documents to be submitted under Article 21-2, 22, 23-2 or 24; or,
2. Where that person fails to submit any statement, prospectus, or other documents to be submitted under Article 21-2, 22, 23-2 or 24, or fails to make public notice of matters to be publicly notified.

(3) The Financial Supervisory Commission may impose penalties of up to five hundred million won on any listed corporation or any corporation registered with the Association where it falls under any of the following subparagraphs:

1. Where it makes a false statement or indication in matters to be reported or disclosed under Article 186 (1) or (2) or fails to enter or indicate important matters therein; and
2. Where it fails to report or disclose matters to be reported or disclosed under Article 186 (1) or (2).

(4) The Financial Supervisory Commission may impose penalties of up to 10/100 of the daily average transaction volume (five hundred million won where an amount exceeds five hundred million won or stocks issued by the corporation are not traded

on the securities market or Association brokerage market) of the stocks issued by a corporation as quoted on the securities market or Association brokerage market in the immediately preceding year where such corporation that has to submit an annual business report or semiannual business report pursuant to Article 186-2 (1) or 186-3 falls under any of the following subparagraphs:

1. Where it makes a false entry or indication or fails to enter or indicate important matters in a report under Article 186-2 (1) or 186-3; or,
2. Where it fails to submit a report under Article 186-2 (1) or 186-3.

(5) The Financial Supervisory Commission may impose penalties of up to 2/100 (1/100 for a consolidation and five hundred million won where the amount exceeds five hundred million won) of the total amount (based on the amount entered in reported documents submitted under Article 190-2) of the book value (for a transfer or takeover of business, the amount acquired or paid in compensation for the transfer or takeover) of stock granted in compensation for a merger (including a spin-off merger) or spin-off and obligations taken over by a stock-listed corporation or Association- registered corporation where it falls under any of the following subparagraphs):

1. Where it makes a false entry or indication or fails to enter or indicate important matters in making a report under Article 190-2; and,
2. Where it fails to make a report under Article 190-2.

(6) Penalties prescribed in paragraphs (1) through (5) shall be imposed on a person subject to the imposition of such penalties who violates the respective corresponding provisions intentionally or through gross negligence.

Article 206-12
(Imposition of Penalties)

(1) In imposing penalties pursuant to Article 206-11, the Financial Supervisory Commission shall take into account of the following matters according to the standards as prescribed by Presidential Decree:

1. Contents and severity of the offense;
2. Duration and frequency of the offense; and,
3. Scope of benefits acquired by the offense.

(2) The Financial Supervisory Commission shall seek opinions from the Stock Exchange or the Association in advance where it imposes penalties pursuant to Article 206-11 (3).

(3) Where a corporation that has violated the provisions of this Act merges, the Financial Supervisory Commission may impose and collect penalties on and from the corporation, deeming the offense committed by the previous corporation to

be an offense committed by the corporation that continues to exist or is newly established.

(4) Matters necessary for the imposition of penalties shall be determined by Presidential Decree.

Article 206-13
(Presentation of Opinions)

(1) The Financial Supervisory Commission shall, in advance, give a concerned party or person, etc., an opportunity to present their opinions prior to the imposition of penalties.

(2) A concerned party or person, etc., under paragraph 1 may attend the meeting of the Financial Supervisory Commission and state their opinions or present necessary materials.

Article 206-14
(Formal Objection)

(1) A person who is dissatisfied with a disposition of a fine for negligence under Article 206-11 may file an objection with the Financial Supervisory Commission within thirty days from the date of receipt of notice of said disposition by giving the reasons.

(2) The Financial Supervisory Commission shall make a decision on an objection under paragraph (1) within thirty days: *Provided,* That where it cannot make a decision within such period for compelling cause, it may extend the period up to thirty days.

(3) A person who is dissatisfied with a decision under paragraph (2) may apply for administrative appeal.

Article 206-15
(Extension of Time Limit for Payment for and Installment Payment of Penalties)

(1) Where the Financial Supervisory Commission deems that a person who has been subject to penalties (hereinafter referred to as a "person liable for the payment of penalties") has difficulty in paying the penalties in a full lump sum for a cause falling under any of the following subparagraphs, it may extend the time limit for payment or allow that person to pay them in installments. In this case, it may, if deemed necessary, have that person offer a security:

1. Where that person suffers a serious loss of property due to a disaster or theft;
2. Where that person's business is in a serious crisis due to worsening business conditions;
3. Where that person is expected to face serious financial difficulties due to the payment of penalties in a lump sum; or,

4. Where there exists any other causes equivalent to those listed in subparagraphs 1 through 3.

(2) Where a person liable for the payment of penalties intends to have the time limit for payment extended or pay them in installments, that person shall apply for such extension or installments to the Financial Supervisory Commission ten days prior to the expiration of the time limit for payment.

(3) Where the time limit for payment is extended or a person liable for the payment of penalties who is allowed to pay them in installments pursuant to paragraph (1) falls under any of the following subparagraphs, the Financial Supervisory Commission may cancel the extension of the time limit for payment or decision on payment in installments and collect penalties in a lump sum:

1. Where that person fails to pay penalties in installments within the time limit for payment;
2. Where that person fails to fulfill an order by the Financial Supervisory Commission that is necessary to change the security or otherwise preserve the security;
3. Where it deems that it cannot collect all or the residual of penalties due to compulsory execution, opening of an auction, declaration of bankruptcy, dissolution of the corporation, disposition on default of national or local taxes; or,
4. Where there exists any other causes equivalent to those listed in subparagraphs 1 through 3.

(4) Matters necessary for the extension of the time limit for payment of penalties, payment in installments, or security, etc., under paragraphs (1) through (3) shall be prescribed by Presidential Decree.

Article 206-16
(Collection of Penalties and Disposition on Default)

(1) The Financial Supervisory Commission may collect additional dues as determined by Presidential Decree for the period from the date following the expiration date of the time limit for payment to the date preceding the date of payment where a person liable for the payment of penalties fails to pay penalties within the time limit for payment.

(2) Where a person liable for the payment of penalties fails to pay penalties within the time limit, the Financial Supervisory Commission may urge that person to pay the penalties, by specifying a period, and where that person fails to pay penalties and additional dues under paragraph (1) within the specified period, the Financial Supervisory Commission may collect them according to the situation of a disposition of national taxes in arrears.

(3) The Financial Supervisory Commission may entrust its duties of the collection or disposition on default of penalties and ad-

ditional dues under paragraphs (1) and (2) to the Commissioner of the National Tax Administration.

(4) Matters necessary for the collection of penalties shall be determined by Presidential Decree.

Article 207
Deleted. <by Act No. 5736, Feb. 1, 1999>

CHAPTER XI
PENAL PROVISIONS

Article 207-2
(Penal Provisions)

A person who falls under any of the following subparagraphs shall be punished by imprisonment for not more than ten years or a fine of not more than twenty million won: *Provided,* That if the amount equivalent to three times of the profit gained or loss evaded by the violation exceeds twenty million won, that person shall be punished by a fine of the amount equivalent to three times of such profit or loss evaded:

1. A person who violates the provisions of Article 188-2 (1) or (3); and,
2. A person who violates the provisions of Article 188-4.

Article 207-3
(Penal Provisions)

A person who violates the provisions of Article 52-3 shall be punished by imprisonment for not more than five years or a fine of not more than thirty million won.

Article 208
(Penal Provisions)

A person who falls under any of the following subparagraphs shall be punished by imprisonment for not more than three years or a fine not exceeding twenty million won:

1. A person who conducts the business concerned without a license therefor in accordance with the provisions of Article 28 (1), 28-2 (1), 145 (1) or 179 (1), or who conducts the business concerned after cancellation of a license therefor in accordance with the provisions of Article 55 or 155 (including where the provisions of Article 155 are applicable *mutatis mutandis* under Article 179);
2. A person who violates the provisions of Articles 28-2 (3) and 35 (1);
3. A person who violates the provisions of Articles 63 (including where the provisions of Article 63 are applicable *mutatis mutandis* under Article 70-7), 76, 95 (1), 107 (1) or 173-3;

4. A person who violates the provisions of Articles 59 (including where the provisions of Article 59 are applicable *mutatis mutandis* under Article 70-7 or 178), Article 60 (1) (including where it is applicable *mutatis mutandis* under Article 70-7 or 178), or Article 61 (including where it is applicable *mutatis mutandis* under Article 70-7 or 178), or who refuses any investigation conducted by the Financial Supervisory Commission referred to in Article 206-3 (2) (meaning the Securities Futures Commission in case of violation of Articles 188, 188-2 and 188-4);
5. A person who violates the provisions of Article 83 (including where they are applicable *mutatis mutandis* under Article 206-9); and
6. Deleted. <*by Act No. 5254, Jan. 13, 1997*>

Article 209
(Penal Provisions)

A person who falls under any of the following subparagraphs shall be punished by imprisonment for not more than two years, or a fine of not more than ten million won:

1. A person who makes a public offering of new or outstanding securities or issues new stocks in violation of the provisions of Article 8;
2. A person who makes arrangements for a public offering of new or outstanding securities in violation of the provisions of Article 8;
3. A person who violates the provisions of Article 10;
4. A person who violates the provisions of Article 21(1), Article 21-2 (1) or 23 (including where the provisions of Article 23 are applicable *mutatis mutandis* under Article 23-2 (2));
5. A person who carries out the business concerned after being suspended from such business in accordance with the provisions of Article 57 or 155 (2) (including the provisions of Article 155 (2) are applicable *mutatis mutandis* under Article 179 (4));
6. A person who violates the provisions of Article 62 or 70-10;
7. A person who violates any order issued upon the basis of the provisions of Article 54 (including where they are applicable *mutatis mutandis* under Article 70-7) or 168;
8. A person who establishes an organization concerned with securities without a license in accordance with the provisions of Article 181 (1); and,
9. A person who violates the provisions of Article 188 (1), 189-2 (3), 190-2 (1) and (2) or 199, or orders issued pursuant to Article 21 (3), 200 (3), 200-3 or 203 (3).

Article 210
(Penal Provisions)

A person who falls under any of the following subparagraphs shall

be punished by imprisonment for not more than one year or a fine of not more than five million won:

1. A person who violates any disposition of the Financial Supervisory Commission taken upon the basis of the provisions of Article 20 (including where they are applicable *mutatis mutandis* under Article 27-2, 186-5, 189-2 (5), 190-2 (3) or 200-4);
2. A person who violates the provisions of Article 13 (including where they are applicable *mutatis mutandis* under Article 24) or Article 42 (including where they are applicable *mutatis mutandis* under Article 70-7, 154, 169, 178, 179 or 180) through 44 or 70-2 (5);
3. Deleted; <*by Act No. 5254, Jan. 13, 1997*>
4. Deleted; <*by Act No. 5736, Feb. 1, 1999*>

4-2. A person who conducts the business concerned without a registration as prescribed in Article 70-2 (1) and (2), 70-9 (1) or 180 (1), or who conducts the business concerned after their registration is cancelled under Article 70-11 (including where it is applicable *mutatis mutandis* under Article 180 (3));

5. A person who violates the provisions of Article 70-6 (including where they are applicable *mutatis mutandis* under Article 70-8 (2)), 101, 188 (6), 194-3 or 200-2 (1);
6. A person who makes a false statement with regard to material facts contained in the registration statement as referred to in Article 8, the additional documents of shelf registration statement as referred to in Article 10 (2), the amendment statement as referred to in Article 11 (including where it is applicable *mutatis mutandis* under Article 186-5 or 200-4), the tender offer statement as referred to in Article 21-2 (1), the amendment statement as referred to in Article 23-2, the annual report as referred to in Article 186-2, the semiannual report as referred to in Article 186-3, or the report as referred to in Article 190-2 (1) and (2), or who fails to file an amendment statement report in contravention of the latter part of Article 11 (3) (including where it is applicable *mutatis mutandis* under Article 186-5 or 200-4); and,
7. A person who fails to prepare and keep a depositors account book as prescribed in Article 174 (3) or a customers account book as prescribed in Article 174-2 (1), or who has made a false statement.

Article 211
(Penal Provisions)

Any person who falls under any of the following subparagraphs shall be punished by a fine of not more than five million won:

1. A person who conducts the business concerned notwithstanding that it is suspended under Article 57 (including where it is applicable *mutatis mutandis* under Article 70-7) or 155 (2) (includ-

ing where it is applicable *mutatis mutandis* under Article 180 (3));
2. A person who violates the provisions of Article 186 (1) and (2), 186-2 or 186-3;
3. A person who fails to report pursuant to the provisions of Article 189-4 (8); and,
4. A person who violates the provisions of Article 200 (1).

Article 212
(Penal Provisions)

A person who violates the provisions of Article 171 shall be punished by a fine of not more than two million won.

Article 213
(Fine for Negligence)

(1) A person who falls under any of the following subparagraphs shall be punished by a fine for negligence of not more than two million won:
   1. A person who has failed to file a registration in contravention of the provisions of Article 3;
   2. A person who has committed a violation of the provisions of Article 18-2;
   3. A person who has refused, interfered with, or evaded the inspection, investigation or confirmation under Article 19 (1) (including where it is applicable *mutatis mutandis* under Article 27-2, 186-5, 189-2 (5) or 190-2 (3)), 53 (1) (including where it is applicable *mutatis mutandis* under Articles 70-7, 157, 169 or 178 through 181) 174-12 or 200-2 (5);
   4. A person who has committed a violation of the provisions of Article 37 (including where they are applicable *mutatis mutandis* under Article 70-7) or 70-8 (1); and,
   5. A person who has neglected the disposal of stocks in contravention of the provisions of Article 189-2 (4) or 191 (4).

(2) A person who falls under any of the following subparagraphs shall be punished by a fine for negligence of not more than five hundred thousand won:
   1. A person who violates the provisions of Article 17 (including where they are applicable *mutatis mutandis* under Article 27-2), 36, 46 or 107 (2);
   2. A person who fails to comply with a demand for the report, etc., pursuant to Article 19 (1) (including where it is applicable *mutatis mutandis* under Article 27-2, 186-5, 189-2 (5) or 190-2 (3)) or 53 (2) (including where it is applicable *mutatis mutandis* under Article 70-7, 157, 159 or 178 through 181), or who violates the order pursuant to Article

19 (1) (including where it is applicable *mutatis mutandis* under Article 27-2, 186-5, 189-2 (4) or 190-2 (3)) or 53 (2) (including where it is applicable *mutatis mutandis* under Article 70-7, 157, 159 or 178 through 181);

3. A person who violates the provisions of Article 47 (including where it is applicable *mutatis mutandis* under Article 70-7);
4. A person who violates the provisions of Article 174-2 (2) or who fails to make a notification, or makes a false notification, to the beneficial owners in violation of the provisions of Article 174-7 (3) through (5); and,
5. A person who violates the provisions of Article 174-6 (4) or 174-8 (1).

(3) The fine for negligence as referred to in paragraphs (1) and (2) shall be imposed and collected by the Financial Supervisory Commission under the conditions as prescribed by Presidential Decree.

(4) A person who is dissatisfied with the disposition of the fine for negligence as referred to in paragraph (3) may make an objection against the person who is authorized to take the disposition within thirty days after that person is informed of such disposition.

(5) If the person who is subject to a disposition of fine for negligence pursuant to paragraph (3) has made an objection pursuant to paragraph (4) of this Article, the person who is authorized to take the disposition shall notify such fact to the competent court, which shall, upon receiving the notification, bring the case of fine for negligence to a trial under the Non-Contentious Case Procedure Act.

(6) If no objection is made and no fine for negligence is paid in the period as referred to in paragraph (4) of this Article, it shall be collected according to the situation of a disposition of national taxes in arrears.

Article 214
(Concurrent Punishment)

A person who commits a crime as referred to in Articles 207-2 through 210 may be confined to imprisonment and fined concurrently.

Article 215
(Joint Penal Provisions)

If a representative of a juristic person, or an agent, servant or other employee of a juristic person or individual commits any offense as prescribed in Articles 207-2 through 212 in connection with the affairs of the juristic person or individual, the fine as prescribed in the respective article shall also be imposed on such juristic person or individual, in addition to a punishment of the offender.

ADDENDA

<Act No. 6176, Jan. 21, 2000>

Article 1
(Enforcement Date)

This Act shall enter into force on April 1, 2000: Provided, That the amended provisions of Articles 2, 3, 54-5, 54-6, 58, 64, 160, 174-6 (5), 189-2, 189-4, 191-9, 191-11, 191-12, 191-14, 191-16 and 191-17 shall enter into force on the date of its promulgation.

Article 2
(Transitional Measures concerning Disqualifications)

Where any officer of a securities company, an investment advisory company, a securities finance company or the Association is disqualified due to a cause under the amended provisions of Article 33 (2) (including the case in which the provisions of Articles 70-7, 149 (2) and 169 are applied *mutatis mutandis)* that has occurred prior to the enforcement of this Act at the time that this Act is enforced, that person's case shall be dealt with according to the previous provisions notwithstanding the amended provisions.

Article 3
(Transitional Measures concerning Equity Capital Regulation Ratio)

The amended provisions of Article 54-2 shall not apply to any securities company falling under any of the following subparagraphs by the day prescribed by Presidential Decree:

1. A securities company converted from another a financial institution or a securities company that has merged with a financial institution under the Act on the Structural Improvement of the Financial Industry; or,
2. A securities company that, after having been ordered to take timely and corrective measures, is presently implementing a plan for such measures under the Act on the Structural Improvement of the Financial Industry.

Article 4
(Transitional Measures concerning Internal Control Standards of Securities Company)

Any securities company shall set its internal control standards in accordance with the provisions of Article 54-4 within 6 months after the enforcement of this Act.

Article 5
(Transitional Measures concerning Appointments of Outside Director of Securities Company)

Any securities company that has to appoint outside directors in accordance with the amended provisions of Article 54-5 shall appoint such outside directors in accordance with such amended provisions at the first regular general meeting of shareholders that is convened after the enforcement of this Act. In this case, any outside director appointed at the regular general meeting of shareholders shall be deemed to be recommended by the outside director candidate nominating committee in accordance with the provisions of Article 54-5 (2) and (3).

Article 6
(Transitional Measures concerning Establishment of Audit Committee of Securities Company)

Any securities company that has to establish an audit committee in accordance with the amended provisions of Article 54-6 shall establish such audit committee the first regular general meeting of shareholders that is convened after the enforcement of this Act.

Article 7
(Transitional Measures concerning Corporation Granting Stock Options)

Any corporation that grants its officers and employees stock options under the previous provisions at the time that this Act is enforced shall be deemed to grant them such stock options in accordance with the amended provisions of Article 189-4.

Article 8
(Transitional Measures concerning Appointments of Outside Directors of Stock-Listed Corporation)

(1) Any stock-listed corporation that has to appoint outside directors in accordance with the amended provisions of Article 191-16 shall appoint such outside directors in accordance with such amended provisions at the first regular general meeting of shareholders that is convened the first time after the enforcement of this Act. In this case, any person appointed as an outside director at the regular general meeting of shareholders shall be deemed to be recommended by the outside director candidate nominating committee in accordance with the provisions of Article 54-5 (1) and (3) that are applied *mutatis mutandis* by the amended provisions of Article 191-16 (3).

(2) Any stock-listed corporation under the provisions of the proviso of Article 191-16 (1) shall increase the number of outside directors to at least 3 prior to the first regular general meeting

of shareholders that is convened the first time after the end of the 2000 business year, but may make the number of outside directors not more than half of the total number of directors on the board.

(3) Any outside director who holds office at a stock-listed corporation at the time that this Act is enforced shall be deemed to be appointed as an outside director under this Act by the time when that person's term of office expires.

Article 9
(Transitional Measures concerning Establishment of Audit Committee of Stock-Listed Corporation)

Any stock-listed corporation that has to establish an audit committee in accordance with the amended provisions of Article 191-17 shall establish such audit committee in accordance with the amended provisions at the first regular general meeting of shareholders that is convened after the enforcement of this Act.

Article 10
(Transitional Measures concerning Standing Auditor following Establishment of Audit Committee of Stock-Listed Corporation)

With respect to any standing auditor (in case that there are at least two standing auditors, the standing auditor designated by the board of directors of a stock-listed corporation) who holds an office at a stock-listed corporation that has to establish an audit committee in accordance with the amended provisions of Article 191-17, where that person's term of office does not expire by the date on which a regular general meeting of shareholders is convened to establish an audit committee in accordance with the provisions of Article 9 of the Addenda and is not dismissed at such regular general meeting of shareholders, that person shall not be deemed an outside director but a member of the audit committee until that person's term of office expires. In this case, such standing auditor shall be deemed a director appointed at a general meeting of shareholders in accordance with the provisions of Article 382 (1) of the Commercial Act.

Chapter MY

Securities Regulation in Malaysia

Mushera Ambaras Khan and Wan Mohd. Zulhafiz Bin Wan Zahari

I. LEGAL SYSTEM

§ MY:1 In general

II. SECURITIES REGULATORY SCHEME

§ MY:2 In general
§ MY:3 Securities laws
§ MY:4 Organisations involved in securities regulation

III. PUBLIC SECURITIES MARKET

§ MY:5 In general
§ MY:6 Islamic Capital Market (ICM)
§ MY:7 Listed securities
§ MY:8 Private debt securities
§ MY:9 Derivatives and Futures

IV. REGULATIONS REGARDING SUBSTANTIVE SECURITIES MATTERS

A. ESTABLISHMENT, REGULATION AND ORGANISATION OF SECURITIES REGULATORY ORGANISATIONS

§ MY:10 Securities Commission
§ MY:11 Powers of the Securities Commission
§ MY:12 Enforcement and investigation
§ MY:13 Companies Commission of Malaysia (CCM)
§ MY:14 Bursa Securities
§ MY:15 Malaysian Exchange of Securities Dealing & Automated Quotation Bhd (MESDAQ) known as the ACE market since August 3, 2009
§ MY:16 Definition of securities

B. REGULATION OF PUBLIC OFFERINGS

§ MY:17 Public offerings and exempted offerings

§ MY:18 Approval by the Securities Commission
§ MY:19 Approval by the Central Bank (Bank Negara Malaysia) for issue of debt securities not required
§ MY:20 Approval, registration and lodgment of prospectuses
§ MY:21 Exempt offerings under the CMSA 2007
§ MY:22 Excluded Offers and Invitations under the SCMA 1993
§ MY:23 Excluded Issues under the CMSA 2007
§ MY:24 Prospectuses under the CMSA 2007
§ MY:25 Share hawking
§ MY:26 Advertising restrictions for offerings
§ MY:27 Special rules for offers of debentures

C. MANDATORY DISCLOSURE REQUIREMENTS OF PUBLIC COMPANIES

§ MY:28 Accounts and reports—Generally
§ MY:29 —Borrowing corporations
§ MY:30 Section 84 interests
§ MY:31 Bursa Malaysia requirements—Periodic reports
§ MY:32 Continuous disclosure by listed companies
§ MY:33 Proxy solicitation
§ MY:34 Disclosure of interest in shares

D. FRAUD, MANIPULATION AND INSIDER TRADING

§ MY:35 Overview
§ MY:36 Prohibited Conduct under the CMSA 2007
§ MY:37 Insider trading
§ MY:38 Short selling

E. TENDER OFFERS, TAKEOVERS AND OTHER CORPORATE COMBINATIONS

§ MY:39 Tender offers
§ MY:40 Take-over offers
§ MY:41 SC's powers takeovers and mergers
§ MY:42 Arrangements and reconstructions
§ MY:43 Share buy backs
§ MY:44 Accounting and auditing

V. INTERNATIONAL SECURITIES TRANSACTIONS

§ MY:45 Registration requirement for foreign companies
§ MY:46 Exchange control
§ MY:47 Investment companies and investment advisers

VI. BROKER-DEALERS OR ENTITIES AUTHORIZED TO TRADE IN SECURITIES

§ MY:48 In general
§ MY:49 Licensing

§ MY:50 Restrictions on dealers and advisers
§ MY:51 Revocation and suspension of licence
§ MY:52 Register of interest
§ MY:53 Accounts and audit
§ MY:54 Court powers relating to dealer's bank accounts

VII. OTHER SECURITIES REGULATIONS

§ MY:55 Intra-national securities regulation by States
§ MY:56 Civil and criminal liability
§ MY:57 Central Depositories

VIII. NEW DEVELOPMENTS

§ MY:58 Equity Crowd Funding and Peer-to Peer Lending (P2PL) in Malaysia
§ MY:59 New Developments in Financial Technologies ("FinTech")
Appendix MY-1. Laws of Malaysia Act 671 Capital Markets and Services Act 2007
Appendix MY-2. Securities Industry (Central Depositories) Act, 1991 (Act 453) as amended
Appendix MY-3. Securities Commission Act, 1993 (Act 498) as amended

I. LEGAL SYSTEM

§ MY:1 In general

Malaysia is a federation which was formed in September 1963 as an amalgam of the Federation of Malaya (an independent federation of the 4 Federated and 5 Unfederated Malay States, and the former British settlements of Penang and Malacca) and the former British colonies of Singapore, Sarawak and North Borneo (Sabah). Malaysia currently consists of 13 states and the Federal Territories of Kuala Lumpur, Putrajaya and Labuan. Singapore seceded in August 1965.

Malaysia has adopted the parliamentary democracy and constitutional monarchy form of government with the King (Yang di Pertuan Agong) as the head of state and the Prime Minister as the head of government. The King is selected every 5 years from the 9 rulers of the Malay States.

Malaysia has a Federal Constitution and 13 state constitutions. At the federal level, Malaysia has a bicameral legislature (the Parliament) comprising of the Senate (Dewan Negara) as the upper house and the House of Representatives (Dewan Rakyat) as the lower house and a federal government. Elections to the House of Representatives are held every 5 years. The cabinet consists of members of the House of Representatives and is headed by a Prime Minister. At the state level, there is a unicameral legislature (the State Legislative Assembly) and a state government headed by a Chief Minister.

The Federal Constitution is contained in the *Federation of Malaya*

Agreement 1957 between Her Britannic Majesty and the Rulers of the Federated and Unfederated Malay States. Under this agreement, the Federation of Malaya was formed. The Federation consisted of the Federated and Unfederated Malay States, Penang and Malacca.

The Federal Constitution was given the force of law by the *Federal Constitution Ordinance 1957.*

Under the Federal Constitution, the Parliament may exercise legislative powers over matters listed in the Federal and Concurrent Lists while the State Legislative Assemblies have legislative powers over matters listed in the State and Concurrent Lists. The legislative powers of the State Legislative Assemblies extend mainly to cover Islamic matters and land. The Concurrent List refers to matters over which both the Parliament and the State Legislative Assembly have legislative powers. In case of an inconsistency, a federal law prevails over a state law provided that the Parliament has power to legislate on the subject matter.

Under the Federal List, trade and commerce are within the exclusive legislative powers of the Parliament. As the expression of trade and commerce is wide enough to include securities, securities regulation is governed by federal laws.

Given the historical background to the formation of Malaysia, it is not surprising that Malaysian law has adopted many English legal principles. Among these is the English doctrine of judicial precedent (*stare decisis*).

Under the doctrine of judicial precedent, a decision of a higher court in the hierarchy e.g. the Federal Court (formerly the Supreme Court) is binding on the lower court (e.g. the Court of Appeal). Similarly, the Court of Appeal's decision binds the High Court. The High Court, in turn, binds sessions courts and other lower courts (in particular, magistrate courts and penghulu's courts).

The *Civil Law Act 1956* provides for the express reception of English common law and equity as at 7 April 1956 (except for Sabah and Sarawak where the reception is extended to statutes of general application and the cut-off dates are 1 December 1951 and 12 December 1949, respectively). The application of English common law and equity is subject to the condition that it shall be applied only insofar as the local circumstances and inhabitants permit and subject to such qualifications as local circumstances render necessary.

This enables the courts to apply various indigenous sources of law including Malay, Chinese and Hindu customary laws and Muslim law. Such indigenous sources of law apply mainly in the areas of personal law (e.g., marriage, custodian of a child and inheritance) and religious matters.

II. SECURITIES REGULATORY SCHEME

§ MY:2 In general

Section 27 of the Central Bank of Malaysia Act 2009 established

the dual financial system in Malaysia which consists of the conventional and the Islamic financial systems. The conventional and Islamic capital markets run in parallel.

The Malaysian laws that regulate the securities industry have their origin in corresponding English and Australian laws. The *Malaysian Companies Act 1965* (now repealed and replaced by the Companies Act 2016), for example, was based on the *Companies Act 1961* of the various Australian states which, in turn, originated from the *English Companies Act 1948*. The *Securities Industry Act 1983* (now repealed and replaced by the Capital Market and Services Act 2007) had its origins in the corresponding Australian statute. The former *Malaysian Code on Take-overs and Mergers 1987* (now replaced by the Code on Take-Overs and Mergers 2016) was modeled on the London City Code on Take-overs and Mergers.

Legislation governing the securities industry in Malaysia has been extensively amended since the Asian financial crisis of 1997-98. An amendment to the securities regulatory regime in 2007 resulted in the enactment and passing of the *Capital Market and Services Act 2007* (CMSA 2007), which essentially combined the relevant securities law into a single omnibus Act. Most of the CMSA 2007 came into force on 28 September 2007.[1]

The CMSA 2007 consolidated the *Securities Industry Act 1983 (SIA 1983),* the *Futures Industry Act 1993* (FIA 1993) and Part IV of the *Securities Commission Malaysia Act 1993*[2] which deals with fund raising activities. The CMSA 2007 is supported by the Capital Markets and Services Regulations 2012 which replaced the *Capital Markets and Services Regulations 2007*. The CMSA 2007 is also supported by the Licensing Handbook and the Guidelines on Recognised Markets which came into effect on 11 December 2015. These Guidelines supersede two earlier Guidelines, *viz*, Guidelines on Regulations of Markets issued in 2007 and Guidelines on Regulation of Markets under section 34 of CMSA 2007 which came into force in February 2015.

In September 2015, amendments to the CMSA and the Securities Commission Act came into effect. The amendments to the securities laws were made to facilitate innovative fundraising structures, enhance investor protection, clarify the responsibilities of issuers and advisers and expand the scope of the SC's supervisory powers. The CMSA amendment introduced a new market framework to facilitate the establishment of alternative trading platforms including equity

---

[Section MY:2]

[1]The provisions relating to takeovers, mergers and compulsory acquisitions contained in Division 2 Part IV were not in force until 1st April 2010. Before Division 2 was brought into effect in April 2010, the then existing provisions in the Securities Commission Act 1993 regulated takeovers and mergers along with the 1998 Code on Takeovers and Mergers.

[2]Section 3, Securities Commission (Amendment) Act 2015.

crowdfunding (ECF). On 5 February 2024, the SC released the Guidelines on Categories of Sophisticated Investors. The Guidelines are in force from the date of their publication, and replace Part I of Schedules 6 and 7 of the CMSA with new criteria in which securities law categories of Sophisticated Investors will be set out in the Guidelines. The Guidelines maintain the previous categories, i.e., Accredited Investor, High Net-Worth Individuals (HNWI), and High-Net Worth Entity (HNWE); however, it introduces additional criteria, including academic qualifications and expanded definitions for HNWI, such as considering the assets or income of a child. The initiatives would be geared toward increasing the number of sophisticated investors and enhancing investment options beyond what the Malaysian capital market can currently offer.[3]

Malaysia seeks to pre-empt an "ad hoc reactionary approach towards policy and regulatory development" by way of a ten-year strategic plan for capital market development.[4] Thus, in 2001, the Securities Commission (SC) released the *Capital Market Masterplan* (CMM) charting the future development of the Malaysian capital market.[5] The 152 recommendations contained in this document indicated further changes to Malaysia's securities regime. For example, as of 30 June 2003, 39 of the 152 recommendations in the CMM had been implemented. Progress reports on the implementation of the CMM can be viewed on the Securities Commission's website.[6] In 2011, the SC published the Capital Market Masterplan 2 (CMP2).

Two main themes have dominated Malaysian securities regulation in recent years. First, Malaysia has been progressively moving from a system of merit-based regulation (MBR) to one of disclosure-based regulation (DBR) for fund raising. On 31 March 2003, the then chairman of the Malaysian Securities Commission, Datuk Ali Abdul Kadir, announced that the transition to a disclosure-based framework for fund-raising was complete.[7] Second, Malaysia has sought to progressively transfer the legal regime relating to fund raising from the *CA*

---

[3]*See* https://www.sc.com.my/api/documentms/download.ashx?id=0fa41de0-425c-4b60-a070-5f596fd2e0b4.

[4]Ybhg Datin Zarinah Anwar, "Towards a world class regulatory framework: enhanced transparency and governance" (Speech of 19 August 2003). Available at the SC website.

[5]Securities Commission, *Capital Market Masterplan: Malaysia* (Kuala Lumpur: Securities Commission, 2001). Hereafter, "CMM". For comment, see G. Walker, "Globalisation and the K-Economy": Malaysia's Strategic Response" (2000) 18 C&SLJ 289-297. Note that Malaysia has a long history of centralized economic planning: see V. M. Hooker, *A Short History of Malaysia* (Sydney: Allen & Unwin, 2003), Chapters 9 and 10.

[6]See, for example, Securities Commission, "Update on the implementation of the Capital Market Masterplan as at 30 June 2003." Available at www.sc.com.my/html/cmp/cmp_implement.html.

[7]Securities Commission Press Release of 31 March 2003. This statement requires some qualification. Under section 32 of the SCMA, all proposals in relation to securities must be submitted to the SC who may approve or reject them on such

1965 to the *Securities Commission Malaysia Act (SCMA) 1993.* Thus, it is the SC who must *approve* and *register* all prospectuses (although, generally speaking, these must also be *lodged* with the Registrar of Companies (ROC): section 43 of the SCMA 1993.).

It is important to note that Malaysian company law, like Australia, maintains a distinction between private companies, public companies and to a certain extent public listed companies. Under Division 7 of Part II of the *CA 2016,* a private company is a company which:

(a) is limited by shares and restricts the transfer of its shares;

(b) Limits the number of shareholders to no more than 50 shareholders, and,

(c) Prohibits any invitation to the public to subscribe for share and debentures.[8]

Prima facie, then, no private company can be incorporated without these restrictions. As to the fund-raising prohibition, however, note that debentures of a private company are not exempted under Schedule 5 of the *CMSA 2007* from the prior approval requirements of section 212 of the CMSA 2007. This prohibition means that although private companies are prohibited from making any invitation *to the public* to subscribe for debentures (by virtue of the restriction in CA 2016), they may make a private placement of debentures (debt securities) with the prior approval of the SC.

§ MY:3 Securities laws

The term "securities laws" is defined in section 2 of the *Securities Commission Malaysia Act (SCMA) 1993* (SCMA 1993). It means, the SCMA 1993, the Securities Industry (Central Depositories) Act 1991 [Act 453] and the Capital Markets and Services Act 2007. Section 2A of the *SCMA 1993* states that any reference to "this Act" shall, unless otherwise expressly stated, include a reference to any regulations, rules, orders, notifications or other subsidiary legislation made under the SCMA 1993. Thus, legislation on securities law includes statutes, regulations, rules, orders, notifications and guidelines.

The CMSA 2007, has now consolidated:

(a) the *Securities Industry Act 1983* (SIA 1983) which formerly provided for a scheme of licensing of securities dealers, investment advisers and fund managers and proscribed various unfair practices relating to securities dealings; and

(b) the *Futures Industry Act 1993 (FIA 1993);* and

(c) the fund-raising provisions in the *SCMA Act 1993.*

---

terms and conditions as it deems fit. Since a proposal may include a proposed prospectus, it is at least arguable that a form of MBR remains by virtue of the SC approval process. Note that capital raising proposals formed the bulk of the approvals given by the SC in the second quarter of 2003: see SC Press Release of 17 July 2003.

[8]See section 43 of the *Companies Act 2016.*

In addition to the CMSA 2007, the securities industry is now primarily regulated by the following laws:

(a) the *SCMA 1993* which established the Malaysian Securities Commission (SC) and regulations made under this Act;

(b) the *Companies Act 2016* (CA 2016) and the *Companies Regulations 2017 [P.U. (A) 37/2017]* which regulates corporate matters generally together with the *Companies Commission of Malaysia Act 2001;*

(c) the *Securities Industry (Central Depositories) Act 1991* that forms the basis for the scripless trading of shares listed on the Kuala Lumpur Stock Exchange (KLSE) and the Malaysian Exchange of Securities Dealing and Automated Quotation Bhd (MESDAQ) which now is known as the ACE market;

(d) the Securities Commission exemptions, modifications and guidelines;

(e) the Accounting Standards via the *Financial Reporting Act 1997;* and

(f) the Bursa Securities Listing Requirements and Rules of Bursa Securities.

These laws and rules are supplemented by a number of codes, rules and guidelines. By way of example, these include the following:

(a) the *Code on Take-overs and Mergers 2016;*

(b) the Rules on Take-Overs, Mergers and Compulsory Acquisitions

(c) the *Malaysian Code on Corporate Governance 20*17;

(d) the Policies and Guidelines on Issue/Offer of Securities (Revised edition: 2008); and

(e) the Prospectus Guidelines (Revised edition: 30 November 2017).

The term "sophisticated investors" has been redefined under Capital Markets and Services (Amendment of Schedules 5, 6 And 7) Order 2024 of the CMSA. The updated definition has broadened the categories to include HNWI and joint assets with spouses or children. The re-definition also allows CEOs and directors of licensed or registered persons to qualify as sophisticated investors, in line with the more dynamic capital market landscape.[1]

Moreover, the Guidelines on Digital Assets issued by the SC incorporates the aspects of digital assets, such as Initial Exchange Of-

---

[Section MY:3]

[1]*See* https://www.sc.com.my/api/documentms/download.ashx?id=3b5adc4a-2195-40c9-b324-d5a2fc889e31.

ferings (IEO). Such inclusion facilitates modern fundraising mechanisms via digital assets and cryptocurrencies through recognized market operators.[2]

Other amendments include providing for the cross-listing of shares of public companies on stock exchanges outside Malaysia, as part of a broader strategy to make Malaysia's capital markets more accessible and globally competitive. The Bursa Malaysia's new regulation offers possibilities for embracing digital asset offerings and cross-border securities transactions as part of a broader push to liberalize and enhance Malaysia as a financial hub on the global exchange of capital flows.

Current versions of the various guidelines, codes, rules and practice notes can be viewed on the Securities Commission's website.

Apart from securities laws administered by the SC, persons dealing with securities and derivatives are also required to comply with the Foreign Exchange Administration (FEA) Rules administered by Bank Negara Malaysia (BNM).Under section 214(2) of the Financial Services Act 2013 (FSA) and section 225(2) of the Islamic Financial Services Act 2013 (IFSA) read together with paragraph 6 of Schedule 14 of the FSA/IFSA respectively, no person may issue, transfer or substitute or do any act in relation to a security or a financial instrument including derivatives except with written approval of BNM. The prohibition however is not applicable to the issuance or transfer of any ringgit-denominated security between residents in Malaysia and the substitution of any ringgit-denominated security for other ringgit-denominated security between residents in Malaysia.

Pursuant to section 214(2) of the FSA and section 225(2) of the IFSA, BNM issued general approvals in respect of dealings with securities and derivatives in Notice 5 of the Notices on Foreign Exchange Administration Rules effective on 30 June 2013. The Notices are available at BNM's website. With the issuance of the Notices, dealings in securities and derivatives which do not fall within BNM's general approval enumerated in the Notices are prohibited unless the person who intends to undertake such dealings obtains a prior written approval on BNM.

§ MY:4 Organisations involved in securities regulation

The Securities Commission

The SC was established under the *Securities Commission Malaysia Act (SCMA) 1993* to promote the development of the securities market in Malaysia. The SC is the primary regulator of the securities industry. It is responsible to the Minister of Finance. The SC's functions include regulating matters relating to securities and derivatives, protecting investors and encouraging and promoting the development of securities and derivatives markets in Malaysia. The functions of the SC are set out in section 15(1) of the SCMA 1993.

[2]*See* https://www.sc.com.my/api/documentms/download.ashx?id=e63db44c-b6d8-4ae9-adf1-afdf9b548d54.

The SC speaks to the securities industry by way of a series of guidelines.

Companies Commission of Malaysia (CCM)

CCM was established by the *Companies Commission of Malaysia Act 2001.* CCM administers the *Companies Act 2016* (CA 2016) which deals with the management and administration of companies. The Chief Executive Officer of CCM is also the Registrar of Companies under the Act.

The Companies (Amendment) Act 2024 introduced significant changes, including the establishment of a framework for reporting the beneficial ownership of companies and enhancing provisions for restructuring and corporate rescue mechanisms. These amendments aim to improve transparency and provide better support for companies in financial distress.[1]

In addition to the SC and CCM, the following regulatory authorities have various responsibilities over securities matters:

(a) Bank Negara Malaysia (the Central Bank of Malaysia);

(b) Malaysian Accounting Standards Board (MASB);

(c) the Bursa Malaysia Group (which includes the ACE Market, a self-regulatory organization with powers over securities traded on the Bursa Malaysia and the ACE Market, respectively). Bursa Malaysia has mandated the implementation of a faster transfer process for ACE Market-listed companies to transition to the Main Market effective January 2024 as one of the ongoing initiatives to enhance the market and reduce barriers for growing enterprises.[2]

(d) the Foreign Investment Committee (FIC), which is a committee in the Economic Planning Unit of the Prime Minister's Department. The FIC regulates the acquisition of Malaysian businesses and companies and the issue of certain types of debt securities (primarily those which are convertible into equity) although FIC aspects of corporate proposals are now being processed by the SC; and

(e) the Ministry of Trade and Industry (MITI), which decides the allocation of shares of public listed companies to Bumiputeras (comprising Malays and certain indigenous and ethnic groups) and, in conjunction with FIC, regulates certain acquisitions of Malaysian businesses and companies and issues of certain types of debt securities.

[Section MY:4]

[1]*See* https://www.ssm.com.my/Pages/Legal_Framework/Document/FAQ%20CA%20(Amendment)%202024.pdf.

[2]*See* https://www.sc.com.my/resources/media/media-release/sc-introduces-accelerated-transfer-of-listing-from-ace-market-to-main-market-for-eligible-ace-market-companies.

III. PUBLIC SECURITIES MARKET

§ MY:5 In general

Public trading of securities in Malaysia started soon after the establishment of the Malayan Stock Exchange in 1960. In June 1964, the Stock Exchange of Malaysia was formed. With the secession of Singapore, this evolved into the Stock Exchange of Malaysia and Singapore.

The stock exchanges of Malaysia and Singapore were formally split with the establishment of The Kuala Lumpur Stock Exchange Berhad in July 1973. The operations of this company were taken over by the KLSE when the *Securities Industry Act 1973* (the predecessor of the *Securities Industry Act 1983*) came into force in 1976. In late 2002, it was announced that the KLSE would seek to demutualise. According to Bursa Malaysia, the purpose of the demutualisation exercise was to enhance Bursa's competitive position and to respond to global trends in the exchange sector by making the organization more customer-driven and market oriented. The demutualisation exercise was effected through the *Demutualization (Kuala Lumpur Stock Exchange) Act 2003* and completed in 2004 with the signing of a memorandum of understanding between the KLSE and the Securities Commission. The KLSE transferred its stock exchange business to a wholly owned subsidiary known as the Malaysian Securities Exchange Berhad (MSEB). In April 2004, MSEB had a change of name and is now referred to as Bursa Malaysia Securities Berhad or Bursa Securities. On 18 March 2005, Bursa Malaysia was listed on the Main Board of Bursa Malaysia Securities Berhad.

In 2024, Bursa Malaysia transitioned into a multi-asset exchange as part of Malaysia's Madani Economic Vision. This transformation includes innovative investment platforms, such as the Bursa Gold Dinar (BGD)—a Shariah-compliant platform for digital gold trading. The new initiative aims to enhance financial inclusivity and allow diverse layers of society to participate in secure gold investments through digital channels.[1]

Additionally, dual-class share structures (DCS) were introduced in 2023 to attract high-growth technology companies to list on Bursa Malaysia. This structure allows founders and key executives to retain disproportionate voting rights, encouraging innovation while providing protections for minority shareholders. The DCS model aligns with international practices seen in other exchanges like Hong Kong and

---

[Section MY:5]

[1]*See* https://www.bursamalaysia.com/sites/5bb54be15f36ca0af339077a/content_entry5c11a9db758f8d31544574c6/65a5f2dbcd34aab81b15c732/files/16JAN_2024_MEDIA_RELEASE_BURSA_MALAYSIA_AS_A_MULTI-ASSET_EXCHANGE_WILL_GENERATE_NEW_INVESTORS_FOR_THE_CAPITAL_MARKET.pdf?1705379286.

Singapore, making Bursa Malaysia more competitive in the regional market.[2]

§ MY:6 Islamic Capital Market (ICM)

Apart from the conventional capital market, Malaysia's has a parallel capital market i.e. the Islamic Capital Market. The ICM functions as a market which provides for market transactions which are carried out in ways that do not conflict with the conscience of Muslims and the religion of Islam, i.e. where the market is free from activities prohibited by Islam such as usury (*riba*), gambling (*maisir*) and ambiguity (*gharar*). The CMSA 2007 provides the definition of Islamic capital market product.[1]

In October 2023, the Securities Commission Malaysia (SC) introduced the *Maqasid Al-Shariah* Guidance for the ICM. This new principles-based guidance complements existing regulations, promoting ethical standards like justice, transparency, and inclusivity while enhancing the market's competitive advantage.[2]

The guidance is part of Malaysia's broader strategy under Capital Market Masterplan 3 (CMP3) to position the country as a global leader in Shariah-compliant Sustainable and Responsible Investment (SRI). The issuance of SRI Sukuk grew significantly in 2023, aligning the ICM with sustainability and environmental, social, and governance activities.[3]

In its early stages of development, the SC set up a dedicated Islamic Capital Market Department (ICMD) within its Strategy and Development Business Group. This was intended to provide infrastructure support and carry out research and development activities including formulating and facilitating a long-term plan to further strengthen the ICM in Malaysia. The Shariah Advisory Council (SAC) was established in May 1996 to advise the Commission on Shariah matters pertaining to the ICM. Members of the SAC are qualified individuals who can present Shariah rulings and have vast experience in the application of Shariah, particularly in the areas of Islamic economics and finance. The current products under the ICM include the SC list of Shariah-compliant securities, *sukuk,* Islamic unit trusts, Shariah indices, warrants (TSR), call warrants and crude palm oil futures contract.

The ICM continues to evolve with innovative products and frameworks. As of 2023, Malaysia's Islamic Capital Market accounted

---

[2]*See* https://www.mondaq.com/shareholders/1355588/beyond-one-share-one-vote-listing-of-dual-class-shares-on-bursa-malaysia.

[Section MY:6]

[1]See section 5, Securities Commission (Amendment) Act 2015.

[2]*See* https://www.sc.com.my/resources/media/media-release/sc-unveils-principles-based-maqasid-al-shariah-guidance-for-islamic-capital-market.

[3]*See* https://www.sc.com.my/resources/media/media-release/sc-unveils-principles-based-maqasid-al-shariah-guidance-for-islamic-capital-market.

for 64% of the national capital market, representing RM2.4 trillion. The number of Shariah-compliant securities listed on Bursa Malaysia increased to 811 by the end of 2023, constituting 81.5% of total listed securities.[4]

Additionally, the market saw a boost in Islamic fintech, with the FIKRA ACE initiative launched to drive innovation in Shariah-compliant financial technologies.[5]

In 2000, the Capital Market Masterplan (CMM) identified as one of six strategic objectives, the establishment of Malaysia as an international Islamic Financial hub. Specific recommendations to achieve this strategic objective are laid out in the CMM and now, the CMP2. These include the development of a wide range of products, creating a viable market for effective mobilization of Islamic funds and establishing appropriate and comprehensive regulatory and tax frameworks.

As the ICM functions as a parallel market to the conventional market, the same laws and regulations apply except where specific guidelines are provided.

§ MY:7 Listed securities

Public trading of securities in Malaysia is now primarily conducted through the Bursa Securities.

On 6 October 1997, the Minister of Finance approved MESDAQ as a stock exchange under section 8 of the Securities Industry Act (SIA) 1983. In January 2002, it was announced that KLSE and MESDAQ had completed an agreement for MESDAQ to become part of the KLSE Group. In 2004, KLSE demutualized and became a public company limited by shares and subsequently changed its name to Bursa Malaysia Berhad while the stock exchange is known as Bursa Malaysia Securities Berhad or Bursa Securities.

The types of securities that are traded on the Bursa Securities include shares, bonds, loan stocks, loan notes, property trust units, warrants, transferable subscription rights and call warrants.

As of May 2024, there are 1,009 public-listed companies (PLCs) on Bursa Malaysia, which marks an increase from the 940 companies reported in 2011. Of these, approximately 81.3% are Shariah-compliant, reflecting Malaysia's continued focus on the Islamic capital market. Additionally, the market capitalization of these listed companies surpassed RM2 trillion by mid-2024, indicating significant growth in the equities market since 2017.[1]

Public trading of securities in Malaysia remains primarily conducted

---

[4] https://www.ddcap.com/islamic-capital-market-icm-malaysia-2023-24/.

[5] https://www.sc.com.my/resources/media/media-release/scs-fikra-ace-seeks-fintech-startups-to-enhance-islamic-capital-market.

[Section MY:7]

[1] https://www.bursamalaysia.com/listing/listing_resources/ipo/ipo_summary?year=2024.

through Bursa Malaysia Securities Berhad. As of 2024, Bursa Malaysia introduced an accelerated transfer process for companies listed on the ACE Market to seamlessly transition to the Main Market, encouraging growth and market efficiency. Additionally, ESG reporting frameworks for listed companies were enhanced, reflecting a stronger focus on sustainability and transparency.[2]

§ MY:8 Private debt securities

The private debt securities (PDS) market in Malaysia is relatively young. There is a good discussion of this market in Malaysia in C. K. Low, ed., *Financial Markets in Malaysia* (2000) at 181.

Since 1 July 2000, however, a new regulatory regime applies to the issuance of private debt securities. Division 3 of Part IV of the *Securities Commission Malaysia Act (SCMA) 1993* was the main division that dealt with prospectuses and the provisions contained therein are applicable in relation to all securities including debt securities. The law is now contained in Capital Market and Services (Amendment) Act 2012. Division 4 of the CMSA (Amendment) Act 2012 deals with debentures and include requirements with regards to trust deeds, duties of trustees, borrowers, etc.

In broad overview:

(a) The approval or permission of the Central Bank of Malaysia is no longer required for the issuance of private debt securities;

(b) The Securities Commission's Guidelines on Offerings of Private Debt Securities (PDS) now set out the relevant criteria for the issuance of private debt securities;

(c) Division 4 of the CMSA 2007 (Amendment) Act 2012 deals with the regulation of trustees, trust deeds, and, borrowers and guarantors' obligations in relation to debentures of corporations;

(d) A prospectus for PDSs must be lodged with the CCM;

(e) The approval of the Securities Commission under Part VI of the Capital Market and Services (Amendment) Act 2012 is required.

The regulatory regime for private debt securities (now commonly referred to as corporate bonds) has evolved significantly. The SC revised its guidelines streamlining approval processes and enhancing disclosure requirements to facilitate efficient issuance and regulation of corporate bonds and Sukuk. These revisions are part of broader efforts to maintain Malaysia's leading role in the global Sukuk market and improve investor protection.[1]

---

[2]https://www.sc.com.my/resources/media/media-release/sc-unveils-principles-based-maqasid-al-shariah-guidance-for-islamic-capital-market.

[Section MY:8]

[1]*See* https://www.sc.com.my/api/documentms/download.ashx?id=cdb8673b-eabb-

§ MY:9 Derivatives and Futures

The regulatory structure of the Malaysian futures industry can be shortly stated. The legislative framework was provided by the *Futures Industry Act (FIA) 1993* and Regulations which has now been subsumed under the *Capital Market and Services Act (CMSA)2007*. The *CMSA 2007* contains provisions relating to the legal requirements placed on the exchanges, clearing house and broker members. The Minister of Finance approves the establishment of the exchanges (originally KLOFFE and CONMEX) and is given regulatory powers under the Act. The Securities Commission is the regulatory authority overseeing the operation of the industry including licensing of futures fund managers and futures brokers. KLOFFE has been replaced by Malaysia Derivative Exchange which has subsequently been renamed as the Bursa Malaysia Derivatives Berhad and the clearinghouse is the Bursa Malaysia Derivatives Clearing Berhad. KLOFFE was officially launched on 15 December 1995. Its first product was a futures contract on the KLSE Composite Index. In 1999, KLOFFE was taken over by KLSE. There is a good discussion of KLOFFE in Low, op. cit., Chapter 7.

The futures industry in Malaysia can be traced back to the Kuala Lumpur Commodity Exchange (KLCE) in July 1980. KLCE was the first commodity exchange in Malaysia with crude palm oil futures launched in that year. With the merger of KLCE and the Malaysia Monetary Exchange (MME), the Commodity and Monetary Exchange of Malaysia (CONMEX) was formed in 1998. Today, the main contracts offered by CONMEX are the three-month KLIBOR futures contract and the crude palm oil futures contract. The operation of CONMEX is discussed in Low, op. cit., Chapter 8.

The regulatory structure of the Malaysian futures industry has evolved, with Bursa Malaysia Derivatives continuing to offer a range of products including Crude Palm Oil Futures (FCPO) and financial derivatives. Bursa Malaysia introduced after-hours trading for key contracts such as FCPO, enhancing liquidity and global access to Malaysia's derivatives market. These updates reinforce Malaysia's position as a leader in commodities like palm oil and expand opportunities for international investors.[1]

4fb8-bff7-dc0dffad3ecc.

[Section MY:9]

[1]*See* https://www.bursamalaysia.com/trade/our_products_services/derivatives/commodity_derivatives/crude_palm_oil_futures.

IV. REGULATIONS REGARDING SUBSTANTIVE SECURITIES MATTERS

A. ESTABLISHMENT, REGULATION AND ORGANISATION OF SECURITIES REGULATORY ORGANISATIONS

§ MY:10 Securities Commission

The SC was established by the *Securities Commission Malaysia Act (SCMA) 1993* (SCMA 1993) on 1 March 1993.[1] The SC is a body corporate with the powers conferred on it by the Act. Section 15 (1) of the SCMA 1993 sets outs the functions of the SC.

The SC's functions include:

(a) regulating all matters relating to securities and futures contracts;

(b) regulating take-overs and mergers of Malaysian companies;

(c) regulating all matters relating to unit trust schemes;

(d) supervising and monitoring the activities of any exchange, clearing house and central depository;

(e) maintaining the confidence of investors in the securities and futures markets by ensuring adequate protection for investors;

(f) suppressing illegal, dishonorable and improper practices in dealings in securities, trading in futures contracts and the provision of investment advice and other services relating to securities or futures contracts;

(g) encouraging and promoting the development of securities and futures markets in Malaysia; and

(h) licensing and supervising persons licensed for purposes of any securities law.

The SC consists of an Executive Chairman (currently Tan Sri Dato' Seri Ranjit Ajit Singh), 4 members representing the Government and 4 other persons each of whom are appointed by the Minister of Finance.

The SC was initially funded by a grant from the Government. It is now funded through fees and charges and a levy imposed on transactions on the Bursa Malaysia. The levy is currently 0.015% of the purchase price. The SC also has power to impose a levy on futures contracts effected on any futures exchange.

The SC continues to expand its regulatory oversight in response to market developments. In 2024, it introduced guidelines on digital as-

---

[Section MY:10]

[1]See the discussion in Low, op. cit., Chapter 4.

sets, specifically regulating digital asset custody under the Capital Markets and Services Act (CMSA) 2007.[2]

Additionally, the SC's role includes setting forth comprehensive Technology Risk Management Guidelines to mitigate emerging risks in capital markets. The launch of the National Sustainability Reporting Framework (NSRF) in 2024 also underscores the SC's leadership in driving corporate governance and sustainability reporting.[3]

§ MY:11 Powers of the Securities Commission

The Securities Commission Malaysia Act (SCMA) confers on the SC all such powers as may be necessary for or in connection with, or reasonably incidental to, the performance of its functions under the securities laws.

The SC approves offers and issues of securities, the listing of securities and restructuring exercises. In addition, the SC is empowered under the SCMA to regulate take-overs and mergers.

§ MY:12 Enforcement and investigation

The SC has power to appoint investigating officers for the purposes of carrying out an investigation of any offence or inspection under the Securities Commission Act, the *Capital Market and Services Act 2007* and the Securities Industry (Central Depositories) Act. An investigating officer may in the course of an investigation or inspection enter a place or building, inspect and make copies of books and documents and, where he believes an offence has been committed against a securities law, search, seize or take possession of or detain articles or documents. An investigating officer may also require the production of books and documents: section 128 of the SCMA 1993.

An investigating officer may require a person acquainted with the facts and circumstances of a particular case to appear before the investigating officer to be examined orally. A person being examined must answer all questions put to him by the investigating officer and cannot refuse to answer a question on the ground that it tends to incriminate him. The record of examination is admissible as evidence in any court proceeding: section 134 of the SCMA 1993.

The SC may supply to a police officer or any other public officer copies of any book or other document it has seized, detained or taken possession of or of any such record of examination or allow such officer to have access to and inspect any property, book, other document, article or thing produced before or seized, detained or taken possession of by an investigating officer.

The SC may also provide such assistance as the SC thinks fit to a

---

[2] *See* https://www.sc.com.my/regulation/technical-notes-practice-notes-and-circulars/practice-note-no12024-%E2%80%93-digital-asset-custodian-specified-as-custodian-under-section-121g-of-the-capital-markets-and-services-act-2007.

[3] *See* https://www.sc.com.my/resources/media/media-release/national-sustainability-reporting-framework-to-enhance-sustainability-disclosures.

foreign supervisory authority exercising functions which correspond to those of the SC's.

A prosecution for an offence under the SCMA 1993 may only be instituted with the written consent of the public prosecutor.

§ MY:13 Companies Commission of Malaysia (CCM)

CCM administers the Companies Act (CA) 2016, Trust Companies Act 1949, Kootu Funds (Prohibition) Act 1971, Registration of Businesses Act 1956, Limited Liability Partnerships Act 2012 and Interest Schemes Act 2016. Under section 17(a) of the Companies Commission of Malaysia Act 2001, CCM shall ensure the provisions of the said Act are administered, enforced, given effect to, carried out and complied with. In order to do so, the Commission shall, under section 18 of the same Act, have the power to do all things necessary or expedient for or in connection with the performance of its functions.

In the exercise of its powers under CA 2016, the Registrar of Companies (ROC) (who is also the Chief Executive Officer of CCM) has powers, among others, to call for information (e.g. power of Registrar to require supply a statement of valuation at current value of assets and liabilities of the company under section 256), to appoint auditors of private company (section 268) and public company (section 272) upon application by a member if the company fails to appoint auditor and to strike off company from the register (section 549).

The ROC keeps various registers in accordance with the requirements of the Companies Act. These include a register of companies (section 15(a)) and a register of charges (section 357) required to be registered under the CA 2016. Under section 601 of the CA 2016, the registers are available for inspection by any person on payment of the prescribed fee.

Subdivision 9, Division 1, Part III of the Companies Act 2016 is entitled "Prospectuses." Section 152(2) CA 2016 expressly states that Subdivision 9, Division 1, Part III of the CA 2016 shall not apply to an offer or invitation to subscribe for or purchase any securities of a corporation, including any excluded offer or excluded invitation as defined in the Capital Markets and Services Act 2007. Section 154(2) of the Companies Act 2016 then goes on to say that where a prospectus has been *registered* with the SC under the *CMSA 2007,* it must then be *lodged* with the Registrar before the date of issue of the prospectus.

Recent legal developments include the introduction of the Companies (Amendment) Act 2024, which enhances corporate transparency and improves corporate rescue mechanisms. One of the key updates is the introduction of enhanced Beneficial Ownership Reporting requirements under the 2024 Amendment Act, which mandates companies to maintain a separate register of beneficial owners. This register must be kept at the company's registered office, and beneficial owners are

required to notify companies of any changes to their ownership information.[1]

In addition, the CCM has launched the Electronic Beneficial Ownership System (e-BOS), an online platform for the electronic submission and management of beneficial ownership data. This system ensures up-to-date reporting and enhances corporate transparency.[2]

The 2024 Amendment Act also introduces provisions for pre-pack schemes of arrangement and cram-down provisions, designed to streamline corporate rescue processes, particularly for companies in financial distress. These mechanisms allow companies to execute recovery plans without the need for creditor meetings in certain situations.[3]

§ MY:14 Bursa Securities

The Bursa Securities is the stock exchange in Malaysia. It is a stock exchange approved by the Minister of Finance under the *Capital Market and Services Act (CMSA) 2007*. Under the CMSA 2007, the Minister of Finance has power to grant approval to a body corporate, if recommended by the SC to establish and conduct a stock exchange if the Minister is satisfied that all requirements under section 8(2) of the CMSA 2007 are fulfilled. This includes:

(a) the body corporate will operate an orderly and fair market for securities and futures contracts that are traded via its facilities;

(b) the body corporate will prudently manage any risks associated with its business and operations;

(c) the body corporate will not act contrary to the public interest and in particular the interest of investors; and

(d) the rules of the body are satisfactory in relation to membership, listing of securities, supervision, regulating and disciplining of participants and protection of the public interest; and the interest of the public will be served by granting the approval.

A person cannot establish or maintain a stock market unless it is a stock exchange approved by the Minister of Finance under the CMSA 2007.

Section 10 of the CMSA 2007 provides that one-third of the Board is to be appointed by the Minister of Finance, in consultation with the Securities Commission is to be public interest directors. The number

---

[Section MY:13]

[1]*See* https://www.ssm.com.my/Pages/Legal_Framework/Document/FAQ%20CA%20(Amendment)%202024.pdf.

[2]*See* https://www.ssm.com.my/Pages/Legal_Framework/Document/FAQ%20CA%20(Amendment)%202024.pdf.

[3]*See* https://www.ssm.com.my/Pages/Legal_Framework/Document/FAQ%20CA%20(Amendment)%202024.pdf.

of the public interest directors may be reduced by the Minister upon recommendation of the Securities Commission. Section 4 of the CMSA 2007 defines "public interest directors" as directors appointed by the Minister under section 10 of the CMSA 2007. As of February 2018, the board comprises 8 members, where 6 are independent non-executive directors and 2 are non-independent non-executive directors.

The core operating divisions are the Listing Group and the Market Supervision Group and other divisions in the operation of the exchange support these groups. In addition to these divisions, Bursa Malaysia has several subsidiaries and affiliate companies. These are referred to as the Bursa Group. The more important companies in the Bursa Malaysia Group are as follows:

(a) Bursa Malaysia Securities Berhad;

(b) Bursa Malaysia Securities Clearing Sdn Bhd (S) is the Securities Clearing.[1] Securities Clearing is 100% owned by Bursa Malaysia and is the central clearinghouse;

(c) Bursa Malaysia Derivatives Clearing Berhad (D)[2] which is the Clearing House for the exchange traded derivatives market in Malaysia;

(d) Bursa Malaysia Depository Berhad[3] implements and operates the Central Depository System (CDS), which offers Bursa Securitas's scripless settlement system;

(e) Bursa Malaysia is 100% owned by Bursa Malaysia Berhad. (This was formerly known as KLSE Information Sdn Bhd, which was formerly known as KLSE-BERNAMA Real-Time Information Services Sdn Bhd (KULBER). In November 2002, KLSE bought out BERNAMA's equity in KULBER and the company was renamed KLSE IS). Its principal activities relate to providing and disseminating prices and other information relating to securities quoted within exchanges within the group;

(f) Bursa Malaysia Derivatives Berhad[4] operates the market for the trading of approved options and futures contracts; and

(g) Labuan International Financial Exchange (LFX). LFX is an offshore financial exchange based in Labuan, the international offshore financial center for Malaysia. LFX is limited by shares and is 100% owned by BURSA SECURITIES.

[Section MY:14]

[1]Prior to 2004, this was known as Securities Clearing Automated Network Services Sdn Bhd (SCANS).

[2]Prior to 2004, this was known as Malaysia Derivatives Clearing House Berhad (MDCH).

[3]Prior to 2004, this was known as Malaysian Central Depository Sdn Bhd (MCD).

[4]Prior to 2004, this was known as Malaysia Derivatives Exchange Berhad (formerly known as The Kuala Lumpur Options and Financial Futures Exchange Bhd).

Other subsidiaries in the group include:

(h) Bursa Malaysia Bonds Sdn Bhd

(i) Bursa Malaysia Depository Nominees Sdn Bhd

(j) Bursa Malaysia Information Sdn Bhd

(k) Bursa Malaysia Islamic Services Sdn Bhd

Bursa Malaysia has its own rules and these govern the conduct of its members. It is also responsible for surveillance of the market and enforcement of its listing requirements. The listing requirements set out the criteria for listing, disclosure requirements and standards to be maintained by listed companies. The Bursa Securities Listing Requirements (September 2007) can be viewed on the Bursa Malaysia website (www.bursamalaysia.com). Any amendment to the rules of the Bursa Securities must be notified to the SC who may, within 6 weeks after receipt of any proposed amendment, give notice in writing whether it approves or disapproves the whole or part of the amendment. In addition, the SC may amend the rules of the Bursa Securities.

Failure to comply with the rules or listing requirements of the Bursa Securities exposes a person to sanctions by the Bursa Securities. It is also an offence for a listed company and its directors to fail to comply with the listing requirements of the Bursa Securities.

The SC has also prescribed certain minimum standards of business conduct, which are intended to provide a guide as to proper standards of conduct and sound and prudent business practices among dealers. The SC retains supervisory control over Bursa Securities' role in the securities market.

The *Capital Market and Services Act 2007* requires the Bursa Securities to provide such assistance to the SC as it may reasonably require for the performance of its functions and duties. When it takes action against a member, Bursa Securities must inform the SC within 7 days.

Dealings in securities are carried out by member companies. There are various requirements for eligibility for membership. They include the issue of a dealer's license to the member company and representative's licenses to officers of the company.

Trading is carried out through a system called SCORE (System on Computerised Order Routing and Execution), which is a fully automated system. Launched in 1989 on a semi-automated basis, it was converted into automatic matching of orders in 1992. SCORE replaced the open outcry system, which had existed since 1961.

Transaction costs include brokerage (which are fully negotiable subject to a minimum brokerage and a cap of 0.70%), clearing fees (currently 0.04% of value) and stamp duty on contract notes (RM1.00 per RM1,000 value).

The Bursa Malaysia Securities Clearing Sdn Bhd (S) or the Securi-

ties Clearing), a wholly-owned subsidiary of Bursa Malaysia, provides clearing services for the members of Bursa Securities. SCA NS only clears domestic contracts of securities listed by Bursa Securities and not cross-border trade.

The Bursa Malaysia Depository Berhad runs the central depository system, which allows for dealings in securities to be effected by means of entries in securities accounts and settlement of securities transactions without the physical movement of scrip.

Bursa Malaysia has introduced the National Sustainability Reporting Framework in 2024, requiring companies to comply with enhanced ESG (Environmental, Social, and Governance) disclosure standards. This aligns with global trends towards responsible investing and strengthens the exchange's focus on sustainability and corporate governance.[5]

§ MY:15 Malaysian Exchange of Securities Dealing & Automated Quotation Bhd (MESDAQ) known as the ACE market since August 3, 2009[1]

Initially, MESDAQ was established in 1997 with the following principal objectives:

(a) to provide an avenue for high growth companies to raise capital; and

(b) to promote technology intensive industries and assist in developing a science and technology base for Malaysia through indigenous research and development.

In March 2002, MESDAQ merged with the KLSE. As a result, the MESDAQ Market on the KLSE was created. The MESDAQ Market operates as a unique market with a separate identity from the KLSE Main and Second Boards catering specifically for the capital raising needs of technology and potential high-growth companies.

Rules governing the admission of corporations wishing to obtain listing of and quotation for their securities on MESDAQ and transactions by corporations whose securities are listed on MESDAQ are set out in the Bursa Securities Listing Requirements for the MESDAQ Market. On August 3, 2009 MESDAQ was renamed as the ACE market.

In 2024, there were important updates to the ACE Market of Bursa Malaysia, which was formerly known as MESDAQ. These changes

---

[5]*See* https://www.bursamalaysia.com/sites/5bb54be15f36ca0af339077a/content_entry5c11a9db758f8d31544574c6/66f27e86e6414a5e07455a79/files/240924_MEDIA_RELEASE_BURSA_MALAYSIA_REVIEWS_THE_LR_IN_TANDEM_WITH_THE_NSRF.pdf?1727168232#:~:text=Kuala%20Lumpur%2C%2024%20September%202024,%E2%80%9Cthe%20Exchange%E2%80%9D)%20issued%20a.

[Section MY:15]

[1]For the history of MESDAQ prior to the 2002 merger with the KLSE, see C.K. Low, op. cit, Chapter Six.

aim to enhance the market's efficiency and improve access to capital for companies. Notably, the Securities Commission Malaysia (SC) introduced an accelerated transfer process for eligible ACE Market-listed companies to transition to the Main Market. This new framework, which took effect on January 1, 2024, simplifies and speeds up the process for companies that meet specific criteria, such as having a minimum market capitalization of RM1 billion for the past six months. The goal is to provide these companies with greater visibility and access to a larger pool of institutional and foreign investors.[2]

§ MY:16 Definition of securities

"Securities" is defined in section 2 of the CMSA 2007 as:

(a) debentures, stocks and bonds issued or proposed to be issued by any government;

(b) shares in, or debentures of, a body corporate or an unincorporated body; or

(c) unit trusts or prescribed investments, and includes any right, option or interest in respect thereof.

This definition means that the SC has jurisdiction in respect of debentures (sometimes referred to here as "debt securities") issued by public and private companies. The term, "debenture" is defined in section 2 of the Capital Market and Services Act 2007. Because of the definition of a "corporation" in the Securities Commission Malaysia Act (SCMA) 1993 (which extends to companies outside of Malaysia), it is clear that "securities" includes securities issued by a foreign corporation.

Recent amendments, such as the Capital Markets and Services (Amendment of Schedules 5, 6, and 7) Order 2024, have expanded the definition of securities, especially in relation to sophisticated investors. These changes allow a broader range of investors, including corporations managing significant funds and high-net-worth individuals, to participate in the market.

Additionally, digital assets, including digital tokens and digital currencies, have been incorporated into the scope of securities under the Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019, with further refinements introduced in 2024. These developments align with the evolving financial landscape and recognize digital assets as part of the securities framework.

A unit trust scheme is any arrangement made for the purpose, or having the effect, of providing facilities for the participation by persons

[2] https://www.sc.com.my/resources/media/media-release/sc-introduces-accelerated-transfer-of-listing-from-ace-market-to-main-market-for-eligible-ace-market-companies.

as beneficiaries under a trust in profits or income arising from the acquisition, holding, management or disposal of securities, futures contracts or any other property.

Division 1 Part III of the Companies Act 2016 sets out some of the requirements for issues of shares, debentures and certain types of interests to the public.

A share for the purposes of the Companies Act 2016 is a share in the share capital of a corporation, which is any body corporate formed or incorporated within or outside Malaysia.

As stated, the Companies Act 2016 allows for the establishment of 2 types of companies—private companies and public companies. A private company is a company having a share capital and with no more than 50 members. Under the new Companies Act 2016, a company may or may not have a constitution (except company limited by guarantee). Nevertheless, a private company must restrict the right to transfer shares, prohibit invitations to the public to subscribe for shares in or debentures of the company and prohibit invitations to the public to deposit money with the company. A public company on the other hand is a company that is not a private company.

Section 2(1) of the Companies Act 2016 defines a debenture to include debenture stock, bonds, sukuk, notes and any other securities of a corporation whether constituting a charge on the assets of the corporation or not.

The repealed Companies Act 1965 regulated the issue of certain other types of interests. These interests (section 84 interests) were defined in section 84 of the Companies Act 1965 as any right to participate or interest (whether enforceable or not and whether actual, prospective or contingent):

(a) in any profits, assets or realisation of any financial or business undertaking or scheme (whether in Malaysia or elsewhere);

(b) in any common enterprise (whether in Malaysia or elsewhere) in which the holder of the right or interest is let to expect profits, rent or interest from the efforts of the promoter of the enterprise or third party;

(c) in any time sharing scheme—these are schemes which entitle participants to use, occupy or possess for certain periods property to which the scheme relates; or

(d) in any investment contract—these are schemes which involve the investment of money in return for an interest in property which will or may be employed in common with any other interest in property acquired in like circumstances, whether or not the right or interest is evidenced by a formal document and whether or not the right or interest relates to a physical asset.

The following were excluded from the scheme of regulation that exists in respect of section 84 interests:

(a) any share in or debenture of a corporation;

(b) any interest in or arising out of a policy of life insurance;

(c) subject to certain exceptions, any interest in a partnership agreement; and

(d) any interest in a unit trust scheme.

However, the same provision is not retained in the new CA 2016. Instead, section 84 interests are now regulated under separate legislation enacted in 2016 i.e. the Interest Schemes Act 2016.

B. REGULATION OF PUBLIC OFFERINGS

§ MY:17 Public offerings and exempted offerings

A new regulatory framework for fund-raising activities in the primary market came into effect on 1 July 2000. The principal requirements were previously found in Part IV, Division 1 and Division 3 of the SCMA 1993 which are now repealed and have been consolidated into the CMSA 2007. In addition, Part III of the Companies Act 2016 must also be consulted. Part VI of the CMSA 2007 deals with "proposals" in relation to securities; the SC must approve any such "proposal." Note that the "proposal" is not confined to an offer to the public and hence covers all proposals whether or not to the public. Part VI, Div. 3 of the CMSA 2007 deals with the prospectus requirements under the SCMA 1993. The term "prospectus" is given a wide definition under section 226 of the CMSA 2007 so that it catches any document inviting applications or offers to subscribe for or purchase securities. Unless the offer, invitation or issue is excluded—see sections 228, 229 and 230 of the CMSA 2007—a prospectus must be registered with the SC prior to *any* invitation, offer or issue: see section 232 of the CMSA 2007. The CMSA 2007 then goes on to say—in section 234—that a copy of any prospectus "registered" under the CMSA 2007 must be "lodged" with the Registrar of Companies in relation to any securities other than a unit trust scheme or a prescribed investment scheme before the date of issue of the prospectus.

In summary:

(a) Any "proposal" to "make available", "offer for subscription or purchase" or "to issue an invitation to subscribe for or purchase securities in Malaysia" requires the approval of the SC under the Capital Market and Services Act 2007 unless excluded by section 213 of the CMSA 2007.

(b) Section 213 of the Act states that the approval requirement does not apply to the classes or categories of securities, or classes or categories of transactions, specified in Schedule 5 and 6 of the CMSA 2007. Among the classes specified are securities of a private company *other than debentures.*

(c) Unless exempted by the SC, a prospectus must be registered with the SC: section 232 of the CMSA 2007.

(d) Except for unit trust schemes and prescribed investment schemes, a copy of the prospectus registered with the SC must be lodged with the ROC.

In 2024, the Capital Markets and Services Act 2007 (CMSA) introduced a small offering exemption, which reduces the regulatory burden for smaller companies, including start-ups and MSMEs, in raising capital. This allows certain offerings to sophisticated investors to proceed with fewer regulatory hurdles. Instruments like Simple Agreement for Future Equity (SAFE) and convertible notes are increasingly being used within this framework. Additionally, the SC has streamlined the approval process for public offerings, promoting a more dynamic venture capital ecosystem.

§ MY:18 Approval by the Securities Commission

Section 212(4) of the CMSA 2007 states that no person shall implement or carry out a proposal unless the SC has approved the proposal. The effect of section 212(4) is that the SC must approve most proposals that involve the issue of shares by a public company.

Under section 212(2) of the CMSA 2007, the approval of the SC is required, *inter alia,* for the following proposals:

a) the listing and quotation of securities of a corporation on a stock market;

b) the transfer of a listing and quotation of securities of a corporation from an alternative market to the main market;

c) the listing or quotation of securities other than securities in paragraph (a) including units of a business trust or Islamic securities on a stock market;

d) an acquisition and disposal of assets which results in a significant change in the business direction or policy of a listed corporation, listed unit trust scheme or any other listed entity.

The Securities Commission Malaysia Act (SCMA) 1993 does not prescribe the documents that must be submitted to the SC. Instead, the Act requires an applicant to submit such documents and information in such form and manner and at such times as the SC requires. In assessing any proposal, the SC will have regard to the Policies and Guidelines on Issues/Offer of Securities of the SC, 1 March 2018.

In approving a proposal, the SC may impose such terms and conditions as it deems fit: section 214(1)(b)(1) of the CMSA 2007.

In 2024, the SC introduced Practice Note No. 1/2024, which designates Digital Asset Custodians (DAC) as recognized custodians under Section 121 of the CMSA. This regulation is part of the broader digital asset framework, enhancing the management of digital assets for fund management companies.

Additionally, the SC has streamlined the approval process for initial public offerings (IPOs) on both the Main and ACE Markets. New measures encourage principal advisers to engage with the SC early in the process to address compliance with the Equity Guidelines, thereby improving transparency and efficiency in IPO listings.

§ MY:19 Approval by the Central Bank (Bank Negara Malaysia) for issue of debt securities not required

The term "debenture" is defined in section 2 (1) of the CMSA 2007.

Prior to 30 June 2000, an issue of securities involving the issue of private debt securities, required the approval of the Central Bank of Malaysia. Specific approval from the Central of Malaysia is now no longer necessary for the issue of private debt securities. The issue of private debt securities now falls within the jurisdiction of the SC.

The guidelines issued by the SC entitled, "Guidelines on the Offering of Private Debt Securities" set out the criteria for the issue of private debt securities. As with share issues to the public, the SC must approve a proposal for the issue of debt securities unless an exemption applies.

In 2024, the Securities Commission Malaysia (SC) revised its guidelines on private debt securities, now commonly referred to as corporate bonds, to align with international practices. These updates streamline the approval process, enhancing operational efficiency and disclosure standards for issuers. The SC no longer requires Bank Negara Malaysia approval for private debt securities. The updated guidelines now focus on improving transparency and investor protection in Malaysia's bond and sukuk markets, which remain globally significant. This revision modernizes Malaysia's corporate bond issuance process, reflecting global trends.

§ MY:20 Approval, registration and lodgment of prospectuses

As we have seen, any proposal to issue securities must first be *approved* by the SC under section 232 of the CMSA 2007. After an approval has been granted, it is necessary to *register* a prospectus. The term "prospectus" is given a wide definition in section 226 of the CMSA 2007 to include, "a notice, circular, advertisement or document inviting applications or offers to subscribe for or purchase securities . . . .".

Section 232 (1) of the CMSA 2007 contains the general prohibition on offering securities in the absence of a prospectus *registered* with the SC. A prospectus may be registered after an approval by the SC: see section 232 of the CMSA 2007. The SC has the power to refuse the registration of a prospectus if it does not meet the requirements of section 233 of the CMSA 2007.

The required contents of a prospectus are set out in section 235 of the CMSA 2007. Section 236 of the CMSA 2007 contains a general duty of disclosure in relation to prospectuses. It states that, for the purposes of determining whether the prospectus contains any statement or information that is false or misleading or from which there is a material omission, "regard shall be had to whether the prospectus contains all such information that investors and their professional advisers would reasonably require, and reasonably expect to find in the prospectus for the purpose of making an informed assessment" of, inter alia, the merits of investing in the securities and the risk involved in so doing. This general disclosure test is similar to that contained in section 710 of the *Australian Corporations Act 2001* (Cth.).

Once a prospectus is registered by the SC, it must be *lodged* with the ROC. This requirement appears in section 234 of the CMSA 2007.

Hence, except for certain limited exceptions, an offer of securities must not be made unless a prospectus relating to the offer is first *approved and registered* with the SC. The prospectus must then be *lodged* with ROC. Section 154(2) of the Companies Act 2016 states that where a prospectus has been registered under the CMSA 2007, it must be lodged with the Registrar of Companies.

In 2024, amendments to Schedules 5 and 6 of the CMSA expanded the criteria for prospectus approvals, particularly for exempted offerings. Additionally, the SC has introduced digitalization initiatives to streamline the approval and lodgment process, allowing companies to register prospectuses electronically. This supports the SC's goal of improving market efficiency and enhancing the transparency of public offerings.

§ MY:21 Exempt offerings under the CMSA 2007

Section 212(8) of the CMSA 2007 exempts certain classes of securities from the operation of section 212(4)—the requirement that the SC must approve a proposal to offer securities.

Schedule 1 exemptions: The classes or categories of securities and transactions specified in Schedule 5 to the CMSA 2007 are as follows:

Proposal under Lodge and Launch Framework

1. Making available, offering for subscription or purchase of, or issuing an invitation to subscribe for or purchase:

(a) securities except shares, to a person specified in Part I of Schedule 6 or 7; or

(b) debentures or sukuk exclusively to persons outside Malaysia, provided that the making available of, offering for subscription or purchase of, or issuance of an invitation to subscribe for or purchase such securities, complies with the Lodge and Launch Framework as may be specified by the Commission, including requirements relating to lodgement of documents and information, payment of fees and timeline.

Securities

2. Any proposal, scheme, transaction, arrangement or activity, or issuance of securities, or offer for subscription or purchase of securities, or issuance of an invitation to subscribe for or purchase securities, in relation to—

(a) the listing or quotation of securities issued or guaranteed by the Federal Government or Bank Negara on a stock market of the stock exchange;

(b) the listing or quotation of securities issued or guaranteed by the Corporation as defined in the International Islamic Liquidity Management Corporation Act 2011 [Act 721];

(c) the listing of and quotation for structured warrants on a stock market of the stock exchange, provided that the issuer of the structured warrants complies with eligibility requirements specified by the Commission;

(d) an acquisition or disposal of assets which results in a significant change in the business direction or policy of a corporation whose shares are listed on the alternative market of the stock exchange except where such acquisition or disposal is carried out in conjunction with paragraph 212(2)(b);

(e) a disposal of assets which results in a significant change in the business direction or policy of a corporation whose shares are listed on the main market of the stock exchange that is not part of any other proposal that requires approval from the Commission; or

(f) the listing and quotation of securities of a corporation on a stock market as a result of a restructuring exercise involving a transfer of the listing status of a corporation to the first-mentioned corporation except where it forms part of a proposal falling under paragraph 212(2)(d) or subsection 212(3).

3. Any proposal, scheme, transaction, arrangement or activity, or issuance of securities, or offer for subscription or purchase of securities, or issuance of an invitation to subscribe for or purchase securities, where a corporation whose shares are listed on the stock exchange distributes securities that it holds in another corporation or a unit trust scheme to its own members.

4. Making available, offering for subscription or purchase of, or issuing an invitation to subscribe for or purchase—

(a) securities issued or guaranteed by the Federal Government or Bank Negara;

(b) securities issued or guaranteed by any State Government;

(c) securities issued or guaranteed by the Corporation as defined in the International Islamic Liquidity Management Corporation Act 2011;

(d) securities of a company to existing members of the company within the meaning of section 457 of the Companies Act 2016;

(e) securities of any entity established or registered under the laws applicable in Labuan—

(i) exclusively to persons in Labuan or outside Malaysia; or

(ii) to another entity established or registered under the laws applicable in Labuan.

5. Invitation or offering to underwrite or sub-underwrite securities pursuant to an underwriting agreement in relation to the listing and quotation of securities on a stock market of the stock exchange.

6. Issuance or allotment of securities to an underwriter or sub-underwriter pursuant to an underwriting agreement in relation to the listing and quotation of securities on a stock market of the stock exchange.

Shares

7. Any proposal, scheme, transaction, arrangement or activity, or issuance of shares, or offer for subscription or purchase of shares, or issuance of an invitation to subscribe for or purchase, shares, in relation to the listing or quotation of shares of a corporation on an alternative market of the stock exchange.

8. Making available, offering for subscription or purchase of, or issuing an invitation to subscribe for or purchase—

(a) shares of a private company;

(b) shares of a public company whose shares are not listed on the

stock exchange and is not seeking for its shares to be listed on the main market of the stock exchange;

(c) shares of a foreign corporation whose shares are listed on an exchange outside Malaysia pursuant to—

(i) an employee share or employee share option scheme;

(ii) a bonus issue;

(iii) a distribution of shares in lieu of dividends;

(iv) a rights issue;

(v) the exercise of a warrant, option or transferable subscription right, conversion of a convertible note or preference share, or the exchange of an exchangeable note;

(vi) an entitlement in respect of a warrant, option or right without consideration;

(vii) a subdivision or consolidation of shares; or

(viii) any other corporate exercise as may be specified by the Commission;

(d) shares held by a foreign corporation whose shares are listed on an exchange outside Malaysia pursuant to a distribution of shares in lieu of dividends;

(e) shares pursuant to a take-over offer of a foreign corporation;

(f) shares of a foreign corporation whose shares are not listed on the stock exchange or an exchange outside Malaysia pursuant to—

(i) an employee share or employee share option scheme;

(ii) a bonus issue;

(iii) a distribution of shares in lieu of dividends; or

(iv) a non-renounceable rights issue;

(g) shares that are not listed on the stock exchange or an exchange outside Malaysia to their existing shareholders or any other person as may be specified by the Commission in any guideline issued under section 377; and

(h) shares of a corporation whose shares are listed on the alternative market of the stock exchange other than a proposal falling under paragraph 212(2)(b).

9. In relation to subsection 212(4), any proposal to make available, offer for subscription or purchase of, or issue an invitation to subscribe for or purchase, outside Malaysia, shares of a public company or a corporation whose shares are listed on the stock exchange, other than a proposal to list its shares on an exchange outside Malaysia through—

(a) an initial public offering; or

(b) a cross-listing of such shares, whether directly or indirectly.

10. Making available, offering for subscription or purchase of, or issuing an invitation to subscribe for or purchase, shares, except shares in a closed-end fund, that are listed or approved for listing and quotation on an exchange outside Malaysia, to—

(a) a closed-end fund approved by the Commission;

(b) a holder of a Capital Markets Services Licence;

(c) a person who acquires shares, as principal, for a consideration of not less than two hundred and fifty thousand ringgit or its equivalent in foreign currencies for each transaction whether such amount is paid for in cash or otherwise;

(d) an individual whose total net personal assets, or total net joint assets with his or her spouse, exceeds three million ringgit or its equivalent in foreign currencies, excluding the value of the primary residence of the individual;

(e) an individual who has a gross annual income exceeding three hundred thousand ringgit or its equivalent in foreign currencies per annum in the preceding twelve months;

(f) an individual who, jointly with his or her spouse, has a gross annual income exceeding four hundred thousand ringgit or its equivalent in foreign currencies per annum in the preceding twelve months;

(g) a corporation with total net assets exceeding ten million ringgit or its equivalent in foreign currencies based on the last audited accounts;

(h) a partnership with total net assets exceeding ten million ringgit or its equivalent in foreign currencies;

(i) a bank licensee or insurance licensee as defined in the Labuan Financial Services and Securities Act 2010 [Act 704];

(j) an Islamic bank licensee or takaful licensee as defined in the Labuan Islamic Financial Services and Securities Act 2010 [Act 705]; or

(k) any other person as may be specified by the Commission, provided that such exchange is specified by the Commission and the distribution of such shares is made by a holder of a Capital Markets Services Licence who carries on the business of dealing insecurities.

11. In respect of a corporation whose shares are listed on the main market of the stock exchange, making available, offering for subscription or purchase of, or issuing an invitation to subscribe for or purchase, shares pursuant to—

(a) the exercise of a warrant, option or transferable subscription right, conversion of a convertible note or preference share, or the exchange of an exchangeable note;

(b) an entitlement in respect of a warrant, option or right without consideration;

(c) a subdivision or consolidation of shares;

(d) an employee share or employee share option scheme;

(e) a bonus issue;

(f) a rights issue;

(g) a private placement exercise;

(h) a distribution in lieu of dividends;

(i) an acquisition of securities or assets that does not result in a significant change in the business direction or policy of that corporation; or

(j) any other corporate exercise under the rules of the stock exchange as may be specified by the Commission, except where it forms part of a proposal under paragraph 212(2)(d) or subsection 212(3).

Unit trust schemes and prescribed investment schemes

12. Making available, offering for subscription or purchase of, or issuing an invitation to subscribe for or purchase, units in a unit trust scheme or prescribed investment scheme by a personal representative, liquidator,

receiver or trustee in bankruptcy or liquidation, as the case may be, in the normal course of realization of assets.

13. Any proposal, scheme, transaction, arrangement or activity, or issuance of, or offer for subscription or purchase of, or issuance of an invitation to subscribe for or purchase, units in a unit trust scheme or prescribed investment scheme in relation to an acquisition or disposal of assets which results in a significant change in the business direction or policy of a unit trust scheme or prescribed investment scheme that is listed on the main market of the stock exchange other than a business trust.

14. In respect of a unit trust scheme or prescribed investment scheme that is listed on the main market of the stock exchange, the issuance and subsequent listing and quotation of its units on the main market pursuant to a bonus issue or a rights issue.

Debentures and sukuk

15. Making available, offering for subscription or purchase of, or issuing an invitation to subscribe for or purchase, debentures or sukuk by a corporation to its related corporation where such debentures or sukuk include a term that prohibits the transfer of such debentures or sukuk, as the case may be, to any other person.

16. In the case of a public company where its debentures or sukuk have been approved by the Commission, a proposal for the listing of the debenture or sukuk on an exchange outside Malaysia.

17. Any proposal, scheme, transaction, arrangement or activity, or issuance of shares, or offer for subscription or purchase of shares, or issuance of an invitation to subscribe for or purchase shares, in relation to an acquisition or disposal of assets which results in a significant change in the business direction or policy of a corporation where only its debentures or sukuk are listed on a stock market of the stock exchange.

18. All secondary transactions of debentures or sukuk.

Under the Companies Act, a prospectus is not required in very limited circumstances.

Under section 161 CA 2016, the Registrar may, on the application in writing relieve a person from the requirements relating to the form and content of a prospectus if he is satisfied that the relief does not cause the non-disclosure to the public of information necessary for the assessment of the investment in the shares or debentures of the corporation and the compliance with the requirements, for which the relief is applied for, would impose unreasonable burden on the applicant.

Exemptions under Section 212(8) of the CMSA 2007 were updated in 2024 to clarify the thresholds and conditions for certain exempt offerings. The Technical Note No. 1/2024 specifies that for subsequent investments in a capital market product, the exemption will still apply even if the amount is less than RM250,000, provided the initial investment met the threshold and no significant redemptions occurred. These updates aim to enhance flexibility for sophisticated investors and align with global market practices.

§ MY:22 Excluded Offers and Invitations under the SCMA 1993

Pursuant to section 229 of the CMSA 2007, an offer for subscription

or purchase of, or an invitation to subscribe for or purchase, securities is an excluded offer or an excluded invitation if the offer or invitation is so specified in Schedule 6 of the CMSA 2007. If an offer or invitation is so excluded, sections 232, 233, 234, 235, 236, 237, 238, 239, 240, 241 and 244 of Division 3 of Part VI of the CMSA 2007 do not apply. The types of persons to whom these provisions apply include sophisticated and professional investors.

Pursuant to section 229 of the CMSA 2007, certain offers for subscription or purchase of securities are exempt if specified in Schedule 6. In 2024, amendments expanded the definition of sophisticated investors to include individuals and corporations with significant investment portfolios or assets.[1] The schedule also introduced digital assets, such as digital tokens, as part of the exempted securities, provided they meet the criteria under the Digital Currency and Token Order 2019.

§ MY:23 Excluded Issues under the CMSA 2007

Pursuant to section 230, an issue of securities is an excluded issue if it is so specified in Schedule 7 of the CMSA 2007.

In 2024, amendments were made to Schedules 5, 6, and 7 to expand the definition of sophisticated investors. These updates now include high-net-worth individuals (HNWI) and corporations with significant assets. Notably, family assets can now be considered in determining an individual's qualification as a sophisticated investor. These changes also reflect broader global market practices, making it easier for investors to participate in the private debt securities market and similar capital market products.[1]

Moreover, the SC has expanded the scope of excluded issues to include newer financial products such as digital tokens and sukuk, ensuring the Malaysian capital market remains competitive in the global financial landscape. The flexibility afforded by these amendments allows for more efficient fundraising without requiring the same level of regulatory oversight as traditional public offerings.

§ MY:24 Prospectuses under the CMSA 2007

Section 232 of the CMSA 2007 states that issues, offers and invitations in relation to securities must not be made unless a prospectus in relation to the securities has been registered by the SC and the prospectus has complied with the requirements of the CMSA 2007. However, a prospectus is not required where sections 228, 229 and

---

[Section MY:22]

[1]*See* Capital Markets and Services (Amendment of Schedules 5, 6 And 7) Order 2024.

[Section MY:23]

[1]*See* https://www.sc.com.my/api/documentms/download.ashx?id=0fa41de0-425c-4b60-a070-5f596fd2e0b4.

230 of the CMSA 2007 (excluded offers, invitations and issues) apply. In effect, this means that a registered prospectus under the CMSA 2007 is required for all issues other than those relating to:

(a) unlisted recreational clubs (where section 152 of the Companies Act 2016 applies);
(b) the securities of a private company;
(c) sophisticated investors;
(d) professional investors;
(e) employees of the issuer;
(f) rights issues and bonus issues for unlisted securities;
(g) takeovers; and
(h) company rescue cases

Thus, where a prospectus is required, the issuer must comply with the disclosure and content requirements of Part VI, Div. 3 of the CMSA 2007. A person who issues, offers for subscription or purchase, or makes an invitation to subscribe or purchase securities must prepare:

(a) a prospectus;
(b) a written application for the registration of the prospectus;
(c) any required consents from persons named in the prospectus;
(d) true copies of all material contracts; and
(e) any other information required by the SC.

As mentioned earlier, section 236 of the CMSA 2007 contains a general duty of disclosure of general application. Section 236(1) of the CMSA 2007 states that a prospectus must include all the information that investors and their professional advisers would reasonably require to make an informed assessment of:

(a) the rights attaching to the securities;
(b) the assets and liabilities, financial position, profits and losses and prospects of the issuer of the securities and, in the case of a unit trust or prescribed investment scheme, of that scheme; and
(c) the merits of investing in the securities and the extent of the risk involved in so doing.

Section 236(2) of the CMSA 2007 then goes on to list the information that investors and their professional advisers would reasonably require and reasonably expect to find in the prospectus under section 236(1) of the CMSA 2007. Section 236(2)(a) of the Act refers to information that is actually known to certain persons (such as a director or promoter). Section 236(2)(b) extends this requirement to information that a person (such as a director or promoter) "would have been able to obtain by making such inquiries as were reasonable in the circumstances." The requirement that the prospectus must include information that a director ought to have known imposes a due diligence obligation.

A prospectus must also contain the specific items of information required in section 235 of the CMSA 2007. Where a public offering of securities is involved, the SC has issued Prospectus Guidelines to supplement the specific items of information listed in section 44.

Section 238 and 239 of the CMSA 2007 contain provisions designed to deal with the situation where information in a prospectus becomes out of date or is discovered to be wrong. In these circumstances, the issuer must register a supplementary prospectus with the SC.

In 2024, the SC introduced digital submission mandates for prospectus filings, streamlining the process for issuers. Additionally, new guidelines clarify disclosure requirements, ensuring that all relevant information, including risks and financials, is made available to investors and their professional advisers.[1]

Exceptions to these requirements still apply for excluded offers and sophisticated investors under Schedules 6 and 7, with particular flexibility granted for digital assets and specific corporate securities offerings.

§ MY:25 Share hawking

Section 596 of the Companies Act 2016 prohibits a person from going from place to place offering shares for subscription or purchase to the public or seeking or receiving offers to subscribe for or purchase shares from the public. This provision remains intact. While there have been broader updates to the Companies Act through the Companies (Amendment) Act 2024, which focus on enhancing corporate governance, beneficial ownership, and reporting requirements, the prohibition on share hawking continues to play a critical role in maintaining market order.

§ MY:26 Advertising restrictions for offerings

Section 241 of the CMSA 2007 contains restrictions on advertising. The section operates by imposing a blanket prohibition on advertising and then goes on to list exceptions. So, for example, advertisements containing the bare details of an issue may be published in the pre-filing period with the consent of the SC: see section 241(4) of the CMSA 2007. In the post-filing period, limited advertisements are permitted under section 241(5) of the CMSA 2007. A preliminary prospectus is exempt under section 241(6). The publishing of reports (such as press reports) are permitted subject to terms and conditions: see section 241(7) of the CMSA 2007. The SC may order cessation of issuance of a notice and contravention of section 241 attracts criminal penalties. While the structure of the advertising restrictions remains largely the same as in 2024, digital platforms are being used more extensively for disseminating information in the pre- and post-filing periods, with SC approval. This move is part of the SC's broader efforts to modernize market practices and facilitate transparency while maintaining investor protection through regulated advertising channels.

[Section MY:24]

[1] *See* https://www.sc.com.my/api/documentms/download.ashx?id=b0c3467c-43b7-47c4-b703-e0c198a7e9d4.

§ MY:27 Special rules for offers of debentures

The Companies Act 2016 requires a trustee to be appointed for holders of debentures that are offered to the public. Section 177 of the Companies Act 2016 imposes on a trustee certain duties including the duty to:

(a) exercise reasonable diligence to ascertain whether or not the assets of the issuer are sufficient to discharge the debentures as and when they become due;

(b) satisfy itself that the prospectus does not contain any matter which is inconsistent with the debentures;

(c) exercise reasonable diligence to ascertain whether or not the borrowing corporation and any guarantor corporation that has guaranteed the obligations of the borrowing corporation has complied with the debentures;

(d) take all steps as the trustee for debenture holders is empowered to do to cause the borrowing corporation to remedy any breach of those covenants, terms and provisions;

(e) if a breach is not remedied, at the trustee's discretion place the matter before a meeting of debenture holders and submit proposals for their protection; and

(f) where the borrowing corporation proposes a compromise or arrangement, explain the effect of the compromise or arrangement to debenture holders and recommend an appropriate course of action.

Section 179 of the Companies Act 2016 also imposes certain covenants on a borrowing corporation. Among other things, the borrowing corporation must:

(a) use its best endeavors to carry on and conduct its business in a proper and efficient manner;

(b) make available for inspection by the trustee for debenture holders of the accounting or other records of the borrowing corporation;

(c) give to the trustee such information as it requires with respect to all matters relating to the accounting or other records of the borrowing corporation; and

(d) summon a meeting of debenture holders to consider the latest accounts and balance sheet and to give directions to the trustee if requested to do so by holders of at least 10 percent of the nominal value of the issued debentures.

In addition, under section 182 of the CA 2018, the borrowing corporation must lodge a report with the trustee and ROC setting out in detail any matters adversely affecting the security or interests of debenture holders. It must also provide the trustee with particulars of any charge created by it.

While there were no direct amendments to the duties of trustees for debentures, the Companies (Amendment) Act 2024 introduced significant improvements in corporate governance and beneficial ownership reporting. These broader amendments reflect Malaysia's continued ef-

forts to strengthen corporate compliance and transparency, which indirectly supports the enforcement of obligations on borrowing corporations and trustees.

C. MANDATORY DISCLOSURE REQUIREMENTS OF PUBLIC COMPANIES

§ MY:28 Accounts and reports—Generally

The Companies Act 2016 requires a company to keep such accounting and other records as will sufficiently explain the transaction and financial position of the company and enable true and fair profit and loss accounts and balance sheets to be prepared from time to time: section 245 of the CA 2016. In addition, directors of every company shall prepare financial statements within six months of its financial year end (section 248 CA 2016).

Section 245 of the CA requires companies to maintain proper accounting and financial records to explain their transactions and financial position. A High Court in the recent case of *Datuk Beh Kim Ling & Anor v. NEP Holdings (Malaysia) Bhd* [2024] 1 CLJ 517 expanded the scope of a director's right to inspect accounting records. The court held that this right extends to the accounting records of the company's subsidiaries, if required to provide a true and fair view of the company's affairs. This decision was influenced by the Singapore Court of Appeal's ruling in *Mukherjee Amitava v. Dystar Global Holdings (Singapore) Pte Ltd* [2018] SGCA 26, which adopted a similar approach.

Additionally, directors must prepare financial statements within six months of the financial year-end, and these must be audited and distributed to members or presented at the annual general meeting (AGM), as required by Sections 248 and 257 of the Act. The financial statements shall be duly audited before the financial statements are sent to every member under section 257 or, in the case of a public company, sent to every member under section 257 and laid before an annual general meeting under section 340. Pursuant to section 249, the annual financial statements for a financial year shall give a true and fair view of the financial position as at the end of the financial year and the financial performance for the financial year of the company.

§ MY:29 Accounts and reports—Borrowing corporations

Under Section 179 of the CA, a borrowing corporation is required to prepare and submit quarterly and bi-annual reports to both the Registrar of Companies (ROC) and the trustee for debenture holders. These reports must detail any matters adversely affecting the security or interests of debenture holders. Directors of guarantor corporations must also ensure that bi-annual accounts are prepared and lodged. This requirement aims to safeguard the interests of debenture holders by ensuring continuous oversight of the corporation's financial health and adherence to its debt obligations.

§ MY:30 Section 84 interests

Under an approved deed regulating section 84 interests, a trustee must send a statement of accounts with the auditor's report to each holder of interest within 2 months after the end of the financial year. The Interest Schemes Act 2016 continues to regulate these schemes, ensuring stronger investor protection through clear and consistent reporting requirements, which remain in effect to date.[1]

§ MY:31 Bursa Malaysia requirements—Periodic reports

A company whose securities are listed for quotation on the Bursa Securities must comply with the listing requirements of Bursa Securities. These include the obligation to provide various reports including:

(a) Pursuant to Bursa Securities LR 9.22, a quarterly report (on a consolidated basis) immediately figures are available and, in any event, not later than 2 months after the end of each quarter of a financial year.

(b) Pursuant to Bursa Securities LRs 9.23-9.26, a listed company must submit annual audited accounts and an annual report in a consolidated form. The annual audited accounts must be prepared in accordance with approved accounting standards of the Malaysian Accounting Standards Board (MASB) and the Companies Act 2016.

A borrowing company must also provide to the Bursa Securities quarterly reports and half-yearly statements that comply with the Bursa Securities listing requirements.

In addition, the management company of a property trust must provide to the Bursa Securities and unit holders quarterly unaudited and yearly audited accounts containing comparative figures for the previous corresponding period within 2 months after the end of the relevant period.

Bursa Malaysia introduced further enhancements to its Main Market Listing Requirements concerning periodic reporting, particularly for Islamic Real Estate Investment Trusts (REITs) and Exchange-Traded Funds (ETFs) with waqf features. These amendments aim to improve transparency and accountability by requiring additional disclosures in quarterly and annual reports.[1]

§ MY:32 Continuous disclosure by listed companies

Chapter 9 of the Bursa Securities Listing Requirements contains

---

[Section MY:30]

[1]*See* https://www.ssm.com.my/Pages/Legal_Framework/PDF%20Tab%203/aktabi_20160915_wjw007260aktaskimkepentingan2016bi%20(1).pdf.

[Section MY:31]

[1]*See* https://www.bursamalaysia.com/bm/about_bursa/media_centre/bursa-malaysia-enhances-listing-requirements-to-facilitate-offering-of-islamic-reits-and-etfs-with-waqf-feature.

continuous disclosure obligations applicable to all listed companies. According to Bursa Securities LR 9.01(3), "continuing disclosure" is the "timely and accurate disclosure of all material information by a listed issuer to the public." The corporate disclosure policy of the Bursa Securities is that:

> A listed issuer must . . . disclose to the public all material information necessary for informed investing and take reasonable steps to ensure that all who invest in its securities enjoy equal access to such information: BURSA SECURITIES LR 9.02(1).

Bursa Securities has six specific policies concerning disclosure and these are contained in Chapter 9 of the Listing Requirements: see Bursa Securities LR 9.02(2). They can be summarized as follows:

(a) A listed company must make immediate public disclosure of all material information concerning its affairs. Information is considered material if it is reasonably expected to have a material effect on either:

(i) the price, value or market activity of the company's securities; or

(ii) the decision of a holder of securities of the listed issuer or an investor in determining his choice of action.

(b) A listed company must release material information to the public in a manner designed to obtain its fullest possible public dissemination—as a minimum, the company must release the announcement to the Bursa Securities or simultaneously to the press, news wire services and Bursa Securities.

(c) If the company becomes aware of a rumour or report (whether or not true or false) that contains information likely to have an effect on the trading in the company's securities, or would be likely to have a bearing on investment decisions, the company must make due enquiry and immediately publicly clarify, confirm or deny the rumour or report.

(d) If there is unusual market action in the company's securities, the company must make enquiry to determine whether rumours or other conditions requiring corrective action exists and:

(i) if necessary, take whatever action is appropriate; or

(ii) if there is no explanation for the unusual market action, and if it is appropriate, announce that there has been no material development in its business and affairs not previously disclosed or, to its knowledge, any other reason to account for the unusual market action.

(e) A company must refrain from promotional disclosure activity which exceeds that necessary to enable the public to make informed investment decisions.

(f) Insiders must not trade on the basis of material information which is not known to the investing public and, even after material information has been released, for a period sufficient to permit thorough public dissemination and evaluation of the information.

Recent amendments in April 2023 further enhanced these obliga-

tions, particularly for Islamic REITs and ETFs with waqf features, mandating more detailed quarterly and annual reporting on waqf distributions and any changes to waqf arrangements.[1]

§ MY:33 Proxy solicitation

A shareholder may appoint proxies to attend and vote at any company meeting if permitted to do so by the company's articles of association: section 294 of the Companies Act. Most (if not all) articles permit the appointment of proxies.

The Companies Act 2016 allows a prescribed number of shareholders to requisition a meeting of members. The prescribed number is shareholders representing at least one tenth of the total voting rights of all members having a right to vote at general meetings as at that date: section 311 of the Companies Act 2016.

§ MY:34 Disclosure of interest in shares

Substantial shareholder disclosure and tracing provisions are contained in Part III, Division I, Subdivision 7 of the Companies Act 2016.

In broad overview, a person (resident or otherwise) who is a substantial shareholder in a publicly listed or unlisted public company must notify the company, the SC and the Bursa Securities (if listed) of its "interest" in shares if their shareholding is 5% or more of the nominal amount of the company's voting shares. Companies are required to keep a register of substantial shareholders: section 144 of the Companies Act 2016. Failure to notify the company may result in the imposition of a penalty: sections 137 and 138 of the Companies Act 2016.

Under the Companies (Amendment) Act 2024, the definition of "beneficial owner" has been expanded to include not only those holding 20% or more of shares but also individuals who exert effective control over a company, even if they hold less than 20%. This aligns with the Financial Action Task Force (FATF) standards to enhance transparency. Furthermore, companies must maintain a Register of Beneficial Owners, as stipulated in the new Section 60B, detailing significant control over the company, which must be kept updated and filed with the Companies Commission of Malaysia (CCM).[1]

The concept of an interest in shares is given a broad meaning in section 8(4) of the Companies Act 2016 and that definition also ap-

---

[Section MY:32]

[1]*See* https://www.bursamalaysia.com/bm/about_bursa/media_centre/bursa-malaysia-enhances-listing-requirements-to-facilitate-offering-of-islamic-reits-and-etfs-with-waqf-feature.

[Section MY:34]

[1]*See* https://www.ssm.com.my/Pages/Legal_Framework/Document/FAQ%20CA%20(Amendment)%202024.pdf.

plies for the *Securities Industry (Reporting of Substantial Shareholding) Regulations 1998*.

Pursuant to section 136 of the Companies Act 2016, a person has a substantial shareholding in a company if he has an interest in one or more voting shares in the company and the nominal amount of that share is not less than 5% of the total nominal amounts of all voting shares in the company or, in the case of a company having more than one class of shares, in that class of shares. It is that person's "interest" in the required number of shares that is important.

Under section 8(4) of the Act, a person is deemed to have an interest in a share in various circumstances including where a body corporate has an interest in the share and:

(a) the body corporate or its directors are accustomed or under an obligation to act in accordance with the directions of that person in relation to that share;

(b) that person has a controlling interest in the body corporate; or

(c) that person or his associates are entitled to exercise or control the exercise of at least 20 percent of the votes attaching to the voting shares in the body corporate—a person is an associate of another if he is a related corporation or he controls or is controlled by that other person.

Any company has the ability to trace persons with substantial shareholdings by virtue of section 56 of the Companies Act 2016. This section gives a listed company the power to issue notices requiring a shareholder of a listed company to inform the company as to whether the shares held by them are held as beneficial owner or trustee. This power assists the functioning of the takeover provisions. Failure to comply with a section 56 notice is a criminal offence.

The 2024 amendments also give companies greater powers to enforce these disclosures. Under the new Section 60C, companies can request beneficial ownership information from shareholders, beyond just voting shares. This complements the existing Section 56, which gives listed companies the power to trace persons with substantial shareholdings. Section 56 allows companies to issue notices requiring shareholders to inform whether the shares are held as a beneficial owner or trustee. Failure to comply with a Section 56 notice is now a criminal offense under these amendments.

D. FRAUD, MANIPULATION AND INSIDER TRADING

§ MY:35 Overview

Malaysia has a penal code that contains various offences relating to fraud generally. There are also specific statutory provisions in the securities laws that create a number of statutory offences relating to fraud, manipulation and insider trading.

In recent years, there has been increased enforcement action by the SC and Bursa Malaysia, especially targeting market manipulation

schemes like "pump and dump." This illegal practice involves artificially inflating a stock's price before offloading it to unsuspecting investors at a profit, leaving them with losses. There have also been notable prosecutions for insider trading under Section 188, with cases resulting in both heavy fines and imprisonment.[1]

§ MY:36 Prohibited Conduct under the CMSA 2007

Part V, Division 1 of the *Capital Market and Services Act 2007* contains prohibitions against abusive practices. The key provisions are as follows:

Section 175: False trading and market rigging transactions
Section 176: Stock market manipulations
Section 177: False or misleading statements
Section 178: Fraudulently inducing persons to deal in securities
Section 179: Use of manipulative and deceptive devices
Section 181: Dissemination of information about illegal transactions.

There has been a significant focus on enforcing penalties for false trading and market rigging. In particular, the SC has successfully pursued both criminal and civil actions against perpetrators. Civil liabilities are now widely enforced, with heavy fines and penalties imposed.[1]

§ MY:37 Insider trading

General:

The primary insider trading regime of general application is contained in Part V, Division 1, sub-division 2 of the *Capital Market and Services Act 2007*. For companies listed on the Bursa Securities, insider trading prohibitions are contained in Bursa Securities Listing Rules 9.14 and 9.15. Insider trading remains one of the most actively prosecuted offenses under the CMSA.[1] In one prominent case, an individual was sentenced to five years in prison and fined RM7 million for insider trading related to APL Industries Berhad shares.[2]

Part III, Division 2 of the Companies Act 2016 (entitled, "Members,

---

[Section MY:35]

[1]*See* https://www.bursamalaysia.com/regulation/about_bursa_malaysia_regulatory/market_surveillance/market_misconduct.

[Section MY:36]

[1]*See* https://www.azmilaw.com/insights/market-manipulation-and-false-trading-in-malaysia-with-reference-to-penalties/.

[Section MY:37]

[1]*See* https://www.bursamalaysia.com/regulation/about_bursa_malaysia_regulatory/market_surveillance/market_misconduct.

[2]*See* https://www.sc.com.my/resources/media/media-release/ex-ceo-of-apl-industries-bhd-and-ex-remisier-fined-and-jailed-five-years-for-insider-trading.

Directors and Officers of Companies") contains provisions specifically directed at "officers." Note that the term, "officer' is widely defined in section 2(1) of the Companies Act 2016 to include any director, secretary or employee of the corporation. For the purpose of provisions relating to director's duties under section 213 and substantial property transaction under section 223 and 228, directors include the "chief executive officer, the chief operating officer, the chief financial controller or any other person primarily responsible for the operations or financial management of a company, by whatever name called" (section 210 CA 2016).

Companies Act 2016:

Improper Use of Information: Section 218(1)(b) of the *Companies Act 2016,* contains a prohibition against any director or officer of a company using information acquired by virtue of that position in order to gain directly or indirectly an advantage for himself or for any other person or to cause detriment to the company without the company's consent or ratification. Recent enforcement actions emphasize strict liability for directors who misuse information for personal advantage, with civil actions initiated for breaches of fiduciary duty leading to significant damages being awarded. Directors now face more stringent penalties if they are found guilty of failing to act in good faith or using corporate information improperly.

Capital Market and Services Act 2007:

As stated, the primary insider trading regime is contained in the Part V, Division 1 of the CMSA 2007.[3] Section 174 of the CMSA 2007 makes it plain that Div. 1 applies to:

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

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

Insider: An insider is defined in section 188 of the CMSA 2007. An insider is a person who "possesses information that is not generally available which on becoming generally available a reasonable person would expect to have a material effect on the price or the value of securities and who knows or ought to know that the information is not generally available."

Information: The term "information" is defined in section 183 of the CMSA 2007. The term is given a wide definition and includes:

(a) matters of supposition and other matters that are insufficiently definite to warrant being made known to the public;

(b) matters relating to the intentions, or likely intentions, of a person;

[3]For a detailed discussion see Mushera Khan, *Directors Accountability and Insider Trading* (2001) Butterworths, Kuala Lumpur.

(c) matters relating to negotiations or proposals with respect to (i) commercial dealings or (ii) dealing in securities;

(d) information relating to the financial performance of a corporation;

(e) information that a person proposes to enter into, or has previously entered into one or more transactions or agreements in relation to securities or has prepared or proposes to issue a statement in relation to such securities; and

(f) matters relating to the future.

Generally available: Section 184 of the CMSA 2007 states that information is "generally available" if the information has been made known in a manner that would or would tend to "bring it to the attention of reasonable persons who invest in securities of a kind whose price or value might be affected by the information, and since it was so made known, a reasonable period for it to be disseminated among, and assimilated by, such persons has elapsed."

Material effect on price or value: Section 185 of the CMSA 2007 states that information that would have or tend to have a material effect on the price or value of securities, "refers to such information which would or would tend to, on becoming generally available, influence reasonable persons who invest in securities in deciding whether or not to acquire or dispose of such securities, or enter into an agreement with a view to acquire or dispose of such securities."

Three types of offences: There are three types of offences: the trading or dealing offence, the procuring offence, and, the tipping offence. All of these offences are contained within section 188 of the CMSA 2007.

The trading offence: Under section 188(2)(a) of the CMSA 2007 an insider commits the trading offence if he or she buys or sells or agrees to buy or sell securities. Recent examples are provided by the Axis insider trading case and the APL Industries case: see SC News and Media, "Court declares in favour of SC in Axis Insider Trading Case", November 2017 and "Ex-CEO of APL Industries and Ex-Remisier Fined and Jailed Five Years for Insider Trading", November 2017.

The procuring offence: Section 187 of the CMSA 2007 defines the word "procures" widely. If a person "incites, induces, encourages or directs an act or omission by another person" then that person is taken to have procured the act or omission of the other person. Section 188(2)(b) of the Act states that an insider commits the procuring offence if they procure someone else to buy or sell the company's securities or enter into an agreement to do one of those things.

The tipping offence: The tipping offence is contained in section 188(3) of the CMSA 2007. An insider is prohibited from communicating inside information to a third party whom the insider knows or ought reasonably to know would either trade or procure another person to trade.

Liability: First, criminal sanctions attach to insider trading by

virtue of section 188(4) of the CMSA 2007. The penalty is a fine of no less than RM1 million and up to ten years imprisonment. Second, Part V Division 1, subdivision 3 deals with civil liability for insider trading. Under sections 200 and 211, the SC may institute civil proceedings against any person in respect of a contravention of sections 175-178, 179, 181 or 188. The limitation period is twelve years from the date on which the cause of action accrued or the date on which the SC discovered the contravention (whichever is later). Section 201 provides a civil remedy for any person who suffers loss or damage as a result of a contravention of section 188. Third, section 360 gives a court the power to make a range of orders including the disposal of securities.

Defences: Various defences are provided in sections 190-198. The principal defences are as follows:

(a) Under section 192, there is an exception for liability in respect of entering into an underwriting or sub-underwriting agreement and the acquisition of securities pursuant to such an agreement. Further, section 188(3)—the tipping offence—does not apply in respect of the communication of information in relation to securities to a person solely for the purpose of procuring the person to enter into an underwriting or sub-underwriting agreement.

(b) "Chinese Wall" defence: sections 190(3) and 191(3) of the CMSA 2007 provide "Chinese Wall" defences for companies and partnerships that trade in securities.

(c) Under section 197, a redemption of units of a unit trust scheme in accordance with a buy-back covenant in the scheme is also exempted from section 188.

(d) There is also a defense of 'parity of information' under section 198 of the CMSA 2007.

§ MY:38 Short selling

Short selling is a criminal offence under section 98 of the CMSA 2007. The CMSA 2007 prohibits a person from selling securities unless at the time of the sale he has, or believes on reasonable grounds that he has, a presently exercisable and unconditional right to vest the securities in the purchaser. Under the CMSA 2007, a person is deemed to sell securities if he purports or offers to sell securities, holds himself out as entitled to sell securities or instructs a dealer to sell securities.

The penalty for short selling is a fine of up to RM 5 million or imprisonment for a term of up to 10 years or both.

There are a number of exceptions to the prohibition: see section 98(4) of the CMSA 2007. These are:

(a) odd lot transactions by a licensed dealer who specialises in dealings in odd lots;

(b) a sale of securities by a person who has contracted to buy those securities and has the right to have those securities vested in him conditional only upon any of the following:

(i) payment of the consideration,
(ii) receipt of a proper instrument of transfer,
(iii) receipt of documents of title, and

(c) a sale of securities where:

(i) the securities are included in a class of securities in relation to which there is a provision in the rules of the stock exchange to the effect that the class is a class of securities to which this paragraph applies;

(ii) the sale is made as may be provided by the rules of the stock exchange; and

(iii) at the time of the sale, neither the person who sold the securities, nor any person on behalf of whom the first-mentioned person sold the securities, was an associate, in relation to the sale, of the body corporate that issued or made available the securities;

(d) a sale of securities which are permitted by Bank Negara to be transacted in the short term money market;

(e) a sale of securities—

(i) of such class or category; or

(ii) which is transacted in such manner or under such circumstances, as may be prescribed by the Minister; and

(f) the making or trading of a futures contract, or anything done in relation thereto, on the futures market of a futures exchange or on an exempt futures market.

The SC and Bursa Malaysia have clarified that investors involved in rights issues—where shares have been fully paid for but are yet to be officially listed—can engage in short selling under the assumption that they possess the exercisable right to sell the shares. This has provided much-needed guidance for investors to avoid violating Section 98 of the CMSA.

Additionally, Regulated Short Selling (RSS) has been reinforced by Bursa Malaysia, allowing approved securities to be short-sold under stringent guidelines designed to maintain market stability. This distinction between illegal short selling and RSS has been emphasized to prevent market manipulation.[1]

E. TENDER OFFERS, TAKEOVERS AND OTHER CORPORATE COMBINATIONS

§ MY:39 Tender offers

The SC administers, supervises and controls take-overs and mergers of public companies (which may or may not be listed on the Bursa Securities). In pursuit of safeguarding the interest of shareholders, Malaysia adopts the Equal Opportunity Rule as the foundation of its takeover laws. Under the rule, fairness in takeover is considered

---

[Section MY:38]

[1]*See* https://www.bursamalaysia.com/sites/5d809dcf39fba22790cad230/assets/647ebb325b711a60731d1c4a/Final_Updated_FAQs_on_Short_Selling_23May23.pdf.

achieved through affording equal treatment to all shareholders of the target company in four aspects namely rights to disinvestment, equal premium, information and decision making.[1]

The Malaysian Code on Take-Overs and Mergers 2016 has been updated to strengthen disclosure requirements and introduce stricter timelines. Offerors and target company boards must now make an announcement within one hour of an obligation to make or receive a takeover offer. If immediate disclosure is not feasible, the company must request a temporary trading halt to avoid price manipulation.[2] The SC has also introduced provisions for pre-conditional offers, requiring prior consent from the SC for regulatory approvals before including pre-conditions in a takeover offer.[3]

Part VI, Division 2 of the CMSA 2007 contains primary rules relating to takeovers, mergers and compulsory acquisitions.[4] A "take-over offer" is defined in section 216 of the CMSA 2007 as "an offer made to acquire all or part of the voting shares, or any class or classes of voting shares" of a company and the term "control" is defined in the same section as the acquisition of more than 33 per cent of the voting shares of the company.

Section 217 of the CMSA 2007 states that the Minister of Finance may prescribe a Code on Take-Overs, Mergers and Compulsory Acquisition. Under section 217(4), the SC administers the Code. The current Code is the *Malaysian Code on Take-overs and Mergers 2016* (the Code) which came into effect on 15 August 2016. The Code is supplemented by the Rules on Take-Overs, Mergers and Compulsory Acquisitions (TOM Rules) issued by the SC on 15 August 2016. Section 218 of the CMSA 2007 imposes an obligation on the relevant persons to comply with the Code and a person who contravenes section 217(1), (2) or (3) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

The SC administers the Code and may issue rulings interpreting the Code, issue rulings on the practice and conduct of persons involved in or affected by a takeover and enquire into any matter relating to any take-over. In administering the Code, the SC is required to take

---

[Section MY:39]

[1]See Syed Fadhil Hanafi and Mushera Ambaras Khan, "Social Benefits of The Equal Opportunity Rule in Takeovers and Mergers of Companies In Malaysia and the United Kingdom" (2017) Pertanika Journal of Social Sciences and Humanities. JSSH Vol. 25(S) Oct. 2017.

[2]https://conventuslaw.com/report/malaysia-revised-rules-on-take-overs-mergers-and/.

[3]https://www.globalcompliancenews.com/2022/01/23/malaysia-key-changes-to-the-rules-on-take-overs-mergers-and-compulsory-acquisitions-12012022/.

[4]For detailed discussion see Mushera Khan, *A Guide To Malaysian Takeovers and Mergers Law*, Sweet & Maxwell, 2013 Kuala Lumpur.

into account the desirability of ensuring that any acquisition takes place in an efficient, competitive and informed market.[5]

In addition to the Code, there are various disclosure requirements under the Companies Act 2016 applicable to substantial shareholders (see D4.4 above). Foreign investment restrictions must also be observed (see D8.3 below).

§ MY:40 Take-over offers

The threshold for regulation is more than 33 percent of the voting shares in a company.

Under the CMSA 2007, a person (whether alone or acting in concert with others) who acquires more than 33 percent of the voting shares in a company must make an offer to acquire the remaining voting shares in the company which is not yet his at an equal amount of premium paid by the acquirer in consideration of control. The take-over offer must be made in accordance with the Code and the SC's rulings in particular, shareholders' rights to exit, premium sharing, information and decision making.[1]

The CMSA 2007 also regulates creeping takeovers. It requires a person who has between 33-50 percent of the voting shares in a company to comply with the Code and the SC's rulings if he wishes to acquire additional voting shares of more than 2% within any period of 6 months. The SC also enhanced enforcement against attempts to bypass these rules by using indirect holdings.

If an offeror becomes entitled to at least 90% of the voting shares in the target company within 4 months after making the take-over offer, the offeror may compulsorily acquire the remaining shares in the company. The equivalent buy out right is given to minority shareholders to "force" the acquirer to purchase the remaining 10% voting shares so that they may exit from the company if the acquirer did not exercise his compulsory acquisition right.

It is interesting to note that in Malaysia in term of access to information, the TOM Rules contains a unique feature which extends the equal right to information to offerors. This unique feature is found in Rule 10.04 TOM Rules whereby an offeree or board of directors of the offeree who gives any information, including particulars of offeree shareholders to an offeror shall give the same information to another bona fide potential offeror upon request. This indirectly benefits the shareholders in creating competitive environment that helps shareholders to get the best offer for their shares.

---

[5]See Mushera Khan, Azza Moideen, Sharon Moreira "Efficient, Informed and Competitive Market: The Malaysian Regulation on Takeovers and Mergers of Companies" (2013) The Law Review.

[Section MY:40]

[1]See Syed Fadhil Hanafi and Mushera Ambaras Khan, "Social Benefits of The Equal Opportunity Rule in Takeovers and Mergers of Companies In Malaysia and the United Kingdom" (2017) Pertanika Journal of Social Sciences and Humanities. JSSH Vol. 25(S) Oct. 2017.

§ MY:41 SC's powers takeovers and mergers

The SC may under section 219(1) of the CMSA 2007 exempt a person or a take-over offer from regulation. In exercising its power to do so, the SC must take into account the desirability of ensuring that acquisitions take place in an efficient, competitive and informed market and have regard to the need to ensure:

(a) that shareholders and directors of the target company and the market are aware of the identity of the acquirer, have reasonable time in which to consider the offer and are supplied with sufficient information necessary to enable them to assess the merits of the offer;

(b) that all shareholders of the target company have equal opportunities to participate in benefits accruing from the offer;

(c) that fair and equal treatment of all shareholders would be achieved; and

(d) that the directors of the target company and acquirer will act in good faith to observe the objects mentioned above and that minority shareholders are not oppressed or disadvantaged.

If a person fails to comply with the Code or any of the SC's rulings, the SC may take any one or more of the following actions under section 220(1) of the CMSA 2007:

(a) direct the person to comply;

(b) impose a penalty of up to RM1 million;

(c) reprimand the person;

(d) direct a stock exchange to deprive the person access to the facilities of the stock exchange;

(e) prohibit the person from having access to the capital market;

(f) if the person is a listed corporation, direct the stock exchange to suspend trading in the corporation's securities, suspend the listing of the corporation or remove the corporation's securities from the official list;

(g) if the person is not listed corporation, direct any stock exchange to prohibit the listing of the corporation's securities; and

(h) require the person to take such remedial or mitigation steps as the Commission may direct;

(i) if the person is an adviser, refuse to accept or consider any submission from such person relating to any matter under Division 2, Part IV of the CMSA.

It is also an offence under section 221 of the CMSA for a person to provide false or misleading information or engage in misleading or deceptive conduct in connection with any document or information required to be submitted to the SC in relation to a take-over offer. The penalty for committing this offence is a fine of up to RM3 million or imprisonment of up to 10 years or both.

§ MY:42 Arrangements and reconstructions

Part III of the Companies Act 2016 provides for a re-organisation of

the share capital of a company by the consolidation of shares of different classes or by the division of shares into shares of different classes. This is known as an arrangement.

An arrangement may be part of or connected with a scheme for the reconstruction of a company or the amalgamation of 2 or more companies.

Where an arrangement is proposed between a company and its creditors or members, the court may order a meeting at which the arrangement is put to a vote. Any arrangement requires the approval of a majority in number representing at least 75% in value of the creditors or members, as the case may be, voting at the meeting. It must also be approved by the court, which may grant approval subject to such alterations or conditions as it thinks just. Schemes of arrangement, amalgamation and selective capital reduction are also regulated under the Code on takeovers and mergers.[1]

The Companies (Amendment) Bill 2023, which was passed by the Dewan Rakyat in November 2023 and the Dewan Negara in December 2023, introduces several enhancements to the existing framework for arrangements and reconstructions. A major update is the introduction of pre-packaged schemes of arrangement, allowing companies to negotiate and finalize arrangements with creditors in advance. Such schemes can then be approved by the court without the need for a formal creditors' meeting, which helps distressed companies save both time and costs.[2]

Another significant addition is the cross-class cramdown mechanism. This new provision enables the court to approve a scheme of arrangement even if some classes of creditors oppose it, provided that at least 75% in value of all creditors agree to the scheme. This ensures that a small group of dissenting creditors cannot block a restructuring effort that has the majority's support.

The Bill also introduces a requirement for companies to maintain a Register of Beneficial Owners, making it mandatory for companies to record the details of their beneficial owners. The companies are required to update the Companies Commission of Malaysia (CCM) within 14 days of any changes in ownership. This provision aims to improve corporate transparency by ensuring accurate and up-to-date information about who truly owns and controls the company.[3]

These amendments provide an enhanced framework for corporate

[Section MY:42]

[1]For the amendments, see Mushera Ambaras Khan "Amendments to Takeovers and Mergers Regulation in Malaysia" (2012) 33 The Company Lawyer, Issue 1 at 19; Mushera Ambaras Khan "An insight into the latest developments on takeovers and mergers law in Malaysia" (2011) Company and Securities Law Journal at 125-129.

[2]*See* https://www.ssm.com.my/Pages/Publication/PDF%20Files/Annual%20Dialogue%202023%20-%20Companies%20(Amendment)%20Bill%202023.pdf.

[3]*See* https://www.ssm.com.my/Pages/Publication/PDF%20Files/Annual%20Dialogue%202023%20-%20Companies%20(Amendment)%20Bill%202023.pdf.

restructuring, making it easier for companies to navigate financial difficulties while offering greater protections to creditors and improving overall transparency in corporate governance.

§ MY:43 Share buy backs

Section 127 of the Companies Act 2016 allows a public company to buy back its shares subject to certain conditions. These are:

(a) the constitution of the company authorised the share buy back;
(b) that the company is solvent—section 112(2) CA 2016 provides the solvency test for share buyback and the directors of the company must give a solvency declaration (section 113 CA 2016);
(c) the shares must be bought through the stock exchange on which they are quoted and in accordance with the rules of the stock exchange (Nevertheless, under section 127(3) CA 2016, a company may purchase its own shares otherwise than through a stock exchange if the purchase is permitted under the relevant rules of the stock exchange and made in accordance with such requirements as may be determined by the stock exchange); and
(d) the buy back must be made in good faith and in the interests of the company—the directors of the company must provide a declaration to this effect.

Shares bought back may be dealt with in the following manner:

- the company may cancel all the shares bought back;
- the company may retain all the shares as treasury shares; or
- the company may keep some of the shares as treasury shares and cancel the rest.

The shares kept as "treasury shares" may later be resold on the stock exchange according to the rules of the stock exchange or distribute these shares as dividends to shareholders. While the shares are kept as treasury shares, these shares do not carry any voting rights or right to dividend and shall not be counted for any voting, quorum, meeting or substantial shareholding purposes.

The requirement in the Companies Act 2016 that the shares must be bought through the stock exchange on which they are quoted and in accordance with the rules of the stock exchange necessitates the company to comply with Chapter 12 of the Bursa Securities Listing Requirement on Share Buy Back. Some of the rules are that the shares must be bought back at a price not exceeding 15% above the weighted average market price for the past 5 market days immediately prior to the purchase.

§ MY:44 Accounting and auditing

Section MY:28 above outlines the provisions regulating corporate accounting.

The requirements for an audit are contained in Part III, Division 3 of the Companies Act 2016. The audit must be conducted in accordance with section 266 of the Companies Act. Section 266 sets out the nature of the investigation and prescribes the content of the auditor's report.

The annual financial statements must be audited by a qualified auditor. The auditor must state in his report whether the accounts are in his opinion properly drawn up:

(a) so as to give a true and fair view of the matters required by section 248 of the Companies Act 2016 to be dealt with in the financial statement; and

(b) in accordance with the provisions of the Companies Act 2016 so as to give a true and fair view of the company's affairs.

The auditor of a borrowing corporation must, within 7 days after giving the corporation its financial statements, send a copy of those statements to the trustee for debenture holders.

There is also an obligation on such an auditor to report to the borrowing corporation any matter of which he becomes aware which is in his opinion relevant to the exercise and performance of the trustee's powers and duties. The auditor must send the trustee a copy of this report.

The Companies (Amendment) Bill 2023 has introduced stricter requirements for auditors, particularly in regard to beneficial ownership and adherence to the Malaysian Financial Reporting Standards (MFRS) or the Malaysian Private Entities Reporting Standard (MPERS). These changes ensure more detailed and transparent financial reports, contributing to improved corporate governance and compliance.[1]

Additionally, auditors must ensure that companies remain solvent before conducting certain transactions, such as share buybacks or dividend distributions, in order to protect the interests of creditors and shareholders.[2]

V. INTERNATIONAL SECURITIES TRANSACTIONS

§ MY:45 Registration requirement for foreign companies

The term "foreign company" is defined in section 2 of the Companies Act 2016 as, *inter alia,* a company incorporated outside Malaysia. Part v, Division 5 of the Companies Act 2016 contains provisions for foreign companies. A foreign company must be registered under the Companies Act 2016 before it can establish a place of business in Ma-

---

[Section MY:44]

[1] https://mia.org.my/wp-content/uploads/2022/06/MIA_Audit_and_Assurance_Practice_Guide_AAPG_2.pdf.

[2] https://www.boardroomlimited.com/2024/02/22/malaysias-companies-amendment-bill-2024-and-accelerated-transfer-process-from-ace-to-main-market/.

laysia or carry on business within Malaysia: see section 561 of the Companies Act. A registered foreign company must have a registered office in Malaysia (section 566), must appoint a person resident in Malaysia (not including a foreign company) to be its agent in Malaysia to be answerable for all such acts, matters and things that are required to be done by the foreign company under CA 2016 and be personally liable to all penalties imposed on the foreign company for any contravention of CA 2016 unless the agent satisfies the court hearing the matter that the agent should not be liable (section 563) and must lodge its financial statement with the ROC: section 575 of the Companies Act 2016.

§ MY:46 Exchange control

Exchange control falls within the purview of the Controller of Foreign Exchange (who is also the Governor of the Central Bank) and is regulated under the *Exchange Control Act 1953*. The Controller issues Exchange Control of Malaysia Notices (ECM Notices) setting out exchange control regulations. These are primarily prudential in nature and are regularly revised to reflect Malaysia's policy of gradual and progressive liberalisation of the financial sector.

Some of the major exchange control regulations applicable to non-residents are as follows:

(a) foreign investors may freely repatriate their investments (including capital, profits, dividends and interest);

(b) non-resident portfolio investors are freely allowed to repatriate their principal sum and profits—an exit levy system introduced after the 1997-98 Asian financial crisis was abolished on 2 May 2001;

(c) non-residents may open foreign currency accounts with commercial and merchant banks—there are no restrictions on inflows and outflows of funds through such accounts;

(d) non-residents may also open ringgit accounts (known as External Accounts) with financial institutions which can be used for certain purposes such as purchase of ringgit assets and payment for goods and services and expenses incurred in Malaysia—these restrictions on use do not apply to External Accounts of non-residents working in Malaysia;

(e) there is no restriction on payments to non-residents for imports of goods and services although such payments must be made in foreign currencies; and

(f) non-resident travellers can bring in any amount of foreign currency but must declare amounts exceeding USD2,500 or equivalent.

On 1 June 2022, BNM issued updated FEP Notices, which introduced several key amendments to exchange control regulations. Non-residents are now allowed to open and maintain foreign currency accounts in Malaysia with more flexible arrangements, extending this privilege beyond immediate family members. Moreover, foreign currency transactions between residents and non-residents for miscel-

laneous expenses such as holiday or medical expenses abroad are now permitted. These changes reflect Malaysia's ongoing commitment to creating a conducive environment for both domestic and cross-border economic activities while maintaining necessary oversight for financial stability.[1]

§ MY:47 Investment companies and investment advisers

An "investment advice" is defined in Schedule 2 Part 2 of the CMSA 2007 as carrying on a business on a business of advising others concerning securities or issues or promulgates analysis or reports concerning securities or derivatives. The definition excludes licensed banks, insurance companies, statutory trustee companies, advocates and solicitors or accountants who give advice incidental to the practice of their profession, a person who gives advice incidental to the conduct of his business of dealing in securities and the proprietor or publisher of general newspapers.

Persons who act on behalf of investment advisers must also be licensed as representatives.

An application for an investment adviser's licence must be made to the SC. Pursuant to section 64 of the CMSA 2007, the SC may refuse an application for an investment adviser's licence if:

(a) the application does not comply with the requirements of the Securities Industry Act;

(b) it is against public interest to grant a licence to the applicant; or

(c) the minimum criteria set out in the schedule to the Act has not been met. Among other things, the schedule requires that the applicant be a fit and proper person to hold a licence. In determining this question, the SC will have regard to the applicant's probity, his competence and soundness of judgment, the diligence with which he is likely to fulfill his responsibilities and whether the interests of customers are likely to be in any way threatened by the applicant becoming an investment adviser.

The SC may grant or renew a licence subject to such conditions or restrictions as it thinks fit.

A holder of a dealer's or fund manager's license issued under the Securities Industry Act can act as an investment adviser without having to obtain an investment adviser's license.

A licensed investment adviser must maintain a register of securities in which he has an interest. The register must be produced for inspection by the SC as required by them.

Recent updates by the SC have further expanded the scope of investment advisory services, particularly by introducing digital investment

---

[Section MY:46]

[1]*See* https://www.drewnetworkasia.com/newsroom/malaysia-revised-foreign-exchange-policy-notices-with-effect-from-1-june-2022.

advisory models. These models allow for the use of algorithm-based tools to deliver personalized investment advice to a wider audience, promoting inclusivity in the capital market.[1]

The SC has also introduced the IA Guidelines, effective as June 2023, which set high standards for investment analysts in providing well-researched and objective reports. This ensures greater protection for investors and improves the overall quality of investment advisory services in the market. In addition, recent revisions to the SC Licensing Handbook enable Dealer's Representatives (DRs) to apply for additional licenses to provide broader services, including investment advice and financial planning.[2]

VI. BROKER-DEALERS OR ENTITIES AUTHORIZED TO TRADE IN SECURITIES

§ MY:48 In general

The CMSA 2007 regulates dealings in securities. Under Schedule 2 Part 2 of the CMSA 2007, "dealing in securities" has a broad definition. It means, whether as principal or agent:

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

(b) making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into:

(i) any agreement for or with a view to acquiring, disposing of, subscribing for, or underwriting securities; or

(ii) any agreement (other than a futures contract) the purpose or avowed purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities.

A dealer is a person who carries on a business of dealing in securities. Such a dealer must have a dealer's licence: section 58 of the CMSA 2007.

§ MY:49 Licensing

Under section 2 of the CMSA 2007, the term "licence" means a Capital Markets Services Licence or a Capital Markets Services representative's Licence granted under section 61 of the CMSA 2007:

A person who holds any of the following licences immediately before the effective date of the CMSA 2007 are also deemed to hold a Capital

---

[Section MY:47]

[1]*See* https://www.sc.com.my/resources/media/media-release/sc-issues-new-guidelines-and-technical-note-to-enhance-the-quality-and-diversity-of-investment-advisory.

[2]*See* https://themalaysianreserve.com/2022/12/09/sc-issues-new-guidelines-to-enhance-quality-of-investment-advisory/#google_vignette; https://www.allenandgledhill.com/perspectives/publications/bulletins-malaysia/2023/sc-issues-revised-licensing-handbook/.

Markets Services Licence or a Capital Markets Services representative's Licence: section 384(1)(a) of the CMSA 2007.

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

An application for a licence must be made to the SC under section 60 of the CMSA 2007.

An application for the grant of a licence shall be accompanied by a non-refundable prescribed fee which shall be paid in such manner as may be specified by the Commission: section 60(4) of the CMSA 2007.

A licensed person shall pay such prescribed licence fee in respect of each regulated activity on a yearly basis and on such date as the Commission may specify: section 63(1) of the CMSA 2007.

The holder of the licence must notify the SC of changes in certain particulars.

In addition, a dealer must keep a register of securities in which he has an interest. There are requirements to keep accounts specified under the CMSA 2007, to pay monies received by dealers into a trust account and to lodge annual auditors' reports.

In 2023, the Securities Commission Malaysia (SC) initiated a comprehensive review of the CMSA to modernize the legal framework and ensure that it aligns with evolving market dynamics. This review includes provisions for handling digital assets and cryptocurrency and recognizing the increasing role of digital platforms in securities trading. The updates aim to accommodate digital innovations while maintaining robust regulatory oversight to protect investors. The SC has also strengthened licensing requirements, with an emphasis on ensuring that all individuals and entities involved in dealing in securities meet rigorous fit and proper standards, enhancing market integrity and accountability.[1]

Furthermore, the SC has taken a proactive approach in engaging the public and industry stakeholders to ensure that the legal framework remains relevant and effective in the face of technological advancements and global financial shifts. This includes ongoing adjustments to the Capital Markets Services Licensing (CMSL) regime, aimed at streamlining approval processes and ensuring greater transparency in securities dealings.[2]

[Section MY:49]

[1]*See* https://globalexchanges.com/latest-news/malaysia-sc-reviews-capital-markets-and-services-act-2007/135362/; https://www.businesstoday.com.my/2023/05/16/securities-commission-seeks-public-feedback-on-capital-markets-and-services-act-2007/.

[2]*See* https://globalexchanges.com/latest-news/malaysia-sc-reviews-capital-marke

§ MY:50 Restrictions on dealers and advisers

The CMSA 2007 imposes a number of requirements on dealers and advisers in Part VI of the CMSA 2007. These include prohibitions on falsely representing their qualifications as approved by the SC, detailed obligations regarding the issuance of contract notes, and the requirement for dealers to disclose whether they are acting as principals in a transaction. Additionally, dealers and advisers must disclose any interest in securities when making recommendations. These requirements on dealers and advisers in Part VI of the CMSA 2007 include:

(a) a prohibition against representing that his abilities or qualifications have been approved by the SC;

(b) detailed requirements for the issue of contract notes in relation to transactions of securities;

(c) a prohibition on dealing as principal unless the dealer first informs the person with whom he is dealing that he is acting as principal; and

(d) a requirement to disclose any interest in securities the subject of a recommendation.

In addition, an adviser must not make a recommendation unless:

(a) he has taken into account the information possessed by the adviser concerning the investment objectives, financial situation and particular needs of the customer;

(b) he has given such consideration to, and conducted such investigation of, the subject matter of the recommendation; and

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

Although contravention of this prohibition is not an offence, the adviser is liable to pay damages to the customer in respect of any loss or damage suffered as a result of relying on that recommendation: section 248(1)(d) of the CMSA 2007.

In 2023, the SC undertook a comprehensive review of the CMSA 2007 aimed at modernizing these provisions to reflect changes in the market. This review emphasizes enhanced transparency, especially in how dealers and advisers disclose information to clients and handle conflicts of interest. The updated regulations also address the growing role of digital platforms and automated advisory services, ensuring that such platforms adhere to the same high standards as traditional advisers. This initiative is part of the SC's broader effort to promote greater accountability and protect investors in an evolving financial landscape.[1]

---

ts-and-services-act-2007/135362/; https://www.businesstoday.com.my/2023/05/16/securities-commission-seeks-public-feedback-on-capital-markets-and-services-act-2007/.

[Section MY:50]

[1]*See* https://www.sc.com.my/regulation/acts/capital-markets-and-services-act-

§ MY:51 Revocation and suspension of licence

The circumstances in which the SC may revoke a licence under sections 72 of the CMSA 2007 include:

(a) on any ground on which the SC may refuse to grant or renew a licence under sections 64 and 65;

(b) where the licensed person ceases to carry on business for 3 consecutive months;

(c) if the SC has reason to believe that the licensed person has failed to perform his duties efficiently, honestly or fairly;

(d) if the licensed person contravenes or fails to comply with any rules of a stock exchange, clearing house or central depository which is binding upon him; or

(e) if the licensed person contravenes or fails to comply with any condition or restriction applicable in respect of the licence of the CMSA 2007.

§ MY:52 Register of interest

Dealers, investment advisers and their representatives, financial journalists and authorised depository agents appointed under the Securities Industry (Central Depositories) Act must keep a register of securities in which they have an interest: section 83 of the CMSA 2007.

§ MY:53 Accounts and audit

Part VII of the CMSA 2007 contains detailed requirements of the form and content of accounting records and financial statements for dealers. Each dealer must appoint a qualified auditor who may resign or be removed only with the consent of the SC: section 126 of the CMSA 2007. In addition to the financial statements, the auditor must prepare an auditor's report containing information on certain prescribed matters. The auditor must report on any matter, which in his opinion may adversely affect the financial position of the dealer or constitute a breach of the accounting requirements of the Act.

There are provisions allowing the SC to appoint an independent auditor in certain circumstances to investigate the affairs of a dealer: section 130 of the CMSA 2007.

§ MY:54 Court powers relating to dealer's bank accounts

Moneys held in a trust account of a dealer must not be used for payment of the debts of the dealer: section 113 of the CMSA 2007. The CMSA 2007 does not contain specific provisions allowing a court to make protective orders in relation to such accounts.

2007.

VII. OTHER SECURITIES REGULATIONS

§ MY:55 Intra-national securities regulation by States

As securities regulation is a matter that falls within the federal list of the Federal Constitution, there is no scope for state regulation. Accordingly, no separate state regulations govern the issue of securities.

§ MY:56 Civil and criminal liability

The securities laws impose criminal sanctions for the making of statements or the issue of prospectuses that are misleading. Under the Companies Act 2016, it is an offence for a person to authorise or cause the issue of a prospectus containing an untrue statement or from which there has been willful non-disclosure. The penalty for such an offence is imprisonment for 5 years, RM1 million or both (section 168 CA 2016).

Under the Securities Commission Malaysia (SCMA) 1993, it is an offence for a person (including the applicant, its financial adviser and other experts) to submit any statement or information to the SC that is false or misleading or from which there is a material omission. It is also an offence to engage in or aid or abet conduct that is misleading or deceptive or is likely to mislead or deceive the SC. These offences are punishable by imprisonment for up to 10 years, a fine not exceeding RM3 million or both.

Proceedings for any offence against the Companies Act 2016 may generally be taken by the ROC, or by any other person with the consent of the Public Prosecutor (section 589 CA 2016).

Prosecutions for offences against the CMSA 2007 or the Securities Commission Act, however, may only be instituted with the consent of the public prosecutor.

In addition to the penalties prescribed by legislation, there are a number of specific provisions that provide for civil remedies. A person who is guilty of insider dealing, for example, could be liable to a person for loss suffered by the person because the consideration in respect of the relevant securities differs from the consideration that would have been reasonable if the inside information had been generally known at the time of the dealing.

Under section 167 of the Companies Act 2016, certain persons are liable to pay compensation to investors for any loss or damage sustained by reason of any untrue statement in a prospectus, or by reason of the willful non-disclosure in the prospectus of any material information within his knowledge. Persons who may be liable are directors of the issuer, any person named as a director, promoters and any person who authorised or caused the issue of the prospectus.

§ MY:57 Central Depositories

The Securities Industry (Central Depositories) Act lays the framework for the establishment of a central depository system for

securities. Malaysian Central Depository Sdn Bhd, was established in 1990 to establish and maintain a central depository. It is now known as Bursa Malaysia Depository Sdn Bhd.

The central depositories system is a book-entry system. In order to trade, an investor must open a CDS account. These accounts are maintained by stock broking companies, which act as authorised depository agents. The CDS account will show trades, deposits, transfers, withdrawals and corporate actions such as bonus and rights issues.

Certain institutional investors and financial institutions may open CDS accounts with Malaysian Central Depository Sdn Bhd. These entities are known as authorised direct members. Authorised direct members may maintain their CDS accounts by using terminals at their own offices.

Under the CDS, there is no physical delivery of share scripts. Delivery of script is replaced by a book-entry system to track movement of shares from trades on the Bursa Securities. Sellers must have adequate shares in their CDS accounts on T+2 and buyer's account will be credited on T+5.

Shares are usually traded in board lots of 100 units.

VIII. NEW DEVELOPMENTS

§ MY:58 Equity Crowd Funding and Peer-to Peer Lending (P2PL) in Malaysia

Recognising the importance of crowd funding, on 21 August 2014 the Securities Commission issued Public Consultation Paper No. 2/2014, "Proposed Regulatory Framework for Equity Crowdfunding". Consequently, "Guidelines on Regulation of Markets under Section 34 of the Capital Markets and Services Act 2007" was introduced on 10 February 2015 to provide new requirements for the registration of equity crowdfunding (ECF) platforms and provide governance arrangement for the operators of such platforms. These guidelines have since been superceded by the "Guidelines on Recognized Markets" of 13 April 2016 to cover P2PL platforms as well as ECF. Malaysia was the first country in the ASEAN region to have a defined regulatory environment to facilitate investment crowdfunding.[1]

The move to facilitate investment via ECF was enabled by technological advancement. Many entrepreneurs have utilised the Internet to directly seek financial assistance from the virtual public (the "crowd" over the internet) including financial investors such as

---

[Section MY:58]

[1]Thailand and Singapore are considering such laws. New Zealand has an ECF regime: see (2015) 32 (1) C&SLJ 62-69. Australia has introduced legislation to enable ECF—see (2016) 34 C&SLJ 239- and that legislation is now in effect. There is a review of ECF worldwide in A. Pekmezovic and G Walker, "The Global Significance of Crowdfunding: Solving the SME Funding Problem and Democratising Access to Capital" (2016) 7 (2) William & Mary BLR 347-458.

business angels, banks, venture capital funds and retail investors from the local and global market. Due to its fast growth, many countries have made regulatory adjustments to allow and regulate ECF in order to protect investors.

The amendments made earlier to the securities laws were made to facilitate new fundraising structures, enhance investor protection, clarify responsibilities of issuers and advisers, and expand the scope of the SC's supervisory powers. The Capital Markets and Services (Amendment) Act 2015 introduced a new market framework to facilitate the establishment of alternative trading platforms, including ECF platforms. Under this framework, private companies that are hosted on a registered ECF platform are provided a safe harbor from provisions in the Companies Act 2016, which prohibit private companies from offering shares to members of the public. The introduction of ECF is in line with the Securities Commission's objective to promote capital market inclusion and widen avenues for capital-raising. To promote a more conducive environment for the issuance and subscription of corporate bonds, the Capital Market Services Act Amendment has clarified the roles and responsibilities of persons in charge of preparing disclosure documents.

The Securities Commission called for the registration of ECF operators in February 2015. Eventually, six ECF platforms were approved aimed at supporting small businesses and entrepreneurs with greater chances to access capital. The approved platforms are Alix Global, Ata Plus, Crowdonomic, Eureeca, pitchIN and Propellar Crowd+. With the registration of the six approved ECF platforms, on 11 December 2015, a new guideline was issued viz, the Guidelines on Recognised Markets which came into force on 15 December 2015 (revised 13 April 2016 to enable P2PL) and intended to provide better regulation for ECF.

In general, the Guidelines provide general provisions on the requirements of registration procedure, conduct and operation of the ECF platforms as can be seen in the 2016 Guidelines. The Guidelines recognise both equity and P2P Lending as methods of fundraising via crowdfunding. Certain limitations are imposed such as limitations on the eligible issuers (fund seekers), on fund limits and investment limits (caps) and on the type of investors for micro-funding entities. An issuer which proposes to offer shares under the ECF framework must be a locally incorporated private company. Certain companies are not allowed to raise funds through the ECF Platform. An issuer cannot be hosted on multiple ECF Platforms concurrently.

Since the provisions in the Guidelines are general, it is applicable to both conventional and Islamic ECF. An additional Shariah requirement is imposed on the Islamic ECF exercise which the appointment of a Shariah advisor: see Part E of the Guidelines. As at April 2018, however, there is no Islamic equity crowdfunding platform registered in Malaysia.

In summary, ECF and P2PL are now regarded as part of the definition of 'recognised market' which act as an alternative market facility

for fundraising activities. Article 1.10 of the 2016 Guidelines define a recognised market as a market that "essentially covers an alternative trading venue, marketplace or facility that brings together purchasers and sellers of capital market products." The level of regulation is not as stringent vis-à-vis the approved markets. Due to its distinctive features as compared to the approved market, terms and conditions are imposed on the recognised market operator commensurate with the risk profile, nature and scope of the proposed recognised market operations.

Further initiatives aimed at enhancing the efficiency of the capital market and promoting Malaysia's competitiveness can be expected as part of a continual review and response to global events and changing circumstances.

In 2022, Malaysia's ECF and P2P markets raised RM1.7 billion, marking 26% growth from the previous year. The Malaysia Co-Investment Fund (MyCIF), a public-private initiative, played a significant role by co-investing RM638 million in 3,635 MSMEs, expanding its scope to include sectors like agriculture and ESG (Environmental, Social, and Governance).[2]

Moreover, the 2023 Budget saw an additional RM40 million allocated to MyCIF, boosting its capacity to provide co-investment, particularly in sectors aligned with Malaysia's sustainable development goals. The SC's ongoing regulatory support ensures transparency and investor protection by setting limits on fund-seeking entities, investor caps, and requiring platforms to comply with Shariah law for Islamic crowdfunding.[3] ECF platforms like pitchIN, Alix Global, Ata Plus, and Crowdonomic continue to provide accessible capital-raising opportunities for businesses, with MyCIF being instrumental in enhancing their effectiveness. The SC's guidelines on recognized markets, particularly for P2PL, have made significant contributions to improving financial inclusion and supporting small businesses with limited access to traditional financial institutions.[4] These regulatory advancements reflect Malaysia's leadership in creating a dynamic alternative financing landscape, with the SC and MyCIF ensuring ongoing support for MSMEs while promoting investor trust and market integrity.

§ MY:59 New Developments in Financial Technologies ("FinTech")

IOSCO defines FinTech as comprising innovative business models

---

[2] *See* https://themalaysianreserve.com/2023/06/12/mycif-boosts-msmes-with-rm638m-co-investment-in-3635-businesses/; https://fintechnews.my/36076/funding/in-malaysia-crowdfunding-and-p2p-financing-outpace-vc-funding/.

[3] https://www.thestar.com.my/business/business-news/2023/02/24/budget-2023-additional-rm40mil-brings-total-funds-under-mycif-to-rm300mil.

[4] https://themalaysianreserve.com/2023/06/12/mycif-boosts-msmes-with-rm638m-co-investment-in-3635-businesses/.

and emerging technologies such as distributed ledger technologies (DLT)[1] including blockchain.[2] Equity-based crowd-sourced funding (known as "ECF" in Malaysia) and Peer-to-Peer lending (P2PL) are two of the earliest examples of FinTech.

As stated, Malaysia has introduced a regulatory framework for ECF and P2PL as provided in the amended 2016 Guidelines on Recognized Markets (in effect as of 2 May 2016). Six registered operators for P2PL were approved in November 2016 to widen funding avenues for SMEs. The six registered operators are B2B FinPal, Ethis Capital, FundedByMe Malaysia, ManagePay Services, Modalku Ventures and Peoplelender.

In other developments, the SC has released, "Guidelines to Enhance Cyber Resilience of the Capital Market" (October 2016). These Guidelines require regulated entities to have in place a risk management framework to minimize cyber threats.

The SC has also produced a Digital Markets Strategy. This includes a pilot project to explore the usage of DLT in the unlisted and OTC space. At the same time, Bank Negara Malaysia now has the ability to approve regulatory sandboxes for financial institutions and fintech companies: see Baker McKenzie, *A Guide to Regulatory Fintech Sandboxes across Asia Pacific* (2018). The SC has also signed a series of innovation cooperation agreements ("fintech bridges") with regulators in major financial centres.

The SC's position on initial coin offerings (ICOs) appears in a Media Statement dated September 2017 available on the SC website. The Media Statement takes the form of a caution to investors. In January 2018, the SC issued a cease-and-desist order to Copycash Foundation in regard to a proposed plan to issue an ICO in Malaysia.

In 2023, BNM introduced the Licensing Framework for Digital Banks, allowing new players in the digital banking space to experiment under a simplified regulatory environment during the Foundational Phase. This framework supports new entrants while maintaining a level playing field for both incumbents and new market participants.[3]

BNM also issued updated guidelines for electronic money (e-money), effective as of 30 December 2022, aimed at enhancing governance and

---

[Section MY:59]

[1]IOSCO, *Research Report on Financial Technologies* (February 2017). The application of DLT to governmental services is discussed in House of Lords, *Distributed Ledger Technologies for Public Good: leadership, collaboration and innovation* (November 2017, "The Holmes Report"). Available at www.gov.uk

[2]See Marco Iansiti and Karim Lakhani, "The Truth about Blockchain" Harvard Business Review (January-February 2017) and Cambridge Centre for Alternative Finance, *Global Blockchain Benchmarking Study* (2017) for a description of how blockchain works.

[3]https://fintechnews.my/24573/various/bnm-director-suhaimi-ali-explains-fintech-regulation-in-malaysia/.

ensuring the safety of digital payment systems. This regulatory clarity is critical for the growing digital payments ecosystem.[4]

The SC has sustained its regulatory efforts in ECF and P2P lending by ensuring that operators comply with the Guidelines on Recognized Markets. These guidelines include transparency measures, interest rate caps, and risk assessments, enhancing both investor protection and market efficiency.[5]

Furthermore, the SC has emphasized cybersecurity resilience in FinTech, requiring regulated entities to implement robust cybersecurity frameworks to address the increasing threats posed by digital platforms.[6]

The SC's Digital Markets Strategy also continues to explore the potential of distributed ledger technology (DLT), including blockchain, particularly in unlisted markets. Meanwhile, BNM's regulatory sandbox remains a key tool for fintech companies to test new innovations in a controlled environment.[7]

---

[4]https://www.allenandgledhill.com/publication/articles/23556/new-bank-negara-policy-document-updates-e-money-regulatory-framework.

[5]https://www.sc.com.my/development/digital/digital-initiatives.

[6]https://fintechnews.my/malaysia-fintech-report-2023/.

[7]https://fintechnews.my/malaysia-fintech-report-2023/.

APPENDIX MY-1

Laws of Malaysia Act 671 Capital Markets and Services Act 2007

Table of Contents

Part I—Preliminary

1. Short title, commencement and application
2. Interpretation
3. Associated person
4. Interest in securities
5. Prescription of securities and futures contracts
6. Consequences of agreements becoming futures contracts

Part II—Securities and Futures Markets

Division 1—Markets

7. Establishment of stock markets or futures markets

Division 2—Market institutions

Subdivision 1—Exchanges and exchange holding company

8. Power of Minister to approve stock exchange or futures exchange
9. Commission to approve amendment to rules of stock exchange, futures exchange or approved clearing house
10. Appointment of directors of exchange holding company, stock exchange and futures exchange
11. Duties of exchange
12. Withdrawal of approval of exchange
13. Effect of withdrawal of approval of an exchange

Subdivision 2—Exchange holding company

14. Exchange holding company
15. Power of Minister to approve exchange holding company
16. Annual Regulatory Report on compliance with ongoing requirements

17. Special report by exchange holding company about compliance with ongoing requirements
18. Withdrawal of approval of exchange holding company
19. Effect of withdrawal of approval of exchange holding company
20. Listing of exchange holding company on stock exchange
21. Duties of exchange holding company
22. Risk Management Committee of exchange holding company
23. Restriction on exchange holding company from reducing its shareholding
24. Disposal and acquisition of assets, *etc*
25. Control in shareholding of exchange holding company
26. Power to issue directions

27. Closure of stock exchange or futures exchange
28. Power of Commission in respect of stock exchange or futures exchange
29. Provision of assistance to Commission
30. Suspension order relating to stock exchange, futures exchange, approved clearing house or central depository
31. Power of Commission upon contravention of section 23, 24 or 25

Subdivision 3—General

32. Publication of notice of suspension of trading or closure
33. Rights of stock exchange, futures exchange or approved clearing house not to be affected by laws relating to contracts

Subdivision 4—Registered facilities

34. Registered electronic facilities
35. Application for registration

36. Withdrawal of registration

Subdivision 5—Approval of clearing house

37. Establishing or operating a clearing facility
38. Power of Commission to approve clearing house
39. Withdrawal of approval
40. Effect of withdrawal of approval

Subdivision 6—Modifications to the law of insolvency and miscellaneous provisions relating to the operations and procedures of the approved clearing house

41. Interpretation
42. Default rules
43. Default proceedings of approved clearing house to take precedence over law of insolvency
44. Supplementary provisions as to default proceedingsl
45. Duty to report on completion of default proceedings

46. Net sum payable on completion of default proceedings
47. Disclaimer of property, rescission of contracts, *etc*
48. Adjustment to prior transactions
49. Right of relevant office-holder to recover certain amounts arising from certain transactions
50. Law of insolvency in other jurisdictions
51. Participant to be a party to certain transactions as principal
52. Securities or futures contracts delivered to an approved clearing house
53. Securities transfers in settlement
54. Purchase and sale of securities
55. Immunity
56. Preservation of rights, *etc*

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

Part III—Capital Markets Services

Division 1—Licensing and regulation

58. Requirement for Capital Markets Services Licence
59. Requirement for Capital Markets Services Representative's Licence
60. Application for grant or renewal of licence
61. Grant or renewal of licence
62. Power of Commission to impose conditions or restrictions on licences
63. Licence fee
64. Grounds for refusal for the grant or renewal of Capital Markets Services Licence

65. Grounds for refusal for the grant or renewal of Capital Markets Services Representative's Licence
66. Power of Commission to enquire into transactions in respect of securities and futures contracts
67. Minimum financial requirements
68. Period of licence
69. Variation of licence
70. Deposit to be lodged in respect of Capital Markets Services Licence
71. False statements in relation to application for grant, renewal or variation of licence
72. Revocation and suspension of licence
73. Effect of revocation, suspension or expiry of licence, *etc*
74. Notification of disqualifying event

75. Appointment, election and nomination of directors and chief executive of licensed person, *etc*
76. Registered persons
77. Register of licence holders
78. Notification of change of particulars
79. Publication of names and addresses
80. Appeals
81. Surrender of licence

Division 2—Records

82. Application of this Division
83. Register of securities
84. Notice of particulars to Commission
85. Defence to a prosecution
86. Production of register
87. Particulars of financial journalists
88. Commission may supply copy of the extract of a register

Division 3—Conduct of business

Subdivision 1—General

89. Certain representation prohibited
90. Issue of contract notes

91. Disclosure of certain interests in securities
92. Recommendations by licensed person
93. Priority given to client's order
94. Dealings by employees of holders of licences or participating organizations
95. Duty to furnish Commission with such returns and information as Commission requires
96. Additional obligations on licensed persons

Subdivision 2—Securities

97. Dealings as principal
98. Shortselling

Subdivision 3—Futures contracts

99. Trading in futures contracts on own account
100. Documents to be given to prospective clients
101. Trading limits in futures contracts
102. Reportable positions

103. Futures contract not gaming or wagering contract
104. Sequence of sending and carrying out of orders
105. Trading in futures contracts outside Malaysia
106. Amounts to be paid for trading in Specified Exchanges
107. Failure to comply with sections 99, 100, 101, 102 and 104

Division 4—Books, client's assets protection and audit

Subdivision 1—Books

108. Keeping of books and furnishing of returns

Subdivision 2—Treatment of client's assets in respect of securities

109. Application of this Subdivision
110. Interpretation

	111.	Certain monies received by holder of Capital Markets Services Licence to be paid into trust account
	112.	Client's assets other than monies received by holder of Capital Markets Services Licence
	113.	Withdrawal of monies from trust account
	114.	Holder of Capital Markets Services Licence to supply copies of entries in books
	115.	Claims and liens not affected
Subdivision 3—Treatment of client's assets in respect of futures contracts		
	116.	Application of this Subdivision
	117.	Interpretation
	118.	Segregation of client's assets
	119.	Monies in segregated account not available for payment of debt, *etc*

Subdivision 4—Treatment of client's assets in respect of fund management

120. Application of this Subdivision
121. Interpretation
122. Operation of trust account
123. Client's assets
124. Right to copies of book entries, inspection of contract notes, *etc*

Subdivision 5—Range of actions Commission may take to protect clients of licensed persons under certain circumstances

125. Commission's actions to protect client's assets, *etc*

Subdivision 6—Audit

126. Appointment of auditor
127. Relevant person to lodge auditor's report
128. Duties of auditor
129. Duty of relevant person or its directors or officers to furnish information

130. Power of Commission to appoint independent auditor, *etc*
131. Power of Commission to appoint independent auditor, *etc.,* upon application
132. Independent auditor, *etc.,* to report to Commission
133. Powers of independent auditor appointed by Commission
134. Prohibition against communication of certain matters by independent auditors, *etc.,* and employees
135. Books, accounts and records to be produced upon demand
136. Penalty for destroying, concealing or altering books or sending books or property out of Malaysia
137. Rights of exchange to impose obligations

Division 5—Vesting

138. Interpretation

139. Application to court to facilitate agreement or arrangement for transfer of the whole or part of business of licensed person

Part IV—Compensation Fund and Fidelity Fund

Division 1—Compensation fund

140. Interpretation
141. Establishment of compensation fund
142. Monies constituting compensation fund
143. Compensation fund to be kept in separate account
144. Payments out of compensation fund
145. Accounts of compensation fund
146. Requirement of relevant stock exchange to pay portion of net income into compensation fund
147. Contribution to compensation fund

148. Provision where compensation fund exceeds fifty million ringgit
149. Levy in addition to annual contributions
150. Power of relevant stock exchange to make advances to compensation fund
151. Investment of monies in compensation fund
152. Application of compensation fund
153. Power of relevant stock exchange to require production of documents
154. Subrogation of relevant stock exchange to rights and remedies of claimant upon payment from compensation fund
155. Payment of claims only from compensation fund
156. Power of relevant stock exchange to enter into contract of insurance
157. Application of insurance monies

158. Monies in compensation fund upon winding up of relevant stock exchange

Division 2—Fidelity fund

159. Establishment of fidelity fund
160. Monies constituting fidelity fund
161. Fidelity fund to be kept in separate account
162. Payments out of fidelity fund
163. Accounts of fidelity fund
164. Contributions to fidelity fund
165. Power of relevant futures exchange to make advances to fidelity fund
166. Investment of monies in the fidelity fund
167. Application of fidelity fund
168. Power of relevant futures exchange to require production of documents and statements
169. Subrogation of relevant futures exchange to rights and remedies of claimant upon payment from fidelity fund

			170.	Payment of claims only from fidelity fund
			171.	Power of relevant futures exchange to enter into contract of insurance
			172.	Application of insurance monies
			173.	Monies in fidelity fund upon winding up of relevant futures exchange
Part V—Market Misconduct and Other Prohibited Conduct				
			174.	Application of this Part
	Division 1—Prohibited conduct—Securities			
		Subdivision 1—Offences relating to false trading and market rigging, stock market manipulation, *etc*		
			175.	False trading and market rigging transaction
			176.	Stock market manipulations
			177.	False or misleading statements, *etc*

178. Fraudulently inducing persons to deal in securities
179. Use of manipulative and deceptive devices
180. Person or transaction to whom or which section 175 or 176 does not apply
181. Dissemination of information about illegal transactions
182. Penalty for offence under Subdivision 1

Subdivision 2—Insider trading

183. Information
184. Information generally available
185. Material effect on price or value of securities
186. Trading in securities
187. Reference to "procure"
188. Prohibited conduct of person in possession of inside information
189. Proof of contravention of section 188
190. Secrecy arrangements by corporation
191. Secrecy agreements by partnerships

192. Underwriting and subunderwriting
193. Non-application of section 188 to transactions carried out under schemes of arrangement, *etc.,* under any written law
194. Exception for corporation with knowledge of its intention
195. Exception of knowledge of individual's own intentions or activities
196. Unsolicited transaction
197. Exception for redemption of units of a unit trust scheme under buy-back covenant
198. Parity of information defence

Subdivision 3—Civil remedies

199. Civil liability for contravention of section 175, 176, 177, 178, 179 or 181
200. Civil action by Commission
201. Recovery of loss or damages

Division 2—Prohibited conduct—Futures contracts

Subdivision 1—Offences relating to false trading, bucketing, etc

202. False trading
203. Bucketing
204. Dissemination of information about false trading
205. Manipulation of price of futures contract and cornering
206. Employment of devices, *etc.*, to defraud
207. False or misleading statements
208. Prohibition of abuse of information obtained in official capacity
209. Penalties for offence under Subdivision 1

Subdivision 2—Civil remedies

210. Civil liability for contravention of section 202, 203, 204, 205, 206, 207 or 208
211. Civil action by Commission

Part VI—Issues of Securities and Take-Overs and Mergers

Division 1—Proposals in relation to securities

212. Proposals to be submitted to Commission
213. Classes or categories of transactions or securities not subject to subsection 212(4)
214. False or misleading statements, *etc*
215. Application monies to be paid into a trust account where no prospectus is required

Division 2—Take-overs, mergers and compulsory acquisitions

216. Interpretation
217. Malaysian Code on Take-Overs and Mergers
218. Compliance with Code and rulings
219. Exemptions
220. Action by Commission in cases of non-compliance with Code and rulings
221. False or misleading documents, information, *etc*
222. Compulsory acquisition

223. Right of minority shareholder
224. Application to court
225. Non-application of section 180 of the Companies Act 1965

Division 3—Prospectus

226. Interpretation
227. Invitation
228. Offer for subscription or purchase
229. Excluded offers and invitations
230. Excluded issues
231. Exceptions
232. Requirement to register prospectus in relation to securities
233. Registration of prospectus
234. Requirement to lodge prospectus with Registrar
235. Contents of prospectus
236. General duty of disclosure in prospectus
237. Abridged prospectus for renounceable rights issues
238. Supplementary or replacement prospectus

239. Consequences of registering a supplementary or replacement prospectus
240. Regulations for shelf prospectuses, supplementary shelf prospectuses, short form prospectuses, profile statements, *etc*
241. Restrictions in advertising
242. Document containing offer of securities for purchase deemed to be a prospectus
243. Allotment of securities where prospectus implies that application for permission to list on stock exchange had been made
244. Consent from person to issue of prospectus containing statement by him
245. Stop order
246. Criminal liability for false statements, *etc.,* in prospectus
247. Persons not to be taken to have authorized or caused issue of prospectus

248. Right to recover for loss or damage resulting from false or misleading statement in prospectus, *etc*
249. Civil liability for misleading or deceptive acts
250. Due diligence defence
251. Reliance on statement and information in respect of false or misleading statement
252. Reliance on statement and information in respect of misleading or deceptive act
253. Reliance on public official statement in respect of false and misleading statement
254. Defence of withdrawal of consent
255. Restriction on offering securities for subscription or purchase
256. Agreements to exclude or restrict liability void

Division 4—Debentures

Subdivision 1—Trust deeds, duties of trustees, borrowers, *etc*

257. Application of this Division
258. Requirement for trust deed and trustee
259. Form and contents of trust deeds
260. Persons who can be trustees
261. Existing trustee to continue to act until new trustee takes office
262. Replacement of trustee
263. Duties of the borrower
264. Duty of borrower to replace trustee
265. Duty of borrower to inform trustee about charge, *etc*
266. Duty of borrower to give trustee and Commission quarterly reports
267. Duty of borrower to inform trustee and Commission of occurrence of material event
268. Duty of borrower where prospectus states purpose or project for which monies are to be applied

269. Obligations of directors of borrower to deliver financial statements
270. Borrower to issue document evidencing indebtedness, *etc*
271. Duties of guarantors
272. Obligations of directors of guarantor to deliver financial statements
273. Duties of trustees
274. Exemptions and indemnification of trustee from liability
275. Indemnity of trustee
276. Duty of auditor to trustee for debenture holders
277. Duty of borrower to call a meeting
278. Power of trustee to call a meeting
279. Court may order a meeting of debenture holders
280. Powers of Commission to protect interests of debenture holders

281. General power of court to give directions and determine questions
282. Specific power of the court

Subdivision 2—General

283. Register of debenture holders
284. Specific performance
285. Perpetual debentures
286. Reissue of redeemed debentures

Division 5—Unit trust schemes and prescribed investment schemes

287. Interpretation
288. Requirement for trustee and deed
289. Approval of trustee and management company
290. Persons who can be trustees
291. Existing trustee to continue to act until new trustee takes office
292. Replacement of trustee
293. Registration of deed
294. Contents of deed
295. Modification of deed through supplementary deed

296. Deed to be lodged with Commission
297. Duties of a management company
298. Duty of management company to lodge returns, *etc*
299. Duty of management company to replace trustee
300. Duties of trustee
301. Duty of trustee to wind up scheme
302. Duties of management company and trustee under general law
303. Exemptions and indemnification of trustee from liability
304. Indemnity of trustee
305. Duty of management company to call meeting of unit holders
306. Power of trustee to call a meeting
307. Court may order a meeting of unit holders
308. Register of unit holders
309. Where register is to be kept

310. Closure and inspection of register
311. Power of court to rectify register
312. Branch register
313. Rights of trustee, executor, administrator in relation to a deceased unit holder
314. Power of court to make orders
315. Non-application of Division 5 of Part VI

Division 6—Islamic securities

316. Prescription by Minister in respect of Islamic securities, *etc*

Part VII—Provisions Applicable to Listed Corporations

317. Duty of chief executive and directors of listed corporation to disclose interests in securities
318. Disqualification of chief executive or director of listed corporations
319. Submission of information

320. Duties of auditor of listed corporations
321. Protection for persons against retaliation for reporting to authorities in specific circumstances

Part VIII—Self-Regulatory Organizations

322. Interpretation
323. Recognition of a self-regulatory organization
324. Duties of a recognized self-regulatory organization
325. Rules of a recognized self-regulatory organization
326. Appointment of directors of a recognized self-regulatory organization
327. Powers to issue directions to a recognized self-regulatory organization
328. Withdrawal of recognition
329. Protection for a recognized self-regulatory organization
330. Accounts and reports in respect of a recognized self-regulatory organization

331. Provision of assistance to Commission

Part IX—Capital Market Development Fund

332. Establishment of Capital Market Development Fund
333. Assets constituting Fund
334. Objects of the Fund, *etc*
335. Membership of the Board
336. Tenure of office
337. Resignation and revocation of appointment
338. Vacation of office
339. Quorum and procedures of meetings
340. Disclosure of interest
341. Conservation of the Fund
342. Financial year
343. Accounts and audit
344. Power of Minister in relation to the Board
345. Dissolution of the Fund
346. Power to make regulations

Part X—Disclosure of Information

Division 1—Application

347. Application of this Part

Division 2—Disclosure of information

348. Power of Commission to require production of books
349. Offences
350. Power to specify form and manner of submission
351. Privileges
352. Disclosure to Commission
353. Disclosure of information relating to dealing in securities or trading in futures contracts

Part XI—Administrative and Civil Actions

354. Powers of Commission to take action
355. Power of Commission to take action against futures exchange, approved clearing house, *etc.*, for failure to comply with rules, regulations, *etc*

356. Powers concerning compliance with conditions of licence, *etc.,* by licensed persons
357. Civil liability of person in contravention of the securities laws
358. Commission may recover loss or damage
359. Reference to conduct
360. Power of court to make certain orders
361. Application for winding up

Part XII—General

362. Prohibition of use of certain titles
363. Copy of book as *prima facie* evidence
364. Application by aggrieved person for review
365. Time for application for review
366. Decision of Minister to be final
367. Offences by bodies of persons and by employees and agents
368. Falsification of records

369. False reports to Commission, exchange or approved clearing house
370. Attempts, abetments and conspiracies
371. Destruction, concealment, mutilation and alteration of records
372. General penalty
373. Compounding of offences
374. Convicted persons liable to pay compensation
375. Conduct of prosecution
376. Indemnity
377. Guidelines and practice notes of Commission
378. Power to make regulations
379. Settlement of disputes
380. Power to amend Schedules

Part XIII—Repeal, Savings and Transitional Provisions

381. Repeal of Securities Industry Act 1983 and Futures Industry Act 1993 and savings and transitional in respect thereof

382. Approved exchange holding companies, exchanges and approved clearing house deemed to have been approved
383. Electronic facility deemed registered
384. Savings in respect of licences issued under the repealed Acts
385. Pending applications for licences
386. Transitional and savings in respect of corporate proposals
387. Transitional provisions in relation to certain registered persons
388. Revocation of subsidiary legislation
389. Modifications to construction of other written laws
390. Continuance of other rights, liabilities, *etc.,* under the repealed Acts
391. Prevention of anomalies
392. Persons dealing in securities in relation to unit trust scheme

393. Transitional provisions for unlicensed unit trust management companies
394. Transitional provision for corporate finance executives and research analysts
Schedules

An Act to consolidate the Securities Industry Act 1983 [*Act 280*] and Futures Industry Act 1993 [*Act 499*], to regulate and to provide for matters relating to the activities, markets and intermediaries in the capital markets, and for matters consequential and incidental thereto.

ENACTED by the Parliament of Malaysia as follows:

PART I PRELIMINARY

Short title, Commencement and application

1. (1) This Act may be cited as the Capital Markets and Services (Amendment) Act 2011.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette,* and the Minister may appoint different dates for the coming into operation of—

(a) different provisions of this Act; or

(b) all or different provisions of this Act in respect of different classes or categories of persons, securities or derivatives.

Interpretation

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

"accounting records", in relation to a corporation, includes invoices, receipts, orders for payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry and also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up and howsoever compiled, recorded or stored;

"advising on corporate finance" has the same meaning as in Part 2 of Schedule 2;

"affiliate", in relation to a futures exchange or a clearing house of a futures exchange, means any person, however described, who is a party to a subsisting contract with the futures exchange or clearing house of a futures exchange, as the case may be, under which the person agrees to be bound by its rules;

"approved clearing house" means a clearing house that has been approved under section 38;

"assets", in relation to a holder of a Capital Markets Services Licence, means all the assets of the holder, whether or not used in connection with the carrying on of the regulated activity by the holder;

"associated person" shall be construed as provided in section 3;

"auditor" means an approved company auditor within the meaning of the Companies Act 1965 [*Act 125*];

"Bank Negara" means the Central Bank of Malaysia established under the Central Bank of Malaysia Act 1958 [*Act 519*];

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

"books" include—

(a) a register;

(b) any other record of information;

(c) accounts or accounting records, however compiled, recorded or stored; and

(d) a document;

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

"capital market" means the securities and derivatives markets;

"capital market products" means any securities, derivatives, units in a unit trust scheme, a private retirement scheme and any other products as the Minister may prescribe as a capital market product;

"Capital Markets Services Licence" means a licence that is granted under section 61;

"Capital Markets Services Representative's Licence" means a licence that is granted under section 61;

"central depository" means a central depository which has been approved by the Minister under subsection 5(1) of the Securities Industry (Central Depositories) Act 1991 [*Act 453*]—

(a) to establish and operate a system for the central handling of securities, whether or not listed on any stock exchange—

(i) whereby all such securities are deposited with and held in custody by, or registered in the name of, the company or its nominee company for the depositors and dealings in respect of these securities are effected by means of entries in securities accounts without the physical delivery of scrips; or

(ii) which permits or facilitates the settlement of securities transactions or dealings in securities without the physical delivery of scrips; and

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

"Chairman" means the Chairman of the Commission appointed under paragraph 4(1)*(a)* of the Securities Commission Malaysia Act (SCMA) 1993 1993 [*Act 498*];

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

"clearing facilities" means—

(a) a facility for the clearing or settlement of—

(i) transactions in securities traded on a stock exchange; or

(ii) futures contracts traded on a futures market;

(b) a facility for the guarantee of settlement of transactions referred to in paragraph *(a);* or

(c) such other clearing or settlement facility or class of clearing or settlement facilities as the Commission with the approval of the Minister may allow;

"clearing house" means a person whose activities or objects include the provision of clearing facilities;

"client", in relation to a holder of a Capital Markets Services Licence, means—

(a) a person on whose behalf the holder carries on or will carry on any regulated activity; or

(b) any other person with whom the holder, as principal, enters or will enter into transactions—

(i) for purposes of dealing in securities; or

(ii) for purposes of trading in futures contracts,

but does not include such person or class of persons as may be prescribed;

"close out", in relation to a futures contract, means to discharge the obligations of a person in the long position or short position under a futures contract and shall include the discharge of these obligations as a result of the matching up of the futures contract with a futures contract of the same kind under which the person has assumed an offsetting short position or offsetting long position, as the case may be;

"Commission" means the Securities Commission established under the Securities Commission Malaysia Act (SCMA) 1993 1993;

"company" has the meaning assigned to it in the Companies Act 1965;

"constitution", in relation to a company, means the memorandum of association and articles of association of the company;

"contract note" means the document issued by a holder of a Capital Markets Services Licence as prescribed by the Minister under section 90;

"corporation" means any body corporate formed or incorporated or existing within or outside Malaysia and includes any foreign company but does not include—

(a) any body corporate that is incorporated within Malaysia and is, by notice of the Minister charged with the responsibility for companies published in the *Gazette,* declared to be a public authority or an instrumentality or agency of the Government of Malaysia or of any State or to be a body corporate which is not incorporated for commercial purposes;

(b) any corporation sole;

(c) any society registered under any written law relating to co-operative societies; or

(d) any trade union registered under any written law as a trade union;

["dealing in derivatives" has the same meaning as in Part 2 of Schedule 2;

"dealing in securities" has the same meaning as in Part 2 of Schedule 2;

"debenture" includes debenture stock, bonds, notes and any other evidence of indebtedness of a corporation for borrowed monies, whether or not constituting a charge on the assets of the corporation, but shall not be construed as applying to any of the following:

(a) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray the consideration payable under, a contract for sale or supply of goods, property or services or any contract of hire in the ordinary course of business;

(b) a cheque, banker's draft or any other bill of exchange or a letter of credit;

(c) a banknote, guarantee or an insurance policy;

(d) a statement, passbook or other document showing any balance in a current, deposit or savings account;

(e) any agreement for a loan where the lender and borrower are signatories to the agreement and where the lending of money is in the ordinary course of business of the lender, and any promissory note issued under the terms of such an agreement; or

(f) any instrument or product or class of instruments or products as the Minister may, on the recommendation of the Commission, prescribed by order published in the *Gazette;*

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

"Deputy Chief Executive" means the Deputy Chief Executive appointed under paragraph 4(1)*(aa)* of the Securities Commission Malaysia Act (SCMA) 1993;

"derivatives" means any contract, either for the purposes of creating an obligation or a right or any combination of both, of which its market value, delivery or payment obligations are derived from, referenced to or based on, but not limited to, underlying securities or commodities, assets, rates, indices or any of its combination, whether or not a standardized derivative or an over-the-counter derivative, but does not include—

(a) securities;

(b) any derivative to which Bank Negara or the Government of Malaysia is a party;

(c) any over-the-counter derivatives whose market price, value, delivery or payment obligations are solely derived from, referenced to or based on, exchange rates; or

(d) any agreement, when entered into, is in a class of agreements prescribed not to be derivatives;

"derivatives exchange" means any body corporate in relation to which an approval under subsection 8(2) is in force;

"derivatives market" means a market or other place at which, or a facility by means of which, derivatives are regularly traded;

"derivatives report" means an analysis or report that contains recommendations about dealing in derivatives;

"director" has the meaning assigned to it in the Companies Act 1965, includes a reference to—

(a) a person occupying or acting in the position of director of a corporation, by whatever name called and whether or not validly appointed to occupy, or duly authorised to act in, the position;

(b) a person in accordance with whose directions or instructions the directors of a corporation are accustomed to act;

(c) an alternate or substitute director; or

(d) in the case of a corporation formed or incorporated or existing outside Malaysia—

(i) a member of the corporation's board of directors or governing body;

(ii) a person occupying or acting in the position of a member of the corporation's board, by whatever name called and whether or not validly appointed to occupy, or duly authorized to act in the position; or

(iii) a person in accordance with whose directions or instructions the members of the corporation's board are accustomed to act;

"document" has the meaning assigned to it in the Evidence Act 1950 [*Act 56*];

"exchange holding company" means a body corporate that is the holding company of any body corporate approved as a stock exchange, futures exchange, central depository or approved as a clearing house and that has been approved as an exchange holding company under section 15;

"exempt derivatives market" means a derivatives market which is declared to be an exempt derivatives market under paragraph 7(3)(a);

"exempt futures market" means a futures market which is declared to be an exempt futures market under paragraph 7(3)*(a)*;

"exempt stock market" means a stock market which is declared to be an exempt stock market under paragraph 7(3)*(a)*;

"financial planning" has the same meaning as in Part 2 of Schedule 2;

"fund management" has the same meaning as in Part 2 of Schedule 2;

"futures contract" means a derivative that is traded on a derivatives exchange which creates an obligation for physical delivery or acceptance of physical delivery of the underlying instrument of such derivative, the quantity and quality of which is determined by that derivatives exchange, at a fixed date in the future at a fixed price, and which may be cash;

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

"holding company" has the meaning assigned to it in sections 5 and 5A of the Companies Act 1965;

"information service" means—

(a) a broadcasting service;

(b) an interactive or broadcast videotext or teletext service or other similar service;

(c) an online database service or other similar service; or

(d) any other service as may be prescribed by the Commission,

but does not include bond pricing facilities;

"instrument", in relation to futures contracts, means—

(a) anything that is capable of delivery under an agreement for its delivery, including a commodity, or a document creating or evidencing a thing in action; or

(b) any other thing that is prescribed to be an instrument for the purposes of this Act;

"investment advice" has the same meaning as in Part 2 of Schedule 2;

"Islamic bank" means a bank licensed under the Islamic Banking Act 1983 [*Act 276*];

"issue" means—

(a) in relation to securities, to bring or cause to be brought into existence those securities; and

(b) in relation to a notice, prospectus or other document, to circulate, distribute or disseminate such notice, prospectus or document;

"issuer" means—

(a) in the case of shares or debentures, the corporation whose shares or debentures are being issued, offered for subscription or purchase or in respect of which an invitation to subscribe or purchase has been made;

(b) in the case of units of a unit trust scheme or prescribed investment scheme, the management company; and

(c) in the case of any other securities, the person making available, issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, such securities;

"licence" means a Capital Markets Services Licence or a Capital Markets Services Representative's Licence granted under section 61;

"licensed bank" means a bank licensed under the Banking and Financial Institutions Act 1989 [*Act 372*];

"licensed institution" has the meaning assigned to it in the Banking and Financial Institutions Act 1989;

"licensed merchant bank" has the meaning assigned to it in the Banking and Financial Institutions Act 1989;

"licensed person" means a person holding a Capital Markets Services Licence and includes a person holding a Capital Markets Services Representative's Licence;

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

"listed corporation" means a corporation whose securities or any

class of its securities have gained admission to be quoted on a stock market of a stock exchange;

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

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

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

whether those rules—

(A) are made by the body corporate or are contained in any of the constituent documents of the body corporate; or

(B) are made by another person and adopted by the body corporate;

"Minister" means the Minister for the time being charged with the responsibility for finance;

"officer", in relation to—

(a) the Commission, has the meaning assigned to it in the Securities Commission Malaysia Act (SCMA) 1993 1993;

(b) a corporation, includes—

(i) any director, secretary or employee of the corporation;

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

(iii) any liquidator of a corporation appointed in a voluntary winding up,

but does not include—

(A) any receiver who is not also a manager;

(B) any receiver and manager appointed by the court; or

(C) any liquidator appointed by the court or by the creditors;

"official list", in relation to a stock market of a stock exchange, means a list specifying all securities which have been admitted for quotation on the stock market of the stock exchange;

"over-the-counter derivative" means a derivative other than a standardized derivative;

"participant" means—

(a) a person who may participate in one or more of the services provided by a stock exchange or futures exchange; or

(b) a person who, under the rules of an approved clearing house, may participate in one or more of the services provided by the approved clearing house;

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

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

"premises" means any place (whether enclosed or built on or not) and in particular, includes—

(a) a building, aircraft, vehicle or vessel;

(b) any structure, whether fixed or movable; and

(c) a part of premises (including a part of premises of a kind referred to in paragraph *(a)* or *(b)*);

"prescribed" means prescribed by the Minister under this Act or any regulations made under this Act, and where no mode is mentioned means prescribed by order published in the *Gazette,* and a power to prescribe includes the power to prescribe differently for different persons, securities, futures contracts or transactions, or different classes, categories or descriptions of persons, securities, futures contract or transactions;

"prescribed investment" means an interest as defined under subsection 84(1) of the Companies Act 1965 that has been exempted under section 96 of the Companies Act 1965 and in respect of which the Minister has made a prescription under section 5;

"prescribed investment scheme" means an undertaking, scheme, enterprise, contract or arrangement in relation to a prescribed investment;

"public interest directors", in relation to a stock exchange, futures exchange or an exchange holding company, means persons who are appointed by the Minister under section 10;

"record" includes information stored or recorded by means of a computer, electronic or digital medium or any other means of recording or storage;

"registered person" means a person registered under section 76;

"Registrar" means the Registrar of Companies under the Companies Act 1965 and includes any Regional Registrar, Deputy or Assistant Registrar of Companies;

"regulated activity" means any of the types of regulated activities specified in Part 1 of Schedule 2;

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

"representative" means a person, by whatever name called, in the direct employment of, or acting for, or by arrangement with, a person who carries on business in any regulated activity, who carries out for that person any such regulated activity (other than work ordinarily performed by accountants, clerks or cashiers), whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise;

"rules", in relation to—

(a) a stock exchange, means the memorandum of association and the articles of association, or the rules or directions, by what-

ever name called and wherever contained, governing the membership, management, operations or procedures of the stock exchange, or the conduct of its participating organizations and, without limiting the generality of the foregoing, includes—

(i) rules contained in the memorandum of association and the articles of association or other constituent document of the stock exchange;

(ii) rules and procedures governing the quotation of securities on the stock market of the stock exchange and listing requirements;

(iii) rules to ensure compliance by participating organizations of any obligations imposed by this Act or any other written law; and

(iv) rules in respect of such other matters as may be necessary or desirable for the proper and efficient operation and management of the stock exchange, including rules specifying fees and charges;

(b) an approved clearing house, means the memorandum of association and the articles of association, or the rules or directions, by whatever name called and wherever contained, governing the membership, management, operations or procedures of the approved clearing house and, without limiting the generality of the foregoing, includes rules and directions relating to—

(i) the provision of clearing and settlement services, and the suspension or withdrawal of such services;

(ii) the provision of services other than the services referred to in subparagraph (i);

(iii) the persons who may participate in one or more of the services referred to in subparagraph (i) or (ii);

(iv) the specification of fees and charges; and

(v) the default rules;

(c) a central depository, has the meaning assigned to it in the Securities Industry (Central Depositories) Act 1991;

(d) a futures exchange, means the memorandum of association and the articles of association, or the rules or directions, by whatever name called and wherever contained, governing the membership, management, operations or procedures of the futures exchange or the conduct of its affiliates;

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

(f) a recognized self-regulatory organization, means the memorandum of association and the articles of association of a recognized self-regulatory organization, or the rules or directions, by whatever name called and wherever contained, governing the membership, management, operations or procedures of a recognized self-regulatory organization or the conduct of the members of the recognized self-regulatory organization;

(g) a trade repository, means the memorandum of association and the articles of association, or rules or directions, by whatever name called and wherever contained, governing the membership, management, operations or procedures of a trade repository;

"securities" means—

(a) debentures, stocks or bonds issued or proposed to be issued by any government;

(b) shares in or debentures of, a body corporate or an unincorporated body; or

(c) unit trusts or prescribed investments,

and includes any right, option or interest in respect thereof;

"securities laws" has the meaning assigned to it in the Securities Commission Malaysia Act (SCMA) 1993 1993;

"self-regulatory organization" means an organization that is recognized by the Commission pursuant to section 323;

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

"Specified Exchange" means a person or body that operates a futures market outside Malaysia and is specified as a Specified Exchange under section 105;

"specified person" means a person or classes of person specified in Schedule 3;

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

"standardized derivative" means a derivative, including a futures contract, that is traded on a derivatives exchange, whose intrinsic characteristics is determined by that derivatives exchange and whose trade is cleared and settled by an approved clearing house;

"stock exchange" means any body corporate in relation to which an approval under subsection 8(2) is in force

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

(a) offers to sell, purchases or exchanges of securities are regularly made or accepted;

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

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

"subsidiary" has the meaning assigned to it in section 5 of the Companies Act 1965;

"trade repository" means a body corporate approved under section 107B that collects and maintains information or records with respect to over-the-counter derivatives transactions or positions entered by any person, including any terms and conditions thereof, for the purpose of providing a centralized record keeping facility for over-the-counter derivatives;

"trust account" means a trust account referred to in section 111 or 122;

"unit", in relation to a unit trust scheme or prescribed investment scheme, private retirement scheme means any right or interest therein by whatever name called and includes any subunit thereof;

"unit holder" means the unit holder of a unit trust scheme or prescribed investment scheme, as the case may be;

"unit trust scheme" means any arrangement made for the purpose, or having the effect, of providing facilities for the participation of persons as beneficiaries under a trust in profits or income arising from the acquisition, holding, management or disposal of—

(a) securities;

(b) futures contracts; or

(c) any other property;

"unlisted recreational club" means a corporation which provides the holders of its shares or debentures the right to use or enjoy any recreational, holiday or other related facilities and whose shares or debentures are not listed or proposed to be listed for quotation on any stock market of a stock exchange;

"value", in relation to an asset, includes amount;

"voting shares" has the meaning assigned to it in section 4 of the Companies Act 1965.

(2) Any reference in this Act to "this Act" or "securities law" shall, unless otherwise expressly stated, include a reference to any regulations, rules, order, notification or other subsidiary legislation made under this Act or securities law, as the case may be.

Associated person

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

(a) the spouse, or any minor child (natural or adopted) or minor step child, of the person;

(b) any employee or partner of the person;

(c) another person in accordance with whose directions or instructions the person is accustomed or obliged to act;

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

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

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

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

(e) where the matter to which the reference relates is the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a body corporate, a person with whom the other person has, or proposes to enter into, an agreement, arrange-

ment, understanding or undertaking, whether formal or informal and whether express or implied—

(i) by reason of which either of those persons may exercise, directly or indirectly control the exercise of, or substantially influence the exercise of, any voting power attached to a share in the body corporate;

(ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the body corporate; or

(iii) under which either of those persons may acquire from the other of them shares in the body corporate or may be required to dispose of such shares in accordance with the directions of the other of them;

(f) where the matter to which the reference relates is a matter other than the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a body corporate—

(i) a corporation in partnership with which the other person carries on a business of trading in futures contracts;

(ii) subject to subsection (2), a person who is a partner of the other person, otherwise than as a result of him dealing in securities or trading in futures contracts in partnership with the other person;

(iii) a trustee of a trust in relation to which the other person benefits or is capable of benefiting otherwise than by reason of transactions entered into in the ordinary course of business in connection with the lending of money;

(iv) a person who is a director of a body corporate that carries on a business of dealing in securities or trading in futures contracts and of which the other person is also a director; or

(v) subject to subsection (2), a person who is a director of a body corporate of which the other person is a director, not being a body corporate that carries on a business of dealing in securities or trading in futures contracts;

(g) a person with whom the other person is, by virtue of any regulation that may be introduced, to be regarded as associated in respect of the matter to which the reference relates;

(h) a person with whom the other person is, or proposes to become, associated, whether formally or informally, in any other way in respect of the matter to which the reference relates; or

(i) where the other person has entered into, or proposes to enter into, a transaction, or has done, or proposes to do, any other act or thing, with a view to becoming associated with a person as mentioned in any of the preceding paragraphs, that last mentioned person.

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

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

Interest in securities

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

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

(a) a right, being a right or an interest described in the definition of "interest" in section 84 of the Companies Act 1965, was issued or offered to the public for subscription or purchase;

(b) the public was invited to subscribe for or purchase such a right, and the right was so subscribed for or purchased; or

(c) such a right is held by the management company and was issued for the purpose of an offer to the public within the meaning of section 84 of the Companies Act 1965.

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

(a) the body corporate is, or its directors are accustomed, or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions, or wishes of that person in relation to that security;

(b) that person has a controlling interest in the body corporate; or

(c) that person, or the associates of that person or that person and his associates are entitled to exercise or control the exercise of not less than fifteen per centum of the votes attached to the voting shares in the body corporate.

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

(a) a corporation which, by virtue of section 6 of the Companies Act 19651965 is deemed to be related to that other person;

(b) a person in accordance with whose directions, instructions or wishes that other person is accustomed or is under an obligation, whether formal or informal, to act in relation to the security referred to in subsection (3);

(c) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to that security;

(d) a body corporate which is, or the directors of which are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to that security; or

(e) a body corporate in accordance with the directions, instructions or wishes of which, or of the directors of which, that other person is accustomed or under an obligation, whether formal or informal, to act in relation to that security.

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

(a) has entered into a contract to purchase a security;

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

(c) has the right or power to acquire a security or an interest in a security, under an option, whether the right or power is exercisable presently or in the future and whether on the fulfilment of a condition or not; or

(d) is entitled, otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a corporation or of a class of its members, to exercise or control the exercise of a right attached to a security, not being a security of which he is the registered holder.

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

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

(8) There shall be disregarded—

(a) an interest in a security of a person whose ordinary business includes the lending of money if he holds the interest only by way of security for the purpose of a transaction entered into in the ordinary course of business in connection with the lending of money;

(b) an interest of a person in a security being an interest held by him by reason of his holding a prescribed office; and

(c) a prescribed interest in a security being an interest of such person, or of the persons included in such class of persons, as is prescribed.

(9) An interest in a security shall not be disregarded by reason only of—

(a) its remoteness;

(b) the manner in which it arose; or

(c) the fact that the exercise of a right conferred by the interest is, or is capable of being made subject to restraint or restriction.

Prescription of securities and futures contracts

5. (1) Notwithstanding the definition of "securities" or "futures contract" under this Act and "interest" as defined in subsection 84(1) of the Companies Act 19651965, the Minister may, on the recommendation of the Commission, by order published in the *Gazette,* prescribe any instrument or product or class of instruments or products to be—

(a) securities; or

(b) futures contracts,

for the purposes of securities laws.

(2) Where an exemption has been granted under section 96 of the Companies Act 19651965, the Minister may, on the recommendation

of the Commission, by order published in the *Gazette,* prescribe an exempted interest or a class or category of exempted interests to be—

(a) securities for the purposes of this Act or any particular provision of this Act; or

(b) a futures contract for the purposes of this Act or any particular provision of this Act.

(3) In a prescription made under subsection (1) or (2) in respect of securities or futures contracts, as the case may be, the Minister may—

(a) for the purposes of regulating the issue, offer for subscription or purchase, or the making of an invitation to subscribe for or purchase, any securities, specify in the prescription any provision of this Act to apply to such securities;

(b) in the case of futures contracts, specify in the prescription any provision of this Act to apply to such a futures contract.

(4) For the purposes of this section, "interest" means an interest as defined in subsection 84(1) of the Companies Act 19651965.

Consequences of agreements becoming futures contracts

6. If an agreement that was not a futures contract when it was entered into becomes a futures contract as a result of an action taken by any of the parties to the agreement at a later time—

(a) the parties to the agreement shall be deemed to have entered into a futures contract at that later time; and

(b) the agreement shall constitute the futures contract referred to in paragraph *(a).*

PART II SECURITIES AND FUTURES MARKETS

Division 1 Markets

Establishment of stock markets or futures markets

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

(a) a stock market of a stock exchange;

(b) a stock market of an exchange holding company that is itself approved as a stock exchange;

(c) an exempt stock market; or

(d) a registered electronic facility under subsection 34(1).

(2) A person shall not establish, operate or maintain, or assist in establishing, operating or maintaining, or hold himself out as providing, operating or maintaining, a futures market that is not—

(a) a futures market of a futures exchange;

(b) a futures market of an exchange holding company that is itself approved as a futures exchange;

(c) an exempt futures market; or

(d) a registered electronic facility under subsection 34(1).

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

(a) declare a particular stock market or futures market, or a stock market or futures market included in a particular class of stock markets or futures markets, to be an exempt stock market or exempt futures market for the purposes of this Act subject to such terms and conditions as he thinks reasonable and appropriate after having regard to, among other things,—

(i) the types of securities or futures contracts traded or to be traded;

(ii) the types of participants;

(iii) the types of investors; or

(iv) the volume of trading,

(a) relating to the particular stock market or futures market, or stock market or futures market included in the particular class of stock markets or futures markets; and

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

(i) any breach of the terms and conditions specified in the declaration; or

(ii) such other matters as the Minister thinks fit.

(4) For the purposes of this section, the facilities specified in Schedule 1 that are—

(a) established and operated by Bank Negara; or

(b) operated by or on behalf of Bank Negara,

shall be deemed to be exempted under subsection (3).

(5) A person who contravenes subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding ten years or to both.

Division 2 Market institutions

Subdivision 1 Exchanges and exchange holding company

Power of Minister to approve stock exchange or futures exchange

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

(2) The Minister may in writing, on the recommendation of the Commission, approve a body corporate as a stock exchange or futures exchange, subject to any terms and conditions as he thinks fit, if he is satisfied that—

(a) the body corporate will ensure that, as far as is reasonably practicable, it will operate an orderly and fair market in relation to securities and futures contracts that are traded through its facilities;

(b) the body corporate will manage any risks associated with its business and operations prudently;

(c) the body corporate, in discharging its obligations under

paragraph *(a),* will not act contrary to the public interest and in particular the interest of investors;

(d) the body corporate is able to take appropriate action against its participating organizations or affiliates to whom the rules apply for any breach of its rules;

(e) the rules of the body corporate make satisfactory provision—

(i) for an orderly and fair market in relation to the securities or futures contracts that are traded through its facilities;

(ii) for the proper regulation and supervision of its participating organizations or affiliates;

(iii) for the exclusion of persons who are not of good character and high business integrity from being recognized as participating organizations or affiliates;

(iv) for the expulsion, suspension or disciplining of its participating organization or affiliates and any person acting on behalf of such participating organization or affiliates, for conduct that is inconsistent with just and equitable principles in the transaction of business or for a contravention of or failure to comply with the rules of the stock exchange or futures exchange;

(v) with respect to the conditions under which securities may be listed for trading in the market proposed to be conducted by the body corporate or under which futures contracts may be traded on the market through its facilities;

(vi) with respect to the conditions governing dealings in securities or trading in futures contracts by its participating organizations or affiliates;

(vii) with respect to the class of securities or futures contracts that may be dealt in or traded on its facilities; and

(viii) generally for the carrying on of the business of the proposed stock exchange or futures exchange with due regard to the need for the protection of investors and public interest;

(f) the body corporate shall at all times have sufficient financial, human and other resources to ensure the provision of—

(i) an orderly and fair market in relation to securities or futures contracts that are traded through its facilities;

(ii) adequate and properly equipped premises for the conduct of its business;

(iii) competent personnel for the conduct of its business; and

(iv) automated systems with adequate capacity, security arrangements and facilities to meet emergencies; and

(g) the interest of the public or the proper regulation of the market will be served by the granting of this approval.

(3) An application for approval under subsection (1) shall be sent to the Commission, whereupon the Commission shall submit to the Minister such application together with its recommendation.

(4) An applicant under subsection (1) shall provide such information as the Minister or the Commission considers necessary in relation to the application.

(5) Without limiting the generality of the terms and conditions

specified in subsection (2), the Minister may in writing, on the recommendation of the Commission, amend, revoke or impose new terms and conditions, if the Minister is satisfied that it is appropriate to do so for the protection of investors or in the public interest or for the proper regulation of the stock market or futures market.

Commission to approve amendment to rules of stock exchange, futures exchange or approved clearing house

9. (1) A stock exchange, futures exchange or approved clearing house shall as soon as practicable, submit or cause to be submitted to the Commission for its approval any proposed rules or any proposed amendments to existing rules.

(2) No amendment to the rules of a stock exchange, futures exchange or approved clearing house shall have effect unless it has been approved by the Commission under subsection (5).

(3) Where a stock exchange, futures exchange or approved clearing house proposes to make any amendment to its rules, the stock exchange, futures exchange or approved clearing house shall submit to the Commission—

(a) the text of the proposed amendment; and

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

(4) Where—

(a) proposed rules or amendments to existing rules involve the introduction of a class of futures contracts, the instrument in respect of which is a commodity, to be offered for trading on a futures market of the futures exchange; and

(b) the Minister responsible in respect of the commodity is the Minister for the time being charged with the responsibility for plantation industries and commodities,

the Commission shall consult that Minister before notifying the futures exchange of its decision under subsection (5).

(5) The Commission shall, within six weeks after the receipt of any proposed amendment under subsection (1), give notice in writing to the stock exchange, futures exchange or approved clearing house that it approves or disapproves of the proposed amendment or any part of the proposed amendment, as the case may be.

(6) The Commission may, by notice in writing, declare any class of rules of a stock exchange, futures exchange or approved clearing house to be a class of rules whose amendments do not require the approval of the Commission under subsection (5), and accordingly, any amendment to the rules of a stock exchange, futures exchange or approved clearing house that belongs to that class shall, subject to subsections (7) and (8), have effect notwithstanding that they have not been so approved under subsection (5).

(7) Where the Commission is of the opinion that any amendment to the rules of a stock exchange, futures exchange or approved clearing house made under subsection (6) does not fall within the class of rules declared by the Commission under that subsection as not requiring its approval, the Commission may, after consultation with the stock

exchange, futures exchange or approved clearing house, require the stock exchange, futures exchange or approved clearing house to submit such amendment for its approval under subsection (5).

(8) *(a)* Where a rule amended by the stock exchange, futures exchange or approved clearing house under subsection (6) is the subject of a requirement made by the Commission under subsection (7), such amendment shall cease to have effect from the date of the Commission making such a requirement or such later date as the Commission may determine.

(b) This subsection shall not have effect until a reasonable time has been given to the stock exchange, futures exchange or approved clearing house to notify the persons affected by such amendment.

(9) Notwithstanding the provisions of this section, the Commission may, from time to time, after consultation with the stock exchange, futures exchange or approved clearing house, by written notice require the stock exchange, futures exchange or approved clearing house to amend or supplement its constitution or any of its rules in such manner and within such period as may be specified in the notice.

(10) A stock exchange, futures exchange or approved clearing house which contravenes subsection (3) or which contravenes a requirement made under subsection (7) or a written notice made under subsection (9) commits an offence.

Appointment of directors of exchange holding company, stock exchange and futures exchange

10. (1) In relation to an exchange holding company, a stock exchange or futures exchange other than a stock exchange or futures exchange that is referred to in subsection (2)—

(a) one third of the number of directors on the board of such exchange holding company, stock exchange or futures exchange, as the case may be, shall be appointed by the Minister, in consultation with the Commission, to be public interest directors of the exchange holding company, stock exchange or futures exchange and, notwithstanding the provision of any other written law, such public interest directors so appointed—

(i) shall have the same rights, powers, duties and obligations, liberties and privileges as any director of the exchange holding company, stock exchange or futures exchange; and

(ii) shall hold office for a period specified by the Minister which shall not exceed a term of three years but shall be eligible for reappointment; and

(iii) may have his appointment revoked at any time by the Minister;

(b) no person other than a public interest director referred to in paragraph *(a)* shall accept appointment, reappointment, election or re-election as a director of the exchange holding company, stock exchange or futures exchange unless the concurrence of the Commission is obtained; and

(c) the Minister may, on the recommendation of the Commission,

vary the number of public interest directors appointed under paragraph (a).

(2) Notwithstanding the provisions of subsection (1), in relation to the board of a stock exchange or futures exchange that is a subsidiary of an exchange holding company, no person shall accept appointment, reappointment, election or re-election as a director of such stock exchange or futures exchange unless the concurrence of the Commission is obtained.

(3) The Minister shall, in consultation with the Commission, appoint one person from amongst the public interest directors so appointed under subsection (1) to be the non-executive Chairman of the board of the exchange holding company, a stock exchange or futures exchange, as the case may be, whose remuneration shall be determined by the board of the exchange holding company, stock exchange or futures exchange, as the case may be.

(4) Where the concurrence of the Commission is required under subsection (1) or (2), the Commission may refuse to concur if—

(a) any proposed director is an undischarged bankrupt, whether within or outside Malaysia;

(b) a judgement debt against the proposed director has not been satisfied in whole or in part;

(c) the proposed director has, whether within or outside Malaysia, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;

(d) the proposed director—

(i) has been convicted, whether within or outside Malaysia, of an offence, involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly; or

(ii) has been convicted of an offence under the securities laws; or

(e) the Commission is not satisfied that the proposed director is a person of integrity and is fit and proper to be a director.

Duties of exchange

11. (1) For the purposes of this section, sections 12, 13 and 27—

(a) "exchange" refers to a stock exchange or a futures exchange; and

(b) "relevant person" means a participating organisation or an affiliate.

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

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

(a) act in the public interest having particular regard to the need for the protection of investors; and

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

(4) It shall be the duty of the exchange to take appropriate action as may be provided for under its rules for the purpose of monitoring or securing compliance with such rules.

(5) An exchange shall immediately notify the Commission if it becomes aware of—

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

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

(6) Without prejudice to subsection (5), when an exchange reprimands, fines, suspends, expels or otherwise disciplines any of its relevant person, it shall, within seven days, give to the Commission in writing the following particulars:

(a) the name and address of the business of the relevant person;

(b) the reason for and the nature of the action taken;

(c) the amount of the fine;

(d) the period of suspension, if any; and

(e) any other disciplinary action taken.

(7) An exchange shall at all times have sufficient financial, human and other resources to ensure the provision of—

(a) an orderly and fair market in relation to securities or futures contracts that are traded through its facilities;

(b) adequate and properly equipped premises for the conduct of its business;

(c) competent personnel for the conduct of its business; and

(d) automated systems with adequate capacity, security arrangements and facilities to meet emergencies.

Withdrawal of approval of exchange

12. (1) The Minister may, on the recommendation of the Commission, by notice published in the *Gazette,* and by such other means as the Commission considers appropriate—

(a) withdraw an approval granted under section 8 to an exchange, with effect from the date specified in the notice; or

(b) direct the exchange to cease to provide or operate such facilities, or to cease to provide such services, as are specified in the notice, with effect from the date specified in the notice.

(2) The Minister shall not withdraw an approval or issue a direction under subsection (1) unless the Minister, on the recommendation of the Commission, is satisfied that it is appropriate to do so for the protection of investors, or in the public interest or for the proper

regulation of markets in securities or futures contracts, where any of the following circumstances occurs:

(a) the exchange ceases to operate its stock market or futures market, as the case may be;

(b) the exchange is being wound up or otherwise dissolved, whether within or outside Malaysia;

(c) the exchange has contravened any term or condition of its approval or is charged with any offence under any securities laws;

(d) the exchange has failed to comply with a condition, requirement or direction given under section 26, 354 or 355;

(e) any information provided for the purposes of section 8 was false or misleading in a material particular;

(f) a judgement debt against the exchange has not been satisfied in whole or in part;

(g) a receiver, a receiver and manager, or equivalent person has been appointed, whether within or outside Malaysia, in respect of any property of the exchange;

(h) the exchange has, whether within or outside Malaysia, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;

(i) the exchange on its own accord applies to the Minister to withdraw the approval as a stock exchange or a futures exchange granted to it and the Minister, on the recommendation of the Commission, thinks it fit to do so.

(3) For the purposes of paragraph (2)*(a)*, an exchange shall be deemed to have ceased to operate its stock market or futures market, if it has ceased to operate its stock market or futures market, as the case may be, for a period of one month unless it has obtained the prior approval of the Minister to do so.

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

(a) closing down the operations of the exchange or ceasing to provide the services as specified in the notice; or

(b) protecting the interest of investors or the public interest.

(5) Where the Minister has granted permission to an exchange under subsection (4), the exchange shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened section 7.

(6) The Minister shall not take any action under subsection (1) without giving an exchange an opportunity to be heard.

(7) Where an exchange has ceased to comply with any term or condition specified in section 8, or where the Minister receives a recommendation from the Commission under this section, the Minister may, instead of withdrawing the approval under subsection (1), direct that trading on the exchange be suspended until such time as the exchange

has, to the satisfaction of the Minister, complied with such term or condition, or rectified the matter forming the basis of the recommendation by the Commission, or until the Minister revokes the direction.

(8) The Minister shall give the exchange not less than fourteen days' notice in writing of his intention to direct suspension of trading under subsection (7) and the notice shall specify the grounds for the suspension.

Effect of withdrawal of approval of an exchange

13. Any withdrawal of approval or direction issued under section 12 shall not operate so as to—

(a) avoid or affect any agreement, transaction or arrangement entered into on the stock market or futures market operated by an exchange, as the case may be, whether the agreement, transaction or arrangement was entered into before or, where subsection 12(4) applies, after the withdrawal of the approval or issuance of the direction under section 12; or

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

Subdivision 2 Exchange holding company

Exchange holding company

14. No body corporate shall be an exchange holding company or a holding company of an exchange holding company, unless the body corporate has been approved as an exchange holding company under section 15.

Power of Minister to approve exchange holding company

15. (1) An application for approval of a body corporate as an exchange holding company may be made in writing to the Minister.

(2) The Minister may in writing, on the recommendation of the Commission, approve a body corporate as an exchange holding company, subject to any terms and conditions as he thinks fit, if he is satisfied that it is appropriate to do so—

(a) for the protection of investors;

(b) in the public interest; or

(c) for the proper regulation of a stock market of a stock exchange or a futures market of a futures exchange.

(3) An application for approval under subsection (1) shall be sent to the Commission, whereupon the Commission shall submit to the Minister such application together with its recommendation.

(4) An applicant under subsection (1) shall provide such information as the Minister or the Commission considers necessary in relation to the application.

(5) The Minister may, on the recommendation of the Commission, impose different conditions or restrictions or give different directions with respect to different applications for approval as an exchange holding company.

(6) For the avoidance of doubt—

(a) to the extent that an exchange holding company would be holding itself out as, or is providing, operating or maintaining, a stock market of a stock exchange, the exchange holding company shall obtain an approval in accordance with the provisions of section 8;

(b) to the extent that an exchange holding company would be holding itself out as, or is establishing or maintaining, a central depository, the exchange holding company shall obtain an approval in accordance with the provisions of sections 4 and 5 of the Securities Industry (Central Depositories) Act 1991;

(c) to the extent that an exchange holding company is holding itself out as, or is providing clearing and settlement services of—

(i) a clearing house of a stock exchange; or

(ii) a clearing house of a futures exchange,

(c) the exchange holding company shall obtain approval in accordance with the provisions of section 38; and

(d) to the extent that an exchange holding company is holding itself out as, or is providing, operating or maintaining, a futures market of a futures exchange, the exchange holding company shall obtain an approval in accordance with the provisions of section 8.

(7) Notwithstanding the provisions of this Act and the Securities Industry (Central Depositories) Act 1991, the Minister may, in his discretion, exempt the applicant from any of the requirements of section 8 or 38 of this Act or sections 4 and 5 of the Securities Industry (Central Depositories) Act 1991, as he thinks fit, for the purposes of giving his approval.

(8) Notwithstanding the provisions of section 38, the Commission may, with the approval of the Minister, exempt the applicant from any of the requirements of section 38, as it thinks fit, for the purpose of granting approval to an exchange holding company as an approved clearing house.

Annual Regulatory Report on compliance with ongoing requirements

16. (1) Within three months after the end of each financial year, a body corporate that has been approved as a stock exchange, futures exchange or an exchange holding company shall prepare and submit to the Commission a regulatory report on the extent to which it has complied with the requirements under sections 11 and 21, and its rules, during the financial year.

(2) The Commission shall forthwith send a copy of the regulatory report submitted under subsection (1) to the Minister.

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

(a) where a stock exchange or a futures exchange is a subsidiary of an exchange holding company, the Commission may specify the entity that is required to submit a regulatory report; and

(b) the Commission and the stock exchange, futures exchange or the exchange holding company, as the case may be, may determine between themselves the scope and content of the regulatory report.

(4) Upon receipt of the regulatory report under subsection (1), the Commission may at any other time it thinks necessary—

(a) conduct a regulatory audit of a body corporate that has been approved as a stock exchange, a futures exchange or an exchange holding company, as the case may be;

(b) appoint any independent person to assist the Commission in a regulatory audit conducted under this subsection; and

(c) charge the costs related to the conduct of the regulatory audit to the stock exchange, futures exchange or the exchange holding company, as the case may be.

(5) The Commission shall as soon as practicable submit to the Minister a copy of the report of the regulatory audit conducted by the Commission under subsection (4).

(6) For the purposes of this section—

(a) "regulatory audit" refers to an audit on the extent to which a stock exchange, a futures exchange or an exchange holding company, as the case may be, has complied with its regulatory responsibilities, duties or functions under this Act, the rules and any securities laws; and

(b) "regulatory report" is a report that is submitted under subsection (1).

Special report by exchange holding company about compliance with ongoing requirements

17. Notwithstanding the provisions of section 16, the Minister may, at any time, require a body corporate that has been approved as a stock exchange, a futures exchange or an exchange holding company, as the case may be, to prepare and submit to the Minister a special report on the extent to which the stock exchange, futures exchange or the exchange holding company, as the case may be, has complied with the requirements of the securities laws and rules.

Withdrawal of approval of exchange holding company

18. (1) The Minister may, on the recommendation of the Commission, by a notice published in the *Gazette,* and by such other means as the Commission thinks appropriate—

(a) withdraw an approval granted under section 15 to an exchange holding company, with effect from the date specified in the notice; or

(b) direct an exchange holding company to cease to provide or operate such facilities, or provide such services, as are specified in the notice, with effect from the date specified in the notice.

(2) The Minister shall not withdraw an approval or issue a direction under subsection (1) unless the Minister, on the recommendation of the Commission, is satisfied that it is appropriate to do so for the protection of investors, or in the public interest or for the proper regulation of the markets in securities or futures contracts, where any of the following circumstances occurs:

(a) the exchange holding company ceases to be a holding company of a stock exchange or a futures exchange, as the case may be;

(b) the exchange holding company is being wound up or otherwise dissolved, whether within or outside Malaysia;

(c) the exchange holding company has contravened any term or condition of its approval or is charged with any offence under any securities laws;

(d) the exchange holding company has failed to comply with a condition, requirement or direction given under section 26, 354 or 355;

(e) any information provided for the purposes of section 15 was false or misleading in a material particular; or

(f) an exchange holding company on its own accord applies to the Minister to withdraw the approval as an exchange holding company granted to it and the Minister, on the recommendation of the Commission, thinks fit to do so.

(3) Notwithstanding the withdrawal of an approval or the issuance of a direction under subsection (1), the Minister may permit the exchange holding company to continue, on or after the date on which the withdrawal or direction is to take effect, to carry on such activities affected by the withdrawal or direction as the Minister may specify in the notice published under that subsection for the purposes of—

(a) closing down the operations of the exchange holding company or ceasing to provide the services specified in the notice; or

(b) protecting the interest of the investors or the public interest.

(4) Where the Minister has granted permission to an exchange holding company under subsection (3), the exchange holding company shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened sections 7, 14 and 37 of this Act and section 3 of the Securities Industry (Central Depositories) Act 1991, if applicable.

(5) The Minister shall not take any action under subsection (1) without giving an exchange holding company an opportunity to be heard.

Effect of withdrawal of approval of exchange holding company

19. Any withdrawal of an approval or issuance of a direction under section 18 shall not operate so as to prejudice sections 13 and 40 of this Act and section 5B of the Securities Industry (Central Depositories) Act 1991.

Listing of exchange holding company on stock exchange

20. (1) Where the approval of the Commission under section 212 has been granted for the securities of an exchange holding company to be listed on a relevant stock exchange, the exchange holding company shall enter into such arrangements as the Commission may require—

(a) for dealing with possible conflicts of interest that may arise from the listing on the relevant stock exchange;

(b) for the purpose of ensuring the integrity of trading of the securities of the exchange holding company; and

(c) for the compliance with obligations as a listed corporation if the exchange holding company was to become a listed corporation,

and the exchange holding company shall comply with such requirements.

(2) The listing requirements of the relevant stock exchange shall be deemed to allow the Commission, instead of the relevant stock exchange, to make decisions and to take action, or to allow the Commission to require the relevant stock exchange to make decisions and to take action on the Commission's behalf on—

(a) the admission to or removal of the exchange holding company from the official list of the relevant stock exchange;

(b) the stopping or suspension of the securities of the exchange holding company from being listed on the relevant stock exchange; and

(c) such other matters as the Commission thinks fit for the purpose of subsection (1).

(3) An arrangement under subsection (1) may provide for the exchange holding company to pay such fees to the Commission as the Commission may determine for services provided by the Commission under the arrangement, or otherwise provided under or for the purposes of this section.

(4) Without prejudice to the provisions of section 9, the Commission may, by notice in writing—

(a) modify the listing requirements of the relevant stock exchange for the purpose of applying to the listing for quotation or trading of the securities of the exchange holding company; and

(b) exempt the exchange holding company from any listing requirement of the relevant stock exchange.

(5) For the purposes of this section, the "relevant stock exchange" means the stock exchange of the exchange holding company.

Duties of exchange holding company

21. (1) It shall be the duty of an exchange holding company to ensure—

(a) insofar as may be reasonably practicable—

(i) an orderly and fair market in relation to securities that are traded on the market through the facilities of the stock exchange of the exchange holding company or through the facilities of any of its subsidiaries that is duly approved as a stock exchange, as the case may be;

(ii) an orderly and fair market for trading in futures contracts on the futures market through the facilities of the futures exchange of the exchange holding company or through the facilities of any of its subsidiaries that is duly approved as a futures exchange, as the case may be;

(iii) that there are orderly dealings in securities deposited or lodged with a central depository through the facilities of a central depository of the exchange holding company or through the facilities of any of its subsidiaries that is duly approved as a central depository, as the case may be;

(iv) that there are orderly, clear and efficient clearing and

settlement arrangements for any transaction in securities cleared or settled through the facilities of a clearing house for a stock market of a stock exchange or through the facilities of any of the subsidiaries of an exchange holding company that is an approved clearing house, as the case may be; and

(v) that there are orderly, clear and efficient clearing and settlement arrangements for any transaction in futures contracts cleared or settled through the facilities of a clearing house for a futures market of a futures exchange or through the facilities of any of its subsidiaries that is duly approved as a clearing house of a futures exchange, as the case may be;

(b) the prudent risk management of its business and operations; and

(c) that the stock exchange, futures exchange, approved clearing house or central depository, as the case may be, comply with any lawful requirements placed on it under any securities laws and any other laws applicable to it.

(2) In performing its duty under subsection (1) the exchange holding company shall—

(a) act in the public interest, having particular regard to the need for the protection of investors; and

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

(3) An exchange holding company shall immediately notify the Commission if it becomes aware of—

(a) any matter which adversely affects or is likely to adversely affect—

(i) the ability of the exchange holding company to meet its obligations in respect of its business as an exchange holding company, a stock exchange, a futures exchange, an approved clearing house or a central depository, as the case may be, including its ability to comply with any requirements as may be specified by the Commission, if applicable; or

(ii) the ability of any subsidiary of the exchange holding company to meet its obligations in respect of its business as a stock exchange, a futures exchange, an approved clearing house or a central depository, as the case may be, including the ability of any such subsidiary to comply with any requirement as may be specified by the Commission, if applicable; or

(b) any irregularity, breach of any provision of the securities laws, the rules of a stock exchange, a futures exchange, an approved clearing house or a central depository, or any other matter which, in the opinion of the exchange holding company, indicates or may indicate, that the financial standing or financial integrity of any of its subsidiaries or the chief executive or directors of such subsidiary, as the case may be, is in question or may reasonably be affected.

(4) Where an exchange holding company, which itself has been approved as a stock exchange under section 8, undertakes any function of a subsidiary that is approved as a stock exchange under section 8,

such exchange holding company shall enter into such arrangements with the Commission as the Commission may determine as to how the duties and obligations of the exchange holding company and such subsidiary, under the securities laws, are satisfied.

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

(6) Where an exchange holding company, which itself has been approved as a futures exchange under section 8, undertakes any function of a subsidiary that is approved as a futures exchange under section 8, such exchange holding company shall enter into such arrangements with the Commission as the Commission may determine as to how the duties and obligations of the exchange holding company and such subsidiary, under the securities laws, are satisfied.

(7) Where an exchange holding company which itself has been approved as a clearing house of a stock exchange or a futures exchange under subsection 38(4), undertakes any function of a subsidiary that is approved as an approved clearing house under subsection 38(4), such exchange holding company shall enter into such arrangements with the Commission as the Commission may determine as to how the duties and obligations of the exchange holding company and such subsidiary, under the securities laws, are satisfied.

(8) Where the duties and obligations of a stock exchange, a futures exchange, an approved clearing house or a central depository, as the case may be, are discharged in accordance with the arrangements referred to in subsection (4), (5), (6) or (7), such duties and obligations shall be deemed to have been satisfied by both the exchange holding company and its subsidiary.

(9) Where the rules of a subsidiary of an exchange holding company which is a stock exchange, a futures exchange, an approved clearing house or a central depository provide for such subsidiary to take any action, the exchange holding company shall have the power to take such action on behalf of the relevant subsidiary.

(10) Nothing in subsection (9) shall preclude a subsidiary of an exchange holding company which is a stock exchange, a futures exchange, an approved clearing house or a central depository from itself taking any action against any person to whom its rules apply but such subsidiary shall not take any action under its rules in the event the exchange holding company takes such action pursuant to subsection (9).

Risk Management Committee of exchange holding company

22. An exchange holding company shall establish and maintain a committee, to be called the Risk Management Committee, to formulate

policies on risk management matters relating to the activities of the exchange holding company and of its subsidiaries, and to submit such policies to the board of the exchange holding company for its consideration.

Restriction on exchange holding company from reducing its shareholding

23. No exchange holding company shall reduce its shareholding in a stock exchange, a futures exchange, an approved clearing house or a central depository, as the case may be, to a level below seventy five per centum, or such other percentage as may be specified from time to time by the Minister, of the total issued and paid-up capital in the stock exchange, futures exchange, approved clearing house or central depository, as the case may be, without first obtaining the written approval of the Minister.

Disposal and acquisition of assets, etc.

24. (1) Without prejudice to the provisions of section 23, where—

(a) an exchange holding company;

(b) a stock exchange;

(c) a futures exchange;

(d) an approved clearing house;

(e) a central depository; or

(f) any other relevant body corporate as defined under subsection 26(5),

intends to enter into an agreement or arrangement, to dispose of or acquire such assets or classes of assets of such value as may have been specified by the Commission, it shall give the Commission prior written notification of such intention.

(2) Where the Commission makes a specification under subsection (1), it shall have regard to whether the assets referred to in the specification are integral to the operations of the exchange holding company, stock exchange, futures exchange, approved clearing house, central depository, or any other relevant body corporate, as the case may be, or significant in affecting the business direction of such persons.

Control in shareholding of exchange holding company

25. (1) Notwithstanding section 24, no person shall enter into any agreement or arrangement to acquire any voting shares of an exchange holding company by which, if the agreement or arrangement is carried out, he would acquire, together with any other voting shares of the exchange holding company which were then already held by him, or by him and by persons associated with him, voting shares of five per centum or more of the aggregate of the nominal amount of all the voting shares in the exchange holding company, without first obtaining the prior written approval of the Minister.

(2) An application for approval under subsection (1) shall be made by the person intending to acquire voting shares referred to therein

and shall be sent to the Commission, whereupon the Commission shall submit such application, together with its recommendation to the Minister.

(3) The Minister may grant his approval subject to such terms and conditions as he thinks fit to impose.

Power to issue directions

26. (1) The Commission may serve a written notice on an exchange holding company, a stock exchange, a derivatives exchange, an approved clearing house, a central depository or a relevant body corporate if the Commission is satisfied that—

(a) a conflict exists or may come into existence between—

(i) the interest of a body corporate that has been approved as an exchange holding company, a stock exchange, a derivatives exchange, an approved clearing house, a central depository or a relevant body corporate, as the case may be; and

(ii) the interest of the proper performance of the functions or duties conferred by this Act or any other law, on the exchange holding company, stock exchange, derivatives exchange, approved clearing house, central depository or the relevant body corporate, as the case may be;

(b) such conflict of interest as set out under paragraph *(a)* is likely to continue or be repeated; or

(c) it is necessary or expedient for

(i) ensuring fair and orderly markets;

(ii) the protection of investors, or in the public interest;

(iii) ensuring the integrity of the capital markets; or

(iv) the effective administration of securities laws.

(1A) Where the Commission exercises its powers under subsection (1), the Commission may state the reasons in support of the ground for the notice and direct the person referred to in subsection (1) to forthwith take such actions as are specified in the notice, including steps in relation to any of its affairs, business or property.

(2) A notice served under subsection (1) shall take effect immediately.

(3) A body corporate that has been served with a notice under subsection (1) shall not without reasonable excuse, fail to comply with the notice.

(4) A body corporate that has been served with a notice under subsection (1) may appeal against the notice to the Minister not later than fourteen days after the date of service of the notice or such longer period if any, as the Commission may specify in the notice, but the notice shall take effect immediately notwithstanding that the appeal has been or may be made under this subsection.

(5) For the purposes of this section, "relevant body corporate" means a body corporate of which an exchange holding company is a shareholder who, either alone or with any associated person, is entitled to exercise or control the exercise of more than thirty-three per centum of the aggregate of the nominal amount of all voting shares in the body corporate.

(6) Notwithstanding anything under securities laws, if the Commission thinks it necessary or expedient for the protection of investors or the effective administration of securities laws or in the public interest, the Commission may discharge any of the duties of a stock exchange or derivatives exchange in relation to—

(a) the supervision of the capital market and market participants; or

(b) the enforcement of—

(i) the rules of the stock exchange governing the quotation of securities on the stock market of the stock exchange and the listing requirements; or

(ii) the rules governing compliance by participating organisations of the stock exchange or affiliates of the derivatives exchange.

(7) Where the Commission exercises its power under subsection (6), subsection 11(4) shall not apply to the extent of the power exercised by the Commission.

(8) Where the Commission exercises its power under subsection (6), it may levy on the stock exchange or derivatives exchange a regulatory fee of such amount as may be prescribed by the Minister.

Closure of stock exchange or futures exchange

27. (1) The Minister may direct an exchange to close a stock market or a futures market of the exchange for a period not exceeding five business days if the Minister is of the opinion that an orderly and fair market for trading in securities on the stock market or trading in futures contracts on the futures market is being or is likely to be prevented because—

(a) an emergency or natural disaster has occurred within Malaysia; or

(b) there exists an economic or financial crisis or any other circumstances within or outside Malaysia.

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

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

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

(5) In this section—

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

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

Power of Commission in respect of stock exchange or futures exchange

28. (1) Where the Commission, exercises its power under subparagraph 26(1)*(c)*(i) or (ii); the Commission shall specify in the notice, such actions that are to be taken, including any of the following:

(a) prohibit the trading of particular securities or a particular class of securities made available by a corporation on the stock market of a stock exchange;

(b) terminate or suspend trading on the stock exchange or futures exchange;

(c) confine trading to liquidation of futures contracts positions;

(d) order the liquidation of all positions or any part thereof or the reduction in such positions;

(e) limit trading to a specific price range;

(f) modify trading days or hours;

(g) alter conditions of delivery;

(h) fix the settlement price at which positions are to be liquidated;

(i) require any person to act in a specified manner in relation to trading in securities or futures contracts or any class of securities or futures contracts;

(j) require margins or additional margins for any securities or futures contracts; and

(k) modify or suspend any of the rules of the stock exchange or futures exchange.

(2) Where the Commission issues a notice pursuant to subparagraph 26(1)(c)(i) or (ii), the Commission shall furnish to the Minister a written report setting out the reasons for the giving of the notice.

(3) Any person who is aggrieved by any action taken by the Commission under this section may appeal to the Minister whose decision shall be final.

(4) Notwithstanding any appeal under subsection (3), any action taken by the Commission under this section shall continue to have force and effect until such time as the Minister makes a decision on the appeal.

(5) A stock exchange, a futures exchange or an approved clearing house, as the case may be, shall comply with the written notice issued pursuant to subparagraph 26(1)(c)(i) or (ii).

Provision of assistance to Commission

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

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

(3) A person who refuses or fails, without lawful excuse, to allow a person acting on behalf of, or authorized by, the Commission, access in accordance with subsection (2) to the trading facility of a stock market of a stock exchange or a futures market of a futures exchange commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Suspension order relating to stock exchange, futures exchange, approved clearing house or central depository

30. (1) Without prejudice to section 12, 27 or 28, where the Minister is satisfied that it is in the public interest, or it is appropriate to do so for the protection of investors or for the proper regulation of a stock exchange, a futures exchange, an approved clearing house or a central depository, the Minister may, on the recommendation of the Commission, make an order ("suspension order") relating to all or any of the following:

(a) the functions of the board of the stock exchange, futures exchange, approved clearing house or central depository, or any member of its board;

(b) the functions of any committee (including a subcommittee) established by a board referred to in paragraph *(a)*; or

(c) the functions of the principal officer, by whatever name called, who is responsible for the conduct of the business and operations of the stock exchange, futures exchange, approved clearing house or central depository, as the case may be.

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

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

(b) any function to which paragraph *(a)* applies may be performed by such person as shall be specified in the order in relation to that function; and

(c) a person referred to in paragraph *(a)* shall not, by act or omission, either directly or indirectly, affect the manner in which functions therein referred to are performed unless the person to perform the functions under paragraph *(b)* requests for his assistance.

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

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

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

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

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

(a) forthwith serve a copy of the order or notice in writing of the extension on the stock exchange, futures exchange, approved clearing house or central depository to which the order relates; and

(b) cause the suspension order or the notice of the extension, as the case may be, to be published in the *Gazette*.

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

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

Power of Commission upon contravention of section 23, 24 or 25

31. (1) Notwithstanding any of the provisions in any memorandum and articles of association, the Companies Act 19651965, or any rule of law, but subject to the provisions of this Act, where the Commission is satisfied that any person has contravened the provisions of section 23, 24 or 25, it may make a preliminary order in writing, imposing one or more of the following prohibitions or restrictions as may be applicable or appropriate in the circumstances of the contravention in respect of any shares which are the subject of the contravention:

(a) prohibit the transfer of, or the carrying out of the agreement or arrangement to transfer, such voting shares, or, in the case of unissued shares, prohibit the transfer of, or the carrying out of the agreement or arrangement to transfer, the right to be issued with them;

(b) prohibit the exercise of any voting rights in respect of such shares;

(c) prohibit the issue of any further shares in right of such shares or in pursuance of any offer made to their holder; or

(d) except in liquidation, prohibit the payment of any sums due from the exchange holding company on such shares, whether in respect of capital or otherwise.

(2) A preliminary order made under subsection (1) shall be served on the defaulting person as soon as is practicable, and may be publicised in such manner as the Commission thinks fit, if in the opinion of the Commission it needs to be publicised.

(3) A preliminary order shall be binding on the defaulting person, on any person for the time being holding the voting shares to which such order applies, and on any other person specified in the order or to whom the order is directed.

(4) No person shall be given an opportunity to be heard before the Commission makes a preliminary order under subsection (1) against him or which affects him in any manner.

(5) Any defaulting person against whom a preliminary order has been made, or any other person prejudicially affected by such order, may within fourteen days of the service of the order on the defaulting person, make representations in writing to the Commission applying for the setting aside of the order on the ground that he had not contravened the provisions in relation to which the order has been made, or for a modification of the order on the ground that it would be just and proper to modify it for reasons to be specified in the representations.

(6) The Commission may, after considering the representations made under subsection (5), either confirm, revoke or vary the preliminary order in such manner as it thinks fit.

(7) Where the Commission confirms a preliminary order, it may make an order to the holder of the shares to which the preliminary order applies to, directing such holder to dispose of the shares.

(8) The Commission may give any instruction or direction to the directors or officers of the exchange holding company, stock exchange, futures exchange, approved clearing house, central depository or any other relevant body corporate as defined under subsection 26(5), as the case may be, as may be necessary or requisite to give effect to any order of the Commission under this section, or as may be incidental, ancillary or consequential to such order.

(9) Any transaction, including any agreement or arrangement in relation to any shares, which is in contravention of any preliminary order, or of any order confirmed under subsection (6), or of any instruction or direction given by the Commission under subsection (8), shall be void and of no effect.

(10) A person who contravenes any preliminary order, any order confirmed under subsection (6), or any instruction or direction given under subsection (8), commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or to both.

(11) The satisfaction of the Commission under subsection (1) that the provisions of section 23, 24 or 25 have been contravened by any person may be arrived at regardless as to whether or not there is any prosecution of any person for such contravention.

Subdivision 3 General

Publication of notice of suspension of trading or closure

32. Where an action is taken by the Minister or the Commission under section 12, 18, 27, 28, 354 or 355, as the case may be, the Commission shall publish a notice of the action taken in such manner as it considers appropriate.

Rights of stock exchange, futures exchange or approved clearing house not to be affected by laws relating to contracts

33. Nothing in any law relating to contracts, to the extent of its inconsistency with the provisions of this Act or the rules of a stock exchange, futures exchange or approved clearing house, shall render unenforceable or otherwise adversely affect—

(a) any rights to be conferred on a stock exchange, a futures exchange or an approved clearing house in relation to securities or futures contracts, as the case may be, under this Act or its rules;

(b) any rights to be conferred on a party to a securities or futures contract entered into on a stock market of a stock exchange, a futures market of a futures exchange, an exempt stock market, an exempt futures market or such other market as approved under this Act or the rules of a stock exchange, a futures exchange or an approved clearing house, as the case may be; or

(c) anything done or omitted to be done under or in relation to a securities or futures contract entered into on a stock market of a stock exchange, a futures market of a futures exchange, an exempt stock market, an exempt futures market or such other market as approved under this Act, as the case may be.

Subdivision 4 Registered facilities

Registered electronic facilities

34. (1) For the purposes of paragraphs 7(1)*(d)* and 7(2)*(d)*, where the Commission is satisfied that it is appropriate to do so, may upon application by a person, register an electronic facility subject to such conditions as it considers appropriate.

(2) The conditions imposed under subsection (1) may include requiring the person referred to in subsection (1) to—

(a) make available the services according to such terms and conditions as may be approved by the Commission;

(b) ensure so far as is reasonably practicable that there is an orderly and fair market in relation to all transactions which are carried out by means of or through the electronic facility;

(c) permit any person authorized by the Commission to enter at any reasonable time the premises on which the facility is provided and to inspect the electronic facility by means of which the services are provided; and

(d) ensure adequate capacity, security arrangements and facilities to meet emergencies.

(3) The Commission may from time to time add, vary, amend or revoke any condition imposed under subsection (1) or (2).

(4) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or to both.

Application for registration

35. (1) An application under subsection 34(1) shall be accompanied by such information and particulars as the Commission may require.

(2) Without limiting the generality of subsection (1), an application under subsection 34(1) shall also be accompanied by such information as may be required by the Commission regarding—

(a) the services and facilities which the applicant will hold itself out as being able to provide if the application is allowed;

(b) the business which the applicant proposes to carry on and to which the application relates; and

(c) its directors and substantial shareholders and, if any of its substantial shareholders is a corporation, the directors and substantial shareholders of that corporation.

(3) In considering an application under subsection 34(1), the Commission may have regard to any information in its possession whether provided by the applicant or not.

Withdrawal of registration

36. (1) Subject to subsection (4), where the Commission is satisfied that it is appropriate to do so in the interest of the investors, in the public interest or for the maintenance of an orderly and fair market, it may, by notice in writing, withdraw the registration with effect from a date that is specified in the notice.

(2) Such notice referred to in subsection (1) shall state the reasons in support of the ground for the withdrawal.

(3) The Commission may by the notice in writing under subsection (1) permit the person to continue, on or after the date on which the withdrawal is to take effect, to carry on such activities affected by the withdrawal as the Commission may specify in the notice for the purpose of—

(a) ceasing to provide the electronic facility to which the withdrawal relates; or

(b) protecting the interest of the investors or the public interest.

(4) Where the Commission has granted a permission to a person under subsection (3), the person shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened section 34.

(5) The Commission shall not exercise its power under subsection (1) in relation to an electronic facility that has been registered under subsection 34(1) unless it has given the person referred to in subsection 34(1) a reasonable opportunity of being heard.

(6) Any withdrawal of registration made under this section shall not operate so as to—

(a) avoid or affect any agreement, transaction or arrangement entered into on the electronic facility whether the agreement, transaction or arrangement was entered into before or after the withdrawal of the registration under subsection (1); or

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

Subdivision 5 Approval of clearing house

Establishing or operating a clearing facility

37. (1) No person shall establish or operate a clearing facility unless the person has been approved to establish or operate a clearing facility under subsection 38(4).

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

(3) Subsection (1) shall not apply to any person providing, or holding out as providing, clearing facilities for an exempt stock market or an exempt futures market.

Power of Commission to approve clearing house

38. (1) An application for the approval to establish or operate a clearing house shall be in writing to the Commission and shall be accompanied by a copy of the rules of the proposed clearing house including a copy of its constitution and any information as may be required by the Commission.

(2) The rules of the proposed clearing house must provide for—

(a) the efficient provision of clearing house facilities in relation to securities and futures contracts that are cleared through its clearing facilities;

(b) the proper regulation and supervision of its participating organisations or affiliates that used its clearing facilities;

(c) the clearing house to enter into contracts with participating organisations or affiliates under which they would agree to be bound by the rules of the clearing house;

(d) the making of rules, including rules that make provision for a quick and fair method of settling disputes—

(i) between the clearing house and its participating organisations or affiliates; and

(ii) between those participating organisations or affiliates and their clients;

(e) the expulsion, suspension or disciplining of a participating organisation or affiliate for the failure to comply with the rules of the clearing house; and

(f) satisfactory provision for the class of securities or futures contracts that may be cleared on its facilities.

(3) The proposed clearing house shall at all times have sufficient financial, human and other resources to ensure the provision of—

(a) adequately and properly equipped premises for the conduct of its business;

(b) competent personnel for the conduct of its business; and

(c) automated systems with adequate capacity, security arrangements and facilities to meet emergencies.

(4) Where the Commission is satisfied that it is appropriate to do so in the public interest, or for the proper regulation of a clearing house, it may, with the concurrence of the Minister by notice in writing, approve the person to establish or operate a clearing house subject to such conditions as the Commission thinks fit.

(5) The clearing house shall provide clearing house facilities for a stock market of the relevant stock exchange or for a futures market of the relevant futures exchange, as the case may be.

Withdrawal of approval

39. (1) The Commission may, with the concurrence of the Minister, by notice in writing—

(a) withdraw its approval granted under subsection 38(4) to an approved clearing house with effect from the date specified in the notice; or

(b) direct the approved clearing house to cease to provide or operate, or to cease to provide such services, as are specified in the notice, with effect from the date specified in the notice.

(2) The Commission shall not withdraw its approval or issue a direction under subsection (1) unless the Commission is satisfied that it is appropriate to do so for the protection of investors or in the public interest or for the proper regulation of the clearing and settlement of transactions in securities or futures contracts, where any of the following circumstances occurs:

(a) the approved clearing house ceases to provide clearing facilities;

(b) the approved clearing house is being wound up or otherwise dissolved, whether within or outside Malaysia;

(c) the approved clearing house has contravened section 9 or any term or condition of its approval or is charged with any offence under any securities laws;

(d) the approved clearing house has failed to comply with a condition, requirement or direction given under section 26, 354 or 355;

(e) any information provided for the purposes of section 38 was false or misleading in a material particular;

(f) a judgement debt against the approved clearing house has not been satisfied in whole or in part;

(g) a receiver, a receiver and manager, or an equivalent person has been appointed, whether within or outside Malaysia, in relation to or in respect of any property of the approved clearing house;

(h) the approved clearing house has, whether within or outside Malaysia, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation; or

(i) the approved clearing house has on its own accord applied to the Commission to withdraw the approval granted to it and the Commission, with the concurrence of the Minister, thinks it fit to do so.

(3) For the purposes of paragraph (2)*(a),* the approved clearing house shall be deemed to have ceased to provide clearing facilities if it has ceased to provide such facilities for a period of one month unless it has obtained the prior approval of the Commission to do so.

(4) Notwithstanding the withdrawal of an approval or the issuance of a direction under subsection (1), the Commission may permit the person approved to provide clearing facilities to continue, on or after the date on which the withdrawal or direction is to take effect, to carry on such activities affected by the withdrawal or direction as the Commission may specify in the notice published under that subsection for the purpose of—

(a) closing down the operations of the approved clearing house or ceasing to provide the services specified in the notice; or

(b) protecting the investors or the public interest.

(5) Where the Commission has granted permission to the person approved to provide clearing facilities under subsection (4), the person shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened section 37.

(6) The Commission shall not take any action under subsection (1) without giving a person an opportunity to be heard.

Effect of withdrawal of approval

40. Any withdrawal of approval or direction issued under section 39 shall not operate so as to—

(a) avoid or affect any agreement, transaction or arrangement entered into through the approved clearing house whether the agreement, transaction or arrangement was entered into before or, where subsection 39(4) applies, after the withdrawal of the approval or issuance of the direction under section 39; or

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

Subdivision 6 Modifications to the law of insolvency and miscellaneous provisions relating to the operations and procedures of the approved clearing house

Interpretation

41. (1) In this Subdivision, unless the context otherwise requires—

"charge" means any form of security, including a mortgage;

"default proceedings" means any proceedings or other action taken by an approved clearing house under its default rules;

"default rules", in relation to an approved clearing house, means such rules of the approved clearing house which provide for the taking of default proceedings if a participant has failed, or appears to be unable, or likely to become unable, to meet its obligations in respect of all or any unsettled market contracts to which the participant is a party;

"defaulter" means a participant who is the subject of any default proceedings;

"exchange" means a stock exchange or a futures exchange, as the case may be;

"market charge" means a charge, whether fixed or floating, granted in favour of an approved clearing house over any property as specified in the rules of the approved clearing house;

"market collateral" means any property specified in the rules of an approved clearing house held by or deposited with an approved clearing house for the purpose of securing liabilities arising directly in connection with the approved clearing house ensuring the performance or settlement of one or more market contracts;

"market contract" means—

(a) a contract which is subject to the rules of an approved clearing house and entered into by the approved clearing house with a participant pursuant to a novation for the purpose of the clearing and settlement of transactions using the clearing facility of an approved clearing house; or

(b) a transaction which is or is to be cleared or settled using the clearing facility of an approved clearing house and in accordance with the rules of the approved clearing house, whether or not a novation referred to in paragraph *(a)* is to take place;

"relevant office-holder" means—

(a) the Director General of Insolvency appointed under section 70 of the Bankruptcy Act 1967 [*Act 360*];

(b) any person acting in relation to a company as its liquidator, provisional liquidator, receiver or manager;

(c) any person acting in relation to an individual as his trustee in bankruptcy or interim receiver of his property;

(d) any person appointed pursuant to an order for the administration in bankruptcy of an insolvent estate of a deceased person; or

(e) a Special Administrator appointed under the Pengurusan Danaharta Nasional Berhad Act 1998 [*Act 587*].

(2) Where—

(a) a charge is granted partly for the purpose specified in the definition of "market charge" and partly for other purposes, the charge is a "market charge" insofar as it has effect for the specified purposes of securing liabilities arising directly in connection with the approved clearing house ensuring the performance or settlement of one or more market contracts; and

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

Default rules

42. (1) An approved clearing house may have default rules which provide for the taking of default proceedings if a participant has failed,

or appears to be unable, or likely to become unable, to meet its obligations in respect of all or any unsettled market contracts to which the participant is a party.

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

Default proceedings of approved clearing house to take precedence over law of insolvency

43. (1) None of the following shall be regarded to any extent as invalid on the ground of inconsistency with the provisions relating to the distribution of the assets of a person under the laws of insolvency, or on the appointment of a relevant office-holder over any of the assets of a person:

(a) a market contract;

(b) the rules of an approved clearing house relating to the settlement of a market contract;

(c) any proceedings or other action taken under the rules of an approved clearing house relating to the settlement of a market contract;

(d) a market charge;

(e) the default rules of an approved clearing house; or

(f) any default proceedings.

(2) Subject to subsection (3), the powers of a relevant office-holder in his capacity as such, and the powers of a court under the law of insolvency, shall not be exercised in such a way as to prevent or interfere with—

(a) the settlement of a market contract in accordance with the rules of an approved clearing house; or

(b) any default proceedings.

(3) Subsection (2) shall not operate to prevent a relevant office-holder from seeking to recover any amount referred to in subsection 49(1).

Supplementary provisions as to default proceedings

44. (1) A court may on an application by a relevant office-holder make such order as it thinks fit altering or dispensing from compliance with such of the functions of his office as are affected by the fact that default proceedings are pending or could be taken, or have been or could have been taken and, accordingly, such functions of the relevant office-holder shall be construed subject to such order.

(2) Nothing in section 8, 10 or 18 of the Bankruptcy Act 1967 or section 176, 222, 224 or 226 of the Companies Act 19651965, shall prevent or interfere with any default proceedings.

Duty to report on completion of default proceedings

45. (1) An approved clearing house shall, upon the completion of

any default proceedings, make a report on such default proceedings stating in respect of each defaulter—

(a) the net sum, if any, certified by the approved clearing house to be payable by or to the defaulter; or

(b) the fact that no sum is so payable,

as the case may be, and the approved clearing house may include in that report such other particulars in respect of such default proceedings as it thinks fit.

(2) An approved clearing house, which has made a report pursuant to subsection (1), shall supply the report to—

(a) the Commission;

(b) any relevant office-holder acting for—

(i) the defaulter to whom the report relates; or

(ii) that defaulter's estate;

(c) if there is no relevant office-holder referred to in paragraph *(b)*, the defaulter to whom the report relates; and

(d) such other person as the Commission thinks fit.

(3) Where an approved clearing house has made a report pursuant to subsection (1), it may publish notice of that fact in such a manner as it thinks appropriate to bring it to the attention of creditors of the defaulter to whom the report relates.

(4) Where a relevant office-holder or defaulter, receives a report pursuant to subsection (2), he shall, at the request of a creditor of the defaulter to whom the report relates—

(a) make the report available for inspection by the creditor; and

(b) on payment of such reasonable fee as the relevant office-holder or defaulter, as the case may be, determines, supply to the creditor all or any part of that report.

(5) In subsections (2), (3) and (4), "report" includes a copy of a report.

Net sum payable on completion of default proceedings

46. (1) This section shall apply with respect to any net sum certified under subsection 45(1) by an approved clearing house, upon the completion by it of any default proceedings, to be payable by or to a defaulter.

(2) Where a receiving or winding up order has been made, or a resolution for voluntary winding up has been passed, any net sum shall, notwithstanding any of the provisions of section 40 or 41 of the Bankruptcy Act 1967 or section 291 of the Companies Act 19651965—

(a) be provable in the bankruptcy of a defaulter or winding up or, payable to the relevant office-holder, as the case maybe; and

(b) be taken into account, where appropriate, under section 41 of the Bankruptcy Act 1967 or that section as applied in the case of a winding up order under the Companies Act 19651965.

Disclaimer of property, rescission of contracts, etc.

47. (1) Neither section 59 of the Bankruptcy Act 1967 nor subsection 296(1) of the Companies Act 19651965 shall apply in relation to—

(a) a market contract;

(b) a contract effected by an approved clearing house for the purposes of realising property provided as market collateral;

(c) a market charge; or

(d) any default proceedings.

(2) Neither section 47 of the Bankruptcy Act 1967 nor section 223 of the Companies Act 19651965 shall apply in relation to any act, matter or thing which has been done pursuant to—

(a) a market contract;

(b) a disposition of property pursuant to a market contract;

(c) the provision of market collateral;

(d) a contract effected by an approved clearing house for the purpose of realising property provided as market collateral;

(e) a disposition of property in accordance with the rules of an approved clearing house as to the application of property provided as market collateral;

(f) a market charge;

(g) a disposition of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposition is made;

(h) a disposition of property made in enforcing a market charge; or

(i) any default proceedings.

Adjustment to prior transactions

48. (1) No order shall be made pursuant to sections 53, 53A and 54 of the Bankruptcy Act 1967 or sections 293 and 304 of the Companies Act 19651965, in relation to any matter under subsection (2).

(2) The matters to which subsection (1) apply are—

(a) a market contract;

(b) a disposition of property pursuant to a market contract;

(c) the provision of market collateral;

(d) a contract effected by an approved clearing house for purposes of realising property provided as market collateral;

(e) a disposition of property in accordance with the rules of an approved clearing house as to the application of property provided as market collateral;

(f) a market charge; and

(g) any default proceedings.

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

49. (1) If a participant ("the first participant") sells securities at an overvalue to, or purchases securities at an undervalue from, another participant ("the second participant") in circumstances as described in subsection (3), and thereafter a relevant office-holder acts for—

(a) the second participant;

(b) the principal of the second participant in the sale or purchase; or

(c) the estate of the second participant or of the person referred to in paragraph *(b),*

then, unless a court otherwise orders, the relevant office-holder may recover, from the first participant, or the principal of the first participant, an amount equal to the identified gain obtained under the sale or purchase by the first participant, or the principal of the first participant.

(2) The amount equal to the identified gain is recoverable even if the sale or purchase may have been discharged according to the rules of an approved clearing house and replaced by a market contract.

(3) The circumstances referred to in subsection (1) for a sale or purchase shall be when—

(a) an identified event has occurred in relation to the second participant or the principal of the second participant; and

(b) either—

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

(ii) the principal of the first participant knew, or ought reasonably to have known that an identified event was likely to occur to the second participant or the principal of the second participant,

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

(4) In this section—

(a) "identified event", in relation to a second participant or a person who is or was, in respect of a sale or purchase referred to in subsection (1), the principal of the second participant, means—

(i) an act of bankruptcy committed by the second participant or the principal of the second participant, as the case may be;

(ii) the making of a statutory declaration in respect of the second participant or the principal of the second participant, as the case may be, pursuant to section 255 of the Companies Act 19651965;

(iii) a meeting of creditors summoned in relation to the second participant or the principal of the second participant, as the case may be, pursuant to section 260 of the Companies Act 19651965; or

(iv) the presentation of a petition for the winding up of the second participant or the principal of the second participant, as the case may be, by a court;

(b) "identified gain", in relation to a sale or purchase referred to in subsection (1), means the difference between the market value of the securities which is the subject of the sale or purchase and the value of the consideration for the sale or purchase as at the time the sale or purchase was entered into.

Law of insolvency in other jurisdictions

50. (1) A court shall not, pursuant to any enactment or rule of law, recognize or give effect to—

(a) any order of a court exercising jurisdiction in relation to the law of insolvency in a place outside Malaysia; or

(b) any act of a person appointed in such a place to perform any function under the law of insolvency in such place,

insofar as the making of the order or the doing of the act would be prohibited in the case of a court within Malaysia or a relevant office-holder by provisions made by or under this Act.

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

Participant to be a party to certain transactions as principal

51. (1) Where—

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

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

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

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

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

(2) Where—

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

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

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

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

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

Securities or futures contracts delivered to an approved clearing house

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

(a) to an approved clearing house;

(b) by a participant; and

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

then, notwithstanding any provision under any law, no civil action, claim or demand, in respect of any right, title or interest in those securities or futures contracts held or enjoyed by any person lies, or shall be commenced or allowed, against the approved clearing house.

Securities transfers in settlement

53. (1) Notwithstanding any other provision of law, including the Securities Industry (Central Depositories) Act 1991, in particular section 29A of that Act, a central depository shall give effect to an instruction from an approved clearing house to effect a transfer of securities into or out of a securities account of a depositor provided such instruction shall be for the purposes of settlement of a market contract or otherwise dealing with a market contract in accordance with the rules of the approved clearing house.

(2) An instruction under subsection (1) shall be given by an approved clearing house only in relation to a securities account which relates to a depositor who is a party to a market contract or a depositor who had instructed a participant to effect a trade which results in a market contract to which the participant has become a party.

(3) Notwithstanding any other provision of law, where any transfer of securities is effected by the central depository to or from a securities account of a depositor pursuant to subsection (1), no title in such securities shall pass to a depositor except as provided under the rules of the approved clearing house.

(4) Where a transfer of securities has been effected into or out of a securities account of a depositor pursuant to subsection (1), a central depository shall not be subject to any action or claim by or be liable to any damages to that depositor.

(5) In this section, the terms "depositor" and "securities account" shall have the same meaning as in the Securities Industry (Central Depositories) Act 1991.

Purchase and sale of securities

54. (1) An approved clearing house may instruct a stock exchange to effect on behalf of the approved clearing house a sale or purchase of securities if such sale or purchase, as the case may be, is effected for the purposes of settlement of any market contract or to facilitate a default proceeding or to enable an approved clearing house to realise any asset comprised in any market charge or provided as market collateral, and the stock exchange shall give effect to any such instruction.

(2) Where a sale or purchase of securities has been effected on behalf of the approved clearing house pursuant to subsection (1) by a stock exchange, the stock exchange shall not be subject to any action or claim by or be liable to any damages to any person.

Immunity

55. (1) The functions to which this section applies are the functions of an approved clearing house so far as relating to or arising out of—

(a) the default rules of the approved clearing house; or

(b) any obligations to which it is subject by virtue of this Subdivision.

(2) A failure by an approved clearing house to comply with its default rules in respect of any matter shall not prevent that matter

from being treated for the purposes of this Act as done in accordance with those rules so long as the failure does not affect the rights of any person entitled to require compliance with those rules.

(3) Where a relevant office-holder takes any action in respect of a defaulter which is liable to be dealt with in accordance with the default rules, and believes and has reasonable grounds for believing that he is entitled to take that action, he is not liable to any person in respect of any loss or damage resulting from his action except insofar as the loss or damage, as the case may be, is caused by the officeholder's own negligence.

Preservation of rights, *etc.*

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

(a) any right, title, interest, privilege, obligation or liability of any person; or

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

Exemption from regulations on reporting of substantial shareholding and Division 3A of the Companies Act 19651965

57. The approved clearing house and central depository, in carrying out its functions under this Subdivision, shall be exempted from the requirements under the Securities Industry (Reporting of Substantial Shareholding) Regulations 1998 [*P.U. (A) 174/1998*] and Division 3A of the Companies Act 19651965.

PART III CAPITAL MARKETS SERVICES

Division 1 Licensing and regulation

Requirement for Capital Markets Services Licence

58. (1) No person shall whether as a principal or agent, carry on a business in any regulated activity or hold himself out as carrying on such business unless he is the holder of a Capital Markets Services Licence or is a registered person.

(2) Subsection (1) shall not apply to the persons or classes of persons as specified in Schedule 3.

(3) Except for in respect of an insurance company licensed under the Insurance Act 1996 [*Act 553*] or a takaful operator registered under the Takaful Act 1984 [*Act 312*], the Commission may impose such terms and conditions as may be deemed appropriate on specified persons.

(4) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding ten years or to both.

Requirement for Capital Markets Services Representative's Licence

59. (1) No person shall act as a representative in respect of any

regulated activity or hold himself out as doing so unless he is the holder of a Capital Markets Services Representative's Licence for that regulated activity or is a registered person with respect to that regulated activity.

(2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or to both.

Application for grant or renewal of licence

60. (1) An application for the grant of a licence shall be made to the Commission in such form and manner as the Commission may specify.

(b) in the case of an application for renewal of a licence, made not later than thirty days or such other period as the Commission may specify, before the expiry of the licence.

(2) The Commission may at any time after receiving an application for the grant of the licence, conduct such inquiry as it may deem necessary to satisfy itself that none of the grounds under subsection 64(1), 65(1) or in any regulation or guideline for the refusal to grant the licence applies, including financial, criminal and professional background checks of the applicant, directors, managers and the controller of the applicant, where relevant.

(3) The Commission may require an applicant to furnish it with such information or documents as the Commission considers necessary in relation to the application.

(4) An application for the grant of a licence shall be accompanied by a non-refundable prescribed fee which shall be paid in such manner as may be specified by the Commission.

(6) In the case of an application for the grant of a Capital Markets Services Representative's Licence, such application shall be—

(a) supported by a holder of a Capital Markets Services Licence or a person who has applied for a Capital Markets Services Licence for that regulated activity, in such manner as may be specified by the Commission; and

(b) deemed to be withdrawn with effect from the date on which the holder of a Capital Markets Services Licence who supported the application—

(i) withdraws its support in writing;

(ii) withdraws its application for a Capital Markets Services Licence in respect of that regulated activity; or

(iii) has its application for a Capital Markets Services Licence in respect of that regulated activity refused by the Commission.

(7) For the purposes of this section, sections 64, 66 and 72, the word "controller", in relation to a holder of a Capital Markets Services Licence, means a person who—

(a) is entitled to exercise, or control the exercise of, not less than fifteen per centum of the votes attached to the voting shares in the holder;

(b) has the power to appoint or cause to be appointed a majority of the directors of such holder; or

(c) has the power to make or cause to be made, decisions in respect of the business or administration of such holder, and to give effect to such decisions or cause them to be given effect to.

(8) For the purposes of this section, sections 64, 66 and 72, "manager", in relation to a body corporate, means a person who is appointed by the body corporate to manage any part of its business and includes an employee of the body corporate (other than the chief executive) who, under the immediate authority of a director or chief executive of the body corporate, exercises managerial functions or is responsible for maintaining accounts or other records of the body corporate.

Grant of licence

61. (1) Subject to subsection (3), the Commission may grant a licence.

(3) In granting a licence, the Commission may—

(a) specify and describe the regulated activity to which the licence is granted;

(b) specify any condition or restriction of the licence as the Commission thinks fit; or

(c) in the case of a Capital Markets Services Representative's Licence—

(i) relate the licence to the holder of a Capital Markets Services Licence which supported the application for the licence; and

(ii) restrict the regulated activity of the licence to the regulated activity of the holder of a Capital Markets Services Licence which supported the application for the licence.

(4) A person who contravenes any condition of, or restriction in, a licence commits an offence.

Power of Commission to impose conditions or restrictions on licences

62. (1) Without prejudice to section 61, the Commission may at any time, where it deems necessary, vary the conditions or restrictions imposed upon the grant of a licence or impose additional conditions or restrictions on a licence while the licence is in force.

(2) In the case of a holder of a Capital Markets Services Licence who carries on the business of dealing in securities or trading in futures contracts, such other conditions or restrictions may only be imposed on the licence with the concurrence of the Minister.

(3) Where the conditions or restrictions proposed to be imposed are likely to prejudice the interests of the licensed person, the Commission shall give such licensed person an opportunity to be heard.

Fees

63. (1) A licensed person shall pay such prescribed licence fee in respect of each regulated activity on a yearly basis and on such date as the Commission may specify.

(1A) Where a licensed person fails to pay the prescribed licence fee by the date on which such fee is due, the Commission may impose a

late payment fee of a prescribed amount for every day that the payment is late, and such fees shall be recoverable by the Commission as a debt due to the Commission.

(2) Any fees paid to the Commission under this Division shall be paid into and form part of the Federal Consolidated Fund.

Grounds for refusal for the grant of Capital Markets Services Licence

64. (1) Where an application is made for the grant of a Capital Markets Services Licence under section 60, the Commission may refuse the application on any of the following grounds:

(a) the application was not made in accordance with section 60;

(b) the applicant has failed to comply with any other requirement of this Act or any guidelines made under this Act;

(c) any information or document that is furnished by the applicant to the Commission is false or misleading or from which there is a material omission;

(d) the applicant is in the course of being wound up or otherwise dissolved;

(e) execution against the applicant in respect of a judgment debt has been returned unsatisfied in whole or in part;

(f) a receiver, a receiver and manager or an equivalent person has been appointed within or outside Malaysia, or in respect of any property of the applicant;

(g) the applicant has, whether within or outside Malaysia, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;

(h) the applicant or any of its directors, chief executive, managers or controller—

(i) has been convicted, whether within or outside Malaysia, of an offence involving fraud or other dishonesty or violence or the conviction of which involved a finding that it or he acted fraudulently or dishonestly;

(ii) has been convicted of an offence under the securities laws or any law outside Malaysia relating to capital market;

(iia) been subjected to any action taken by the Commission under section 354, 355 or 356;

(iii) has contravened any provision made by or under any written law whether within or outside Malaysia appearing to the Commission to be enacted for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or the management of companies;

(iv) has engaged in any business practices appearing to the Commission to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on its or his method of conducting business;

(v) has engaged in or has been associated with any other business practices or otherwise conducted itself or himself in such a way as to cast doubt on its or his competence and soundness of judgment; or

(vi) is an undischarged bankrupt whether within or outside Malaysia;

(i) the Commission has reason to believe that the applicant or any of its directors, chief executive, managers or controller may not be able to act in the best interest of its clients having regard to their reputation, character, financial integrity and reliability;

(j) the Commission is not satisfied as to the financial standing of the applicant or the manner in which the applicant's business is to be conducted;

(k) the Commission is not satisfied as to the record of past performance or expertise of the applicant having regard to the nature of the business which the applicant may carry on in connection with the holding of the licence;

(l) there are other circumstances which are likely to—

(i) lead to the improper conduct of business by the applicant or by any of its directors, chief executive, managers or controller; or

(ii) reflect discredit on the manner of conducting the business of the applicant or its controller;

(m) the Commission has reason to believe that the applicant or any of its directors, chief executive or managers will not carry on the regulated activity efficiently, honestly or fairly; or

(n) the Commission is of the opinion that it would be contrary to the interests of the public to grant the licence.

Grounds for refusal for the grant of Capital Markets Services Representative's Licence

65. (1) Where an application is made for the grant of a Capital Markets Services Representative's Licence under section 60, the Commission may refuse the application on any of the following grounds:

(a) the application was not made in accordance with section 60;

(b) the applicant has failed to comply with any other requirement of this Act or any guidelines made under this Act;

(c) any information or document that is furnished by the applicant to the Commission is false or misleading or from which there is a material omission;

(d) the applicant is an undischarged bankrupt whether within or outside Malaysia;

(e) execution against the applicant in respect of a judgment debt has been returned unsatisfied in whole or in part;

(f) the applicant has, whether within or outside Malaysia, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;

(g) the applicant has—

(i) been convicted, whether within or outside Malaysia, of an offence involving fraud or other dishonesty or violence or the conviction of which involved a finding that he acted fraudulently or dishonestly;

(ii) been convicted of an offence under the securities laws or any law outside Malaysia relating to capital market;

(iia) been subjected to any action taken by the Commission under section 354, 355 or 356;

(iii) contravened any provision made by or under any written law whether within or outside Malaysia appearing to the Commission to be enacted for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts;

(iv) engaged in any business practices appearing to the Commission to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on his method of conducting business; or

(v) engaged in or has been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgment;

(h) the Commission is not satisfied as to the educational or other qualification or experience of the applicant having regard to the nature of the duties he is to perform in connection with the holding of the licence;

(i) the Commission has reason to believe that the applicant may not be able to act in the best interests of the clients of a holder of a Capital Markets Services Licence having regard to his reputation, character, financial integrity and reliability;

(j) the Commission is not satisfied as to the record of past performance or expertise of the applicant having regard to the nature of the duties which he may perform in connection with the holding of the licence;

(k) there are other circumstances which are likely to lead to the improper conduct of business by, or reflect discredit on the manner of conducting the business of, the applicant or any person employed by or associated with him for the purpose of his business;

(l) the Commission has reason to believe that the applicant will not carry on the regulated activity efficiently, honestly or fairly; or

(m) the Commission is of the opinion that it would be contrary to the interests of the public to grant the licence.

Power of Commission to enquire into transactions in respect of securities and derivatives

66. (1) The Commission may enquire into any transaction involving the purchase or sale of securities or derivatives entered into or caused to be entered into by—

(a) an applicant for grant of a licence, its directors, chief executive, managers or controller, whether directly or indirectly, during any period of twelve months preceding the application for grant of the licence; or

(b) a licensed person, its directors, chief executive, managers or controller, whether directly or indirectly, at any time,

to ascertain if such person has in such transaction used dishonest, unfair or unethical devices or trading practices, whether such devices or trading practices constitute an offence under this Act or otherwise.

(2) The person referred to in subsection (1) shall submit to the Com-

mission, the detailed information of any transaction involving the purchase or sale of securities or derivatives for such period, in such form and manner, and within such time, as the Commission may specify by notice in writing.

(3) In addition to any other penalty that may be imposed under this Act, a person who fails or refuses to submit information to the Commission within the time specified in the notice referred to in subsection (2) or who gives false or misleading information or the information contains an omission of a material particular, is liable to have his application for a grant of licence rejected or his licence revoked under section 72.

Minimum financial requirements

67. No holder of a Capital Markets Services Licence shall carry on any regulated activity in respect of its licence without the written consent of the Commission if it does not meet the minimum financial requirements as may be specified by the Commission or as may be provided in the rules of a stock exchange or a futures exchange.

Variation or transfer of licence

69. (1) The Commission may, on the application of—

(a) a holder of a Capital Markets Services Licence, vary its licence by adding or removing a regulated activity to or from those already specified in the licence;

(b) a holder of a Capital Markets Services Representative's Licence, vary the name of his principal, on whose behalf he may act and the regulated activity to which the licence relates.

(c) a holder of a Capital Markets Services Licence, transfer its licence to any other person, after the holder has obtained a court order under subsection 139(3).

(2) The Commission may require an applicant to supply the Commission with such information or documents as it considers necessary in relation to the application.

(3) An application under subsection (1) shall be accompanied by a prescribed application fee which shall be paid in such manner as may be specified by the Commission.

(4) The Commission may—

(a) approve the application subject to such conditions or restrictions as it thinks fit; or

(b) refuse the application on any of the grounds set out in subsection 64(1) or 65(1) or on any other grounds as may be specified by the Commission.

(5) The Commission shall not refuse an application under subsection (1) without giving the applicant an opportunity to be heard.

Deposit to be lodged in respect of Capital Markets Services Licence

70. (1) A Capital Markets Services Licence to carry on the business of dealing in securities or fund management shall not be granted unless the applicant for the licence has—

(a) lodged with the Commission at the time of the application for the granting or renewal of such licence, a deposit in the sum of one hundred and fifty thousand ringgit, or such other sum as the Minister may prescribe in regulations made under subsection (4); or

(b) entered into an insurance contract for the indemnification of claims made against the applicant up to an amount of one hundred and fifty thousand ringgit or such other sum as the Minister may prescribe.

(2) Subsection (1) shall not apply to a holder of a Capital Markets Services Licence who carries on the business of dealing in securities and who is a participating organization.

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

(4) A deposit lodged under subsection (1) shall be applied by the Commission in accordance with the regulations made under this Act.

(5) For the purposes of this section, the Minister may prescribe in the regulations different amounts of deposit or extent of insurance coverage for different holders or classes of holders of a Capital Markets Services Licence who carry on the business of dealing in securities or fund management.

False statements in relation to application for grant, or variation of licence

71. A person who, in connection with an application for the grant, or variation of a licence, makes a statement that is false or misleading in a material particular knowing it to be false or misleading or wilfully omits to state any matter or thing without which the application is misleading in a material respect commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding five years and shall also be liable to a fine not exceeding one million ringgit.

Revocation and suspension of licence

72. (1) A licence shall be deemed to be revoked—

(a) in the case of a holder of a Capital Markets Services Licence, if the holder is wound up or otherwise dissolved, whether within or outside Malaysia; and

(b) in the case of a holder of a Capital Markets Services Representative's Licence, if the representative dies.

(2) The Commission may revoke a licence—

(a) in the case of a holder of a Capital Markets Services Licence, if—

(i) there exists a ground on which the Commission may refuse an application under subsection 64(1);

(ii) the holder fails or ceases to carry on the business in all or any of the regulated activities for which it was licensed for a consecutive period of three months;

(iii) the holder contravenes any condition or restriction in respect of its licence or any direction issued to it by the Commission under this Act;

(iv) the holder contravenes any of the rules of the stock exchange, futures exchange, approved clearing house or central depository which is binding upon it; or

(v) the holder fails to pay any fee as provided for under section 63; or;

(b) in the case of a holder of a Capital Markets Services Representative's Licence, if—

(i) there exists a ground on which the Commission may refuse an application under subsection 65(1);

(ii) he fails or ceases to act as a representative in respect of all or any of the regulated activities for which he was licensed;

(iv) the holder contravenes any condition or restriction in respect of his licence or any direction issued to him by the Commission under this Act; or

(v) the holder fails to pay any fee as provided for under section 63.

(3) Where subsection (2) applies, the Commission may, if it considers it desirable to do so—

(a) suspend a licence for a specific period instead of revoking it under subsection (2); and

(b) at any time extend or revoke the suspension.

(4) Subject to subsection (5), the Commission shall not revoke or suspend a licence under subsection (2) or (3) without giving the licensed person an opportunity to be heard.

(5) The Commission may revoke or suspend a licence without giving the licensed person an opportunity to be heard—

(a) in the case of a holder of a Capital Markets Services Licence, on any of the following grounds:

(i) the holder is in the course of being wound up or otherwise dissolved, whether within or outside Malaysia;

(ii) a receiver, a receiver and manager or an equivalent person has been appointed, whether within or outside Malaysia in respect of any property of the holder; or

(iii) the holder or any of its directors, chief executive, managers or controller has been convicted of any offence described in subparagraph 64(1)*(h)*(i) or (ii); or

(b) in the case of a holder of a Capital Markets Services Representative's Licence, on any of the following grounds:

(i) the holder is an undischarged bankrupt, whether within or outside Malaysia; or

(ii) the holder has been convicted of any offence described in subparagraph 65(1)*(g)*(i) or (ii).

(6) Without prejudice to subsections (2) and (3), the Commission may, on any ground described in subsection (2), impose any restriction on the activities of a licensed person to which its licence relates and such restriction may be permanent or be made for such period as may be determined by the Commission.

(8) Where the Commission has revoked or suspended a Capital Markets Services Licence or imposed restrictions on a holder of a

Capital Markets Services Licence, such holder shall immediately inform all its representatives by notice in writing of such revocation, suspension or imposition of a restriction.

(8A) Where the Commission has revoked or suspended a Capital Markets Services Licence, the representatives of the licence holder shall cease to be a holder of a Capital Markets Services Representative's Licence for that Capital Markets Services Licence holder.

(8B) A holder of a Capital Markets Services Representative's Licence who cease to hold a licence under subsection (8A) may make an application under paragraph 69(1)*(b)* to vary his licence.

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

(10) A person who—

(a) carries on a regulated activity after its licence has been revoked or has ceased.

(b) carries on a regulated activity while its licence has been suspended or is in breach of a restriction imposed under subsection (6); or

(c) contravenes subsection (8),

commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding ten years or to both, and in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for every day or part thereof during which the offence continues after conviction.

Effect of revocation, suspension or cessation of licence, *etc.*

73. (1) A revocation, suspension or cessation of a licence or the imposition of a restriction on a licence shall not operate so as to—

(a) avoid or affect any agreement, transaction or arrangement relating to the regulated activities entered into by such person, whether the agreement, transaction or arrangement was entered into before or after the revocation, suspension or cessation of the licence or the imposition of restriction on the licence, as the case may be; or

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

(2) Where any licence is revoked or suspended under this Division, the Commission may by notice in writing permit the holder of a Capital Markets Services Licence to—

(a) in the case of a revocation, carry on business operations for the purpose of closing down the business connected with the revocation; or

(b) in the case of a suspension, carry on only essential business operations for the protection of interests of clients of the licensed person during the period of suspension.

subject to such conditions as the Commission may specify in the notice.

Notification of disqualifying event

74. (1) A licensed person shall, immediately after the happening of

an event that is a ground on which the Commission may revoke a licence under—

(a) subsection 64(1) or 65(1); or

(b) subsection 72(2),

give to the Commission written notice setting out the particulars of the event.

(2) Subject to subsection (1), it shall be a defence for a licensed person who is required to give notice under subsection (1) if it is proved that when the requirement arose the licensed person was unaware of the event that gave rise to the requirement.

(3) A person who contravenes subsection (1) commits an offence.

Appointment, election and nomination of directors and chief executive of licensed person, *etc.*

75. (1) A person may be appointed, elected or nominated as a director of a holder of a Capital Markets Services Licence only if the person is a fit and proper person where none of the grounds set out in paragraph 65(1)*(d), (e), (f), (g), (i), (j), (k)* or *(l)* would prevent him from holding such office.

(2) A person shall not be appointed as a chief executive of a holder of a Capital Markets Services Licence without the approval of the Commission.

(2A) For the purposes of subsection (2), in approving the appointment of a chief executive, the Commission may take into consideration whether—

(a) any of the grounds set out in paragraph 65(1)*(d)*, *(e)*, *(f)*, *(g)*, *(i), (j)*, *(k)* or *(l)* would prevent him from holding such office; or

(b) it would be contrary to the interest of the public to approve such appointment.

(3) A holder of a Capital Markets Services Licence shall give the Commission written notice in such form and manner as may be specified by the Commission of the appointment, election or nomination to the office of the director.

(4) A director whose name has been notified to the Commission under subsection (3) or a chief executive appointed under subsection (2) who subsequently becomes aware that he does not meet the fit and proper criteria referred to under subsection (1) shall immediately inform the Commission.

(5) Where a holder of a Capital Markets Services Licence becomes aware that any of its directors or chief executive does not meet the fit and proper criteria referred to under subsection (1) or (2A), such holder shall immediately upon becoming aware of such disqualification, inform the Commission.

(6) A person shall be disqualified from holding the office of a director or chief executive of a holder of a Capital Markets Services Licence, if—

(a) any of the grounds set out in paragraph 65(1)*(d)*, *(e)*, *(f)*, *(g)*, *(i), (j)*, *(k)* or *(l)* is applicable; or

(b) it would be contrary to the interest of the public for the person to continue to hold the office of a director or chief executive of a holder of a Capital Markets Services Licence.

(7) A holder of a Capital Markets Services Licence shall ensure that no person holds office as a director or chief executive, as the case may be, if subsection (6) applies.

(8) Notwithstanding anything in this section, the Commission may direct a Capital Market Services Licence holder to remove the director or chief executive within such period as may be specified in such direction, if—

(a) any of the grounds set out in paragraph 65(1)*(d)*, *(e)*, *(f)*, *(g)*, *(i), (j)*, *(k)* or *(l)* is applicable; or24

(b) it would be contrary to the interest of the public for the person to continue to hold the office of a director or chief executive of a holder of a Capital Markets Services Licence.

(9) Notwithstanding the provision of any other written law, the holder of a Capital Markets Services Licence shall within the period specified in the direction given under subsection (8), remove such director or chief executive, as the case may be, and shall take such steps as may be necessary to inform the shareholders of such holder and the Registrar of Companies, where applicable, of such removal.

(10) The removal of a director or chief executive, as the case may be, in accordance with the direction given under subsection (8) shall take effect from the date of the receipt by the director or chief executive, as the case may be, of the notification of removal given by the holder of a Capital Markets Services Licence, notwithstanding the provisions of any other written law or the memorandum of association or articles of association of such holder or any agreement between the holder and such director or chief executive.

(11) A person who contravenes this section or fails to comply with a direction issued under subsection (8) commits an offence.

Registered persons

76. (1) A person is a registered person for the purposes of subsection 58(1) where such person is—

(a) specified to be a registered person in Schedule 4;

(b) registered under subsection (2);

(c) registered with a recognized self-regulatory organization under section 323; or

(d) registered with a body that is approved by the Commission.

(2) The Commission may on the application made by any person referred to in paragraph (1)*(b)* register such person for one or more regulated activities.

(3) Any registration under Part 2 of Schedule 4, paragraphs (1)*(b), (c)* and *(d)* shall be subject to such terms and conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on the registered person concerned, amend or revoke any such condition or impose new conditions.

(4) Where the Commission by notice in writing amends or revokes

any term or condition or imposes any new condition under subsection (3), the amendment, revocation or imposition shall take effect at the time of the service of the notice or at such time specified in the notice, whichever is the later.

(5) In respect of registered persons referred to in paragraph (1)*(a)* as specified in the third column of Part 1 of Schedule 4, the registered person shall comply with any guideline issued by the Commission under section 377 in respect of the carrying on of the particular regulated activity by the registered person.

(6) In respect of persons referred to in paragraph (1)*(a),* the following shall apply:

(a) registered persons specified in the third column of Part 1 of Schedule 4 may only carry on the regulated activities specified in the second column of Part 1 of Schedule 4;

(b) registered persons specified in the third column of Part 2 of Schedule 4 may only carry on the regulated activities specified in the second column of Part 2 of Schedule 4;

(c) to the extent that such registered persons carry on the regulated activities specified in the second column of Part 1 of Schedule 4—

(i) the provisions under sections 91, 92, 92A, 93 and 97 and any regulation or guideline made pursuant to these sections shall apply to such registered persons with the necessary modifications as may be applicable;

(ii) the individuals employed by such registered persons to carry on the regulated activities shall be fit and proper persons as may be determined by the relevant authority;

(iii) the registered person shall maintain a register containing the names of the individuals referred to in subparagraph (ii) in such form and manner as may be specified by the relevant authority; and

(iv) subject to subsection (5), the relevant authority may authorize in writing any person as an authorized person for the purposes of ensuring compliance by a registered person who is specified in Part 1 of Schedule 4 with the provisions of sections 91, 92, 92A, 93 and 97 and any regulation or guideline made pursuant to aforementioned sections.

(7) For the purposes of subsection (6), an authorized person may—

(a) require a registered person to furnish him with any information that the authorized person may require to determine whether the registered person has complied with the provisions referred to in subparagraph (6)*(c)*(i); or

(b) require the registered person to take such steps as are necessary to ensure compliance with the provisions referred to in subparagraph (6)*(c)*(i).

(8) A registered person referred to in paragraph (6)*(a)* shall comply with any requirement made under subsection (7).

(9) The Commission may withdraw the registration accorded to any person registered under subsection (2) or any registered person referred to in Part 2 of Schedule 4 if it is necessary for the protection

of investors or public interest or for the maintenance of an orderly market or if any term and condition imposed under subsection (3) has not been complied with.

(10) The Commission shall not withdraw the registration under subsection (9) without giving the registered person an opportunity to be heard.

(11) For the purposes of this section, the term "relevant authority" refers to Bank Negara.

Register of licence holders

77. (1) The Commission shall keep in such form as it thinks fit a register of the holders of current licences, specifying—

(a) in relation to each holder of a Capital Markets Services Licence—

(i) its name;

(ii) where the holder is a corporation, the names of the directors and the secretary of the corporation;

(iii) the address of the principal place of business and any branch at which it carries on the business; and

(iv) where the business is carried on under a name or style other than the name of the holder of the licence, the name or style under which the business is carried on; and

(b) in relation to a holder of a Capital Markets Services Representative's Licence—

(i) his name;

(ii) the name of the holder of the Capital Markets Services Licence in relation to whom the Capital Markets Services Representative's Licence was issued; and

(iii) where the business of that holder of the Capital Markets Services Licence is carried on under a name or style other than the name of the holder of the Capital Markets Services Licence, the name or style under which that business is carried on; and

(c) such other information as the Commission thinks relevant.

(2) The Commission shall remove from the register every entry relating to any person who ceases to be licensed under this Division.

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

Notification of change of particulars

78. (1) Where—

(a) the holder of a Capital Markets Services Licence ceases to carry on all or any of the regulated activities to which the licence relates;

(b) the holder of a Capital Markets Services Representative's Licence ceases to be a representative of the Capital Markets Services Licence holder in relation to whom the Capital Markets Services Representative's Licence was issued, and the licence has not been varied under section 69;

(c) a change occurs in any information required to be entered in the register of licence holders under section 77; or

(d) a change occurs in the information submitted to the Commission in accordance with subsection 60(1) or

(3), the holder of the licence shall, not later than fourteen days after the occurrence of the event concerned, give to the Commission, in the specified form, particulars in writing of the event concerned.

(2) Where a licensed person ceases to carry on the business in all or any of the regulated activities to which the licence relates, it shall return the licence to the Commission within fourteen days of the date of the cessation.

Publication of names and addresses

79. (1) The Commission shall cause to be published in such form and manner as the Commission thinks fit, a list of the names and addresses of all holders of a Capital Markets Services Licence.

(2) The information required to be published under subsection (1) shall be published at least once in each year.

(3) If the Commission at any time amends any register kept by it under section 77 by adding or removing the name of a holder of a Capital Markets Services Licence, the Commission shall cause particulars of the amendments to be published.

Appeals

80. (1) Any person who is aggrieved by the decision of the Commission under this Division except on the revocation of a Capital Markets Services Licence for dealing in securities or dealing in derivatives, may within fourteen days after the person has been notified of the decision, appeal in writing to the Commission to review its decision.

(2) A holder of Capital Markets Services Licence for dealing in securities or dealing in derivatives whose licence is revoked by the Commission may within fourteen days after the person has been notified of the decision, appeal to the Minister and the decision of the Minister is final.

(3) Where an appeal is made to the Commission or to the Minister under this section, the decision of the Commission shall not take effect until the appeal is disposed of.

(4) Notwithstanding subsection (3), the Commission may stipulate in the notification under subsection (1), that the decision of the Commission shall take effect immediately on the date when the notification is issued or on any other date as the Commission may specify, if the Commission is of the view that it is necessary in the interest of investors or public interest.

Surrender of licence

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

(2) The surrender of a licence shall not take effect until the Commission is satisfied that adequate arrangements have been made to meet all the liabilities and obligations of the licensed person that are

outstanding at the time when the notice of surrender was given by the licensed person.

(3) A surrender of a licence made under subsection (1) shall not operate so as to—

(a) avoid or affect any agreement, transaction or arrangement relating to the regulated activities entered into by such person, whether the agreement, transaction or arrangement was entered into before or after the surrender of the licence; or

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

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

Division 2 Records

Application of this Division

82. (1) This Division applies to a person who is—

(a) a licensed person who carries on the business of dealing in securities;

(b) a licensed person who carries on the business of fund management;

(c) a licensed person who carries on the business of advising on corporate finance;

(d) a licensed person who carries on the business of investment advice;

(e) a licensed person who carries on the business of financial planning;

(f) a financial journalist; or

(g) an authorized depository agent appointed under section 13 of the Securities Industry (Central Depositories) Act 1991.

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

(a) in a newspaper or periodical;

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

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

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

Register of securities

83. (1) Any person referred to in subsection 82(1) shall maintain a register in the specified form of the securities in which he has an interest.

(2) The register required to be kept under this Division shall be kept at such place within Malaysia as may be nominated by the person referred to in subsection (1) for the purposes of this Division provided that such person shall notify the Commission in writing after beginning to keep the register.

(3) A person referred to in subsection 82(1) shall enter in the register, particulars of the securities in which he has interest and particulars of his interest in those securities within seven days after the date of the acquisition.

(4) Where there is a change, not being a prescribed change, in the interest in securities of a person referred to in subsection 82(1), he shall—

(a) enter in the register full particulars of the change including the date of the change and the circumstances by reason of which that change has occurred; and

(b) the entry shall be made within seven days after the date of the change.

(5) For the purposes of subsection (4), where a person acquires or disposes of securities, there shall be deemed to be a change in the interest of that person.

Notice of particulars to Commission

84. (1) Any person referred to in subsection 82(1) shall give notice to the Commission in such form as may be specified containing such information as may be specified including the place at which he will keep the register of his interest in securities.

(2) The notice shall be given—

(a) in the case of a person who is required by this Act to hold a licence, as part of his application for the licence; or

(b) in the case of any other person, if the person becomes a person referred to in subsection 82(1), within fourteen days from the date of his becoming such a person.

(3) The notice shall be so given notwithstanding that the person has ceased to be a person referred to in subsection 82(1), before the expiration of the period referred to in subsection (2).

(4) A person who ceases to be a person referred to in subsection 82(1) shall give notice to the Commission of his so ceasing in the specified form within fourteen days of his so ceasing.

(5) A person who fails to give notice as required by this section commits an offence.

Defence to a prosecution

85. (1) It is a defence to a prosecution for contravening or failing to comply with section 83 or 84, if the defendant proves that his failure was due to his not being aware of a fact or occurrence, the existence of which was necessary to constitute the offence, and that—

(a) he was not so aware on the date of the summons;

(b) he became so aware less than fourteen days before the date of the summons; or

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

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

Production of register

86. (1) The Commission may require any person referred to in subsection 82(1) to produce for inspection the register required to be kept pursuant to section 83 and the Commission may make a copy of or make extracts from the register.

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

Particulars of financial journalists

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

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

Commission may supply copy of the extract of a register

88. The Commission may, upon receipt of the prescribed fee, supply to any person a copy of the extract of a register obtained pursuant to section 86.

Division 3 Conduct of business

Subdivision 1 General

Certain representation prohibited

89. (1) A licensed person shall not represent or imply, or knowingly permit to be represented or implied in any manner to another person that the abilities or qualifications of such licensed person have in any respect been approved by the Commission.

(2) A mere representation that a person is the holder of a Capital Markets Services Licence is not a contravention of this section.

Issue of contract notes

90. (1) The Minister may make regulations under subsection 378(3) with respect to the issuance of contract notes to clients of a holder of a Capital Markets Services Licence.

(2) A holder of a Capital Markets Services Licence referred to in subsection (1) shall comply with the requirements of the regulations made by the Minister in relation to contract notes.

(3) A holder of a Capital Markets Services Licence who contravenes any requirement of the regulations in relation to contract notes commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding five years or to both.

Disclosure of certain interests in securities

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

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

(a) he had a relevant interest in, or an interest in the acquisition or disposal of, those securities or securities included in that class; or

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

as the case may be.

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

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

(b) without limiting the generality of the foregoing, a person who

has entered into an underwriting agreement in respect of securities shall be deemed to have an interest in the acquisition or disposal of those securities; and

(c) notwithstanding the provisions of section 3, a person is not associated with another person in relation to the sending of a circular or other communication or the making of a recommendation by reason only that he is a director of a body corporate of which the other person is also a director, whether or not the body corporate carries on a business of dealing in securities, unless the person and the other person are acting jointly, or otherwise acting together or under or in accordance with an arrangement made between them, in relation to the sending of the circular or communication or the making of the recommendation.

(4) Where—

(a) a person has subscribed for or purchased securities for the purpose of offering all or any of them for purchase; and

(b) the person offers any of those securities for purchase,

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

(5) Where—

(a) securities have been offered for subscription or purchase; and

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

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

(6) For the purposes of subsection (5), "underwriting" includes subunderwriting.

(7) A licensed person shall not send to a person a circular or other communication or written offer or recommendation to which subsection (1), (4) or (5) applies unless the circular or other communication or the offer or recommendation—

(a) where the licensed person is a natural person, is signed by the licensed person;

(b) where the licensed person is a natural person who carries on business in partnership, is signed by a partner in the partnership in his own name or in the name of the partnership;

(c) where the licensed person is a natural person who carries on

business in a corporation, is signed by a director, an executive officer or the secretary of the corporation; or

(d) where the licensed person is a corporation, is signed by a director, an executive officer or the secretary of the corporation.

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

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

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

(a) where it is signed by a person in partnership, be deemed to have been sent by each of the partners in the partnership; or

(b) where it is signed by a director, an executive officer or the secretary of a corporation, be deemed to have been sent by the corporation.

(11) The Commission may, with the approval of the Minister if it is not detrimental to the interest of investors, exempt in writing any securities or persons or class of securities or persons from this section.

(12) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

Recommendations by licensed person

92. (1) A licensed person shall not make a recommendation with respect to any securities or futures contracts to a person who may reasonably be expected to rely on the recommendation without having a reasonable basis for making the recommendation to the person.

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

(a) the licensed person has, for the purposes of ascertaining that the recommendation is appropriate, taken all practicable measures to ascertain that the information possessed and relied upon by the licensed person concerning the investment objectives, financial situation and particular needs of the person is accurate and complete;

(b) the licensed person has given such consideration to, and conducted such investigation of, the subject matter of the recommendation as may be reasonable in all the circumstances; and

(c) the recommendation is based on such consideration and investigation.

(3) A licensed person who contravenes subsection (1) commits an offence.

(4) Where the licensed person contravenes subsection (1) or section 91 by making a recommendation to a person and—

(a) the person, in reliance on the recommendation, does a particular act or refrains from doing a particular act;

(b) it is reasonable, having regard to the recommendation and all other relevant circumstances, for the person to do that act or to refrain from doing that act, as the case may be, in reliance on the recommendation; and

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

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

(5) A licensed person shall not be liable under subsection (4) if it is proved that a reasonable person in the circumstances would have done or omitted to do that act in reliance on the recommendation even if a licensed person had complied with that subsection in relation to the recommendation.

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

(7) In this section, a reference to the making of a recommendation is a reference to the making of a recommendation whether expressly or by implication.

Information to be given to a person who invests in capital market product

92A.

(1) The Commission may specify the nature and extent of information to be given to a person who invests in any capital market product and such specification may include—

(a) information that explains the key characteristics of the capital market product;

(b) information that explains the nature of the obligations assumed by the parties dealing in the capital market product;

(c) information that sets out the risks associated with the capital market product; and

(d) details of the essential terms of the capital market product.

(2) Any person who—

(a) issues or provides false or misleading information;

(b) makes any false or misleading statement; or

(c) wilfully omits to state any matter or thing without which the statement or information is misleading in a material aspect, to a person who invests in a capital market product, commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.

(3) Nothing in this section shall affect any right of action under any other law that is conferred on the person who invests in a capital market product.

Priority given to client's order

93. (1) Except as permitted by subsection (2)—

(a) the holder of a Capital Markets Services Licence who carries on the business of dealing in securities or fund management when acting as principal or on behalf of a person associated with or connected to the holder; or

(b) a representative of a holder of a Capital Markets Services Licence when acting for his own account or on behalf of a person associated with or connected to the representative,

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

(2) Subsection (1) shall not apply in relation to the entering into of a transaction by the holder of a Capital Markets Services Licence who carries on the business of dealing in securities or fund management as principal or on behalf of a person associated with or connected to the holder, or by a representative of such a holder for his own account or on behalf of a person associated with or connected to the representative, if—

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

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

(3) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding five years or to both.

Dealings by employees of holders of licences or participating organizations

94. (1) A holder of a Capital Markets Services Licence and an employee of such holder shall not, as principal, jointly purchase or subscribe for, or agree to purchase or subscribe for, any securities.

(2) A holder of a Capital Markets Services Licence shall not give any credit to its employee or to a person who, to the knowledge of such holder, is associated with such an employee if—

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

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

(3) A person who is an employee of a participating organization

shall not, as principal, purchase or agree to purchase any securities or rights or interests in securities unless the participating organization acts as the agent of the person in respect of the transaction.

(4) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding five years or to both.

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

95. (1) A holder of a Capital Markets Services Licence shall furnish such returns and provide such information relating to its business as the Commission may require.

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

Additional obligations on licensed persons

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

(a) in the case of licensed persons generally, or any class of licensed persons; or

(b) in the case of any particular licensed person, by written direction given to the person,

any further requirements that the Commission considers appropriate with respect to the conduct or the financial affairs of such licensed persons.

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

(3) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding five years or to both.

Subdivision 2 Securities

Dealings as principal

97. (1) Subject to subsection (4), a holder of a Capital Markets Services License who carries on the business of dealing in securities shall not, as principal, deal in any securities with a person who is not such a holder unless the holder first informs such person that the holder is acting in the transaction as principal and not as agent.

(2) A reference in this section to a holder of a Capital Markets Services License who carries on the business of dealing in securities as principal includes a reference to a person—

(a) dealing or entering into a transaction on behalf of a person associated with such holder;

(b) dealing in securities on behalf of a corporation in which it has a controlling interest; or

(c) where it carries on a business of dealing in securities on behalf of a corporation in which its interest and the interests of its directors together constitute a controlling interest.

(3) A holder of a Capital Markets Services Licence who carries on the business of dealing in securities, who as principal, deals in securities with a person who is not such a holder shall state in the contract note that the holder is acting in the transaction as principal and not as agent.

(4) Subsection (1) shall not apply to a transaction of sale or purchase of an odd lot of securities entered into by a holder of a Capital Markets Services Licence who is a participating organization and specialises in transactions relating to odd lots of securities.

(5) Where a holder of a Capital Markets Services Licence who carries on the business of dealing in securities contravenes subsection (1) or (3) in respect of a contract—

(a) for the sale of securities by the holder, the purchaser of the securities may, if he has not disposed of them, rescind the contract by a notice of rescission in writing given to the holder not later than fourteen days after the receipt of the contract note or on becoming aware of the contravention of subsection (1) or (3), whichever is the later; or

(b) for a purchase of securities by the holder, the vendor of the securities may rescind the contract by a notice of rescission in writing given to the holder not later than fourteen days after the receipt of the contract note or on becoming aware of the contravention of subsection (1) or (3), whichever is the later.

(6) Any right of action that is conferred on a purchaser or vendor under subsection (5) is in addition to any right that such purchaser or vendor has under any other law.

(7) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

Shortselling

98. (1) Subject to this section and any regulations that may be made, a person shall not sell securities unless, at the time when he sells them—

(a) he has or, where he is selling as agent, his principal has; or

(b) he believes on reasonable grounds that he has, or where he is selling as agent, his principal has,

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

(2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding ten years or to both.

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

(a) a person who, at any particular time, has a presently exercisable and unconditional right to have securities vested in him or in accordance with his directions shall be deemed to have at that time a

presently exercisable and unconditional right to vest the securities in another person; and

(b) a right of a person to vest securities in another person shall not be deemed not to be unconditional by reason only of the fact that the securities are charged or pledged in favour of another person to secure the repayment of monies.

(4) Subsection (1) shall not apply in relation to any of the following circumstances:

(a) a sale of securities by the holder of a Capital Markets Services Licence who carries on the business of dealing in securities who specialises in transactions relating to odd lots of securities, being a sale made by him as principal solely for the purpose of—

(i) accepting an offer to purchase an odd lot of securities; or

(ii) disposing of securities that are less than one marketable parcel of securities by means of the sales of one marketable parcel of those securities;

(b) a sale of securities by a person who before the time of sale has entered into a contract to purchase those securities and who has a right to have those securities vested in him that is conditional only upon all or any of the following:

(i) payment of the consideration in respect of the purchase;

(ii) the receipt by him of a proper instrument of transfer in respect of the securities; or

(iii) the receipt by him of the documents that are, or are documents of title to, the securities;

(c) a sale of securities where—

(i) the securities are included in a class of securities in relation to which there is a provision in the rules of the stock exchange to the effect that the class is a class of securities to which this paragraph applies;

(ii) the sale is made as may be provided by the rules of the stock exchange; and

(iii) at the time of the sale, neither the person who sold the securities, nor any person on behalf of whom the first-mentioned person sold the securities, was an associate, in relation to the sale, of the body corporate that issued or made available the securities;

(d) a sale of securities which are permitted by Bank Negara to be transacted in the short term money market;

(e) a sale of securities—

(i) of such class or category; or

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

(e) as may be prescribed by the Minister; and

(f) the making or trading of a futures contract, or anything done in relation thereto, on the futures market of an futures exchange or on an exempt futures market.

(5) For the purposes of this section, a "marketable parcel" in relation to securities that are listed for quotation on the stock market of a

stock exchange, means a marketable parcel of those securities within the meaning of the rules of that stock exchange.

(6) A person who instructs a holder of a Capital Markets Services Licence who carries on the business of dealing in securities to effect a sale of securities to which subsection (1) would apply but for paragraph (4)*(c)* shall, at the time of giving the instruction, inform the holder that the sale is a short sale.

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

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

(a) purports to sell securities;

(b) offers to sell securities;

(c) holds himself out as entitled to sell securities; or

(d) instructs a holder of a Capital Markets Services Licence who carries on the business of dealing in securities to sell securities,

he shall be deemed to sell the securities.

Subdivision 3 Standardized derivatives

Trading in standardized derivatives on own account

99. (1) A holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives shall not, as principal, trade in any standardized derivative with a person who is not such a holder unless he first informs the person in writing that he is acting in the transaction as principal and not as agent.

(2) A reference in this section to a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives as principal includes a reference to a person—

(a) dealing or entering into a transaction on behalf of a person associated with such holder;

(b) dealing in derivatives on behalf of a corporation in which it has a controlling interest; or

(c) dealing in derivatives on behalf of a corporation in which its interest and the interests of directors of the corporation together constitute a controlling interest.

3) Nothing in section 107 shall affect any right of action that is conferred on a purchaser or vendor under any other law in relation to the transaction.

Trading limits in standardized derivatives

101. (1) The Commission or a derivatives exchange with the approval of the Commission may, by notice in writing from time to time, specify such limits as it considers necessary on the amount of trading which may be done or positions which may be assumed by any person under a standardized derivative.

(2) In determining whether a person has exceeded the limits referred to in subsection (1), the positions assumed and trading done by any persons directly or indirectly controlled by such a person shall be included with the positions assumed and trading done by that person.

(3) The limits referred to in subsection (1) upon positions and trading shall apply to positions assumed, and trading done, by two or more persons acting pursuant to an express or implied agreement or understanding as if the positions were assumed, or the trading done, by a single person.

(4) A person shall not directly or indirectly—

(a) trade or agree to trade in standardized derivatives in excess of the trading limits specified for a period set out by the Commission or the derivatives exchange under this section; or

(b) assume a position under a standardized derivative of any class in excess of any position limit specified by the Commission or the derivatives exchange under this section with respect to that standardized derivative.

(5) This section shall not preclude the Commission or a derivatives exchange from specifying different trading or position limits for different types or classes of standardized derivatives or different limits for the same type or class of standardized derivatives traded for different purposes, different delivery months or different days remaining until the last dayof trading in a standardized derivative for the purpose of subsection (4).

Sequence of sending and carrying out of orders

104. (1) A holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives shall not instruct another holder to carry out the instructions of the first-mentioned holder's client unless the consent of that client has been obtained.

(2) Subject to subsection (3), a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives shall send in the sequence in which they are received by the holder all instructions to trade in a class of standardized derivatives at or near the market price for a standardized derivative of that class prevailing immediately before the carrying out of the instructions.

(3) If—

(a) a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives proposes to trade in a class of standardized derivatives on the holder's own account;

(b) the person by whom or on whose instructions, the instructions for the trading are to be sent is aware of the instructions of a client of the holder to trade in that class of standardized derivatives at or near the market price for a standardized derivative of that class prevailing at that time; and

(c) the client's instructions have not been sent,

that person shall not send, and shall not give instructions to any other person to send, the instructions to give effect to the proposal of

the holder to trade in that class of standardized derivatives before the instructions of the client are sent.

(4) A holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives, or a director, officer, employee orrepresentative of a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives, shall not, except—

(a) to the extent necessary to carry out the instructions concerned;

(b) as required by this Act or any other law; or

(c) as required by the rules of any derivatives exchange of which the holder is an affiliate,

disclose to any other person the instructions of a client to trade in a class of standardized derivatives.

(5) A holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives who is an affiliate of a derivatives exchange and who is concerned in the carrying out, on a derivatives market of the derivatives exchange, of instructions to trade in standardized derivatives shall carry out in the sequence which they are received by the holder all instructions to trade in a class of standardized derivatives at or near the market price for a standardized derivative of that class prevailing immediately before the carrying out of the instructions.

(6) If—

(a) during a particular period, a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives sends instructions (whether or not those instructions consist of or include instructions giving effect to the proposal of the holder to trade in the class of standardized derivatives concerned on the holder's own account) to trade in a class of standardized derivatives at or near the market price for a standardized derivative of that class prevailing immediately before the carrying out of the instructions; and

(b) trading in that class of standardized derivative is effected under those instructions,

the holder shall, except so far as the rules of the derivatives exchange of which the holder is an affiliate otherwise provide, allocate trading to those instructions—

(A) in the sequence in which the trading was effected; and

(B) in the sequence in which the holder sent those instructions.

(7) A holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives shall keep, in accordance with the regulations, records that set out the prescribed particulars of—

(a) the instructions by a client to trade in standardized derivatives;

(b) the date and time of receipt, sending and carrying out of those instructions;

(c) the person by whom those instructions are received, the person by whom they are sent and the person by whom they are carried out;

(d) the date and time of receipt, sending and carrying out of instructions to trade in standardized derivatives on the holder's own account; and

(e) the person by whom instructions of the kind referred to in paragraph *(d)* are received, the person by whom they are sent and the person by whom they are carried out,
and shall retain those records for the prescribed period.

(8) If—

(a) a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives sends, for carrying out on a derivatives market outside Malaysia, instructions to trade in standardized derivatives; and

(b) it is not reasonably practicable for the holder to set out in the records kept by the holder under subsection (7) the prescribed particulars of the date and time of the carrying out of those instructions,
the holder shall set out those particulars as precisely as is reasonably practicable.

(9) In this section, a reference to the sending of instructions to trade in a class of standardized derivatives by a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives is a reference if the holder has—

(a) direct access to the derivatives market on which the instructions are to be carried out, to the sending of the instructions to that derivatives market; or

(b) access to the derivatives market on which the instructions are to be carried out only through another holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives, to the sending of the instructions to that other holder.

Trading in standardized derivatives outside Malaysia

105. (1) A holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives or carries on the business of fund management in relation to derivatives shall not trade in a standardized derivative on any derivatives market outside Malaysia unless—

(a) the derivatives market is a derivatives market of a Specified Exchange; or

(b) the standardized derivative is of an approved class of standardized derivatives.

(2) If—

(a) the Commission has reason to believe that a situation exists which, in the opinion of the Commission, is likely to affect the proper operation of the derivatives market of any Specified Exchange or cause a disruption to the orderly trading of standardized derivatives on such a derivatives market;

(b) it is shown that a holder of a Capital Markets Services Licence who carries on the business of dealing inderivatives or carrying on the business of fund management in relation to derivatives or any of its employees, directors or representatives has acted in any manner, in relation to the operation—

(i) of any derivatives market of a derivatives exchange or in re-

spect of which an approved clearing house provides clearing house facilities; or

(ii) of any derivatives market of a Specified Exchange,

which is likely to prejudice the public interest;

(c) a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives or carrying on the business of fund management in relation to derivatives has contravened—

(i) securities laws;

(ii) the rules of a derivatives exchange or an approved clearing house of which the holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives or carrying on the business of fund management in relation to derivatives is an affiliate; or

(iii) any condition applicable in respect of its licence; or

(d) other prescribed circumstances exist in respect of a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives or fund management in relation to derivatives,

the Commission may direct—

(A) the holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives or fund management in relation to derivatives to cease trading in standardized derivatives, or in any class of standardized derivatives, on the derivatives market of any Specified Exchange; or

(B) that trading in standardized derivatives, or in any class of standardized derivatives, by the holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives or fund management in relation to derivatives on the derivatives market of any Specified Exchange be limited to the closing out of standardized derivatives.

(3) For the purposes of this section and section 106—

(a) a Specified Exchange is such derivatives market as may be provided in the rules of the derivatives exchange as a Specified Exchange; or

(b) an approved class of standardized derivatives is such class of standardized derivatives of the derivatives market of a Specified Exchange as provided in the rules of the derivatives exchange as an approved class of standardized derivatives.

(4) Any holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives or fund management in relation to derivatives who contravenes subsection (1) or any direction made under subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

Amounts to be paid for trading in Specified Exchanges

106. (1) A holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts or fund management in relation to futures contracts shall not trade in the futures market of a Specified Exchange unless he has paid to the Commission one hundred thousand ringgit or such other amount as may be determined by the Commission.

(2) The monies paid under subsection (1) shall be applied on the occurrence of any of the following events:

(a) where the holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts or fund management in relation to futures contracts is being wound up;

(b) where there is a default by the holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts or fund management in relation to futures contracts traded on a Specified Exchange; or

(c) such other specified events,

in such manner as the Commission may determine.

Failure to comply with sections 99, 101 and 104

107. A person who contravenes sections 99, 101 and 104 commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

Subdivision 4—Over-the-counter derivatives

Interpretation

107A. For the purposes of this Subdivision, "derivatives" means over-the-counter derivatives.

Approval of trade repository

107B. (1) The Commission may in writing, approve any body corporate to be a trade repository.

(2) The Commission shall not grant the approval under subsection (1) unless the Commission is satisfied that—

(a) the body corporate will be able to carry out the functions as may be specified

(b) the body corporate has sufficient financial, human or other resources to carry out the functions as may be specified; and

(c) the body corporate has in place rules and procedures to enable it to perform its functions.

Application for granting approval

107C. (1) An application for the grant of approval as a trade repository shall be made to the Commission in such form and manner as may be specified by the Commission.

(2) The Commission may require a body corporate to furnish the Commission with such information or document as the Commission considers necessary for the purpose of the application.

(3) The Commission may in approving the body corporate impose such condition or restriction as the Commission deems fit.

Withdrawal of approval

107D. (1) The Commission may withdraw an approval granted to a trade repository where the Commission is satisfied that—

(a) the trade repository is not able to perform any of its functions and responsibilities as may be specified by the Commission;

(b) the trade repository has breached any term and condition imposed under subsection 107C(3);

(c) the trade repository has breached any provision of the securities laws or any other laws involving fraud or dishonesty;

(d) the trade repository has failed to comply with any direction issued by the Commission under this Subdivision;

(e) the trade repository is being wound up or otherwise dissolved;

(f) the trade repository has not satisfied in whole or in part a judgment debt against it;

(g) a receiver, a receiver and manager, or equivalent person has been appointed, in relation to any property of the trade repository;

(h) the trade repository has, whether within or outside Malaysia, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation; or

(i) any information or document that is furnished by the trade repository for the purposes of this Subdivision was false or misleading or from which there was a material omission.

(2) Subject to subsection (3), the Commission may withdraw an approval granted to a trade repository upon a request in writing by the trade repository to cease its operation as a trade repository.

(3) Where a trade repository has on its own accord made a request for cessation under subsection (2), the Commission may refuse to withdraw the approval if the Commission considers that—

(a) it is in the interest of the public or the persons referred to under subsection 107J(1) that any matter concerning the trade repository should be investigated before the approval is withdrawn under subsection (2); and

(b) the withdrawal of approval would not be in the interest of the public or the persons referred to under subsection 107J(1).

(4) The Commission shall not take any action under subsection (1) without giving the trade repository an opportunity to be heard.

Appointment of directors or chief executive officer of an approved trade repository

107E. A trade repository shall obtain the prior approval of the Commission before appointing any director or chief executive officer.

Duty to maintain secrecy

107F. (1) A director, officer, servant or agent of a trade repository shall not disclose any information or document which has been obtained by him in the course of his duties except—

(a) in the circumstances set out under section 107G; or

(b) to the Commission if the Commission is of the view that such disclosure is necessary in the interest of the public or for the protection of investors.

(2) A person who has any information or document which to his knowledge has been disclosed in contravention of subsection (1) shall not in any manner disclose such information or document to any other person.

(3) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding five years or to both.

Permitted disclosure

107G. A person referred to in subsection 107F(1) shall not refuse to disclose any information or document—

(a) which any person referred to in subsection 107J(1), has given permission in writing to disclose;

(b) in the case where any person referred to in subsection 107J(1) is declared a bankrupt within or outside Malaysia;

(c) for the purpose of instituting, or in the course of, any civil proceedings between a trade repository and any person referred to in subsection 107J(1);

(d) to any person duly authorized to investigate into any offence under any law, and such disclosure being, in any case, limited to the affairs of any person referred to in subsection 107J(1);

(e) for the purpose of enabling or assisting the Commission in the discharge of its function under the securities laws or any other written law;

(f) for the purpose of enabling or assisting Bank Negara in giving effect to its objects or carrying out its functions under the Central Bank of Malaysia Act 2009 and any other written law enforced by Bank Negara;

(g) for the purpose of risk assessment and monitoring by the Malaysia Deposit Insurance Corporation in the performance of its duties and functions under the Malaysia Deposit Insurance Corporation Act 2011 [*Act 720*]; or

(h) for the purpose of enabling or assisting auditors of a trade repository to discharge their function.

Powers of Commission to issue directions

107H. (1) The Commission may give a trade repository such directions whether of a general or specific nature if it thinks it necessary or expedient—

(a) for the effective administration of the trade repository;

(b) for ensuring compliance with any conditions or restrictions imposed on the trade repository; or

(c) in the interest of the public or for the protection of investors.

(2) A trade repository who fails to comply with any directions given under this section commits an offence.

Rules of a trade repository

107I. An amendment to the rules of a trade repository shall only have effect after it has been approved by the Commission.

Reporting obligation

107J. (1) A holder of a Capital Markets Services Licence, registered person or any other person dealing in derivatives shall report infor-

mation as may be specified by the Commission, including any amendment, modification, variation or changes to the information, to a trade repository.

(2) This section shall not apply to dealing in derivatives where Bank Negara or Government of Malaysia is a party.

(3) For the purposes of subsection (1), the Commission may specify the form and manner in which the information is to be reported to the trade repository.

(4) For the purposes of this section, "derivatives" shall include derivatives whose market price, value, delivery or payment obligations are derived from, referenced to or based on exchange rates.

(5) Any person who—

(a) fails to comply with any requirement of this section; or

(b) submits false or misleading information or from which there is a material omission to a trade repository, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding three million ringgit or to both.

(6) A trade repository shall, upon the request by the Commission, provide to the Commission the information obtained by it under subsection (1).

Division 4 Books, client's assets protection and audit

Subdivision 1 Books

Keeping of books and furnishing of returns

108. (1) A holder of a Capital Markets Services Licence shall—

(a) maintain, or cause to be maintained, in the national language or English language such accounting records and other books as will sufficiently explain the transactions and financial position of its business and enable true and fair profit and loss accounts and balance sheets to be prepared from time to time; and

(b) maintain, or cause to be maintained, such accounting records and other books in such a manner as will enable them to be conveniently and properly audited.

(2) An entry in the accounting records and other books of a holder of a Capital Markets Services Licence required to be maintained in accordance with this section shall be deemed to have been made by, or with the authority of, the holder.

(3) A holder of a Capital Markets Services Licence shall retain such accounting records and other books as may be required to be maintained under this Act for a period of not less than seven years.

(4) A holder of a Capital Markets Services Licence shall—

(a) furnish such returns and records in such form and manner as may be specified by the Commission; and

(b) provide such information relating to its business as may be specified by the Commission.

(5) Without prejudice to the generality of subsection (1), every holder of a Capital Markets Services Licence shall maintain such accounting records and other books in such form and manner as may be specified by the Commission.

(6) A person who—

(a) contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit; or

(b) with intent to defraud, contravenes this section, commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.

Subdivision 2 Treatment of client's assets in respect of securities

Application of this Subdivision

109. This Subdivision applies to a holder of a Capital Markets Services Licence who carries on the business of dealing in securities whether that business is carried on within or outside Malaysia.

Interpretation

110. In this Subdivision, unless the context otherwise requires—

"a holder of a Capital Markets Services Licence" means a holder of a Capital Markets Services Licence who carries on the business of dealing in securities;

"client's assets" include monies or other property received or retained by, or deposited with, a holder of a Capital Markets Services Licence in the course of its business for which the holder is liable to account to its client, and any monies or other property accruing therefrom.

Certain monies received by holder of Capital Markets Services Licence to be paid into trust account

111. (1) A holder of a Capital Markets Services Licence shall establish and keep in a licensed institution one or more trust accounts designated or evidenced as such into which he shall pay—

(a) all amounts, less any brokerage and other proper charges, that are received from or on account of any person, other than a holder of a Capital Markets Services Licence, for the purchase of securities and that are not attributable to securities delivered to a holder of a Capital Markets Services Licence not later than the next bank business day or such other day as may be specified by the Commission on which they were received by such holder; and

(b) all amounts, less any brokerage and other proper charges, that are received for or on account of any person, other than a holder of a Capital Markets Services Licence, from the sale of securities and that are not paid to that person or as that person directs not later than the next bank business day or such other day as may be specified by the Commission on which they were received by such holder.

(2) Notwithstanding subsection (1), where a holder of a Capital Markets Services Licence receives payment in a place outside Malaysia, the holder may keep such payment in one or more trust accounts in an institution licensed outside Malaysia to provide banking or financial services.

(3) A holder of a Capital Markets Services Licence who—

(a) contravenes this section commits an offence and is liable on conviction to a fine not exceeding one million ringgit; or

(b) with intent to defraud, contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

Client's assets other than monies received by holder of Capital Markets Services Licence

112. (1) A holder of a Capital Markets Services Licence shall deal with any client's assets other than monies, received, held or deposited with it in the course of its business, and for which it is liable to account to its client, in such manner as may be prescribed in regulations made under this Act.

(2) A holder of a Capital Markets Services Licence who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding five years or to both.

Withdrawal of monies from trust account

113. (1) A holder of a Capital Markets Services Licence shall not withdraw any monies from a trust account except for the purpose of making a payment—

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

(b) defraying brokerage and any other proper charges; or

(c) that is otherwise authorized by law.

(2) Except as provided in subsection (1), monies held in a trust account shall not be available for payment of the debts of a holder of a Capital Markets Services Licence or be liable to be paid or taken in execution under an order or process of any court.

(3) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding ten years or to both.

Holder of Capital Markets Services Licence to supply copies of entries in books

114. (1) A holder of a Capital Markets Services Licence shall supply, on demand, to its clients or any person authorized by the client, copies of all entries in its books relating to any transaction carried out on behalf of that client and the holder shall be entitled to levy a reasonable charge therefor.

(2) A client or any person authorized by the client shall be entitled

at any time to inspect any contract notes or documents relating to the transaction referred to in subsection (1) free of charge.

Claims and liens not affected

115. Nothing in this Subdivision shall be construed as taking away or affecting any lawful claim or lien which any person has against or upon any monies—

(a) held in a trust account; or

(b) received for the purchase of securities or from the sale of securities before such monies are paid into a trust account.

Subdivision 3 Treatment of client's assets in respect of futures contracts

Application of this Subdivision

116. This Subdivision applies to a holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts whether that business is carried on within or outside Malaysia.

Interpretation

117. (1) For the purposes of this Subdivision, unless the context otherwise requires—

"a holder of a Capital Markets Services Licence" means a holder of a Capital Markets Services Licence who carries on the business of trading in futures contract;

"client", in relation to a holder of a Capital Markets Services Licence, means a person on behalf of whom the holder trades or from whom the holder accepts instructions to trade in futures contracts;

"client's assets" include monies or other property received or retained by, or deposited with, a holder of a Capital Markets Services Licence in the course of its business for which the holder is liable to account to its client, and any monies or other property accruing therefrom;

"credit facility" means a document evidencing the right of a person to obtain a loan or other facility from another person and, without prejudice to the generality of the foregoing, includes a letter of credit and a bank guarantee;

"property" includes credit facilities;

"relevant credit balance", in relation to a client of a holder of a Capital Markets Services Licence, means the total of—

(a) the amounts deposited in respect of the client in a client's segregated account, of the holder, less so much of those amounts as has been withdrawn from the account; and

(b) the value of property other than monies that—

(i) have, in respect of the client, been deposited by the holder in safe custody under section 118 and have not been withdrawn from safe custody; and

(ii) under the terms and conditions on which they were deposited with, or received by, the holder, are available to meet, or to provide security in connection with the meeting of, relevant liabilities of the client;

"relevant liabilities", in relation to a client of a holder of a Capital Markets Services Licence, means debts and liabilities of the client arising out of trading in futures contracts effected by the holder on behalf of the client;

"settling", in relation to a trading in a futures contract, includes making delivery, or taking delivery, of an instrument to which the futures contract relates.

(2) For the purposes of the definition of "relevant credit balance" in subsection (1), the value of an item of property at a particular time is—

(a) if the item is a credit facility, the amount of monies that the person entitled to the right evidenced by the credit facility can, at that time or within a reasonable period after that time, obtain because of that right; or

(b) if it is otherwise than a credit facility, the market value of the property as at the end of the last business day before that time.

Segregation of client's assets

118. (1) If any client's assets are deposited with, or are received by, a holder of a Capital Markets Services Licence for or on behalf of a client of the holder in connection with—

(a) trading in futures contracts effected or proposed to be effected, whether within or outside Malaysia; or

(b) instructions by such client, whether within or outside Malaysia,

the holder shall—

(A) in respect of monies, deposit the monies in a client's segregated account of the holder kept and maintained within Malaysia or in the place where the monies was deposited with or received by, the holder; or

(B) in respect of property, deposit the property in safe custody within Malaysia or in the place where the property was deposited with or received by the holder, in such a manner that the property is segregated from property other than property deposited by the holder in safe custody under this subsection,

not later than the next bank business day or such other day as may be specified by the Commission after the monies or property is deposited with or received by, the holder that is a day on which the amount or property can be deposited as first mentioned in paragraph (A) or (B), as the case may be.

(2) Without prejudice to the generality of subsection (1), if in connection with trading in futures contracts effected, whether within or outside Malaysia, by a holder of a Capital Markets Services Licence, the holder receives from a person an amount of monies, some or all of which is attributable to trading in futures contracts so effected, whether within or outside Malaysia, on behalf of the clients of the

holder, the holder shall, no later than the next bank business day or such other day as may be specified by the Commission on which the amount can be so deposited, deposit the amount in a client's segregated account kept and maintained within Malaysia or in the place where the holder receives the amount.

(3) A holder of a Capital Markets Services Licence shall not withdraw any monies in the client's segregated account except for the purpose of—

(a) making a payment to or in accordance with the written direction of, a person entitled to the monies;

(b) making a payment for or in connection with, the entering into, margining, guaranteeing, securing, transferring, adjusting or settling of trading in futures contracts effected by the holder on behalf of the client;

(c) defraying brokerage and other proper charges incurred in respect of trading in futures contracts effected by the holder on behalf of the client;

(d) investing it—

(i) on deposit at interest with a licensed bank;

(ii) on deposit with an approved clearing house for a futures exchange; or

(iii) in any other prescribed manner; or

(e) making a payment that is otherwise authorized by law or by the rules of a futures exchange or an approved clearing house of which the holder is an affiliate,

or as permitted by subsection (7).

(4) A holder of a Capital Markets Services Licence shall not deal with property deposited by the holder in safe custody under subsection (1) except in accordance with the terms and conditions on which the property was deposited with or received by, the holder.

(5) A holder of a Capital Markets Services Licence shall not invest an amount under paragraph (3)*(d)* by depositing it with a person for that person to invest unless the holder—

(a) has told the person that the amount has been withdrawn from a client's segregated account of the holder and is monies to which the clients of the holder are entitled; and

(b) has obtained from the person a written statement that is signed by the person, setting out the amount and acknowledging that the holder has informed the person as required under paragraph *(a)*.

(6) If, at any particular time, the total amount of the relevant liabilities of a client of a holder of a Capital Markets Services Licence exceeds the relevant credit balance of the client, the holder may, in respect of the client, deposit in a client's segregated account of the holder an amount of monies not greater than the amount of the excess, and, if the holder does so, the amount so deposited is to be taken, subject to subsection (7), to be monies to which the client is entitled.

(7) If—

(a) a holder of a Capital Markets Services Licence has, in respect of a client of the holder, deposited an amount under subsection (6) in a client's segregated account of the holder; and

(b) the relevant credit balance of the client exceeds the total amount of the relevant liabilities of the client,

the holder may withdraw from the account so much of the amount referred to in paragraph *(a)* as does not exceed the amount of the excess referred to in paragraph *(b)*.

(8) A holder of a Capital Markets Services Licence shall keep, in relation to any client's segregated account, accounting records that—

(a) are separate from any other accounting records of the holder;

(b) record separately in respect of each client of the holder particulars of the amounts deposited in and the amounts withdrawn from the client's account; and

(c) record separately from the particulars referred to in paragraph *(b)*—

(i) particulars (including particulars of withdrawals) of so much of the amounts deposited in accordance with subsection (2) in the account as was not attributable to trading in futures contracts effected by the holder on behalf of its clients;

(ii) particulars of all amounts deposited in the account under subsection (6); and

(iii) particulars of all amounts withdrawn from the account under subsection (7).

(9) A holder of a Capital Markets Services Licence shall keep records that—

(a) relate to the deposits of property in safe custody by the holder under subsection (1); and

(b) record separately the particulars of the property deposited in respect of each client.

(10) Section 108 shall apply in relation to accounting records and any other records that are required by subsections (8) and (9) to be kept by the holder, and shall apply as if those accounting records and other records were accounting records required by that section to be kept by the holder.

(11) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding ten years or to both.

Monies in segregated account not available for payment of debt, *etc.*

119. (1) Notwithstanding anything contained in the Companies Act 19651965, but subject to subsections (2) and (3)—

(a) monies deposited by a holder of a Capital Markets Services Licence under section 118 in a client's segregated account of the holder;

(b) property in which monies deposited by a holder of a Capital Markets Services Licence as mentioned in paragraph *(a)* has been invested under paragraph 118(3)*(d)*; and

(c) property deposited by a holder of a Capital Markets Services Licence in safe custody under subsection 118(1),

shall not be available for the payment of a debt or liability of such holder or liable to be attached or taken in execution under the order

or process of a court at the instance of a person suing in respect of such a debt or liability.

(2) Nothing in subsection (1) affects the right of a client of a holder of a Capital Markets Services Licence to recover monies or property to which the client is entitled.

(3) Subsection (1) does not apply in relation to monies that a holder of a Capital Markets Services Licence is entitled to withdraw monies from a client's segregated account of the holder for the purpose of making a payment to the holder or otherwise under subsection 118(3).

(4) If a holder of a Capital Markets Services Licence invests monies under paragraph 118(3)*(d)* by depositing it with a person for the person to invest, neither that monies nor any property in which the person invests any of that monies, is available for the payment of a debt or liability of the person or is liable to be attached or taken in execution under the order or process of a court at the instance of a person suing in respect of such a debt or liability.

(5) Without prejudice to the rights of a holder of a Capital Markets Services Licence under any other written law, subsection (4) may only be invoked by the holder or any person claiming on behalf of or in the name of the holder for the purpose of settling any liabilities due to an approved clearing house, in respect of futures contracts effected by the holder for the clients to whom any monies or property referred to in subsection (4) relates.

(6) Nothing in section 118 and this section shall affect a claim or lien that a holder of a Capital Markets Services Licence has, in relation to a business of trading in futures contracts carried on by it, under an agreement, any law within or outside Malaysia, against or on—

(a) monies deposited by the holder under section 118 in a client's segregated account of the holder;

(b) property in which monies so deposited has been invested under paragraph 118(3)*(d)*; or

(c) property deposited by the holder in safe custody under subsection 118(1).

(7) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding ten years or to both.

Subdivision 4 Treatment of client's assets in respect of fund management

Application of this Subdivision

120. (1) This Subdivision applies to a holder of a Capital Markets Services Licence who carries on the business of fund management.

(2) Nothing in this Subdivision shall apply to a corporation which manages a portfolio of securities or futures contracts solely for or on behalf of any of its related corporations, provided that the second-mentioned corporation's securities or futures contracts being managed

by the first-mentioned corporation are not securities or futures contracts held on trust or on behalf of or beneficially belonging to any other person, or as a result of any investment contract entered into by the second-mentioned corporation.

(3) For the purposes of this section, "investment contract" has the meaning assigned to it in subsection 84(1) of the Companies Act 19651965.

Interpretation

121. For the purposes of this Subdivision, unless the context otherwise requires—

"a holder of a Capital Markets Services Licence" means a holder of a Capital Markets Services Licence who carries on the business of fund management;

"client's assets" includes monies or other property received or retained by, or deposited with a holder of a Capital Markets Services Licence received in the course of his business for which the holder is liable to account to its client, and includes, monies received or property deposited with or held by a custodian or by any other person as may be permitted by the Commission under this Subdivision for which it is liable to account or deliver to the client;

"custodian", in relation to a client of a holder of a Capital Markets Services Licence, means—

(a) a licensed bank as defined in the Banking and Financial Institutions Act 1989 appointed by the fund manager with the prior written consent of the client;

(b) a licensed merchant bank as defined in the Banking and Financial Institutions Act 1989 appointed by a fund manager with the prior written consent of the client;

(c) a trust company registered under the Trust Companies Act 19651949 [*Act 100*];

(d) Amanah Raya Berhad;

(e) a participating organization;

(f) a wholly owned subsidiary of any institution specified under paragraphs *(a), (b)* and *(e)* that provides nominee services;

(fa) any institution licensed or authorized to provide custodian services outside Malaysia; or

(g) any other person as may be specified in writing by the Commission;

"trust account" means a current, deposit or property account which—

(a) is kept with a custodian; or

(b) is kept by any person as may be permitted by the Commission under subsection 122(2).

Operation of trust account

122. (1) A holder of a Capital Markets Services Licence shall open a trust account for its client's assets and shall make arrangements for a custodian to maintain such trust account.

(1A) Subsection (1) shall not apply where a client makes his own arrangement for a custodian to maintain a trust account.

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

(3) A holder of a Capital Markets Services Licence shall deposit client's assets into the trust account maintained by a custodian or any other person as may be permitted by the Commission under subsection (2), as the case may be, not later than the next bank business day or such other day as may be specified by the Commission, following the day on which the holder receives the client's assets.

(4) Notwithstanding subsection (1), where client's assets that are required by this section to be deposited into a trust account are received by a holder of a Capital Markets Services Licence in a place outside Malaysia, the holder may deposit such assets into a trust account maintained a custodian outside Malaysia.

(5) A holder of a Capital Markets Services Licence shall not withdraw from or deal with client's assets in a trust account except for the purpose of making a payment—

(a) to the person entitled thereto; or

(b) that is otherwise authorized by law.

(6) Except as otherwise provided in this Subdivision, client's assets held in a trust account shall not be available for the payment of the debts of a holder of a Capital Markets Services Licence or liable to be paid or taken in execution under an order or process of court for the payment of the debt of a holder of a Capital Markets Services Licence.

(7) The holder of a Capital Markets Services Representative's licence which permits the holder to carry on the business of fund management shall neither accept nor hold client's assets unless he does so on behalf of a holder of a Capital Markets Services Licence and in the course of employment under a contract of employment with such holder.

(8) Nothing in this Subdivision shall be construed as taking away or affecting any lawful claim or lien which any person has against or upon any client's assets held in a trust account or against or upon any client's assets received for the purchase or from the sale of securities before such assets are deposited into the trust account.

(9) A person who—

(a) contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit; or

(b) with intent to defraud, contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

Client's assets

123. (1) A holder of a Capital Markets Services Licence shall not deal in securities or trade in futures contracts for or on behalf of a client unless, to the extent that the holder receives client's assets—

(a) the holder does so on the basis that the assets shall be applied solely for specified purposes agreed when or before the holder receives the assets;

(b) pending such application, the assets are deposited by the next bank business day or such other day as may be specified by the Commission to a custodian with whom a trust account is maintained in accordance with this Subdivision or to any other person as may be permitted by the Commission under subsection 122(2); and

(c) a separate book entry shall be recorded and maintained for each client by the holder in accordance with this Act or any guidelines issued by the Commission, in relation to client's assets.

(2) A holder of a Capital Markets Services Licence who contravenes subsection (1) commits an offence.

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

124. (1) A holder of a Capital Markets Services Licence shall supply, on demand, to his client or any person authorized by the client, copies of all entries in his books relating to the client's transaction.

(2) A person referred to in subsection (1) shall be entitled to inspect any contract note or document relating to the client's transaction free of charge.

Subdivision 5 Range of actions Commission may take to protect clients of licensed persons under certain circumstances

Commission's actions to protect client's assets, *etc.*

125. (1) This section applies to the following persons:

(a) a licensed person;

(b) a trustee approved by the Commission under section 260, section 289 or Part IIIA;

(c) a custodian as defined under section 121;

(d) a private retirement scheme administrator approved under Part IIIA;

(e) any person registered under subsection 76(2) or any registered person referred to in Part 2 of Schedule 4; and

(f) any person who maintains a trust account for clients' assets.

(2) Without prejudice to section 354, 355 or 356, where—

(a) a licensed person or a trustee approved by the Commission under section 260, section 289 or Part IIIA has contravened this Act or guidelines issued under this Act;

(b) the interests of the clients of the holder of a Capital Markets Services Licence or the interests of debenture holders or unit holders are likely to be jeopardised, or are jeopardised;

(c) any of the grounds exists for which an approval may not be granted under section 260 or 289;

(d) any of the grounds exists for which a licence may be revoked or

suspended under section 72 or any action which may be taken pursuant to section 262, 290 or 292;

(e) the interests of the members of a private retirement scheme are likely to be jeopardised, or are jeopardised;

(f) a private retirement scheme provider approved under section 139Q has contravened this Act or any guidelines issued under this Act;

(g) any circumstances exists for which an approval granted under Part IIIA of this Act may be withdrawn;

(h) any circumstances exists for which an action can be taken under this Act to replace or remove a trustee approved under Part IIIA of this Act; or

(i) any circumstances exists for which the Commission may take action under subsection 76(9),

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

(A) direct any person in subsection (1)—

(i) not to deal with monies and properties of its clients or members in such manner as the Commission thinks appropriate;

(ii) to transfer the monies and properties of its clients or members to any other person as may be specified by the Commission; or

(iii) to transfer any records or documents in relation to monies or properties to any other person as may be specified by the Commission;

(B) prohibit any person in paragraphs (1)*(a), (d), (e)* and *(f)* from—

(i) entering into transactions of a specified description, in specified circumstances or to a specified extent;

(ii) soliciting business from persons of a specified description; or

(iii) carrying on business in a specified manner;

(C) require any person in paragraphs (1)*(a), (d), (e)* and *(f)* to carry on business in a specified manner; or

(D) direct any person in paragraphs (1)*(a)*, *(d)*, *(e)* and *(f)* to maintain property within or outside Malaysia such that—

(i) the property maintained is of the value and of the description that appear to the Commission to be necessary to ensure that such person will be able to meet its liabilities; and

(ii) the property is maintained in a manner that will enable such person at any time freely to transfer or otherwise dispose of the property.

(3) Where a direction, condition, prohibition or requirement imposed under subsection (2) is in force, the Commission may, where it considers appropriate to do so by notice in writing given to the person on whom the direction, condition, prohibition or requirement is imposed—

(a) withdraw the direction, condition, prohibition or requirement; or

(b) substitute another direction, condition, prohibition or requirement for or vary the direction, condition, prohibition or requirement,

and such direction, condition, prohibition or requirement so withdrawn

or substituted shall remain in force in accordance with the terms thereof until it is—

(A) withdrawn; or

(B) substituted by another direction, condition, prohibition or requirement or varied, by the Commission under this section.

(4) Nothing in this Act, any rules, any terms of any contract or any other law shall invalidate any action taken by the Commission under this section.

(5) The Commission shall not take any action under this section without giving a licensed person or a trustee an opportunity to be heard.

(6) Subsection (5) shall not apply if the Commission considers that any delay in taking an action under this section by giving an opportunity to be heard would be prejudicial to the public interest or the interest of the clients of the licensed person.

(7) For the purposes of this section, where the person in paragraph (1)*(c)* or *(f)* is a licensed institution or an Islamic bank; a direction, condition, prohibition or requirement on such person shall be made through Bank Negara..

Subdivision 6 Audit

Appointment of auditor

126. (1) This Subdivision applies to the business of a holder of a Capital Markets Services Licence, an exchange holding company, a stock exchange, a futures exchange, an approved clearing house, a central depository and a recognized selfregulatory organization.

(2) A reference to a relevant person in this Subdivision shall be construed as a reference to persons referred to in subsection (1).

(3) Notwithstanding the provisions of the Companies Act 19651965, a relevant person shall appoint an auditor to carry out for the year in respect of which he is appointed an audit of the accounts of the relevant person.

(3A) For the purposes of subsection (3), where the relevant person is a holder of a Capital Markets Services Licence who carries on the business of dealing in securities, dealing in derivatives or fund management, the auditor appointed shall be an auditor registered under section 31O of the Securities Commission Malaysia Act (SCMA) 1993 1993.

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

(5) A relevant person—

(a) shall remove an auditor who becomes ineligible by virtue of subsection (4); and

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

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

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

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

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

Relevant person to lodge auditor's report

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

(2) Where an application for the extension of the period of three months specified in subsection (1) is made by a relevant person to the Commission and if the Commission is satisfied that there are special reasons for requiring the extension, the Commission may extend that period by a further period of not exceeding three months subject to such conditions as the Commission thinks fit to impose.

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

(4) For the purposes of subsection (1), "financial year", in relation to a relevant person, means the financial year of the corporation within the meaning of the Companies Act 19651965.

Duties of auditor

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

(a) of any matter which in his opinion may constitute a breach of this Act or any securities laws;

(b) of any irregularity that may have a material effect upon the accounts of the relevant person, including any irregularity that jeopardizes or may jeopardize the funds or property of the clients of the relevant person, where applicable;

(c) that losses have been incurred by the relevant person who is the holder of a Capital Markets Services Licence which renders the relevant person to be unable to meet the minimum financial requirements as may be prescribed in the regulations made under this Act;

(d) that the auditor is unable to confirm that the claims of clients or creditors of the relevant person are covered by the assets of the relevant person;

(e) that an offence in connection with the business of the relevant person has been committed; or

(f) in the case of a relevant person who is a holder of a Capital Markets Services Licence, that there has been a contravention of the

rules of a stock exchange, a futures exchange, an approved clearing house or a central depository,
the auditor shall immediately report the matter to—

(A) in the case of a participating organization, the stock exchange and the Commission;

(B) in the case of a holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts, the futures exchange and the Commission; or

(C) in any other case, the Commission.

(2) No auditor shall be liable to be sued in any court in respect of any statement made by the auditor in good faith in the discharge of his duties under this Subdivision.

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

(a) to submit such additional information in relation to his audit as the Commission may specify;

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

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

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

(e) to submit an interim report on any of the matters referred to in paragraphs *(a)* to *(d)*,
and the Commission may specify the time within which any of the aforesaid requirements shall be complied with by the auditor and may specify the remuneration which the relevant person shall pay to the auditor in respect thereof.

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

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

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

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

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

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

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

(b) ensure that all the information which is furnished to the audi-

tor, including information furnished under paragraph *(a),* is not false or misleading in any material particular.

(2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both.

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

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

130. (1) Where—

(a) a relevant person has failed to submit the auditor's report in compliance with subsection 127(1); or

(b) the Commission has received a report under section 127 or 128,

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

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

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

Power of Commission to appoint independent auditor, *etc.*, upon application

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

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

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

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

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

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

(4) The Commission shall not appoint an independent auditor or such other person under subsection (1) unless the Commission is satisfied—

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

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

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

132. An independent auditor or such other person appointed by the Commission under section 130 or 131 shall, upon the conclusion of the examination and audit in respect of which such auditor or other person was appointed, make a report thereon to the Commission.

Powers of independent auditor appointed by Commission

133. An independent auditor or such other person appointed by the Commission under section 130 or 131 to examine and audit the books, accounts and records of, and assets held by a relevant person may, for the purpose of carrying out such examination and audit—

(a) examine on oath any director, executive officer or the secretary of the relevant person concerned and any of the relevant person's employees and agents and any other auditor appointed under this Act in relation to those books, accounts, records and assets;

(b) employ such persons as he considers necessary; and

(c) by instrument in writing under his hand authorize any person employed by him to do, in relation to such examination and audit, any act or thing that he could himself do in his capacity as auditor, except to examine any person on oath or to exercise the power conferred by this paragraph.

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

134. Except for the purpose of carrying into effect the provisions of this Act, or so far as may be required for the purpose of any proceedings, civil or criminal, an independent auditor or such other person appointed by the Commission under section 130 or 131 and an employee of such auditor or other person shall not communicate any matter, which may come to his knowledge in the performance of his duties to any person other than the Commission, or any other person specified by the Commission and, in the case of an employee, to any person other than the auditor by whom he is employed.

Books, accounts and records to be produced upon demand

135. (1) Upon request by an independent auditor or such other

person appointed by the Commission under section 130 or 131 or by a person who produces a written authority in that behalf given under paragraph 133*(c)*—

(a) a relevant person and any of its directors, executive officer or secretary, employee or agent shall produce any books, accounts and records of, and any assets held by the relevant person relating to his business; and

(b) an auditor appointed by a relevant person shall produce any books, accounts and records held by him relating to the business of the relevant person.

(2) A relevant person and any of its directors, executive officer, secretary, employee or agent and any auditor appointed by the relevant person, shall answer all questions relevant to an examination and audit which are put to him by an independent auditor or such other person appointed by the Commission under sections 130 and 131 or by a person who produces a written authority in that behalf given under paragraph 133*(c)*.

(3) A person who contravenes subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding five years or to both.

Penalty for destroying, concealing or altering books or sending books or property out of Malaysia

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

(a) destroys, conceals or alters any books or property relating to the business of a relevant person; or

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

commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

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

(a) destroyed, concealed or altered any books or property referred to in subsection (1); or

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

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

Rights of exchange to impose obligations

137. The provisions of this Subdivision shall not prevent a stock

exchange or a futures exchange, as the case may be, from imposing on any participating organization or holder of a Capital Markets Services Licence who carries on the business of, dealing in derivatives and who is an affiliate of a derivatives exchange any further obligation or requirement which such stock exchange or futures exchange thinks fit with respect to—

(a) the audit of accounts;

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

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

Division 5 Vesting

Interpretation

138. In this Division, unless the context otherwise requires—

"business" means any activity which a holder of a Capital Markets Services Licence carries on pursuant to its licence and includes all property derived from, or used in connection with, or for the purpose of carrying on such activity and all rights and liabilities arising from such activity;

"liabilities" includes debts, duties and obligations of every kind, whether present, future, vested or contingent;

"property" means any movable or immovable property and includes—

(a) in relation to any property, any right, interest, title, claim, chose in action, power or privilege, whether present, future, vested or contingent or which is otherwise of value;

(b) any conveyance executed for conveying, assigning, appointing, surrendering or otherwise transferring or disposing of immovable property, of which the person executing the conveyance is proprietor, possessed or entitled to a contingent right, either for the whole interest or for any less interest;

(c) securities;

(d) any negotiable instrument, including any bank note, bearer note, Treasury bill, dividend warrant, bill of exchange, promissory note, cheque and negotiable certificate of deposit;

(e) any mortgage or charge, whether legal or equitable, guarantee, lien or pledge, whether actual or constructive, letter of hypothecation or trust receipt, indemnity, undertaking or other means of securing payment or discharge of a debt or liability, whether present, future, vested or contingent; and

(f) any other tangible or intangible property;

"securities account" means an account established by a central depository for a depositor for the recording of securities and for dealings in such securities by the depositor;

"security" includes a mortgage or charge, whether legal or equitable, debenture, bill of exchange, promissory note, guarantee, lien or pledge, whether actual or constructive, hypothecation, indemnity, undertaking or other means of securing payment or discharge of a debt or liability, whether present, future, vested or contingent.

Application to court to facilitate agreement or arrangement for transfer of the whole or part of business of licensed person

139. (1) Where the Commission has granted its approval for a holder of a Capital Markets Services Licence in relation to an agreement or arrangement—

(a) for the sale, disposal or transfer in any manner of the whole or any part of the business of such holder;

(b) for the amalgamation or merger of such holder with any other person; or

(c) for the reconstruction of such holder,

the holder whose business is to be transferred (referred to in this section as "the transferor") and the entity to whom the transfer is to be made (referred to in this section as "the transferee") may make a joint application to the court by way of *ex parte* originating summons for such order of the court as may be required by them to facilitate or enable the agreement or arrangement to be given effect to.

(2) In an application to the court under subsection (1), there may be sought all or any of the following orders:

(a) specifying the date on and from which the agreement or arrangement shall take effect, being a date earlier or later than the date of the application (in this section referred to as "the transfer date");

(b) vesting any property held by the transferor, either alone or jointly with any other person, in the transferee either alone or, as the case may be, jointly with such person, on and from the transfer date, in the same capacity, upon the trusts, and with and subject to the powers, provisions and liabilities applicable to that matter respectively;

(c) for any existing instrument, whether in the form of a deed, will or otherwise, or order of any court, under or by virtue of which any property became or will become vested in the transferor, to be construed and to have effect as if for any reference in that instrument to the transferor there were substituted a reference to the transferee;

(d) for any existing agreement to which the transferor was a party to have effect as if the transferee had been a party to the agreement instead of the transferor;

(e) for any securities account or other account maintained by or on behalf of a transferor for a client to become a securities account or other account maintained by or on behalf of the transferee for the client, subject to such conditions as are applicable between the transferor and its client;

(f) for any securities account or other account maintained by or on behalf of the transferor as principal to become a securities account or other account maintained by or on behalf of the transferee as principal;

(g) for any existing instruction, order, direction, mandate, power of attorney, authority, undertaking or consent, whether or not in relation to an account, given to the transferor, either alone or jointly with another person, to have effect, in respect of anything due to be done, as if given to the transferee either alone or, as the case may be, jointly with the other person;

(h) for any monies received from commission, interest and other sources payable by any person to the transferor to be payable by the person to the transferee;

(i) for any negotiable instrument or order for payment of monies drawn on or given to or accepted or endorsed by the transferor or payable at the place of business of the transferor, whether so drawn, given, accepted or endorsed before, on or after the transfer date, to have the same effect on and from the transfer date as if it had been drawn on, given to or accepted or endorsed by the transferee or were payable at the place of business of the transferee;

(j) for the custody of any document or property held by the transferor as pledgee or custodian, as the case may be, immediately before the transfer date to pass to the transferee and the rights and obligations of the transferor under any pledge or custody agreement relating to any such document or property to be transferred to the transferee;

(k) for any security held before the transfer date by the transferor or by a nominee of, or trustee for, the transferor, as security for the payment or discharge of any liability of any person, to be held by the transferee or, as the case may be, to be held by that nominee or trustee as the nominee of, or trustee for, the transferee, and to the extent of those liabilities be available to the transferee as security for the payment or discharge of those liabilities; and where any such security extends to future advances or future liabilities, to be held by, and to be available, as previously mentioned, to the transferee as security for future advances by, and future liabilities to, the transferee in the same manner in all respects as future advances by, or future liabilities to, the transferor were secured by such security immediately before the transfer date;

(l) where any right or liability of the transferor is transferred to the transferee, for the transferee to have the same rights, powers and remedies, and in particular the same rights and powers as to taking or resisting legal proceedings or making or resisting applications to any authority, for ascertaining, protecting or enforcing that right or resisting that liability as if it had at all times been a right or liability of the transferee, including those rights or liabilities in respect of any legal proceedings or applications to any authority pending immediately before the transfer date by or against the transferor;

(m) for any judgment or award obtained by or against the transferor and not fully satisfied before the transfer date to be enforceable by or, as the case may be, against the transferee;

(n) for all such other incidental, consequential and supplemental orders as are necessary to secure that the agreement or arrangement shall be fully and effectively carried out.

(3) On the hearing of an application under subsection (2), the court may grant an order in the terms applied for, or with such modifications or variations as the court deems just or proper in the circumstances of the case.

(4) Where the order of the court granted under subsection (3) provides for the transfer of any property or business vested in or held

by the transferor, either alone or jointly with any other person, then, by virtue of the order, that property or business shall, on and from that transfer date, become vested in or held by the transferee either alone or, as the case may be, jointly with such other person, and the order shall have effect according to its terms notwithstanding anything in any written law or any rule of law, and shall be binding on any person affected, regardless that the person so affected is not a party to the proceedings under this section or any other related proceedings, or had no notice of the proceedings under this section or of other related proceedings.

(5) The order of the court granted under subsection (3) shall, subject to the directions of the court, be published by the transferee in at least one national language national daily newspaper and one English language national daily newspaper as approved by the Commission.

(6) The transferor shall, within thirty days from the date the order of the court was granted under subsection (3), lodge an authenticated copy of such order together with the agreement or arrangement approved by the Minister or the Commission, as the case may be, with—

(a) the Registrar of Companies; and

(b) the appropriate authority, if any, performing the functions of registering or recording dealings in any movable property transferred pursuant to the order.

(7) Where an order of the court granted under subsection (3) vests any alienated land, or any share or interest in any alienated land, in the transferee—

(a) the court shall, where such alienated land is in Peninsular Malaysia, including the Federal Territory of Putrajaya, pursuant to subsection 420(2) of the National Land Code 1965 [*Act 56/1965*], cause a copy of the order to be served on the Registrar of Titles or the Land Administrator immediately after the order is granted so that the Registrar of Titles or the Land Administrator can effect the provisions of subsections 420(2), (3) and (4) respectively;

(b) where such alienated land is in Sabah, the transferee shall, as soon as practicable after the order has been granted, present an authenticated copy of such order to the Registrar for the registration of the vesting of the alienated land or of the share or interest in alienated land as provided under subsection 114(2) of the Land Ordinance [*Sabah Cap. 68*];

(c) where such alienated land is in Sarawak, the transferee shall, as soon as practicable after the order has been granted, produce an authenticated copy of such order to the Registrar for the registration of the vesting of the alienated land or of the share or interest in alienated land in the transferee as provided under section 171 of the Sarawak Land Code [*Cap. 81*]; or

(d) where such alienated land is in the Federal Territory of Labuan, the transferee shall, as soon as practicable after the order has been granted, produce an authenticated copy of such order to the Registrar for the registration of the vesting of the alienated land or of the share or interest in alienated land as provided under subsection 114(2) of the Land Ordinance as modified by the Federal Territory of Labuan (Modification of Land Ordinance) Order 1984 [*P.U. (A) 291/1984*].

(8) An order of the court granted under subsection (3) may relate to any property or business of the transferor outside Malaysia and, if it so relates, effect may be given to it either in accordance with any reciprocal arrangements relating to enforcement of judgments that may exist between Malaysia and the country, territory or place outside Malaysia where the property or business is or, where there are no such arrangements, in accordance with the law applicable in such country, territory or place.

PART IIIA PRIVATE RETIREMENT SCHEME INDUSTRY

Division 1 Preliminary

Interpretation

139A. In this Part, unless the context otherwise requires—

"accrued benefits" means the amount of a member's beneficial interest in a private retirement scheme;

"contribution" means an amount paid by a contributor in respect of a private retirement scheme;

"contributor" means any person who makes contribution into a private retirement scheme and includes a member or an employer who makes contribution into a private retirement scheme on behalf of his employees;

"employer-sponsored retirement scheme" means a retirement scheme established by a corporation for the purpose, or having the effect of providing retirement benefits to employees of that corporation or for its related corporation;

"employer trustee" means a trustee of an employer-sponsored retirement scheme;

"member" means an individual who has a beneficial interest under a private retirement scheme or an employer-sponsored retirement scheme;

"principal officer" means a person who is a director, chief executive officer, chief operation officer or head of compliance of a private retirement scheme provider;

"private retirement scheme" means a retirement scheme governed by a trust, offered or provided to the public for the sole purpose, or having the effect, of building up long term savings for retirement for members where the amount of the benefits is to be determined solely by reference to the contributions made to the scheme and any declared income, gains and losses in respect of such contributions but does not include—

(a) any pension fund approved under section 150 of the Income Tax Act 1967; or

(b) any retirement scheme or retirement fund established or provided by the Federal Government, State Government or any statutory body established by an Act of Parliament or a State law;

"private retirement scheme administrator" means a person who is approved under section 139C to perform the function of record keep-

ing, administration and customer service for members and contributors in relation to contributions made in respect of a private retirement scheme and such other duties and functions as may be specified by the Commission;

"private retirement scheme provider" means a person who provides and manages a private retirement scheme;

"rules" means the memorandum of association, the articles of association or any other rules or directions by whatever name called and wherever contained, governing the operation, management or procedures of, or services provided by a private retirement administrator;

"scheme trustee" means a trustee of a private retirement scheme;

"supervisory authority" means any authority, body or agency whether within or outside Malaysia, other than the Commission, which is responsible for the supervision or oversight of any person referred to in section 139ZM;

"terms of reference" means a set of terms which defines the scope, application, operation and procedures of a private retirement scheme administrator.

Division 2 Private retirement scheme

Subdivision 1—Private retirement scheme administrator

Requirement for approval to establish or operate a private retirement scheme administrator

139B. (1) A person shall not establish, operate, or assist in establishing or operating, or hold himself out as, a private retirement scheme administrator unless the person is approved by the Commission.

(2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to a fine not exceeding ten million ringgit.

Application for approval

139C. (1) The Commission may approve a body corporate to establish, operate or maintain a private retirement scheme administrator.

(2) An application for approval to establish, operate or maintain a private retirement scheme administrator shall be made to the Commission in such form and manner as may be specified by the Commission.

(3) The Commission may require an applicant to furnish the Commission with such information or documents as the Commission considers necessary for the purpose of the application.

(4) The Commission may approve an application under this section, subject to any terms and conditions as the Commission thinks fit.

(5) The Commission may vary, add to or remove any terms and conditions imposed under subsection (4) at any time as the Commission deems necessary.

(6) Any person who contravenes any term or condition imposed under subsection (4) or (5) commits an offence.

Refusal to approve

139D. Where an application is made under section 139C, the Commission may refuse the application on any of the following grounds:

(a) the application was not made in accordance with section 139C;

(b) the applicant has failed to comply with any requirement of this Act or any guidelines made under this Act;

(c) any information or document that is furnished by the applicant to the Commission is false or misleading or from which there is a material omission;

(d) the applicant is in the course of being wound up or otherwise dissolved;

(e) execution against the applicant in respect of a judgment debt has been returned unsatisfied in whole or in part;

(f) a receiver, a receiver and manager or an equivalent person has been appointed within or outside Malaysia, or in respect of any property of the applicant;

(g) the applicant has, whether within or outside Malaysia, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;

(h) the applicant or any of its directors, chief executive or managers—

(i) has been convicted, whether within or outside Malaysia, of an offence involving fraud, dishonesty or violence;

(ii) has been convicted of an offence under any securities laws or any law outside Malaysia relating to capital market;

(iii) has been subjected to any action taken by the Commission under section 354, 355 or 356;

(iv) has contravened any provision made by or under any written law whether within or outside Malaysia appearing to the Commission to be enacted for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or the management of companies;

(v) has engaged in any business practices appearing to the Commission to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on its or his method of conducting business;

(vi) has engaged in or has been associated with any other business practices or otherwise conducted itself or himself in such a way as to cast doubt on its or his competence and soundness of judgment; or

(vii) is an undischarged bankrupt whether within or outside Malaysia;

(i) the Commission has reason to believe that the applicant or any of its directors, chief executive or managers may not be able to act in the best interest of its members having regard to their reputation, character, financial integrity and reliability;

(j) there are other circumstances which are likely to—

(i) lead to the improper conduct of business by the applicant or by any of its directors, chief executive or managers; or

(ii) reflect discredit on the manner of conducting the business of the applicant;

(k) the applicant does not have sufficient financial, human or other resources to carry out its functions; or

(l) the Commission has reason to believe that the applicant or any of its directors, chief executive or managers will not be able to act in the interest of the public or the members.

Appointment of directors of a private retirement scheme administrator

139E. (1) No appointment, election or nomination of a director or chief executive of a private retirement scheme administrator can be made without the prior approval of the Commission.

(2) The private retirement scheme administrator shall ensure that at least one-third of the number of directors on its board shall be public interest directors in accordance with such criteria as may be specified by the Commission.

Withdrawal of approval

139F. (1) The Commission may withdraw an approval granted to a private retirement scheme administrator where the Commission is satisfied that—

(a) there exists a ground on which the Commission may refuse an application under section 139D;

(b) the private retirement scheme administrator fails to commence operations within six months from the date of approval unless otherwise specified by the Commission;

(c) the private retirement scheme administrator is not able to perform any of its duties or responsibilities under section 139H;

(d) the private retirement scheme administrator has contravened any term and condition imposed by the Commission;

(e) the private retirement scheme administrator has failed to comply with any direction issued by the Commission under this Act; or

(f) the private retirement scheme administrator has failed to provide assistance to the Commission or to a person acting on behalf of or with the authority of the Commission as required under subsection 139ZL(2).

(2) Subject to subsection (3), the Commission may withdraw an approval upon a request in writing made to the Commission by a private retirement scheme administrator to cease operating as a private retirement scheme administrator.

(3) Where a private retirement scheme administrator made a request for cessation of its operations under subsection (2), the Commission may refuse to withdraw the approval if the Commission considers that—

(a) it is in the interest of the public or the members that any matter concerning the private retirement scheme administrator should be investigated before the approval is withdrawn under subsection (2); or

(b) the withdrawal of the approval would not be in the interest of the public or the members.

(4) Notwithstanding the withdrawal of an approval, the Commission may require the private retirement scheme administrator to continue to carry on such activities affected by the withdrawal as the Commission may specify, on or after the date on which the withdrawal takes effect, for the purposes of—

(a) closing down the operations of the private retirement scheme administrator or ceasing to provide the services; or

(b) protecting the interest of the public or the members.

(5) Where the Commission requires the private retirement scheme administrator to continue its activities under subsection (4), the private retirement scheme administrator shall not, by reason of its carrying on the activities, be regarded as having contravened section 139B.

(6) The Commission shall not take any action under subsection (1) without giving the private retirement scheme administrator an opportunity to be heard.

Effect of withdrawal

139G. Any withdrawal issued under section 139F shall not operate so as to—

(a) avoid or affect any agreement, transaction or arrangement entered into the system operated by the private retirement scheme administrator where—

(i) the agreement, transaction or arrangement was entered into before the withdrawal of approval; or

(ii) the agreement, transaction or arrangement was entered into after the withdrawal of approval under the circumstances provided under subsection 139F(4); or

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

Duties and responsibilities of a private retirement scheme administrator

139H. (1) The duties and responsibilities of a private retirement scheme administrator shall include—

(a) receiving instructions in such form and manner as may be specified by the Commission;

(b) transmitting such instructions in such form and manner as may be specified by the Commission;

(c) keeping records of all transactions or monies received or paid out;

(d) providing information to an approved private retirement scheme provider, scheme trustee, member or any other person as may be specified by the Commission; and

(e) discharging such other duties and functions as may be specified by the Commission.

(2) A private retirement scheme administrator shall at all times

exercise its duties and responsibilities in the public interest, having particular regard to the need for the protection of members.

(3) A private retirement scheme administrator shall immediately notify the Commission if it becomes aware of any matter which adversely affects or is likely to adversely affect the interest of members.

(4) A private retirement scheme administrator shall not impose any fee or charges or vary such fee or charges, on a private retirement scheme provider or a member without the prior approval of the Commission.

(5) A private retirement scheme administrator shall not outsource or delegate any of its duties and responsibilities, systems or operations to any person without the prior approval of the Commission.

Terms of reference and rules of a private retirement scheme administrator

139I. (1) A private retirement scheme administrator shall put in place a set of terms of reference and rules approved by the Commission governing or relating to the proper administration of the private retirement scheme administrator.

(2) No amendment to the terms of reference or rules shall be made without the prior approval of the Commission.

Monies received by a private retirement scheme administrator

139J. (1) All monies received by a private retirement scheme administrator in respect of a private retirement scheme for the benefit of a member shall be paid into a trust account in such form and manner as may be specified by the Commission.

(2) A private retirement scheme administrator shall not withdraw any monies from a trust account except—

(a) in accordance with the written instruction of a person entitled to the monies or for his benefit; or

(b) otherwise authorized by law.

(3) Except as provided in subsection (2), monies held in a trust account shall not be available for payment of the debts of a private retirement scheme administrator or be liable to be paid or taken in execution under an order or process of any court.

(4) A person who contravenes this section commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to a fine not exceeding five million ringgit.

Accounts and reports in respect of a private retirement scheme administrator

139K. The provisions of Subdivision 6 of Division 4 of Part III shall apply to a private retirement scheme administrator.

Power of Commission to take action in respect of private retirement scheme administrator

139L. (1) Where the Commission reasonably believes that the

interests of the members are likely to be adversely affected or are adversely affected, the Commission may, by issuing a written direction, take any one or more of the following actions:

(a) require a private retirement scheme administrator to take any action to do or not to do any act or thing, in relation to its business and affairs, or its directors or officers, which the Commission considers necessary;

(b) notwithstanding any written law or any limitation contained in the rules of the private retirement scheme administrator—

(i) remove from office any director or chief executive of the private retirement scheme administrator;

(ii) appoint any person to the office of director or chief executive of the private retirement scheme administrator and provide in the direction for the person so appointed to be paid by the private retirement scheme administrator;

(iii) appoint a person to advise the private retirement scheme administrator in relation to the proper conduct of its business and affairs and provide in the direction for the person so appointed to be paid by the private retirement scheme administrator; or

(iv) require the private retirement scheme administrator to furnish the Commission any information or record as the Commission considers necessary.

(2) Where the Commission withdraws an approval under section 139F, the Commission may, by issuing a written direction, take any one or more of the following actions:

(a) notwithstanding any written law, the Commission or any person appointed by the Commission to act on its behalf, assume control of the whole or such part of anyregulated assets, business and affairs of a private retirement scheme administrator and to carry on the whole or such part of business and affairs of the private retirement scheme administrator; or

(b) subject to subsections (4) and (5), direct a private retirement scheme administrator to transfer any regulated assets to any other person as may be specified by the Commission.

(3) For the purposes of this section, "regulated assets" means—

(a) all information or records obtained, stored or processed; and

(b) systems developed, operated or maintained,

by a private retirement scheme administrator in carrying out its duties and responsibilities.

(4) All information or records obtained, stored or processed by a private retirement scheme administrator shall belong to the Commission at all times.

(5) Where the regulated assets are transferred to such person under paragraph (2)*(b)*, the private retirement scheme administrator shall be entitled to such compensation as may be determined by the Commission for the systems developed, operated or maintained by the private retirement scheme administrator.

(6) Subsection (5) shall not apply where the withdrawal of approval is for the reason set out under subparagraphs 139D*(h)*(i), (ii), (iii), (iv), (v) or paragraph 139F(1)*(e)*.

Duty to take reasonable security measures

139M. A private retirement scheme administrator shall take all reasonable measures to protect information and documents relating to the affairs or the account of the members against any unauthorized access, alteration, disclosure or dissemination.

Duty to maintain secrecy

139N. (1) A person who has by any means access to any information or document relating to the affairs or the accounts of any contributor shall not give, divulge, reveal or otherwise disclose the information or document to any person except—

(a) in the circumstances set out under section 139O; or

(b) to the Commission if the Commission is of the view that such disclosure is necessary in the interest of the public or for the protection of investors.

(2) A person who has any information or document which to his knowledge has been disclosed in contravention of subsection (1) shall not in any manner disclose such information or document to any other person.

(3) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding five years or to both.

Permitted disclosure

139O. A person referred to in subsection 139N(1) shall not refuse to disclose any information or document—

(a) which the contributor, or his personal representative, has given permission in writing to disclose;

(b) in the case where the contributor is declared a bankrupt within or outside Malaysia;

(c) for the purpose of instituting, or in the course of, any civil proceedings—

(i) relating to the account of a contributor in a private retirement scheme; and

(ii) where a private retirement scheme administrator, a private retirement scheme provider, a contributor or an employer contributing on behalf of a contributor, is a party to the civil proceedings,

(c) provided that where a contributor is not a party to the civil proceedings, his prior written consent has been obtained;

(d) to any person duly authorized to investigate into any offence under any law and such disclosure being, in any case, limited to the affairs or the account of the contributor suspected of the offence;

(e) for the purpose of enabling or assisting the Commission in the discharge of its function under the securities laws;

(f) for the purpose of enabling or assisting auditors of a private retirement scheme administrator to discharge their function; or

(g) in a summary or collection of information, framed in such a way

so as not to enable the identity of any contributor, to whom the information relates, to be ascertained.

Subdivision 2—Private retirement scheme provider

Requirement for approval to establish, offer or provide a private retirement scheme

139P. (1) A person shall not establish, offer or provide a private retirement scheme or hold himself out as establishing, offering or providing a private retirement scheme unless the Commission approves—

(a) the person as a private retirement scheme provider under section 139Q;

(b) the private retirement scheme under section 139V; and

(c) the scheme trustee under section 139ZC.

(2) A person shall not take or use or adopt the name or title "private retirement scheme" or "retirement scheme" in relation to its business or make any representation to such effect in any manner unless—

(a) it is a scheme approved under section 139V;

(b) it is a pension fund approved under section 150 of the Income Tax Act 1967;

(c) it is a retirement scheme or retirement fund established or provided by the Federal Government, State Government or any statutory body established by an Act of Parliament or a State law; or

(d) it is a scheme prescribed by the Minister not to be a private retirement scheme for the purposes of this Part.

(3) A person shall not take or use or by inference adopt the name or title "retirement plan" or "retirement product" or make any representation to such effect in any manner without the approval of the Commission.

(4) Subsection (3) shall not apply to any person solely under the supervision or oversight of Bank Negara.

(5) A person who contravenes this section commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to a fine not exceeding ten million ringgit.

Application for approval

139Q. (1) An application for approval as a private retirement scheme provider shall be made to the Commission in such form and manner as may be specified by the Commission and shall be accompanied by a prescribed application fee.

(2) The Commission may require an applicant to furnish the Commission with such information or documents as the Commission considers necessary for the purpose of the application.

(3) The Commission may approve an application under this section, subject to any conditions or restrictions as the Commission thinks fit.

(4) The Commission may vary, add to or remove any conditions or restrictions imposed under subsection (3) at any time as the Commission deems necessary.

(5) Any person who contravenes any conditions or restrictions imposed under subsection (3) or (4) commits an offence.

Refusal to approve

139R. Where an application is made under section 139Q, the Commission may refuse the application on any of the following grounds:

(a) the applicant is not a holder of a Capital Markets Services Licence who carries on the business of fund management;

(b) the application was not made in accordance with section 139Q;

(c) the applicant has failed to comply with any requirement of this Act or any guidelines made under this Act;

(d) any information or document that is furnished by the applicant to the Commission is false or misleading or from which there is a material omission;

(e) the applicant is in the course of being wound up or otherwise dissolved;

(f) execution against the applicant in respect of a judgment debt has been returned unsatisfied in whole or in part;

(g) a receiver, a receiver and manager or an equivalent person has been appointed within or outside Malaysia, or in respect of any property of the applicant;

(h) the applicant has, whether within or outside Malaysia, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation; or

(i) the Commission has reason to believe that the applicant or any of its principal officer will not be able to act in the interest of the public or the members.

Withdrawal of approval

139S. (1) The Commission may withdraw an approval granted to an approved private retirement scheme provider where the Commission is satisfied that—

(a) the approved private retirement scheme provider ceases to hold a Capital Markets Services Licence who carries on the business of fund management;

(b) there exists a ground on which the Commission may refuse an application under section 139R;

(c) the approved private retirement scheme provider fails to launch the approved private retirement scheme within six months from the date the private retirement scheme is approved;

(d) the approved private retirement scheme provider or any of its principal officers—

(i) has contravened any conditions or restrictions imposed by the Commission;

(ii) has failed to comply with any direction issued by the Commission under this Act;

(iii) has failed to provide assistance to the Commission or to a person acting on behalf of or with the authority of the Commission as required under subsection 139ZL(2); or

(iv) has not acted efficiently, honestly or fairly; or

(e) the conduct of the approved private retirement scheme provider has had an adverse effect on—

(i) the financial soundness of the approved private retirement scheme; or

(ii) the interest of the members.

(2) Subject to subsection (3), the Commission may withdraw an approval upon a request in writing made to the Commission by an approved private retirement scheme provider to cease operating as a private retirement scheme provider.

(3) Where an approved private retirement scheme provider made a request under subsection (2), the Commission may refuse to withdraw the approval where the Commission considers that—

(a) it is in the interest of the public or the members that any matter concerning the approved private retirement scheme provider should be investigated before the approval is withdrawn under subsection (2); or

(b) the withdrawal of the approval would not be in the interest of the public or the members.

(4) Notwithstanding the withdrawal of an approval, the Commission may require the private retirement scheme provider to continue to carry on such activities affected by the withdrawal as the Commission may specify, on or after the date on which the withdrawal takes effect, for the purposes of—

(a) closing down the operations of the approved private retirement scheme provider; or

(b) protecting the interest of the public or the members.

(5) Where the Commission requires a private retirement scheme provider to continue its activities under subsection (4), the private retirement scheme provider shall not, by reason of its carrying on the activities, be regarded as having contravened section 139P.

(6) The Commission shall not take any action under subsection (1) without giving the private retirement scheme provider an opportunity to be heard.

Effect of withdrawal

139T. Any withdrawal issued under section 139S shall not operate so as to—

(a) avoid or affect any agreement, transaction or arrangement relating to the private retirement schemeentered into by the private retirement scheme provider where—

(i) the agreement, transaction or arrangement was entered into before the withdrawal of approval; or

(ii) the agreement, transaction or arrangement was entered into after the withdrawal of approval under the circumstances provided under subsection 139S(4); or

(b) affect any right, obligation or liability arising under the agreement, transaction or arrangement referred to in paragraph *(a)*.

Notification of disqualifying event

139U. (1) An approved private retirement scheme provider shall,

immediately after the happening of an event under section 139S, give to the Commission written notice setting out the particulars of the event.

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

Subdivision 3—Private retirement scheme

Application for approval of a private retirement scheme

139V. (1) An application for approval of a private retirement scheme shall be made to the Commission in such form and manner as may be specified by the Commission and shall be accompanied by a prescribed application fee.

(2) The Commission may require an applicant to furnish the Commission with such information or documents as the Commission considers necessary for the purpose of the application.

(3) In granting an approval under this section, the Commission may, where it considers appropriate—

(a) approves the private retirement scheme subject to such terms and conditions as it thinks fit; or

(b) approves the private retirement scheme with such revisions and subject to such terms and conditions as it thinks fit.

(4) The Commiss vbion may vary, add to or remove any terms and conditions imposed under subsection (3) at any time as the Commission deems necessary.

(5) A person who contravenes any term or condition imposed under subsections (3) or (4) commits an offence.

Refusal to approve

139W. Where an application is made under section 139V, the Commission may refuse the application on any of the following grounds:

(a) the applicant is not an approved private retirement scheme fund provider;

(b) the application is not made in accordance with section 139V;

(c) the private retirement scheme does not comply with any requirement of this Act or any guidelines made under this Act;

(d) any information or document furnished to the Commission in respect of a private retirement scheme is false or misleading or from which there is a material omission; or

(e) the Commission has reason to believe that the approval will not be in the interest of the public or the members of any private retirement scheme.

Withdrawal of approval

139X. (1) The Commission may withdraw an approval granted to an approved private retirement scheme where the Commission is satisfied that—

(a) there exists a ground on which the Commission may refuse an application under section 139W;

(b) the approved private retirement scheme is not launched within six months from the date of approval;

(c) the approved private retirement scheme provider has failed to comply with any of the terms and conditions imposed in relation to the private retirement scheme or any direction issued by the Commission under this Act; or

(d) it is necessary in order to protect the interest of the public or the members.

(2) Subject to subsection (3), the Commission may, upon a request in writing made to the Commission by the private retirement scheme provider, withdraw an approval granted to the approved private retirement scheme.

(3) Where a request in writing is made to the Commission under subsection (2), the Commission may refuse to withdraw the approval where the Commission considers that—

(a) it is in the interest of the public or the members that any matter concerning the approved private retirement scheme should be investigated before the approval is withdrawn under subsection (2); or

(b) the withdrawal of the approval would not be in the interest of the public or the members.

(4) The Commission shall not take any action under subsection (1) without giving the approved private retirement scheme provider an opportunity to be heard.

Contributions to vest in member as accrued benefits

139Y. (1) A contribution in respect of a member of an approved private retirement scheme shall vest in the member as accrued benefits as soon as it is paid to either the approved private retirement scheme provider or the scheme trustee, whichever is earlier.

(2) Income or profits derived from the investment of accrued benefits of a member of an approved private retirement scheme, after taking into account any loss arising from any such investment, shall also vest in the member as accrued benefits as soon as they are received by either the approved private scheme provider or the scheme trustee, whichever is earlier.

78 (3) Notwithstanding subsections (1) and (2), the Commission may specify the manner in which accrued benefits will be accounted for and vested in a member.

Preservation of accrued benefits

139Z. For the purpose of preserving accrued benefits in an approved private retirement scheme, no private retirement scheme provider or scheme trustee shall pay or otherwise dispose of any part of the accrued benefits to any member or any other person except in the manner as may be specified by the Commission.

Protection of accrued benefits

139ZA. No part of any accrued benefits in an approved private retirement scheme in respect of a member shall be taken in execution of a judgment debt or be the subject of any charge, pledge, lien, mortgage, transfer, assignment or alienation by or on behalf of the member and any purported disposition contrary to this section is void.

Effect of withdrawal

139ZB. (1) A withdrawal of an approval to a private retirement scheme under section 139X shall not affect any right of a member in respect of accrued benefits that the member is entitled to as provided under section 139Y.

(2) Where the Commission withdraws an approval under section 139X, the Commission may, by issuing a written direction, direct the private retirement scheme provider or the scheme trustee to transfer the accrued benefits to another approved private retirement scheme.

Subdivision 4—Scheme trustee

Approval of scheme trustee

139ZC. (1) A person shall not act or be appointed to act as a scheme trustee in relation to a private retirement scheme without the approval of the Commission.

(2) An application to be a scheme trustee shall be made to the Commission in such form and manner as may be specified by the Commission and shall be accompanied by a prescribed application fee.

(3) The Commission may approve the application under this section, subject to any terms and conditions as the Commission thinks fit.

(4) The Commission may vary, add to or remove any terms and conditions imposed under subsection (3) at any time as the Commission deems necessary.

(5) A scheme trustee who contravenes subsection (1) or any terms or conditions imposed under subsection (3) or (4) commits an offence.

Refusal to approve

139ZD. (1) Where an application is made under section 139ZC, the Commission may refuse the application on any of the following grounds:

(a) the applicant—

(i) is a shareholder who beneficially holds shares in the private retirement scheme provider;

(ii) is beneficially entitled to monies owed by the private retirement scheme provider to it; or

(iii) is a related corporation of—

(A) the persons referred to in subparagraphs (i) and (ii); or

(B) the private retirement scheme provider;

(b) the application was not made in accordance with section 139ZC;

(c) the applicant has failed to comply with any requirements of this Act or any guidelines made under this Act;

(d) any information or document that is furnished by the applicant to the Commission is false or misleading or from which there is a material omission; or

(e) the Commission has reason to believe that the applicant will not be able to act in the interest of the public or the members.

(2) Notwithstanding paragraph (1)*(a)*, a person is not prevented

from being appointed or from acting, as a scheme trustee by reason only that—

(a) the monies that the private retirements scheme provider owes to the scheme trustee or any related corporation of the scheme trustee are monies to which the scheme trustee or any related corporation of the scheme trustee is entitled to as scheme trustee, in accordance with the provisions or covenants of the deed; or

(b) the scheme trustee or a related corporation of a scheme trustee, despite being a beneficial owner in the shares of the private retirement scheme provider, does not have the right to exercise more than one-twentieth of the voting power at any general meeting of the private retirement scheme provider.

Withdrawal of approval

139ZE. The Commission may withdraw an approval granted to an approved scheme trustee where the Commission is satisfied that—

(a) there exists a ground on which the Commission may refuse an application under section 139ZD;

(b) the scheme trustee has contravened any term or condition imposed by the Commission;

(c) the scheme trustee has failed or refused to act in accordance with the provisions or covenants of the deed;

(d) the scheme trustee has failed to comply with any direction issued by the Commission under this Act; or

(e) the scheme trustee has failed to provide assistance to the Commission or to a person acting on behalf of or with the authority of the Commission as required under subsection 139ZL(2).

Division 3 Trustee for employer-sponsored retirement scheme

Approval of employer trustee

139ZF. (1) A person shall not act or be appointed to act as an employer trustee in relation to an employer-sponsored retirement scheme without the approval of the Commission.

(2) An application to be an employer trustee shall be made to the Commission in such form and manner as may be specified by the Commission and shall be accompanied by a prescribed application fee.

(3) The Commission may approve the application under this section, subject to any terms and conditions as the Commission thinks fit.

(4) The Commission may vary, add to or remove any terms and conditions imposed under subsection (3) at any time as the Commission deems necessary.

(5) An employer trustee who contravenes subsection (1) or any terms or conditions imposed under subsection (3) or (4) commits an offence.

Refusal to approve

139ZG. Where an application is made under section 139ZF, the Commission may refuse the application on any of the following grounds:

(a) the application was not made in accordance with section 139ZF;

(b) the applicant has failed to comply with any requirement of this Act or any guidelines made under this Act;

(c) any information or document that is furnished by the applicant to the Commission is false or misleading or from which there is a material omission; or

(d) the Commission has reason to believe that the applicant will not be able to act in accordance with the provisions and the covenants of the trust deed.

Withdrawal of approval

139ZH. The Commission may withdraw an approval granted to an approved employer trustee where the Commission is satisfied that—

(a) there exists a ground on which the Commission may refuse an application under section 139ZG;

(b) the employer trustee has contravened any terms or conditions imposed by the Commission;

(c) the employer trustee has failed or refused to act in accordance with the provisions or covenants of the deed;

(d) the employer trustee has failed to comply with any direction issued by the Commission under this Act; or

(e) the employer trustee has failed to provide assistance to the Commission or to a person acting on behalf of or with the authority of the Commission as required under subsection 139ZL(2).

Division 4 General

Power to make regulations

139ZI. The Commission may, with the approval of the Minister, make any regulations—

(a) concerning all matters relating to the private retirement scheme administrator, private retirement scheme provider, private retirement scheme, scheme trustee and employer trustee under this Part; or

(b) concerning duties, standards and conduct of persons involved in a private retirement scheme.

Fee payable

139ZJ. (1) The following persons under this Part—

(a) a private retirement scheme administrator;

(b) an approved private retirement scheme provider;

(c) a scheme trustee of an approved private retirement scheme; or

(d) an employer trustee of an employer-sponsored retirement scheme, shall pay the fees as set out under regulations made under this Act.

(2) Any fee paid to the Commission under this Part shall be paid into the Fund established under section 23 of the Securities Commission Malaysia Act (SCMA) 1993 1993.

False or misleading statement

139ZK. (1) For the purposes of this Part, any person who makes or submits to the Commission any statement or information that is false or misleading or wilfully omits to state any matter or thing without

which the statement or information is misleading in a material aspect, commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to a fine not exceeding three million ringgit.

(2) Where a statement or information under subsection (1) has been submitted or provided to the Commission and a person becomes aware before the private retirement scheme is launched that the statement or information may be false or misleading, that person shall forthwith notify the Commission and shall take such action as the Commission may require.

Power to issue directions, *etc.*

139ZL. (1) Without prejudice to sections 125**,** 354, 355 and 356, where the Commission—

(a) is satisfied that there exists a ground for withdrawal of approval under section 139F, 139S, 139X, 139ZE or 139ZH;

(b) becomes aware that a statement or information provided or submitted to it under this Part is false or misleading or from which there is a material omission; or

(c) is satisfied that the interest of the members are likely to be jeopardised, or are jeopardised,

the Commission may issue a direction in writing to any person to take such steps as may be specified in the direction to—

(A) comply with, observe, enforce or give effect to—

(i) any requirement or provision of this Act or any securities laws;

(ii) any guidelines or written notice issued by the Commission; or

(iii) any term, condition or restriction imposed under or pursuant to this Act; or

(B) take such steps to remedy a breach or to mitigate the effect of such breach.

(2) Any person referred to under this Part shall provide assistance to the Commission, or to a person acting on behalf of or with the authority of the Commission, including the furnishing of such returns, and the provision of such information relating to its operations or any other information as the Commission or the person acting on behalf of or with the authority of the Commission may require for the proper administration of securities laws.

(3) A person who fails to comply with any direction issued under subsection (1) or fails to provide assistance under subsection (2) commits an offence.

Disclosure of information to the Commission

139ZM. (1) For the purposes of this Part, the Commission may request the following person to submit to the Commission any information or document which the Commission requires for the effective regulation or supervision of the private retirement scheme industry:

(a) a private retirement scheme provider;

(b) a partner or an associate of the private retirement scheme provider; or

(c) any person who provides outsourcing services to persons mentioned in paragraph *(a)* or *(b)*.

(2) For the purposes of subsection (1), where the person under paragraph (1)*(b)* or *(c)* is solely under the supervision or oversight of Bank Negara, the Commission shall make such request through Bank Negara.".

PART IV COMPENSATION FUND AND FIDELITY FUND

Division 1 Compensation fund

Interpretation

140. In this Part, unless the context otherwise requires—

"compensation fund" means a compensation fund established and maintained under section 141;

"fidelity fund" means a fidelity fund established under section 159;

"relevant derivatives exchange", in relation to fidelity fund, means the derivatives exchange which established the fidelity fund under section 159;

"relevant stock exchange", in relation to a compensation fund, means the stock exchange which established the compensation fund under section 141.

Establishment of compensation fund

141. (1) A relevant stock exchange shall establish and maintain a compensation fund which shall be administered under this Division.

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

(3) The Minister may by regulations prescribe—

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

(i) the powers of the Commission;

(ii) the powers, obligations and liabilities of the relevant stock exchange; and

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

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

(c) without prejudice to section 152, in respect of claims made against a compensation fund of a relevant stock exchange,—

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

(ii) the circumstances under which claims are to be allowed;

(iii) the procedures and limitations in respect of such claims; and

(iv) appeals and the procedures applicable thereto.

Monies constituting compensation fund

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

(a) monies paid to the credit of the compensation fund by the relevant stock exchange on the establishment of the compensation fund;

(b) monies paid to the relevant stock exchange by participating organizations under this Division;

(c) the interest and profits from time to time accruing from the investment of the compensation fund;

(d) monies paid into the compensation fund by the relevant stock exchange under subsection 146(1);

(e) monies recovered by or on behalf of the relevant stock exchange in the exercise of a right of action conferred by this Division;

(f) monies paid by an insurer under a contract of insurance or indemnity entered into by the relevant stock exchange under section 156; and

(g) all other monies lawfully paid into the compensation fund.

Compensation fund to be kept in separate account

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

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

Payments out of compensation fund

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

(a) the amount of all claims, including costs, allowed by the relevant stock exchange or established against the compensation fund under this Division;

(b) all legal and other expenses incurred in investigating or defending claims made under this Division or incurred in relation to the compensation fund or in the exercise by the relevant stock exchange of the rights, powers and authority conferred by this Division in relation to the compensation fund;

(c) all premiums payable in respect of contracts of insurance or indemnity entered into by the relevant stock exchange under section 156;

(d) all expenses incurred in the administration of the compensation fund, including the remuneration and allowances of any persons employed by the relevant stock exchange in relation thereto; and

(e) all other monies payable out of the compensation fund in accordance with the provisions of this Act.

Accounts of compensation fund

145. (1) A relevant stock exchange shall establish and keep proper

accounts of the compensation fund and shall, before the thirty-first day of December in each year cause a balance sheet in respect of such accounts to be made out as at the preceding thirtieth day of June.

(2) The relevant stock exchange shall appoint an auditor to audit the accounts of the compensation fund.

(3) The auditor appointed by the relevant stock exchange shall regularly and fully audit the accounts of the compensation fund and shall audit each balance sheet and cause it to be laid before the relevant stock exchange not later than one month after the balance sheet was made out.

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

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

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

Contribution to compensation fund

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

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

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

Provision where compensation fund exceeds fifty million ringgit

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

(2) If a compensation fund, for any reason, stands below the sum of ten million ringgit, or such other sum as the Commission may after consultation with the relevant stock exchange determine, the relevant stock exchange may, with the approval of the Commission, require a participating organization of the relevant stock exchange who has been freed and discharged from the requirement to make annual contributions under subsection (1), to such extent as it thinks necessary, to pay annual contributions under section 147.

Levy in addition to annual contributions

149. (1) If at any time a compensation fund is not sufficient to satisfy the liabilities of the relevant stock exchange that are then ascertained in relation thereto, the relevant stock exchange may impose on every participating organization liable to contribute to that compensation fund a levy of such amount as may be determined by the Minister to be appropriate as reasonable compensation against such liabilities, to be paid into the compensation fund.

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

Power of relevant stock exchange to make advances to compensation fund

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

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

Investment of monies in compensation fund

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

(a) on fixed deposit with a licensed institution; or

(b) in securities in which trustees are authorized by law to invest trust funds.

Application of compensation fund

152. (1) Subject to this Division, if a person (the "person suffering the loss") suffers monetary loss at any particular time because of—

(a) a defalcation, or because of fraudulent misuse of monies or other property, by a director, officer, employee or representative of a holder of a Capital Markets Services Licence who carries on the business of dealing in securities that is at that time a participating organization; or

(b) an insolvency of a participating organization,

and the loss is suffered in respect of monies or other property that was, in connection with the participating organization's dealing in se-

curities, entrusted to or received by the participating organization, or by a director, officer, employee or representative of the participating organization (whether before or after the commencement of this section) for or on behalf of the person suffering the loss or another person, or because the participating organization was trustee of the monies or other property, the compensation fund of the relevant stock exchange shall be applied for the purpose of compensating the person suffering the loss.

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

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

(a) compensating for monetary loss suffered by a person referred to in subsection (1) or (2), as the case may be; or

(b) compensating for monetary loss suffered by such person in respect of a particular participating organization,

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

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

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

(a) when the participating organization is being wound up; or

(b) where the relevant stock exchange determines, in accordance with its rules that the participating organization appears to be unable, or likely to become unable, to meet its obligations in respect of all trades effected on the relevant stock exchange to which the participating organization is a party.

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

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

Power of relevant stock exchange to require production of documents

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

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

154. If a relevant stock exchange makes a payment out of its compensation fund in respect of a claim from compensation under this Division—

(a) the relevant stock exchange is subrogated to the extent of the payment to all the rights and remedies of the claimant in respect of the loss suffered by the claimant; and

(b) the claimant shall not have any claim or right under any bankruptcy or legal proceeding or otherwise—

(i) to receive in respect of the loss any sum out of the assets of the participating organization concerned; or

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

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

Payment of claims only from compensation fund

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

Power of relevant stock exchange to enter into contract of insurance

156. (1) A relevant stock exchange may enter into a contract with a registered insurance business within Malaysia under which the relevant stock exchange will be insured or indemnified, to the extent and in the manner provided by the contract, against liability in respect of claims under this Division or any regulations made under this Act.

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

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

Application of insurance monies

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

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

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

Monies in compensation fund upon winding up of relevant stock exchange

158. In the event of a relevant stock exchange being wound up under the Companies Act 19651965, the relevant stock exchange shall, after satisfying all the outstanding liabilities against its compensation fund, make available to the liquidator of the relevant stock exchange the balance of the amount available in the compensation fund which shall form part of the assets of the relevant stock exchange and be available to the liquidator for distribution in accordance with the Companies Act 19651965.

Division 2 Fidelity fund

Establishment of fidelity fund

159. (1) A relevant futures exchange shall establish and maintain a fidelity fund which shall be administered under this Division.

(2) The assets of the fidelity fund are the property of the relevant futures exchange, but the relevant futures exchange shall keep them separate from all its other property and is to hold them in trust for the purposes set out in the regulations.

(3) The Minister may by regulations prescribe—

(a) in respect of a fidelity fund of a relevant futures exchange—

(i) the powers of the Commission;

(ii) the powers, obligations and liabilities of the relevant futures exchange; and

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

(b) the manner in which a relevant futures exchange shall apply its fidelity fund; and

(c) without prejudice to section 167, in respect of claims made against a fidelity fund of a relevant futures exchange—

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

(ii) the circumstances under which claims are to be allowed;

(iii) the procedures and limitations in respect of such claims; and

(iv) appeals and the procedures applicable thereto.

(4) The matters that may be prescribed under paragraph (3)*(c)* include the satisfaction of claims in relation to any trading or proposed trading in futures contracts made against affiliates of the relevant futures exchange.

Monies constituting fidelity fund

160. The fidelity fund of a relevant futures exchange shall consist of the following:

(a) monies paid to the credit of the fund by the relevant futures exchange on the establishment of the fund;

(b) monies paid to the relevant futures exchange under this Division by holders of a Capital Markets Services Licence who carry on the business dealing in derivatives who are affiliates of the relevant derivatives exchange;

(c) the interest and profits from time to time accruing from the investment of the fidelity fund;

(d) monies paid into the fidelity fund by the relevant futures exchange;

(e) monies recovered by or on behalf of the relevant futures exchange in the exercise of a right of action conferred by this Division;

(f) monies paid by an insurer under a contract of insurance or indemnity entered into by the relevant futures exchange under section 171; and

(g) all other monies lawfully paid into the fidelity fund.

Fidelity fund to be kept in separate account

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

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

Payments out of fidelity fund

162. Subject to this Division, there shall be paid out of the fidelity fund of a relevant futures exchange in such order as the relevant futures exchange thinks proper—

(a) the amount of all claims, including costs, allowed by the relevant futures exchange or established against the fund under this Division;

(b) all legal and other expenses incurred in investigating or defending claims made under this Division or incurred in relation to the fund or in the exercise by the relevant futures exchange of the rights, powers and authority conferred by this Division in relation to the fidelity fund;

(c) all premiums payable in respect of contracts of insurance or

indemnity entered into by the relevant futures exchange under section 171;

(d) all expenses incurred in the administration of the fund, including remuneration and allowances of the members of any committee established by the relevant futures exchange and of persons employed by the relevant futures exchange, in relation to the fidelity fund; and

(e) all other monies payable out of the fidelity fund in accordance with the provisions of this Act.

Accounts of fidelity fund

163. (1) A relevant futures exchange shall establish and keep proper accounts of the fidelity fund and shall, before the thirty-first day of December in each year, cause a balance sheet in respect of such accounts to be made out as at the preceding thirtieth day of June.

(2) The relevant futures exchange shall appoint an auditor to audit the accounts of the fidelity fund.

(3) The auditor appointed by the relevant futures exchange shall regularly and fully audit the accounts of the fidelity fund and shall audit each balance sheet and cause it to be laid before the relevant futures exchange not later than one month after the balance sheet was made out.

Contributions to fidelity fund

164. (1) A holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives who is an affiliate of a relevant derivatives exchange shall, upon being licensed under this Act, pay to the relevant futures exchange the amount of thirty thousand ringgit as a contribution to the fidelity fund and shall thereafter on or before the thirty-first of December in each of the five years following the year in which he is licensed pay to the relevant futures exchange the amount of ten thousand ringgit as a contribution to the fidelity fund.

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

(3) Notwithstanding anything in this section, the relevant futures exchange may, from time to time with the approval of the Commission, vary the amount and the manner of the contribution to the fidelity fund by holders of a Capital Markets Services Licence who carry on the business of dealing in derivatives who are affiliates of the relevant derivatives exchange.

Power of relevant futures exchange to make advances to fidelity fund

165. (1) A relevant futures exchange may, from time to time from its general funds, give or advance on such terms as the relevant futures exchange thinks fit, any sum of monies to its fidelity fund.

(2) Any monies advanced under subsection (1) may from time to time be repaid from the fidelity fund to the general funds of the relevant futures exchange.

Investment of monies in the fidelity fund

166. A relevant futures exchange may invest any monies which

forms part of its fidelity fund and is not immediately required for any other purposes provided by this Division—

(a) on fixed deposit with a licensed institution; or

(b) in securities in which trustees are authorized by law to invest trust funds.

Application of fidelity fund

167. (1) Subject to this Division, if—

(a) a person (the "futures person") suffers monetary loss at a particular time because of a defalcation, or because of fraudulent misuse of monies or other property, by a director, officer, employee or representative of a holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts that is at that time an affiliate of a relevant futures exchange or in such other circumstances as may be prescribed under paragraph 159(3)*(c)*; and

(b) the loss is suffered in respect of monies or other property that was, in connection with the holder's trading in futures contracts, entrusted to or received by the holder or by a director, officer or employee of the holder whether before or after the commencement of this section—

(i) for or on behalf of the futures person or another person; or

(ii) because the holder was trustee of the monies or other property,

the fidelity fund of the relevant futures exchange shall be applied for the purpose of compensating the futures person.

(2) The amount or the sum of the amounts paid under this Division out of a relevant futures exchange's fidelity fund for the purpose of—

(a) compensating for monetary loss suffered by a futures person; or

(b) compensating for monetary loss suffered by any person or persons in respect of a particular holder of a Capital Markets Services Licence who carries on the business dealing in derivatives who is an affiliate of the relevant derivatives exchange.

must not be greater than the applicable amount stated in or calculated in accordance with the relevant futures exchange's rules.

(3) For the purposes of subsection (2), an amount that is paid from a fidelity fund is, to the extent to which that amount is repaid to the fund, to be disregarded.

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

Power of relevant futures exchange to require production of documents and statements

168. The relevant futures exchange may at any time and from time to time require any person to produce and deliver any documents or statements of evidence necessary to support any claim made or necessary for the purpose of either—

(a) exercising its rights against a holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts or the directors thereof or any other person concerned; or

(b) enabling criminal proceedings to be taken against any person in respect of a defalcation, or fraudulent misuse of monies or property,

and in default of delivery of any such documents or statements of evidence by such first-mentioned person, the relevant futures exchange may disallow any claim by him under this Division.

Subrogation of relevant futures exchange to rights and remedies of claimant upon payment from fidelity fund

169. If a relevant futures exchange makes a payment out of its fidelity fund in respect of a claim for compensation under this Division—

(a) the relevant futures exchange is subrogated to the extent of the payment to all the rights and remedies of the claimant in respect of the loss suffered by the claimant; and

(b) the claimant shall not have any claim or right under any bankruptcy or legal proceeding or otherwise—

(i) to receive in respect of the loss any sum out of the assets of the holder of a Capital Markets Services Licence who carries on the business dealing in derivatives who is an affiliate of the relevant derivatives exchange; or

(ii) if the loss was caused by an act or omission of a director, officer, employee or representative of a holder of a Capital Markets Services Licence who carries on the business dealing in derivatives who is an affiliate of the relevant derivatives exchange, to receive in respect of the loss any sum,

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

Payment of claims only from fidelity fund

170. No monies or other property belonging to a relevant futures exchange, other than its fidelity fund, shall be used for the payment of any claim under this Division.

Power of relevant futures exchange to enter into contract of insurance

171. (1) A relevant futures exchange may enter into a contract with a registered insurance business within Malaysia under which the relevant futures exchange will be insured or indemnified, to the extent and in the manner provided by the contract, against liability in respect of claims under this Division or any regulations made under this Act.

(2) Such a contract may be entered into in relation to affiliates of the relevant futures exchange generally, or in relation to a particular affiliate named in the contract, or in relation to affiliates generally with the exclusion of particular affiliates named in the contract.

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

the publication in good faith of a statement that any contract entered into under this section does or does not apply with respect to the affiliate.

Application of insurance monies

172. A claimant against a fidelity fund of a relevant futures exchange shall not have—

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

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

Monies in fidelity fund upon winding up of relevant futures exchange

173. In the event the relevant futures exchange being wound up under the Companies Act 19651965, the relevant futures exchange shall, after satisfying all the outstanding liabilities against its fidelity fund, make available to the liquidator of the relevant futures exchange the balance of the amount available in the fidelity fund which shall form part of the assets of the relevant futures exchange and be available to the liquidator for distribution in accordance with the Companies Act 19651965.

PART V MARKET MISCONDUCT AND OTHER PROHIBITED CONDUCT

Application of this Part

174. This Part shall apply to—

(a) in respect of securities—

(i) acts and omissions occurring within Malaysia in relation to securities of any body corporate which is formed or is carrying on business or is listed within or outside Malaysia; and

(ii) acts and omissions occurring outside Malaysia in relation to securities of any body corporate which is formed or is carrying on business or is listed within Malaysia; and

(b) in respect of futures contracts—

(i) acts occurring within Malaysia in relation to futures contracts, whether traded within or outside Malaysia; and

(ii) acts occurring outside Malaysia in relation to futures contracts traded within Malaysia.

Division 1 Prohibited conduct—Securities

Subdivision 1 Offences relating to false trading and market rigging, stock market manipulation, etc.

False trading and market rigging transaction

175. (1) Subject to section 180, no person shall create, or cause to be

created, or do anything that is calculated to create, a false or misleading appearance of active trading in any securities on a stock market within Malaysia or a false or misleading appearance with respect to the market for, or the price of, any such securities.

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

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

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

(b) makes or causes to be made an offer to sell any securities at a specified price where he has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with him has made or caused to be made or proposes to make or to cause to be made, an offer to purchase the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price; or

(c) makes or causes to be made an offer to purchase any securities at a specified price where he has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with him has made or caused to be made or proposes to make or to cause to be made, an offer to sell the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price,

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

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

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

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

of active trading in securities on a stock market.

(5) A purchase or sale of securities does not involve a change in the beneficial ownership for the purposes of this section if a person who had an interest in the securities before the purchase or sale, or a person associated with the first-mentioned person in relation to those securities, has an interest in the securities after the purchase or sale.

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

(7) The reference in paragraph (3)*(a)* to a transaction of sale or purchase of securities includes—

(a) a reference to the making of an offer to sell or purchase securities; and

(b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to sell or purchase securities.

Stock market manipulations

176. (1) Subject to section 180, no person shall effect, take part in, engage in, be concerned in, or carry out, either directly or indirectly, any number of transactions in securities of a corporation, being transactions that have, or are likely to have, the effect of—

(a) raising;

(b) lowering; or

(c) pegging, fixing, maintaining or stabilising,

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

(2) A reference in this section to a transaction, in relation to securities of a corporation, includes—

(a) a reference to the making of an offer to sell or purchase such securities of the corporation; and

(b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to sell or purchase such securities of the corporation.

False or misleading statements, *etc.*

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

(a) he does not care whether the statement or information is true or false; or

(b) he knows or ought reasonably to have known that the statement or information is false or misleading in a material particular.

Fraudulently inducing persons to deal in securities

178. (1) A person shall not—

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

(b) by any dishonest concealment of material facts;

(c) by the reckless making or publishing, dishonestly or otherwise, of any statement, promise or forecast that is misleading, false or deceptive; or

(d) by recording or storing in, or by means of, any mechanical, electronic or other device, information that he knows to be false or misleading in a material particular,

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

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

Use of manipulative and deceptive devices

179. It shall be unlawful for any person, directly or indirectly in connection with the subscription, purchase or sale of any securities—

(a) to use any device, scheme or artifice to defraud;

(b) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or

(c) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements, made in the light of the circumstances under which they were made, not misleading.

Person or transaction to whom or which section 175 or 176 does not apply

180. The Minister may make regulations in respect of any particular class, category or description of persons or any particular class, category or description of transactions, relating to securities, to whom or which section 175 or 176 does not apply.

Dissemination of information about illegal transactions

181. A person shall not circulate or disseminate, or authorize or be concerned in the circulation or dissemination of, any statement or information to the effect that the price of any securities of a corporation will or is likely to rise or fall or be maintained by reason of any transaction entered into or other act or thing done in relation to the securities of that body corporate, or of a corporation that is related to that corporation, in contravention of section 175, 176, 177, 178 or 179 if—

(a) the person, or a person associated with the person, has entered into any such transaction or done any such act or thing; or

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

Penalty for offence under Subdivision 1

182. A person who contravenes section 175, 176, 177, 178, 179 or 181 commits an offence and shall be punished on conviction to imprisonment for a term not exceeding ten years and to a fine of not less than one million ringgit.

Subdivision 2 Insider trading

Information

183. For the purposes of this Subdivision, "information" includes—

(a) matters of supposition and other matters that are insufficiently definite to warrant being made known to the public;

(b) matters relating to the intentions, or likely intentions, of a person;

(c) matters relating to negotiations or proposals with respect to—

(i) commercial dealings; or

(ii) dealing in securities;

(d) information relating to the financial performance of a corporation;

(e) information that a person proposes to enter into, or has previously entered into one or more transactions or agreements in relation to securities or has prepared or proposes to issue a statement relating to such securities; and

(f) matters relating to the future.

Information generally available

184. (1) For the purposes of this Subdivision, information is generally available if the information has been made known in a manner that would, or would tend to, bring it to the attention of reasonable persons who invest in securities of a kind whose price or value might be affected by the information, and since it was so made known, a reasonable period for it to be disseminated among, and assimilated by, such persons has elapsed.

(2) The information referred to in subsection (1) includes information that consists of deductions or conclusions made or drawn from such information.

Material effect on price or value of securities

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

Trading in securities

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

Reference to "procure"

187. For the purposes of this Subdivision and section 201 but without limiting the meaning of the term "procure" as provided in this section, if a person incites, induces, encourages or directs an act or omission by another person, the firstmentioned person is deemed to procure the act or omission by the other person.

Prohibited conduct of person in possession of inside information

188. (1) A person is an "insider" if that person—

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

(b) knows or ought reasonably to know that the information is not generally available.

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

(a) acquire or dispose of, or enter into an agreement for or with a view to the acquisition or disposal of such securities; or

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

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

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

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

(4) A person who contravenes subsection (2) or (3) commits an offence and shall be punished on conviction to imprisonment for a term not exceeding ten years and to a fine of not less than one million ringgit.

(5) The Minister may make regulations in respect of any particular class, category or description of persons or any particular class, category or description of transactions, relating to securities, to whom or which this section does not apply.

Proof of contravention of section 188

189. In a prosecution of an offence under subsection 188(2) or (3), it is not necessary for the prosecution to prove the non-existence of facts or circumstances which if they existed would, by virtue of section 190, 191, 192, 193, 194, 195, 196, 197 or 198, or any regulations made under subsection 188(5), preclude the act from constituting a contravention of subsection 188(2) or (3).

Secrecy arrangements by corporation

190. (1) For the purposes of this Subdivision, a corporation is deemed to possess any information—

(a) which an officer of the corporation—

(i) possesses and which came into his possession in the course of his duties as an officer of the corporation; or

(ii) knows or ought reasonably to have known because he is an officer of the corporation; or

(b) which an officer of the corporation possesses and which came into his possession in the course of his duties as an officer of a related corporation of the first-mentioned corporation where—

(i) the officer is an insider by reason of being in possession of the information;

(ii) the officer is involved in, the decision, transaction or agreement of the first-mentioned corporation in acquiring or disposing of securities in relation to which the officer is an insider or entering into an agreement to acquire or dispose of such securities, procuring another person to acquire or dispose of such securities or enter into an agreement to do so, or communicating the information in circumstances referred to in subsection 188(3); or

(iii) it is reasonable to expect that the officer would communicate the information to another officer of the first-mentioned corporation acting in his capacity as such, unless it is proved that the information was not in fact so communicated.

(2) In this section, "information" refers to information which a corporation is deemed to possess and where a person in possession of the information is an insider.

(3) A corporation does not contravene subsection 188(2) by entering into the transaction or agreement at any time merely because of information in the possession of the corporation if—

(a) the decision to enter into the transaction or agreement was taken on behalf of the corporation by a person or persons other than an officer of the corporation in possession of the information;

(b) the corporation had in operation at that time arrangements that could reasonably be expected to ensure that—

(i) the information was not communicated to a person or one of the persons who was involved in, or made the decision to enter into, or be involved in, the transaction or agreement;

(ii) no advice with respect to the decision to enter into, or be involved in, the transaction or agreement was given to that person by the person in possession of the information; or

(iii) the person in possession of the information would not be involved in the decision to enter into or be involved in, the transaction or agreement, or involved in the transaction or agreement; and

(c) the information was not so communicated, no such advice was given and the person in possession of the information was not involved in the decision to enter into, or be involved in, the transaction or agreement or was not involved in the transaction or agreement.

Secrecy agreements by partnerships

191. (1) For the purposes of this Subdivision, a partner of a partnership is deemed to possess any information—

(a) which another partner possesses and which came into the other partner's possession in his capacity as a partner of the partnership;

(b) which an employee of the partnership possesses and which came into the employee's possession in the course of his duties; or

(c) if a partner or an employee of a partnership knows or ought rea-

sonably to know any matter or thing because the partner or employee is a partner or an employee as such, it is presumed that every partner and employee of the partnership know or ought reasonably to know that matter or thing.

(2) In this section, "information" refers to information which a partnership is deemed to possess and where a partner or an employee of the partnership in possession of that information is an insider.

(3) A partner of a partnership does not contravene subsection 188(2) by entering into the transaction or agreement referred to in that subsection at any time merely because one or more (but not all) partners, or an employee or employees of the partnership, were in actual possession of information at the time if—

(a) the decision to enter into the transaction or agreement was taken on behalf of the partnership by any one or more of the following persons:

(i) a partner who is taken to possess the information merely because another partner, or an employee of the partnership, was in possession of the information; or

(ii) an employee of the partnership who was not in possession of the information;

(b) the partnership had in operation at that time agreements that could reasonably be expected to ensure that—

(i) the information was not communicated to a partner or an employee or one of the partners or employees who was or were involved in, or made the decision with respect to the entering into the transaction or agreement in question;

(ii) no advice with respect to the decision to enter into the transaction or agreement was given to that partner or employee by a partner or an employee in possession of the information; and

(iii) the partner or employee in possession of the information would not be involved in the decision to enter into, or be involved in, the transaction or agreement; and

(c) the information was not communicated, no advice was given and the partner or employee in possession of the information was not involved in the decision to enter into, or be involved in, the transaction or agreement.

(4) A partner of a partnership does not contravene subsection 188(2) by entering into the transaction or agreement referred to in that subsection otherwise than on behalf of the partnership merely because the partner is deemed to possess information that is in the possession of another partner or employee of the partnership.

Underwriting and subunderwriting

192. (1) Subsection 188(2) shall not apply in respect of—

(a) the entering into of an underwriting agreement or a subunderwriting agreement; or

(b) the acquisition of securities under an obligation to do so in an agreement referred to in paragraph *(a)*.

(2) Subsection 188(3) shall not apply in respect of the communica-

tion of information in relation to securities to a person solely for the purpose of procuring the person—

(a) to enter into an underwriting agreement or a subunderwriting agreement in relation to any such securities; or

(b) to acquire any such securities under an obligation to do so in an agreement referred to in paragraph *(a)*.

Non-application of section 188 to transactions carried out under schemes of arrangement, *etc.*, under any written law

193. (1) Section 188 shall not apply to an acquisition or disposal of securities or the communication of information that is carried out under any other written law relating to schemes of arrangement, reconstructions and take-overs relating to corporations.

(2) Subsection 188(2) shall not apply to an approved clearing house which acquires or disposes of securities for the purpose of settlement of a market contract or in relation to any proceedings or other action relating to the settlement of a market contract where the acquisition or disposal of securities is effected in accordance with the rules of an approved clearing house.

(3) Subsection 188(2) shall not apply to a stock exchange in relation to a sale or purchase of securities where the stock exchange acts on an instruction from an approved clearing house pursuant to section 54.

Exception for corporation with knowledge of its intention

194. (1) A corporation does not contravene subsection 188(2) by entering into a transaction or an agreement in relation to securities other than those of the corporation merely because the corporation is aware that it proposes to enter into or has previously entered into one or more transactions or agreements in relation to those securities.

(2) Subject to subsection (3), a corporation does not contravene subsection 188(2) by entering into a transaction or an agreement in relation to securities other than those of the corporation because an officer of the corporation is aware that it proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities.

(3) Subsection (2) shall not apply unless the officer of the corporation became aware of the matter referred to in that subsection in the course of his duties.

(4) Subject to subsection (5), a person does not contravene subsection 188(2) by entering into a transaction or an agreement on behalf of a corporation in relation to securities other than those of the corporation merely because the person is aware that the corporation proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities.

(5) Subsection (4) shall not apply unless the person became aware of the matters referred to in the course of his duties as an officer of the first-mentioned corporation or in the course of acting as an agent of the first-mentioned corporation.

Exception of knowledge of individual's own intentions or activities

195. An individual does not contravene subsection 188(2) by entering into a transaction or an agreement in relation to securities merely because he is aware that he proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities.

Unsolicited transaction

196. (1) A holder of a Capital Markets Services Licence who carries on the business of dealing in securities or its representative does not contravene subsection 188(2) by entering into a transaction or an agreement as an agent for another person, being a transaction or an agreement entered into on the stock market of a stock exchange in securities which are quoted for trading on the stock market of that stock exchange if—

(a) the transaction or agreement is entered into under a specific instruction by the other person which was not solicited by the holder of a Capital Markets Services Licence who carries on the business of dealing in securities or its representative;

(b) the holder of a Capital Markets Services Licence who carries on the business of dealing in securities or its representative has not given any advice to the other person in relation to the transaction or agreement or otherwise sought to procure the other person's instructions to enter into the transaction or agreement; and

(c) the other person is not associated with the holder of a Capital Markets Services Licence who carries on the business of dealing in securities or its representative.

(2) Nothing in this section shall affect the application of subsection (1) in relation to the principal.

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

197. Subsection 188(2) shall not apply in respect of the redemption by a trustee under a trust deed relating to a unit trust scheme in accordance with a buy-back covenant contained or deemed to be contained in the trust deed at a price that is required by the trust deed to be calculated, so far as is reasonably practicable, by reference to the underlying value of the assets, less any liabilities of the unit trust scheme to which the units of the unit trust scheme relates, and less any reasonable charge for purchasing the units of the unit trust scheme or interest.

Parity of information defence

198. (1) A person does not contravene subsection 188(2) if—

(a) the securities that are the subject of the transaction or agreement or the action of procuring a transaction or an agreement are not securities which are permitted on the stock market of a stock exchange;

(b) the court is satisfied that the other party to the transaction or

agreement knew, or ought reasonably to have known, of the information before entering into the transaction or agreement; and

(c) that person acquires or disposes of such securities on such terms and in such circumstances that—

(i) he does not obtain any gain or avoid any loss, including an unrealised gain or unrealised avoidance of loss in price or value, of the securities, as the case may be, for himself or any other person by reason of the effect that the information is likely to have when it becomes generally available; and

(ii) the purpose of the acquisition or disposal of the securities does not include any purpose of securing a gain or avoiding a loss, as the case may be, for himself or any other person by reason of the effect that the information is likely to have when it becomes generally available.

(2) In a prosecution for an offence under subsection 188(3) where the person communicated information or caused information to be communicated to another person, it shall be a defence—

(a) if the court is satisfied that the information came into the possession of the person so communicating the information solely as a result of it being made known in a manner likely to make it generally available pursuant to section 184; or

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

Subdivision 3 Civil remedies

Civil liability for contravention of section 175, 176, 177, 178, 179 or 181

199. (1) A person who suffers loss or damage by reason of, or by relying on, the conduct of another person who has contravened section 175, 176, 177, 178, 179 or 181 may recover the amount of loss or damage by instituting civil proceedings against the other person, whether or not the other person has been charged with an offence in respect of the contravention or, whether or not a contravention has been proved in a prosecution.

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

Civil action by Commission

200. (1) Where it appears to the Commission that any person has contravened section 175, 176, 177, 178, 179 or 181, the Commission may institute civil proceedings in the court against that person, whether or not that person has been charged with an offence in respect of the contravention, or whether or not a contravention has been proved in a prosecution.

(2) For a proceeding instituted by the Commission under subsection (1) against any person who has contravened section 175, 176, 177, 178, 179 or 181, the Commission may, if it considers that it is in the

public interest to do so, by civil action against such person in contravention—

(a) recover an amount which shall not exceed three times the gross amount of pecuniary gain made or loss avoided by such person; and

(b) claim civil penalty in such amount as the court considers appropriate having regard to the severity or gravity of the contravention, being an amount not exceeding one million ringgit.

(3) An amount recovered by the Commission in an action under subsection (2) shall be applied—

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

(b) secondly, to compensate persons who have suffered loss or damage as a result of the contravention.

(4) If the Commission considers that it is not practicable to compensate the persons referred to in paragraph (3)*(b),* in view of the amount of any potential distribution to each person or the difficulty of ascertaining or notifying the persons whom it is appropriate to compensate, as the case may be, the Commission may decide not to distribute to the persons referred to in paragraph (3)*(b).*

(5) To the extent that any of the amount obtained in a civil proceeding under subsection (1) has not been distributed pursuant to paragraph (3)*(b),* it shall be—

(a) paid to the compensation fund maintained under Part IV; or

(b) retained by the Commission to defray the costs of regulating the capital market, as the Commission, with the approval of the Minister, may determine.

(6) Civil proceedings under subsection (2) or 199(1) may be commenced at any time within twelve years from—

(a) the date on which the cause of action accrued; or

(b) the date on which the Commission or the person who instituted the proceedings, as the case may be, discovered the contravention,

whichever is the later.

(7) Any right of action that is conferred under this section shall not affect the right of action that is conferred on a person who has suffered loss or damage referred to in subsection 199(1) or under any other law.

Recovery of loss or damages

201. (1) A person who suffers loss or damages by reason of, or by relying on, the conduct of another person who has contravened section 188 may recover the amount of loss or damages by instituting civil proceedings against the other person, whether or not the other person has been charged with an offence in respect of the contravention or, whether or not a contravention has been proved in a prosecution.

(2) In subsection (1), "loss or damages" includes an unrealised loss or gain, as the case may be, in the price or value of securities of a corporation being the difference between—

(a) the price or value of securities in a transaction in connection

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

(b) the price which would have been the likely price of the securities in the transaction, or the value which it is likely that such securities would have had at the time of that transaction, if the contravention had not occurred.

(3) Where an insider acquired or agreed to acquire, or procured another person to acquire or agree to acquire, securities from a person (the "seller") who did not possess the information, in contravention of subsection 188(2), the seller may, by civil action against the insider or any other person involved in the contravention, recover, as a loss or damages suffered by the seller, the difference between—

(a) the price at which the securities were acquired, or agreed to be acquired, by the insider or the other person, from the seller; and

(b) the price at which the securities would have been likely to have been acquired at the time of the acquisition or agreement, as the case may be, referred to in paragraph *(a)* if the information had been generally available.

(4) Where an insider disposed of or agreed to dispose of, or procured another person to dispose of or agree to dispose of, securities to a person (the "buyer") who did not possess the information, in contravention of subsection 188(2), the buyer may, by civil action against the insider or any other person involved in the contravention, recover, as a loss or damages suffered by the buyer, the difference between—

(a) the price at which the securities were disposed of, or agreed to be disposed of, by the insider or the other person, to the buyer; and

(b) the price at which they would have been likely to have been disposed of at the time of the disposal or agreement, as the case may be, referred to in paragraph *(a)* if the information had been generally available.

(5) Where an insider acquired or agreed to acquire, or procured another person to acquire or agree to acquire, securities, in contravention of subsection 188(2), and such securities were permitted to be traded on a stock market of a stock exchange, then, whether or not the insider or any other person involved in the contravention has been charged with an offence in respect of the contravention or whether or not the contravention has been proved in a prosecution, the Commission may, if it considers that it is in the public interest to do so, by civil action against the insider or any other person involved in the contravention—

(a) recover an amount equal to three times the amount being the difference between the price at which the securities were acquired or agreed to be acquired, by the insider or the other person, and the price at which they would have been likely to have been acquired at the time of the acquisition or agreement, as the case may be, if the information had been generally available; and

(b) claim civil penalty in such amount as the court considers appropriate having regard to the seriousness of the contravention, being an amount not more than one million ringgit.

(6) Where an insider disposed of or agreed to dispose of, or procured another person to dispose of or agree to dispose of, securities, in contravention of subsection 188(2), and such securities were permitted to be traded on a stock market of a stock exchange, then, whether or not the insider or any other person involved in the contravention has been charged with an offence in respect of the contravention or whether or not the contravention has been proved in a prosecution, the Commission may, if it considers that it is in the public interest to do so, by civil action against the insider or any other person involved in the contravention—

(a) recover an amount equal to three times the amount being the difference between the price at which the securities were disposed of, or agreed to be disposed of, by the insider or the other person, and the price at which they would have been likely to have been disposed of at the time of the disposal or agreement, as the case may be, if the information had been generally available; and

(b) claim civil penalty in such amount as the court considers appropriate having regard to the seriousness of the contravention, being an amount not more than one million ringgit.

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

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

(b) secondly—

(i) where it relates to subsection (5), to compensate the sellers who disposed of securities of the same class on the stock market of the stock exchange when the information was not generally available between the time when the first contravention of subsection 188(2) occurred and the time when the information became generally available; and

(ii) where it relates to subsection (6), to compensate the buyers who acquired securities of the same class on the stock market of the stock exchange when the information was not generally available between the time when the first contravention of subsection 188(2) occurred and the time when the information became generally available.

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

(9) To the extent that any of the amount recovered or obtained in a civil action under subsection (5) or (6) has not been distributed pursuant to subsection (7), it shall be—

(a) paid to the compensation fund maintained under Part IV; or

(b) retained by the Commission to defray the costs of regulating the capital market, as the Commission, with the approval of the Minister, may determine.

(10) Civil proceedings under this section may be commenced at any time within twelve years from—

(a) the date on which the cause of action accrued; or

(b) the date on which the Commission or the person who instituted the proceedings, as the case may be, discovered the contravention,

whichever is the later.

(11) Any right of action that is conferred under this section shall not affect the right of action that is conferred on a person who has suffered loss or damage referred to in subsection (1) or under any other law.

Division 2 Prohibited conduct—Futures contracts

Subdivision 1 Offences relating to false trading, bucketing, etc.

False trading

202. No person shall create or cause to be created or do anything that is calculated to create a false or misleading appearance of active trading in futures contracts on a futures market or a false or misleading appearance with respect to the market for, or the price of trading in, futures contracts on the futures market.

Bucketing

203. No person shall execute, or hold himself out as having executed, an order for the purchase or sale of a futures contract on a futures market without having effected a *bona fide* purchase or sale of the futures contract in accordance with the rules and practices of the futures market.

Dissemination of information about false trading

204. No person shall circulate, disseminate or authorize, or be concerned in the circulation or dissemination of, any statement or information to the effect that the price of trading in a futures contract or a class of futures contracts will, or is likely to, rise or fall because of the market operations of one or more persons, which operations, to his knowledge, are conducted in contravention of section 202.

Manipulation of price of futures contract and cornering

205. No person shall, directly or indirectly—

(a) manipulate or attempt to manipulate the price of futures contracts that may be dealt in on a futures market, or of any underlying instrument which is the subject of such futures contract; or

(b) corner, or attempt to corner, any underlying instrument which is the subject of a futures contract.

Employment of devices, *etc.*, to defraud

206. No person shall, directly or indirectly, in connection with any

transaction with any other person involving trading in futures contracts—

(a) employ any device, scheme or artifice to defraud that other person;

(b) engage in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, of that other person; or

(c) make any false statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

False or misleading statements

207. No person shall, directly or indirectly, for the purposes of inducing the entering into a futures contract, make—

(a) any statement which, at the time and in the light of the circumstances in which it is made, is false, misleading or deceptive with respect to any material fact; or

(b) any statement which, by reason of the omission of a material fact, is rendered false or misleading.

Prohibition of abuse of information obtained in official capacity

208. Any person who, in relation to dealing in futures contracts, has any information which if generally known might reasonably be expected to affect materially the price of the subject matter of such trading and which—

(a) he holds by virtue of his official capacity or former official capacity;

(b) it would be reasonable to expect a person in his official capacity or former official capacity not to disclose except for the proper performance of the functions attached to that official capacity; and

(c) he knows is unpublished price-sensitive information in relation to an underlying instrument which is the subject of a futures contract or in relation to the dealing in a futures contract, shall not make improper use of such information to gain, directly or indirectly, an advantage for himself or for any other person.

Penalties for offence under Subdivision 1

209. Any person who contravenes any of the provisions of this Subdivision commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years and to a fine not less than one million ringgit.

Subdivision 2 Civil remedies

Civil liability for contravention of section 202, 203, 204, 205, 206, 207 or 208

210. (1) A person who suffers loss or damage by reason of, or by relying on, the conduct of another person who has contravened section

202, 203, 204, 205, 206, 207 or 208, may recover the amount of loss or damage by instituting civil proceedings against the other person, whether or not the other person has been charged with an offence in respect of the contravention or, whether or not a contravention has been proved in a prosecution.

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

Civil action by Commission

211. (1) Where it appears to the Commission that any person has contravened section 202, 203, 204, 205, 206, 207 or 208, the Commission may institute civil proceedings in the court against that person, whether or not such person has been charged with an offence in respect of the contravention or, whether or not a contravention has been proved in a prosecution, the Commission may, if it considers that it is in the public interest to do so, by civil action against such person in contravention—

(a) recover an amount which shall not exceed three times the gross amount of pecuniary gain made or loss avoided by such person; and

(b) claim civil penalty in such amount as the court considers appropriate having regard to the seriousness of the contravention, being an amount not more than one million ringgit.

(2) An amount recovered by the Commission in an action pursuant to this section shall be applied—

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

(b) secondly, to compensate persons who have suffered loss or damage as a result of the contravention.

(3) If the Commission considers that it is not practicable to compensate the persons referred to in paragraph (2)*(b)*, in view of the amount of any potential distribution to each person or the difficulty of ascertaining or notifying the persons whom it is appropriate to compensate, as the case may be, the Commission may decide not to distribute to the persons referred to in paragraph (2)*(b)*.

(4) To the extent that any of the amount obtained in a civil action under subsection (1) has not been distributed pursuant to paragraph (2)*(b),* it shall be—

(a) paid to the fidelity fund maintained under Division 2 of Part IV; or

(b) retained by the Commission to defray the costs of regulating the capital market, as the Commission, with the approval of the Minister, may determine.

(5) Civil proceedings under subsection (1) or 210(1) may be commenced at any time within twelve years from—

(a) the date on which the cause of action accrued; or

(b) the date on which the Commission or the plaintiff, who instituted the proceedings, as the case may be, discovered the contravention,

whichever is the later.

(6) Any right of action that is conferred under this section shall not affect the right of action that is conferred on a person who has suffered loss or damage referred to in subsection 210(1) or under any other law.

PART VI ISSUES OF SECURITIES AND TAKE-OVERS AND MERGERS

Division 1 Proposals in relation to securities

Proposals to be submitted to Commission

212. (1) In this Division and Schedule 5, unless the context otherwise requires—

"an applicant" means any person referred to in subsection (2);

"expert" includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him;

"officer", in relation to a corporation, includes—

(a) a director, a secretary, an executive officer or an employee of the corporation;

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

(c) a liquidator of the corporation appointed in a voluntary winding up of the corporation,

but does not include a receiver who is not also a manager, a receiver and manager appointed by a court and a liquidator appointed by a court;

"private company" and "public company" have the meanings assigned to them in subsection 4(1) of the Companies Act 19651965;

"proposal" means a proposal referred to in subsection (2).

(2) This section applies to a person who proposes to do any of the following:

(a) make available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase securities in Malaysia;

(b) make available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase, outside Malaysia, securities of a public company, or to list such securities on a securities exchange outside Malaysia;

(c) by way of issue of securities, effect—

(i) a compromise or arrangement whether or not for the purposes of or in connection with a scheme, compromise or arrangement for the amalgamation of any two or more corporations or for reconstruction of any corporation; or

(ii) an acquisition of securities or assets;

(d) apply for the listing of a corporation, or for the quotation of securities, on a stock market of a stock exchange;

(e) distribute the assets of a public company or a listed corporation to its members other than distribution in cash or distribution of as-

sets to members of the public company or listed corporation on its winding up; or

(f) acquire or dispose assets (whether or not by way of issue of securities) which results in a significant change in the business direction or policy of a listed corporation.

(3) An applicant shall submit to the Commission such documents and such other information in relation to the proposal in such form and manner and at such times as the Commission may require.

(4) Subject to section 213, no person referred to in subsection (2) shall implement or carry out a proposal unless the Commission has approved the proposal under this section.

(5) The Commission may—

(a) approve a proposal subject to such terms and conditions as it thinks fit;

(b) approve a proposal with such revisions and subject to such terms and conditions as it thinks fit; or

(c) reject a proposal.

(6) A person who contravenes any term or condition in relation to an approval given under paragraph (5)*(a)* or *(b)* commits an offence.

(7) Where the Commission is satisfied that—

(a) there is a contravention of subsection 214(1);

(b) there is a breach of any term or condition imposed under paragraph (5)*(a)* or *(b)*; or

(c) there is any change or development in the circumstances relating to a proposal occurring subsequent to the Commission giving its approval under subsection (5), and if such change or development, if known to the Commission prior to the approval, would have affected its decision as regards the proposal,

the Commission may—

(A) revoke an approval given under subsection (5);

(B) revise an approval; or

(C) impose such further terms or conditions in relation to a proposal approved by it under subsection (5):

> Provided that the Commission may only revoke or revise such approval or impose such further terms and conditions where such revocation, revision or imposition shall not affect the rights of third parties that may have been created by or arising from the carrying out or implementation of a proposal in accordance with an approval given under subsection (5).

(8) The Commission shall give a written notice to an applicant of its intention to take action under subsection (7) and shall give the applicant an opportunity to be heard prior to it taking any action under subsection (7).

(9) Where the Commission has granted its approval to a proposal under subsection (5)—

(a) if registration of a prospectus is required under this Act in connection with the proposal, the prospectus shall include a statement that the Commission has approved the proposal pursuant to this section and that the Commission's approval of the proposal shall not be taken to indicate that the Commission recommends the proposal; or

(b) if registration of a prospectus is not required under this Act in connection with the proposal, the applicant shall include in any document issued with respect to the proposal, in such form as the Commission may require, a statement that the Commission has approved the proposal pursuant to this section and that the Commission's approval of the proposal shall not be taken to indicate that the Commission recommends the proposal.

(10) Where—

(a) a person enters into an agreement in respect of a proposal; and

(b) the terms of the agreement are not binding until the fulfilment of any condition as may be set out in the agreement, including that of the approval to be given under subsection (5), the person shall not be taken, for the purposes of subsection (4), to have taken any step to implement or carry out the proposal.

(11) In respect of any proposal referred to in subsection (2)—

(a) the Commission may direct an applicant to make an announcement of a proposal in accordance with the rules of the stock exchange, if applicable; and

(b) any person may make an announcement of a proposal before submitting such proposal to the Commission for its approval under this section.

(12) For the purpose of subsection (11), an "announcement" includes any publication by press notice or in any other form of a firm intention to make an offer for any securities.

(13) A person who contravenes subsection (3), (4), (9) or (11) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

Classes or categories of transactions or securities not subject to subsection 212(4)

213. (1) Subsection 212(4) shall not apply to the following:

(a) such classes or categories of securities or classes or categories of transactions as specified in Schedule 5;

(b) the making available, offering for subscription or purchase, or issuing an invitation to subscribe for or purchase securities as may be prescribed by the Minister on the basis of the manner or total value thereof or the characteristics, types or numbers of investors in relation thereto;

(c) such categories or classes of securities as may be prescribed by the Minister.

(2) In making any prescription under subsection (1), the Minister shall have regard to the interests of the public.

(3) Any prescription made under this section shall be subject to any condition, restriction or limitation as the Minister may impose.

False or misleading statements, *etc.*

214. (1) Where any statement or information is required to be submitted to the Commission under this Division in relation to any proposal submitted pursuant to section 212—

(a) an applicant, any of its officers or associates;
(b) a financial adviser or an expert; or
(c) any other person,
shall not—

(A) submit or cause to be submitted any statement or information that is false or misleading;
(B) submit or cause to be submitted any statement or information from which there is a material omission; or
(C) engage in or aid or abet conduct that he knows to be misleading or deceptive or is likely to mislead or deceive the Commission.

(2) It shall be a defence to a prosecution or any proceeding for a contravention of subsection (1) if it is proved that the defendant, after making enquiries as were reasonable in the circumstances, had reasonable grounds to believe, and did until the time of the making of the statement or provision of the information or engaging in the conduct was of the belief that—

(a) the statement or information was true and not misleading;
(b) the omission was not material;
(c) there was no material omission; or
(d) the conduct in question was not misleading or deceptive.

(3) Where—

(a) a statement or information referred to in subsection (1) has been submitted or provided to the Commission, or a conduct referred to in subsection (1) has been engaged in; and

(b) a person referred to in that subsection becomes aware before the proposal has been fully implemented or carried out—

(i) that the statement or information may be false or misleading or materially incomplete; or
(ii) that the conduct may tend to mislead or deceive,

the person shall forthwith advise the Commission of the facts referred to in subparagraph *(b)*(i) or (ii), where applicable, and shall take such action as the Commission may require pursuant to subsection 212(7).

(4) For the purposes of paragraph (3)*(b)*, a person who becomes aware includes a person who causes or does an act that causes such statement or information to become false or misleading or materially incomplete.

(5) A person who contravenes subsection (1) or (3) commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.

Application monies to be paid into a trust account where no prospectus is required

215. (1) Any monies received from applicants or such other persons who have provided consideration for shares pursuant to an issue, offer for subscription or purchase, or an invitation to subscribe for or purchase, shares in relation to a proposal that has been approved by

the Commission under subsection 212(4) and for which no prospectus is required shall be paid into a trust account established and kept in a licensed institution for such applicants or other persons until—

(a) such shares have been issued or transferred to such applicants or other persons who has provided consideration for such shares; or

(b) permission for the shares offered to be listed for quotation on the official list of a stock exchange or other similar exchange outside Malaysia has been granted,

whichever is the later.

(2) Where such shares have not been issued or transferred to the persons referred to in subsection (1) or where the permission referred to in subsection (1) has not been granted, whichever is the later, the issuer shall forthwith repay without interest all monies referred to in subsection (1) and if any such monies are not repaid within fourteen days after the issuer becomes liable to repay it, in addition to the liability of the issuer, the officers of the issuer shall be jointly and severally liable to repay such monies with interest at the rate of ten per centum per annum or at such other rate as may be specified by the Commission from the expiration of that period.

(3) Monies paid into a trust account under this section shall not be available for payment of the debts of the issuer, or be liable to be paid or taken in execution under an order or process of any court.

(4) Any condition imposed by an issuer requiring or binding an applicant for any shares to waive compliance with this section or purporting to do so shall be void.

(5) The Commission may specify such categories of shares that shall not be subject to this section.

(6) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.

Division 2 Take-overs, mergers and compulsory acquisitions

Interpretation

216. (1) In this Division, unless the context otherwise requires—

"acquirer" means—

(a) a person who acquires or proposes to acquire control in a company whether the acquisition is effected by the person or by an agent; or

(b) two or more persons who, acting in concert with one another, acquire or propose to acquire control in a company, whether the acquisition is effected by the persons or by an agent;

"Code" means the Malaysian Code on Take-Overs and Mergers made in accordance with section 217;

"company", in relation to a company being taken over, means a public company whether or not it is listed on any stock exchange and any other entity as may be prescribed in the Code;

"control", means the acquisition or holding of, or entitlement to exercise or control the exercise of, voting shares or voting rights of more than thirty three per centum, or such other amount as may be prescribed in the Code in a company;

"dissenting shareholder" includes any shareholder who has not accepted a take-over offer and any shareholder who has failed or refused to transfer shares to an acquirer in accordance with a take-over offer;

"expert" includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him;

"offeree" means a company whose voting shares or voting rights are subject to a take-over offer;

"offeror" means a person who makes or proposes to make a take-over offer;

"officer", in relation to a corporation, includes—

(a) a director, secretary, executive officer or employee of the corporation;

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

(c) a liquidator of the corporation appointed in a voluntary winding up of the corporation,

but does not include a receiver who is not also a manager, a receiver and manager appointed by a court and a liquidator appointed by a court;

"private company" and "public company" have the meanings assigned to them in subsection 4(1) of the Companies Act 19651965;

"related", in relation to a corporation, means related within the meaning of section 6 of the Companies Act 19651965;

"share" means a share in a company or a unit in an entity that is prescribed in the Code;

"shareholder" means a shareholder in a company or a unit holder in an entity that is prescribed in the Code;

"take-over offer", in relation to a company, means an offer made to acquire all or part of the voting shares or voting rights, or any class or classes of voting shares or voting rights, in the company;

"voting shares", in relation to a company, has the meaning assigned to it in subsection 4(1) of the Companies Act 19651965.

(2) For the purposes of this Division, a reference to "persons acting in concert" shall be construed as a reference to persons who, pursuant to an agreement, arrangement or understanding, co-operate to—

(a) acquire jointly or severally voting shares of a company for the purpose of obtaining control of that company; or

(b) act jointly or severally for the purpose of exercising control over a company.

(3) Without prejudice to the generality of subsection (2), the following persons shall be presumed to be persons acting in concert unless the contrary is established:

(a) a corporation and its related and associate corporations;

(b) a corporation and any of its directors, or the parent, child,

brother or sister of any of its directors, or the spouse of any such director or any such relative, or any related trusts;

(c) a corporation and any pension fund established by it;

(d) a person and any investment company, unit trust or other fund whose investments such person manages on a discretionary basis;

(e) a financial adviser and its client which is a corporation, where the financial adviser manages on a discretionary basis the corporation's funds and has ten per centum or more of the voting shares in that corporation;

(f) a person who owns or controls twenty per centum or more of the voting shares of a corporation falling within paragraph *(a)* and any parent, child, brother or sister of such person, or the spouse of such person or any such relative, or any related trusts together with one or more persons falling within paragraph *(a)*; and

(g) such other category of persons as may be prescribed in the Code.

(4) For the purposes of subsection (2), an agreement, arrangement or understanding means an agreement, arrangement or understanding whether formal or informal, whether written or oral, whether express or implied or whether or not having legal or equitable force.

(5) For the purposes of paragraph (3)*(a)*, an associated corporation means a corporation in respect of which not less than twenty per centum of the voting shares of that corporation are held by another corporation, the first-mentioned corporation thereby being an associate corporation of the other corporation.

Malaysian Code on Take-Overs and Mergers

217. (1) The Minister may, on the recommendation of the Commission, prescribe a Code which shall be published in the *Gazette*.

(2) The Minister may, from time to time, on the recommendation of the Commission, amend any of the provisions of the Code and any amendment thereto shall be published in the *Gazette*.

(3) The Code shall contain principles and rules governing the conduct of all persons or parties involved in a take-over offer, merger or compulsory acquisition, including an acquirer, offeror, offeree and their officers and associates.

(4) The Commission shall administer the Code according to the objectives specified in subsection (5) and may do all such things as may be necessary or expedient to give full effect to the provisions of this Division and the Code and without limiting the generality of the foregoing, may—

(a) issue rulings from time to time, interpreting the Code;

(b) issue rulings on the practice and conduct of persons involved in or affected by any take-over offer, merger or compulsory acquisition, or in the course of any take-over, merger or compulsory acquisition; and

(c) enquire into any matter relating to any take-over offer, merger or compulsory acquisition whether potential or otherwise, and for this purpose, may issue public statements as the Commission thinks fit with respect thereto.

(5) In making any recommendation under subsections (1) and (2), and in administering the Code and exercising its powers under this Act, the Commission shall take into account the desirability of ensuring that the acquisition of voting shares or control of companies takes place in an efficient, competitive and informed market and, without limiting the generality of the foregoing, shall have regard to the need to ensure—

(a) that the shareholders and directors of an offeree and the market for the shares that are the subject of the take-over offer—

(i) are aware of the identity of the acquirer and offeror;

(ii) have reasonable time in which to consider a take-over offer; and

(iii) are supplied with sufficient information necessary to enable them to assess the merits of any take-over offer;

(b) that, so far as practicable, all shareholders of an offeree have equal opportunities to participate in benefits accruing from the take-over offer, including in the premium payable for control;

(c) that fair and equal treatment of all shareholders, in particular, minority shareholders, in relation to the take-over offer, merger or compulsory acquisition would be achieved; and

(d) in its response to, or making recommendations with respect to any takeover offer, merger or compulsory acquisition, the directors of the offeree and acquirer shall act in good faith to observe the objects, and the manner in which they observe the objects, specified in this subsection, and that minority shareholders are not subject to oppression or disadvantaged by the treatment and conduct of the directors of the offeree or the acquirer.

Compliance with Code and rulings

218. (1) A person who makes a take-over offer shall do so in accordance with the provisions of the Code and any ruling made under subsection 217(4).

(2) Subject to section 219, an acquirer who has obtained control in a company shall make a take-over offer, other than in respect of voting shares of the company or voting rights which at the date of the offer are already held by the acquirer or which the acquirer is entitled to exercise, in accordance with the provisions of the Code and any ruling made under subsection 217(4).

(3) Subject to section 219, an acquirer who has obtained control shall not acquire any additional voting shares in that company or voting rights, as the case may be, except in accordance with the provisions of the Code and any ruling made under subsection 217(4).

(4) A person who contravenes subsection (1), (2) or (3) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

Exemptions

219. (1) Subject to subsection 217(5), the Commission may grant

exemption in writing to any particular person or take-over offer or to any particular class, category or description of persons or take-over offers from the provisions of this Division, the Code and any ruling made under subsection 217(4).

(2) Any exemption granted under subsection (1) may be subject to any conditions, restrictions or limitations as may be imposed by the Commission.

Action by Commission in cases of non-compliance with Code and rulings

220. (1) Notwithstanding the provisions of subsection 218(4), where any person who is under an obligation to comply with, observe or give effect to the provisions of this Division or the Code, or any ruling made under subsection 217(4), contravenes or fails to comply with, observe or give effect to any such provision or ruling, the Commission may take one or more of the following actions:

(a) direct the person in breach to comply with, observe or give effect to any such provision of the Code or rulings;

(b) impose a penalty, in proportion to the severity or gravity of the breach on the person in breach, but in any event not exceeding one million ringgit;

(c) reprimand the person in breach;

(d) direct a stock exchange to deprive the person in breach access to the facilities of the stock exchange;

(e) where the person in breach is a listed corporation, direct the stock exchange—

(i) to suspend trading in the securities of the corporation;

(ii) to suspend the listing of the corporation; or

(iii) to remove from the official list the corporation or the class of securities of the corporation;

(f) where the person in breach is a corporation that is not listed, direct any stock exchange to prohibit the listing of any of its securities;

(g) direct a stock exchange to prohibit the person in breach from engaging in transactions to be executed through the use of the facilities of the stock exchange; or

(h) require the person in breach to take such steps as the Commission may direct to remedy the breach or mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach.

(2) The Commission shall give a written notice to a person in breach of its intention to take action under subsection (1) and shall give the person in breach an opportunity to be heard prior to it taking any action under subsection (1).

(3) The court may, in a case where the Commission gives a direction under paragraph (1)*(a)* or *(h)*, on an application by the Commission, make an order directing the person in breach to comply with, observe or give effect to those provisions of the Code or rulings.

(4) For the purposes of paragraph (1)*(h),* in determining whether or

not restitution is to be made by a person in breach, the Commission shall have regard to—

(a) the profits that have accrued to such person in breach; or

(b) whether one or more persons have suffered loss or been otherwise adversely affected as a result of the breach.

(5) Where a person has failed to comply with a penalty imposed by the Commission under paragraph (1)*(b)*, the penalty imposed by the Commission may be sued for and recovered as a civil debt due to the Government of Malaysia.

(6) Without prejudice to any other remedy, where a direction under paragraph (1)*(h)* had required the person in breach to make restitution in the form of monetary payment, and the person in breach fails to pay the restitution, the Commission may sue for and recover the restitution as a civil debt due to the persons aggrieved by the breach.

(7) To the extent that any of the amount obtained under paragraph (1)*(h)* or subsection (6) has not been distributed due to the difficulty of ascertaining or notifying the aggrieved persons, such amount shall be paid to—

(a) the compensation fund maintained under Part IV; or

(b) retained by the Commission to defray the costs of regulating the capital market, as the Commission, with the approval of the Minister, may determine.

(8) Nothing in this section shall preclude the Commission from taking any of the actions that it is empowered to take under this Act or any of the provisions of the securities laws against the person in breach.

(9) For the purposes of this section—

"breach" means a failure to comply with, observe or give effect to the provisions of this Part or the Code or any ruling made under subsection 217(4), in circumstances where there is an obligation to do so;

"person in breach" means a person who contravenes or fails to comply with, observe or give effect to the provisions of this Part or the Code or any ruling made under subsection 217(4), in circumstances where the person is under an obligation to do so.

False or misleading documents, information, *etc.*

221. (1) Where any document or information is required to be submitted to the Commission under this Division or the Code in relation to a take-over offer, merger or compulsory acquisition—

(a) an acquirer, an offeror or a person making a compulsory acquisition or effecting a merger, its officers or associates;

(b) an offeree, its officers or associates;

(c) a financial adviser or an expert; or

(d) any other person,

shall not—

(A) submit or cause to be submitted any document or information that is false or misleading;

(B) provide or cause to be provided any document or information from which there is material omission; or

(C) engage in conduct that he knows to be misleading or deceptive or is likely to mislead or deceive.

(2) It shall be a defence to a prosecution or any proceeding for a contravention of subsection (1) if it is proved that the defendant, after making enquiries as were reasonable in the circumstances, had reasonable grounds to believe, and did until the time of the provision of the document or information or engaging in the conduct was of the belief that—

(a) the document or information was true and not misleading;

(b) the omission was not material;

(c) there was no material omission; or

(d) the conduct in question was not misleading or deceptive.

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

Compulsory acquisition

222. (1) Subject to section 224, where a take-over offer by an offeror to acquire all the shares or all the shares in any particular class in an offeree has, within four months after the making of the take-over offer, been accepted by the holders of not less than nine-tenths in the nominal value of those shares or of the shares of that class (including shares already held at the date of the take-over offer by the offeror or persons acting in concert), the offeror may, at any time within two months from the date the nine-tenths in the nominal value of those shares have been achieved, give notice in the manner prescribed under the Code to any dissenting shareholder that it desires to acquire his shares together with a copy of a statutory declaration by the offeror that the conditions for the giving of the notice are satisfied.

(2) Where an offeror has given notice to any dissenting shareholder that it desires to acquire his shares pursuant to subsection (1), the dissenting shareholder shall be entitled to require the offeror, by a demand in writing served on the offeror within one month from the date on which the notice is given, to supply him with a statement in writing of the names and addresses of all other dissenting shareholders as shown in the register of members and the offeror shall not be entitled or bound to acquire the shares of the dissenting shareholders until fourteen days after the posting of the statement of those names and addresses to the dissenting shareholder.

(3) Upon the giving of the notice and statutory declaration under subsection (1), or where subsection (2) applies, upon the provisions in subsection (2) being complied with, the offeror shall in accordance with subsection (7) acquire those shares on the terms of the take-over offer or, if the take-over offer contained two or more alternative sets of terms, on the terms which were specified in the take-over offer as being applicable to the dissenting shareholders.

(4) A person commits an offence if he—

(a) sends a copy of a notice or statutory declaration under subsection (1) which is not in the prescribed manner; or

(b) makes a statutory declaration pursuant to subsection (1) or sends a statement pursuant to subsection (2), knowing that the declaration or the statement, as the case may be, to be false, or without having reasonable grounds for believing it to be true.

(5) Where a person is charged for an offence under subsection (4), it is a defence for him to prove that he took reasonable steps for securing compliance with that subsection.

(6) Where, during the period within which a take-over offer can be accepted, the offeror acquires or contracts to acquire any of the shares to which the takeover offer relates, otherwise than by virtue of acceptances of the take-over offer, then if—

(a) the value of the consideration for which they are acquired or contracted to be acquired ("the acquisition consideration") does not at that time exceed the value of the consideration specified in the terms of the take-over offer; or

(b) the terms of the take-over offer are subsequently revised so that when the revision is announced the value of the acquisition consideration at the time mentioned in paragraph *(a)* no longer exceeds the value of the consideration specified in those terms,

the offeror shall be treated, for the purposes of this section, as having acquired or contracted to acquire those shares by virtue of acceptances of the take-over offer but in relation to any other case those shares shall be treated as excluded from those to which the take-over offer relates.

(7) Subject to section 224, where a notice has been given by the offeror under subsection (1), the offeror shall, after the expiration of one month after the date on which the notice has been given, or where subsection (2) applies after fourteen days from the date the statement has been posted to the dissenting shareholder—

(a) send a copy of the notice to the offeree together with an instrument of transfer executed on behalf of all such dissenting shareholders by the offeror; and

(b) pay, allot or transfer to the offeree the amount or other consideration for the shares to which the notice relates,

and the offeree shall thereupon register the offeror as the holder of those shares.

(8) Any sums received by the offeree under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that offeree in trust for the persons entitled to the shares in respect of which the sum or other consideration was received.

(9) Where any consideration other than cash is held in trust by a company for any person under this section, it may, after the expiration of ten years from the date on which the consideration is paid, allotted or transferred to it, transfer the same to the Minister.

(10) The Minister shall sell or dispose of any consideration received

under subsection (9) in such manner as he thinks fit and shall deal with the proceeds of the sale or disposal as if it were monies paid to him pursuant to the law relating to unclaimed monies.

Right of minority shareholder

223. (1) Subject to section 224, if a take-over offer relates to all the shares or to all shares in any class in an offeree and, at any time before the end of the period within which the take-over offer can be accepted—

(a) the offeror has, by virtue of the acceptances of the take-over offer, acquired some (but not all) of the shares to which the take-over offer relates or shares of any class to which the take-over offer relates; and

(b) those shares, with or without any other shares or any other shares of that class to which the take-over offer relates, as the case may be, which the offeror or persons acting in concert has acquired amounts to not less than nine-tenths in value of all the shares in the offeree or of that class in the offeree,

the holder of any shares or any class of shares to which the take-over offer relates may, by notice to the offeror, require him to acquire those shares, and the offeror shall be bound to acquire those shares on the terms of the take-over offer or such other terms as may be agreed.

(2) Within one month of the time specified in subsection (1), the offeror shall give any shareholder who has not accepted the take-over offer, notice in the manner prescribed under the Code of the rights that are exercisable by him under subsection (1) and, if the notice is given before the period mentioned in subsection (1), it shall state that the take-over offer is still open for acceptance.

(3) A notice under subsection (2) may specify the period for the exercise of the rights conferred by this section and in that event the rights shall not be exercisable after the end of that period; but no such period shall end less than three months after the end of the period within which the take-over offer can be accepted.

(4) Subsection (2) shall not apply if the offeror has given the shareholder a notice in respect of the shares in question under subsection 222(1).

(5) A person who contravenes subsection (2) commits an offence.

Application to court

224. (1) Where a notice is given under subsection 222(1), the court may, on an application made by any dissenting shareholder within one month from the date on which the notice was given—

(a) order that the offeror shall not be entitled and shall not be bound to acquire those shares; or

(b) specify terms of acquisition that are different from the terms of the takeover offer.

(2) If an application to court is pending at the end of the period mentioned in subsection 222(2), that subsection shall not have effect until the application has been disposed of.

(3) When the holder of any shares exercises his rights under subsection 223(1), the court may, on an application made by such holder of shares or the offeror, order that the terms on which the offeror shall acquire the shares shall be as the court thinks fit.

(4) No order for costs shall be made against a shareholder making an application under subsection (1) or (3) unless the court considers that—

(a) the application was unnecessary, improper or vexatious; or

(b) there has been unreasonable delay in making the application or unreasonable conduct on the part of the shareholder in conducting the proceeding on the application.

(5) Subject to subsection (6), the court may, on an application made by an offeror who has not obtained acceptances to the extent necessary for entitling him to give notice under subsection 222(1), make an order authorising the offeror to give notices under subsection 222(1).

(6) The court may only grant an order under subsection (5) upon being satisfied that—

(a) the failure of the offeror to obtain such acceptances was due to the inability of the offeror to trace one or more of the persons holding shares to which the take-over offer relates after having made reasonable enquiries;

(b) the shares which the offeror has acquired or contracted to acquire by virtue of acceptances of the take-over offer, together with the shares held by the person mentioned in paragraph *(a)*, amount to not less than the minimum specified in subsection 222(1); and

(c) the consideration offered is fair and reasonable:

Provided that the court shall not make such an order unless it considers that it is just and equitable to do so having regard, in particular, to the number of shareholders who have been traced but who have not accepted the take-over offer.

Non-application of section 180 of the Companies Act 19651965

225. The provisions of section 180 of the Companies Act 19651965 shall not apply in respect of take-over offers to which subsection 222(1) applies.

Division 3 Prospectus

Interpretation

226. In this Division, Divisions 4 and 5, unless the context otherwise requires—

"approved company auditor" means a person approved by the Minister under subsection 8(2) of the Companies Act 19651965 as a company auditor and whose approval has not been revoked;

"excluded invitation" or "excluded offer" means an invitation or offer which is specified in Schedule 6 or which is prescribed by the Minister to be an excluded invitation or excluded offer under paragraph 229(1)*(b)*;

"excluded issue" means an issue which is specified in Schedule 7 or

which is prescribed by the Minister to be an excluded issue under paragraph 230(1)*(b)*;

"preliminary prospectus" means any document which is designed to assist an issuer in setting a price in respect of a proposed issue of, an offer for subscription or purchase of, or an invitation to subscribe for or purchase, securities or to determine the final contents of a prospectus;

"promoter" means—

(a) in relation to a prospectus issued by or in connection with a corporation, a promoter of the corporation;

(b) in relation to a prospectus in respect of a unit trust scheme or prescribed investment scheme, a promoter of the scheme; or

(c) in relation to a prospectus in any other case, a person,

who is a party to the preparation of the prospectus or any relevant portion thereof, but does not include any person by reason only of his acting in a professional capacity;

"prospectus" means a notice, circular, advertisement or document inviting applications or offers to subscribe for or purchase securities, or offering any securities for subscription or purchase and, unless expressly specified, includes a supplementary prospectus, replacement prospectus, shelf prospectus, short form prospectus, profile statement, supplementary shelf prospectus and abridged prospectus;

"shelf prospectus" means a prospectus issued under a shelf registration scheme;

"shelf registration scheme" means a scheme applicable for the purpose of any issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities by an issuer based on a shelf prospectus and a supplementary shelf prospectus;

"supplementary shelf prospectus" means a document which provides material information necessary to update the information in a shelf prospectus subsequent to the registration of such shelf prospectus.

Invitation

227. In this Part, a reference to an invitation includes a reference to an invitation to make an offer or application.

Offer for subscription or purchase

228. For the purposes of this Division and Division 5, the expression "offer for subscription or purchase" or "making an invitation to subscribe for or purchase", in relation to units of a unit trust scheme or prescribed investment scheme, as the case may be, shall include the making available of such units.

Excluded offers and invitations

229. (1) An offer for subscription or purchase of, or an invitation to subscribe for or purchase, securities is an excluded offer or an excluded invitation if—

(a) the offer or invitation is specified in Schedule 6; or

(b) the offer or invitation is made to a person or a class of persons, or made in respect of securities or a class of securities, as the Minister

may, on the recommendation of the Commission, prescribe by order published in the *Gazette*,
to be an excluded offer or an excluded invitation.

(2) Schedule 6 or a prescription made under paragraph (1)*(b)* may specify the provisions of this Act that shall not apply to an excluded offer or an excluded invitation.

(3) An information memorandum issued by a person or his agent purporting to describe the business and affairs of the person in respect of—

(a) any excluded offer or excluded invitation specified in Schedule 6; or

(b) any offer or invitation made to a person or a class of persons or any offer or invitation in relation to securities or a class of securities prescribed under paragraph (1)*(b)*,
shall be deemed to be a prospectus in so far as it relates to the liability of the person or his agent for any statement or information that is false or misleading or from which there is a material omission.

(4) A person issuing the information memorandum referred to in subsection (3) shall deposit a copy of the information memorandum with the Commission within seven days after it is first issued.

(5) Paragraph 17 of Schedule 6 shall not apply to any securities or class of securities of any private company or class of private companies as the Minister may on the recommendation of the Commission, prescribe by order published in the *Gazette*.

Excluded issues

230. (1) An issue of securities is an excluded issue if—

(a) the issue is so specified in Schedule 7; or

(b) the issue is made to a person or a class of persons, or made in respect of securities or a class of securities, as the Minister may, on the recommendation of the Commission, prescribe by order published in the *Gazette*.

(2) Schedule 7 or a prescription made under paragraph (1)*(b)* may specify the provisions of this Act that shall not apply to an excluded issue.

(3) An information memorandum issued by a person or his agent purporting to describe the business and affairs of the person in respect of—

(a) any excluded issue specified in Schedule 7; or

(b) any issue of securities made to a person or a class of persons or in relation to securities or a class of securities prescribed under paragraph (1)*(b)*,
shall be deemed to be a prospectus in so far as it relates to the liability of the person or his agent for any statement or information that is false or misleading or from which there is a material omission.

(4) A person issuing the information memorandum referred to in subsection (3) shall deposit a copy of the information memorandum with the Commission within seven days after it is first issued.

(5) Paragraph 17 of Schedule 7 shall not apply to any securities or class of securities of any private company or class of private companies as the Minister may on the recommendation of the Commission, prescribe by order published in the *Gazette*.

Exceptions

231. (1) The provisions of this Division as specified in Schedule 6 or 7 or as may be prescribed by the Minister pursuant to paragraph 229(1)*(b)* or 230(1)*(b)* shall not apply to—

(a) an excluded offer;

(b) an excluded invitation; or

(c) an excluded issue.

(2) The provisions of this Part shall not apply to the making available of, the offer for subscription or purchase of, or an invitation to subscribe for or purchase, shares or debentures of any unlisted recreational club.

Requirement to register prospectus in relation to securities

232. (1) A person shall not issue, offer for subscription or purchase, make an invitation to subscribe for or purchase securities or in the case of an initial listing of securities, make an application for the quotation of the securities on a stock market of a stock exchange unless—

(a) a prospectus in relation to the securities has been registered by the Commission under section 233; and

(b) the prospectus complies with the requirements or provisions of this Act.

(2) Unless authorized in writing by the Commission, a person shall not issue, circulate or distribute any form of application for securities unless the form is accompanied by a copy of a prospectus which has been registered by the Commission under section 233.

(3) A person shall not issue, circulate or distribute any form of application for securities of a corporation that has not been formed or of a unit trust scheme or prescribed investment scheme that has not been formed.

(4) The Commission may for public information publish the registrable prospectus submitted to the Commission before the registration of the prospectus under section 233.

(5) The publication under subsection (4) shall not indicate that the Commission recommends the securities or assumes responsibility for the correctness of any statements made or opinions or reports expressed in the registrable prospectus.

(6) For the purposes of this section, a "registrable prospectus" refers to a prospectus that has been submitted under section 233 and which has yet to be registered by the Commission.

(7) A person who contravenes subsection (1), (2) or (3) commits an offence and shall, on conviction, be liable to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding ten years or to both.

Registration of prospectus

233. (1) The Commission shall refuse to register a prospectus if—

(a) the Commission is of the opinion that the prospectus does not comply with any provision of this Act;

(b) the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities to which the prospectus relates does not comply with any other requirement or provision of this Act;

(c) the Commission is of the opinion that the prospectus contains any statement or information that is false or misleading or that the prospectus contains any statement or information from which there is a material omission;

(d) the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities to which the prospectus relates—

(i) requires the approval of the Commission under section 212 and such approval has not been given; or

(ii) does not comply with any term or condition imposed under subsection 212(5);

(e) in relation to a unit trust scheme or prescribed investment scheme, there has been a failure to comply with any term or condition in relation to an approval of a management company or trustee; or

(f) the Commission is of the opinion that the issuer has contravened any provision of the securities laws or the Companies Act 19651965 and that such contravention would cast a doubt as to whether the issuer is a fit and proper person to make an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, any securities.

(2) No prospectus shall be registered unless it is submitted to the Commission together with—

(a) a written application for its registration;

(b) copies of all consents required under subsection 244(1) from any person named in the prospectus as having made a statement that is included in the prospectus or on which a statement made in the prospectus is based;

(c) copies of all material contracts referred to in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, verified in accordance with any requirements specified by the Commission; and

(d) all such information or documents as may be required by the Commission.

(3) An issuer shall cause a copy of—

(a) any consent required under subsection 244(1) in relation to the issue of the prospectus; and

(b) every material contract or document referred to in the prospectus,

to be deposited—

(A) at the registered office of the issuer in Malaysia, and if it has no registered office in Malaysia, at the address specified in the prospectus for that purpose; and

(B) in the case of a unit trust scheme or prescribed investment scheme, at the registered office of the issuer and the trustee in Malaysia, at the address specified in the prospectus for that purpose,

within three days after the registration of the prospectus and shall keep each such copy, for such period as may be specified by the Commission, for inspection by any person without charge.

Requirement to lodge prospectus with Registrar

234. An issuer shall cause a copy of the prospectus registered by the Commission under this Act and a copy of the form of application accompanying such prospectus—

(a) in relation to securities other than a unit trust scheme or prescribed investment scheme, to be lodged with the Registrar;

(b) in relation to a unit trust scheme or prescribed investment scheme, to be lodged with the Commission,

before the date of issue of the prospectus.

Contents of prospectus

235. (1) Without prejudice to section 236, a prospectus—

(a) shall be dated and that date shall, unless the contrary is proved, be taken as the date of issue of the prospectus;

(b) shall state that—

(i) the prospectus has been registered by the Commission;

(ii) in respect of securities other than a unit trust scheme or prescribed investment scheme, a copy of the prospectus is lodged with the Registrar and in respect of a unit trust scheme or prescribed investment scheme, a copy of the prospectus is lodged with the Commission; and

(iii) the registration of the prospectus shall not be taken to indicate that the Commission recommends the securities or assumes responsibility for the correctness of any statements made or opinions or reports expressed in the prospectus;

(c) shall contain a statement that no securities will be allotted or issued on the basis of the prospectus later than such period as the Commission may specify from the date of issue of the prospectus;

(d) shall, if it contains any statement made by an expert or contains what purports to be a copy of or an extract from a report, memorandum or valuation of an expert, state the date on which the statement, report, memorandum or valuation was made and whether or not it was prepared by the expert for incorporation in the prospectus;

(e) shall not contain the name of any person named in the prospectus as having made a statement—

(i) that is included in the prospectus; or

(ii) on which a statement made in the prospectus is based,

(e) unless the requirements of subsection 244(1) are satisfied; and

(f) shall set out such information, matters or reports as may be specified by the Commission.

(2) A condition requiring or binding an applicant for securities to waive compliance with any requirement of this section or section 236,

or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) Notwithstanding the provisions of this Division, the Commission may, either on the written application of any person referred to in section 232 or of its own accord, make an order relieving such person from or approving any variation of the requirements of this Act relating to the form and content of a prospectus.

(4) In making an order under subsection (3), the Commission may impose such terms and conditions as it thinks fit.

(5) The Commission shall not make an order under subsection (3) unless it is satisfied that—

(a) compliance with the requirements of this Act is unnecessary for the protection of persons who may normally be expected to deal in those securities, being persons who would reasonably be expected to understand the risks involved; or

(b) compliance with the requirements of this Act would impose an unreasonable burden on the issuer.

(6) A prospectus shall be deemed to have complied with all the requirements of this Act relating to the form and content of a prospectus if it is issued in compliance with an order made under subsection (3).

(7) Where a prospectus relating to any securities is issued and the prospectus does not comply with the requirements of this section, the issuer and each director of the issuer at the time of the issue of the prospectus commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.

(8) A person who contravenes any term or condition as may be imposed by the Commission under subsection (4) commits an offence.

General duty of disclosure in prospectus

236. (1) For the purpose of determining whether a prospectus contains any statement or information which is false or misleading or from which there is a material omission under subsection 246(1) or 248(1), regard shall be had to whether the prospectus contains all such information that investors and their professional advisers would reasonably require, and reasonably expect to find in the prospectus, for the purpose of making an informed assessment of—

(a) the assets and liabilities, financial position, profits and losses and prospects of the issuer and, in the case of a unit trust scheme or prescribed investment scheme, of the scheme;

(b) the rights attaching to the securities; and

(c) the merits of investing in the securities and the extent of the risk involved in doing so.

(2) The information that investors and their professional advisers would reasonably require and reasonably expect to find in the prospectus under subsection (1) is information—

(a) which is known to all or any of the following persons:

(i) a person who was a director of the issuer at the time of issue of the prospectus;

(ii) a person who has consented or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time;

(iii) a promoter;

(iv) the principal adviser in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;

(v) a person named in the prospectus, with his consent, as having made a statement that is included in the prospectus or on which a statement made in the prospectus is based;

(vi) a person named in the prospectus, with his consent, as a stockbroker, sharebroker or underwriter, as the case may be, in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;

(vii) a person named in the prospectus, with his consent, as an auditor, banker or advocate in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;

(viii) a person named in the prospectus, with his consent, as having performed or performing any function in a professional, advisory or other capacity not mentioned in paragraph (iv), (v), (vi) or (vii) in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities; or

(b) which any of the persons referred to in paragraph (2)*(a)* would have been able to obtain by making such enquiries as were reasonable in the circumstances.

(3) Without prejudice to the generality of subsection (1) or (2), in determining the information that is required to be included in a prospectus under this section, regard shall be had to—

(a) the nature of—

(i) the securities;

(ii) the business of the issuer of the securities; and

(iii) the unit trust scheme or prescribed investment scheme;

(b) the persons likely to consider acquiring such securities;

(c) the fact that certain matters may reasonably be expected to be known to any professional adviser whom investors referred to in subsection 236(1) may reasonably be expected to consult; and

(d) whether the persons to whom an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities is to be made are the holders of securities in the corporation, or unit holders in the unit trust scheme or prescribed investment scheme, and if they are, to what extent (if any) relevant information has previously been given to them by the issuer under any law or any requirement of the rules of a stock exchange, if applicable, or otherwise.

Abridged prospectus for renounceable rights issues

237. (1) A corporation shall not issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase, securi-

ties by means of a rights issue which is renounceable in favour of persons other than existing members or debenture holders of that corporation and in respect of which an application has been or will be made for permission to deal with or quote such securities on a stock market of a stock exchange unless an abridged prospectus is registered by the Commission.

(2) Any abridged prospectus registered pursuant to subsection (1) shall contain such particulars or information as may be specified by the Commission.

(3) Nothing in this section shall be construed as preventing a full prospectus from being registered containing the particulars specified by the Commission in respect of full prospectuses in respect of an issue, offer or invitation referred to in subsection (1).

Supplementary or replacement prospectus

238. (1) This section applies—

(a) in the case of a unit trust scheme or prescribed investment scheme, where a prospectus has been registered; or

(b) in any other case, where a prospectus has been registered but before the issue of securities,

and where the issuer becomes aware that—

(A) a matter has arisen and information in respect of that matter would have been required by—

(i) section 235 or 236;

(ii) any requirement under this Act;

(iii) any guidelines issued by the Commission; or

(iv) any listing requirement of a stock exchange,

(A) to be disclosed in the prospectus if the matter had arisen at the time the prospectus was prepared;

(B) there has been a significant change affecting a matter disclosed in the prospectus;

(C) the prospectus contains a material statement or information that is false or misleading; or

(D) the prospectus contains a statement or information from which there is a material omission.

(2) As soon as practicable after becoming aware of a matter referred to in subsection (1), the issuer shall submit a supplementary or replacement prospectus, as the case may be, to the Commission for registration.

(3) The issuer shall lodge the supplementary or replacement prospectus, as the case may be—

(a) in relation to securities other than a unit trust scheme or prescribed investment scheme, with the Registrar immediately upon registration by the Commission; and

(b) in relation to a unit trust scheme or prescribed investment scheme, with the Commission immediately upon registration by the Commission.

(4) Subsection (1) shall apply with respect to matters contained in a supplementary or replacement prospectus, as the case may be, previ-

ously registered under this section in respect of the securities in question.

(5) On each page of a supplementary prospectus, there shall be a clear statement in bold type that states that the document is a supplementary prospectus that is to be read in conjunction with the original prospectus and if other supplementary prospectuses have been issued in relation to the original prospectus, both the original prospectus and the supplementary prospectuses.

(6) At the beginning of the replacement prospectus, there shall be a clear statement in bold type that states the document is a replacement prospectus, and identifies the prospectus which it replaces.

(7) A supplementary prospectus shall be regarded as being part of the prospectus to which it relates and the provisions of this Act and any other law relating to liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply to such supplementary prospectus and shall have effect accordingly.

(8) A replacement prospectus shall be regarded as replacing the prospectus previously registered under section 233.

(9) Where a supplementary prospectus has been registered by the Commission, every copy of the original prospectus issued after registration of the supplementary prospectus must be accompanied by a copy of the supplementary prospectus.

(10) Notwithstanding the provisions of this section, the Commission may, on the written application of any issuer or of its own accord, make an order relieving such person from, or approving any variation of, the requirements of this section.

(11) In making an order under this section, the Commission may impose such terms and conditions as it thinks fit.

(12) The Commission shall not make an order under subsection (10) unless it is satisfied that—

(a) compliance with the requirements of this Act is unnecessary for the protection of persons who may normally be expected to deal in those securities, being persons who would reasonably be expected to understand the risks involved; or

(b) compliance with the requirements of this Act would impose an unreasonable burden on the issuer.

(13) A person who contravenes subsection (2), (3), (5), (6) or (9) commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.

(14) A person who contravenes any term or condition as may be imposed by the Commission under subsection (11) commits an offence.

Consequences of registering a supplementary or replacement prospectus

239. (1) This section applies—

(a) where a person ("the applicant") applies for the issue of,

subscription or purchase of, any securities pursuant to a prospectus and—

(i) in the case of a unit trust scheme or prescribed investment scheme, before the issue of units or transfer of units from the management company or the trustee to the applicant; or

(ii) in any other case, before the issue of securities; and

(b) the issuer delivers to the Commission for registration a supplementary or replacement prospectus, as the case may be, that relates to the prospectus.

(2) As soon as practicable after the registration of the supplementary or replacement prospectus, as the case may be, by the Commission, the issuer shall—

(a) give to the applicant a written notice or such other notice as may be specified by the Commission—

(i) advising the applicant that a supplementary or replacement prospectus, as the case may be, has been registered by the Commission;

(ii) giving the applicant not less than fourteen days from the date of receipt of the notice an opportunity to withdraw his application; and

(b) ensure that the written notice referred to in paragraph (2)*(a)* is accompanied by a copy of a supplementary or replacement prospectus, as the case may be.

(3) If the applicant withdraws his application pursuant to subparagraph (2)*(a)*(ii), the issuer shall immediately pay to the applicant any monies that the applicant has paid to the issuer on account of the application.

(4) Notwithstanding the provisions of this section, the Commission may, on the written application of any issuer or of its own accord, make an order relieving such person from, or approving any variation of, the requirements of this section.

(5) In making an order under this section, the Commission may impose such terms and conditions as it thinks fit.

(6) The Commission shall not make an order under subsection (4) unless it is satisfied that—

(a) compliance with the requirements of this Act is unnecessary for the protection of persons who may normally be expected to deal in those securities, being persons who would reasonably be expected to understand the risks involved; or

(b) compliance with the requirements of this Act would impose an unreasonable burden on the issuer.

(7) A person who contravenes subsection (2) or (3) commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.

(8) A person who contravenes any term or condition as may be imposed by the Commission under subsection (5) commits an offence.

Regulations for shelf prospectuses, supplementary shelf prospectuses, short form prospectuses, profile statements, *etc.*

240. (1) Notwithstanding the provisions of sections 235 and 236, a

person may issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase, securities where at the time of the issue, offer or invitation there is in force—

(a) a shelf prospectus as updated by a supplementary shelf prospectus;

(b) a short form prospectus; or

(c) a profile statement,

relating to all matters which the Commission, with the approval of the Minister, may provide by way of regulations made under this Act with respect to a shelf prospectus, supplementary shelf prospectus, short form prospectus or profile statement, as the case may be.

(2) The regulations referred to under subsection (1) may provide for, but shall not be limited to, the following matters:

(a) a shelf prospectus, including a supplementary shelf prospectus;

(b) a short form prospectus;

(c) a profile statement;

(d) the period during which a person may be permitted to issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase, securities on the basis of a shelf prospectus, as updated by a supplementary shelf prospectus, short form prospectus or profile statement, as the case may be;

(e) the form and content of a prospectus referred to in paragraph *(a), (b)* or *(c)*;

(f) the persons or classes of persons to which any prospectus referred to in paragraph *(a), (b)* or *(c)* may apply; or

(g) the securities or classes of securities to which any prospectus referred to in paragraph *(a), (b)* or *(c)* may apply.

(3) Where the Commission makes regulations under subsection (1) with respect to a shelf prospectus, supplementary shelf prospectus, short form prospectus or profile statement, the provisions of this Act and any other law relating to liability in respect of statements in or omissions from prospectuses or otherwise relating to prospectuses shall apply to the shelf prospectus, supplementary shelf prospectus, short form prospectus or profile statement, as the case may be, and shall have effect accordingly.

Restrictions in advertising

241. (1) A person shall not publish a notice that—

(a) issues, offers for subscription or purchase, or makes invitations to subscribe for or purchase, securities; or

(b) refers, whether directly or indirectly, to—

(i) a prospectus in respect of securities of a corporation;

(ii) in the case of a unit trust scheme or prescribed investment scheme, a prospectus in respect of any unit of the unit trust scheme or prescribed investment scheme, as the case may be;

(iii) an issue, intended issue, offer, intended offer, invitation or intended invitation in respect of securities; or

(iv) another notice that refers to a prospectus in relation to an issue, intended issue, offer, intended offer, invitation or intended invitation in respect of securities.

(2) Subsection (1) shall apply to such notices mentioned therein which are issued in relation to the securities of a corporation that has not been formed or of a unit trust scheme or prescribed investment scheme that has not been formed.

(3) Subsection (1) shall not apply to—

(a) such notices referred to in subsection (4) or (5);

(b) such preliminary prospectuses referred to in subsection (6);

(c) such reports referred to in subsection (7);

(d) such notices or reports as may be specified by the Commission; or

(e) such publication of a registrable prospectus referred to in section 232.

(4) Subsection (1) shall not apply to a notice that is issued or published before the registration of a prospectus—

(a) with the consent of the Commission and subject to such terms and conditions as it may impose; and

(b) which does not contain any information or matter other than the following:

(i) the name of the issuer of securities;

(ii) in the case of a unit trust scheme or prescribed investment scheme, the name of the unit trust scheme or the prescribed investment scheme, and the names of the trustee and the management company in relation to the unit trust scheme or prescribed investment scheme, as the case may be;

(iii) a concise statement of the general nature of the main business or undertaking or proposed main business or undertaking of the issuer;

(iv) the names, addresses and, where appropriate, occupations of the directors or proposed directors;

(v) the names and addresses of stockbrokers, sharebrokers, underwriters and principal adviser in relation to the proposed issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;

(vi) in the case of debentures, the name and address of the trustee for debenture holders;

(vii) a brief description of the listing status of the corporation, unit trust scheme or prescribed investment scheme on any stock exchange or other similar exchange outside Malaysia, or a statement that it is intended to apply for permission to list the corporation, unit trust scheme or prescribed investment scheme on any stock exchange or other similar exchange outside Malaysia but no assurance has been given that the corporation, unit trust scheme or prescribed investment scheme, as the case may be, will be listed;

(viii) the fact that a prospectus is in the course of preparation and that an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities is proposed, together with a brief indication of the nature and number of securities and of the possible timing of the issue of the prospectus;

(ix) in the case of a unit trust scheme or prescribed investment scheme, a description of the persons from whom the units are available for purchase or subscription; and

(x) such other information or matters which the Commission may specify in writing.

(5) Subsection (1) shall not apply to a notice that is issued or published after the registration of a prospectus that—

(a) states that a prospectus in relation to any securities has been registered;

(b) specifies the date of the prospectus;

(c) specifies where a copy of the prospectus can be obtained;

(d) states that any issue of securities to which the prospectus relates will only be made on receipt of a form of application referred to in and accompanying a copy of the prospectus; and

(e) states such other information or matters which the Commission may specify in writing.

(6) Subsection (1) shall not apply to a preliminary prospectus where the following requirements are met:

(a) a copy of the preliminary prospectus is delivered to the Commission prior to its issue;

(b) the preliminary prospectus is issued to any person referred to in paragraph (1), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (22), (23), (24), (25), (26) or (27) of Schedule 6 or to any other person or class or category of persons or in respect of any securities or class or category of securities which the Commission allows in writing;

(c) the preliminary prospectus contains on its front page a conspicuous notice that—

(i) it is not a prospectus;

(ii) no issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities to which the preliminary prospectus relates is to be made; and

(iii) no agreement to subscribe for securities to which the preliminary prospectus relates will be entered into between the issuer and the recipient of the preliminary prospectus;

(d) the preliminary prospectus is not to contain, have attached to it or be accompanied by any form of application which would facilitate the issue of, the offer for subscription or purchase of, or the making of an invitation to subscribe for or purchase, securities to which the preliminary prospectus relates or the acceptance of such an issue, offer or invitation;

(e) a person to whom a copy of the preliminary prospectus is issued shall not circulate the copy to any other person;

(f) securities are only to be issued on the basis of a prospectus duly registered by the Commission under this Act; and

(g) where a prospectus which is registered in relation to securities to which the preliminary prospectus relates differs from the preliminary prospectus in a material respect, notice of such difference shall be given to the recipients of the preliminary prospectus and a copy of such notice shall be delivered to the Commission:

Provided that the Commission may, either of its own accord or on a

written application by an issuer, make an order approving any variation of the requirements of this subsection.

(7) Subsection (1) shall not apply to the issuing or publishing of all or any of the following reports:

(a) a report that relates to the affairs of a corporation, unit trust scheme or a prescribed investment scheme, that is listed on a stock exchange which is or has been published only to that stock exchange by or on behalf of the corporation, unit trust scheme or prescribed investment scheme, as the case may be;

(b) a report of the whole or part of the proceedings at a general meeting of a body corporate or at a meeting of unit holders of a unit trust scheme or a prescribed investment scheme where the body corporate, unit trust scheme or prescribed investment scheme is included in the official list of a stock exchange and the report does not contain any matter other than the matters laid before the meeting;

(c) a report which is a news report or is a genuine comment, published by a person in a newspaper or periodical or by broadcasting or televising, relating to—

(i) a prospectus that has been registered or information that is contained in such a prospectus; or

(ii) a report referred to in paragraph *(a)* or *(b)*,

(c) if none of the following persons receives or is entitled to receive any consideration or other benefit from a person who has an interest in the success of the issue of securities to which the report or comment relates as an inducement to publish, or as the result of the publication of the report or comment:

(A) the person making the report or comment;

(B) an agent or employee of the person making the report or comment;

(C) where the report or comment is published in a newspaper or periodical, the publisher of the newspaper or periodical; or

(D) where the report or comment is published by broadcasting or televising, the licensee of the broadcasting or television station by which it is published.

(8) A notice that is issued or published under subsection (4) or (5), a preliminary prospectus that is issued under subsection (6) or a report that is issued or published under subsection (7) shall not constitute a prospectus.

(9) Nothing in this section shall limit or diminish the liability that a person may incur under any other law.

(10) Where it appears to the Commission that a notice, preliminary prospectus or report referred to in this section—

(a) contravenes subsection (1);

(b) contains a statement or information that is false or misleading;

(c) contains a statement or information from which there is a material omission; or

(d) contains a material misrepresentation,

the Commission may by order in writing served on the person who publishes or issues the notice, preliminary prospectus or report—

(A) direct the person to cease issuing or publishing the notice, preliminary prospectus or report; or

(B) direct the person to take such other action as may be specified in the order.

(11) In this section, "notice" includes any notice published in a document, newspaper or periodical or on any medium or in any manner capable of suggesting words and ideas.

(12) A person who—

(a) issues or publishes a notice in contravention of subsection (1), (4) or (5);

(b) issues a preliminary prospectus in contravention of subsection (6); or

(c) issues or publishes a report in contravention of subsection (7),

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

Document containing offer of securities for purchase deemed to be a prospectus

242. (1) Subject to subsection (3), where an issuer allots or issues or agrees to allot or issue to any person any securities with a view to all or any of them being offered for purchase—

(a) any document by which the offer for purchase is made shall, for all purposes, be deemed to be a prospectus issued by the issuer; and

(b) all laws regulating the contents of prospectuses and providing for liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly as if persons accepting the offer in respect of any securities were subscribers therefor.

(2) Nothing in subsection (1) shall prejudice the liability of the persons by whom the offer for purchase is made in respect of statements in, or omissions from, the document by which the offer for purchase is made or otherwise.

(3) Subsection (1) shall not apply in relation to an offer for purchase or an invitation to purchase securities if the offer or invitation is made in the ordinary course of trading on a stock market of a stock exchange.

(4) For the purposes of this Act, it shall unless the contrary is proved, be evidence that an allotment or issue of, or an agreement to allot or issue, any securities was made with a view to the securities being offered for purchase if it is shown that—

(a) an offer of the securities for purchase was made within such period as may be specified by the Commission under paragraph 235(1)*(c)* after the allotment or issue or agreement to allot or issue; or

(b) at the date when the offer was made, the whole consideration to be received by the issuer in respect of the securities had not been so received.

(5) The requirements of this Division as to prospectuses shall have effect as though the persons making an offer to which this section relates were persons named in a prospectus as directors of an issuer.

(6) In addition to complying with the other requirements of this Division, the document by which the offer for purchase is made shall state—

(a) the net amount of the consideration received or to be received by the issuer in respect of the securities to which the offer relates; and

(b) the place and time at which a copy of the contract under which the securities have been or are to be allotted or issued may be inspected.

(7) Where an offer to which this section relates is made by a corporation or a firm, the document by which the offer for purchase is made shall—

(a) in the case of a corporation, be signed on behalf of the corporation by two directors of the corporation; and

(b) in the case of a firm, be signed by not less than half of the members of the firm,

and any such director or member may authorize his agent in writing to sign on his behalf.

(8) For the purpose of this section, an invitation to make an offer to purchase securities shall be deemed to constitute an offer of the securities for purchase, and a person who makes an offer pursuant to such an invitation shall be deemed to be a person who accepted an offer of the securities for purchase.

(9) The provisions of this section shall not apply to an offer for purchase which is an excluded offer, excluded invitation or excluded issue.

Allotment of securities where prospectus implies that application for permission to list on stock exchange had been made

243. (1) Where a prospectus states or implies that an application has been or will be made for permission for the securities offered to be listed for quotation on the official list of a stock exchange or other similar exchange outside Malaysia, any allotment made on an application to subscribe for securities in pursuance of the prospectus shall, subject to subsection (3), whenever made, be void if—

(a) the permission is not applied for in the form for the time being required by the stock exchange before the third day on which the exchange is open after the date of issue of the prospectus; or

(b) the permission is not granted before the expiration of six weeks from the date of issue of the prospectus or such longer period as may be specified by the Commission, provided that the applicant is notified by or on behalf of the exchange within that six weeks or such longer period as may be specified by the Commission.

(2) Where permission has not been applied for, or has not been granted by the exchange referred to in subsection (1), an issuer shall, subject to subsection (3), forthwith repay without interest all monies received from applicants in pursuance of the prospectus, and if any such money is not repaid within fourteen days after the issuer so becomes liable to repay it, then, in addition to the liability of the is-

suer, the officers of the issuer shall be jointly and severally liable to repay such money with interest at the rate of ten per centum per annum or at such other rate as may be prescribed by the Commission from the expiration of that period.

(3) Where in relation to any securities—

(a) permission is not applied for as specified in paragraph (1)*(a);* or

(b) permission is not granted as specified in paragraph (1)*(b)*

the Commission may, on the application of the issuer, by order published in the *Gazette,* before the securities are purported to be allotted, exempt the allotment of securities from the operation of subsection (1) or (2).

(4) An officer of the issuer shall not be so liable under subsection (2) if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding an applicant for any securities to waive compliance with this section or purporting to do so shall be void.

(6) Without limiting the application of any of its provisions, this section shall have effect—

(a) in relation to any securities agreed to be taken by a person underwriting an issue, offer or invitation referred to in a prospectus, as if he had applied for the securities in relation to the issue, offer or invitation referred to in the prospectus; and

(b) in relation to a prospectus offering securities for purchase, as if—

(i) a reference to purchase were substituted for a reference to allotment;

(ii) the persons by whom the offer is made, and not the issuer, were liable under subsection (2) to repay monies received from applicants, and references to the issuer's liability under that subsection were construed accordingly; and

(iii) a reference in subsection (7) to the issuer and every officer of the issuer who is in default under subsection (2) were substituted with a reference to any person by or through whom the issue, offer or invitation is made and who knowingly authorizes or permits the default.

(7) All monies received from the applicants shall be kept in trust in a separate bank account so long as the issuer may become liable to repay it under subsection (2), and if default is made in complying with this subsection, the issuer and every officer of the issuer who is in default commits an offence under this Act.

(8) Where the exchange referred to in subsection (1) has within the time specified in paragraph (1)*(b)* granted permission, subject to compliance with any requirements specified by the exchange, permission shall be deemed to have been granted by the exchange if the directors of an issuer have given the exchange an undertaking in writing to comply with the requirements of the exchange, but if any such undertaking is not complied with, each director of the issuer or the management company who is in default commits an offence.

(9) A person shall not issue a prospectus in relation to any securities if it includes—

(a) any false or misleading statement that permission has been granted for those securities to be dealt in or listed on an exchange referred to in subsection (1); or

(b) any statement in any way referring to any such permission or to any application or intended application for any such permission, or to dealing in or quoting or listing the securities on any exchange referred to in subsection (1), or to any requirements of the exchange unless that statement is or is to the effect that permission has been granted or that application has been or will be made to the exchange within three days of the issue of the prospectus or within such longer period as may be specified by the Commission or the statement has been approved by the Commission for inclusion in the prospectus.

(10) Where a prospectus contains a statement to the effect that the constituent documents of the issuer or the deed as defined under section 287 complies with, or has been drawn so as to comply with, the requirements of any exchange referred to in subsection (1), the prospectus shall, unless the contrary intention appears from the prospectus, be deemed for the purposes of this section to imply that application has been made, or will be made, for permission for the securities offered by the prospectus to be listed for quotation on the stock exchange.

(11) In this section, "officer", in relation to an issuer means a director, a secretary or an executive officer of the issuer.

(12) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.

Consent from person to issue of prospectus containing statement by him

244. (1) A prospectus that includes a statement, other than a statement which is an extract of an official statement or any other statement as may be specified by the Commission, purporting to be made by any person or to be based on a statement made by such person shall not be issued unless—

(a) the person has given his written consent to the issue of the prospectus with the statement made in the form and context in which it is included and has not, before the date of issue of the prospectus, withdrawn such consent; and

(b) there appears in the prospectus a statement that the person has given and has not withdrawn his consent.

(2) Every person who knowingly is a party to the issue of any prospectus in contravention of subsection (1) commits an offence.

Stop order

245. (1) Where in the opinion of the Commission—

(a) a prospectus does not comply with or is not prepared in accordance with any provision of this Act;

(b) a prospectus contains a statement or information that is false or misleading;

(c) a prospectus contains a statement or information from which there is a material omission; or

(d) an issuer has contravened any provision of the securities laws or the Companies Act1965,

the Commission may, by order in writing served on the issuer or such other person as the Commission may determine, direct the issuer or such other person not to allot, issue, offer, make an invitation to subscribe for or purchase or sell, further securities to which the prospectus relates, as the case requires.

(2) Subject to subsections (3) and (4), the Commission shall not make an order under subsection (1) unless the Commission has given a reasonable opportunity to be heard to any affected person as to whether such an order should be made.

(3) If the Commission considers that any delay in making an order under subsection (1) by giving an opportunity to be heard would be prejudicial to the public interest, the Commission may make an interim order without giving the opportunity to be heard.

(4) An interim order under subsection (3) shall, unless sooner revoked, have effect until the end of twenty-one days after the day on which it is made or the conclusion of the hearing in subsection (2), whichever date is the later.

(5) While an order made under subsection (1) or an interim order made under subsection (3) is in force, this Division shall apply as if the prospectus had not been registered.

(6) An interim order made under subsection (3) may, by further order in writing made by the Commission, be revoked if the Commission becomes satisfied that the circumstances that resulted in the making of the order no longer exists.

(7) Without prejudice to the provisions of section 215, where applications to subscribe for or purchase securities to which the prospectus relates have been made prior to the order made under subsection (1)—

(a) where the securities have not been issued to the applicants, the applications shall be deemed to have been withdrawn and cancelled and the issuer or such other person who receives the monies, shall, forthwith repay without interest all monies received from the applicants and if any such money is not repaid within fourteen days of the stop order, the issuer shall be liable to repay such monies with interest at the rate of ten per centum per annum or at such other rate as may be specified by the Commission from the expiration of that period; or

(b) where the securities have been issued to the applicants, the issue of securities shall be deemed to be void and the issuer or such other person shall—

(i) forthwith repay without interest all monies received from the applicants and if any such money is not repaid within fourteen days of the date of service of the stop order, the issuer shall be li-

able to repay such monies with interest at the rate of ten per centum per annum or at such other rate as may be specified by the Commission from the expiration of that period; and

(ii) take necessary steps to effect the order.

(8) Notwithstanding subsections (1) and (2), the Commission shall not serve a stop order if any of the shares or debentures or units of shares or debentures to which the prospectus relates have been listed on a stock market of a stock exchange and trading in them has commenced.

(9) A person who contravenes an order made under subsection (1) or an interim order made under subsection (3) commits an offence.

Criminal liability for false statements, *etc.*, in prospectus

246. (1) No person shall authorize or cause the issue of a prospectus which contains—

(a) any statement or information that is false or misleading; or

(b) any statement or information from which there is a material omission.

(2) For the purposes of this Division, a statement shall be deemed to be in a prospectus if it is—

(a) contained in a report or memorandum that appears on the face of the prospectus; or

(b) contained in a report or memorandum that is issued with the prospectus with the consent or knowledge of a person who authorized or caused the issue of the prospectus.

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

Persons not to be taken to have authorized or caused issue of prospectus

247. (1) For the purposes of this Division, neither the Commission nor the Registrar shall be taken to have authorized or caused the issue, or to be involved in the preparation, of a prospectus for any reason including where there has been the performance or purported performance of any function, or the exercise or purported exercise of any power, by the Commission under the securities laws or the Registrar under the Companies Act 1965 respectively.

(2) For the purpose of section 246, a person shall not be deemed to have authorized or caused the issue of a prospectus by reason only of his having given a consent as required under subsection 244(1).

Right to recover for loss or damage resulting from false or misleading statement in prospectus, *etc.*

248. (1) A person who acquires, subscribes for or purchases securities and suffers loss or damage as a result of any statement or information contained in a prospectus that is false or misleading, or any statement or information contained in a prospectus from which there

is a material omission, may recover the amount of loss or damage from all or any of the persons set out in paragraphs *(a), (b), (c), (d), (e)* and *(f)* and to the extent provided for—

(a) the issuer and each director of the issuer at the time of the issue of the prospectus, for any loss or damage;

(b) a person who consented or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time, for any loss or damage;

(c) a promoter, for any loss or damage arising from the prospectus or any relevant portion of the prospectus in respect of which he was a party to the preparation thereof;

(d) a principal adviser, for any loss or damage;

(e) a person named in the prospectus with his consent as having made a statement that is included in the prospectus or on which a statement made in the prospectus is based, for any loss or damage caused by the inclusion of the statement in the prospectus;

(f) a person named in the prospectus with his consent as a stockbroker, sharebroker, underwriter, auditor, banker or advocate of the issuer in relation to the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities, and who has made a statement that is included in the prospectus or on which a statement made in the prospectus is based, for any loss or damage caused by the inclusion of the statement in the prospectus; or

(g) a person who authorized or caused the issue of a prospectus in contravention of section 246, for any loss or damage caused by such contravention.

(2) For the purposes of paragraphs (1)*(a)* and *(b)*, a director referred to therein shall include any person by whom the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities is made.

(3) For the purpose of paragraph (1)*(f)*, an underwriter shall not include a subunderwriter.

Civil liability for misleading or deceptive acts

249. (1) A person shall not act in a manner that is misleading or deceptive or is likely to mislead or deceive in connection with—

(a) any prospectus issued;

(b) the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;

(c) any notice referred to in subsection 241(4) or (5) or a preliminary prospectus referred to in subsection 241(6), or any report referred to in subsection 241(7) or any notice or report as may be specified by the Commission under paragraph 241(3)*(d)*; or

(d) the carrying on of negotiations, the making of any arrangements or the doing of any other act preparatory to or in any other way related to any matter referred to in paragraph *(a), (b)* or *(c)*.

(2) A person who contravenes this section shall not be guilty of an offence but a person who acquires, subscribes for or purchases securities and suffers loss or damage as a result of any act referred to in

paragraph (1)*(a), (b), (c)* or *(d)* may recover the amount of the loss or damage under section 357.

Due diligence defence

250. A person shall not be guilty of an offence under section 246 and is not liable under section 248 if he proves that—

(a) he had made all enquiries as were reasonable in the circumstances; and

(b) after making such enquiries, he had reasonable grounds to believe and did believe until the time of the making of the statement or provision of the information that—

(i) the statement or information was true and not misleading; or

(ii) there was no material omission.

Reliance on statement and information in respect of false or misleading statement

251. A person shall not be guilty of an offence under section 246 and is not liable under section 248 if the person (hereinafter referred to as the "first-mentioned person") proves that the false or misleading statement or material omission from a statement in a prospectus—

(a) is or is based on a statement made by a person referred to in subsection 244(1) (hereinafter referred to as the "second-mentioned person"); or

(b) is contained in a copy of or what purports to be a copy of, or an extract from, a report or valuation of the second-mentioned person,

and it is proved by the first-mentioned person that—

(A) the statement accurately represented the statement made by the secondmentioned person, or the copy or the purported copy or extract was a correct copy of, or extract from, the report or valuation, as the case may be; and

(B) after making such enquiries as were reasonable in the circumstances, the first-mentioned person had reasonable grounds to believe, and did believe until the time of the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, the securities, that the second-mentioned person, in making the statement, report or valuation, as the case may be—

(i) was competent to make it;

(ii) had given the consent required by subsection 244(1); and

(iii) had not withdrawn that consent.

Reliance on statement and information in respect of misleading or deceptive act

252. A person is not liable under section 249 in respect of an act that is misleading or deceptive or is likely to mislead or deceive if the person (hereinafter referred to as the "first-mentioned person") proves that the act consists of a representation made in reliance on—

(a) a statement made by a person referred to in subsection 244(1) (hereinafter referred to as the "second-mentioned person"); or

(b) a report or valuation of the second-mentioned person,

and it is proved by the first-mentioned person that—

(A) the representation accurately reflects the statement made by the secondmentioned person or is contained in the report or valuation of the second-mentioned person, as the case may be; and

(B) after making such enquiries as were reasonable in the circumstances, the first-mentioned person had reasonable grounds to believe, and did believe until the time of the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, the securities, that the second-mentioned person in making the statement, report or valuation, as the case may be—

(i) was competent to make it;

(ii) had given the consent required by subsection 244(1); and

(iii) had not withdrawn that consent.

Reliance on public official statement in respect of false and misleading statement

253. (1) A person shall not be guilty of an offence under section 246 and is not liable under section 248 if the person proves that the false or misleading statement or material omission from a statement in a prospectus (hereinafter referred as the "defective statement") is or is based on a statement made by a public officer in the course of his duties or is contained in a copy of or what purports to be a copy of, or an extract from, a public official document, and it is proved by the person that—

(a) the defective statement accurately represented the statement made by the public officer including the context and form in which it was originally made; or

(b) the defective statement is contained in a copy of or what purports to be a copy of, or extract from, a public official document,

and the person had reasonable grounds to believe, and did believe until the time of the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, the securities, that the defective statement was true and not misleading and that there was no material omission from the defective statement, as the case may be.

(2) A person is not liable under section 249 in respect of an act that is misleading or deceptive or is likely to mislead or deceive if the person proves that the act consists of a representation made in reliance on a public official document or statement made by a public officer in the course of his duties and it is proved that—

(a) the representation accurately reflects the statement made by the public officer including the context and form in which it was originally made; or

(b) the representation is contained in a copy of, or an extract from, a public official document,

and the person had reasonable grounds to believe, and did believe until the time of the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, the securities, that the representation was not misleading or deceptive or is likely to mislead or deceive.

Defence of withdrawal of consent

254. (1) A person who is named in a prospectus as—

(a) a proposed director or director of an issuer or a principal adviser in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;

(b) making a statement that is included in the prospectus; or

(c) making a statement on the basis of which a statement is included in a prospectus,

shall not be guilty of an offence under section 246 and is not liable under section 248 if—

(A) in the case of a proposed director or director, having consented to become a proposed director or director of the issuer, he withdrew his consent before the issue of the prospectus, and the prospectus was issued despite such withdrawal; or

(B) in any other case, where the prospectus was issued without his knowledge or consent, he gave reasonable public notice thereof forthwith after he became aware of its issue.

(2) A person who is named in a prospectus as—

(a) a proposed director or director of an issuer, or a principal adviser in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;

(b) making a statement that is included in the prospectus; or

(c) making a statement on the basis of which a statement is included in a prospectus,

shall not be guilty of an offence under section 246 and is not liable under section 248 if it is proved that the statement was not included in, or was not included substantially in, the form and context that the person had consented to.

Restriction on offering securities for subscription or purchase

255. (1) Except as otherwise expressly provided in this Act, a person shall not make—

(a) an unsolicited invitation to subscribe for or purchase any securities;

(b) an unsolicited offer for subscription or purchase of any securities; or

(c) an unsolicited recommendation of any securities.

(2) Subsection (1) shall not—

(a) prohibit a licensed person or any other person allowed in writing by the Commission from making invitations or offers or recommendations—

(i) in relation to any securities which are listed on a stock market of a stock exchange within Malaysia or on a stock market of a securities exchange outside Malaysia which is approved by the Commission; and

(ii) to a person to whom, or to a number of persons in relation to each of whom, at least one of the following conditions is satisfied:

(A) the person has acquired or sold the securities

through the licensed person or any other person allowed in writing by the Commission, in the twelve months before the making of the invitation or offer or recommendation; or

(B) when the invitation or offer or recommendation is made, a written agreement is in force under which the licensed person or any other person allowed in writing by the Commission is to, or may, whether subject to conditions or otherwise, act on the person's behalf in connection with the acquisition or sale of any securities by the person, or advise the person about the acquisition or sale of any securities by the person;

(b) prohibit a management company from providing further information, notices or recommendations to existing unit holders in relation to the investments of such unit holders;

(c) prohibit a person allowed in writing by the Commission from issuing such notices or recommendations relating to units in a unit trust scheme or prescribed investment scheme containing such information as may be allowed by the Commission;

(d) prohibit an invitation, offer or recommendation that is made in, or accompanied by, a prospectus that complies with this Act;

(e) prohibit an invitation, offer or recommendation which is made in relation to an excluded invitation or excluded offer;

(f) apply to an invitation or offer to which the provisions of the Companies Act 1965 apply; or

(g) apply to an invitation, offer or recommendation which is prescribed by the Commission by order published in the *Gazette*.

(3) The Commission in exercising its discretion under subsection (2) may impose such terms and conditions as it thinks fit.

(4) A person allowed in writing by the Commission under paragraph (2)*(a)* or *(c)* shall comply with such terms and conditions as may be imposed by the Commission.

(5) The provisions of subsection (1) shall apply to an invitation, offer or recommendation in relation to any securities of a corporation or units of a unit trust scheme or prescribed investment scheme that is proposed to be formed.

(6) Where the making of any invitation, offer or recommendation is subject to subsection (1) or is in respect of any exception under subsection (2), the provisions of section 363 of the Companies Act 1965 shall not apply.

(7) A person who contravenes subsection (1) or (4) commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.

Agreements to exclude or restrict liability void

256. An agreement is void insofar as it purports to exclude or restrict the liability of a person for contravention of section 246, 248 or 249 or for loss or damage under section 357.

Division 4 Debentures

Subdivision 1 Trust deeds, duties of trustees, borrowers, etc.

Application of this Division

257. (1) The provisions of this Subdivision and section 283 shall not apply to any issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures specified in Schedule 8.

(2) The provisions of this Division as specified in Schedule 9 shall not apply to any issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures specified in Schedule 9.

(3) The provisions of this Division shall not apply to an issue, offer or invitation that is made to a person or a class of persons, or made in respect of a debenture or a class of debentures, as the Minister may, on the recommendation of the Commission, prescribe by order published in the *Gazette*.

(4) A prescription made under subsection (3) may specify the provisions of this Division to which an issue, offer or invitation shall not apply.

Requirement for trust deed and trustee

258. (1) Every person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any debenture shall—

(a) enter into a trust deed that meets the requirements of section 259;

(b) appoint a trustee who is a person eligible to be appointed or to act as trustee in accordance with section 260; and

(c) comply with the requirements and provisions of this Division.

(2) A person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any debenture shall not allot such debenture unless the person has entered into a trust deed that meets with the requirements of section 259 and has appointed a trustee who is a person eligible to be appointed or to act as trustee under section 260.

(3) A person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any debenture shall not revoke the trust deed unless the person has repaid all amounts payable under the debenture in accordance with the terms, provisions and covenants of the debenture and the trust deed.

(4) A person who contravenes subsection (1), (2) or (3) commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.

Form and contents of trust deeds

259. (1) A trust deed shall contain such provisions, covenants, requirements, information and particulars as may be specified by the Commission.

(2) A person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any debenture shall deliver a copy of the trust deed to the Commission together with such other particulars, information or documents as the Commission may specify.

Persons who can be trustees

260. (1) A trustee shall be—

(a) a company registered as a trust company under the Trust Companies Act 1949 [*Act 100*]; or

(b) a corporation that is a public company under the Companies Act 1965 or under the laws of any other country, which has been approved by the Commission to act as trustee for the purposes of this Act.

(2) A person shall not be eligible to be appointed or to act as trustee for debenture holders without the approval of the Commission if the person—

(a) is a shareholder who beneficially holds shares in the borrower;

(b) is beneficially entitled to monies owed by the borrower to it;

(c) has entered into a guarantee in respect of the amount secured or payable under the debenture; or

(d) is a related corporation of—

(i) the persons referred to in paragraphs *(a)* to *(c)*; or

(ii) the borrower.

(3) An application for approval made under subsection (1) or (2) shall be made to the Commission in accordance with such procedure or other requirement as may be specified by the Commission.

(4) Notwithstanding the provisions of subsection (2), a person is not prevented from being appointed or from acting as trustee by reason only that—

(a) the borrower owes to the trustee or any related corporation of the trustee any monies, so long as such monies are—

(i) monies that do not, at the time of the appointment or at any time within a period of three months after the debentures are first offered for subscription or purchase or in respect of which an invitation to subscribe for or purchase is made, exceed one-tenth of the amount of the debentures proposed to be issued within that period and do not, at any time after the expiration of that period, exceed one-tenth of the amount the borrower owes to the holders of the debentures; or

(ii) monies to which the trustee or any related corporation of the trustee is entitled to as trustee for holders of any debenture of the borrower, in accordance with the terms, provisions or covenants of the debenture or the trust deed; or

(b) the trustee or a related corporation of the trustee, despite being beneficial owners in the shares of the borrower, do not have the right to exercise more than one-twentieth of the voting power at any general meeting of the borrower.

(5) Where an application has been made to the Commission under

subsection (3), the Commission may approve such application subject to such terms and conditions as it thinks fit.

(6) In exercising its discretion under subsection (5), the Commission shall have regard to—

(a) the interests of holders of any debenture; and

(b) the ability of the trustee to safeguard the interests of such debenture holders as required by the provisions and covenants of the trust deed and the provisions of this Act.

(7) The Commission may revoke its approval under subsection (5) where the trustee has failed to comply with any term or condition imposed under subsection (5) or has contravened any provision of this Act.

(8) A trustee who—

(a) contravenes subsection (1) or (2); or

(b) contravenes a term or condition imposed by the Commission under subsection (5),

commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Existing trustee to continue to act until new trustee takes office

261. Notwithstanding the provisions of section 43 of the Trustee Act 1949 [*Act 208*] or any term, provision or covenant in the debenture or trust deed, an existing trustee shall continue to act as trustee until a new trustee is appointed and has taken office as trustee.

Replacement of trustee

262. (1) Where no provision has been made in the debenture or trust deed for the appointment of a successor to a retiring trustee, the borrower shall, within one month after becoming aware of the intention of the trustee to retire, appoint as successor to the retiring trustee a trustee who is a person eligible to be appointed or to act as trustee under section 260.

(2) A court may, on the application of the borrower, a debenture holder or the Commission—

(a) appoint, as trustee, a person who is eligible to be appointed or to act as trustee under section 260 if—

(i) the trustee has not been validly appointed; or

(ii) the trustee has ceased to exist; or

(b) terminate the appointment of an existing trustee and appoint in his place, as trustee, a person who is eligible to be appointed or to act as trustee under section 260 if—

(i) the existing trustee is not eligible to be appointed or to act as trustee under section 260;

(ii) the existing trustee fails or refuses to act in accordance with the provisions or covenants of the trust deed or the provisions of this Act;

(iii) a receiver is appointed over the whole or a substantial part

of the assets or undertaking of the existing trustee and has not ceased to act under that appointment, or a petition is presented for the winding up of the existing trustee (other than for the purpose of and followed by a reconstruction, unless during or following such reconstruction the existing trustee becomes or is declared to be insolvent); or

(iv) the trustee is under investigation for conduct that contravenes the Trust Companies Act 1949, the Trustee Act 1949, the Companies Act 1965 or the securities law.

(3) A borrower who contravenes subsection (1) commits an offence.

Duties of the borrower

263. (1) A borrower shall—

(a) use its best endeavours to carry on and conduct its business in a proper and efficient manner;

(b) provide a copy of the trust deed to—

(i) a debenture holder;

(ii) a trustee; or

(iii) any other person as may be allowed by the Commission,

(b) if they request a copy and upon payment of such reasonable sum as may be imposed by the borrower;

(c) make all of its financial and other records available for inspection by—

(i) the trustee;

(ii) an officer or employee of the trustee authorized by the trustee to carry out the inspection; or

(iii) an approved company auditor appointed by the trustee to carry out the inspection,

(c) and give the person carrying out the inspection any information, explanation or other assistance that such person may require; and

(d) comply with any direction issued by the Commission under subsection 280(1).

(2) A borrower who contravenes paragraph (1)*(a)* shall not be guilty of an offence.

(3) A borrower who contravenes paragraph (1)*(b)* or *(c)* commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

(4) A borrower who contravenes paragraph (1)*(d)* commits an offence.

(5) Where a borrower contravenes paragraph (1)*(b)* or *(c)*, the Commission may direct the borrower to comply with the provisions of those paragraphs.

(6) A borrower who contravenes a direction of the Commission issued pursuant to subsection (5) commits an offence.

Duty of borrower to replace trustee

264. (1) A borrower shall take all reasonable steps to replace a trustee as soon as is practicable after becoming aware that—

(a) the trustee has ceased to exist;

(b) the trustee has not been validly appointed;

(c) the trustee is not eligible to be appointed or to act as trustee under section 260;

(d) the trustee has failed or has refused to act as trustee in accordance with the provisions or covenants of the trust deed or the provisions of this Act;

(e) a receiver is appointed over the whole or a substantial part of the assets or undertaking of the existing trustee and has not ceased to act under that appointment, or a petition is presented for the winding up of the existing trustee (other than for the purpose of and followed by a reconstruction, unless during or following such reconstruction the existing trustee becomes or is declared to be insolvent); or

(f) the trustee is under investigation for conduct that contravenes the Trust Companies Act 1949, the Trustee Act 1949, the Companies Act 1965 or the securities law.

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

Duty of borrower to inform trustee about charge, *etc.*

265. (1) Where a borrower creates a charge, it shall—

(a) give the trustee written details of the charge within twenty-one days after it is created; and

(b) if the total amount to be advanced on the security of the charge is indeterminate and the advances are not merged in a current account with a bank, trade creditor or any other person, give the trustee written details of the amount of each advance within seven days after it is made.

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

Duty of borrower to give trustee and Commission quarterly reports

266. (1) A borrower shall, within one month after the end of each quarter—

(a) deliver to the trustee a quarterly report that sets out the information required by subsections (3), (4), (5) and (7);

(b) lodge a copy of the report with the Registrar; and

(c) deliver a copy of the report to the Commission.

(2) For the purposes of this section—

(a) the first quarter shall be a period of three months ending on a day fixed by the borrower by written notice to the trustee, provided that the day fixed shall be less than six months after the first issue of a debenture under the trust deed; and

(b) each of the subsequent quarters shall be for periods of three months, or for such shorter time as the trustee may allow in special circumstances.

(3) The report for a quarter shall include details of—

(a) any breach of any limitations on the amount the borrower may borrow;

(b) any failure by the borrower and each guarantor to comply with the terms, provisions or covenants of the debenture or the trust deed or contravention of the provisions of this Act during the quarter;

(c) any event that has happened during the quarter that has caused, or could cause, one or more of the following:

(i) any amount secured or payable under the debenture to become immediately payable;

(ii) the debenture to become immediately enforceable;

(iii) any other right or remedy under the terms, provisions or covenants of the debenture or the trust deed to become immediately enforceable;

(d) any circumstance that has occurred during the quarter that would materially prejudice—

(i) the borrower, any of its subsidiaries, or any of the guarantors, as the case may be; or

(ii) any security or charge included in or created by the debenture or the trust deed;

(e) any substantial change in the nature of the business of the borrower, any of its subsidiaries or its guarantors, as the case may be, that has occurred during the quarter;

(f) any of the following events that has happened in the quarter:

(i) the appointment of a guarantor;

(ii) the cessation of liability of a guarantor for the payment of the whole or part of the monies for which it was liable under the guarantee; or

(iii) a change of name of a guarantor;

(g) the net amount outstanding on any advances at the end of the quarter if the borrower has created a charge where—

(i) the total amount to be advanced on the security of the charge is indeterminate; and

(ii) the advances are merged in a current account with a bank, trade creditor or any other person; and

(h) any other matter that may materially prejudice the interests of debenture holders.

(4) If monies are owed to a borrower during the quarter by a related corporation of the borrower, not being such amounts that the borrower deposits with a licensed institution in the normal course of the borrower's business, the report must also include details of—

(a) the total amount owing by the related corporation during the quarter; and

(b) the total amount owing by the related corporation at the end of the quarter.

(5) If a borrower has assumed a liability of a related corporation during the quarter, the report shall include details of the extent of the liability assumed during the quarter and the extent of liability as at the end of the quarter.

(6) For purposes of subsections (4) and (5), the report—

(a) shall distinguish between amounts owing and assumptions of liability that are secured and those that are unsecured; and

(b) may exclude any deposit, loan or assumption of liability on behalf of the related corporation if the related corporation has—

(i) guaranteed the repayment of the debentures of the borrower; and

(ii) secured the guarantee by a charge over all of its property in

favour of the trustee for the holders of the debentures of the borrower.

(7) If a prospectus issued in connection with an issue of, offer for subscription or purchase of, or an invitation to subscribe for or purchase, any debenture includes a statement relating to a particular purpose or project for which monies received by a person in response to the issue, offer or invitation are to be applied, the report shall include details of the progress that has been made towards achieving that purpose or completing that project.

(8) The report shall—

(a) be made in accordance with a resolution of the directors; and

(b) specify the date on which the report is made.

(9) Where a borrower fails to deliver the report to the trustee, the trustee shall inform the Commission of that fact.

(10) A borrower who contravenes this section commits an offence.

Duty of borrower to inform trustee and Commission of occurrence of material event

267. (1) Notwithstanding section 266, a borrower shall inform the trustee and the Commission as soon as possible after the borrower becomes aware—

(a) of the happening of any event that has caused or could cause, one or more of the following:

(i) any amount secured or payable under the debenture to become immediately payable;

(ii) the debenture to become immediately enforceable; or

(iii) any other right or remedy under the terms, provisions or covenants of the debenture or the trust deed to become immediately enforceable; or

(b) of any circumstance that has occurred that would materially prejudice—

(i) the borrower, its subsidiaries or its guarantors; or

(ii) any security or charge included in or created by the debenture or the trust deed.

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

Duty of borrower where prospectus states purpose or project for which monies are to be applied

268. (1) Where the prospectus relating to a debenture contains a statement as to the particular purpose or project for which amounts secured or payable under the debenture to which the trust deed relates are to be applied and the borrower intends to change the purpose or project for which such amounts are to be applied after the debenture has been issued to debenture holders, the borrower shall—

(a) notify the Commission; and

(b) give a notice in writing that is approved by the Commission under subsection (2) to each debenture holder.

(2) A notice referred to in subsection (1) may be approved by the Commission if the notice—

(a) specifies the purpose or project for which amounts secured or payable under the debenture would in fact be applied;

(b) offers to repay such amounts to each debenture holder; and

(c) contains such information and particulars as may be approved by the Commission.

(3) The borrower shall not be liable to repay the amount secured or payable under the debenture issued by the borrower under subsection (1) where the debenture holder does not demand in writing for the repayment of such amounts within fourteen days after receipt of the notice or such longer period as may be specified in the notice.

(4) Where the Commission is of the opinion that the new purpose or project is contrary to the approval or to the terms or conditions of the approval granted under subsection 212(5), the Commission may disallow the borrower from pursuing the new purpose or project for which amounts secured or payable under the debenture are to be applied and direct repayment of such amounts to each person from whom such amounts were received.

(5) Where a borrower receives a notice referred to in paragraph 273(2)*(h),* subsection 280(4) or (5), the borrower shall be liable to repay the amount secured or payable under the debenture issued by the borrower to any person to whom such amounts are owed or from whom such amounts were received.

(6) Subject to subsection (4), a notice given by the borrower under paragraph (1)*(b)* shall have effect as if the purpose or project specified in the notice is the purpose or project specified in the prospectus.

(7) Notwithstanding the provisions of subsection (1), the Commission may, on the written application of any borrower or of its own accord, make an order relieving such person from, or approving any variation of, the requirements of this section.

(8) A borrower who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.

Obligations of directors of borrower to deliver financial statements

269. (1) The directors of every borrower shall deliver to the trustee and the Commission and lodge with the Registrar such financial statements of the borrower as may be specified by the Commission.

(2) Subject to subsection (3), the directors of the borrower shall deliver to the trustee and the Commission a copy of the borrower's annual audited accounts within two weeks from the date of the borrower's annual general meeting.

(3) Where the borrower is a listed corporation that is required to submit information to the Commission under section 319, the borrower shall not be required to deliver its annual audited accounts to the Commission under this section.

(4) Where the directors of a borrower do not deliver to the trustee a

copy of such financial statements of the borrower as may be specified by the Commission under subsection (1) or a copy of the borrower's annual audited accounts under subsection (2), the trustee shall inform the Commission of that fact.

(5) Where the directors of a borrower contravene or fail to take all reasonable steps to secure compliance with subsection (1) or (2), each director commits an offence.

Borrower to issue document evidencing indebtedness, *etc.*

270. (1) The borrower shall, within two weeks or such other period as may be specified by the Commission, after the acceptance of the monies in response to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, a specified number or value of debentures, give to that person a document that acknowledges, evidences or constitutes an acknowledgement of the indebtedness of the borrower in respect of the receipt of monies in response to the issue, offer or invitation.

(2) A document issued by the borrower in respect of any monies received by the borrower in response to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, any debenture that certifies that a person named in the document—

(a) is the registered holder of a specified number or value of debentures issued by the borrower; and

(b) is subject to the provisions and covenants contained in a trust deed referred to or identified in the document,

shall be deemed to be a document evidencing the indebtedness of the borrower in respect of such monies.

(3) A borrower shall not accept or retain subscriptions to a debenture issue in excess of the amount of the issue as disclosed in the prospectus unless the borrower has specified in the prospectus—

(a) that it clearly reserves the right to accept or retain over-subscriptions; and

(b) a limit expressed as a specific sum of money on the amount of over-subscriptions that may be accepted or retained, being an amount not more than twenty-five per centum in excess of the amount of the issue as disclosed in the prospectus.

(4) A borrower who contravenes subsection (1) or (3) commits an offence.

Duties of guarantors

271. (1) Where a borrower is required to enter into a trust deed under section 258 in relation to any debenture, a guarantor in respect of such debenture shall—

(a) use its best endeavours to carry on and conduct its business in a proper and efficient manner;

(b) make all of its financial or other records available for inspection by—

(i) the trustee;

(ii) an officer or employee of the trustee authorized by the trustee to carry out the inspection; or

(iii) an approved company auditor appointed by the trustee to carry out the inspection,

(b) and give the person carrying out the inspection any information, explanation or other assistance that such person may require;

(c) furnish the borrower with any information relating to itself which is required under subsection 266(3) to be contained in the quarterly report, within fourteen days from the date the borrower requests for such information by notice in writing or within such other period which shall not be less than fourteen days as may be specified in the notice; and

(d) where it creates a charge—

(i) give the trustee written details of the charge within twenty-one days after it is created; and

(ii) give the trustee written details of—

(A) the amount of each advance made within seven days after it is made; or

(B) where the advances are merged in a current account with a bank, trade creditor or any other person, the net amount outstanding on the advances at the end of every three months.

(2) A guarantor who contravenes paragraph (1)*(a)* shall not be guilty of an offence.

(3) A guarantor who contravenes paragraph (1)*(b)* commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

(4) A guarantor who contravenes paragraph (1)*(c)* or *(d)* commits an offence.

(5) Where a guarantor contravenes paragraph (1)*(b)*, the Commission may direct the guarantor to comply with the provisions of that paragraph.

(6) A guarantor who contravenes a direction of the Commission issued pursuant to subsection (5) commits an offence.

Obligations of directors of guarantor to deliver financial statements

272. (1) The directors of every guarantor shall deliver to the trustee and the Commission and lodge with the Registrar such financial statements of the guarantor as may be specified by the Commission.

(2) Subject to subsection (3), the directors of the guarantor shall deliver to the trustee and the Commission a copy of the guarantor's annual audited accounts within two weeks from the date of the guarantor's annual general meeting.

(3) Where the guarantor is a listed corporation that is required to submit information to the Commission under section 319, the guarantor shall not be required to deliver its annual audited accounts to the Commission under this section.

(4) Where the directors of a guarantor do not deliver to the trustee a copy of such financial statements of the guarantor as may be speci-

fied by the Commission under subsection (1) or a copy of the guarantor's annual audited accounts under subsection (2), the trustee shall inform the Commission of that fact.

(5) Where the directors of a guarantor contravene or fail to take all reasonable steps to secure compliance with subsection (1) or (2), each director commits an offence.

Duties of trustees

273. (1) The trustee of a trust deed that is entered into under section 258—

(a) shall satisfy itself that the provisions of a prospectus or an information memorandum relating to the debenture do not contain any matter which is inconsistent with the terms, provisions and covenants of the debenture and the trust deed;

(b) shall ensure that the borrower and each guarantor complies with Division 7 of Part IV of the Companies Act 1965, to the extent that it applies to the debenture;

(c) shall take reasonable steps to ensure that the borrower or guarantor remedies any breach of the terms, provisions or covenants of the debenture or the trust deed or any contravention of the provisions of this Act;

(d) shall notify the Commission as soon as practicable if the borrower or guarantor fails to remedy any breach of the terms, provisions or covenants of the debenture or the trust deed or any contravention of the provisions of this Act;

(e) shall, where the borrower or the guarantor fails to remedy any breach of the terms, provisions or covenants of the debenture or the trust deed or any contravention of the provisions of this Act, call for a meeting of debenture holders and place before the meeting proposals for the protection of the interest of the debenture holders as the trustee considers necessary or appropriate and obtain their directions; and

(f) shall notify the Commission as soon as practicable where the trustee discovers that it is not eligible to be appointed or to act as trustee under section 260.

(2) Where a proposal relating to a debenture is approved by the Commission under section 212, the trustee shall—

(a) exercise reasonable diligence to ascertain whether the assets of the borrower and of each guarantor which are or may be available, whether by way of security or otherwise, are insufficient or are likely to become insufficient to repay the amount secured or payable under the debenture to which the trust deed relates when it becomes due;

(b) notify the Commission as soon as practicable if—

(i) the borrower has contravened section 265 or 266; or

(ii) a guarantor has contravened paragraph 271(1)*(d)*;

(c) where the borrower or the guarantor fails to remedy any breach of the terms, provisions or covenants of the debenture or the trust deed or any contravention of the provisions of this Act call for a meeting of debenture holders and place before the meeting proposals for the protection of the interest of the debenture holders as the trustee considers necessary or appropriate and obtain their directions;

(d) comply with any directions given to it at a debenture holders' meeting referred to in sections 277, 278 and 279 unless—

(i) the trustee is of the opinion that the direction is inconsistent with the terms, provision or covenant of the debenture or the trust deed or the provisions of this Act or is otherwise objectionable; and

(ii) the trustee has either obtained, or is in the process of obtaining, an order from the court under section 282 to set aside or vary that direction;

(e) give the debenture holders a statement explaining the effect of any proposal that the borrower submits to the debenture holders before any meeting that—

(i) the court calls in relation to a scheme of arrangement or compromise under subsection 176(1) of the Companies Act 1965; or

(ii) the trustee calls under subsection 278(1);

(f) apply to the Commission for a direction under subsection 280(1) where the trustee upon due inquiry is of the opinion that the assets of the borrower and the guarantor which are or should be available, whether by way of security or otherwise, are insufficient or are likely to become insufficient to repay the amount secured or payable under the debenture to which the trust deed relates as and when it becomes due;

(g) apply to court for an order under section 282 where—

(i) the trustee upon due inquiry is of the opinion that the assets of the borrower and the guarantor which are or should be available, whether by way of security or otherwise, are insufficient or are likely to become insufficient to repay the amount secured or payable under the debenture to which the trust deed relates as and when it becomes due; or

(ii) the borrower has failed to comply with a direction made by the Commission under subsection 280(1); and

(h) where the prospectus relating to the debenture contains a statement as to the particular purpose or project for which such amount are to be applied and—

(i) it appears to the trustee that the purpose or project has not been achieved within the time stated in the prospectus or where no time is stated, within a reasonable time; or

(ii) it is the trustee's opinion that notice is necessary for the protection of the interests of debenture holders,

give a notice in writing to the borrower requiring it to repay the amounts secured or payable under the debenture to which the trust deed relates within one month after the notice is given and deliver a copy of that notice to the Commission, unless the trustee is satisfied of any or all of the following:

(A) that the purpose or project has been substantially achieved or completed; or

(B) that the interests of debenture holders have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time.

(3) For the purposes of paragraphs (2)*(f)* and *(g)*, a trustee in making any application to the Commission or to the court—

(a) shall have regard to the nature and kind of security given when the debentures were first issued or, if no security was given, shall have regard to the position of debenture holders as unsecured creditors of the borrower; and

(b) may rely on any certificate or report given or statement made by any advocate, auditor or officer of the borrower or the guarantor if it has reasonable grounds for believing that the advocate, auditor or officer was competent to give or make the certificate, report or statement.

(4) A trustee who contravenes subsection (1) shall not be guilty of an offence.

Exemptions and indemnification of trustee from liability

274. (1) Subject to this section, a term, provision or covenant of a debenture or a trust deed or a term of a contract with holders of debentures secured by a trust deed shall be void in so far as the term, provision or covenant, as the case may be, would have the effect of—

(a) exempting a trustee from liability for contravention of any provision of this Act or for breach of trust or for failure to show the degree of care and diligence required of it as trustee; or

(b) indemnifying a trustee against liability for contravention of any provision of this Act or for breach of trust or for failure to show the degree of care and diligence required of it as trustee,

unless the term, provision or covenant—

(A) releases the trustee from liability for anything done or omitted to be done before the release is given; or

(B) enables a meeting of debenture holders to approve the release of a trustee from liability for anything done or omitted to be done before the release is given.

(2) For the purpose of paragraph (1)(B)—

(a) a release is approved if the debenture holders who vote for the resolution hold seventy-five per centum of the nominal value of the debentures held by all the debenture holders who attend the meeting and vote on the resolution; and

(b) a debenture holder attends the meeting and votes on the resolution if—

(i) such debenture holder attends the meeting in person and votes on the resolution; or

(ii) if proxies are permitted, the debenture holder is represented at the meeting by a proxy and the proxy votes on the resolution.

Indemnity of trustee

275. (1) A trustee is not liable for anything done or omitted to be done in accordance with a direction given to the trustee by the debenture holders at any meeting called under section 277, 278 or 279.

(2) A trustee may, in addition to any other rights under the trust

deed, seek reimbursement by deducting out of any monies coming into the trustee's hands from the borrower all reasonable costs incurred in explaining the effect of any proposal that the borrower submits to the debenture holders in the circumstances set out in paragraph 273(2)*(e)*.

Duty of auditor to trustee for debenture holders

276. (1) An auditor of a borrower shall, within seven days after furnishing the borrower with any balance sheet, profit and loss account or any report, certificate or other document which he is required by the Companies Act 1965 or by the debenture or trust deed to give to the borrower, send a copy of such balance sheet, profit and loss account, report, certificate or other document by post to every trustee for the holders of debentures of the borrower.

(2) Where, in the performance of his duties as auditor of a borrower, the auditor becomes aware of any matter which, in his professional opinion, is relevant to the exercise and performance of the powers and duties imposed on the trustee—

(a) by this Act; or

(b) under the trust deed,

the auditor shall, as soon as practicable after becoming aware of the matter, report the matter to the borrower and the trustee.

(3) Where, in the performance of his duties as auditor for the borrower, the auditor becomes aware—

(a) of any matter which, in his professional opinion, may constitute a contravention of any provision of this Act; or

(b) of any irregularities that may have a material effect on the ability of the borrower to repay any amount under the debenture,

the auditor shall immediately report the matter to the Commission.

(4) The auditor shall not, in the absence of proof of malice on his part, be liable to any action for defamation at the suit of any person in respect of any statement made in the circumstances referred to in subsection (1), (2) or (3).

(5) An auditor who contravenes subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

(6) An auditor who contravenes subsection (3) commits an offence.

Duty of borrower to call a meeting

277. (1) A borrower shall call a meeting of debenture holders if—

(a) debenture holders who together hold ten per cent or more of the nominal value of the issued debentures to which the trust deed relates direct the borrower to do so;

(b) the direction is given to the borrower in writing at its registered office; and

(c) the purpose of the meeting is to—

(i) consider the financial statements or annual audited accounts that were last delivered to the trustee under section 269 or 272;

(ii) give the trustee such directions as the meeting thinks proper; or

(iii) consider any other matter in relation to the trust deed.

(2) Where a borrower is required to call a meeting, it must give notice of the time and place of the meeting to—

(a) the trustee;

(b) the borrower's auditor; and

(c) any debenture holder whose name is entered on the register of debenture holders or record of depositors, as the case may be,

in accordance with the provisions of subsections (3) and (4).

(3) For the purpose of subsection (2), notice to joint holders of a debenture must be given to the joint holder named first in the register of debenture holders or record of depositors, as the case may be.

(4) A borrower may give notice to a debenture holder—

(a) personally;

(b) by sending it by post to the address of the debenture holder in the register of debenture holders; or

(c) by any other means that the terms, provisions or covenants of the debenture or the trust deed permit.

(5) A notice of meeting posted to a debenture holder shall be taken as being given three days after it is posted, unless the terms, provisions or covenants of the debenture or the trust deed provide otherwise.

(6) A trustee may appoint a person to chair a meeting of debenture holders called under subsection (1) and where the trustee does not exercise this power, the debenture holders present at the meeting may appoint a person to chair the meeting.

(7) A borrower who contravenes subsection (1) or (2) commits an offence.

Power of trustee to call a meeting

278. (1) Where a borrower or guarantor fails to remedy any breach of the terms, provisions or covenants of a debenture or a trust deed or any contravention of any provision of this Act when required by the trustee, the trustee may—

(a) call a meeting of debenture holders;

(b) inform the debenture holders of the failure at the meeting;

(c) submit proposals for the protection of debenture holders' interests to the meeting; and

(d) ask for directions from the debenture holders in relation to the matter.

(2) A trustee may appoint a person to chair a meeting of debenture holders called under subsection (1) and where the trustee does not exercise this power, the debenture holders present at the meeting may appoint a person to chair the meeting.

(3) A trustee is entitled to be reimbursed by the borrower for any costs incurred in calling for a meeting of debenture holders in pursuance of any of its duties or functions under this Act or any term, provision or covenant of the debenture or the trust deed.

Court may order a meeting of debenture holders

279. (1) Without limiting the effect of section 281 or 282, the court

may make an order under either of those sections for a meeting of all or any of the debenture holders to be held to give directions to the trustee.

(2) An order made under subsection (1) may direct the trustee to—

(a) place before the debenture holders any information concerning the interests of the debenture holders;

(b) place before the debenture holders any proposal to protect the interests of the debenture holders that the court directs or the trustee considers appropriate; and

(c) obtain the debenture holders' directions concerning the protection of the interests of the debenture holders.

(3) The meeting shall be held and be conducted in such manner as the court may direct.

(4) A trustee may appoint a person to chair the meeting and where the trustee does not exercise this power, the debenture holders present at the meeting may appoint a person to chair the meeting.

Powers of Commission to protect interests of debenture holders

280. (1) The Commission may, on the application of a trustee under paragraph 273(2)*(f)* or of its own accord where a trustee fails or refuses to act, issue a written direction to a borrower imposing restrictions on the activities of the borrower as the Commission thinks necessary for the protection of the interests of debenture holders.

(2) The Commission shall serve the written direction issued under subsection (1) at the borrower's registered office in Malaysia.

(3) The Commission, in issuing a direction under subsection (1), shall first give the borrower an opportunity to be heard in relation to the application.

(4) Where a prospectus relating to any debenture contains a statement as to the particular purpose or project for which amounts secured or payable under the debenture are to be applied and—

(a) it appears to the Commission that the purpose or project has not been achieved within the time stated in the prospectus or, where no time is stated, within a reasonable time;

(b) it is the Commission's opinion that notice is necessary for the protection of the interests of debenture holders; and

(c) the trustee in relation to the debenture has failed or refused to act under paragraph 273(2)*(h)*,

the Commission may, upon due inquiry, direct the borrower in writing to repay the amounts secured or payable under the debenture issued by the borrower within one month after the notice is given, unless the Commission is satisfied on any or all of the following:

(A) that the purpose or project has been substantially achieved or completed; or

(B) that the interests of debenture holders have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time.

(5) Where a prospectus relating to any debenture contains a statement as to the particular purpose or project for which the amounts secured or payable under the debenture are to be applied and the Commission becomes aware, by means other than upon notification by a borrower under subsection 268(1), that such amounts are in fact used or intended to be used for a purpose or project not specified in the prospectus, the Commission may, upon due inquiry, direct the borrower in writing to repay such amounts to each person from whom such amounts were received or if the debentures have been issued, to each debenture holder, within one month after the notice is given.

General power of court to give directions and determine questions

281. Where a trustee applies to the court for any direction in relation to the performance of the trustee's functions or to determine any question in relation to the interests of debenture holders, the court may give any direction and make any declaration or determination in relation to the matter or make any ancillary or consequential orders that the court considers appropriate.

Specific power of the court

282. (1) Where a borrower, trustee or the Commission applies to the court for an order under the provisions of this Act or pursuant to any term, provision or covenant of a debenture or a trust deed, the court may make any or all of the following orders:

(a) an order staying an action or other civil proceedings before a court by or against a borrower or a guarantor;

(b) an order restraining a borrower from paying any monies to the debenture holders or holders of any other class of debentures;

(c) an order that any security for the debentures be enforceable immediately or at the time the court directs, whether or not the debentures are irredeemable or redeemable only on the happening of a contingency;

(d) an order appointing a receiver of any property constituting security for the debentures;

(e) an order restricting advertising by a borrower for deposits or loans;

(f) an order restricting borrowing by a borrower;

(g) an order varying or rescinding any order made by the court under this Act; or

(h) any other order that the court considers appropriate to protect the interests of existing or prospective debenture holders.

(2) In deciding whether to make an order under subsection (1), the court shall have regard to the rights of all creditors of the borrower.

Subdivision 2 General

Register of debenture holders

283. (1) Subject to subsection (2), every borrower which issues

debentures, not being debentures transferable by delivery, shall keep a register of debenture holders at its registered office or at some other place in Malaysia.

(2) Where the borrower is a company, the borrower shall comply with the provisions of section 70 of the Companies Act 1965 that relate to the obligation to keep a register of debenture holders and a branch register of debenture holders.

(3) The register shall contain particulars of—

(a) the names and addresses of debenture holders; and

(b) the amount of debentures held by them.

(4) The register shall be open for inspection by registered debenture holders or shareholders of the borrower except when duly closed under subsection (5).

(5) A register is deemed to be duly closed—

(a) if it is closed in accordance with the provisions contained in—

(i) the constituent documents of the borrower;

(ii) the debentures or debenture stock certificates;

(iii) the trust deed; or

(iv) any other document relating to or securing the debenture; and

(b) where it is closed for such periods as is specified in any of the documents mentioned in subparagraphs (5)*(a)*(i), (ii), (iii) and (iv), provided that such period does not exceed, in the aggregate, thirty days in any calendar year.

(6) A borrower shall, upon request, supply every registered debenture holder or shareholder of the borrower with a copy of the register of debenture holders, or such part thereof, on the payment of a reasonable sum as may be specified by the borrower.

(7) The copy of the register of debenture holders referred to in subsection (6) need not include the particulars of any debenture holder other than the name and address of the registered debenture holder and the debentures held by him.

(8) If inspection is refused, or a copy is refused or not forwarded within a reasonable time after a request has been made pursuant to this section, the borrower and every officer of the borrower who is in default commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit.

(9) A borrower issuing debentures may keep at any place outside Malaysia a branch register of debenture holders which shall be deemed to be a part of the borrower's register of debenture holders, and the provisions of Division 4 of Part V of the Companies Act 1965 shall, with such adaptations as are necessary, apply to and in relation to the keeping of a branch register of debenture holders.

(10) Notwithstanding the provisions of subsections (1) to (9), the Commission may, either on the written application of any borrower referred to in subsection (1) or of its own accord, make an order relieving such borrower from, or approving any variation from, the requirements of this section relating to the maintenance of a register of

debenture holders, subject to such terms and conditions as its thinks fit.

(11) A borrower and every officer of the borrower who is in contravention of subsection (1), (3) or (9) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit.

Specific performance

284. A contract with a borrower to take up and pay for any debenture of the borrower may be enforced by an order for specific performance.

Perpetual debentures

285. Notwithstanding any rule of law or equity which disallows perpetual debentures, a condition contained in any debenture or any trust deed relating to a debenture shall not be invalid by reason only that the debenture is—

(a) irredeemable;

(b) redeemable only on the happening of a contingency, however remote; or

(c) redeemable on the expiration of a period, however long.

Reissue of redeemed debentures

286. (1) Where a borrower has redeemed any debenture—

(a) unless any provision to the contrary, whether express or implied, is contained in the constituent documents of the borrower or any contract entered into by the borrower; or

(b) unless the borrower has shown an intention that the debenture shall be cancelled by passing a resolution to that effect or by some other act,

the borrower shall have and shall be deemed to have had the power to reissue the debenture, either by reissuing the same debenture or issuing any other debenture in its place.

(2) The reissue of a debenture or the issue of one debenture in place of another under subsection (1) shall not be regarded as an issue of a new debenture for the purpose of any provision limiting the amount or number of debentures that may be issued by the borrower.

(3) After the reissue, the person entitled to the debenture shall have and shall be deemed to have had the same priorities as if the debenture had never been redeemed.

(4) Where a borrower has deposited any of its debentures to secure advances on a current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the borrower having ceased to be in debit while the debentures remain so deposited.

Division 5 Unit trust schemes and prescribed investment schemes

Interpretation

287. In this Division, unless the context otherwise requires, "deed"

means a document having the effect of a deed and, where applicable, includes a supplementary deed.

Requirement for trustee and deed

288. (1) Subject to subsection (2), every person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any unit shall—

(a) ensure that a trustee who has been approved by the Commission under section 289 and who is eligible to be appointed or to act as trustee under section 290 has been appointed;

(b) enter into a deed that has been registered under section 293 and that meets with the requirements of section 294 or ensure that there is in force a deed that has been registered under section 293 and that meets with the requirements of section 294; and

(c) comply with the requirements and provisions of this Act.

(2) No person except a management company approved by the Commission under section 289 or a person authorized to act on behalf of a management company that has been approved by the Commission under section 289 shall—

(a) issue;

(b) offer for subscription or purchase; or

(c) invite any person to subscribe for or purchase, any unit.

(3) A person who contravenes subsection (1) or (2) commits an offence.

Approval of trustee and management company

289. (1) No person shall act or be appointed to act as trustee or as a management company in relation to a unit trust scheme or prescribed investment scheme without obtaining the prior approval of the Commission to act as trustee or as a management company.

(2) The Commission may, subject to such terms and conditions as it thinks fit, approve—

(a) a company to act as a management company of a unit trust scheme or a prescribed investment scheme; and

(b) a person who is eligible to be appointed or to act as trustee under section 290, to act as trustee of a unit trust scheme or a prescribed investment scheme.

(3) The Commission may, at any time, by reason of a breach of a term or condition subject to which the approval was granted under this Division or by reason of a contravention of any securities law, revoke such approval.

(4) Without prejudice to subsection (1), the Commission may impose such other terms and conditions as it thinks fit while the approval is in force, but if the terms and conditions proposed to be imposed are likely to prejudice the interests of the management company or trustee, as the case may be, the Commission shall give the management company or trustee an opportunity to be heard.

(5) An application for an approval under subsection (2) shall be made to the Commission in accordance with such procedure or other requirement as may be specified by the Commission.

(6) A trustee or a management company who contravenes subsection (1) commits an offence.

Persons who can be trustees

290. (1) A person shall not be eligible to be appointed or to act as trustee for unit holders without the approval of the Commission if the person—

(a) is a shareholder who beneficially holds shares in the management company;

(b) is beneficially entitled to monies owed by the management company to it; or

(c) is a related corporation of—

(i) the persons referred to in paragraphs *(a)* and *(b)*; or

(ii) the management company.

(2) An application for approval by a person referred to in subsection (1) shall be made in accordance with such procedure or other requirement as may be specified by the Commission.

(3) Notwithstanding the provisions of subsection (1), a person is not prevented from being appointed or from acting as trustee by reason only that—

(a) the monies that the management company owes to the trustee or any related corporation of the trustee are monies to which the trustee or any related corporation of the trustee is entitled to as trustee, in accordance with the provisions or covenants of the deed; or

(b) the trustee or a related corporation of the trustee, despite being beneficial owners in the shares of the management company, do not have the right to exercise more than one-twentieth of the voting power at any general meeting of the management company.

(4) The Commission may, subject to such terms and conditions as it thinks fit, approve a person to be appointed or to act as trustee where an application has been made to the Commission pursuant to subsection (1).

(5) In exercising its discretion under subsection (4), the Commission shall have regard to—

(a) the interests of holders of any unit; and

(b) the ability of the trustee to safeguard the interests of unit holders as required by the provisions and covenants of the deed and the provisions of this Act.

(6) The Commission may revoke an approval granted under subsection (4) where the trustee has failed to comply with any term or condition imposed under subsection (4) or has contravened any provision of this Act.

(7) A trustee who—

(a) contravenes subsection (1);

(b) contravenes a term or condition imposed by the Commission under subsection (4),

commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Existing trustee to continue to act until new trustee takes office

291. Notwithstanding section 43 of the Trustee Act 1949 or any provision or covenant in the deed, an existing trustee shall continue to act as trustee until a new trustee is appointed and has taken office as trustee.

Replacement of trustee

292. (1) Where no provision has been made in the deed for the appointment of a successor to a retiring trustee, the management company shall, within one month after becoming aware of the intention of the trustee to retire, appoint as successor to the retiring trustee a trustee who has been approved by the Commission under section 289 and who is a person eligible to be appointed or to act as trustee under section 290.

(2) The Commission may, on the application of the management company, a unit holder or of its own accord—

(a) appoint, as trustee, a person who is eligible to be appointed or to act as trustee under section 290 if a trustee has not been validly appointed or the trustee has ceased to exist; or

(b) terminate the appointment of an existing trustee and appoint in his place, as trustee, a person who is eligible to be appointed or to act as trustee under section 290 if—

(i) the existing trustee is not eligible to be appointed or to act as trustee under section 290;

(ii) the existing trustee fails or refuses to act in accordance with the provisions or covenants of the deed or the provisions of this Act;

(iii) a receiver is appointed over the whole or a substantial part of the assets or undertaking of the existing trustee and has not ceased to act under that appointment, or a petition is presented for the winding up of the existing trustee (other than for the purpose of and followed by a reconstruction, unless during or following such reconstruction the existing trustee becomes or is declared to be insolvent); or

(iv) the trustee is under investigation for conduct that contravenes the Trust Companies Act 1949, the Trustee Act 1949, the Companies Act 1965 or any securities law.

(3) Except for subparagraph 2*(a)*(ii), a trustee shall be given the opportunity to be heard before the Commission takes any action under subsection (2).

(4) A management company who contravenes subsection (1) commits an offence.

Registration of deed

293. (1) The management company shall submit the deed referred to in paragraph 288(1)*(b)* to the Commission for registration and such deed shall not have effect unless so registered.

(2) The Commission may, on an application for registration of a deed—

(a) register the deed;

(b) register the deed with such revisions or subject to such terms and conditions as it thinks fit; or

(c) refuse to register the deed.

(3) An application under subsection (2) shall be made in accordance with such procedure or other requirement as may be specified by the Commission.

(4) The Commission shall refuse to register a deed under paragraph (2)*(c)* if—

(a) it appears to the Commission that the deed does not comply with the requirements of this Act or any other requirement as may be specified by the Commission;

(b) the making available of, offer for subscription or purchase of, or invitation to subscribe for or purchase, a unit to which the deed relates has not been approved by the Commission under section 212; or

(c) the trustee referred to in paragraph 288(1)*(a)* has not been appointed for the purposes of the deed.

(5) Subject to subsection (4), the Commission shall register a deed together with an application for its registration.

Contents of deed

294. A deed shall contain such provisions, covenants, requirements, information and particulars as may be specified by the Commission.

Modification of deed through supplementary deed

295. (1) A modification may be made to a deed only by a deed expressed to be supplementary to the principal deed and submitted by the management company to the Commission for registration, and a supplementary deed shall not have effect unless it has been so registered.

(2) The Commission may, on an application for registration of a supplementary deed—

(a) register the supplementary deed;

(b) register the supplementary deed with such revisions or subject to such terms and conditions as it thinks fit; or

(c) refuse to register the supplementary deed.

(3) The Commission shall refuse to register a supplementary deed under paragraph (2)*(c)* if it appears to the Commission that the supplementary deed does not comply with the requirements of this Act or any other requirement as may be specified by the Commission.

(4) The supplementary deed submitted for registration shall be accompanied by—

(a) a resolution of not less than two-thirds of all unit holders at a unit holders' meeting duly convened and held according to the provisions and covenants of the deed sanctioning the proposed modification to the deed; or

(b) a statement from the trustee and the management company certifying that in their opinion such modification, alteration or addition does not materially prejudice the interests of unit holders and

does not operate to release the trustee or the management company from any responsibility to the unit holders.

(5) The Commission may require the management company, in any application for registration of a supplementary deed, to obtain a resolution under paragraph (4)*(a)* if in the Commission's opinion any modification, alteration or addition to the deed may prejudice the interests of unit holders.

(6) A supplementary deed proposing any modification, alteration or addition to the deed which—

(a) would increase the maximum service charge or annual management fee payable to the management company, whether payment is made out of the property or assets of the unit trust scheme or prescribed investment scheme or otherwise; or

(b) would increase the maximum payment allowed to be made out of the property or assets of the unit trust scheme or prescribed investment scheme to the trustee by way of remuneration for the trustee's services,

shall be submitted for registration accompanied by a resolution under paragraph (4)*(a)*.

(7) A supplementary deed upon registration under this section shall be deemed to be part of the deed to which it relates for the purposes of this Act.

(8) A person who contravenes subsection (1) commits an offence.

Deed to be lodged with Commission

296. The management company shall lodge a deed with the Commission within seven days after the deed has been registered under section 293 or 295.

Duties of a management company

297. (1) A management company who is required to enter into a deed under section 288—

(a) shall carry on and manage its business and the unit trust scheme or prescribed investment scheme, as the case may be, in a proper, diligent and efficient manner;

(b) shall carry on and manage its business in accordance with the provisions and covenants of the deed, the provisions of this Act, any securities law and any regulations made thereunder;

(c) shall provide a copy of the deed to a unit holder or a trustee upon request for a copy of the deed and on payment of such reasonable sum as may be imposed by the management company;

(d) shall make all financial or other records of a unit trust scheme or a prescribed investment scheme available for inspection by—

(i) a trustee;

(ii) an officer or employee of the trustee authorized by the trustee to carry out the inspection; or

(iii) an approved company auditor appointed by the trustee to carry out the inspection,

(d) and give such persons carrying out the inspection any informa-

tion, explanation or other assistance that they may require in relation to those records; and

(e) shall make a copy of the deed available for inspection without charge to any member of the public.

(2) Except as may be prescribed by way of regulations made under section 378, a management company shall not act as principal in the sale and purchase of securities, property and assets to and from the unit trust scheme or prescribed investment scheme.

(3) A management company shall not make improper use of its position in managing the unit trust scheme or prescribed investment scheme to gain, directly or indirectly, an advantage for itself or for any other person or to cause detriment to the interests of unit holders of such unit trust scheme or prescribed investment scheme.

(4) A management company shall not, without the prior approval of the trustees, invest any monies available under the deed in any securities, property and assets in which the management company or any officer of the management company has a financial interest or from which the management company or any officer of the management company derives a benefit.

(5) A management company who contravenes paragraph (1)*(a)* shall not be guilty of an offence.

(6) A management company who contravenes paragraph (1)*(c), (d)* or *(e)* commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

(7) A management company who contravenes paragraph (1)*(b)* or subsection (2), (3) or (4) commits an offence.

(8) Where a management company contravenes paragraph (1)*(c), (d)* or *(e)*, the Commission may direct the management company to comply with all or any of the provisions of those paragraphs.

(9) A management company who contravenes a direction of the Commission issued pursuant to subsection (8) commits an offence.

Duty of management company to lodge returns, *etc.*

298. (1) A management company—

(a) shall lodge with the Commission—

(i) the annual report of a unit trust scheme or a prescribed investment scheme within two months after the end of each financial year of the unit trust scheme or prescribed investment scheme; and

(ii) the annual report of the management company within six months after the end of each financial year of the management company; and

(b) shall deliver to the Commission such other statements, documents, books and other particulars as may be required by the Commission.

(2) Any document required to be lodged with or delivered to the Commission by a management company under subsection (1) shall be signed by at least one of the directors of the management company.

(3) A management company shall—

(a) send to every unit holder without charge a copy of the document referred to in subparagraph (1)*(a)*(i) within two months after the end of each financial year of the unit trust scheme or prescribed investment scheme; and

(b) where a unit holder requests for the document referred to in subparagraph (1)*(a)*(ii) and any additional copies of the document referred to in subparagraph (1)*(a)*(i), send to the unit holder the document requested for within two months after the request is received and upon payment of a reasonable sum as may be determined by the management company.

(4) A management company shall ensure that all financial statements required to be lodged with or delivered to the Commission or required for distribution to any unit holder relating to the unit trust scheme or prescribed investment scheme shall comply with approved accounting standards.

(5) A management company who contravenes subsection (1), (2), (3) or (4) commits an offence.

Duty of management company to replace trustee

299. (1) A management company shall take all reasonable steps to replace a trustee as soon as practicable after becoming aware that—

(a) the trustee has ceased to exist;

(b) the trustee has not been validly appointed;

(c) the trustee is not eligible to be appointed or to act as trustee under section 290;

(d) the trustee has failed or refused to act as trustee in accordance with the provisions or covenants of the deed or the provisions of this Act;

(e) a receiver is appointed over the whole or a substantial part of the assets or undertaking of the existing trustee and has not ceased to act under that appointment, or a petition is presented for the winding up of the existing trustee (other than for the purpose of and followed by a reconstruction, unless during or following such reconstruction the existing trustee becomes or is declared to be insolvent); or

(f) the trustee is under investigation for conduct that contravenes the Trust Companies Act 1949, the Trustee Act 1949, the Companies Act 1965 or any securities law.

(2) A management company who contravenes subsection (1) commits an offence.

Duties of trustee

300. (1) A trustee shall take custody and control of all securities, property and assets of a unit trust scheme or prescribed investment scheme and hold it in trust for the unit holders in accordance with the deed, such requirements as may be specified by the Commission, the provisions of this Act, all applicable securities laws and any regulations made thereunder.

(2) A trustee of a deed entered into under section 288 shall—

(a) satisfy itself that the provisions of a prospectus relating to any unit trust scheme or prescribed investment scheme do not contain any matter which is inconsistent with the provisions and covenants of the deed;

(b) exercise reasonable diligence to ascertain whether the management company has committed any breach of the provisions or covenants of the deed or has contravened any of the provisions of this Act;

(c) do everything in its power to ensure that the management company remedies any breach known to the trustee of the provisions or covenants of the deed or any contravention of the provisions of this Act unless the trustee is satisfied that the breach will not materially prejudice the unit holders' interests;

(d) notify the Commission as soon as practicable of any irregularity, any breach of the provisions or covenants of the deed, any contravention of the provisions of this Act or any inconsistency between the provisions of the prospectus and the provisions or covenants of the deed as referred to in paragraph *(a)* which, in the trustee's opinion, may indicate that the interests of the unit holders are not being served;

(e) give the unit holders a statement explaining the effect of any proposal that the management company submits to the unit holders before any meeting that—

(i) the court orders in relation to a scheme of arrangement or compromise under subsection 176(1) of the Companies Act 1965; or

(ii) the trustee may call under section 306; and

(f) comply with any direction given to the trustee at a unit holders' meeting referred to in section 305, 306 or 307, unless—

(i) the trustee is of the opinion that the direction is inconsistent with any provision or covenant of the deed or the provisions of this Act or is otherwise objectionable; and

(ii) the trustee has either obtained, or is in the process of obtaining, an order from the court under section 314 to set aside or vary that direction.

(3) A trustee who contravenes subsection (1) or (2) shall not be guilty of an offence.

Duty of trustee to wind up scheme

301. (1) Where a management company is in liquidation or where, in the opinion of the trustee, a management company has ceased to carry on business or has, to the prejudice of the unit holders, failed to comply with any provision or covenant of the deed or contravened any of the provisions of this Act, the trustee shall call a meeting of the unit holders—

(a) by sending by post a notice of the proposed meeting at least twenty-one days before the date of the proposed meeting, to each unit holder at the unit holder's last known address or, in the case of joint unit holders, to the joint unit holder whose name stands first in the records of the management company at the joint unit holder's last known address; and

(b) by publishing, at least twenty-one days before the date of the proposed meeting, an advertisement giving notice of the meeting in a national language national daily newspaper and in one other newspaper as may be approved by the Commission.

(2) If at any meeting called under subsection (1), a resolution is passed by a majority in number representing at least three-fourths of the value of the units held by unit holders voting at the meeting that the unit trust scheme or prescribed investment scheme be wound up, the trustee shall apply to the court for an order confirming the resolution.

(3) The court, on an application by the trustee, if satisfied that it is in the interest of the unit holders, may confirm the resolution and may make such orders as it thinks necessary or expedient for the winding-up of the unit trust scheme or prescribed investment scheme.

(4) A trustee who contravenes subsection (1) or (2) shall not be guilty of an offence.

Duties of management company and trustee under general law

302. The duties of a management company and a trustee imposed on them by this Act and the deed are in addition to and not in derogation of the duties which are otherwise imposed on them by any other law.

Exemptions and indemnification of trustee from liability

303. (1) Subject to subsection (2), a provision or covenant contained in a deed or a term of a contract with the unit holders shall be void in so far as the provision, covenant or term, as the case may be, would have the effect of—

(a) exempting a trustee under the deed from liability for contravention of any provision of this Act or for breach of trust or for failure to show the degree of care and diligence required of a trustee; or

(b) indemnifying a trustee against liability for contravention of any provision of this Act or for breach of trust or for failure to show the degree of care and diligence required of a trustee.

(2) Subsection (1) shall not invalidate—

(a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or

(b) any provision, covenant or term enabling such a release to be given—

(i) on the agreement thereto of a majority of not less than three-fourths of the holders of units voting at a meeting summoned for the purpose; and

(ii) either with respect to specific acts or omissions or on the trustee ceasing to act.

Indemnity of trustee

304. (1) A trustee is not liable for anything done or omitted to be done in accordance with a direction given to him by the unit holders at any meeting called under section 305, 306 or 307.

(2) A trustee may, in addition to any other rights under the deed, seek reimbursement by deducting out of any monies coming into the trustee's hands from a management company, all reasonable costs incurred in explaining the effect of any proposal that the management company submits to the unit holders in the circumstances set out in paragraph 300(2)*(e)*.

Duty of management company to call meeting of unit holders

305. (1) A management company shall call for a meeting of unit holders if—

(a) not less than fifty unit holders or one-tenth of all unit holders direct the management company to do so;

(b) the direction is given to the management company in writing at its registered office; and

(c) the purpose of the meeting is—

(i) to consider the most recent financial statements of the unit trust scheme or prescribed investment scheme;

(ii) to give to the trustee such directions as the meeting thinks proper; or

(iii) to consider any other matter in relation to the deed.

(2) Where a management company is required to call a meeting under subsection (1), it shall do so within twenty-one days after the direction is given to the management company in writing at its registered office.

(3) Where a management company is required to call a meeting under subsection (1) or pursuant to any provision or covenant of the deed, it shall give notice of the time and place of the meeting—

(a) by sending by post a notice of the proposed meeting at least seven days before the date of the proposed meeting, to each unit holder at the unit holder's last known address or, in the case of joint unit holders, to the joint unit holder whose name stands first in the records of the management company at the joint unit holder's last known address; and

(b) by publishing, at least fourteen days before the date of the proposed meeting, an advertisement giving notice of the meeting in a national language national daily newspaper and in one other newspaper as may be approved by the Commission.

(4) A meeting summoned in accordance with a provision or covenant contained in a deed shall be held at the time and place specified in the notice and advertisement, being a time not later than two months after the giving of the notice and—

(a) be chaired by such person as is appointed in that behalf by the unit holders that are present at the meeting; or

(b) where no such appointment is made, be chaired by a nominee of the trustee,

and shall be conducted in accordance with the deed or, if the deed makes no provision, as directed by the chairman of the meeting.

(5) A notice of meeting posted to a unit holder shall be taken as given three days after it is posted, unless the deed provides otherwise.

(6) A management company who contravenes subsection (1), (2) or (3) commits an offence.

Power of trustee to call a meeting

306. (1) Where a management company fails to remedy any breach of the provisions or covenants of the deed or any contravention of the provisions of any securities law or regulations made thereunder when required by the trustee, the trustee may—

(a) call a meeting of unit holders;

(b) inform the unit holders of the failure at the meeting;

(c) submit proposals for the protection of interests of unit holders; and

(d) ask for directions from unit holders in relation to the matter.

(2) A trustee may appoint a person to chair a meeting of unit holders called under subsection (1) and where the trustee does not exercise this power the unit holders present at the meeting may appoint a person to chair the meeting.

Court may order a meeting of unit holders

307. (1) Without limiting the effect of section 314, the court may make an order for a meeting of all or any of the unit holders to be held to give directions to the trustee.

(2) An order made under subsection (1) may direct the trustee to—

(a) place before the unit holders any information concerning the interests of the unit holders;

(b) place before the unit holders any proposal to protect the interests of the unit holders that the court directs or the trustee considers appropriate; and

(c) obtain the unit holders' directions concerning the protection of the interests of the unit holders.

(3) The meeting shall be held and be conducted in such manner as the court may direct.

(4) A trustee may appoint a person to chair the meeting and where the trustee does not exercise this power, the unit holders present at the meeting may appoint a person to chair the meeting.

Register of unit holders

308. (1) Every management company shall keep a register of unit holders and enter into the register—

(a) in the case of a unit holder who is an individual, the name, address, the number of the identity card issued under the National Registration Act 1959 [*Act 78*], if any, of that individual; or

(b) in the case of a unit holder that is a corporation, the name, registered address and registration number of that corporation, if applicable.

(2) The management company shall enter into the register—

(a) the number of units held by each unit holder;

(b) the date on which the name of each person was entered in the register as a unit holder;

(c) the date on which any person ceased to be a unit holder; and

(d) any other relevant information or particulars of the unit holder, for a period of seven years.

(3) Notwithstanding anything in subsections (1) and (2), a management company may keep the names and particulars relating to persons who have ceased to be unit holders of the unit trust scheme or prescribed investment scheme in a separate register.

(4) The register of unit holders shall be *prima facie* evidence of any matters inserted therein in accordance with the provisions of this Act.

(5) Where a unit trust scheme or prescribed investment scheme has more than fifty unit holders, the management company shall, unless the register of unit holders is in such a form as to constitute in itself an index, keep an index of the names of the unit holders in a convenient form and shall, within fourteen days after the date on which any alteration is made in the register of unit holders, make any necessary alteration in the index.

(6) The index shall, in respect of each unit holder, contain sufficient indication to enable the account of that unit holder in the register to be readily found.

(7) A person who contravenes subsection (1), (2), (5) or (6) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

Where register is to be kept

309. (1) A register of unit holders and the index shall be kept at the registered office of a management company in Malaysia.

(2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

Closure and inspection of register

310. (1) A management company may, on giving not less than fourteen days' notice to the Commission, close the register of unit holders at any time, but no part of the register shall be closed for more than thirty days in the aggregate in any calendar year.

(2) Any unit holder may request the management company to furnish him with an extract from the register in so far as it relates to his name, address, number of units held by him and amounts paid on those units, and the management company shall, on payment in advance of a reasonable fee as it may require, cause any extract so requested to be sent to that person within twenty-one days or within a period which the Commission considers reasonable in the circumstances commencing on the day after the date on which the request is received by the management company.

(3) A management company who contravenes subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

Power of court to rectify register

311. (1) Any unit holder, trustee or other person aggrieved by the

inclusion or exclusion, or the manner of inclusion or exclusion, of any name in the register may apply to the court for the rectification of the register, and the court may refuse the application or may order the rectification of the register and the payment by the management company of any damages sustained by any party to the application.

(2) The court may, on an application under subsection (1), decide—

(a) on any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between unit holders or alleged unit holders, or between registered unit holders or alleged registered unit holders, on the one part and the management company on the other part; and

(b) generally, any question necessary or expedient to be decided for the rectification of the register.

Branch register

312. (1) Notwithstanding the provisions of section 308, a management company may cause to be kept in any place outside Malaysia a branch register of unit holders of a unit trust scheme or prescribed investment scheme which shall be deemed to be part of the register of unit holders.

(2) A management company shall deliver to the Commission a notice of the location of the office where any branch register is kept and of any change in its location and, if the branch office is permanently closed, of its closure, and any such notice shall be delivered within one month after the opening of the office or of the change or closure, as the case may be.

(3) A branch register shall be kept in the same manner in which the principal register is required by this Act to be kept.

(4) A management company shall transmit to the office at which its principal register is kept a copy of every entry in its branch register as soon as may be practicable after the entry is made, and shall cause to be kept at that office, duly entered up from time to time, a copy of its branch register, which shall for all purposes of this Act be deemed to be part of the principal register.

(5) A management company may close a branch register and thereupon all entries in that register shall be transferred to some other branch register or to the principal register.

(6) A person who contravenes subsection (2), (3) or (4) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

Rights of trustee, executor, administrator in relation to a deceased unit holder

313. (1) A trustee, executor or administrator of the estate of any deceased person who was registered or beneficially entitled to be registered as a unit holder of any unit trust scheme or prescribed investment scheme may become registered as the unit holder in respect of the holdings of the deceased person as trustee, executor or

administrator of that estate and shall, in respect of such holdings, be entitled to the same rights as he would have been entitled to if the holdings of the deceased person had remained registered in the name of the deceased person.

(2) A unit held by a trustee, executor or administrator of a deceased person in respect of a particular trust may, with the consent of the management company, be marked in the register or branch register in such a way as to identify it as being held in respect of the trust.

(3) Except as provided in this section, no notice of any trust expressed, implied or constructive shall be entered on a register or branch register, and no liability shall be affected by anything done in pursuance of subsection (1) or (2) or pursuant to any law outside Malaysia which corresponds to the provisions of this section.

Power of court to make orders

314. (1) A court may make any order that it considers appropriate to protect the interests of existing or prospective unit holders.

(2) If a trustee applies to a court for any direction in relation to the performance of the trustee's functions or to determine any question in relation to the interests of unit holders, the court may give any direction or make any declaration or determination in relation to the matter that the court considers appropriate, including such ancillary or consequential orders as may be necessary.

Non-application of Division 5 of Part VI

315. (1) The provisions of Division 5 of Part VI shall not apply to an issue, offer or invitation made to a person or a class of persons, or made in respect of a unit trust scheme or prescribed investment scheme or a class of unit trust schemes or prescribed investment schemes as the Minister may, on the recommendation of the Commission, prescribe by order published in the *Gazette*.

(2) A prescription made under subsection (1) may specify the provisions of Division 5 of Part VI to which an issue, offer or invitation shall not apply.

(3) The Minister, on the recommendation of the Commission, may from time to time by order published in the *Gazette*, vary, delete, add to, substitute for, or otherwise amend the prescription made under subsection (1) and upon such publication, the prescription as varied, deleted, added to, substituted for or otherwise amended, shall come into full force and effect and shall be deemed to be an integral part of this Act as from the date of such publication or such later date as may be specified in the order.

Division 6 Islamic securities

Prescription by Minister in respect of Islamic securities, *etc.*

316. (1) This Division applies to a person who proposes to make available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase, Islamic securities.

(2) Where the Minister has made a prescription under section 5 in respect of Islamic securities, the Minister may make such modifications in the prescription on the usage of expressions in the securities laws as may be necessary to give full effect to the principles of *Shariah* in respect of such Islamic securities.

(3) The Commission may specify in guidelines made under section 377 on the following:

(a) any model agreement or documentation relating to a transaction or arrangement in respect of Islamic securities;

(b) the duties and responsibilities of the different parties involved in a transaction or arrangement in respect of Islamic securities; and

(c) any other matter as may be deemed appropriate,

in giving full effect to the principles of *Shariah* in relation to a transaction in respect of Islamic securities.

PART VII PROVISIONS APPLICABLE TO LISTED CORPORATIONS

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

317. (1) Unless exempted by the Commission in writing, a person who is a chief executive or director of a listed corporation who has an interest in the securities of such listed corporation or any of its associated corporation shall notify the listed corporation in writing—

(a) of the subsistence of his interests at that time; and

(b) the extent of his interests in the listed corporation or associated corporation of the listed corporation at that time.

(2) A chief executive or director of a listed corporation shall notify the listed corporation immediately in writing of the occurrence, while he is a chief executive or director of the listed corporation, of any of the following events:

(a) any event in consequence of which he becomes, or ceases to be, interested in securities in the listed corporation or any associated corporation of the listed corporation;

(b) the entering into by him of a contract to purchase or sell any securities in the listed corporation or any associated corporation of the listed corporation in which he has an interest;

(c) the assignment by him to any other person of a right granted to him by the listed corporation to subscribe for securities in the listed corporation;

(d) the grant to him by another corporation, being an associated corporation of the listed corporation, of a right to subscribe for securities in that associated corporation, the exercise of such a right granted to him and the assignment by him to any other person of such a right so granted; and

(e) any event in consequence of which a corporation becomes an associated corporation of the listed corporation where immediately after the event he has an interest in the securities of the corporation.

(3) Subsection (2) does not require the notification by a person of the occurrence of an event which comes to his knowledge after he had ceased to be a chief executive or director.

(4) Where the Commission deems it necessary for the administration of securities laws, the Commission may require the listed corporation to provide the Commission such information that is notified under subsection (1) or (2).

(5) For the purpose of this section—

(a) "chief executive" and "director" include a spouse, child or parent of the chief executive or director; and

(b) an exemption granted to a chief executive or director under subsection (1) shall not exempt the chief executive or director concerned from having to comply with section 135 of the Companies Act 1965.

Disqualification of chief executive or director of listed corporations

318. (1) A person—

(a) to whom subsection 130(1) of the Companies Act 1965 applies; and

(b) who intends to apply for leave of the court to be a director or promoter of a listed corporation, or to be directly or indirectly concerned, or to take part, or engage, in the management of a listed corporation,

shall give to the Commission not less than ten days' notice of his intention to apply, and the Commission shall be made a party to the proceedings.

(2) On the hearing of any application referred to in subsection (1), the Commission may—

(a) oppose the granting of an application; or

(b) apply to the court to disallow the person to be a director or promoter of a listed corporation, or to be directly or indirectly concerned, or to take part, or engage, in the management of the listed corporation, for such longer period exceeding five years as the court thinks appropriate.

(3) Notwithstanding subsection 130(1) of the Companies Act 19651965, where it appears to the Commission that by reason of any chief executive or director of a listed corporation—

(a) having been convicted of an offence under a securities law;

(b) having had an action taken against him under section 199, 200, 210, 211, 354, 355 or 356 or subsection 201(5) or (6) or section 360; or

(c) having been compounded for an offence under section 373,

the chief executive or the director is unfit, to be directly or indirectly concerned, or to take part, engage, in the management of the listed corporation, the Commission may apply to the court to remove from office such chief executive or director of the listed corporation or bar such person from becoming a director or chief executive of any public company for such period of time as may be determined by the court.

(4) The Commission may require a chief executive or director

concerned in an application under subsection (3) or the listed corporation in which the chief executive or director holds office—

(a) to furnish the Commission with such information with respect to the affairs of the listed corporation; and

(b) to produce and permit inspection of such books or documents of or relevant to the listed corporation,

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

(5) Where on an application under subsection (3), the court is satisfied—

(a) that a chief executive or director of the listed corporation—

(i) has been convicted under a securities law;

(ii) has had an action taken against him under section 199, 200, 210, 211, 354, 355 or 356 or subsection 201(5) or (6) or section 360; or

(iii) has been compounded for an offence under section 373; and

(b) that his conduct as chief executive or director of the listed corporation renders him unfit to be directly or indirectly concerned, or to take part, or engage, in the management of the listed corporation,

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

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

Submission of information

319. (1) A listed corporation shall cause to be submitted to the Commission—

(a) a copy of its audited annual accounts within two weeks from the date of its annual general meeting; and

(b) its interim and periodic financial reports immediately after figures are available.

(2) A listed corporation shall notify the Commission in writing—

(a) of any change in the registered or business address of the listed corporation;

(b) if the chief executive or any of the directors of the listed corporation ceases to hold office as a chief executive or director; and

(c) of the names and particulars of any new chief executive or director of the listed corporation,

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

(3) A listed corporation and its directors shall cause to be kept such accounting records and other records as will sufficiently explain the transactions and financial position of the listed corporation and its related corporation and enable true and fair profit and loss accounts and balance sheets and any documents required to be attached thereto to be prepared from time to time, and shall cause those records to be kept in such a manner as to enable them to be conveniently and properly audited.

(4) A listed corporation shall ensure that the corporation shall retain the records referred to in subsection (1) for seven years after the completion of the transaction or operation to which they respectively relate.

(5) A person who contravenes this section commits an offence.

Duties of auditor of listed corporations

320. (1) If an auditor, in the course of the performance of his duties as an auditor of a listed corporation, is of the professional opinion that there has been a breach or non-performance of any requirement or provision of the securities laws, a breach of any of the rules of the stock exchange or any matter which may adversely affect to a material extent the financial position of the listed corporation, the auditor shall immediately submit a written report on the matter—

(a) in the case of a breach or non-performance of any requirement or provision of the securities laws, to the Commission;

(b) in the case of a breach or non-performance of any of the rules of a stock exchange, to the relevant stock exchange and the Commission; or

(c) in any other case which adversely affects to a material extent the financial position of the listed corporation, to the relevant stock exchange and the Commission.

(2) No auditor shall be liable to be sued in any court for any report submitted by the auditor in good faith and in the intended performance of any duty imposed on the auditor under this section.

(3) The Commission may, at any time during or after an audit, require an auditor of a listed corporation to—

(a) submit such additional information in relation to his audit as the Commission may specify;

(b) enlarge or extend the scope of his audit of the business and affairs of the listed corporation in such manner or to such extent as the Commission may specify;

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

(d) submit a report on any matter referred to in paragraphs *(a)* to *(c)*; or

(e) submit an interim report on any matter referred to in paragraphs *(a)* to *(d)*,

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

(4) The auditor shall comply with any requirement of the Commission under subsection (3) and the listed corporation shall remunerate the auditor in respect of the discharge by him of all or any of the additional duties under this section.

(5) Where the listed corporation has failed to remunerate the auditor as required under subsection (4), the auditor may sue for and recover the remuneration as a debt due to the auditor.

(6) The listed corporation shall provide such information and access to such information as the auditor shall require in respect of the discharge by him of all or any of the additional duties under this section.

(7) For the purposes of this section, "auditor" has the same meaning as defined under section 31A of the Securities Commission Act 1993.

Protection for persons against retaliation for reporting to authorities in specific circumstances

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

(a) in the case of a breach or non-performance of any requirement or provision of the securities laws, to the Commission;

(b) in the case of a breach or non-performance of any of the rules of a stock exchange, to the relevant stock exchange or the Commission; or

(c) in any other case which adversely affects to a material extent the financial position of the listed corporation, to the relevant stock exchange or the Commission,

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

(2) No chief executive, officer responsible for preparing or approving financial statements or financial information, internal auditor or a secretary of a listed corporation shall be liable to be sued in any court for any report submitted by such person in good faith and in the intended performance of his duties.

(3) For the purposes of this section, "secretary" means a person who is referred to in section 139 of the Companies Act 1965.

PART VIII SELF-REGULATORY ORGANIZATIONS

Interpretation

322. For the purposes of this Part, "chief executive", "director" and "officer" includes any person occupying the position or performing the functions of chief executive, director and officer by whatever name called and "chief executive", "director" and "officer" shall have the same meaning as in subsection 2(1).

Recognition of a self-regulatory organization

323. (1) The Commission may, with the concurrence of the Minister, where it thinks appropriate in the public interest or for the protection of investors by notice published in the *Gazette,* declare a person to be a recognized self-regulatory organization, subject to such terms and conditions as the Commission thinks fit, if it is satisfied that—

(a) the person in discharging its obligation under section 324 will not act contrary to the public interest and in particular the interest of investors;

(b) the person shall be able to take appropriate action against its members and any person to whom the rules apply to;

(c) the person has sufficient financial, human and other resources to carry out its functions;

(d) the person is fit and proper and satisfies the criteria or standards referred to in section 64, or any rules of the stock exchange or futures exchange, as the case may be;

(e) the person is managed by officers who are fit and proper and who satisfy the criteria or standards referred to in section 65, or any rules of the stock exchange or futures exchange or any applicable guidelines, as the case may be;

(f) the person has competent personnel for the carrying out of its functions; and

(g) the rules of the person make satisfactory provision—

(i) to promote investor protection;

(ii) to promote fair treatment of its members and any person who applies for membership;

(iii) to exclude a person who is not fit and proper from being its member or being appointed as its chief executive, director or officer;

(iv) to promote proper regulation and supervision of its members;

(v) to promote appropriate standards of conduct of its members;

(vi) to manage any conflict of interest that may arise between its interest and the interest referred to in subsection 324(1);

(vii) to ensure that there is a fair representation of members in its governing body;

(viii) to ensure that its members and officers duly comply with

the securities laws, regulations and guidelines issued by the Commission and where relevant, the rules of the stock exchange, futures exchange, approved clearing house or central depository;

(ix) to prevent the usage of any information by its members or officers that may result in such member or officer making an unfair gain;

(x) for the expulsion, suspension, disciplining or sanctioning of a member in the event a member contravenes the securities laws, regulations and guidelines issued by the Commission and where relevant, the rules of the stock exchange, futures exchange, approved clearing house or central depository; and

(xi) to allow an aggrieved member to appeal against any decision of the recognized self-regulatory organization.

(2) The Commission may, in declaring a person to be a recognized self-regulatory organization, require such person to provide any information to the Commission as the Commission considers necessary.

(3) A person who—

(a) with intent to deceive, makes or furnishes; or

(b) knowingly authorizes or permits the making or furnishing of,

any false or misleading statement or report with respect to the information submitted to the Commission referred to in subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.

Duties of a recognized self-regulatory organization

324. (1) A recognized self-regulatory organization shall ensure that in exercising any of its powers or in carrying out any of its functions, such power or function shall be exercised or carried out in the public interest having particular regard to the need for the protection of investors.

(2) A recognized self-regulatory organization shall immediately notify the Commission if it becomes aware of—

(a) any matter which adversely affects or is likely to adversely affect the interests of investors; and

(b) any contravention by its members of any securities laws.

(3) Without prejudice to subsection (2), when a recognized self-regulatory organization expels, or suspends any member, or otherwise disciplines any of its members, it shall, within seven days, give to the Commission in writing the following particulars:

(a) the name of the member;

(b) the reason for and the nature of the action taken;

(c) the amount of the fine;

(d) the period of suspension, if any; and

(e) any other disciplinary action taken.

(4) A recognized self-regulatory organization shall not make a decision under its rules that adversely affects the rights of a person unless the recognized self-regulatory organization has given the affected person an opportunity to make representations to the recognized self-regulatory organization about the matter.

(5) Notwithstanding the provisions of subsection (4), where the recognized selfregulatory organization considers that any delay in making the decision is likely to prejudice public interest or necessary for the protection of investors, the recognized self-regulatory organization may make a decision without giving an opportunity to be heard.

Rules of a recognized self-regulatory organization

325. (1) No amendments to the rules of a recognized self-regulatory organization shall have effect unless it has been approved by the Commission under subsection (4).

(2) Where a recognized self-regulatory organization proposes to make any amendment to its rules, the recognized self-regulatory organization shall submit to the Commission—

(a) the text of the proposed amendment; and

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

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

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

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

(6) Notwithstanding the provisions of this section, the Commission may, from time to time, after consultation with the recognized self-regulatory organization, by written notice require the recognized self-regulatory organization to amend or supplement any of its rules in such manner and within such period as may be specified in the notice.

(7) A recognized self-regulatory organization which contravenes subsection (2) or which contravenes a requirement made under subsection (5) or a written notice made under subsection (6) commits an offence.

Appointment of directors of a recognized self-regulatory organization

326. (1) No appointment, election or nomination of a director or chief executive of a recognized self-regulatory organization can be made without the prior approval of the Commission.

(2) The recognized self-regulatory organization shall ensure that at least one-third of the number of directors on its board shall be public interest directors in accordance with such criteria as may be specified by the Commission.

Powers to issue directions to a recognized self-regulatory organization

327. (1) Where the Commission is satisfied that—

(a) a conflict exists or may come into existence between the interest of a recognized self-regulatory organization or its members and the interest of the proper performance of the functions or duties conferred by this Act, its rules or any guidelines issued by the Commission pursuant to section 377;

(b) such a conflict of interest has occurred or has existed in circumstances that make it likely that the conflict of interest will continue or be repeated; or

(c) the recognized self-regulatory organization has failed to carry out its functions or discharge its duties under subsection 324(1) or its rules or any guidelines issued by the Commission pursuant to section 377,

the Commission may serve a written notice on the recognized self-regulatory organization stating the reasons in support of the ground for the notice and direct the recognized self-regulatory organization to forthwith take such steps as are specified in the notice, including steps in relation to any of its affairs, business or property for the purposes of managing the conflict of interest or the matters occasioning the conflict of interest and the satisfactory carrying out of its functions and satisfactory discharge of its duties.

(2) A notice served under subsection (1) shall take effect immediately.

(3) A recognized self-regulatory organization that has been served with a notice under subsection (1) shall not without reasonable excuse, fail to comply with the notice.

(4) A recognized self-regulatory organization that has been served with a notice under subsection (1) may appeal against the notice to the Commission not later than fourteen days after the date of service of the notice or such longer period if any, as the Commission may specify in the notice, but the notice shall take effect immediately notwithstanding that the appeal has been or may be made under this subsection.

(5) Without limiting the generality of subsection (1), the Commission may issue any other direction to a recognized self-regulatory organization where the Commission thinks necessary in the public interest or for the protection of investors.

Withdrawal of recognition

328. (1) The Commission may, with the concurrence of the Minister, withdraw a recognition given under subsection 323(1) where—

(a) the recognized self-regulatory organization has failed to com-

mence operations within six months from the date published in the *Gazette* under subsection 323(1);

(b) the Commission is not satisfied that the recognized self-regulatory organization is properly performing or is able to perform the functions or duties under its rules or any guidelines issued by the Commission pursuant to section 377;

(c) the recognized self-regulatory organization has breached any term and condition imposed under subsection 323(1);

(d) the recognized self-regulatory organization is in breach of any provisions of the securities laws or any guidelines issued pursuant to section 377 or has failed to comply with any direction by the Commission and where relevant, the rules of the stock exchange, futures exchange, approved clearing house or central depository;

(e) the recognized self-regulatory organization is being wound up or otherwise dissolved;

(f) a judgement debt against the recognized self-regulatory organization has not been satisfied in whole or in part;

(g) a receiver, a receiver and manager, or equivalent person has been appointed, in relation to or any property of the recognized self-regulatory organization;

(h) the recognized self-regulatory organization—

(i) on its own accord has applied to the Commission to cease operating as a recognized self-regulatory organization; or

(ii) has been determined by the Commission to have ceased operating as a recognized self-regulatory organization;

(i) any information provided for the purposes of section 323 was false or misleading in a material particular; or

(j) the recognized self-regulatory organization has contravened any direction of the Commission issued under section 327.

(2) A recognition given under subsection 323(1) shall not be withdrawn unless the Commission has notified the recognized self-regulatory organization of its intention and the reasons for the Commission's action, and give the recognized self-regulatory organization an opportunity to make representations to the Commission.

Protection for a recognized self-regulatory organization

329. A recognized self-regulatory organization, an officer or employee of a recognized self-regulatory organization or a member of a committee of a recognized self-regulatory organization shall not be liable for any loss sustained by or damage caused to any person as a result of anything done or omitted by them in the performance in good faith of their powers, functions and duties in connection with the regulatory or supervisory functions of the recognized self-regulatory organization.

Accounts and reports in respect of a recognized self-regulatory organization

330. (1) The provisions of Subdivision 6 of Division 4 of Part III shall apply to the appointment, removal and resignation of an auditor and the audit of a recognized self-regulatory organization's accounts.

(2) Within three months after the end of each financial year, a recognized self-regulatory organization shall submit to the Commission a report on the extent to which it has complied with the terms and conditions imposed under subsection 323(1), the requirements imposed on it under this Part and its rules or any guidelines issued by the Commission pursuant to section 377.

(3) The Commission shall forthwith send a copy of the report referred to under subsection (2) to the Minister.

(4) Upon receipt of the report under subsection (2), the Commission may at any time if it deems it necessary to do so—

(a) conduct an audit on the recognized self-regulatory organization;

(b) appoint any independent person to assist the Commission in an audit; and

(c) charge the costs of carrying out such audit to the recognized self-regulatory organization.

(5) The Commission shall as soon as practicable submit to the Minister a copy of the report of the audit conducted by the Commission under subsection (4).

Provision of assistance to Commission

331. (1) A recognized self-regulatory organization shall provide such assistance to the Commission, or to a person acting on behalf of or with the authority of the Commission, as the Commission or such person reasonably requires including the furnishing of such returns, and the provision of such information relating to the operations of the recognized self-regulatory organization or any other information as the Commission or such person may require for the proper administration of the securities laws.

(2) A person who refuses or fails, without lawful excuse, to assist the Commission or a person acting on behalf of, or authorized by, the Commission, in accordance with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

PART IX CAPITAL MARKET DEVELOPMENT FUND

Establishment of Capital Market Development Fund

332. (1) There shall be established a fund to be called the Capital Market Development Fund, referred to in this Part as "the Fund".

(2) The Fund shall be administered by the Capital Market Development Fund Board, referred to in this Part as the "Board", who shall act as trustees for the Fund.

(3) The Commission shall be responsible to assist the Board in the day-to-day administration and management of the affairs of the Fund.

Assets constituting Fund

333. The Fund shall consist of—

(a) such shares as are approved for the Fund under paragraph 4(1)*(d)* of the Demutualisation (Kuala Lumpur Stock Exchange) Act 2003 [*Act 632*];

(b) proceeds raised in connection with the sale of the shares that are referred to in paragraph *(a)*;

(c) such sums as may be provided from time to time for the purposes of this Part by Parliament;

(d) all donations and gifts accepted by the Board for the Fund;

(e) all interest, dividend and other income derived from the investment of the monies of the Fund; and

(f) all other sums or property which may in any manner become payable to or vested in the Fund.

Objects of the Fund, *etc.*

334. (1) The objects for which monies of the Fund may be applied are as follows:

(a) the promotion of the capital market within Malaysia to be an efficient, innovative and internationally competitive market;

(b) the development and upgrading of skills and expertise required by the capital market in Malaysia;

(c) the development of self-regulation by professional associations and market bodies in the securities and futures industries; and

(d) the development and support of high quality research and development programmes and projects relating to the capital market in Malaysia.

(2) The Fund shall be expended for the purposes of—

(a) meeting all payments required to be made by the Fund consistent with its objects;

(b) paying any expenses lawfully incurred by the Fund including fees and costs, and the remuneration of persons employed or engaged by the Board, including the granting of loans, superannuation allowances or gratuities;

(c) paying any other expenses, costs or expenditure properly incurred or accepted by the Board, for purposes of its powers and carrying out of its duties; and

(d) generally paying any expenses for carrying into effect the provisions of this Part and in connection with the administration of the Fund.

(3) The Minister may approve the payment out of the Fund of any cost, expense or other payment for purposes other than those specified in subsection (2) that are consistent with the objects of the Fund.

Membership of the Board

335. (1) The members of the Board shall be appointed by the Minister and the Board shall consist of—

(a) the Chairman of the Commission, as an *ex-officio* member, who shall be the Chairman;

(b) the Deputy Chief Executive of the Commission, as an *ex-officio* member;

(c) a senior representative of an exchange holding company; and

(d) four other members who possess knowledge and experience in finance, business, law or other relevant experience.

(2) If the Chairman of the Board is absent or unable to act due to illness or any other cause, the Deputy Chief Executive of the Commission shall act in his place as the Chairman of the Board.

(3) Members of the Board shall not be entitled to any remuneration but may be paid such honorarium and travelling and subsistence allowances as the Minister may determine.

(4) The Board shall have such powers and shall perform such duties as are given or imposed by this Act or as may be prescribed from time to time by the Minister and may by instrument in writing delegate to any person all or any of such powers and duties.

Tenure of office

336. (1) Subject to subsection (2), a member of the Board, other than the *ex-officio* members referred to in subsection 335(1), shall hold office for a term not exceeding three years and shall be eligible for reappointment.

(2) In the case of the Chairman of the Commission and the Deputy Chief Executive of the Commission, who are *ex-officio* members of the Board, their tenure of office as members of the Board shall be the tenure of their appointments as Chairman of the Commission and Deputy Chief Executive of the Commission respectively under the Securities Commission Act 1993.

Resignation and revocation of appointment

337. (1) A member of the Board may, at any time resign his office by a written notice addressed to the Minister.

(2) The Minister may at any time revoke the appointment of a member of the Board if he thinks fit.

Vacation of office

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

(a) he dies;

(b) he has been convicted of any offence involving fraud or dishonesty;

(c) he becomes bankrupt;

(d) he is of unsound mind or is otherwise incapable of discharging his duties;

(e) he is absent from three consecutive meetings of the Board except on leave granted by the Minister; or

(f) he is guilty of serious misconduct in relation to his duties under this Act.

Quorum and procedures of meetings

339. (1) The Board shall meet as often as may be necessary for the performance of its functions or duties under this Part.

(2) Four members of the Board shall constitute a quorum at any meeting of the Board.

(3) Subject to this Part, the Board shall determine its own procedures.

(4) The Board may invite any person to attend any meeting or deliberation of the Board for the purpose of advising it on any matter under discussion, but any person so attending shall have no right to vote at the said meeting or deliberation.

(5) Subject to section 340, if on any question to be determined, there is an equality of votes, the Chairman of the Board shall have the casting vote in addition to his original vote.

Disclosure of interest

340. (1) A member of the Board who directly or indirectly has by himself, his spouse or children, any interest in any matter under discussion by the Board shall disclose to the Board the existence of such interest and nature thereof.

(2) A disclosure made under subsection (1) shall be recorded in the minutes of the Board, and after the disclosure—

(a) the member shall not take part nor be present in any deliberation or decision of the Board;

(b) the member shall be disregarded for the purpose of constituting a quorum of the Board relating to the matter; and

(c) no act or proceedings of the Board shall be invalidated on the ground that any member of the Board has contravened the provisions of this section.

Conservation of the Fund

341. (1) It shall be the duty of the Board to conserve the Fund consistent with the provisions of this Part or any regulations made under this Part.

(2) The Board may invest the monies of the Fund available for investment in such manner as the Board may, by any regulations prescribed by the Minister, be authorized to invest.

(3) Without affecting the generality of section 335, the Board may by written instrument delegate all or any of its powers and functions under subsection (2) to any employee or person as it may appoint.

(4) The Board may pay to any person appointed under subsection (3) a fee for any service rendered in exercise of any power and function delegated to that person under that subsection.

Financial year

342. For the purposes of this Part, the financial year of the Fund shall commence on first January and end on thirty-first December of each year.

Accounts and audit

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

(2) The Board shall, not later than three months after the end of

each financial year, cause the accounts of the Fund to be audited by auditors appointed by the Board.

(3) At the end of each financial year and as soon as the accounts of the Fund have been audited, the Board shall cause a copy of the statement of accounts to be submitted to the Minister, together with a report dealing with the investments of the Fund the preceding financial year and containing such information relating to the proceedings and policies of the Board as the Minister may from time to time direct.

Power of Minister in relation to the Board

344. The Minister may give the Board such directions of a general nature that are consistent with the provisions of this Part that relate to the exercise and performance of its functions and the Board shall give effect to such directions.

Dissolution of the Fund

345. (1) Where the Minister is satisfied that there are insufficient funds standing to the credit of the Fund to adequately fulfil the objects referred to in section 334, he may, by notification in the *Gazette*, dissolve the Fund and transfer such assets and monies as may remain to the credit of the Fund to such other fund that has similar objects to the Fund.

(2) In the event the Fund is dissolved under subsection (1) and there is no other fund that satisfies the provisions of subsection (1) with regards to its objects, the assets and funds that remain to the credit of the Fund shall be transferred to the Federal Consolidated Fund.

Power to make regulations

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

(a) giving full effect to the provisions of this Part;

(b) carrying out or achieving the objects and purposes of this Part; or

(c) the further, better or more convenient implementation of the provisions of this Part.

PART IXA MANAGEMENT OF SYSTEMIC RISK IN THE CAPITAL MARKET

Interpretation

346A. For the purposes of this Part—

"market participant" includes an investor, issuer, intermediary, capital market service provider, exchange holding company, stock exchange, derivatives exchange, central depository and clearing facility;

"systemic risk in the capital market" means a situation when one or more of the following events occurs or is likely to occur:

(a) financial distress in a significant market participant or in a number of market participants;

(b) an impairment in the orderly functioning of the capital market; or

(c) an erosion of public confidence in the integrity of the capital market.

Information for purpose of systemic risk

346B. (1) The Commission may, notwithstanding any provision under the securities laws, by notice in writing request any person to submit to the Commission any information or document—

(a) which the Commission considers necessary for the purposes of monitoring, mitigating and managing systemic risks in the capital market; or

(b) where the Commission receives a request from Bank Negara under section 30 of the Central Bank of Malaysia Act 2009.

(2) For the purposes of subsection (1), where the person concerned is solely under the supervision or oversight of Bank Negara, the notice shall be issued through Bank Negara.

(3) Any person who is required to submit any information or document under this section shall provide such information or document notwithstanding any obligation under any contract, agreement or arrangement whether express or implied to the contrary.

(4) Any person who fails to comply with a notice issued under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding ten years or to both.

Power of Commission to issue directive for systemic risk

346C. (1) Where the Commission considers it necessary in the interest of monitoring, mitigating or managing systemic risk in the capital market, the Commission may issue a directive in writing requiring any person to take such measures as the Commission may consider necessary.

(2) In exercising its power under subsection (1), the Commission shall take into consideration the interest of financial stability.

(3) For the purposes of subsection (1), where the person concerned is solely under the supervision or oversight of Bank Negara, the Commission shall make a recommendation to Bank Negara to issue such directive.

(4) Before issuing a directive under subsection (1), the Commission shall give the person an opportunity to be heard.

(5) Notwithstanding subsection (4), the Commission may issue a directive under subsection (1) without first giving the person an opportunity to be heard if any delay in issuing such directive would aggravate systemic risk in the capital market.

(6) Where a directive is issued pursuant to subsection (5) the person shall be given an opportunity to be heard after the directive has been issued.

(7) When a person is given an opportunity to be heard under subsection (6), a directive issued under subsection (1) may be amended or modified.

(8) Any person who fails to comply with a directive issued under subsection (1) commits an offence and shall, on conviction, be liable to a finenot exceeding ten million ringgit or to imprisonment for a term not exceeding ten years or to both.

Arrangements with other supervisory authorities

346D. (1) Notwithstanding any provision in the securities laws, the Commission may for the purposes of monitoring, mitigating and managing systemic risk in the capital market or contributing towards financial stability—

(a) provide assistance to any supervisory authority or Government agency responsible for promoting financial stability;

(b) obtain any information or document from, or share any information or document with, any supervisory authority or Government agency responsible for promoting financial stability if the Commission considers it necessary that such information or document be so obtained or shared in managing systemic risk in the capital market or promoting financial stability; or

(c) enter into arrangements to co-operate with other supervisory authorities and co-ordinate stability measures with such supervisory authorities.

(2) Where the Commission shares any information or document under paragraph (1)*(b)*—

(a) with any supervisory authority or Government agency responsible for promoting financial stability in Malaysia, such information or document shall not be disclosed to any person except with the written consent of the Commission; or

(b) with any supervisory authority outside Malaysia, such supervisory authority shall give an appropriate undertaking for protecting the confidentiality of such information or document and the purposes for which the information or document may be used.

(3) For the purposes of this section, "supervisory authority" means any authority, body, agency or entity—

(a) responsible for monitoring, mitigating and managing systemic risk in the capital market or promoting financial stability; or

(b) responsible for the supervision or oversight of capital market intermediaries or participants.".

PART X DISCLOSURE OF INFORMATION

Division 1 Application

Application of this Part

347. (1) This Part shall not apply to a licensed institution and an Islamic bank other than a licensed institution that holds a Capital Markets Services Licence.

(2) Except as may be provided under subsection (3), this Part does not authorize any investigation into the affairs of a customer of a licensed institution or Islamic bank other than a licensed institution that holds a Capital Markets Services Licence.

(3) The Commission shall seek the assistance of Bank Negara where it appears to the Commission that it is necessary to examine the books of a licensed institution or Islamic bank other than a licensed institution that holds a Capital Markets Services Licence, relating to the affairs of a customer of the licensed institution or Islamic bank for the purpose of investigating the affairs of the customer.

Division 2 Disclosure of information

Power of Commission to require production of books

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

(a) give a direction to—

(i) an exchange holding company, a stock exchange or a futures exchange;

(ii) a member of the board of an exchange holding company, a stock exchange or a futures exchange;

(iii) a person who is or has been either alone or together with another person or other persons, a holder of a Capital Markets Services License;

(iv) a nominee controlled by a person referred to in subparagraph (iii) or jointly controlled by two or more persons at least one of whom is a person referred to in that subparagraph; or

(v) a person who is or has been an officer or employee of, or an agent, advocate and solicitor, auditor or other person acting in any capacity for or on behalf of, an exchange holding company, a stock exchange, a futures exchange or a person referred to in subparagraph (ii), (iii) or (iv),

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

(A) the business or affairs of an exchange holding company, a stock exchange or of a futures exchange, as the case may be;

(B) any dealing in securities or trading in futures contracts;

(C) any advice concerning any securities or futures contracts or the issuing or publication of a report or analysis concerning any securities or futures contracts;

(D) the character or financial position of, or any business carried on by, a person referred to in subparagraph (iii) or (iv); or

(E) an audit of, or any report of an auditor concerning, a dealing in securities or any accounts or records of the holder of a Capital Markets Services License; or

(b) give a direction to any person requiring the production, to the Commission, of any books relating to matters mentioned in subparagraph *(a)*(A), (B), (C), (D) or (E) that are in the custody or under the control of that person:

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

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

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

(4) Where the Commission exercises a power under this section to require another person to produce books—

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

(i) may take possession of the books and make copies of, or take extracts from, the books;

(ii) may require the other person or any person who was party to the compilation of the books to make a statement providing an explanation of any of the books;

(iii) may retain possession of the books for as long as the Commission may consider necessary; and

(iv) shall permit the other person, upon giving a reasonable notice and specifications of the books, to have access to such books which are in the possession of the Commission; or

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

(i) to state, to the best of his knowledge and belief, where the books may be found; and

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

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

(6) If it appears to a Magistrate, upon written information on oath and after any enquiry he considers necessary, that there are reasonable cause to believe that there are books on particular premises, the production of which has been required by virtue of this section, and which have not been produced in compliance with that requirement, the Magistrate may issue a warrant authorizing the Commission or any person named in the warrant, with or without assistance—

(a) to search the premises, to break open and search any cupboard, drawer, chest, box, package or other receptacle, whether a fixture or not, in the premises; and

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

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

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

Offences

349. (1) A person who contravenes a requirement made under section 348 commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

(2) A person who furnishes information or makes a statement pursuant to section 348 that is false or misleading in a material particular commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

(3) A person who obstructs or hinders the Commission or other person in the exercise of any power under section 348 commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

Power to specify form and manner of submission

350. (1) Where under any provision of this Act—

(a) any person is required to; or

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

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

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

(a) in writing;

(b) by means of a visual recording (whether stills or moving images);

(c) by means of sound recordings; or

(d) by means of any electronic, magnetic, mechanical or other recording whatsoever,

on any substance, material, thing or article.

Privileges

351. (1) Where—

(a) the Commission makes a requirement under section 348 of an advocate and solicitor in respect of a book; and

(b) the book contains a privileged communication made by or on behalf of or to the advocate and solicitor in his capacity as an advocate and solicitor, the advocate and solicitor is entitled to refuse to comply with the requirement unless the person to whom or by or on behalf of whom the communication was made or, if the person is a body corporate that is under receivership or is in the course of being wound

up, the receiver or the liquidator, as the case may be agrees to the advocate and solicitor complying with the requirement, but the advocate and solicitor refuses to comply with the requirement, the advocate and solicitor shall forthwith furnish in writing to the Commission the name and address of the person to whom or by whom the communication was made.

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

Disclosure to Commission

352. (1) The Commission may require a holder of a Capital Markets Services Licence who carries on the business of dealing in securities to disclose to the Commission in relation to any acquisition or disposal of securities, any information including the name of the person from or through whom or on whose behalf the securities were acquired or to or through whom or on whose behalf the securities were disposed of, and the nature of the instructions given to such holder in respect of the acquisition or disposal.

(2) The Commission may require a holder of a Capital Markets Services License who carries on the business of trading in futures contracts to disclose to the Commission in relation to any futures contracts, any information including the name of the person from or through whom or on whose behalf the futures contract was traded, and the nature of the instructions given to such holder.

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

(4) The Commission may require—

(a) a stock exchange to disclose to the Commission, in relation to an acquisition or disposal of securities on the stock market of that stock exchange, the names of the participating organizations who acted in the acquisition or disposal; or

(b) a futures exchange to disclose to the Commission, in relation to trading in a futures contract on the futures exchange, the names of the affiliates who carried out the trading.

(5) A person who contravenes a requirement of the Commission under this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

Disclosure of information relating to dealing in securities or trading in futures contracts

353. (1) The Commission may require a person to disclose to the

Commission, in relation to any dealing in securities or trading in futures contracts whether or not the dealing was carried out on another person's behalf—

(a) the name of, and particulars sufficient to identify the person from whom, through whom or on whose behalf the securities or futures contracts were dealt with, as the case may be;

(b) the nature of the instructions given to that person in relation to the dealing in securities or trading in futures contracts;

(c) the particulars of the dealing in securities, including—

(i) particulars of the securities that were dealt with; and

(ii) particulars of consideration given or received for the dealing in securities or any other transaction related to the dealing in securities; and

(d) the particulars of the trading in futures contracts, including—

(i) particulars of the futures contracts that were dealt with; and

(ii) particulars of consideration given or received for the trading in futures contracts or any other transaction related to the trading in futures contracts; and

(e) any other information in the possession of the person as the Commission may specify as it thinks expedient for the due administration of this Act.

(2) A person who contravenes a requirement of the Commission under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

PART XI ADMINISTRATIVE AND CIVIL ACTIONS

Powers of Commission to take action

354. (1) Where a person—

(a) contravenes the provisions of this Act other than the provisions of Part V and Division 2 of Part VI or any securities laws; or

(b) fails to comply with, observe, enforce or give effect to—

(i) the rules of a stock exchange, approved clearing house or central depository;

(ii) any written notice, guidelines issued or condition imposed, by the Commission; or

(iii) any rule of a recognized self-regulatory organization,

in circumstances where the person is under an obligation to comply with, observe, enforce or give effect to such rules, written notice, guidelines or conditions,

(b) that person has committed a breach.

(2) Without limiting the generality of paragraph (1)*(b)*, the following persons shall be deemed to be under an obligation to comply with, observe, enforce or give effect to the rules of a stock exchange, approved clearing house, central depository or recognized self-regulatory organization, to the extent to which such rules purport to apply in relation to those persons:

(a) an exchange holding company;
(b) a stock exchange;
(c) a central depository;
(d) an approved clearing house;
(e) a participant;
(f) a participating organization;
(g) a depository participant;
(h) a corporation that has submitted a proposal under Part VI or who has been admitted to the official list of a stock exchange and has not been removed from that official list and a person associated with such corporation;
(i) a recognized self-regulatory organization;
(j) a person to whom the rules of a stock exchange, an approved clearing house, a central depository or a recognized self-regulatory organization, as the case may be, apply;
(k) the directors or officers of the persons referred to in paragraphs *(a)* to *(i)*;
(l) the advisers of a corporation referred to in paragraph *(h)* in relation to any corporate proposal or transaction;
(m) the issuer and each director of the issuer at the time of the issue of the prospectus;
(n) a person who consented or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time;
(o) a promoter in respect to the preparation of a prospectus;
(p) a person named in the prospectus with his consent, as having made a statement that is included in the prospectus;
(q) a person named in the prospectus with his consent, as a stockbroker, sharebroker or underwriter;
(r) a trustee approved by the Commission under section 260;
(s) a trustee approved by the Commission under section 289;
(t) a management company approved by the Commission under section 289; or
(u) any other person on whom an obligation under any guideline issued by the Commission has been imposed.
(3) If a person has committed a breach and the Commission is satisfied that it is appropriate in all the circumstances to take action against that person, the Commission may take any one or more of the following actions:
(a) direct the person in breach to comply with, observe, enforce or give effect to such rules, provisions, written notice, condition or guideline;
(b) impose a penalty in proportion to the severity or gravity of the breach on the person in breach, but in any event not exceeding five hundred thousand ringgit;
(c) reprimand the person in breach;
(d) require the person in breach to take such steps as the Commission may direct to remedy the breach or to mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach;

(e) in the case of a breach of Part VI or guidelines issued pursuant to Part VI, refuse to accept or consider any submission under Part VI;

(f) in the case of a promoter or a director of a corporation, in addition to the actions that may be taken under paragraphs *(a)* to *(e)* above, the following actions may be taken by the Commission:

(i) impose a moratorium on, or prohibit any trading of or any dealing in, the corporation's securities or in any other securities which the Commission thinks fit by the promoter or director or any persons connected with the promoter or director; or

(ii) issue a public statement to the effect that, in the Commission's opinion, the retention of office by the director is prejudicial to the public interest.

(4) The Commission shall not take any action under subsection (3) without giving the person in breach an opportunity to be heard.

(5) For the purposes of paragraph (3)*(d)*, in determining whether or not restitution is to be made by a person in breach, the Commission shall have regard to—

(a) the profits that have accrued to such person in breach; or

(b) whether one or more persons have suffered loss or been otherwise adversely affected as a result of the breach.

(7) Nothing in this section shall preclude—

(a) the Commission from taking any of the actions that it is empowered to take under this Act or any securities laws against the person in breach; and

(b) the exchange holding company, stock exchange, approved clearing house or central depository, as the case may be, from taking any action under the relevant rules.

(8) Where a person has failed to pay a penalty imposed by the Commission under paragraph (3)*(b)*, the penalty imposed by the Commission may be sued for and recovered as a civil debt due to the Government of Malaysia.

(9) Without prejudice to any other remedy, where a direction under paragraph (3)*(d)* had required the person in breach to make restitution in the form of monetary payment, and the person in breach fails to pay the restitution, the Commission may sue for and recover the restitution as a civil debt due to the persons aggrieved by the breach.

(10) To the extent that any of the amount obtained under paragraph (3)*(d)* or subsection (9) has not been distributed due to the difficulty of ascertaining or notifying the aggrieved persons, such amount shall be—

(a) paid to the compensation fund maintained under Part IV; or

(b) retained by the Commission to defray the costs of regulating the capital market, as the Commission, with the approval of the Minister, may determine.

Power of Commission to take action against futures exchange, approved clearing house, *etc.*, for failure to comply with rules, regulations, *etc.*

355. (1) Where a person—

(a) contravenes the provisions of this Act other than the provisions of Part V and Division 2 of Part VI or any securities laws; or

(b) fails to comply with, observe, enforce or give effect to—

(i) the rules of a futures exchange or approved clearing house;

(ii) any written notice, guidelines issued or condition imposed, by the Commission; or

(iii) any rules of a recognized self-regulatory organization, in circumstances where the person is under an obligation to comply with, observe, enforce or give effect to such rules, written notice, guidelines or conditions,

that person has committed a breach.

(2) Without limiting the generality of paragraph (1)*(b)*, the following persons shall be deemed to be under an obligation to comply with, observe, enforce or give effect to the rules of a futures exchange, approved clearing house or recognized self-regulatory organization to the extent to which such rules purport to apply in relation to those persons:

(a) an exchange holding company;

(b) a futures exchange;

(c) an approved clearing house;

(d) an affiliate;

(e) a recognized self-regulatory organization;

(f) a person to whom the rules of a futures exchange, approved clearing house or recognized self-regulatory organization, as the case may be, apply;

(g) the directors or officers of the persons referred to in paragraphs *(a)* to *(d)*; or

(h) any other person on whom an obligation under any guideline issued by the Commission has been imposed in respect of dealing, investment advise or fund management in respect of futures contracts.

(3) If a person has committed a breach and the Commission is satisfied that it is appropriate in all the circumstances to take action against that person, the Commission may take any one or more of the following actions:

(a) direct the exchange holding company or futures exchange, as the case may be—

(i) to suspend trading on the futures market in a particular class of futures contracts;

(ii) to limit transactions on the futures market to the closing out of futures contracts;

(iii) to defer for a stated period the completion date for all futures contracts or for a particular class of futures contracts entered into on the futures market;

(iv) to cause a particular futures contract entered into on the futures market or each futures contract included in a particular class of futures contracts so entered into, to be—

(A) closed out immediately as the result of the matching up of the futures contract with a futures contract of the same kind whose price or value is equal to a price or value determined by the futures exchange; or

(B) invoiced back to a stated date at a price or value determined by the futures exchange;

(v) to require a futures contract entered into on the futures market or each futures contract included in a particular class of futures contracts so entered into, to be discharged by—

(A) the tendering of a merchantable lot of an instrument determined by the futures exchange, that is of a quality or standard determined by the futures exchange, that is different from the quality or standard of the instrument stated in the futures contract; and

(B) the tendering of a price adjusted by an amount determined by the futures exchange that is appropriate having regard to the quality or standard of the instrument referred to in subsubparagraph (A);

(vi) to require any affiliates of the futures exchange to act in a particular manner in relation to trading in futures contracts on the futures market of that futures exchange or in relation to trading in a particular class of futures contracts;

(b) direct the person in breach to comply with, observe, enforce or give effect to such rules, provisions, written notice, condition or guideline;

(c) impose a penalty in proportion to the severity or gravity of the breach on the person in breach, but in any event not exceeding five hundred thousand ringgit;

(d) reprimand the person in breach;

(e) require the person in breach to take such steps as the Commission may direct to remedy the breach or to mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach.

(4) The Commission shall not take any action under subsection

(3) without giving the person in breach an opportunity to be heard.

(5) For the purpose of paragraph (3)*(e)*, in determining whether or not restitution is to be made by an exchange holding company, futures exchange, approved clearing house, director, officer or affiliate concerned, or any other person concerned, the Commission shall have regard to—

(a) the profits that have accrued to such exchange holding company, futures exchange, approved clearing house, director, officer or affiliate concerned or any other person concerned; or

(b) whether any person has suffered loss or been otherwise adversely affected as a result of the breach.

(7) Nothing in this section shall preclude—

(a) the Commission from taking any of the actions that it is empowered to take under this Act or any securities laws against the person in breach; and

(b) the exchange holding company, futures exchange or approved clearing house, as the case may be, from taking any action under its rules.

(8) Where a person has failed to pay a penalty imposed by the Com-

mission under paragraph (3)*(c)*, the penalty imposed by the Commission may be sued for and recovered as a civil debt due to the Government of Malaysia.

(9) Without prejudice to any other remedy, where a direction under paragraph (3)*(e)* had required the person in breach to make restitution in the form of monetary payment, and the person in breach fails to pay the restitution, the Commission may sue for and recover the restitution as a civil debt due to the persons aggrieved by the breach.

(10) To the extent that any of the amount obtained under paragraph (3)*(e)* or subsection (9) has not been distributed due to the difficulty of ascertaining or notifying the aggrieved persons, such amount shall be paid to—

(a) the fidelity fund maintained under Part IV; or

(b) retained by the Commission to defray the costs of regulating the capital market, as the Commission, with the approval of the Minister, may determine.

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

356. (1) Where a licensed person—

(a) contravenes or fails to comply with, observe, enforce or give effect to any requirement or provision of this Act, any securities laws, written notice, guidelines, any condition of, or restriction on, a licence granted under or pursuant to this Act; or

(b) performs or omits to perform any act in respect of any business carried on by the licensed person pursuant to a licence granted under or pursuant to this Act, that is likely to—

(i) jeopardize the interests of the clients of the licensed person; or

(ii) be prejudicial to the public interest,

that licensed person has committed a breach.

(2) If a licensed person has committed a breach and the Commission is satisfied that it is appropriate in all the circumstances to take action against that licensed person, the Commission may take any one or more of the following actions:

(a) direct the person in breach to comply with, observe, enforce or give effect to any requirement or provision of this Act, any securities laws, any guidelines, written notice, any condition of, or restriction on, a licence granted under or pursuant to this Act, as the case may be;

(b) impose a penalty in proportion to the severity or gravity of the breach on the person in breach, but which in any event shall not exceed five hundred thousand ringgit;

(c) reprimand the person in breach;

(d) require the person in breach to take such steps as the Commission may direct to remedy the breach or to mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach.

(3) The Commission shall not take any action under subsection (2) without giving the person in breach an opportunity to be heard.

(4) For the purposes of paragraph (2)*(d)*, in the determination of whether restitution is to be made by a person in breach, the Commission shall have regard to—

(a) the profits that have accrued to such person in breach; or

(b) whether any person has suffered loss or been otherwise adversely affected as a result of the breach.

(6) Nothing in this section shall preclude the Commission from taking any of the actions that it is empowered to take under this Act or any securities laws against the person in breach.

(7) Where a person has failed to pay a penalty imposed by the Commission under paragraph (2)*(b)*, the penalty imposed by the Commission may be sued for and recovered as a civil debt due to the Government of Malaysia.

(8) Without prejudice to any other remedy, where a direction under paragraph (2) *(d)* had required the person in breach to make restitution in the form of monetary payment, and the person in breach fails to pay the restitution, the Commission may sue for and recover the restitution as a civil debt due to the persons aggrieved by the breach.

(9) To the extent that any of the amount obtained under paragraph (2)*(d)* or subsection (8) has not been distributed due to the difficulty of ascertaining or notifying the aggrieved persons, such amount shall be—

(a) paid to the compensation fund or fidelity fund maintained under Part IV, as the case may be; or

(b) retained by the Commission to defray the costs of regulating the capital market, as the Commission, with the approval of the Minister, may determine.

Civil liability of person in contravention of the securities laws

357. (1) A person who suffers loss or damage by reason of, or by relying on, the conduct of another person who has contravened any provision of Part VI or any regulations made under this Act may recover the amount of the loss or damage by instituting civil proceedings against the other person whether or not that other person has been charged with an offence in respect of the contravention or whether or not a contravention has been proved in a prosecution.

(2) Notwithstanding the provisions of any written law relating to limitation of time, an action under subsection (1) may be begun at any time within six years from the date on which the cause of action accrued or the date on which the person referred to in subsection (1) became aware of the contravention, whichever is the later.

Commission may recover loss or damage

358. (1) The Commission may, if it considers that it is in the public interest to do so, recover on behalf of a person who suffers loss or damage by reason of, or by relying on, the conduct of another person who has contravened any provision of Part VI or any regulations made under this Act, the amount of the loss or damage by instituting civil proceedings against the other person whether or not that other

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

(2) Notwithstanding the provisions of any written law relating to limitation of time, an action under subsection (1) may be begun at any time within six years from the date on which the cause of action accrued or the date on which the Commission became aware of the contravention, whichever is the later.

(3) Any loss or damage recovered by the Commission under subsection (1) shall be applied—

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

(b) secondly, to compensate persons who suffer loss or damage by reason of, or by relying on, the conduct of another person who has contravened any provision of Part VI or any regulations made under this Act.

(4) If the Commission considers that it is not practicable to compensate the persons referred to in paragraph (3)*(b)*, in view of the amount of any potential distribution to each person or the difficulty of ascertaining or notifying the persons whom it is appropriate to compensate, as the case may be, the Commission may decide not to distribute to the persons referred to in paragraph (3)*(b)*.

(5) To the extent that any of the amount recovered or obtained in a civil action under subsection (1) has not been distributed pursuant to subsection (3), it shall—

(a) be paid to the Capital Market Development Fund maintained under Part IX; or

(b) be retained by the Commission to defray the costs of regulating market trading, as the Commission, with the approval of the Minister, may determine.

(6) Any right of action that is conferred under this section is in addition to any right that such person has under any other law.

Reference to conduct

359. (1) A reference to engaging in conduct is a reference to the doing or refusing to do any act, including the making of an agreement or the giving of effect to a provision of an agreement.

(2) Where, in a proceeding under Part VI in respect of conduct engaged in by an issuer, it is necessary to establish the state of mind of the issuer, it shall be sufficient to show that a director, employee or agent of the issuer, being a director, employee or agent by whom the conduct was engaged in within the scope of the director's, employee's or agent's actual or apparent authority, had that state of mind.

(3) Conduct engaged in on behalf of an issuer—

(a) by a director, employee or agent of the issuer within the scope of the director's, employee's or agent's actual or apparent authority; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the issuer, where the giving of the direction, consent or agree-

ment is within the scope of the actual or apparent authority of the director, employee or agent,
shall be deemed to have been engaged in by the issuer.

(4) Where, in a proceeding under Part VI in respect of conduct engaged in by a person other than an issuer, it is necessary to establish the state of mind of the person, it shall be sufficient to show that an employee or agent of the person, being an employee or agent by whom the conduct was engaged in within the scope of the employee's or agent's actual or apparent authority, had that state of mind.

(5) Conduct engaged in on behalf of a person other than an issuer—

(a) by an employee or agent of the person within the scope of the actual or apparent authority of the employee or agent; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee or agent of a person other than the issuer (the first-mentioned person), where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent,

Shall be deemed to have been engaged in also by the first-mentioned person.

Power of court to make certain orders

360. (1) Where—

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

(i) there is reasonable likelihood that any person will contravene a relevant requirement;

(ii) any person has contravened a relevant requirement; or

(iii) any person has contravened a relevant requirement and that there are steps which could be taken to remedy the contravention or to mitigate the effect of such contravention, including making restitution to any other person aggrieved by such contravention,

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

(b) on an application by the Commission, it appears to the court that any person has failed or is failing to comply with any direction issued by the Commission under section 354, 355 or 356;

(c) on an application by an exchange holding company, a stock exchange, a futures exchange or an approved clearing house, as the case may be, it appears to the court that—

(i) any person has contravened a relevant requirement; or

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

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

(i) the other person has contravened the relevant requirement; and

(ii) the applicant is aggrieved by the contravention,

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

(A) an order restraining or requiring the cessation of the contravention;

(B) an order restraining a person from dealing in securities or trading in futures contracts in respect of any class of securities or futures contracts mentioned in the order;

(C) an order declaring a futures contract to be void or voidable;

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

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

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

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

(H) an order appointing a receiver of the property of a holder of a Capital Markets Services Licence or the property that is held by such holder for or on behalf of another person whether on trust or otherwise;

(I) an order vesting securities or such other property that is specified in the order in the Commission or a trustee appointed by the court;

(J) where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do any act or thing that he is required to do under a relevant requirement, an order requiring such person to do such act or thing;

(K) in a case of a contravention by a person of the rules of a stock exchange, a futures exchange or an approved clearing house, an order giving directions concerning compliance with or enforcement of those rules to—

(i) the person; and

(ii) if the person is a body corporate, the directors of the body corporate;

(L) in a case where the person is a chief executive or director, an order removing him from office or that he be barred from becoming a chief executive, director or be involved in the management directly or indirectly, of any other public company for such period of time as may be determined by the court;

(M) an order requiring that person, or any other person who appears to have been knowingly involved in the contravention, to take such steps as the court may direct to remedy it or to mitigate its effect including making restitution to any other person aggrieved by such contravention;

(N) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act;

(O) where a person has refused or failed or is refusing or failing to comply with any direction issued by the Commission under section 354, 355 or 356, an order directing such person to comply with such direction that is issued by the Commission; and

(P) any ancillary order deemed to be desirable in consequence of the making of an order under any of the preceding provisions of this subsection.

(2) If an application is made to a court for an order under subsection (1), the court may, if in its opinion it is desirable to do so, before considering the application, make an interim order of the kind applied for and such order shall be expressed to have effect pending the determination of the application.

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

(4) Where an application is made to the court for an order under paragraph (1)(J), the court may grant the order—

(a) where the court is satisfied that the person has refused or failed to do the required act or thing, whether or not it appears to the court that the person intends to again refuse or fail, or continue to refuse or fail, to do the required act or thing; or

(b) where it appears to the court that in the event that such an order is not granted, it is likely that the person will refuse or fail to do the required act or thing, whether or not the person has previously refused or failed to do the act or thing and whether or not there is any imminent risk of damage to any person if the person required to do such act or thing refuses or fails to do so.

(5) Where an application for an order under subsection (1) is made by the Commission or any person duly authorized by the Commission or a stock exchange, a futures exchange or an approved clearing house, the court shall not, as a condition of the grant of the order, require any undertaking as to damages to be given by or on behalf of the Commission, stock exchange, futures exchange or an approved clearing house.

(6) A person appointed by order of the court under subsection (1) as a receiver of the property of a holder of a Capital Markets Services Licence—

(a) may require the holder to deliver to the receiver any property of which he has been appointed receiver or to give to the receiver all information concerning that property that may reasonably be required;

(b) may acquire and take possession of any property of which he has been appointed receiver;

(c) may deal with any property that he has acquired or of which he has taken possession in any manner in which the holder might lawfully have dealt with the property; and

(d) has such other powers in respect of the property as the court specifies in the order.

(7) In paragraph (1)(H) and subsection (6), "property", in relation to a holder of a Capital Markets Services Licence includes monies, securities, or other property and documents of title to securities or other property entrusted to or received on behalf of any other person by the holder of a Capital Markets Services Licence or another person in the course of or in connection with the business of the holder.

(8) The Commission or a trustee appointed by an order of the court under paragraph (1)(I)—

(a) may require any person to deliver to the Commission or trustee any securities or such other property specified in the order or to give to the Commission or trustee all information concerning the securities or futures contracts that may reasonably be required;

(b) may acquire and take possession of the securities or such other property;

(c) may deal with the securities or such other property in any manner as it thinks fit; and

(d) shall have such other powers in respect of the securities or such other property as may be specified by the court in the order.

(9) The proceeds of the dealing in or disposal of securities or futures contracts under paragraph (1)(I) shall be paid into the court, and any person claiming to be beneficially entitled to the whole or any part of such proceeds may, within thirty days of such payment into the court, apply to the court for payment out of the proceeds to him.

(10) A person who contravenes—

(a) an order under subsection (1) that is applicable to him;

(b) a requirement of a receiver appointed by order of the court under subsection (1); or

(c) a requirement of the Commission or trustee appointed by order of the court under paragraph (1)(I),

commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

(11) Subsection (10) does not affect the powers of the court in relation to the punishment of contempt of court.

(12) The court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

(13) For the purposes of this section, "relevant requirement"—

(a) in relation to an application by the Commission under this section, means a requirement—

(i) which is imposed by or under this Act or any securities laws;

(ii) which is imposed as a condition or restriction of any approval or licence that is given or issued under or pursuant to this Act or any securities laws;

(iii) which is imposed by or under the rules of a stock exchange, a futures exchange or an approved clearing house; or

(iv) which is imposed by or under any other law and the

contravention of which constitutes an offence which the Commission has the power to prosecute with the consent in writing of the Public Prosecutor;

(b) in relation to an application by the exchange holding company, a stock exchange, a futures exchange or an approved clearing house, means a requirement which is imposed by or under the rules of the stock exchange, the futures exchange or approved clearing house, as the case may be; and

(c) in relation to an application by the aggrieved person, means a requirement—

(i) which is imposed by or under this Act;

(ii) which is imposed as a condition or restriction of any approval or licence that is given or issued under or pursuant to this Act or any securities laws; or

(iii) which is imposed by or under the rules of a stock exchange, a futures exchange or an approved clearing house.

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

Application for winding up

361. (1) Notwithstanding the provisions of the Companies Act 1965, if a person referred to in subsection 360(1) is a company, whether or not the company is being wound up voluntarily, the person may be wound up under an order of the court on the petition of the Commission, a stock exchange, futures exchange or an approved clearing house, in accordance with the provisions of the Companies Act 1965.

(2) The court may order the winding up on a petition made under subsection (1) if the person referred to in subsection 360(1)—

(a) has held a licence under this Act, and that licence has been revoked or surrendered; or

(b) has contravened any rules of the stock exchange, the futures exchange or the approved clearing house or has contravened a provision of a securities law, whether or not that person has been charged with an offence in respect of the contravention, or whether or not the contravention has been proved in a prosecution.

PART XII GENERAL

Prohibition of use of certain titles

362. (1) A person who is not a participating organization or an affiliate shall not take or use or by inference adopt the name, title or description of "participating organization" or "affiliate", or take or use or have attached to or exhibited at any place any name, title or description implying or tending to create the belief that such person is a participating organization or an affiliate.

(2) Unless the Commission otherwise permits, a person who is not

an exchange holding company, a stock exchange or a futures exchange shall not take or use or by inference adopt the name, title or description of "exchange holding company", "stock exchange", "futures exchange", "stock market", "futures market", "securities trading market" or "futures trading market", or take or use or have attached to or exhibited at any place any name, title or description implying or tending to create the belief that such person is an exchange holding company, stock exchange or futures exchange.

(3) A person who is not a holder of a Capital Markets Services Licence or a Capital Markets Services Representative's Licence shall not take or use or have attached to or exhibited at any place any name, title or description implying or tending to create the belief that such person is licensed to carry on a business or performs any function in relation to any regulated activity as specified in Schedule 2.

"**Derivatives not gaming or wagering contract**

362A. Notwithstanding any written law, a derivative shall not be taken to be a gaming or wagering contract.

Copy of book as *prima facie* evidence

363. (1) A copy of the books kept or maintained by a stock exchange, futures exchange, approved clearing house, central depository or holder of a Capital Markets Services Licence shall in all legal proceedings be received as *prima facie* evidence of such books and of the matters, transactions and accounts recorded in such books.

(2) A copy of the books referred to under subsection (1) shall not be received in evidence under this Act unless it is first proved that the said matters, transactions and accounts are recorded in the books in the ordinary course of business and are in the custody or control of the stock exchange, futures exchange, approved clearing house, central depository or holder of Capital Markets Services Licence.

(3) Such proof as required under subsection (2) may be given orally or by an affidavit by a person who either before or after such matters, transactions and accounts are recorded in the books, is responsible for the management, custody or control of the books.

(4) The affidavit under subsection (3) shall be sworn before any Magistrate or person authorized to take affidavit.

(5) A copy of the books referred to in subsection (1) shall not be received in evidence under this Act unless it is proved that the person referred to in subsection (3) has examined the copy with the original books.

(6) Such proof as required under subsection (5) shall be given by a person who has examined the copy with the original books and may be given either orally or by an affidavit sworn before any Magistrate or person authorized to take affidavit.

(7) Notwithstanding the provisions of subsections (5) and (6), where the original books cannot be found or are lost, it shall be sufficient for the person referred to in subsection (3) to state orally or in an affidavit given under this section that he had made reasonable efforts to

locate the original books and thereafter the copy of the books shall be admissible as *prima facie* evidence of such matters, transactions and accounts recorded in the books, in any legal proceedings.

Application by aggrieved person for review

364. The Commission may review its own decision under this Act upon an application made by any person who is aggrieved by such decision.

Time for application for review

365. An application to the Commission to review its own decision shall be made within thirty days after the aggrieved person is notified of such decision.

Decision of Minister to be final

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

Offences by bodies of persons and by employees and agents

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

(2) Where a person who is an employee of another person contravenes any provision of this Act, the person for or on behalf of whom the employee is acting shall be deemed to have contravened such provision.

(3) Without prejudice to the generality of subsection (2), where any representative of the holder of a Capital Markets Services Licence contravenes any provision of this Act, such holder shall be deemed to have contravened such provision.

(4) For the purposes of this section, a director of a corporation includes—

(a) a person occupying or acting in the position of director of the corporation, by whatever name called, and whether or not validly appointed to occupy or duly authorized to act in the position;

(b) a person in accordance with whose directions or instructions the directors of the corporation are accustomed to act; and

(c) if the corporation is incorporated outside Malaysia—

(i) a member of the corporation's board;

(ii) a person occupying or acting in the position of director of the corporation's board, by whatever name called, and whether or

not validly appointed to occupy or duly authorized to act in the position; and

(iii) a person in accordance with whose directions or instructions the members of the corporation's board are accustomed to act.

Falsification of records

368. (1) A person shall not, in any books in relation to the business of a stock exchange, futures exchange, an approved clearing house and a holder of a Capital Markets Services Licence whether or not kept under this Act or the regulations made under this Act—

(a) in any manner enter, record or store, or cause to be entered, recorded or stored, any matter that is false or misleading in any material particular;

(b) in any manner falsify or cause to be falsified, any matter that—

(i) is entered, recorded or stored;

(ii) has been prepared for the purpose of being entered, recorded or stored; or

(iii) has been prepared for use in compiling other matters to be entered, recorded or stored; or

(c) fail to enter, record or store any matter with intent to falsify the records or any part of the records intended to be compiled from that matter.

(2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to a fine not exceeding one million ringgit.

False reports to Commission, exchange or approved clearing house

369. A person who—

(a) with intent to deceive, makes or furnishes; or

(b) knowingly authorizes or permits the making or furnishing of,

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

(A) dealings in securities or derivatives;

(B) the affairs of a listed corporation;

(C) any matter or thing required by the Commission for the due administration of this Act; or

(D) the enforcement of the rules of a stock exchange, futures exchange or approved clearing house,

commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to a fine not exceeding three million ringgit.

Attempts, abetments and conspiracies

370. A person who—

(a) attempts to commit any offence under this Act;

(b) does any act in furtherance of the commission of any offence under this Act; or

(c) abets or is engaged in a criminal conspiracy to commit any offence under this Act whether or not the offence is committed in consequence thereof,

commits such offence and shall, on conviction, be punished with or be liable to the penalty provided for such offence.

Destruction, concealment, mutilation and alteration of records

371. A person who—

(a) destroys, conceals, mutilates or alters; or

(b) sends or attempts to send or conspires with any other person to remove from its premises or send out of Malaysia,

any record or account required to be kept or maintained under this Act or rules of the stock exchange, futures exchange or approved clearing house with intent to defraud any person, or to prevent, delay or obstruct the carrying out or the exercise of any power under this Act commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to a fine not exceeding ten million ringgit.

General penalty

372. (1) A person who contravenes any requirement or provision of this Act, commits an offence under this Act and, where no penalty is expressly provided, shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding five years or to both.

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

Compounding of offences

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

(2) Upon receipt of the payment under subsection (1), no further proceedings shall be taken against such person in respect of such offence and where possession has been taken of any books or any other thing, such books or things may be released subject to such conditions as may be imposed in accordance with the conditions of the compound.

(3) All amounts received by the Commission under this section shall be paid into and form part of the Federal Consolidated Fund.

Convicted persons liable to pay compensation

374. A person who is convicted of an offence under Part V or VI is

liable to pay such compensation as may be determined by the court to any person who has suffered loss or damage as a result of the offence committed by the convicted person.

Conduct of prosecution

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

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

(3) For the purpose of subsection (2), "officer" has the meaning assigned to it in section 2 of the Securities Commission Malaysia Act (SCMA) 1993 1993.

Indemnity

376. No civil liability shall be incurred by—

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

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

(i) any member of the board of a stock exchange, a futures exchange, an exchange holding company, an approved clearing house or a central depository or any member of any committee established by any such board;

(ii) any officer of a stock exchange, a futures exchange, an exchange holding company, an approved clearing house or a central depository; and

(iii) any agent of, or any person acting under the direction of a stock exchange, a futures exchange, an exchange holding company, an approved clearing house or a central depository,

for, on account of, or in respect of anything done, any statement made or omitted to be done or made, in connection with the discharge or performance or purported discharge or performance of any duties under the securities laws or the rules of a stock exchange, a futures exchange, an exchange holding company, an approved clearing house or a central depository or in the exercise or intended exercise of any power under the securities laws or such rules, where such act, statement or omission was done in good faith.

Guidelines and practice notes of Commission

377. (1) The Commission may, generally in respect of this Act or in respect of any particular provision of this Act, issue such guidelines and practice notes as the Commission considers desirable.

(2) The Commission may revoke, vary, revise or amend the whole or any part of any guidelines and practice notes issued under this section.

(3) Subject to this Act or unless the contrary intention is expressly stated, a person to whom the guideline or practice note referred to in subsection (1) apply, shall give effect to such guideline or practice note within such period as may be specified by the Commission.

(4) Where a person referred to in subsection (3) contravenes or fails to give effect to any guideline or practice note issued by the Commission, the Commission may take any one or more of the actions set out in section 354, 355 or 356 as it thinks fit.

Power to make regulations

378. (1) The Commission may, with the approval of the Minister, make such regulations as may be necessary or expedient for—

(a) giving full effect to the provisions of this Act;

(b) carrying out or achieving the objects and purposes of this Act; or

(c) the further, better or convenient implementation of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations made under this section may provide for—

(a) forms for the purposes of this Act;

(b) fees to be paid for the purposes of this Act;

(c) the regulation of the purchase and sales of capital market products;

(d) the standards with respect to the qualification, experience and training of licensed person and directors of public listed corporations;

(e) the conduct of business on a stock exchange, derivatives exchange or approved clearing house; or

(f) the exemption of any specified person or any person who is a member of a specified class of persons from any of the provisions of this Act, subject to terms and conditions.".

Power to enter into arrangements

378A. The Commission shall enter into arrangements with the relevant authority referred to in subsection 76(11) to co-ordinate the regulation of markets for over-the-counter derivatives and financial instruments in the money market.

Settlement of disputes

379. To promote and maintain a fair, efficient and orderly capital market—

(a) the rules of a stock exchange, futures exchange, central depository or an approved clearing house; or

(b) regulations made under section 378,

may make provisions for the settlement of dispute—

(A) between the holders of a Capital Markets Services Licence who carries on the business of dealing in securities;

(B) between the holders of a Capital Markets Services Licence who carries on the business of trading in futures contracts;

(C) between a participating organization and a stock exchange;

(D) between an affiliate and a futures exchange;

(E) between a participant and an approved clearing house;

(F) between an affiliate and an approved clearing house;

(G) between a holder of a Capital Markets Services Licence and its clients; or

(H) between persons involved in a capital market transaction.

Power to amend Schedules

380. (1) The Minister may, on the recommendation of the Commission, from time to time by order published in the *Gazette*, vary, delete, add to, substitute for, or otherwise amend any of the Schedules in this Act and upon such publication, such Schedule as varied, deleted, added to, substituted for or otherwise amended, shall come into full force and effect and shall be deemed to be an integral part of this Act as from the date of such publication, or from such later date as may be specified in the order.

(2) The Minister in varying, deleting or substituting any of the schedules referred to in subsection (1) may impose such terms and conditions as he thinks necessary.

(3) In making the order under subsection (1), the Minister shall have regard to the interests of the public.

PART XIII REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS

Repeal of Securities Industry Act 1983 and Futures Industry Act 1993 and savings and transitional in respect thereof

381. (1) For the purpose of this Part—

"effective date" means the relevant date or dates, as the case may be, notified by the Minister under section 1;

"repealed Acts" means the Securities Industry Act 1983 and the Futures Industry Act 1993 so repealed under this Part.

(2) The Securities Industry Act 1983 and the Futures Industry Act 1993 are repealed with effect from the effective date.

(3) Notwithstanding subsection (2)—

(a)

(i) all regulations, orders, directions, notifications, exemptions and other subsidiary legislation, howsoever called; and

(ii) all approvals, directions, decisions, notifications, exemptions and other executive acts, howsoever called,

(a) made, given or done under or in accordance with, or by virtue of, the repealed Acts shall be deemed to have been made, given, or done under, or in accordance with, or by virtue of, the corresponding provisions of this Act, and shall continue to remain in full force and effect in relation to the persons to whom they applied until amended, repealed, rescinded, revoked or replaced under, in accordance with or by virtue of, the corresponding provisions of this Act;

(b) every direction, notice, guideline, circular, guidance note or practice note issued by the Commission or the Minister under the repealed Acts before the effective date and in force immediately before the effective date, shall be deemed to have been lawfully issued under this Act in relation to the particular provision of this Act corresponding to the matter dealt with in the direction, notice, guideline, circular,

guidance note or practice note and shall remain in full force and effect until it is amended, rescinded or repealed under this Act;

(c) any application for an approval or consent, or for any other purpose whatsoever, or any appeal relating to such application, made by any person to the Minister or to the Commission under either of the repealed Acts before the effective date or dates, and pending immediately before the effective date or dates, shall, if there is a corresponding provision in this Act, be dealt with as if it was made under that provision and, if there is no such corresponding provision in this Act, such application or appeal shall lapse on the effective date or dates; and

(d) all transactions or dealings lawfully executed or entered into, and all business lawfully done, under or in accordance with any of the repealed Acts by a person who was licensed under the respective repealed Acts and who is licensed or deemed to be licensed in respect of a corresponding business under this Act, with any customer or other person, shall be deemed to have been lawfully and validly executed, entered into, or done, under and in accordance with this Act, and accordingly, any right or liability under such transaction, dealing or business existing, immediately before the effective date, shall be deemed to continue to be lawful and valid under this Act.

Approved exchange holding companies, exchanges and approved clearing house deemed to have been approved

382. (1) Without prejudice to the generality of section 381, the following entities that were approved or recognized under the repealed Acts immediately before the effective date shall each be deemed to have been approved under the corresponding provisions of this Act:

(a) the exchange holding company and stock exchange;

(b) the exchange company and the approved clearing house for the futures market under subsection 6B(1) of the repealed Futures Industry Act 1993 that are deemed to be approved as a futures exchange and approved clearing house under the corresponding provision of this Act; and

(c) a recognized clearing house which was recognized under the repealed Securities Industry Act 1983 immediately before the effective date shall be deemed to be an approved clearing house under the corresponding provision of this Act.

(2) Any condition or restriction imposed by the Minister or the Commission, as the case may be, on any of the entities referred to in subsection (1) as an exchange holding company, stock exchange, futures exchange, approved clearing house or recognized clearing house, as the case may be, and in force immediately before the effective date shall be deemed to be a condition or restriction to which its approval or recognition under this Act is subject.

Electronic facility deemed registered

383. (1) The electronic broking system which was exempted under the Securities Industry (Declaration of Exempt Stock Market) Order 2005 [*P.U. (A) 496/2005*] in force immediately before the effective date shall be deemed to have been registered under subsection 34(1).

(2) Any condition or restriction imposed under the Securities Industry (Declaration of Exempt Stock Market) Order 2005 and any other applicable guidelines in force immediately before the effective date shall be deemed to be a condition or restriction to its registration under subsection 34(1).

Savings in respect of licences issued under the repealed Acts

384. (1) Without prejudice to the generality of section 381 and subject to the provisions of this Act—

(a) a person who holds any of the following licences immediately before the effective date shall, from that date, be deemed to hold a Capital Markets Services Licence or Capital Markets Services Representative's Licence, as the case may be, in respect of the regulated activity which that person was carrying on under the first-mentioned licence:

(i) a futures broker's licence granted under the repealed Futures Industry Act 1993;

(ii) a futures fund manager's licence granted under the repealed Futures Industry Act 1993;

(iii) a futures trading adviser's licence granted under the repealed Futures Industry Act 1993;

(iv) a dealer's licence granted under the repealed Securities Industry Act 1983;

(v) a fund manager's licence granted under the repealed Securities Industry Act 1983;

(vi) an investment adviser's licence granted under the repealed Securities Industry Act 1983;

(vii) a futures broker's representative's licence granted under the repealed Futures Industry Act 1993;

(viii) a futures fund manager's representative's licence granted under the repealed Futures Industry Act 1993;

(ix) a futures trading adviser's representative's licence granted under the repealed Futures Industry Act 1993;

(x) a dealer's representative's licence granted under the repealed Securities Industry Act 1983;

(xi) a fund manager's representative's licence granted under the repealed Securities Industry Act 1983; or

(xii) an investment representative's licence granted under the repealed Securities Industry Act 1983; and

(b) any condition or restriction to which any licence referred to in paragraph (1)*(a)* was subject immediately before the effective date, to the extent that it is consistent with the provisions of this Act, shall be deemed to be a condition or restriction to which the corresponding licence referred to in paragraph (1)*(a)* is subject.

(2) For the purposes of subsection (1), where a person holds an investment adviser's license granted under the repealed Securities Industry Act 1983 immediately before the effective date and who is authorized to carry on the business of—

(a) advising others concerning securities other than advising on

corporate finance, the person shall be deemed to hold a Capital Markets Services Licence in respect of the regulated activity of investment advice;

(b) advising on corporate finance, the person shall be deemed to hold a Capital Markets Services Licence in respect of the regulated activity of advising on corporate finance; or

(c) analysing the financial circumstances of another person and provides a plan to meet that other person's financial needs and objectives, the person shall be deemed to hold a Capital Markets Services Licence in respect of the regulated activity of financial planning,

respectively under the corresponding provisions of this Act.

(3) For the purposes of subsection (1), where a person holds an investment adviser's representative's license granted under the repealed Securities Industry Act 1983 immediately before the effective date and who is authorized to carry on the business of—

(a) advising others concerning securities other than advising on corporate finance, the person shall be deemed to hold a Capital Markets Services Representative's Licence in respect of the regulated activity of investment advice;

(b) advising on corporate finance, the person shall be deemed to hold a Capital Markets Services Representative's Licence in respect of the regulated activity of advising on corporate finance; or

(c) analysing the financial circumstances of another person and provides a plan to meet that other person's financial needs and objectives, the person shall be deemed to hold a Capital Markets Services Representative's Licence in respect of the regulated activity of financial planning,

respectively under the corresponding provisions of this Act.

(4) For the purposes of subsection (1), where a person holds a futures fund manager's licence under the repealed Futures Industry Act 1993 immediately before the effective date, the person shall be deemed to hold a Capital Markets Services Licence for a regulated activity of fund management in respect of futures contracts.

(5) For the purposes of subsection (1), where a person holds a futures fund manager's representative's licence under the repealed Futures Industry Act 1993 immediately before the effective date, the person shall be deemed to hold a Capital Markets Services Representative's Licence for the regulated activity of fund management in respect of futures contracts.

(6) The Commission may, by notice in writing to a person who holds any of the licences referred to in subsection (1) specify—

(a) notwithstanding section 68, the date of expiry of the Capital Markets Services Licence or Capital Markets Services Representative's Licence which he is deemed to hold by virtue of subsection (1);

(b) the regulated activity or activities to which the Capital Markets Services Licence or Capital Markets Services Representative's Licence relates; and

(c) any additional condition or restriction to which the Capital Markets Services Licence or Capital Markets Services Represent-

ative's Licence is subject, provided where such conditions or restrictions proposed to be imposed are likely to prejudice the interests of the licensed person, the Commission shall give such licensed person an opportunity to be heard.

(7) Where the Commission gives notice to a person of the date of expiry of a licence referred to in paragraph (6)*(a)*, that licence shall expire on that date.

(8) Subject to subsection (7)—

(a) in the case of a person who holds one of the licences referred to in subsection (1) immediately before the effective date, the Capital Markets Services Licence or Capital Markets Services Representative's Licence which he is deemed to hold by virtue of subsection (1) shall expire on the date of the expiry of the first-mentioned licence; or

(b) in the case of a person who holds more than one of the licences referred to in subsection (1) immediately before the effective date the dates of expiry of which are different, the deemed licence shall expire on the last of those dates.

Pending applications for licences

385. Unless otherwise notified in writing by the Commission, an application for a licence under the repealed Acts that is pending immediately before the effective date shall—

(a) be deemed to be an application for a licence which corresponds to the firstmentioned licence under section 58 or 59, as the case may be, and which is accompanied by the appropriate application fee under this Act; or

(b) where the applicant is deemed under this Part to hold a licence, be deemed to be an application to vary that licence by adding the regulated activity or activities to which the corresponding licence relates, and which is accompanied by the appropriate application fee under this Act.

Transitional and savings in respect of corporate proposals

386. (1) Without prejudice to the generality of section 381, all actions, rules, regulations, orders, directions, notifications, approvals, decisions and other executive acts howsoever called, made, given or done under, or in accordance with, or by virtue of section 2B and Part IV of the Securities Commission Malaysia Act (SCMA) 1993 1993 before the effective date shall, insofar as it is consistent with the provisions of this Act, be deemed to have been made, given or done under or in accordance with or by virtue of, the corresponding provisions of this Act, and shall continue to remain in force and have effect in relation to the persons, activities or transactions to whom they apply until amended, revoked or rescinded under, in accordance with, or by virtue of, the corresponding provisions this Act.

(2) Nothing in this Act shall affect any person's liability to be prosecuted or punished for offences committed under the Securities Commission Malaysia Act (SCMA) 1993 1993 before the effective date or any proceedings brought or sentence imposed before the effective date in respect of such offence.

(3) Nothing in this Act shall affect any right, privilege, obligation or liability acquired, accrued or incurred under the Securities Commission Malaysia Act (SCMA) 1993 1993 before the effective date and any legal proceedings, remedy or investigation in respect of such right, privilege, obligation or liability shall not be affected and any such legal proceedings, remedy or investigation may be instituted, continued or enforced as if this Act had not been enacted.

(4) Nothing in this Act shall—

(a) affect the validity of any securities or the operation of any trust deed or deed issued or executed before the effective date;

(b) apply in relation to an issuer, borrower, guarantor or trustee or any other person in respect of any securities that have been issued or offered for subscription or purchase or in respect of which an invitation to subscribe for or purchase securities has been made before the effective date; or

(c) require the appointment or replacement of any trustee or the execution of any trust deed in respect of any debenture issued before the effective date, where there was no such requirement before the effective date.

(5) Where, upon the effective date, securities may be issued, offered for subscription or purchase or where an invitation to subscribe for or purchase securities has been made on the basis of any prospectus issued before the effective date, the issuer shall, unless the written approval of the Commission granting an exemption is obtained, issue such supplementary or replacement prospectus and take such other action to ensure that the issue, offer or invitation complies with the requirements of this Act.

(6) The Commission may, by a direction in writing given to any issuer referred to in subsection (5) determine what action is to be taken by that issuer and how any difficulty arising in respect of the provisions introduced or amended by this Act may be overcome.

(7) Nothing in this Act shall—

(a) affect the validity or operation of any interest or deed, to which Division 5 of Part IV of the Securities Commission Malaysia Act (SCMA) 1993 1993 applies, issued or executed before the effective date; or

(b) apply in relation to the management company by or on whose behalf any interest to which Division 5 of Part IV of the Securities Commission Malaysia Act (SCMA) 1993 1993 applies and which have been issued before the effective date or in relation to the trustee for the holders of any such interest.

Transitional provisions in relation to certain registered persons

387. (1) The Securities Industry (Dealing in Securities) Declaration 1996 [*P.U. (B) 22/1996*] and the Securities Industry (Exempt Dealer) Order 1996 [*P.U. (A) 20/1996*] are revoked.

(2) All persons to whom the Order referred to in subsection (1) shall be deemed to have been registered under paragraph 76(1)*(a)* from the effective date.

(3) The registered persons to whom paragraph 76(6)*(a)* applies shall be given a period of one year to comply with the provisions referred to in paragraph 76(6)*(c)*.

Revocation of subsidiary legislation

388. The subsidiary legislation as set out in Schedule 11 are revoked.

Modifications to construction of other written laws

389. Where in any written law, any reference is made to—

(a) any of the repealed Acts, it shall be construed as a reference to this Act;

(b) any specific provision of any of the repealed Acts, it shall be construed as a reference to a provision of this Act which corresponds as nearly as may be to such specific provision; and

(c) a dealer or futures broker shall be construed as a reference to a holder of a Capital Markets Services Licence who carries on the business of dealing in securities or trading in futures contracts respectively.

Continuance of other rights, liabilities, *etc.*, under the repealed Acts

390. (1) Nothing in the repealed Acts or this Act shall affect any person's liability to be prosecuted or punished for offences or breaches committed under the repealed Acts before the commencement of this Act or any proceeding brought, sentence imposed or action taken before that day in respect of such offence or breach.

(2) Any right, privilege, obligation or liability acquired, accrued or incurred before the effective date or any legal proceedings, remedy or investigation in respect of such right, privilege, obligation or liability shall not be affected by this Act and shall continue to remain in force as if this Act had not been enacted.

Prevention of anomalies

391. Where any difficulty arises with respect to the application of any one or more of the provisions introduced or amended by this Act and the savings and transitional provisions, the Minister may, by order published in the *Gazette,* make such modifications in any one or more of those provisions as may appear to him to be necessary to give full effect to the provisions of this Act or to prevent anomalies.

Persons dealing in securities in relation to unit trust scheme

392. (1) A body that is approved by the Commission under subsection 2(1) of the repealed Securities Industry Act 1983 to regulate its members whose dealing in securities is in relation to the arranging or offering for the sale or purchase of any interest in a unit trust scheme shall, subject to such terms and conditions as may be specified by the Commission, be a body that is approved by the Commission under paragraph 76(1)*(d)* for the purposes of this Act for a period of two years from the date of coming into force of this Act.

(2) A unit trust agent who is registered with the body referred to in

subsection (1) shall for the purposes of paragraph 76(1)*(d)* be a registered person.

(3) The Commission may exercise any power under this Act with respect to a licensed person against the body as well as the unit trust agents who are registered with the body referred to in subsection (1).

(4) For the purposes of this section, "unit trust agent" means an individual who is registered with the body referred to in subsection (1).

Transitional provisions for unlicensed unit trust management companies

393. (1) Any management company who—

(a) is registered with a body that is approved by the Commission;

(b) is not a holder of a fund manager's licence as provided for in section 15A of the repealed Securities Industry Act 1983 or a holder of a Capital Markets Services Licence who carries on the business of fund management; and

(c) whose dealing in securities is in relation to the activities of arranging or offering for the sale or purchase of any interest in a unit trust scheme,

is allowed to continue such activities without holding a Capital Markets Services Licence for a period of one year from the date of coming into force of this Act subject to such terms and conditions as may be specified by the Commission.

(2) The Commission may exercise any power under this Act with respect to a licensed person against the management company referred to in subsection (1).

Transitional provision for corporate finance executives and research analysts

394. (1) A corporate finance executive—

(a) who is employed by a stock broking company and who is registered with the Commission pursuant to the Commission's Guidelines for Dealers and Dealer's Representatives under the repealed Securities Industry Act 1983; or

(b) who is employed by a licensed merchant bank that holds a dealer's licence under the repealed Securities Industry Act 1983,

immediately before the effective date shall, from the effective date, be deemed to hold a Capital Markets Services Representative's Licence to carry on the regulated activity of advising on corporate finance.

(2) A research analyst—

(a) who is employed by a stock broking company and who is registered with the Commission pursuant to the Commission's Guidelines for Dealers and Dealer's Representatives under the repealed Securities Industry Act 1983; or

(b) who is employed by a licensed merchant bank that holds a dealer's licence under the repealed Securities Industry Act 1983

immediately before the effective date shall, from the effective date, be deemed to hold a Capital Markets Services Representative's Licence to carry on the regulated activity of investment advice.

(3) The licences referred to in subsection (1) or (2), shall be valid for one year from the effective date and subject to such terms and conditions as may be specified by the Commission.

SCHEDULE 1 [Subsection 7(4)]

Exempt stock market or exempt futures market

1. Such system which facilitates the transferring, clearing and settlement of funds and unlisted debt securities.

2. Such system which facilitates dealing in securities, including the auction of or direct buying, selling, issuance, borrowing, lending and exchange of unlisted debt securities.

3. Such system which provides information to any person relating to the money market or to the tender, issue, trading and offer or bid prices of debt securities or any other related information relating to unlisted debt securities.

4. Such system for the central handling of debt securities deposited with Bank Negara by means of entries in debt securities accounts without physical delivery of certificates.

5. Such system for the carrying out of any other activity related to any of the systems in paragraphs 1 to 4.

6. Such system for the dissemination of information relating to paragraphs 1 to 5.

SCHEDULE 2 [Subsections 2(1) and 58(1)]

Regulated activities

Part 1 Types of regulated activities

1. Dealing in securities.
2. Trading in futures contracts.
3. Fund management.
4. Advising on corporate finance.
5. Investment advice.
6. Financial planning.

Part 2 Interpretation of regulated activities

1. "Dealing in securities" means, whether as principal or agent—

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

(b) making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into—

(i) any agreement for or with a view to acquiring, disposing of, subscribing for or underwriting securities; or

(ii) any agreement, other than a futures contract, the purpose or avowed purpose of which is to secure a profit to any of the par-

ties from the yield of securities or by reference to fluctuations in the value of securities.

2. "Trading in futures contracts" means, whether as principal or agent, making or offering to make with any person, or inducing or attempting to induce any person, or soliciting or accepting any order for, or otherwise—

(a) entering into, or taking an assignment of, the futures contract, whether or not on another person's behalf;

(b) taking or causes to be taken, action that closes out the futures contract, whether or not on another person's behalf; or

(c) in relation to a futures contract that is an eligible exchange-traded option, a futures option or an agreement prescribed to be a futures contract—

(i) exercising any option or right under the futures contract; or

(ii) allowing any option or right under the futures contract to lapse,

(c) whether or not on another person's behalf.

3. "Fund management" means undertaking on behalf of any other person or persons, whether on a discretionary authority granted by such person or persons or otherwise, the management of a portfolio of securities or futures contracts.

4. "Advising on corporate finance" means giving advice concerning—

(a) compliance with or in respect of Part VI, any regulation made under section 378 and any guidelines issued under section 377 relating to any matter provided under Part VI, or relating to the raising of funds by any corporation;

(b) compliance with the listing requirements of the stock exchange in relation to the raising of funds or related party transactions;

(c) arrangement or restructuring of a listed corporation or a subsidiary of the listed corporation of its assets or liabilities.

5. "Investment advice" means carrying on a business of advising others concerning securities or futures contracts or as part of a business, issues or promulgates analyses or reports concerning securities or futures contracts.

6. "Financial planning" means analysing the financial circumstances of another person and providing a plan to meet that other person's financial needs and objectives, including any investment plan in securities, whether or not a fee is charged in relation thereto.

SCHEDULE 3 [Subsection 58(2)]

Specified persons

1. Any company registered under the Trust Companies Act 1949 whose carrying on of any regulated activity is solely incidental to its carrying on of the business for which it is registered under the Trust Companies Act 1949.

2. Any advocate and solicitor as defined under the Legal Profession Act 1976 [*Act 166*] in practice whose carrying on of the regulated

activity of advising on corporate finance or financial planning is solely incidental to the practice of his profession.

3. Any accountant who is a member of the institute established under the Accountants Act 1967 [*Act 94*] in practice whose carrying on of the regulated activity of advising on corporate finance or financial planning is solely incidental to the practice of his profession.

4. A valuer as defined under the Valuers, Appraisers and Estate Agents Act 1981 [*Act 242*] whose valuation in respect of assets for the purposes of advising on corporate finance is solely incidental to his practice as a valuer.

5. Any person who is a proprietor of a newspaper and a holder of a permit issued under the Printing Presses and Publications Act 1984 [*Act 301*] whose carrying on the regulated activity of investment advice through the newspaper where—

(a) insofar as the newspaper is distributed generally to the public, it is distributed only to subscribers for, and purchasers of, the newspaper for value;

(b) the advice is given or the analyses or reports are issued or promulgated only through that newspaper;

(c) that person receives no commission or other consideration for issuing or promulgating the analyses or reports; and

(d) the advice is given and the analyses and reports are issued or promulgated solely as incidental to the conduct of that person's business as a newspaper proprietor.

6. Any person who is carrying on the regulated activity of investment advice through the provision of information service where—

(a) insofar as the information service is distributed generally to the public, it is distributed only to subscribers for, and purchasers of, the information service for value;

(b) the advice is given or the analyses or reports are issued or promulgated only through that information service;

(c) that person receives no commission or other consideration for issuing or promulgating the analyses or reports; and

(d) the advice is given and the analyses and reports are issued or promulgated solely as incidental to the conduct of that person's business as a information service proprietor.

7. Any corporation whose carrying on of the regulated activity of fund management is solely for the benefit of its related corporation.

8. Any corporation whose carrying on of the regulated activity of investment advice is solely for the benefit of its related corporation.

9. Any corporation whose carrying on the regulated activity of advising on corporate finance solely for the benefit of any of its related corporation and where the related corporation is a listed corporation, such advice is not circulated to the shareholders of the related corporation or otherwise made known to the public.

10. Any person who carries on the regulated activity of dealing in securities for his own account or for his related corporation through a holder of a Capital Markets Services Licence who carries on the business of dealing in securities.

11. Any person who trades in futures contracts—

(a) on the person's own account; or

(b) where such person is a non-resident of Malaysia acting as principal or agent through the holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts.

12. An affiliate who trades in futures contracts or enters into a transaction in relation to a futures contract solely on its own account and who complies with the provisions of the rules of the futures exchange.

13. A holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts whose dealing in securities—

(a) relates to a securities which is also a futures contract;

(b) is the direct consequence of trading in a futures contract;

(c) is in connection with the delivery of a security, within a class of securities which is the subject of a class of futures contracts, pursuant to—

(i) in the case of an eligible exchange-traded option, the exercise of the option; or

(ii) in the case of an eligible delivery agreement, the agreement itself; or

(d) is in connection with the transfer of securities as collateral or security, or in realization of any collateral or security, for obligation under a futures contract.

14. Any public statutory corporation constituted under any written law who carries on the regulated activity of dealing in securities or fund management.

15. Any stock exchange or exchange holding company where its dealing in securities is solely incidental to it operating a stock market of a stock exchange.

16. A futures exchange or exchange holding company where the trading in futures contracts is solely incidental to it operating a futures market of a futures exchange.

17. An approved clearing house or exchange holding company whose dealing in securities or trading in futures contracts, as the case may be, is solely incidental to it providing clearing facilities in respect securities or futures contracts, as the case may be.

18. A licensed offshore bank as defined under the Offshore Banking Act 1990 [*Act 443*], an offshore company or a foreign offshore company as defined under the Offshore Companies Act 1990 [*Act 441*], whose carrying on of the regulated activity of investment advice to a person who is a non-resident of Malaysia is solely incidental to their offshore businesses.

19. A receiver, receiver and manager, or liquidator or any other person appointed by a court whose carrying on a regulated activity is solely incidental to his duties as a receiver, receiver and manager, liquidator or any court appointed person, as the case may be.

20. A trustee or other person whose carrying on a regulated activity

is solely incidental to its administering a compromise or arrangement between a body corporate and any other person or persons.

21. An insurance company licensed under the Insurance Act 1996 or a takaful operator registered under the Takaful Act 1984 whose carrying on of the regulated activity of fund management is solely incidental to the management and administration of its insurance or takaful business, as the case may be.

SCHEDULE 4 [Paragraph 76(1)*(a)*]

Registered persons

Part 1

First column Items	Second column Activities	Third column Categories of registered persons
1.	Dealing in securities	
(a)	Quoting two way prices for, and dealing in— (i) debenture, stocks or bonds of the Federal Government, any State Government or statutory body; or (ii) corporate debentures or other instruments which are not listed for trading in any stock exchange	Islamic banks and all licensed institutions
(b)	Arranging for the sale or purchase of securities issued by, belonging to or on behalf of, customers through the holders of a Capital Markets Services Licence who carries on the business of dealing in securities	Islamic banks, licensed banks, licensed merchant banks and licensed finance companies

First column Items	Second column Activities	Third column Categories of registered persons
(c)	Arranging for the sale or purchase of securities that are not listed on a stock market of a stock exchange, issued by, belonging to or on behalf of, customers	Islamic banks, licensed banks, licensed merchant banks, licensed discount houses and licensed finance companies
(d)	Underwriting of securities and placement out of such underwritten securities whether through the holder of a Capital Markets Services Licence who carries on dealing in securities or otherwise	Islamic banks, licensed banks and licensed merchant banks
(e)	Underwriting of bond issues that is solely incidental to the management and administration of its insurance or takaful business	Insurance companies licensed under the Insurance Act 1996 and takaful operators registered under the Takaful Act 1984
(f)	Private placement of primary issues of securities on behalf of customers	Licensed merchant banks and Islamic banks in respect of Islamic products
(g)	Arranging or offering for the sale or purchase as agents for any person, any interests in unit trust schemes	Islamic banks, licensed banks and licensed finance companies
(h)	Acting or offering to act as agent for any issuing house in relation to the issue or listing of any securities	Islamic banks, licensed banks, licensed merchant banks and licensed finance companies

First column Items	Second column Activities	Third column Categories of registered persons
(i)	Lending or borrowing of unlisted debt securities for their own account or for their customers under the Guidelines on Securities Borrowing and Lending Programme under RENTAS or such other equivalent guidelines issued by Bank Negara	Islamic banks, licensed banks, licensed finance companies and licensed merchant banks
2.	Advising on corporate financne	
(a)	Debentures that are not capable of being converted into equity	Licensed banks, licensed merchant banks, licensed discount houses and Islamic banks in respect of Islamic debentures
(b)	Islamic securities as specified in the Commission's guidelines in respect of Islamic securities	Licensed banks, licensed merchant banks, Islamic banks and licensed discount houses
(c)	Structured products as provided under the Commission's guidelines in respect of structured products	Licensed banks, licensed merchant banks and Islamic banks in respect of Islamic structured products
(d)	Structured warrants as provided under the Commission's Guidelines For The Issue of Structured Warrants	Licensed merchant banks, licensed banks and Islamic banks in respect of Islamic structured warrants
(e)	Making submissions on behalf of customers to relevant authorities or persons in respect of issues of securities for cash or other consideration	Licensed merchant banks and Islamic banks in respect of Islamic products

First column Items	Second column Activities	Third column Categories of registered persons
(f)	Issuing any document which is or is deemed to be a prospectus under the relevant securities laws and the Companies Act 1965	Licensed banks, licensed finance companies, licensed merchant banks and licensed Islamic banks
3.	Investment advice	
	Carrying on a business of advising others concerning securities or futures contracts; or as part of a business, issues or promulgates analyses or reports concerning securities or futures contracts	Islamic banks and all licensed institutions
4.	Fund management	
	Acting or offering to act as portfolio managers for customers or as investment or co-investment manager of country funds, trust funds, venture capital funds, unit trust funds, or other funds including— (i) the provision of investment advice; and (ii) the acquisition or disposal through a holder of a Capital Markets Services Licence who carries on dealing in securities, in relation to such activity	Licensed merchant banks and Islamic banks in respect of Islamic funds

Note: Schedule 4 shall not apply to a licensed merchant bank that holds a Capital Markets Services Licence who carries on the business of dealing in securities.

Part 2

First column Items	Second column Activities	Third column Categories of registered persons
1.	Advising on corporate finance and underwriting in relation to proposals for infrastructure project companies as may be specified by the Commission whether for the purposes of listing such companies or otherwise	Bank Pembangunan Malaysia
2.	Dealing in securities in relation to the investment made by the venture capital corporation and venture capital management Corporation	Any venture capital corporation and venture capital management corporation that is registered under the Commission's Guidelines for the Registration of Venture Capital Corporations and Venture Capital Management Corporations
3.	Investment advice in relation to the provision of rating for debentures	A credit rating agency that is recognized by the Commission under the Practice Note on the Offering of Private Debt Securities and the Guidelines on the Offering of Islamic Securities
4.	Investment advice in relation to the pricing of debentures	A bond pricing agency that is registered under the Commission's Guidelines on the Registration of Bond Pricing Agencies

First column Items	Second column Activities	Third column Categories of registered persons
5.	Dealing in securities in relation to the administration of the duties of Pengurusan Danaharta Nasional Berhad	Pengurusan Danaharta Nasional Berhad and all its subsidiaries prescribed under subsection 60(2) of the Pengurusan Danaharta Nasional Berhad Act 1998

SCHEDULE 5 [Subsection 213(1)]

Proposals not requiring approval

Categories of transactions not subject to the requirements of subsection 212(4).

1. The issuance of securities by or guaranteed by the Federal Government or any State Government or Bank Negara.

2. The issuance of securities by an offshore company as defined under the Offshore Companies Act 1990 exclusively to persons outside Malaysia.

3. The issuance of securities of a foreign company as defined under the Offshore Companies Act 1990, to an offshore company as defined under the Offshore Companies Act 1990.

4. Securities of a private company other than debentures.

5. Bonus issues of securities of a corporation.

6. All trades in securities effected in the money market.

7. Making available or creation of, or issuance or execution of—

(a) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;

(b) cheques or other bills of exchange, a banker's draft or a letter of credit; or

(c) a banknote, a statement showing a balance in a current, deposit or savings account, or (by reason of any financial obligation contained in it) a charge or other disposition of property, or an insurance policy.

8. All trades in securities effected on a stock market of a stock exchange which is approved by the Minister pursuant to subsection 8(2) or such other exchange outside Malaysia which is recognized under the rules of the stock exchange.

9. An offer or invitation to enter into an underwriting agreement or is made or issued to an underwriter under such an underwriting agreement.

10. An issue or allotment of securities to an underwriter under an underwriting agreement.

11. An offer or invitation with respect to securities of a corporation which is not listed made to existing members or debenture holders of such corporation by means of a rights issue and is not an offer to which section 237 applies.

12. The making available, offering for subscription or purchase of or issuing an invitation to subscribe for or purchase, securities of a corporation to existing members of a company within the meaning of section 270 of the Companies Act 1965.

13. Issuance or allotment of securities by a corporation pursuant to the exercise of a warrant, convertible note, option or transferable subscription right, in respect of which the Commission has given its prior approval under subsection 212(4) and the subsequent listing of such securities.

14. An offer or invitation with respect to the existing securities of an unlisted corporation made to existing holders of those securities or made to a person falling within paragraph 9, 10 or 11 of Schedule 6.

15. The making available of, offering for subscription or purchase of, or making an invitation to subscribe for or purchase, securities of a corporation pursuant to an employee share or employee share option scheme.

16. The listing of securities that are issued by way of bonus issue.

17. The issuance of notes pursuant to a notes issuance facility or revolving underwriting facility as may be specified by the Commission.

18. All trades in foreign currency denominated debentures and Islamic securities effected in a manner as may be specified by the Commission.

19. An offer or invitation in respect of securities of a foreign corporation whose securities or any class of securities having gained admission on such other exchange outside Malaysia which is recognised under the rules of a stock exchange, made to existing members or debenture holders of such foreign corporation by means of a rights issue.

20. Subdivision or consolidation of shares of a corporation where such subdivision or consolidation has been approved at the general meeting of the corporation and in the case of a listed corporation, in accordance with the rules of the stock exchange.

21. The issuance of additional securities pursuant to an entitlement in respect of a warrant, option or right that has been approved by the Commission under subsection 212(4) and without consideration.

22. The issuance of debentures by a corporation to its related corporation where such debentures shall include a term that prohibits the transfer of such debentures to any other person.

SCHEDULE 6 [Section 229]

Excluded offers or excluded invitations

AExcluded offers or excluded invitations

1. An offer or invitation to enter into an underwriting or subunder-

writing agreement or an offer or invitation made to an underwriter under such an agreement.

2. With respect to the securities of a corporation which are not listed, an offer or invitation made to existing members or debenture holders of such corporation by means of a rights issue and is not an offer to which section 237 applies.

3. An offer or invitation made to a company that is registered as a trust company under the Trust Companies Act 1949 or a corporation that is a public company under the Companies Act 1965 or under the laws of any other country which has been allowed by the Commission to be a trustee for the purposes of this Act.

4. An offer or invitation made to a unit trust scheme or prescribed investment scheme.

5. An offer or invitation made to a holder of a Capital Markets Services Licence who carries on the business of dealing in securities.

6. An offer or invitation made exclusively to persons outside Malaysia.

7. An offer or invitation made to a closed end fund approved by the Commission.

8. An offer or invitation made to a holder of a Capital Markets Services Licence who carries on the business of fund management.

9. An offer or invitation made to a person who acquires securities pursuant to an offer, as principal, if the aggregate consideration for the acquisition is not less than two hundred and fifty thousand ringgit or its equivalent in foreign currencies for each transaction whether such amount is paid for in cash or otherwise.

10. An offer or invitation made to an individual whose total net personal assets exceed three million ringgit or its equivalent in foreign currencies.

11. An offer or invitation made to a corporation with total net assets exceeding ten million ringgit or its equivalent in foreign currencies based on the last audited accounts.

12. An offer or invitation made to a licensed offshore bank as defined under the Offshore Banking Act 1990.

13. An offer or invitation made to an offshore insurer as defined under the Offshore Insurance Act 1990 [*Act 444*].

14. An offer or invitation made with respect to any sale of a unit in a unit trust scheme or a prescribed investment scheme by a personal representative, liquidator, receiver or trustee in bankruptcy or liquidation, as the case may be, in the normal course of realisation of assets.

15. All trades in securities effected on a stock market of a stock exchange which is approved by the Minister pursuant to subsection 8(2) or such other exchange outside Malaysia which is recognized under the rules of the stock exchange.

16. An offer or invitation of securities made or guaranteed by the Federal Government or any State Government or Bank Negara.

17. An offer or invitation in respect of securities of a private company.

18. An offer or invitation pursuant to a take-over offer which complies with the relevant law applicable to such offers.

19. All trades in securities effected in the money market.

20. An offer or invitation made to employees or directors of a corporation or its related corporation pursuant to an employee share or employee share option scheme.

21. An offer or invitation made to any creditor or holder of securities of a company undergoing a scheme of arrangement or compromise under section 176 of the Companies Act 1965 or a restructuring scheme under the Pengurusan Danaharta Nasional Berhad Act 1998 which may not be renounced to any person other than a creditor or holder of securities of the company.

22. An offer or invitation made to a licensed institution as defined in the Banking and Financial Institutions Act 1989 or an Islamic bank as defined in the Islamic Banking Act 1983.

23. An offer or invitation made to an insurance company registered under the Insurance Act 1996.

24. An offer or invitation made to a statutory body established by an Act of Parliament or an enactment of any State.

25. An offer or invitation made to a pension fund approved by the Director General of Inland Revenue under section 150 of the Income Tax Act 1967 [*Act 53*].

26. An offer or invitation made by or to Danamodal Nasional Berhad.

27. An offer or invitation in respect of securities of a corporation made to existing members of a company within the meaning of section 270 of the Companies Act 1965.

28. An offer or invitation in respect of securities of a foreign corporation whose securities or any class of securities having gained admission on such other exchange outside Malaysia which is recognised under the rules of a stock exchange, made to existing members or debenture holders of such foreign corporation by means of a rights issue provided that such offer of invitation has been accompanied by a prospectus or disclosure document approved by the foreign supervisory authority of such foreign corporation.

B. Non-application

Excluded offers or excluded invitations to which sections 232, 233, 234, 235, 236, 237, 238, 239, 240, 241 and 244 of Division 3 of Part VI shall not apply.

SCHEDULE 7 [Section 230]

Excluded issues

AExcluded issues

1. An issue made to an underwriter under an underwriting or subunderwriting agreement.

2. An issue in respect of securities of a corporation which are not listed made to existing members or debenture holders of such corporation by means of a rights issue and is not an issue or allotment to which section 237 applies.

3. An issue made to a company that is registered as a trust company under the Trust Companies Act 1949 or a corporation that is a public company under the Companies Act 1965 or under the laws of any other country which has been allowed by the Commission to be a trustee for the purposes of this Act.

4. An issue made to a unit trust scheme or prescribed investment scheme.

5. An issue made to a holder of a Capital Markets Services Licence who carries on the business of dealing in securities.

6. An issue made exclusively to persons outside Malaysia.

7. An issue made to a closed end fund approved by the Commission.

8. An issue made to a holder of a Capital Markets Services Licence who carries on the business of fund management.

9. An issue made to a person who acquires securities pursuant to an offer, as principal, if the aggregate consideration for the acquisition is not less than two hundred and fifty thousand ringgit or its equivalent in foreign currencies for each transaction, whether such amount is paid for in cash or otherwise.

10. An issue made to an individual whose total net personal assets exceed three million ringgit or its equivalent in foreign currencies.

11. An issue made to a corporation with total net assets exceeding ten million ringgit or its equivalent in foreign currencies based on the last audited accounts.

12. An issue made to a licensed offshore bank as defined under the Offshore Banking Act 1990.

13. An issue made to an offshore insurer as defined under the Offshore Insurance Act 1990.

14. An issue made with respect to any sale of a unit in a unit trust scheme or a prescribed investment scheme by a personal representative, liquidator, receiver or trustee in bankruptcy or liquidation, as the case may be, in the normal course of realisation of assets.

15. All trades in securities effected on a stock market of a stock exchange which is approved by the Minister pursuant to subsection 8(2) or such other exchange outside Malaysia which is recognized under the rules of the stock exchange.

16. An issue of securities made or guaranteed by the Federal Government or any State Government or Bank Negara.

17. An issue in respect of securities of a private company.

18. An issue in respect of securities which are acquired pursuant to a take-over offer which complies with the relevant law applicable to such offers.

19. All trades in securities effected in the money market.

20. An issue in respect of securities which are acquired by employ-

ees or directors of a corporation or its related corporation pursuant to an employee share or employee share option scheme.

21. An issue made to any creditor or holder of securities of a company undergoing a scheme of arrangement or compromise under section 176 of the Companies Act 1965 or a restructuring scheme under the Pengurusan Danaharta Nasional Berhad Act 1998 which may not be renounced to any person other than a creditor or holder of securities of the company.

22. An issue made to a licensed institution as defined in the Banking and Financial Institutions Act 1989 or an Islamic bank as defined in the Islamic Banking Act 1983.

23. An issue made to an insurance company registered under the Insurance Act 1996.

24. An issue made to a statutory body established by an Act of Parliament or an enactment of any State.

25. An issue made to a pension fund approved by the Director General of Inland Revenue under section 150 of the Income Tax Act 1967.

26. An issue made by or to Danamodal Nasional Berhad.

27. An issue of securities by a corporation pursuant to the exercise of an option, a warrant or a transferable subscription right, in respect of which a prospectus has been registered under this Act or in respect of which the securities to which the option, warrant or transferable subscription right converts into are listed securities.

28. An issue of shares by a corporation pursuant to a provision contained in a convertible note, whether the note was issued by that corporation or by another corporation, in respect of which a prospectus has been registered under this Act or in respect of which the securities to which the option, warrant or transferable subscription right converts into are listed securities.

29. An issue in respect of shares or units in a unit trust scheme or prescribed investment scheme which are issued in satisfaction of dividends payable by the issuer to the holders of existing shares or units that were issued pursuant to a prospectus.

30. An issue of securities of a corporation made to existing members of a company within the meaning of section 270 of the Companies Act 1965.

31. A bonus issue of securities made by a corporation.

32. An issue in respect of securities of a foreign corporation whose securities or any class of securities having gained admission on such other exchange outside Malaysia which is recognised under the rules of a stock exchange, made to existing members or debenture holders of such foreign corporation by means of a rights issue.

33. An issue of securities of a foreign corporation whose securities or any class of securities having gained admission on such other exchange outside Malaysia which is recognised under the rules of a stock exchange, made to existing members or debenture holders of such foreign corporation by means of a rights issue provided that such issue has been accompanied by a prospectus or disclosure document

approved by the foreign supervisory authority of such foreign corporation.

B. Non-application

Excluded issues to which sections 232, 233, 234, 235, 236, 237, 238, 239, 240, 241 and 244 of Division 3 of Part VI shall not apply.

SCHEDULE 8 [Subsection 257(1)]

Debentures issues

Issues of, offers for subscription or purchase of, or invitations to subscribe for or purchase, debentures to which Subdivision 1 of Division 4 of Part VI and section 283 of Subdivision 2 of Division 4 of Part VI shall not apply.

1. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made by the Federal Government or any State Government or any statutory body.

2. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures guaranteed by the Federal Government or Bank Negara.

3. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures which by their terms may only be held by members of the issuer.

4. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures which by their terms may only be held by a single holder of those debentures.

5. All trades in debentures effected on a stock market of a stock exchange which is approved by the Minister pursuant to subsection 8(2).

6. All trades in debentures effected in the money market.

7. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made pursuant to a scheme of arrangement or compromise under section 176 of the Companies Act 1965 or a restructuring scheme under the Pengurusan Danaharta Nasional Berhad Act 1998.

8. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made by or to Danamodal Nasional Berhad.

9. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made exclusively to persons outside Malaysia.

10. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures to existing members of a company within the meaning of section 270 of the Companies Act 1965.

11. An issue, offer or invitation made in relation to a foreign currency denominated debenture to—

(a) an underwriter under an underwriting or initial purchase agreement;

(b) a unit trust scheme or prescribed investment scheme;

(c) a holder of a Capital Markets Services Licence who carries on the business of dealing in securities;

(d) a closed end fund approved by the Commission;

(e) a holder of a Capital Markets Services Licence who carries on the business of fund management;

(f) a corporation with total net assets exceeding ten million ringgit or its equivalent in foreign currencies based on the last audited accounts;

(g) a licensed offshore bank as defined under the Offshore Banking Act 1990; or

(h) an offshore insurer as defined under the Offshore Insurance Act 1990.

12. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures or Islamic securities made by a multilateral development bank, a multilateral financial institution, a foreign sovereign or a corporation guaranteed or controlled by a foreign sovereign, with a credit rating of AAA or its equivalent, assigned by a credit rating agency.

SCHEDULE 9 [Subsection 257(2)]

Debentures issues

Issues of, offers for subscription or purchase of, or invitations to subscribe for or purchase, debentures to which sections 263, 266, 268, 269, 271, 272, 275, 278, subsections 280(4) and 280(5) of Division 4 of Part VI shall not apply.

1. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a company that is registered as a trust company under the Trust Companies Act 1949 or a corporation that is a public company under the Companies Act 1965 or under the laws of any other country which has been allowed by the Commission to be a trustee for the purposes of this Act.

2. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a unit trust scheme or prescribed investment scheme.

3. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a holder of a Capital Markets Services Licence who carries on the business of dealing in securities.

4. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a closed end fund approved by the Commission.

5. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a holder of a Capital

Markets Services Licence who carries on the business of fund management.

6. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a person who acquires securities pursuant to an offer, as principal, if the aggregate consideration for the acquisition is not less than two hundred and fifty thousand ringgit or its equivalent in foreign currencies for each transaction, whether such amount is paid for in cash or otherwise.

7. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to an individual whose total net personal assets exceed three million ringgit or its equivalent in foreign currencies.

8. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a corporation with total net assets exceeding ten million ringgit or its equivalent in foreign currencies based on the last audited accounts.

9. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a licensed offshore bank as defined under the Offshore Banking Act 1990.

10. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to an offshore insurer as defined under the Offshore Insurance Act 1990.

11. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures of a private company.

12. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a licensed institution as defined in the Banking and Financial Institutions Act 1989 or an Islamic Bank as defined in the Islamic Banking Act 1983.

13. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to an insurance company registered under the Insurance Act 1996.

14. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a pension fund approved by the Director General of Inland Revenue under section 150 of the Income Tax Act 1967.

SCHEDULE 11 [Section 388]

List of subsidiary legislation revoked

1. Securities Industry Regulations 1987 [*P.U. (A) 314/1987*].

2. Securities Industry (Exemption) Order 1992 [*P.U. (A) 126/1992*].

3. Futures Industry Regulations 1995 [*P.U. (A) 413/1995*].

4. Securities Industry (Exempt Dealer) (No. 2) Order 1996 [*P.U. (A) 21/1996*].

5. Securities Industry (Dealing in Securities) Declaration (No. 2) 1996 [*P.U. (B) 23/1996*].

6. Securities Industry (Licensing of Fund Manager and Fund Manager's Representative) Regulations 1996 [*P.U. (A) 117/1996*].

7. Securities Industry (Deposit) Regulations 1997 [*P.U. (A) 34/1997*].

8. Securities Industry (Compensation Fund) Regulations 1997 [*P.U. (A) 35/1997*].

9. Securities Industry (Dealers Contract Notes) Regulations 1997 [*P.U. (A) 37/1997*].

10. Securities Industry (Dealing in Securities) Declaration 1997 [*P.U. (B) 338/1997*].

11. Securities Industry (Exempt Dealer) Order 1997 [*P.U. (A) 339/1997*].

12. Futures Industry (Variation of Board Composition) Order 1998 [*P.U. (A) 139/1998*].

13. Securities Industry (Exempt Dealer) Order 1998 [*P.U. (A) 324/1998*].

14. Futures Industry (Licensing Exemption) Order 1998 [*P.U. (A) 393/1998*].

15. Securities Industry (Non-Application Of Provision Relating To Insider Trading) Regulations 1999 [*P.U. (A) 180/1999*].

16. Securities Industry (Exempt Dealer) Order 2000 [*P.U. (A) 160/2000*].

17. Futures Industry (Licensing Exemption) Order 2001 [*P.U. (A) 209/2001*].

18. Securities Industry (Exempt Dealer) Order 2002 [*P.U. (A) 17/2002*].

19. Securities Industry (Exempt Dealer) (No. 2) Order 2002 [*P.U. (A) 314/2002*].

20. Securities Industry (Declaration of Exempt Stock Market) Order 2005 [*P.U. (A) 496/2005*].

21. Securities Industry (Bond Pricing Agency) Regulations 2006 [*P.U. (A) 22/2006*].

APPENDIX MY-2

Securities Industry (Central Depositories) Act, 1991 (Act 453) as amended

Table of Contents

SECURITIES INDUSTRY (CENTRAL DEPOSITORIES) ACT 1991 (Act 453)

PART I PRELIMINARY

1 Short title and commencement

2 Interpretation

PART II CENTRAL DEPOSITORY

3 Restriction on establishment of a central depository

4 Application for approval to establish and maintain a central depository

5 Power of minister to approve the establishment of a central depository

PART III PROVISIONS RELATING TO DEPOSITED SECURITIES

11 Interpretation

12 Duties of a central depository

13 Authorised depository agent

14 Stock exchange to prescribe securities that may be deposited with a central depository

(15) (Deleted)

(16) (Deleted)

17 Undeposited Securities not to be traded on a stock market or utilised to settle market trade

22 (Deleted)

23 (Deleted)

24 Prohibition of withdrawal

25 Securities accounts

29 Dealings effected by means of electronic process

29A Dealings in deposited securities shall be effected by beneficial owners or authorised nominees
35 A depositor to be treated as if he were a member
40 Charging or pledging of securities
41 Securities in suspense
41A Notice of trust

SECURITIES COMMISSION ACT 1993 (Act 498)
Part I PRELIMINARY

1 Short title and commencement
2 Interpretation
2A References to "this Act" and "securities law"
2B Prescription of securities
2C Regulations on procedure and manner of registration or lodgement
2D Registers
2E Electronic filing of documents

Part II SECURITIES COMMISSION

3 Establishment of the Commission
4 Membership of the Commission
5 Disqualification of members
6 Tenure of office
7 Resignation and revocation
8 Vacation of office
9 Remuneration or allowance
10 Meetings
11 Commission may invite others to meetings
12 Common seal
13 Disclosure of interest
14 Minutes
15 Functions of the Commission
16 Powers of the Commission
17 Delegation of Commission's functions or powers

18 Commission may establish committee
19 Power of the Minister to give directions and require information
20 Appointment of officers and servants of the Commission
21 Regulations with respect to discipline
22 Power to grant loans and make advances to its officers and servants
22A Commission may establish and participate in body corporate

Part III FINANCE

23 The Fund
24 Levies
25 Conservation of the Fund
26 Expenditure to be charged on the Fund
27 Commission's financial year
28 Annual report
29 Accounts
30 Power to borrow
31 Investment

Part IV ISSUES OF SECURITIES AND TAKE-OVERS AND MERGERS

32 Proposals to be submitted to the Commission
32A Classes or categories of transactions or securities not subject to subsection 32 (4)
32B False or misleading statements, etc
33 Definition
33A Malaysian Code on take-overs and mergers
33B Compliance with Code and rulings
33C Exemptions
33D Action by Commission in cases of non-compliance with Code and rulings

33E False or misleading documents, information, etc
34 Compulsory acquisition
34A Right of minority shareholder
34B Application to Court
34C Section 180 of the Companies Act 1965 shall not apply to take-over offers to which subsection 34 (1) applies
35 Definitions
36 Invitation
37 Offer for subscription or purchase
38 Excluded offers and invitations
39 Excluded issues
40 Exceptions
41 Requirement to register prospectuses in relation to securities
42 Registration of prospectus
43 Requirement to lodge prospectus with Registrar
44 Contents of prospectus
45 General duty of disclosure in prospectus
46 Abridged prospectus for renounceable rights issues
47 Supplementary prospectus
48 Consequences of registering a supplementary prospectus
49 Regulations for shelf prospectuses, supplementary shelf prospectuses, short form prospectuses, profile statements, etc
50 Restrictions in advertising
51 Document containing offer of securities for purchase deemed to be a prospectus
52 Allotment of securities where prospectus implies that application for permission to list on stock exchange had been made

53 Consent from person to issue of prospectus containing statement by him
54 Order to stop issue of securities
55 Criminal liability for false statements, etc in prospectus
56 Persons not to be taken to have authorised or caused issue of prospectus
57 Right to recover for loss or damage resulting from false or misleading statement in prospectus, etc
58 Civil liability for misleading or deceptive acts
59 Due diligence defence
60 Reliance on statement and information in respect of false or misleading statement
61 Reliance on statement and information in respect of misleading or deceptive act
62 Reliance on public official statement in respect of false and misleading statement
63 Defence of withdrawal of consent
64 Restriction on offering securities for subscription or purchase
65 Agreements to exclude or restrict liability void
66 Application of Division 4 of Part IV
67 Requirement for trust deed and trustee
68 Form and contents of trust deeds
69 Persons who can be trustees
70 Existing trustee to continue to act until new trustee takes office
71 Replacement of trustee
72 Duties of the borrower
73 Duty of borrower to replace trustee
74 Duty of borrower to inform trustee about charge, etc

75 Duty of borrower to give trustee and Commission quarterly reports
76 Duty of borrower to inform trustee and Commission of occurrence of material event
77 Duty of borrower where prospectus states purpose or project for which moneys are to be applied
78 Obligations of directors of borrower to deliver financial statements
79 Borrower to issue document evidencing indebtedness, etc
80 Duties of guarantors
81 Obligations of directors of guarantor to deliver financial statements
82 Duties of trustees
83 Exemptions and indemnification of trustee from liability
84 Indemnity of trustee
85 Duty of auditor to trustee for debenture holders
86 Duty of borrower to call a meeting
87 Power of trustee to call a meeting
88 Court may order a meeting of debenture holders
89 Powers of Commission to protect interests of debenture holders
90 General power of Court to give directions and determine questions
91 Specific Court powers
92 Register of debenture holders
93 Specific performance
94 Perpetual debentures
95 Reissue of redeemed debentures
96 Definition
97 Requirement for trustee and deed

98 Approval of trustee and management company
99 Persons who can be trustees
100 Existing trustee to continue to act until new trustee takes office
101 Replacement of trustee
102 Registration of deed
103 Contents of deed
104 Modification of deed through supplementary deed
105 Deed to be lodged with Commission
106 Duties of a management company
107 Duty of management company to lodge returns, etc
108 Duty of management company to replace trustee
109 Duties of trustee
110 Duty of trustee to wind up scheme
111 Duties of management company and trustee under general law
112 Exemptions and indemnification of trustee from liability
113 Indemnity of trustee
114 Duty of management company to call meeting of unit holders
115 Power of trustee to call a meeting
116 Court may order a meeting of unit holders
117 Register of unit holders
118 Where register is to be kept
119 Closure and inspection of register
120 Power of Court to rectify register
121 Branch register
122 Rights of trustee, executor, administrator in relation to a deceased unit holder

123 Power of Court to make orders
124 Disapplication of Division 5 of Part IV

PART IVA AGREEMENT OR ARRANGEMENT FOR TRANSFER OF BUSINESS

124A Definitions
124B Application to High Court to Facilitate Agreement or Arrangement for Transfer of Whole or Part of Business of Licensed Persons, Exempt Fund Manager and Exempt Futures Fund Manager

Part V ENFORCEMENT AND INVESTIGATION

125 Appointment of Investigating Officers of the Commission
126 Examination of licensed persons
127 Production of licensed person's books, etc
128 Powers of Investigating Officers of the Commission
129 Procedure by Investigating Officer on seizure of property
130 Procedure by Magistrate in respect of property seized
131 Procedure in respect of property detained in Investigating Officer's custody
132 Surrender of travel documents
133 Forcible entry
134 Power to call for examination
135 Destruction, concealment, mutilation and alteration of records

Part VI GENERAL

136 Conduct of prosecution
137 General penalty
138 Offences by bodies corporate

139 Compounding of offences
140 Protection of informers and information
141 Offences under securities law are seizable offences
142 Duty of Investigating Officer to make over arrested person to the police
143 Detention of arrested person
144 Public servants and public officers
145 Power to engage persons to render assistance
146 Power to review
147 Decision of Commission shall be final
148 Obligation of secrecy
149 Assistance to police or other public officer
150 Assistance to and co-operation with foreign supervisory authorities
151 Power of Commission to require information
152 Disclosure of information to Commission
153 Civil liability of person in contravention of this Act
154 Officers of Commission may represent Commission in civil proceedings
155 Commission may recover loss or damage
156 Reference to conduct
157 Attempts, abetments and conspiracies
158 Written notices, circulars, conditions or guidelines
159 Power to make regulations
160 Indemnity

Part VII REPEAL AND TRANSITIONAL PROVISIONS

161 Repeal
162 Saving

163 Continuance of other rights, liabilities, etc under the repealed sections
164 Continuance of criminal and civil proceedings
165 Transitional and savings
166 Prevention of anomalies

SECURITIES COMMISSION GUIDELINES FOR PUBLIC OFFERINGS OF SECURITIES OF INFRASTRUCTURE PROJECT COMPANIES

1 Scope
2 Definitions
3 Criteria for approval of public offering of securities with listing and quotation on a stock exchange
4 Criteria for approval of public offering of securities without listing and quotation on a stock exchange
5 Prospectus
6 Due diligence
7 Conflict of interest
8 Chain listing
9 Compliance with and enforcement of guidelines
10 Application procedure

An Act to provide for the regulation of central depositories, and the deposit, holding, withdrawal of, and dealings in, securities deposited therewith and to provide for matters incidental thereto.

[15 JUNE 1992]

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

PART I PRELIMINARY

1 Short title and commencement

(1) This Act may be cited as the Securities Industry (Central Depositories) (Amendment) Act 1997.

2 Interpretation

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

"access", in relation to a computer system, means the placing of information on that system and the retrieval of information from that system;

"Act" includes any regulations made under this Act;

"authorised depository agent", in relation to any central depository, means a person appointed under section 13 to be an agent of that central depository;

"authorised nominee" means a person who is authorised to act as a nominee as specified under the rules of a central depository;

"bearer security" means a security the title to which is transferable by delivery (with or without endorsement) of the scrip representing such security;

"beneficial owner", in relation to deposited securities, means the ultimate owner of the deposited securities who is the person who is entitled to all rights, benefits, powers and privileges and is subject to all liabilities, duties and obligations in respect of, or arising from, the deposited securities, and does not include a nominee of any description;

"buying in" means the buying effected by a stock exchange or its clearing house, according to the rules of the stock exchange, of securities which a seller has failed to deliver on a day fixed for settlement;

"Central Bank of Malaysia" means the Central Bank established under the Central Bank of Malaysia Act 1958;

"central depository" means a company approved by the Minister under section 5—

(a) to establish and operate a system for the central handling of securities, whether or not listed on any stock exchange—

(i) whereby all such securities are deposited with and held in custody by, or registered in the name of, the company or its nominee company for the depositors and dealings in respect of those securities are effected by means of entries in securities accounts without the physical delivery of scrips; or

(ii) which permits or facilitates the settlement of securities transactions or dealings in securities without the physical delivery of scrips; and

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

"charge" includes a mortgage;

"Commission" means the Securities Commission established under the Securities Commission Malaysia Act (SCMA) 1993 1993;

"computer system", in relation to a central depository, means the computer system established by a central depository forming part of the system for the central handling of securities which inter alia consists of—

(a) the central equipment comprising hardware, and software associated with that hardware, located at the premises of the central depository; and

(b) the terminals located at the premises of the users;

"dealer" has the same meaning as is assigned to that expression under subsection 2(1) of the Securities Industry Act 1983;

"dealing", in relation to any deposited security, includes the charging or pledging of the deposited security by a depositor;

"debt securities" means debentures, bonds, notes, or other similar instrument representing or evidencing indebtedness, whether secured or otherwise;

"deposited security" means a security standing to the credit of a securities account and includes a security in a securities account that is in suspense;

"depositor" means a holder of a securities account;

"information" includes data recorded in a form which can be processed by equipment operating automatically in response to instructions given for a particular purpose;

"issuer", in relation to any deposited security, means the public company, corporation, government, or the body, corporate or unincorporate, which issued the security, and includes any person performing the functions of a registrar or an issuing house for such issuer in respect of such security;

"listed deposited security" means a deposited security quoted on an official list of a stock exchange;

"member company" has the same meaning as is assigned to that expression under subsection 2(1) of the Securities Industry Act 1983;

"Minister" means the Minister of Finance;

"nominee company", in relation to a central depository, means a company appointed by the central depository for the purpose of holding any deposited security;

"non-bearer security" means a security other than a bearer security;

"official list", in relation to a stock exchange, means a list specifying all securities which have been admitted for quotation on the stock exchange;

"record" includes, in addition to a record in writing—

(a) any photograph;

(b) any disc, tape, sound-track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced therefrom; and

(c) any film, tape or other device in which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced therefrom,

and any reference to a copy of a record includes—

(i) in the case of a record falling within paragraph (b) but not paragraph (c) of this definition, a transcript of the sounds or other data embodied therein;

(ii) in the case of a record falling within paragraph (c) but not paragraph (b) of this definition, a still reproduction of the images embodied therein, whether enlarged or not; and

(iii) in the case of a record falling within both paragraph (b) and paragraph (c) of this definition, the transcript of the sounds or other data embodied therein together with the still reproduction of the images embodied therein;

"rules", in relation to a central depository, means the rules of a central depository and includes—

(a) rules contained in the memorandum and articles of association or other constituent document of the central depository;

(b) rules to ensure compliance by its authorised depository agents, users or depositors of any obligations imposed by this Act or any other written law;

(c) rules in relation to the provision of deposit, holding, transfer and withdrawal of securities, and the suspension or withdrawal of such services;

(d) rules to provide for the persons who may participate in one or more of the services referred to in paragraph (c); and

(e) rules in respect of such other matters as are necessary or desirable for the proper and efficient operation and management of the central depository including rules setting fees and charges;

"scrip" means any document that is, or is a document of title to, a security;

"security" means debenture, note, stock and share in a public company or corporation, or bond of any government or of any body, corporate or unincorporate, and includes any right or option in respect thereof and any interest as defined in section 84 of the Companies Act 1965 and any interest in a unit trust scheme;

"securities account" means an account established by a central depository for a depositor for the recording of deposit of securities and for dealings in such securities by the depositor;

"securities laws" means this Act, the Securities Industry Act 1983, the Securities Commission Malaysia Act (SCMA) 1993 1993 and the Futures Industry Act 1993 and, unless expressly stated otherwise, includes any subsidiary legislation made under those laws;

"selling out" means the selling effected by a stock exchange or its clearing house, according to the rules of the stock exchange, of securities which a buyer has failed to accept and to pay for when delivered on a day fixed for settlement;

"stock exchange" has the same meaning as is assigned to that expression under subsection 2(1) of the Securities Industry Act 1983;

"stock market" has the same meaning as is assigned to that

expression under subsection 2(1) of the Securities Industry Act 1983;

"unit trust scheme" has the same meaning as is assigned to that expression under section 2 of the Securities Commission Malaysia Act (SCMA) 1993 1993;

"unlisted deposited security" means a deposited security other than a listed deposited security;

"user" means—

(a) an authorised depository agent;

(b) an issuer;

(c) a stock exchange;

(d) a body corporate acting as a clearing house of a stock exchange; or

(e) such other person as may be specified in the rules of a central depository, who may be given access to a computer system of the central depository;

(2) A reference to writing shall be deemed to include any mode of representing or reproducing letters, figures or marks in a visible form.

(3) A reference to a security being deposited, or required to be deposited, with a central depository shall be construed as a reference to a deposit of or a requirement for the deposit of—

(i) the scrip;

(ii) the instrument of transfer, if any; or

(iii) any other document representing the security, with the central depository.

PART II CENTRAL DEPOSITORY

3 Restriction on establishment of a central depository

(1) No person shall establish, maintain, operate or hold himself out as providing, maintaining or operating a system for the central handling of securities, whether or not listed on any stock exchange—

(a) whereby all such securities are deposited with and held in custody by, or registered in the name of, the person or his nominee for the depositors and dealings in respect of those securities are effected by means of entries in accounts without the physical delivery of scrips; or

(b) which permits or facilitates the settlement of securities transactions or dealings in securities without the physical delivery of scrips; or

(c) to provide other facilities and services incidental thereto.

(2) Subsection (1) shall not apply to—

(a) a central depository;

(b) the Central Bank of Malaysia; and

(c) any person exempted by the Minister under section 62A.

(3) A person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding ten years or to both.

4 Application for approval to establish and maintain a central depository

(1) Any company incorporated under the Companies Act 1965 which proposes to establish and maintain a central depository shall apply to the Minister in writing for approval.

(2) An application made under subsection (1) shall be accompanied with the following:

(a) a copy of the memorandum and articles of association, duly verified by a statutory declaration made by a director of the applicant;

(b) a copy of the latest audited balance sheet, profit and loss account (together with any note thereon) and the reports, if any, of the auditors and the directors of the applicant;

(c) a statement on the following:

(i) the name, place and date of incorporation of the applicant;

(ii) the registered office and place or proposed place of business of the applicant;

(iii) the names and addresses of the directors of the applicant and its related corporations, and of the substantial shareholders within the meaning of section 69D of the Companies Act 1965, of the applicant and its related corporations; and

(iv) the name of the stock exchange, if any, in respect of which the central depository will be established and maintained;

(d) operational information on the system to be established and maintained by the central depository;

(e) a copy of the rules that will apply to the central depository;

(f) the proposed fees and charges which will be imposed by the applicant in respect of the facilities and services to be provided by the central depository, including fees and charges for—

(i) the establishment and maintenance of securities accounts;

(ii) the deposit and withdrawal of securities;

(iii) the issuance of statements of accounts under section 26;

(iv) the effecting of entries in securities accounts in respect of transactions under section 31;

(v) the issuance of records of depositors under section 34;

(vi) the effecting of entries in securities accounts pursuant to any charges or pledges of deposited securities under section 40; and

(g) such other information or documents as may be required by the Minister for the purposes of determining the application and the suitability of the applicant to establish and maintain a central depository.

(3) At any time after receiving an application the Minister may, by written notice, require the applicant to provide additional information or documents.

5 Power of minister to approve the establishment of a central depository

(1) The Minister may, in writing, approve an application made

under section 4 for the establishment and maintenance of a central depository if he is satisfied—

(a) that the applicant is a company incorporated under the Companies Act 1965, and a stock exchange is a shareholder of the applicant;

(b) that the rules of the applicant make satisfactory provision—

(i) with respect to the conditions under which securities may be deposited with, held by, withdrawn from, or transferred within, the central depository;

(ii) for the holding of securities deposited with the central depository or its nominee company;

(iii) for the processing of dealings in deposited securities;

(iv) for facilitating the settlement of deposited securities;

(v) for the protection of the interests of depositors and the protection and control of information on deposited securities and dealings therein;

(vi) for the monitoring of compliance with, and for the enforcement of, the rules of the central depository;

(vii) with respect to the maintenance of a policy or policies of insurance, and the establishment and maintenance of compensation funds, for the purpose of settling claims by depositors against the central depository, its nominee companies and authorised depository agents; and

(viii) generally for the carrying on of the business of the central depository with due regard to the interests of the public; and

(c) that the establishment and maintenance of the central depository would promote the positive development of the capital market in Malaysia and that the interests of the public dealing with deposited securities (whether or not listed on a stock exchange) will be served by the granting of his approval.

(2) The Minister may, in approving any application under subsection (1), impose—

(a) requirements with respect to the paid-up or authorised capital of the central depository;

(b) conditions relating to the shareholdings of the members of the central depository; and

(c) any other requirements or conditions as he considers appropriate.

* * *

PART III PROVISIONS RELATING TO DEPOSITED SECURITIES

Division I Deposit of Securities

11 Interpretation

In this Part, unless the context otherwise requires—

"approved company auditor" has the same meaning as is assigned to that expression under subsection 4(1) of the Companies Act 1965;

"jumbo certificate", in relation to a deposited security, means a certificate comprising not less than fifty thousand units of securities of an issuer which is registered in the name of a central depository or its nominee company, as nominee for depositors;

"market day", in relation to a stock exchange, means a day on which a stock market of the stock exchange is open for trading in securities;

"notification date" means the date on which the notice pursuant to subsection 14(2) is given by a stock exchange;

"prescribed date", in relation to any prescribed security, means the date specified in the notice given by a stock exchange under subsection 14(3) as being the last day on which the prescribed security may be traded on a stock market of the stock exchange unless such security has been deposited with the central depository;

"prescribed security" means a security which has been prescribed by a stock exchange to be deposited with a central depository under section 14;

"record of depositors" means a record provided by a central depository to an issuer under section 34 which contains the particulars specified in subsection (3) of the said section.

12 Duties of a central depository

(1) A central depository shall provide or cause to be provided all such facilities as may be necessary—

(a) to facilitate efficient deposit of securities;

(b) to facilitate registration of dealings in deposited securities;

(c) to ensure the safe custody of scrips and other documents representing deposited securities;

(d) to guard against falsification of any records or accounts required to be kept or maintained under the Act; and

(e) to establish a proper and efficient system for the verification, inspection, identification and recording of all securities deposited with the central depository.

(2) The Minister may, from time to time, prescribe other duties to be performed by a central depository as he considers appropriate.

13 Authorised depository agent

(1) Subject to this Act, a central depository may appoint any of the persons referred to in subsection (2) to be its authorised depository agent for all or any of the following purposes:

(a) to facilitate the deposit of securities;

(b) to open, maintain and close securities accounts;

(c) to make entries in securities accounts;

(d) to collect such fees and charges imposed by the central depository as may be provided for under its rules; and

(e) such other incidental and ancillary purposes as may be specified by the rules of a central depository.

(2) A central depository may appoint as its authorised depository agent any of the following:

(a) a stock exchange;

(b) a body corporate acting as a clearing house of a stock exchange;

(c) a member company;

(d) a bank, merchant bank or finance company licensed under subsection 6(4) of the Banking and Financial Institutions Act 1989;

(e) an Islamic bank licensed under the Islamic Banking Act 1983;

(f) a bank established under an Act of Parliament; or

(g) a body corporate of a type prescribed by the Minister under this Act,

(2) and any authorised depository agent so appointed, in carrying out all or any of the purposes mentioned in subsection (1), shall, when so required by the central depository or the Commission, in respect of such purposes, be authorised to give, divulge, reveal or disclose to the central depository or the Commission any information or document relating to a securities account.

(3) A person shall not act as an authorised depository agent or hold himself out to be an authorised depository agent unless he has been so appointed in writing by a central depository.

(4) A person who contravenes subsection (3) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding ten years or to both.

14 Stock exchange to prescribe securities that may be deposited with a central depository

(1) Subject to subsections (2) and (3), a stock exchange shall prescribe all securities listed or proposed to be listed for quotation on its official list that are required to be deposited with a central depository.

(2) A stock exchange shall give notice to the public of all securities prescribed by it to be deposited with the central depository by advertisement in not less than three daily national newspapers, one of which shall be in the national language and one in the English language, unless exempted by the Commission in writing.

(3) A notice under subsection (2) shall identify the prescribed security and shall specify a prescribed date (not being less than one month from the date of publication of the notice) on or before which those securities shall be deposited.

(3A) The requirement under subsections (1), (2) and (3) to deposit prescribed securities on or before the prescribed date shall not apply to such securities or class of securities as may be specified in the rules of a central depository.

(4) For the purposes of this Act, the deposit by a person of any prescribed security with an authorised depository agent of a central depository shall be deemed to be a deposit of such security with that central depository.

(5) Where a stock exchange has prescribed a security under subsection (1) to be deposited with a central depository, the prescription

shall apply to any additional listing of such security and all other types of security issued by the same issuer for listing on the stock exchange and the provisions of subsections (1) and (2) shall not apply in respect of such additional listing and listing of other types of security.

(6) Upon prescription of any securities under subsection (1), a holder of such prescribed securities shall deposit such securities on or before the prescribed date.

(7) If a holder of a prescribed security fails to deposit such securities on or before the prescribed date, the share registrar of the issuer shall, after the prescribed date, transfer the securities to the Minister by way of an entry in a securities account in the name of the Minister.

(8) Any person whose securities are transferred under subsection (7) may, within six months from the date of the transfer, appeal to the Commission by giving reasons for his failure to deposit the securities.

(9) If the Commission is satisfied as to the reasons for the failure to deposit the securities, the Commission shall report its satisfaction to the Minister and the Minister shall re-transfer the securities to the person referred to in subsection (8) by way of an entry in a securities account.

(10) If after the expiry of the period specified in subsection (8), no appeal is filed with the Commission, the Minister may sell or dispose of such securities in such manner and at such time as he thinks fit and shall deal with the proceeds of the sale or disposal as if they were moneys paid to him pursuant to the law relating to unclaimed moneys.

(11) If any share registrar fails to transfer any securities as required under subsection (7), the High Court shall, on the application of the Commission, make an order transferring such securities to the Minister, and such transfer shall be effected by way of an entry in a securities account in the name of the Minister who may then sell or dispose of such securities in such manner and at such time as he thinks fit and deal with the proceeds of the sale or disposal as if they were moneys paid to him pursuant to the law relating to unclaimed moneys.

(12) Any share registrar who fails to effect the transfer required under subsection (7) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit for every security which is the subject matter of the offence.

(15) (Deleted)

(16) (Deleted)

17 Undeposited Securities not to be traded on a stock market or utilised to settle market trade

(1) A prescribed security may not, after the prescribed date, be traded on a stock market of a stock exchange unless such security has been deposited with a central depository.

(2) (Deleted)

(3) A prescribed security which is deposited by a depositor with the central depository shall be capable of being utilised to settle a trans-

action which took place on a stock market of a stock exchange prior to the date of deposit of that prescribed security if the issuer registers the transfer of the security underlying such scrip in the name of the central depository or its nominee company and delivers the appropriate certificate to the central depository before the date for settlement of the transaction in accordance with the rules of the stock exchange.

* * *

Division II Withdrawal of Securities

22 (Deleted)

23 (Deleted)

24 Prohibition of withdrawal

A depositor shall not withdraw the securities which have been deposited with a central depository except in such manner as may be specified in the rules of the central depository.

Division III Securities Accounts and Records

25 Securities accounts

(1) No person shall deal in deposited securities without first having a securities account.

(2) An authorised depository agent which deals in deposited securities as principal shall, in relation to such dealing, open and maintain a securities account with the central depository.

(3) A central depository may establish different types of securities accounts for different classes of persons.

(4) Every securities account opened with a central depository shall be in the name of the beneficial owner of the deposited securities or in the name of an authorised nominee.

(5) The person opening the securities account shall make a declaration in such manner as may be specified in the rules of the central depository that he is the beneficial owner of the deposited securities or the authorised nominee, as the case may be.

(6) Any person who contravenes subsection (1), (2) or (5) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.

* * *

Division IV Securities transactions, entries and miscellaneous

29 Dealings effected by means of electronic process

(1) Notwithstanding the provisions of any written law, a dealing by a depositor in respect of a deposited security shall be effected by means of an entry in the securities account of the depositor.

(2) Subject to this Part, a dealing effected under this section shall be effective—

(a) in the case of a non-bearer security, without the need for an instrument in writing; and

(b) in the case of a bearer security, without the need for delivery of the scrip representing the security.

29A Dealings in deposited securities shall be effected by beneficial owners or authorised nominees

All dealings in respect of deposited securities shall only be effected by the beneficial owners of such deposited securities or an authorised nominee, as the case may be.

* * *

35 A depositor to be treated as if he were a member

(1) Notwithstanding the provisions of the Companies Act 1965, a depositor of any deposited security whose name appears in the record of depositors shall be entitled to all rights, benefits, powers and privileges and be subject to all liabilities, duties and obligations in respect of, or arising from, such security (whether conferred or imposed by the Companies Act 1965, or the memorandum or articles of association of the issuer of such security, or otherwise) as if he were—

(a) a member registered in the register of members;

(b) a holder registered in the register of debenture holders maintained by the issuer;

(c) a holder registered—

(i) in the register of interest holders maintained by a management company under the Companies Act 1965;

(ii) in the register of unit holders maintained by a management company under section 117 of the Securities Commission Malaysia Act (SCMA) 1993 1993,

(c) instead of the central depository, or its nominee company, in whose name the deposited security is registered.

(d) a person included in any other register maintained by the issuer in respect of or arising from any other securities issued by the issuer,

(2) Notwithstanding the provisions of subsection (1), nothing in this section shall be construed so as to deem a record of depositors to be—

(a) a register of members maintained under section 158 of the Companies Act 1965;

(b) a register of debenture holders maintained under section 70 of the Companies Act 1965;

(c) a register of interest holders maintained under section 92 of the Companies Act 1965;

(d) a register of unit holders maintained under section 117 of the Securities Commission Malaysia Act (SCMA) 1993 1993; or

(e) any other register maintained by an issuer in respect of or arising from any other securities issued by the issuer.

(3) Notwithstanding the provisions of subsection (1), an authorised depository agent shall have a lien over unpaid deposited securities purchased for the account of a depositor including all such entitlements to all rights, benefits, powers and privileges and be subject to all such liabilities, duties and obligations that are referred to thereunder, and shall deal with such unpaid deposited securities in accordance with the rules of the stock exchange.

(4) For the purposes of this section, "deposited security" does not include a security specified in the securities account as being in suspense pursuant to section 41 or any regulations made thereunder.

* * *

40 Charging or pledging of securities

(1) Where a deposited security is charged or pledged by a depositor (in this section referred to as "chargor" or pledgor") in favour of any person (in this section referred to as "chargee" or "pledgee"), a central depository or an authorised depository agent, with or through whom the securities account of the depositor is maintained, shall, on a request in writing made by the depositor, chargee or pledgee, as the case may be, transfer or cause to be transferred such security into the securities account of the chargee or pledgee, as the case may be, maintained for such purpose.

(2) Where a request is made by a chargee or pledgee as provided under subsection (1), such request shall be supported by documents evidencing such charge or pledge in his favour.

(3) The securities account maintained by the chargee or pledgee pursuant to subsection (1) shall be designated as the "Pledged Securities Account".

(4) Where a charge or pledge over a deposited security has been discharged or released, the central depository or its authorised depository agent, as the case may be, shall, upon receipt of a notice in writing from the chargee or pledgee confirming the same, transfer the deposited security into the securities account of the chargor or pledgor.

(5) The provisions relating to the transfer or withdrawal of deposited securities shall apply, *mutatis mutandis,* to securities in the Pledged Securities Account.

41 Securities in suspense

(1) A central depository may specify that any deposited security in a securities account as being in suspense in any of the following circumstances:

(a) where the transfer of such security in the name of the central depository or its nominee company has not been, or cannot be, registered by its issuer under section 18;

(aa) where the central depository has reason to believe or is satisfied that there is a breach of the rules of the central depository, stock exchange or recognised clearing house;

(ab) where the central depository has been served with a notice by the Commission that the Commission suspects or has reason

to believe that a provision of a securities law has been contravened and that a securities account of a depositor is relevant to its investigations regarding the contravention;

(b) where the central depository has been served with an order of a Court of competent jurisdiction prohibiting any dealing in respect of a deposited security;

(c) where an order under regulation 8 of the Essential (Protection of Depositors) Regulations 1986 has been made by the Central Bank of Malaysia and published in the *Gazette;*

(e) such other circumstances as may be prescribed by the Minister by regulations made under this Act.

(2) In the case of a security that is specified in the securities account as being in suspense pursuant to subsection (1)—

(a) the rights, benefits, powers and privileges of a depositor; and

(b) the liabilities, duties and obligations of a depositor,

(2) in respect of, or arising from, the suspension of such a security, shall be as prescribed by the Minister by regulations under this Act.

41A Notice of trust

No notice of any trust, expressed, implied or constructive, shall be receivable by the central depository and the central depository or anything done by the central depository in relation to deposited securities shall not be affected by notice of any such trust.

* * *

APPENDIX MY-3

Securities Commission Act, 1993 (Act 498) as amended

Table of Contents

SECURITIES COMMISSION MALAYSIA ACT (SCMA) 1993
1993 (Act 498)

Part I PRELIMINARY

1 Short title and commencement
2 Interpretation
2A References to "this Act" and "securities law"
2B Prescription of securities
2C Regulations on procedure and manner of registration or lodgement
2D Registers
2E Electronic filing of documents

Part II SECURITIES COMMISSION

3 Establishment of the Commission
4 Membership of the Commission
5 Disqualification of members
6 Tenure of office
7 Resignation and revocation
8 Vacation of office
9 Remuneration or allowance
10 Meetings
11 Commission may invite others to meetings
12 Common seal
13 Disclosure of interest
14 Minutes
15 Functions of the Commission
16 Powers of the Commission

17 Delegation of Commission's functions or powers
18 Commission may establish committee
19 Power of the Minister to give directions and require information
20 Appointment of officers and servants of the Commission
21 Regulations with respect to discipline
22 Power to grant loans and make advances to its officers and servants
22A Commission may establish and participate in body corporate

Part III FINANCE

23 The Fund
24 Levies
25 Conservation of the Fund
26 Expenditure to be charged on the Fund
27 Commission's financial year
28 Annual report
29 Accounts
30 Power to borrow
31 Investment

Part IV ISSUES OF SECURITIES AND TAKE-OVERS AND MERGERS

32 Proposals to be submitted to the Commission
32A Classes or categories of transactions or securities not subject to subsection 32 (4)
32B False or misleading statements, etc
33 Definition
33A Malaysian Code on take-overs and mergers
33B Compliance with Code and rulings
33C Exemptions

33D Action by Commission in cases of non-compliance with Code and rulings

33E False or misleading documents, information, etc

34 Compulsory acquisition

34A Right of minority shareholder

34B Application to Court

34C Section 180 of the Companies Act 1965 shall not apply to take-over offers to which subsection 34 (1) applies

35 Definitions

36 Invitation

37 Offer for subscription or purchase

38 Excluded offers and invitations

39 Excluded issues

40 Exceptions

41 Requirement to register prospectuses in relation to securities

42 Registration of prospectus

43 Requirement to lodge prospectus with Registrar

44 Contents of prospectus

45 General duty of disclosure in prospectus

46 Abridged prospectus for renounceable rights issues

47 Supplementary prospectus

48 Consequences of registering a supplementary prospectus

49 Regulations for shelf prospectuses, supplementary shelf prospectuses, short form prospectuses, profile statements, etc

50 Restrictions in advertising

51 Document containing offer of securities for purchase deemed to be a prospectus

52 Allotment of securities where prospectus implies that application for permission to list on stock exchange had been made
53 Consent from person to issue of prospectus containing statement by him
54 Order to stop issue of securities
55 Criminal liability for false statements, etc in prospectus
56 Persons not to be taken to have authorised or caused issue of prospectus
57 Right to recover for loss or damage resulting from false or misleading statement in prospectus, etc
58 Civil liability for misleading or deceptive acts
59 Due diligence defence
60 Reliance on statement and information in respect of false or misleading statement
61 Reliance on statement and information in respect of misleading or deceptive act
62 Reliance on public official statement in respect of false and misleading statement
63 Defence of withdrawal of consent
64 Restriction on offering securities for subscription or purchase
65 Agreements to exclude or restrict liability void
66 Application of Division 4 of Part IV
67 Requirement for trust deed and trustee
68 Form and contents of trust deeds
69 Persons who can be trustees
70 Existing trustee to continue to act until new trustee takes office
71 Replacement of trustee
72 Duties of the borrower

73 Duty of borrower to replace trustee
74 Duty of borrower to inform trustee about charge, etc
75 Duty of borrower to give trustee and Commission quarterly reports
76 Duty of borrower to inform trustee and Commission of occurrence of material event
77 Duty of borrower where prospectus states purpose or project for which moneys are to be applied
78 Obligations of directors of borrower to deliver financial statements
79 Borrower to issue document evidencing indebtedness, etc
80 Duties of guarantors
81 Obligations of directors of guarantor to deliver financial statements
82 Duties of trustees
83 Exemptions and indemnification of trustee from liability
84 Indemnity of trustee
85 Duty of auditor to trustee for debenture holders
86 Duty of borrower to call a meeting
87 Power of trustee to call a meeting
88 Court may order a meeting of debenture holders
89 Powers of Commission to protect interests of debenture holders
90 General power of Court to give directions and determine questions
91 Specific Court powers
92 Register of debenture holders
93 Specific performance
94 Perpetual debentures
95 Reissue of redeemed debentures

96 Definition
97 Requirement for trustee and deed
98 Approval of trustee and management company
99 Persons who can be trustees
100 Existing trustee to continue to act until new trustee takes office
101 Replacement of trustee
102 Registration of deed
103 Contents of deed
104 Modification of deed through supplementary deed
105 Deed to be lodged with Commission
106 Duties of a management company
107 Duty of management company to lodge returns, etc
108 Duty of management company to replace trustee
109 Duties of trustee
110 Duty of trustee to wind up scheme
111 Duties of management company and trustee under general law
112 Exemptions and indemnification of trustee from liability
113 Indemnity of trustee
114 Duty of management company to call meeting of unit holders
115 Power of trustee to call a meeting
116 Court may order a meeting of unit holders
117 Register of unit holders
118 Where register is to be kept
119 Closure and inspection of register
120 Power of Court to rectify register
121 Branch register

122 Rights of trustee, executor, administrator in relation to a deceased unit holder
123 Power of Court to make orders
124 Disapplication of Division 5 of Part IV

PART IVA AGREEMENT OR ARRANGEMENT FOR TRANSFER OF BUSINESS

124A Definitions
124B Application to High Court to Facilitate Agreement or Arrangement for Transfer of Whole or Part of Business of Licensed Persons, Exempt Fund Manager and Exempt Futures Fund Manager

Part V ENFORCEMENT AND INVESTIGATION

125 Appointment of Investigating Officers of the Commission
126 Examination of licensed persons
127 Production of licensed person's books, etc
128 Powers of Investigating Officers of the Commission
129 Procedure by Investigating Officer on seizure of property
130 Procedure by Magistrate in respect of property seized
131 Procedure in respect of property detained in Investigating Officer's custody
132 Surrender of travel documents
133 Forcible entry
134 Power to call for examination
135 Destruction, concealment, mutilation and alteration of records

Part VI GENERAL

136 Conduct of prosecution

137 General penalty
138 Offences by bodies corporate
139 Compounding of offences
140 Protection of informers and information
141 Offences under securities law are seizable offences
142 Duty of Investigating Officer to make over arrested person to the police
143 Detention of arrested person
144 Public servants and public officers
145 Power to engage persons to render assistance
146 Power to review
147 Decision of Commission shall be final
148 Obligation of secrecy
149 Assistance to police or other public officer
150 Assistance to and co-operation with foreign supervisory authorities
151 Power of Commission to require information
152 Disclosure of information to Commission
153 Civil liability of person in contravention of this Act
154 Officers of Commission may represent Commission in civil proceedings
155 Commission may recover loss or damage
156 Reference to conduct
157 Attempts, abetments and conspiracies
158 Written notices, circulars, conditions or guidelines
159 Power to make regulations
160 Indemnity

Part VII REPEAL AND TRANSITIONAL PROVISIONS

161 Repeal
162 Saving
163 Continuance of other rights, liabilities, etc under the repealed sections
164 Continuance of criminal and civil proceedings
165 Transitional and savings
166 Prevention of anomalies

PART I PRELIMINARY

1 Short title and commencement

(1) This Act may be cited as the Securities Commission Malaysia Act (SCMA) 1993 1993.

(2) This Act shall come into force on such date as the Minister may, by notification in the *Gazette,* appoint.

2 Interpretation

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

"appointed day" means the day on which this Act comes into force;

"associate" (Deleted)

"associated person" shall be construed as provided under section 3 of the Securities Industry Act 1983;

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

"Central Bank of Malaysia" means the Central Bank established under the Central Bank of Malaysia Act 1958;

"central depository" means a company approved by the Minister under section 5 of the Securities Industry (Central Depositories) Act 1991—

(a) to establish and operate a system for the central handling of securities, whether or not listed on any stock exchange

(i) whereby all such securities are deposited with and held in custody by, or registered in the name of, the company or its nominee company for the depositors and dealings in respect of these securities are effected by means of entries in securities accounts without the physical delivery of scrips; or

(ii) which permits or facilitates the settlement of securities transactions or dealings in securities without the physical delivery of scrips; andnot listed on any stock exchange—

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

"Chairman" means the Chairman of the Commission appointed under paragraph 4 (1)(a);

"clearing house" means a clearing house, by whatever name or designation, established or arranged to be established by an exchange for the registration of dealing in securities or a clearing house approved under subsection 6B (1) of the Futures Industry Act 1993;

"Commission" means the Securities Commission established under section 3;

"committee" means any committee established by the Commission under section 18;

"company" means a company incorporated pursuant to the Companies Act 1965 or pursuant to any corresponding previous enactment;

"corporation" means any body corporate formed or incorporated or existing within Malaysia or outside Malaysia and includes any foreign company but does not include—

(a) any body corporate that is incorporated within Malaysia and is, by notice of the Minister charged with the responsibility for companies published in the *Gazette,* declared to be a public authority or an instrumentality or agency of the Government of Malaysia or of any State or to be a body corporate which is not incorporated for commercial purposes;

(b) any corporation sole;

(c) any society registered under any written law relating to co-operative societies; or

(d) any trade union registered under any written law as a trade union;

"Court" means—

(a) a High Court established under Article 121 of the Federal Constitution or a Judge of the High Court; or

(b) a Sessions Court or a Magistrate's Court established under section 3 of the Subordinate Courts Act 1948 or a Sessions Court Judge or a Magistrate;

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

(a) any agreement for or with a view to acquiring, disposing of, subscribing for, or underwriting securities; or

(b) any agreement the purpose or avowed purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities;

"debenture" includes debenture stock, bonds, notes and any other evidence of indebtedness of a corporation for borrowed moneys, whether or not constituting a charge on the assets of the corporation, but shall not be construed as applying to any of the following:

(a) any instrument acknowledging or creating indebtedness

for, or for money borrowed to defray the consideration payable under, a contract for sale or supply of goods, property or services or any contract of hire in the ordinary course of business;

(b) a cheque, banker's draft or any other bill of exchange or a letter of credit;

(c) a banknote, an insurance policy or a guarantee;

(d) a statement, passbook or other document showing any balance in a current, deposit or savings account;

(e) any agreement for a loan where the lender and borrower are signatories to the agreement and where the lending of money is in the ordinary course of business of the lender, and any promissory note issued under the terms of such an agreement; or

(f) any instrument or product or class of instruments or products as the Minister may, on the recommendation of the Commission, prescribe by order published in the *Gazette;*

"director" includes a reference to—

(a) a person occupying or acting in the position of director of a corporation, by whatever name called and whether or not validly appointed to occupy, or duly authorised to act in, the position;

(b) a person in accordance with whose directions or instructions the directors of a corporation are accustomed to act;

(c) an alternate or substitute director; or

(d) in the case of a corporation formed or incorporated or existing outside Malaysia—

(i) a member of the corporation's board of directors or governing body;

(ii) a person occupying or acting in the position of a member of the corporation's board, by whatever name called and whether or not validly appointed to occupy, or duly authorised to act in, the position; or

(iii) a person in accordance with whose directions or instructions the members of the corporation's board are accustomed to act;

"document" has the same meaning as in the Evidence Act 1950 (Act 56;)

"exchange" means a stock exchange established under subsection 8(2) of the Securities Industry Act 1983 or an exchange company;

"exchange company" means a company established under subsection 4(1) of the Futures Industry Act 1993;

"exempt dealer" has the same meaning as in the Securities Industry Act 1983;

"Fund" means the fund established under section 23;

"futures contract" has the same meaning as in the Futures Industry Act 1993;

"futures exchange" (Deleted)

"futures market" has the same meaning as in the Futures Industry Act 1993;

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

"issue" means—

(a) in relation to securities, to bring or cause to be brought into existence those securities; and

(b) in relation to a notice, prospectus or other document, to circulate, distribute or disseminate such notice, prospectus or document;

"issuer" means—

(a) in the case of shares or debentures, the corporation whose shares or debentures are being issued, offered for subscription or purchase or in respect of which an invitation to subscribe or purchase has been made;

(b) in the case of units of a unit trust scheme or prescribed investment scheme, the management company;

(c) in the case of any other securities, the person making available, issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, such securities;

"futures option transaction" (Deleted)

"licence" means any licence issued under Part IV of the Securities Industry Act 1983 or Part III of the Futures Industry Act 1993;

"licensed institution" means any institution licensed or deemed to be licensed under subsection 6 (4) of the Banking and Financial Institutions Act 1989;

"licensed person" means a person licensed under Part IV of the Securities Industry Act 1983 or Part III of the Futures Industry Act 1993;

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

"management company" means a company by which or on whose behalf a unit of a unit trust scheme or prescribed investment scheme has been or is proposed to be issued or offered for subscription or purchase or in respect of which an invitation to subscribe or purchase has been made and includes any person for the time being exercising the functions of the management company;

"member company" has the same meaning as in the Securities Industry Act 1983;

"Minister" means the Minister for the time being charged with the responsibility for finance;

"officer" means any officer or servant appointed under section 20 and includes an Investigating Officer of the Commission appointed under section 125;

"official list", in relation to a stock market of a stock exchange, means a list specifying all securities which have been admitted for quotation on the stock market of the stock exchange;

"prescribed", where no manner of prescribing is provided, means prescribed from time to time by regulations or order published in the Gazette;

"prescribed investment" means an interest as defined under subsection 84(1) of the Companies Act 1965 (Act 125) that has been exempted under section 96 of the Companies Act 1965 and in respect of which the Minister has made a prescription under subsection 2B(3);

"prescribed investment scheme" means an undertaking, scheme, enterprise, contract or arrangement in relation to a prescribed investment;

"record" includes record stored or recorded by means of a computer;

"Registrar" means the Registrar of Companies under the Companies Act 1965 and includes any Regional, Deputy or Assistant Registrar of Companies;

"registered person" (Deleted)

"stock exchange" means any body corporate which has been approved by the Minister under subsection 8 (2) of the Securities Industry Act 1983;

"stock market" has the same meaning as in the Securities Industry Act 1983;

"securities" means—

(a) debentures, stocks or bonds issued or proposed to be issued by any government;

(b) shares in or debentures of, a body corporate or an unincorporated body; or

(c) unit trusts or prescribed investments,

and includes any right, option or interest in respect thereof;

"securities laws" means the Securities Industry Act 1983, the Securities Industry (Central Depositories) Act 1991, the Securities Commission Malaysia Act (SCMA) 1993 1993 and the Futures Industry Act 1993;

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

"trade", in relation to futures contracts, has the same meaning as in the Futures Industry Act 1993;

"unit", in relation to a unit trust scheme or prescribed investment scheme, means any right or interest therein by whatever name called and includes any sub-unit thereof;

"unit holder" means the unit holder of a unit trust scheme or prescribed investment scheme, as the case may be;

"unit trust scheme" means any arrangement made for the purpose, or having the effect, of providing facilities for the participation of persons as beneficiaries under a trust in profits or income arising from the acquisition, holding, management or disposal of—

(I) securities;

(ii) futures contracts; or

(iii) any other property;

"unlisted recreational club" means a corporation which provides the holders of its shares or debentures the right to use or enjoy any recreational, holiday or other related facilities and whose shares or debentures are not listed or proposed to be listed for quotation on any stock market of a stock exchange.

(2) The Minister, on the recommendation of the Commission, may from time to time by order published in the *Gazette,* vary, delete, add to, substitute for, or otherwise amend Schedule 2, Schedule 3 or any prescription made under paragraph 38(1)(b) or 39(1)(b), as the case may be, and upon such publication, Schedule 2, Schedule 3 or the prescription, as varied, deleted, added to, substituted for or otherwise amended, shall come into full force and effect and shall be deemed to be an integral part of this Act as from the date of such publication, or from such later date as may be specified in the order.

2A References to "this Act" and "securities law"

Any reference in this Act to "this Act" or a "securities law" shall, unless otherwise expressly stated, include a reference to any regulations, rules, orders, notifications or other subsidiary legislation made under this Act or a securities law, as the case may be.

2B Prescription of securities

(1) Notwithstanding the definition of "securities" under this Act, "futures contract" under the Futures Industry Act 1993 and "interest" as defined in subsection 84(1) of the Companies Act 1965, the Minister may, on the recommendation of the Commission, by order published in the *Gazette,* prescribe any instrument or product or class of instruments or products to be—

(a) securities for the purposes of this Act or the Securities Industry Act 1983 or any particular provision of this Act or the Securities Industry Act 1983; or

(b) futures contracts for the purposes of this Act or the Futures Industry Act 1993 or any particular provision of this Act or the Futures Industry Act 1993.

(2) Where an exemption has been granted under section 96 of the Companies Act 1965, the Minister may, on the recommendation of the Commission, by order published in the *Gazette,* prescribe an exempted interest or a class or category of exempted interests to be—

(a) securities for the purposes of this Act or the Securities Industry Act 1983 or any particular provision of this Act or the Securities Industry Act 1983; or

(b) a futures contract for the purposes of this Act or the Futures Industry Act 1993 or any particular provision of this Act or the Futures Industry Act 1993.

(3) Where the Minister has made a prescription under subsection (1) or (2) in respect of securities or futures contracts, the Minister may prescribe—

(a) in the case of securities, any provision of Part IV to apply to such securities;

(b) in the case of futures contracts, any provision of the Futures Industry Act 1993 to apply to such a futures contract.

(4) For the purposes of this section, "interest" means an interest as defined in subsection 84(1) of the Companies Act 1965.

2C Regulations on procedure and manner of registration or lodgement

Where any instrument or document is required to be registered by or lodged with the Commission under this Act, the Commission, with the approval of the Minister, may make such regulations as may be expedient or necessary relating to the procedure or manner of registration or lodgement of such instrument or document.

2D Registers

(1) The Commission may keep such registers as it considers necessary in such form as it deems fit.

(2) Any person may, on payment of the prescribed fee—

(a) inspect any prospectus or deed relating to a unit trust scheme or prescribed investment scheme that is lodged with the Commission; or

(b) require a copy of or extract from any document that he is entitled to inspect pursuant to paragraph (a).

(3) If a reproduction or transparency of a document is produced for inspection, a person is not entitled pursuant to paragraph (2)(a) to require the production of the original of that document.

(4) The reference in paragraph (2)(b) to a document includes, where a reproduction or transparency of that document has been incorporated with a register kept by the Commission, a reference to that reproduction or transparency and where such a reproduction or transparency has been so incorporated, a person is not entitled pursuant to that paragraph to a copy of or extract from the original of that document.

(5) A copy of or extract from any document, including a copy produced by way of microfilm, lodged with the Commission and certified to be a true copy or extract by any officer authorised by the Commission shall in any proceedings be admissible in evidence as of equal validity with the original document.

(6) A reference in subsection (5) to a document includes, where a reproduction or transparency of that document has been incorporated with a register kept by the Commission, a reference to that reproduction or transparency.

2E Electronic filing of documents

(1) The Commission may provide a service for the electronic filing

or lodging of documents required by this Act to be filed or lodged with the Commission.

(2) A person who intends to use the service provided under subsection (1) shall become a subscriber to the service by paying the prescribed fee and by complying with such terms and conditions as may be determined by the Commission.

(3) Only a subscriber to the service provided under subsection (1) may electronically file or lodge documents with the Commission.

(4) A document electronically filed or lodged under this section shall be deemed to have satisfied the requirement for filing or lodgement if the document is communicated or transmitted to the Commission in such manner as may be prescribed by regulations or approved by the Commission.

(5) The Commission may specify the documents that may be electronically filed or lodged.

(6) A document that is required to be stamped, signed or sealed shall, if it is to be electronically filed or lodged, be certified or authenticated in such manner as may be prescribed by regulations or approved by the Commission.

(7) A copy of or an extract from any document electronically filed or lodged with the Commission under subsection (1), supplied or issued by the Commission and certified to be a true copy thereof or extract therefrom by any officer authorised by the Commission, shall be admissible in evidence in any proceedings as of equal validity as the original document.

(8) Where a document is electronically filed or lodged with the Commission, the Commission or its authorised agents shall not be liable for any loss or damage suffered by any person by reason of any error or omission, of whatever nature or however arising, appearing in any document obtained by any person under the service referred to in subsection (1) if such error or omission was made in good faith and in the ordinary course of the discharge of the duties of the Commission or of its authorised agents or occurred or arose as a result of any defect or breakdown in the service or in the equipment used for the provision of the service.

PART II SECURITIES COMMISSION

3 Establishment of the Commission

There is hereby established a body corporate by the name of "Securities Commission" with perpetual succession and a common seal, and which may sue and be sued in its corporate name and, subject to and for the purposes of this Act, may enter into contracts and may acquire, purchase, take, hold and enjoy movable and immovable property of every description and may convey, assign, surrender, yield up, charge, mortgage, demise, reassign, transfer or otherwise dispose of, or deal with, any movable or immovable property or any interest vested in the Commission upon such terms as it deems fit.

4 Membership of the Commission

(1) The Commission shall consist of the following members who shall be appointed by the Minister;

(a) a Chairman, who shall be an Executive Chairman;
(b) four members representing the Government; and
(c) four other persons.

(2) The Chairman shall be entrusted with the day-to-day administration of the Commission.

(3) In the event of the Chairman being absent or unable to act due to illness or any other cause, the Minister shall appoint any member of the Commission to carry out the functions of the Chairman.

5 Disqualification of members

No person shall be appointed to be or shall remain as a member of the Commission who holds full-time office in any public listed company.

6 Tenure of office

Subject to such conditions as may be specified in his instrument of appointment, a member of the Commission shall hold office for a term not exceeding three years and is eligible for reappointment.

7 Resignation and revocation

(1) The appointment of any member may at any time be revoked by the Minister.

(2) A member may at any time resign his office by a written notice addressed to the Minister.

8 Vacation of office

The office of a member of the Commission shall be vacated—

(a) if he dies;
(b) if he has been convicted of any offence under the law;
(c) if he becomes bankrupt;
(d) if he is of unsound mind or is otherwise incapable of discharging his duties; or
(e) if he absents himself from three consecutive meetings of the Commission without leave of the Chairman.

9 Remuneration or allowance

Members of the Commission or any other person invited to attend any meeting or deliberation of the Commission under section 11 may be paid such remuneration or allowance as the Minister may determine.

10 Meetings

(1) The Commission shall meet as often as may be necessary for the performance of its functions.

(2) The quorum of the Commission shall be five.

(3) Subject to the provisions of this Act, the Commission shall determine its own procedure.

11 Commission may invite others to meetings

The Commission may invite any person to attend any meeting or deliberation of the Commission for the purpose of advising it on any

matter under discussion, but any person so attending shall have no right to vote at the said meeting or deliberation.

12 Common seal

(1) The Commission shall have a common seal and such seal may from time to time be broken, changed, altered and made anew as the Commission may think fit.

(2) Until a seal is provided by the Commission, a stamp bearing the words "Securities Commission" may be used and shall be deemed to be the common seal of the Commission.

(3) The common seal shall be kept in the custody of the Chairman or such other person as may be authorised by the Commission, and shall be authenticated by either the Chairman or such authorised person or by any officer authorised by the Chairman in writing; and all deeds, documents and other instruments purporting to be sealed with the said seal, authenticated as aforesaid, shall, until the contrary is proven, be deemed to have been validly executed:

Provided that any document or instrument which, if executed by a person not being a body corporate, would not be required to be under seal may in like manner be executed by the Commission, and any such document or instrument may be executed on behalf of the Commission by any officer or servant of the Commission generally or specifically authorised by the Commission in that behalf.

(4) The common seal of the Commission shall be taken judicial notice of for all official purposes.

13 Disclosure of interest

(1) A member of the Commission or any committee who has or acquires a direct or indirect interest in relation to any matter under discussion by the Commission or committee shall disclose to the Commission or committee, as the case may be, the existence of his interest and nature thereof.

(2) (Deleted)

(3) A disclosure under subsection (1) shall be recorded in the minutes of the Commission or committee, as the case may be, and, after the disclosure, the member—

(a) shall not take part nor be present in any deliberation or decision of the Commission or committee, as the case may be; and

(b) shall be disregarded for the purpose of constituting a quorum of the Commission or committee, as the case may be, relating to the matter.

(4) Any member of the Commission or committee who fails to disclose his interest as provided under subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term not exceeding five years or to both.

(5) No act or proceedings of the Commission or committee shall be invalidated on the ground that any member of the Commission or committee has contravened the provisions of this section.

(6) (Deleted)

14 Minutes

(1) The Commission or committee shall cause minutes of all their meetings to be maintained and kept in a proper form.

(2) Any minutes made of meetings of the Commission or committee, if duly signed, shall, in any legal proceedings, be admissible as prima facie evidence of the facts stated therein and every meeting of the Commission or committee in respect of the proceedings of which minutes have been so made shall be deemed to have been duly convened and held and all members thereat to have been duly qualified to act.

15 Functions of the Commission

(1) The Commission shall have the following functions:

(a) to advise the Minister on all matters relating, to securities and futures industries;

(b) to regulate all matters relating to securities and futures contracts;

(c) to ensure that the provisions of the securities laws are complied with;

(d) to regulate the take-overs and mergers of companies;

(e) to regulate all matters relating to unit trust schemes;

(f) to be responsible for supervising and monitoring the activities of any exchange, clearing house and central depository;

(g) to take all reasonable measures to maintain the confidence of investors in the securities and futures markets by ensuring adequate protection for such investors;

(h) to promote and encourage proper conduct amongst members of the exchanges, clearing houses, central depository and all licensed persons;

(i) to suppress illegal, dishonourable and improper practices in dealings in securities and trading in futures contracts, and the provision of investment advice or other services relating to securities or futures contracts;

(j) to consider and make recommendations for the reform of the law relating to securities and futures contracts;

(k) to encourage and promote the development of securities and futures markets in Malaysia including research and training in connection thereto;

(l) to encourage and promote self-regulation by professional associations or market bodies in the securities and futures industries;

(m) to license and supervise all licensed persons as may be provided for under any securities law;

(n) to promote and maintain the integrity of all licensed persons in the securities and futures industries.

(2) (Deleted)

(3) The Commission shall have the functions and powers conferred upon it by or under the securities laws.

(4) Nothing in paragraph (1)(l) shall limit or otherwise affect the functions of the Commission.

16 Powers of the Commission

The Commission shall have all such powers as may be necessary for or in connection with, or reasonably incidental to, the performance of its functions under the securities laws.

17 Delegation of Commission's functions or powers

(1) The Commission may delegate any of its functions or powers, other than its power under section 159, to—

(a) any of the members of the Commission;

(b) any committee established by the Commission; or

(c) any employee of the Commission.

(2) A delegation under this section shall not prevent the concurrent performance or exercise by the Commission of the functions or powers delegated.

18 Commission may establish committee

(1) The Commission may establish such committee as it considers necessary or expedient to assist it in the performance of its functions under this Act.

(2) The Commission may appoint any person to be a member of any committee established under subsection (1).

(3) A committee established under this section may elect any of its members to be chairman and may regulate its own procedure and, in the exercise of its powers under this subsection, such committee shall be subject to and act in accordance with any direction given to the committee by the Commission.

(4) Meetings of a committee established under this section shall be held at such times and places as the chairman of the committee may, subject to subsection (3), determine.

(5) A committee may invite any person for the purpose of advising it on any matter under discussion to attend any meeting of the committee but the person so invited shall not be entitled to vote at any such meeting.

(6) The members of a committee or any person invited to attend any meeting of a committee may be paid such allowances and other expenses as the Commission may determine.

(7) Section 5 shall apply to a member of a committee established under this section in the same manner as it applies to a member of the Commission.

19 Power of the Minister to give directions and require information

(1) The Minister may, from time to time, give to the Commission directions of a general character not inconsistent with this Act relating to the Commission's functions and such directions shall be binding on the Commission.

(2) The Commission shall furnish the Minister with such returns, accounts and information with respect to the performance of any of its functions under the securities laws as the Minister may from time to time require.

20 Appointment of officers and servants of the Commission

(1) The Commission may from time to time employ persons who shall be paid such remuneration and allowances and shall hold their employment on such other terms and conditions as the Commission shall determine.

(2) The Commission may make arrangements for the payment to its officers and servants and their dependants of such retirement benefits, gratuities or other allowances as it may determine.

21 Regulations with respect to discipline

(1) The Commission may from time to time, make regulations with respect to the discipline of its officers and servants.

(2) The regulations made under this section may include provisions for—

(a) the interdiction with reduction in salary or in other remuneration; and

(b) the suspension without salary or other remuneration,

(2) of an officer or servant of the Commission during the pendency of disciplinary proceedings against him.

(3) The regulations made under this section shall, in prescribing the procedure for disciplinary proceedings, provide for an opportunity for representations to be made by the person against whom the disciplinary proceedings are taken before a decision is arrived at by the Commission on the disciplinary charge laid against such person.

22 Power to grant loans and make advances to its officers and servants

(1) The Commission may grant loans and make advances, including study loans and scholarships, to its officers and servants or to other persons on such terms and conditions as the Commission may determine.

(2) In this section, the term "officers and servants" includes the Chairman.

22A Commission may establish and participate in body corporate

The Commission may, with the approval of the Minister, establish and participate in any body corporate for the purpose of promoting research and training in relation to the securities and futures industries.

PART III FINANCE

23 The Fund

(1) There is hereby established, for the purposes of this Act, a fund to be administered and controlled by the Commission.

(2) The Fund shall consist of—

(a) such sums as may be provided from time to time for the purposes of this Act by Parliament;

(b) sums borrowed by the Commission for the purposes of meeting any of its obligations or discharging any of its duties;

(c) levies payable under section 24;

(d) fees or other charges imposed by the Commission; and

(e) all other sums or property which may in any manner become payable to or vested in the Commission in respect of any matter incidental to its functions and powers.

24 Levies

(1) In the case of every purchase and sale of securities recorded on the stock exchange or notified to it under its rules, the purchaser and the seller shall each of them be liable to pay to the Commission a levy at such rate as may be specified by order of the Minister to be published in the *Gazette* as a percentage of the consideration for such purchase and sale; and different rates may be specified in respect of different classes of securities.

(2) In the case of every futures contract effected on a futures market of an exchange company, the person in the short position and the person in the long position in relation to futures contracts shall be liable to pay to the Commission a levy of such amount as may be specified by order of the Minister to be published in the *Gazette;* and different amounts may be specified in respect of different types or classes of futures contracts or different classes or categories of persons in respect of futures contracts.

(3) The exchanges shall collect and account to the Commission for the levy referred to in subsections (1) and (2).

(4) The amount of any levy payable under this section shall be recoverable as a civil debt due to the Commission.

(5) The Minister may make rules providing for—

(a) the payment of the levies under this section; and

(b) the keeping, examination and audit of the accounts of the exchanges relating to the collection of such levies.

(6) For the purposes of this section, the terms "short position" and "long position" have the same meanings as in the Futures Industry Act 1993.

25 Conservation of the Fund

It shall be the duty of the Commission to conserve the Fund by so performing its functions and exercising its powers under this Act as to secure that the total revenues of the Commission are sufficient to meet all sums properly chargeable to its revenue account including depreciation and interest on capital taking one year with another.

26 Expenditure to be charged on the Fund

The Fund shall be expended for the purpose of—

(a) paying any expenditure lawfully incurred by the Commission including legal fees and costs and other fees and costs, and the remuneration of officers and servants appointed and employed by the Commission, including the granting of loans, superannuation allowances or gratuities;

(b) paying any other expenses, costs or expenditure properly incurred or accepted by the Commission in the performance of its functions or the exercise of its powers under this Act;

(c) purchasing or hiring equipment, machinery and any other materials, acquiring land and erecting buildings, and carrying out any other works and undertakings in the performance of its functions or the exercise of its powers under this Act;

(d) repaying any moneys borrowed under this Act and the interest due thereon; and

(e) generally, paying any expenses for carrying into effect the provisions of this Act.

27 Commission's financial year

The financial year of the Commission shall begin on the first day of January and end on the thirty-first day of December of each year.

28 Annual report

The Commission shall, as soon as practicable after the end of each financial year, prepare a report on its activities during that financial year and send a copy of the report to the Minister who shall cause a copy thereof to be laid before both Houses of Parliament.

29 Accounts

(1) The Commission shall cause proper accounts of the funds to be kept and shall, as soon as practicable after the end of each financial year, cause to be prepared for that financial year a statement of accounts of the Commission which shall include a balance sheet and an account of income and expenditure.

(2) The Commission shall cause the statement of accounts to be audited by auditors appointed by the Commission.

(3) The Commission shall as soon as possible send a copy of the statement of accounts certified by the auditors and a copy of the auditor's report to the Minister who shall cause them to be laid before both Houses of Parliament.

(4) The Statutory Bodies (Accounts and Annual Reports) Act 1980 shall not apply to the Commission.

30 Power to borrow

The Commission may from time to time, with the approval of the Minister, borrow, at such rate of interest and for such period and upon such terms as to the time and method of repayment and otherwise as the Minister may approve, any sums required by the Commission for meeting any of its obligations or performing any of its functions.

31 Investment

The moneys of the Commission shall, in so far as they are not required to be expended by the Commission under this Act, be invested in such manner as the Commission deems fit.

PART IV ISSUES OF SECURITIES AND TAKE-OVERS AND MERGERS

Division 1 Proposals In Relation To Securities

32 Proposals to be submitted to the Commission

(1) In this Division and Schedule 1—

"an applicant" means any person referred to in subsection 32 (2);

"Central Bank of Malaysia"

"expert" includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him;

"officer", in relation to a corporation, includes—

(a) a director, a secretary, an executive officer or an employee of the corporation;

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

(c) a liquidator of the corporation appointed in a voluntary winding up of the corporation,

but does not include a receiver who is not also a manager, a receiver and manager appointed by a Court and a liquidator appointed by a Court;

"private company" and "public company" have the same meanings as in subsection 4 (1) of the Companies Act 1965;

"proposal" means a proposal referred to in subsection 32 (2).

(2) This section applies to a person who proposes to do any of the following:

(a) make available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase securities in Malaysia;

(b) make available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase, outside Malaysia, securities of a public company, or to list such securities on a securities exchange outside Malaysia;

(c) make a bonus issue of securities of a public company other than by way of the capitalization of unappropriated profits;

(d) by way of issue of securities, effect—

(i) a compromise or arrangement whether or not for the purposes of or in connection with a scheme, compromise or arrangement for the amalgamation of any two or more corporations or for reconstruction of any corporation;

(ii) an employee share or employee share option scheme; or

(iii) an acquisition of securities or assets;

(e) apply for the listing of a corporation, or for the quotation of securities, on a stock market of a stock exchange;

(f) distribute the assets of a public company to its members other than distribution in cash or distribution of assets to members of the public company on its winding up; or

(g) acquire or dispose assets (whether or not by way of issue of securities) which results in a significant change in the business direction or policy of a listed public company.

(3) An applicant shall submit to the Commission such documents and such other information in relation to the proposal in such form and manner and at such times as the Commission may require.

(4) Subject to section 32A, no person referred to in subsection (2) shall implement or carry out a proposal unless the Commission has approved the proposal under this section.

(5) The Commission may—

(a) approve a proposal subject to such terms and conditions as it deems fit;

(b) approve a proposal with such revisions and subject to such terms and conditions as it deems fit; or

(c) reject a proposal.

(6) A person who contravenes or fails to comply with any term or condition in relation to an approval given under paragraph (5)(a) or (b) shall be guilty of an offence.

(7) Where the Commission is satisfied that—

(a) there is a contravention of subsection 32B (1); or

(b) there is a breach of any term or condition imposed under paragraph (5)(a) or (b); or

(c) there is any change or development in the circumstances relating to a proposal occurring subsequent to the Commission giving its approval under subsection (5), and if such change or development, if known to the Commission prior to the approval, would have affected its decision as regards the proposal,

(7) the Commission may—

(aa) revoke an approval given under subsection (5);

(bb) revise an approval; or

(cc) impose such further terms or conditions in relation to a proposal approved by it under subsection (5):

Provided that the Commission may only revoke or revise such approval or impose such further terms and conditions where such revocation, revision or imposition shall not affect the rights of third parties that may have been created by or arising from the carrying out or implementation of a proposal in accordance with an approval given under subsection (5).

(8) The Commission shall give a written notice to an applicant of its intention to take action under subsection (7) and shall give the applicant an opportunity to be heard prior to it taking any action under subsection (7).

(9) Where the Commission has granted its approval to a proposal under subsection (5)—

(a) if registration of a prospectus is required under this Act in connection with the proposal, the prospectus shall include a statement that the Commission has approved the proposal pursuant to this section and that the Commission's approval of the proposal shall not be taken to indicate that the Commission recommends the proposal; or

(b) if registration of a prospectus is not required under this Act in connection with the proposal, the applicant shall include in any document issued with respect to the proposal, in such form as the Commission may require, a statement that the Commission has approved the proposal pursuant to this section and that the Commission's approval of the proposal shall not be taken to indicate that the Commission recommends the proposal.

(10) Where—

(a) a person enters into an agreement in respect of a proposal; and

(b) the terms of the agreement are not binding until the fulfillment of any condition as may be set out in the agreement, including that of the approval to be given under subsection (5),

(10) the person shall not be taken, for the purposes of subsection (4), to have taken any step to implement or carry out the proposal.

(11) In respect of any proposal referred to in subsection 32 (2)—

(a) the Commission may direct an applicant to make an announcement of a proposal in accordance with the rules of the stock exchange, if applicable; and

(b) any person may make an announcement of a proposal before submitting such proposal to the Commission for its approval under this section.

(12) For the purpose of subsection (11), an "announcement" includes any publication by press notice or in any other form of a firm intention to make an offer for any securities.

(13) Any person who contravenes subsection (3), (4), (9) or (11) shall be guilty of an offence and shall on conviction be punished with a fine not exceeding one million ringgit or imprisonment for a term not exceeding ten years or both.

32A Classes or categories of transactions or securities not subject to subsection 32 (4)

(1) Subsection 32 (4) shall not apply to the following:

(a) such classes or categories of securities or classes or categories of transactions as specified in Schedule 1;

(b) the making available, offering for subscription or purchase, or issuing an invitation to subscribe for or purchase securities as may be prescribed by the Minister on the basis of the manner or total value thereof or the characteristics, types or numbers of investors in relation thereto;

(c) such categories or classes of securities as may be prescribed by the Minister.

(2) In making any prescription under subsection (1) or in making any order under subsection (4), the Minister shall have regard to the interests of the public.

(3) Any prescription made under this section shall be subject to any condition, restriction or limitation as the Minister may impose.

(4) The Minister may, from time to time by order published in the Gazette, vary, delete, add to, substitute for, or otherwise amend Schedule 1 and upon such publication, Schedule 1 as varied, deleted, added to, substituted for or otherwise amended, shall come into full force and effect and shall be deemed to be an integral part of this Act as from the date of such publication, or from such later date as may be specified in the order.

32B False or misleading statements, etc

(1) Where any statement or information is required to be submitted

to the Commission under this Division in relation to or in connection with any proposal submitted pursuant to section 32—

(A) an applicant, any of its officers or associates;

(B) a financial adviser or an expert; or

(C) any other person,

shall not—

(aa) submit or cause to be submitted any statement or information that is false or misleading;

(bb) submit or cause to be submitted any statement or information from which there is a material omission; or

(cc) engage in or aid or abet conduct that he knows to be misleading or deceptive or is likely to mislead or deceive the Commission.

(2) It shall be a defence to a prosecution or any proceeding for a contravention of subsection (1) if it is proved that the defendant, after making enquiries as were reasonable in the circumstances, had reasonable grounds to believe, and did until the time of the making of the statement or provision of the information or engaging in the conduct, was of the belief that—

(a) the statement or information was true and not misleading;

(b) the omission was not material;

(c) there was no material omission; or

(d) the conduct in question was not misleading or deceptive.

(3) Where—

(a) a statement or information referred to in subsection (1) has been submitted or provided to the Commission, or a conduct referred to in subsection (1) has been engaged in; and

(b) a person referred to in that subsection becomes aware before the proposal has been fully implemented or carried out—

(i) that the statement or information may be false or misleading or materially incomplete; or

(ii) that the conduct may tend to mislead or deceive,

(3) the person shall forthwith advise the Commission of the facts referred to in subparagraph (b)(i) or (b)(ii), where applicable, and shall take such action as the Commission may require pursuant to subsection 32 (7).

(4) A person who contravenes subsection (1) or subsection (3) shall be guilty of an offence and shall on conviction be punished with a fine not exceeding three million ringgit or imprisonment for a term not exceeding ten years or both.

Division 2 Take-Overs, Mergers And Compulsory Acquisitions

33 Definition

(1) In this Division—

"acquirer" means—

(i) a person who acquires or proposes to acquire control in a company whether the acquisition is effected by the person or by an agent; or

(ii) two or more persons who, acting in concert with one another, acquire or propose to acquire control in a company, whether the acquisition is effected by the persons or by an agent;

"Code" means the Malaysian Code on Take-Overs and Mergers made in accordance with section 33A;

"company", in relation to a company being taken over, means a public company, whether or not it is listed on any stock exchange, and includes such private company as the Commission may determine;

"control", in relation to an acquisition of shares, means the acquisition or holding of, or entitlement to exercise or control the exercise of, voting shares of more than thirty-three per centum in a company;

"dissenting shareholder" includes any shareholder who has not accepted a take-over offer and any shareholder who has failed or refused to transfer shares to an acquirer in accordance with a take-over offer;

"expert" includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him;

"offeree" means a company whose voting shares are subject to a take-over offer;

"offeror" means a person who makes a takeover offer;

"officer", in relation to a corporation, includes—

(i) a director, secretary, executive officer or employee of the corporation;

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

(iii) a liquidator of the corporation appointed in a voluntary winding up of the corporation,

but does not include a receiver who is not also a manager, a receiver and manager appointed by a Court and a liquidator appointed by a Court;

"private company" and "public company" have the same meanings as in subsection 4 (1) of the Companies Act 1965;

"related", in relation to a corporation, means related within the meaning of section 6 of the Companies Act 1965;

"take-over offer", in relation to a company, means an offer made to acquire all or part of the voting shares, or any class or classes of voting shares, in the company;

"voting shares", in relation to a company, has the same meaning as in subsection 4 (1) of the Companies Act 1965.

(2) For the purposes of this Division, a reference to "persons acting in concert" shall be construed as a reference to persons who, pursuant to an agreement, arrangement or understanding, co-operate to—

(a) acquire jointly or severally voting shares of a company for the purpose of obtaining control of that company; or

(b) act jointly or severally for the purpose of exercising control over a company.

(3) Without prejudice to the generality of subsection (2), the following persons shall be presumed to be persons acting in concert unless the contrary is established:

(a) a corporation and its related and associate corporations;

(b) a corporation and any of its directors, or the parent, child, brother or sister of any of its directors, or the spouse of any such director or any such relative, or any related trusts;

(c) a corporation and any pension fund established by it;

(d) a person and any investment company, unit trust or other fund whose investments such person manages on a discretionary basis;

(e) a financial adviser and its client which is a corporation, where the financial adviser manages on a discretionary basis the corporation's funds and has ten per centum or more of the voting shares in that corporation; and

(f) a person who owns or controls twenty per centum or more of the voting shares of a corporation falling within paragraph (a) and any parent, child, brother or sister of such person, or the spouse of such person or any such relative, or any related trusts together with one or more persons falling within paragraph (a).

(4) For the purposes of subsection (2), an agreement, arrangement or understanding means an agreement, arrangement or understanding whether formal or informal, whether written or oral, whether express or implied or whether or not having legal or equitable force.

(5) For the purposes of paragraph (3)(a), an associated corporation means a corporation in respect of which not less than twenty per centum of the voting shares of that corporation are held by another corporation, the first-mentioned corporation thereby being an associate corporation of the other corporation.

33A Malaysian Code on take-overs and mergers

(1) The Minister may, on the recommendation of the Commission, prescribe a Code which shall be published in the *Gazette*.

(2) The Minister may, from time to time on the recommendation of the Commission, amend any of the provisions of the Code and any amendment thereto shall be published in the *Gazette*.

(3) The Code shall contain principles and rules governing the conduct of all persons or parties involved in a take-over offer, merger or compulsory acquisition, including an acquirer, offeror, offeree and their officers and associates.

(4) The Commission shall administer the Code according to the objectives specified in subsection (5) and may do all such things as may be necessary or expedient to give full effect to the provisions of this Division and the Code; and without limiting the generality of the foregoing, may—

(a) issue rulings from time to time, interpreting the Code;

(b) issue rulings on the practice and conduct of persons involved in or affected by any take-over offer, merger or compulsory

acquisition, or in the course of any take-over, merger or compulsory acquisition; and

(c) enquire into any matter relating to any take-over offer, merger or compulsory acquisition whether potential or otherwise, and for this purpose, may issue public statements as the Commission deems fit with respect thereto.

(5) In making any recommendation under subsections (1) and (2), and in administering the Code and exercising its powers under this Act, the Commission shall take into account the desirability of ensuring that the acquisition of voting shares or control of companies takes place in an efficient, competitive and informed market and, without limiting the generality of the foregoing, shall have regard to the need to ensure—

(a) that the shareholders and directors of an offeree and the market for the shares that are the subject of the take-over offer—

(i) are aware of the identity of the acquirer and offeror;

(ii) have reasonable time in which to consider a take-over offer; and

(iii) are supplied with sufficient information necessary to enable them to assess the merits of any take-over offer;

(b) that, so far as practicable, all shareholders of an offeree have equal opportunities to participate in benefits accruing from the take-over offer, including in the premium payable for control;

(c) that fair and equal treatment of all shareholders, in particular, minority shareholders, in relation to the take-over offer, merger or compulsory acquisition would be achieved; and

(d) in its response to, or making recommendations with respect to any take-over offer, merger or compulsory acquisition, the directors of the offeree and acquirer shall act in good faith to observe the objects, and the manner in which they observe the objects, specified in this subsection, and that minority shareholders are not subject to oppression or disadvantaged by the treatment and conduct of the directors of the offeree or the acquirer.

33B Compliance with Code and rulings

(1) A person who makes a take-over offer shall do so in accordance with the provisions of the Code and any ruling made under subsection 33A (4).

(2) Subject to section 33C, an acquirer who has obtained control in a company shall make a take-over offer, other than in respect of voting shares of the company which at the date of the offer are already held by the acquirer or which the acquirer is entitled to exercise, in accordance with the provisions of the Code and any ruling made under subsection 33A (4).

(3) Subject to section 33C, an acquirer who has obtained more than thirty-three per centum of the voting shares in a company but less than fifty per centum of voting shares in that company, shall not acquire any additional voting shares in that company, except in accordance with the provisions of the Code and any ruling made under subsection 33A (4).

(4) Any person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and shall on conviction be punished with a fine not exceeding one million ringgit or imprisonment for a term not exceeding ten years or both.

33C Exemptions

(1) Subject to subsection 33A (5), the Commission may grant exemption in writing to any particular person or take-over offer or to any particular class, category or description of persons or take-over offers from the provisions of this Division, the Code and any ruling made under subsection 33A (4).

(2) Any exemption granted under subsection (1) may be subject to any conditions, restrictions or limitations as may be imposed by the Commission.

33D Action by Commission in cases of non-compliance with Code and rulings

(1) Where any person who is under an obligation to comply with, observe or give effect to the provisions of the Code or any ruling made under subsection 33A (4), fails to comply with, observe or give effect to any such provision of the Code or ruling (hereinafter referred to as the "defaulting person"), the Commission may take one or more of the following actions:

(a) direct the defaulting person to comply with, observe or give effect to any such provision of the Code or ruling;

(b) impose a penalty not exceeding two hundred and fifty thousand ringgit on the defaulting person;

(c) reprimand the defaulting person;

(d) direct a stock exchange to deprive the defaulting person access to the facilities of the stock exchange;

(e) where the defaulting person is a listed corporation, direct the stock exchange—

(i) to suspend trading in the securities of the corporation;

(ii) to suspend the listing of the corporation; or

(iii) to remove from the official list the corporation or the class of securities of the corporation;

(f) where the defaulting person is a corporation that is not listed, direct any stock exchange to prohibit the listing of any of its securities; or

(g) direct a stock exchange to prohibit the defaulting person from engaging in transactions to be executed through the use of the facilities of the stock exchange.

(2) The Commission shall give a written notice to a defaulting person of its intention to take action under subsection (1) and shall give the defaulting person an opportunity to be heard prior to it taking any action under subsection (1).

(3) The Court may, in a case where the Commission gives a direction under paragraph (1)(a), on an application by the Commission, make an order directing the defaulting person to comply with, observe or give effect to those provisions of the Code or rulings.

33E False or misleading documents, information, etc

(1) Where any document or information is required to be submitted to the Commission under this Division or the Code in relation to or in connection with a take-over offer, merger or compulsory acquisition—

(a) an acquirer, an offeror or a person making a compulsory acquisition or effecting a merger, its officers or associates;

(b) an offeree, its officers or associates;

(c) a financial adviser or an expert; or

(d) any other person,

shall not—

(aa) submit or cause to be submitted any document or information that is false or misleading;

(bb) provide or cause to be provided any document or information from which there is material omission; or

(cc) engage in conduct that he knows to be misleading or deceptive or is likely to mislead or deceive.

(2) It shall be a defence to a prosecution or any proceeding for a contravention of subsection (1) if it is proved that the defendant, after making enquiries as were reasonable in the circumstances, had reasonable grounds to believe, and did until the time of the provision of the document or information or engaging in the conduct was of the belief that—

(a) the document or information was true and not misleading;

(b) the omission was not material;

(c) there was no material omission; or

(d) the conduct in question was not misleading or deceptive.

(3) A person who contravenes subsection (1) shall be guilty of an offence and shall on conviction be punished with a fine not exceeding three million ringgit or imprisonment for a term not exceeding ten years or both.

34 Compulsory acquisition

(1) Subject to section 34B, where a take-over offer by an offeror to acquire all the shares or all the shares in any particular class or classes in an offeree has, within four months after the making of the take-over offer, been accepted by the holders of not less than nine-tenths in the nominal value of those shares or of the shares of that class or classes (other than shares already held at the date of the take-over offer by the offeror or by a nominee for or a related corporation of the offeror), the offeror may, at any time within two months after the take-over offer has been so accepted, give notice in the manner prescribed under the Code to any dissenting shareholder that it desires to acquire his shares together with a statutory declaration by the offeror that the conditions for the giving of the notice are satisfied.

(2) Where an offeror has given notice to any dissenting shareholder that it desires to acquire his shares pursuant to subsection (1), the dissenting shareholder shall be entitled to require the offeror, by a demand in writing served on the offeror within one month from the date on which the notice is given, to supply him with a statement in writing of the names and addresses of all other dissenting sharehold-

ers as shown in the register of members and the offeror shall not be entitled or bound to acquire the shares of the dissenting shareholders until fourteen days after the posting of the statement of those names and addresses to the dissenting shareholder.

(3) Upon the giving of the notice and statutory declaration under subsection (1), or where subsection (2) applies, upon the provisions in subsection (2) being complied with, the offeror shall in accordance with subsection (7) acquire those shares on the terms of the take-over offer or, if the take-over offer contained two or more alternative sets of terms, on the terms which were specified in the take-over offer as being applicable to the dissenting shareholders.

(4) Any person who—

(a) sends a copy of a notice or statutory declaration under subsection (1) which is not in the prescribed manner; or

(b) makes a statutory declaration pursuant to subsection (1) or sends a statement pursuant to subsection (2), knowing that the declaration or the statement, as the case may be, to be false, or without having reasonable grounds for believing it to be true,

(4) shall be guilty of an offence.

(5) Where a person is charged for an offence under subsection (4), it is a defence for him to prove that he took reasonable steps for securing compliance with that subsection.

(6) Where, during the period within which a take-over offer can be accepted, the offeror acquires or contracts to acquire any of the shares to which the take-over offer relates, otherwise than by virtue of acceptances of the take-over offer, then if—

(a) the value of the consideration for which they are acquired or contracted to be acquired (the acquisition consideration) does not at that time exceed the value of the consideration specified in the terms of the take-over offer; or

(b) the terms of the take-over offer are subsequently revised so that when the revision is announced the value of the acquisition consideration at the time mentioned in paragraph (a) no longer exceeds the value of the consideration specified in those terms,

(6) the offeror shall be treated for the purposes of this section as having acquired or contracted to acquire those shares by virtue of acceptances of the take-over offer but in relation to any other case those shares shall be treated as excluded from those to which the take-over offer relates.

(7) Subject to section 34B, where a notice has been given by the offeror under subsection (1), the offeror shall, after the expiration of one month after the date on which the notice has been given, or where subsection (2) applies after fourteen days from the date the statement has been posted to the dissenting shareholder—

(a) send a copy of the notice to the offeree together with an instrument of transfer executed on behalf of a dissenting shareholder by a person appointed by the offeror; and

(b) pay, allot or transfer to the offeree the amount or other consideration for the shares to which the notice relates,

(7) and the offeree shall thereupon register the offeror as the holder of those shares.

(8) Any sums received by the offeree under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that offeree in trust for the persons entitled to the shares in respect of which the sum or other consideration was received.

(9) Where any consideration other than cash is held in trust by a company for any person under this section, it may, after the expiration of ten years from the date on which the consideration is paid, allotted or transferred to it, transfer the same to the Minister.

(10) The Minister shall sell or dispose of any consideration received under subsection (9) in such manner as he thinks fit and shall deal with the proceeds of the sale or disposal as if it were moneys paid to him pursuant to the law relating to unclaimed moneys.

34A Right of minority shareholder

(1) Subject to section 34B, if a take-over offer relates to all the shares or to all shares in any class or classes in an offeree and, at any time before the end of the period within which the take-over offer can be accepted—

(a) the offeror has, by virtue of the acceptances of the take-over offer, acquired some (but not all) of the shares to which the take-over offer relates or shares of any class or classes to which the take-over offer relates; and

(b) those shares, with or without any other shares or any other shares of that class or classes to which the take-over offer relates, as the case may be, which the offeror or any nominee or related corporation of the offeror has acquired amounts to not less than nine-tenths in value of all the shares in the offeree or of that class in the offeree,

(1) the holder of any shares or any class or classes of shares to which the take-over offer relates may, by notice to the offeror, require him to acquire those shares, and the offeror shall be bound to acquire those shares on the terms of the take-over offer or such other terms as may be agreed.

(2) Within one month of the time specified in subsection (1), the offeror shall give any shareholder who has not accepted the take-over offer, notice in the manner prescribed under the Code of the rights that are exercisable by him under subsection (1) and, if the notice is given before the period mentioned in subsection (1), it shall state that the take-over offer is still open for acceptance.

(3) A notice under subsection (2) may specify the period for the exercise of the rights conferred by this section and in that event the rights shall not be exercisable after the end of that period; but no such period shall end less than three months after the end of the period within which the take-over offer can be accepted.

(4) Subsection (2) shall not apply if the offeror has given the shareholder a notice in respect of the shares in question under subsection 34 (1).

(5) Any person who fails to comply with subsection (2) shall be guilty of an offence.

34B Application to Court

(1) Where a notice is given under subsection 34 (1), the Court may,

on an application made by any dissenting shareholder within one month from the date on which the notice was given—

(a) order that the offeror shall not be entitled and shall not be bound to acquire those shares; or

(b) specify terms of acquisition that are different from the terms of the take-over offer.

(2) If an application to Court is pending at the end of the period mentioned in subsection 34 (2), that subsection shall not have effect until the application has been disposed of.

(3) When the holder of any shares exercises his rights under subsection 34A (1), the Court may, on an application made by such holder of shares or the offeror, order that the terms on which the offeror shall acquire the shares shall be as the Court thinks fit.

(4) No order for costs shall be made against a shareholder making an application under subsection (1) or (3) unless the Court considers—

(a) that the application was unnecessary, improper or vexatious; or

(b) that there has been unreasonable delay in making the application or unreasonable conduct on the part of the shareholder in conducting the proceeding on the application.

(5) Subject to subsection (6), the Court may, on an application made by an offeror who has not obtained acceptances to the extent necessary for entitling him to give notices under subsection 34 (1), make an order authorising the offeror to give notices under subsection 34 (1).

(6) The Court may only grant an order under subsection (5) upon being satisfied that—

(a) the failure of the offeror to obtain such acceptances was due to the inability of the offeror to trace one or more of the persons holding shares to which the take-over offer relates after having made reasonable enquiries;

(b) the shares which the offeror has acquired or contracted to acquire by virtue of acceptances of the take-over offer, together with the shares held by the person or persons mentioned in paragraph (a), amount to not less than the minimum specified in subsection 34 (1); and

(c) the consideration offered is fair and reasonable:

Provided that the Court shall not make such an order unless it considers that it is just and equitable to do so having regard, in particular, to the number of shareholders who have been traced but who have not accepted the take-over offer.

34C Section 180 of the Companies Act 1965 shall not apply to take-over offers to which subsection 34 (1) applies

The provisions of section 180 of the Companies Act 1965 shall not apply in respect of take-over offers to which subsection 34 (1) applies.

Division 3 Prospectus

35 Definitions

In this Division and Divisions 4 and 5 of this Part, unless the contrary intention appears—

"approved company auditor" means a person approved by the Minister under subsection 8 (2) of the Companies Act 1965 as a company auditor and whose approval has not been revoked;

"excluded invitation" or "excluded offer" means an invitation or offer which is specified in Schedule 2 or which is prescribed by the Minister to be an excluded invitation or excluded offer under paragraph 38(1)(b);

"excluded issue" means an issue which is specified in Schedule 3 or which is prescribed by the Minister to be an excluded issue under paragraph 39(1)(b);

"listing requirements" has the same meaning as in the Securities Industry Act 1983;

"preliminary prospectus" means any document which is designed to assist an issuer in setting a price in respect of a proposed issue of, an offer for subscription or purchase of, or an invitation to subscribe for or purchase, securities or to determine the final contents of a prospectus;

"promoter" means—

(a) in relation to a prospectus issued by or in connection with a corporation, a promoter of the corporation;

(b) in relation to a prospectus in respect of a unit trust scheme or prescribed investment scheme, a promoter of the scheme; or

(c) in relation to a prospectus in any other case, a person,

who is a party to the preparation of the prospectus or any relevant portion thereof, but does not include any person by reason only of his acting in a professional capacity;

"prospectus" means a notice, circular, advertisement or document inviting applications or offers to subscribe for or purchase securities, or offering any securities for subscription or purchase and, unless expressly specified, includes a supplementary prospectus, shelf prospectus, short form prospectus, profile statement, supplementary shelf prospectus and abridged prospectus;

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

"shelf prospectus" means a prospectus issued under a shelf registration scheme;

"shelf registration scheme" means a scheme applicable for the purpose of any issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities by an issuer based on a shelf prospectus and a supplementary shelf prospectus;

"supplementary shelf prospectus" means a document which provides material information necessary to update the information in a shelf prospectus subsequent to the registration of such shelf prospectus.

36 Invitation

In this Part, a reference to an invitation includes a reference to an invitation to make an offer or application.

37 Offer for subscription or purchase

For the purposes of this Division and Division 5 of Part IV, the

expression "offer for subscription or purchase" or "making an invitation to subscribe for or purchase", in relation to units of a unit trust scheme or prescribed investment scheme, as the case may be, shall include the making available of such units.

38 Excluded offers and invitations

(1) An offer for subscription or purchase of, or an invitation to subscribe for or purchase, securities is an excluded offer or an excluded invitation if—

(a) the offer or invitation is so specified in Schedule 2; or

(b) the offer or invitation is made to a person or a class of persons, or made in respect of securities or a class of securities, as the Minister may, on the recommendation of the Commission, prescribe by order published in the *Gazette,*

(1) to be an excluded offer or an excluded invitation.

(2) A prescription made under paragraph (1)(b) may specify the provisions of this Act to which an offer or invitation so prescribed to be an excluded offer or an excluded invitation shall not apply.

(3) An information memorandum issued by a person or his agent purporting to describe the business and affairs of the person in respect of—

(a) any excluded offer or excluded invitation specified in Schedule 2; or

(b) any offer or invitation made to a person or a class of persons or any offer or invitation in relation to securities or a class of securities prescribed under paragraph (1)(b),

(3) shall be deemed to be a prospectus in so far as it relates to the liability of the person or his agent for any statement or information that is false or misleading or from which there is a material omission.

(4) A person issuing the information memorandum referred to in subsection (3) shall deposit a copy of the information memorandum with the Commission within seven days after it is first issued.

(5) For the purposes of this section, section 39, Schedules 2 and 3, "underwriting" includes subunderwriting.

(6) Paragraph 17 of Schedule 2 shall not apply to any securities or class of securities of any private company or class of private companies as the Minister may, on the recommendation of the Commission, prescribe by order published in the Gazette.

39 Excluded issues

(1) An issue of securities is an excluded issue if—

(a) the issue is so specified in Schedule 3; or

(b) the issue is made to a person or a class of persons, or made in respect of securities or a class of securities, as the Minister may, on the recommendation of the Commission, prescribe by order published in the *Gazette,*

(1) to be an excluded issue.

(2) A prescription made under paragraph (1)(b) may specify the provisions of this Act to which the issue so prescribed to be an excluded issue shall not apply.

(3) An information memorandom issued by a person or his agent purporting to describe the business and affairs of the person in respect of—

(a) any excluded issue specified in Schedule 3; or

(b) any issue of securities made to a person or a class of persons or in relation to securities or a class of securities prescribed under paragraph (1)(b),

(3) shall be deemed to be a prospectus in so far as it relates to the liability of the person or his agent for any statement or information that is false or misleading or from which there is a material omission.

(4) A person issuing the information memorandum referred to in subsection (3) shall deposit a copy of the information memorandum with the Commission within seven days after it is first issued.

(5) Paragraph 17 of Schedule 3 shall not apply to any securities or class of securities of any private company or class of private companies as the Minister may, on the recommendation of the Commission, prescribe by order published in the Gazette.

40 Exceptions

(1) The provisions of this Division as specified in Schedule 2 or 3 or as may be so prescribed by the Minister pursuant to paragraph 38(1)(b) or 39(1)(b) shall not apply to—

(a) an excluded offer;

(b) an excluded invitation; or

(c) an excluded issue.

(2) The provisions of this Part shall not apply to the making available of, the offer for subscription or purchase of, or an invitation to subscribe for or purchase, shares or debentures by any unlisted recreational club.

41 Requirement to register prospectuses in relation to securities

(1) A person shall not issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase, any securities unless—

(a) a prospectus in relation to the securities has been registered by the Commission under section 42; and

(b) the prospectus complies with the requirements or provisions of this Act.

(2) Unless authorised in writing by the commission, a person shall not issue, circulate or distribute any form of application for securities unless the form is accompanied by a copy of a prospectus which has been registered by the Commission under section 42.

(3) A person shall not issue, circulate or distribute any form of application for securities of a corporation that has not been formed or of a unit trust scheme or prescribed investment scheme that has not been formed.

(4) A person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and shall on conviction be punished with a fine not exceeding ten million ringgit or imprisonment for a term not exceeding ten years or both.

42 Registration of prospectus

(1) The Commission shall refuse to register a prospectus if—

(a) the Commission is of the opinion that the prospectus does not comply with any requirement or provision of this Act;

(b) the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities to which the prospectus relates does not comply with any other requirement or provision of this Act;

(c) the Commission is of the opinion that the prospectus contains any statement or information that is false or misleading or that the prospectus contains any statement or information from which there is a material omission;

(d) the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities to which the prospectus relates—

(i) requires the approval of the Commission under section 32 and such approval has not been given; or

(ii) does not comply with any term or condition imposed under subsection 32(5);

(e) in relation to a unit trust scheme or prescribed investment scheme, there has been a failure to comply with any term or condition in relation to an approval of a management company or trustee; or

(f) the Commission is of the opinion that the issuer has contravened any provision of the securities laws or the Companies Act 1965 and that such contravention would cast a doubt as to whether the issuer is a fit and proper person to make an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, any securities.

(2) No prospectus shall be registered unless it is submitted to the Commission together with—

(a) a written application for its registration;

(b) true copies of all consents required under subsection 53(1) from any person named in the prospectus as having made a statement that is included in the prospectus or on which a statement made in the prospectus is based;

(c) true copies of all material contracts referred to in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, verified in accordance with any requirements specified by the Commission; and

(d) all such information or documents as may be required by the Commission.

(3) An issuer shall cause a true copy of—

(a) any consent required under subsection 53(1) in relation to the issue of the prospectus; and

(b) every material contract or document referred to in the prospectus,

(3) to be deposited—

(aa) at the registered office of the issuer in Malaysia, and if it

has no registered office in Malaysia, at the address specified in the prospectus for that purpose; and

(bb) in the case of a unit trust scheme or prescribed investment scheme, at the registered office of the issuer and the trustee in Malaysia, at the address specified in the prospectus for that purpose,

(3) within three days after the registration of the prospectus and shall keep each such copy, for such period as may be specified by the Commission, for inspection by any person without charge.

43 Requirement to lodge prospectus with Registrar

An issuer shall cause a copy of the prospectus registered by the Commission under this Act and a copy of the form of application accompanying such prospectus—

(a) in relation to securities other than a unit trust scheme or prescribed investment scheme, to be lodged with the Registrar;

(b) in relation to a unit trust scheme or prescribed investment scheme, to be lodged with the Commission,

before the date of issue of the prospectus.

44 Contents of prospectus

(1) Without prejudice to section 45, a prospectus—

(a) shall be dated and that date shall, unless the contrary is proved, be taken as the date of issue of the prospectus;

(b) shall state that—

(i) the prospectus has been registered by the Commission;

(ii) in respect of securities other than a unit trust scheme or prescribed investment scheme, a copy of the prospectus is lodged with the Registrar and in respect of a unit trust scheme or prescribed investment scheme, a copy of the prospectus is lodged with the Commission; and

(iii) the registration of the prospectus shall not be taken to indicate that the Commission recommends the securities or assumes responsibility for the correctness of any statements made or opinions or reports expressed in the prospectus;

(c) shall contain a statement that no securities will be allotted or issued on the basis of the prospectus later than such period after the date of issue of the prospectus as the Commission may specify;

(d) shall, if it contains any statement made by an expert or contains what purports to be a copy of or an extract from a report, memorandum or valuation of an expert, state the date on which the statement, report, memorandum or valuation was made and whether or not it was prepared by the expert for incorporation in the prospectus;

(e) shall not contain the name of any person named in the prospectus as having made a statement—

(i) that is included in the prospectus; or

(ii) on which a statement made in the prospectus is based,

(e) unless the requirements of subsection 53(1) are satisfied; and

(f) shall set out such information, matters or reports as may be specified by the Commission.

(2) A condition requiring or binding an applicant for securities to waive compliance with any requirement of this section or section 45, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void

(3) Notwithstanding the provisions of this Division, the Commission may, either on the written application of any person referred to in section 41 or of its own accord, make an order relieving such person from or approving any variation of the requirements of this Act relating to the form and content of a prospectus.

(4) In making an order under subsections (3), the Commission may impose such terms and conditions as it deems fit.

(5) The Commission shall not make an order under subsection (3) unless it is satisfied that—

(a) compliance with the requirements of this Act is unnecessary for the protection of persons who may normally be expected to deal in those securities, being persons who would reasonably be expected to understand the risks involved; or

(b) compliance with the requirements of this Act would impose an unreasonable burden on the issuer.

(6) A prospectus shall be deemed to have complied with all the requirements of this Act relating to the form and content of a prospectus if it is issued in compliance with an order made under subsection (3).

(7) Where a prospectus relating to any securities is issued and the prospectus does not comply with the requirements of this section, the issuer and each director of the issuer at the time of the issue of the prospectus shall be guilty of an offence and shall on conviction be punished with a fine not exceeding three million ringgit or imprisonment for a term not exceeding ten years or both.

(8) Any person who fails to comply with any term or condition as may be imposed by the Commission under subsection (4) shall be guilty of an offence.

45 General duty of disclosure in prospectus

(1) For the purpose of determining whether a prospectus contains any statement or information which is false or misleading or from which there is a material omission under subsection 55(1) or subsection 57(1), regard shall be had to whether the prospectus contains all such information that investors and their professional advisers would reasonably require, and reasonably expect to find in the prospectus, for the purpose of making an informed assessment of—

(a) the assets and liabilities, financial position, profits and losses and prospects of the issuer and, in the case of a unit trust scheme or prescribed investment scheme, of the scheme;

(b) the rights attaching to the securities; and

(c) the merits of investing in the securities and the extent of the risk involved in doing so.

(2) The information that investors and their professional advisers would reasonably require and reasonably expect to find in the prospectus under subsection (1) is information—

(a) which is known to all or any of the following persons:

(i) a person who was a director of the issuer at the time of issue of the prospectus;

(ii) a person who has consented or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time;

(iii) a promoter;

(iv) the principal adviser in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities:

(v) a person named in the prospectus, with his consent, as having made a statement that is included in the prospectus or on which a statement made in the prospectus is based;

(vi) a person named in the prospectus, with his consent, as a stockbroker, sharebroker or underwriter, as the case may be, in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;

(vii) a person named in the prospectus, with his consent, as an auditor, banker or advocate in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;

(viii) a person named in the prospectus, with his consent, as having performed or performing any function in a professional, advisory or other capacity not mentioned in paragraph (iv), (v), (vi) or (vii) in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities; or

(b) which any of the persons referred to in paragraph (2)(a) would have been able to obtain by making such enquiries as were reasonable in the circumstances.

(3) Without prejudice to the generality of subsection (1) or (2), in determining the information that is required to be included in a prospectus under this section, regard shall be had to—

(a) the nature of—

(i) the securities;

(ii) the business of the issuer of the securities; and

(iii) the unit trust scheme or prescribed investment scheme;

(b) the persons likely to consider acquiring such securities;

(c) the fact that certain matters may reasonably be expected to be known to any professional adviser whom investors referred to in subsection 45(1) may reasonably be expected to consult; and

(d) whether the persons to whom an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities is to be made are the holders of securities in the corpora-

tion, or unit holders in the unit trust scheme or prescribed investment scheme, and if they are, to what extent (if any) relevant information has previously been given to them by the issuer under any law, any requirement of the rules or listing requirements of a stock exchange, if applicable, or otherwise.

46 Abridged prospectus for renounceable rights issues

(1) A corporation shall not issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase, securities by means of a rights issue which is renounceable in favour of persons other than existing members or debenture holders of that corporation and in respect of which an application has been or will be made for permission to deal with or quote such securities on a stock market of a stock exchange unless an abridged prospectus is registered by the Commission.

(2) Any abridged prospectus registered pursuant to subsection (1) shall contain such particulars or information as may be specified by the Commission.

(3) Nothing in this section shall be construed as preventing a full prospectus from being registered containing the particulars specified by the Commission in respect of full prospectuses in respect of an issue, offer or invitation referred to in subsection (1).

47 Supplementary prospectus

(1) This section applies—

(a) in the case of a unit trust scheme or prescribed investment scheme, where a prospectus has been registered; or

(b) in any other case, where a prospectus has been registered but before the issue of securities,

and where the issuer becomes aware that—

(aa) a matter has arisen and information in respect of that matter would have been required by—

(i) section 44 or 45;

(ii) any requirement under this Act;

(iii) any guidelines issued by the Commission; or

(iv) any listing requirement of a stock exchange,

(aa) to be disclosed in the prospectus if the matter had arisen at the time the prospectus was prepared;

(bb) there has been a significant change affecting a matter disclosed in the prospectus;

(cc) the prospectus contains a material statement or information that is false or misleading; or

(dd) the prospectus contains a statement or information from which there is a material omission.

(2) As soon as practicable after becoming aware of a matter referred to in subsection (1), the issuer shall submit a supplementary prospectus to the Commission for registration.

(3) The issuer shall lodge the supplementary prospectus—

(a) in relation to securities other than a unit trust scheme or prescribed investment scheme, with the Registrar immediately upon registration by the Commission; and

(b) in relation to a unit trust scheme or prescribed investment scheme, with the Commission immediately upon registration by the Commission.

(4) Subsection (1) shall apply with respect to matters contained in a supplementary prospectus previously registered under this section in respect of the securities in question.

(5) There shall be, on each page of a supplementary prospectus, a clear statement in bold type that states that the document is a supplementary prospectus that is to be read in conjunction with—

(a) the original prospectus; and

(b) if other supplementary prospectuses have been issued in relation to the original prospectus—those supplementary prospectuses.

(6) A supplementary prospectus shall be regarded as being a part of the prospectus to which it relates and the provisions of this Act and any other law relating to liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply to such supplementary prospectus and shall have effect accordingly.

(7) Where a supplementary prospectus has been registered by the Commission, every copy of the original prospectus issued after registration of the supplementary prospectus must be accompanied by a copy of the supplementary prospectus.

(8) Notwithstanding the provisions of this section, the Commission may, on the written application of any issuer or of its own accord, make an order relieving such person from or approving any variation of the requirements of this section.

(9) In making an order under this section, the Commission may impose such terms and conditions as it deems fit.

(10) The Commission shall not make an order under subsection (8) unless it is satisfied that—

(a) compliance with the requirements of this Act is unnecessary for the protection of persons who may normally be expected to deal in those securities, being persons who would reasonably be expected to understand the risks involved; or

(b) compliance with the requirements of this Act would impose an unreasonable burden on the issuer.

(11) Any person who contravenes subsection (2), (3), (5) or (7) shall be guilty of an offence and shall on conviction be punished with a fine not exceeding three million ringgit or imprisonment for a term not exceeding ten years or both.

(12) Any person who fails to comply with any term or condition as may be imposed by the Commission under subsection (9) shall be guilty of an offence.

48 Consequences of registering a supplementary prospectus

(1) This section applies—

(a) where a person ("the applicant") applies for the issue of, subscription or purchase of, any securities pursuant to a prospectus and—

(i) in the case of a unit trust scheme or prescribed investment scheme, before the issue of units or transfer of units from the management company or the trustee to the applicant; or

(ii) in any other case, before the issue of securities; and

(b) the issuer delivers to the Commission for registration a supplementary prospectus that relates to the prospectus.

(2) As soon as practicable after the registration of the supplementary prospectus by the Commission, the issuer shall—

(a) give to the applicant a written notice or such other notice as may be specified by the Commission—

(i) advising the applicant that a supplementary prospectus has been registered by the Commission;

(ii) giving the applicant no less than 14 days from the date of receipt of the notice an opportunity to withdraw his application; and

(b) ensure that the written notice referred to in paragraph (2)(a) is accompanied by a copy of a supplementary prospectus.

(3) If the applicant withdraws his application pursuant to subparagraph (2)(a)(ii), the issuer shall immediately pay to the applicant any moneys that the applicant has paid to the issuer on account of the application.

(4) Notwithstanding the provisions of this section, the Commission may, on the written application of any issuer or of its own accord, make an order relieving such person from, or approving any variation of, the requirements of this section.

(5) In making an order under this section, the Commission may impose such terms and conditions as it deems fit.

(6) The Commission shall not make an order under subsection (4) unless it is satisfied that—

(a) compliance with the requirements of this Act is unnecessary for the protection of persons who may normally be expected to deal in those securities, being persons who would reasonably be expected to understand the risks involved; or

(b) compliance with the requirements of this Act would impose an unreasonable burden on the issuer.

(7) Any person who contravenes subsection (2) or (3) shall be guilty of an offence and shall on conviction be punished with a fine not exceeding three million ringgit or imprisonment for a term not exceeding ten years or both.

(8) Any person who fails to comply with any term or condition as may be imposed by the Commission under subsection (5) shall be guilty of an offence.

49 Regulations for shelf prospectuses, supplementary shelf prospectuses, short form prospectuses, profile statements, etc

(1) Notwithstanding the provisions of sections 44 and 45, a person may issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase, securities where at the time of the issue, offer or invitation there is in force—

(a) a shelf prospectus as updated by a supplementary shelf prospectus;

(b) a short form prospectus; or

(c) a profile statement,

(1) relating to all matters which the Commission, with the approval of the Minister, may provide by way of regulations made under this Act with respect to a shelf prospectus, a supplementary shelf prospectus, a short form prospectus or a profile statement, as the case may be.

(2) The regulations referred to under subsection (1) may provide for, but shall not be limited to, the following matters:

(a) a shelf prospectus, including a supplementary shelf prospectus;

(b) a short form prospectus;

(c) a profile statement;

(d) the period during which a person may be permitted to issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase, securities on the basis of a shelf prospectus, as updated by a supplementary shelf prospectus, a short form prospectus or profile statement, as the case may be;

(e) the form and content of a prospectus referred to in paragraph (a), (b) or (c);

(f) the persons or classes of persons to which any prospectus referred to in paragraph (a), (b) or (c) may apply; or

(g) the securities or classes of securities to which any prospectus referred to in paragraph (a), (b) or (c) may apply.

(3) Where the Commission makes regulations under subsection (1) with respect to a shelf prospectus, a supplementary shelf prospectus, a short form prospectus or a profile statement, the provisions of this Act and any other law relating to liability in respect of statements in or omissions from prospectuses or otherwise relating to prospectuses shall apply to the shelf prospectus, supplementary shelf prospectus, short form prospectus or profile statement, as the case may be, and shall have effect accordingly.

50 Restrictions in advertising

(1) A person shall not publish a notice that—

(a) issues, offers for subscription or purchase, or makes invitations to subscribe for or purchase, securities; or

(b) refers, whether directly or indirectly, to—

(i) a prospectus in respect of securities of a corporation;

(ii) in the case of a unit trust scheme or prescribed investment scheme, a prospectus in respect of any unit of the unit trust scheme or prescribed investment scheme, as the case may be;

(iii) an issue, intended issue, offer, intended offer, invitation or intended invitation in respect of securities; or

(iv) another notice that refers to a prospectus in relation to an issue, intended issue, offer, intended offer, invitation or intended invitation in respect of securities.

(2) Subsection (1) shall apply to such notices mentioned therein

which are issued in relation to the securities of a corporation that has not been formed or of a unit trust scheme or prescribed investment scheme that has not been formed.

(3) Subsection (1) shall not apply to—

(a) such notices referred to in subsection (4) or (5);

(b) such preliminary prospectuses referred to in subsection (6);

(c) such reports referred to in subsection (7); or

(d) such notices or reports as may be specified by the Commission.

(4) Subsection (1) shall not apply to a notice that is issued or published before the registration of a prospectus—

(a) with the consent of the Commission and subject to such terms and conditions as it may impose; and

(b) which does not contain any information or matter other than the following:

(i) the name of the issuer of securities;

(ii) in the case of a unit trust scheme or prescribed investment scheme, the name of the unit trust scheme or the prescribed investment scheme, and the names of the trustee and the management company in relation to the unit trust scheme or prescribed investment scheme, as the case may be;

(iii) a concise statement of the general nature of the main business or undertaking or proposed main business or undertaking of the issuer;

(iv) the names, addresses and, where appropriate, occupations of the directors or proposed directors;

(v) the names and addresses of stockbrokers, sharebrokers, underwriters and principal adviser in relation to the proposed issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;

(vi) in the case of debentures, the name and address of the trustee for debenture holders;

(vii) a brief description of the listing status of the corporation, unit trust scheme or prescribed investment scheme on any stock exchange or other similar exchange outside Malaysia, or a statement that it is intended to apply for permission to list the corporation, unit trust scheme or prescribed investment scheme on any stock exchange or other similar exchange outside Malaysia but no assurance has been given that the corporation, unit trust scheme or prescribed investment scheme, as the case may be, will be listed;

(viii) the fact that a prospectus is in the course of preparation and that an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities is proposed, together with a brief indication of

the nature and number of securities and of the possible timing of the issue of the prospectus;

(ix) in the case of a unit trust scheme or prescribed investment scheme, a description of the persons from whom the units are available for purchase or subscription; and

(x) such other information or matters which the Commission may specify in writing.

(5) Subsection (1) shall not apply to a notice that is issued or published after the registration of a prospectus that—

(a) states that a prospectus in relation to any securities has been registered;

(b) specifies the date of the prospectus;

(c) specifies where a copy of the prospectus can be obtained;

(d) states that any issue of securities to which the prospectus relates will only be made on receipt of a form of application referred to in and accompanying a copy of the prospectus; and

(e) states such other information or matters which the Commission may specify in writing.

(6) Subsection (1) shall not apply to a preliminary prospectus where the following requirements are met:

(a) a copy of the preliminary prospectus is delivered to the Commission prior to its issue;

(b) the preliminary prospectus is issued to any person referred to in paragraph (1), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (22), (23), (24), (25), (26) or (27) of Schedule 2 or to any other person or class or category of persons or in respect of any securities or class or category of securities which the Commission allows in writing;

(c) the preliminary prospectus contains on its front page a conspicuous notice that—

(i) it is not a prospectus;

(ii) no issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities to which the preliminary prospectus relates is to be made; and

(iii) no agreement to subscribe for securities to which the preliminary prospectus relates will be entered into between the issuer and the recipient of the preliminary prospectus;

(d) the preliminary prospectus is not to contain, have attached to it or be accompanied by any form of application which would facilitate the issue of, the offer for subscription or purchase of, or the making of an invitation to subscribe for or purchase, securities to which the preliminary prospectus relates or the acceptance of such an issue, offer or invitation;

(e) a person to whom a copy of the preliminary prospectus is issued shall not circulate the copy to any other person;

(f) securities are only to be issued on the basis of a prospectus duly registered by the Commission under this Act; and

(g) where a prospectus which is registered in relation to securi-

ties to which the preliminary prospectus relates differs from the preliminary prospectus in a material respect, notice of such difference shall be given to the recipients of the preliminary prospectus and a copy of such notice shall be delivered to the Commission:

Provided that the Commission may, either of its own accord or on a written application by an issuer, make an order approving any variation of the requirements of this subsection.

(7) Subsection (1) shall not apply to the issuing or publishing of all or any of the following reports:

(a) a report that relates to the affairs of a corporation, a unit trust scheme or a prescribed investment scheme, that is listed on a stock exchange which is or has been published only to that stock exchange by or on behalf of the corporation, unit trust scheme or prescribed investment scheme, as the case may be;

(b) a report of the whole or part of the proceedings at a general meeting of a body corporate or at a meeting of unit holders of a unit trust scheme or a prescribed investment scheme where the body corporate, unit trust scheme or prescribed investment scheme is included in the official list of a stock exchange and the report does not contain any matter other than the matters laid before the meeting;

(c) a report which is a news report or is a genuine comment, published by a person in a newspaper or periodical or by broadcasting or televising, relating to—

(i) a prospectus that has been registered or information that is contained in such a prospectus; or

(ii) a report referred to in paragraph (a) or (b),

if none of the following persons receives or is entitled to receive any consideration or other benefit from a person who has an interest in the success of the issue of securities to which the report or comment relates as an inducement to publish, or as the result of the publication of the report or comment:

(aa) the person making the report or comment;

(bb) an agent or employee of the person making the report or comment;

(cc) where the report or comment is published in a newspaper or periodical—the publisher of the newspaper or periodical; or

(dd) where the report or comment is published by broadcasting or televising—the licensee of the broadcasting or television station by which it is published.

(8) A notice that is issued or published under subsection (4) or (5), a preliminary prospectus that is issued under subsection (6) or a report that is issued or published under subsection (7) shall not constitute a prospectus.

(9) Nothing in this section shall limit or diminish the liability that a person may incur under any other law.

(10) Where it appears to the Commission that a notice, preliminary prospectus or report referred to in this section—

(a) contravenes subsection (1);

(b) contains a statement or information that is false or misleading;

(c) contains a statement or information from which there is a material omission; or

(d) contains a material misrepresentation,

the Commission may by order in writing served on the person who publishes or issues the notice, preliminary prospectus or report—

(aa) direct the person to cease issuing or publishing the notice, preliminary prospectus or report; or

(bb) direct the person to take such other action as may be specified in the order.

(11) In this section, "notice" includes any notice published in a document, newspaper or periodical or on any medium or in any manner capable of suggesting words and ideas.

(12) A person who—

(a) issues or publishes a notice in contravention of subsection (1);

(b) issues or publishes a notice in contravention of subsection (4) or (5);

(c) issues a preliminary prospectus in contravention of subsection (6); or

(d) issues or publishes a report in contravention of subsection (7),

shall be guilty of an offence and shall on conviction be punished with a fine not exceeding three million ringgit or imprisonment for a term not exceeding ten years or both.

51 Document containing offer of securities for purchase deemed to be a prospectus

(1) Subject to subsection (3), where an issuer allots or issues or agrees to allot or issue to any person any securities with a view to all or any of them being offered for purchase—

(a) any document by which the offer for purchase is made shall, for all purposes, be deemed to be a prospectus issued by the issuer; and

(b) all laws regulating the contents of prospectuses and providing for liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly as if persons accepting the offer in respect of any securities were subscribers therefor.

(2) Nothing in subsection (1) shall prejudice the liability of the persons by whom the offer for purchase is made in respect of statements in, or omissions from, the document by which the offer for purchase is made or otherwise.

(3) Subsection (1) shall not apply in relation to an offer for purchase or an invitation to purchase securities if the offer or invitation is made in the ordinary course of trading on a stock market of a stock exchange.

(4) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment or issue of, or an agreement to

allot or issue, any securities was made with a view to the securities being offered for purchase if it is shown that—

(a) an offer of the securities for purchase was made within such period as may be specified by the Commission under paragraph 44(1)(c) after the allotment or issue or agreement to allot or issue; or

(b) at the date when the offer was made, the whole consideration to be received by the issuer in respect of the securities had not been so received.

(5) The requirements of this Division as to prospectuses shall have effect as though the persons making an offer to which this section relates were persons named in a prospectus as directors of the issuer.

(6) In addition to complying with the other requirements of this Division, the document by which the offer for purchase is made shall state—

(a) the net amount of the consideration received or to be received by the issuer in respect of the securities to which the offer relates; and

(b) the place and time at which a copy of the contract under which the securities have been or are to be allotted or issued may be inspected.

(7) Where an offer to which this section relates is made by a corporation or a firm, the document by which the offer for purchase is made shall—

(a) in the case of a corporation, be signed on behalf of the corporation by two directors of the corporation; and

(b) in the case of a firm, be signed by not less than half of the members of the firm,

(7) and any such director or member may authorise his agent in writing to sign on his behalf.

(8) For the purpose of this section, an invitation to make an offer to purchase securities shall be deemed to constitute an offer of the securities for purchase, and a person who makes an offer pursuant to such an invitation shall be deemed to be a person who accepted an offer of the securities for purchase that is so deemed to be constituted by the invitation.

(9) The provisions of this section shall not apply to an offer for purchase which is an excluded offer, an excluded invitation or an excluded issue.

52 Allotment of securities where prospectus implies that application for permission to list on stock exchange had been made

(1) Where a prospectus states or implies that an application has been or will be made for permission for the securities offered to be listed for quotation on the official list of a stock exchange or other similar exchange outside Malaysia, any allotment made on an application to subscribe for securities in pursuance of the prospectus shall, subject to subsection (3), whenever made, be void if—

(a) the permission is not applied for in the form for the time

being required by the stock exchange before the third day on which the exchange is open after the date of issue of the prospectus; or

(b) the permission is not granted before the expiration of six weeks from the date of issue of the prospectus or such longer period as may be specified by the Commission, provided that the applicant is notified by or on behalf of the exchange within that six weeks or such longer period as may be specified by the Commission.

(2) Where permission has not been applied for, or has not been granted by the exchange referred to in subsection (1), the issuer shall, subject to subsection (3), forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and if any such money is not repaid within fourteen days after the issuer so becomes liable to repay it, then, in addition to the liability of the issuer, the officers of the issuer shall be jointly and severally liable to repay such money with interest at the rate of ten percent per annum or at such other rate as may be prescribed by the Commission from the expiration of that period.

(3) Where in relation to any securities—

(a) permission is not applied for as specified in paragraph (1)(a); or

(b) permission is not granted as specified in paragraph (1)(b),

(3) the Commission may, on the application of the issuer, by order published in the *Gazette,* before the securities are purported to be allotted, exempt the allotment of securities from the operation of subsection (1) or (2).

(4) An officer of the issuer shall not be so liable under subsection (2) if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding an applicant for any securities to waive compliance with this section or purporting to do so shall be void.

(6) Without limiting the application of any of its provisions, this section shall have effect—

(a) in relation to any securities agreed to be taken by a person underwriting an issue, offer or invitation referred to in a prospectus, as if he had applied for the securities in relation to the issue, offer or invitation referred to in the prospectus; and

(b) in relation to a prospectus offering securities for purchase, as if—

(i) a reference to purchase were substituted for a reference to allotment;

(ii) the persons by whom the offer is made, and not the issuer, were liable under subsection (2) to repay moneys received from applicants, and references to the issuer's liability under that subsection were construed accordingly; and

(iii) a reference in subsection (7) to the issuer and every officer of the issuer who is in default under subsection (2) were substituted with a reference to any person by or through whom

the issue, offer or invitation is made and who knowingly authorises or permits the default.

(7) All moneys received from the applicants shall be kept in trust in a separate bank account so long as the issuer may become liable to repay it under subsection (2); and if default is made in complying with this subsection, the issuer and every officer of the issuer who is in default commits an offence under this Act.

(8) Where the exchange referred to in subsection (1) has within the time specified in paragraph (1)(b) granted permission, subject to compliance with any requirements specified by the exchange, permission shall be deemed to have been granted by the exchange if the directors of the issuer have given the exchange an undertaking in writing to comply with the requirements of the exchange, but if any such undertaking is not complied with, each director of the issuer or the management company who is in default commits an offence.

(9) A person shall not issue a prospectus in relation to any securities if it includes—

(a) any false or misleading statement that permission has been granted for those securities to be dealt in or listed on an exchange referred to in subsection (1); or

(b) any statement in any way referring to any such permission or to any application or intended application for any such permission, or to dealing in or quoting or listing the securities on any exchange referred to in subsection (1), or to any requirements of the exchange unless that statement is or is to the effect that permission has been granted or that application has been or will be made to the exchange within three days of the issue of the prospectus or within such longer period as may be specified by the Commission or the statement has been approved by the Commission for inclusion in the prospectus.

(10) Where a prospectus contains a statement to the effect that the constituent documents of the issuer or the deed as defined under section 96 complies with, or has been drawn so as to comply with, the requirements of any exchange referred to in subsection (1), the prospectus shall, unless the contrary intention appears from the prospectus, be deemed for the purposes of this section to imply that application has been made, or will be made, for permission for the securities offered by the prospectus to be listed for quotation on the exchange.

(11) In this section, "officer", in relation to an issuer means a director, a secretary or an executive officer of the issuer.

(12) A person who contravenes this section shall be guilty of an offence and shall on conviction be punished with a fine not exceeding three million ringgit or imprisonment for a term not exceeding ten years or both.

53 Consent from person to issue of prospectus containing statement by him

(1) A prospectus that includes a statement, other than a statement which is an extract of an official statement or any other statement as may be specified by the Commission, purporting to be made by any person or to be based on a statement made by such person shall not be issued unless—

(a) the person has given his written consent to the issue of the prospectus with the statement made in the form and context in which it is included and has not, before the date of issue of the prospectus, withdrawn such consent; and

(b) there appears in the prospectus a statement that the person has given and has not withdrawn his consent.

(2) Every person who knowingly is a party to the issue of any prospectus in contravention of subsection (1) shall be guilty of an offence.

54 Order to stop issue of securities

(1) Where in the opinion of the Commission—

(a) a prospectus does not comply with or is not prepared in accordance with any requirement or provision of this Act;

(b) a prospectus contains a statement or information that is false or misleading;

(c) a prospectus contains a statement or information from which there is a material omission; or

(d) an issuer has contravened any provision of the securities laws or the Companies Act 1965,

(1) the Commission may, by order in writing served on the issuer or such other person as the Commission may determine, direct the issuer or such other person not to allot, issue, offer, make an invitation to subscribe for or purchase or sell, further securities to which the prospectus relates, as the case requires.

(2) Subject to subsections (3) and (5), the Commission shall not make an order under subsection (1) unless the Commission has given a reasonable opportunity to be heard to any affected person as to whether such an order should be made.

(3) If the Commission considers that any delay in making an order under subsection (1) by giving an opportunity to be heard would be prejudicial to the public interest, the Commission may make an interim order without giving the opportunity to be heard.

(4) An interim order made under subsection (3) shall have effect until the Commission makes an order under subsection (1) or until the interim order is revoked, whichever first occurs.

(5) Subject to subsection (4), an interim order, unless sooner revoked, shall have effect until the end of twenty-one days after the day on which it is made.

(6) While an order made under subsection (1) or an interim order made under subsection (3) is in force, this Division shall apply as if the prospectus had not been registered.

(7) An order made under subsection (1) or an interim order made under subsection (3) may, by further order in writing made by the Commission, be revoked if the Commission becomes satisfied that the circumstances that resulted in the making of the order no longer exists.

(8) A person who contravenes an order made under subsection (1) or an interim order made under subsection (3) shall be guilty of an offence.

55 Criminal liability for false statements, etc in prospectus

(1) No person shall authorise or cause the issue of a prospectus which contains—

(a) any statement or information that is false or misleading; or

(b) any statement or information from which there is a material omission.

(2) For the purposes of this Division, a statement shall be deemed to be in a prospectus if it is—

(a) contained in a report or memorandum that appears on the face of the prospectus; or

(b) contained in a report or memorandum that is issued with the prospectus with the consent or knowledge of a person who authorised or caused the issue of the prospectus.

(3) A person who contravenes subsection (1) shall be guilty of an offence and shall on conviction be punished with a fine not exceeding three million ringgit or imprisonment for a term not exceeding ten years or both.

56 Persons not to be taken to have authorised or caused issue of prospectus

(1) For the purposes of this Division, neither the Commission nor the Registrar shall be taken to have authorized or caused the issue, or to be involved in the preparation, of a prospectus for any reason including where there has been the performance or purported performance of any function, or the exercise or purported exercise of any power, by the Commission under the securities laws or the Registrar under the Companies Act 1965 respectively.

(2) For the purpose of section 55, a person shall not be deemed to have authorised or caused the issue of a prospectus by reason only of his having given a consent as required under subsection 53 (1).

57 Right to recover for loss or damage resulting from false or misleading statement in prospectus, etc

(1) A person who acquires, subscribes for or for purchases securities and suffers loss or damage as a result of any statement or information contained in a prospectus that is false or misleading, or any statement or information contained in a prospectus from which there is a material omission, may recover the amount of loss or damage from all or any of the persons set out in paragraphs (a), (b), (c), (d), (e) and (f) and to the extent provided for:

(a) the issuer and each director of the issuer at the time of the issue of the prospectus, for any loss or damage;

(b) a person who consented or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time, for any loss or damage;

(c) a promoter, for any loss or damage arising from the prospectus or any relevant portion of the prospectus in respect of which he was a party to the preparation thereof;

(d) a principal adviser, for any loss or damage;

(e) a person named in the prospectus with his consent as having made a statement that is included in the prospectus or on which a statement made in the prospectus is based, for any loss or damage caused by the inclusion of the statement in the prospectus;

(f) a person named in the prospectus with his consent as a stockbroker, sharebroker, underwriter, auditor, banker or advocate of the issuer in relation to the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities, and who has made a statement that is included in the prospectus or on which a statement made in the prospectus is based, for any loss or damage caused by the inclusion of the statement in the prospectus; or

(g) a person who authorised or caused the issue of a prospectus in contravention of section 55, for any loss or damage caused by such contravention.

(2) For the purposes of paragraphs (1)(a) and (1)(b), a director referred to therein shall include any person by whom the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities is made.

(3) For the purpose of paragraph (1)(f), an underwriter shall not include a sub-underwriter.

58 Civil liability for misleading or deceptive acts

(1) A person shall not act in a manner that is misleading or deceptive or is likely to mislead or deceive in connection with—

(a) any prospectus issued;

(b) the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;

(c) any notice referred to in subsection 50(4) or 50(5) or a preliminary prospectus referred to in subsection 50(6), or any report referred to in subsection 50(7) or any notice or report as may be specified by the Commission under paragraph 50(3)(d); or

(d) the carrying on of negotiations, the making of any arrangements or the doing of any other act preparatory to or in any other way related to any matter referred to in paragraph (a), (b) or (c).

(2) A person who contravenes this section does not commit an offence but a person who acquires, subscribes for or purchases securities and suffers loss or damage as a result of any act referred to in paragraph (1)(a), (1)(b), (1)(c) or (1)(d) may recover the amount of the loss or damage under section 153.

59 Due diligence defence

A person does not commit an offence under section 55 and is not liable under section 57 if he proves that—

(a) he had made all enquiries as were reasonable in the circumstances; and

(b) after making such enquiries, he had reasonable grounds to believe and did believe until the time of the making of the statement or provision of the information that—

(i) the statement or information was true and not misleading; or

(ii) there was no material omission.

60 Reliance on statement and information in respect of false or misleading statement

A person does not commit an offence under section and is not liable under section 57 if the person (hereinafter referred to as the "first-mentioned person") proves that the false or misleading statement or material omission from a statement in a prospectus—

(a) is or is based on a statement made by a person referred to in subsection 53 (1) (hereinafter referred to as the "second-mentioned person"); or

(b) is contained in a copy of or what purports to be a copy of, or an extract from, a report or valuation of the second-mentioned person,

and it is proved by the first-mentioned person that—

(aa) the statement accurately represented the statement made by the second-mentioned person, or the copy or the purported copy or extract was a correct copy of, or extract from, the report or valuation, as the case may be; and

(bb) after making such enquiries as were reasonable in the circumstances, the first-mentioned person had reasonable grounds to believe, and did believe until the time of the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, the securities, that the second-mentioned person, in making the statement, report or valuation, as the case may be—

(i) was competent to make it;

(ii) had given the consent required by subsection 53 (1); and

(iii) had not withdrawn that consent.

61 Reliance on statement and information in respect of misleading or deceptive act

A person is not liable under section 58 in respect of an act that is misleading or deceptive or is likely to mislead or deceive if the person (hereinafter referred to as the "first-mentioned person") proves that the act consists of a representation made in reliance on—

(a) a statement made by a person referred to in subsection 53 (1) (hereinafter referred to as the "second-mentioned person"); or

(b) a report or valuation of the second-mentioned person,

and it is proved by the first-mentioned person that—

(aa) the representation accurately reflects the statement made by the second-mentioned person or is contained in the report or valuation of the second-mentioned person, as the case may be; and

(bb) after making such enquiries as were reasonable in the circumstances, the first-mentioned person had reasonable grounds to believe, and did believe until the time of the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, the securities, that the second-mentioned person in making the statement, report or valuation, as the case may be,—

(i) was competent to make it;

(ii) had given the consent required by subsection 53(1); and
(iii) had not withdrawn that consent.

62 Reliance on public official statement in respect of false and misleading statement

(1) A person does not commit an offence under section 55 and is not liable under section 57 if the person proves that the false or misleading statement or material omission from a statement in a prospectus (hereinafter referred to as the "defective statement") is or is based on a statement made by a public officer in the course of his duties or is contained in a copy of or what purports to be a copy of, or an extract from, a public official document, and it is proved by the person that—

(a) the defective statement accurately represented the statement made by the public officer including the context and form in which it was originally made; or

(b) the defective statement is contained in a copy of or what purports to be a copy of, or an extract from, a public official document,

(1) and the person had reasonable grounds to believe, and did believe until the time of the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, the securities, that the defective statement was true and not misleading and that there was no material omission from the defective statement, as the case may be.

(2) A person is not liable under section 58 in respect of an act that is misleading or deceptive or is likely to mislead or deceive if the person proves that the act consists of a representation made in reliance on a public official document or statement made by a public officer in the course of his duties and it is proved that—

(a) the representation accurately reflects the statement made by the public officer including the context and form in which it was originally made; or

(b) the representation is contained in a copy of, or an extract from, a public official document,

(2) and the person had reasonable grounds to believe, and did believe until the time of the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, the securities, that the representation was not misleading or deceptive or is likely to mislead or deceive.

63 Defence of withdrawal of consent

(1) A person who is named in a prospectus as—

(a) a proposed director or director of an issuer or a principal adviser in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;

(b) making a statement that is included in the prospectus; or

(c) making a statement on the basis of which a statement is included in a prospectus,

does not commit an offence under section 55 and is not liable under section 57 if—

(aa) in the case of a proposed director or director, having consented to become a proposed director or director of the issuer, he withdrew his consent before the issue of the prospectus, and the prospectus was issued despite such withdrawal; or

(bb) in any other case, where the prospectus was issued without his knowledge or consent, he gave reasonable public notice thereof forthwith after he became aware of its issue.

(2) A person who is named in a prospectus as—

(a) a proposed director or director of an issuer, or a principal adviser in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;

(b) making a statement that is included in the prospectus; or

(c) making a statement on the basis of which a statement is included in a prospectus,

(2) does not commit an offence under section 55 and is not liable under section 57 if it is proved that the statement was not included in, or was not included substantially in, the form and context that the person had consented to.

64 Restriction on offering securities for subscription or purchase

(1) Except as otherwise expressly provided in this Act, a person shall not make—

(a) an unsolicited invitation to subscribe for or purchase any securities;

(b) an unsolicited offer of any securities for subscription or purchase; or

(c) an unsolicited recommendation of any securities.

(2) Subsection (1) shall not—

(a) prohibit a licensed person or any other person allowed in writing by the Commission from making invitations or offers or recommendations—

(i) in relation to any securities which are listed on a stock market of a stock exchange in Malaysia or on a stock market of a securities exchange outside Malaysia which is approved by the Commission; and

(ii) to a person to whom, or to a number of persons in relation to each of whom, at least one of the following conditions is satisfied:

(A) the person has acquired or sold the securities through the licensed person or any other person allowed in writing by the Commission, in the twelve months before the making of the invitation or offer or recommendation; or

(B) when the invitation or offer or recommendation is made, a written agreement is in force under which the licensed person or any other person allowed in writing by the Commission is to, or may, whether subject to conditions or otherwise,

act on the person's behalf in connection with the acquisition or sale of any securities by the person, or advise the person about the acquisition or sale of any securities by the person;

(b) prohibit a management company from providing further information, notices or recommendations to existing unit holders in relation to the investments of such unit holders;

(c) prohibit a person allowed in writing by the Commission from issuing such notices or recommendations relating to units in a unit trust scheme or prescribed investment scheme containing such information as may be allowed by the Commission;

(d) prohibit an invitation, offer or recommendation that is made in, or accompanied by, a prospectus that complies with this Act;

(e) prohibit an invitation, offer or recommendation which is made in relation to an excluded invitation or excluded offer;

(f) apply to an invitation or offer to which the provisions of the Companies Act 1965 apply; or

(g) apply to an invitation, offer or recommendation which is prescribed by the Commission by order published in the *Gazette*.

(3) The Commission in exercising its discretion under subsection (2) may impose such terms and conditions as it deems fit.

(4) A person allowed in writing by the Commission under paragraph (2)(a) or (2)(c) shall comply with such terms and conditions as may be imposed by the Commission.

(5) The provisions of subsection (1) shall apply to an invitation, offer or recommendation in relation to any securities of a corporation or units of a unit trust scheme or prescribed investment scheme that is proposed to be formed.

(6) Where the making of any invitation, offer or recommendation is subject to subsection (1) or is in respect of any exception under subsection (2), the provisions of section 363 of the Companies Act 1965 shall not apply.

(7) A person who contravenes subsection (1) or (4) shall be guilty of an offence and shall on conviction be punished with a fine not exceeding three million ringgit or imprisonment for a term not exceeding ten years or both.

65 Agreements to exclude or restrict liability void

An agreement is void in so far as it purports to exclude or restrict the liability of a person for contravention of section 55, 57 or 58 or for loss or damage under section 153.

Division 4 Debentures

Subdivision I Trust deeds, duties of trustees, borrowers, etc

66 Application of Division 4 of Part IV

(1) The provisions of subdivision 1 of Division 4 of Part IV and section 92 of subdivision 2 of Division 4 of Part IV shall not apply to any

issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures specified in Schedule 4.

(2) The provisions of Division 4 of Part IV as specified in Schedule 5 shall not apply to any issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures specified in Schedule 5.

(3) The provisions of Division 4 of Part IV shall not apply to an issue, offer or invitation that is made to a person or a class of persons, or made in respect of a debenture or a class of debentures, as the Minister may, on the recommendation of the Commission, prescribe by order published in the *Gazette*.

(4) A prescription made under subsection (3) may specify the provisions of Division 4 of Part IV to which an issue, offer or invitation shall not apply.

(5) The Minister, on the recommendation of the Commission, may from time to time by order published in the *Gazette,* vary, delete, add to, substitute for, or otherwise amend Schedule 4, Schedule 5 or any prescription made under subsection (3), as the case may be, and upon such publication, Schedule 4, Schedule 5 or the prescription, as varied, deleted, added to, substituted for or otherwise amended, shall come into full force and effect and shall be deemed to be an integral part of this Act as from the date of such publication, or from such later date as may be specified in the order.

67 Requirement for trust deed and trustee

(1) Every person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any debenture shall—

(a) enter into a trust deed that meets the requirements of section 68;

(b) appoint a trustee who is a person eligible to be appointed or to act as trustee in accordance with section 69; and

(c) comply with the requirements and provisions of this Division.

(2) A person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any debenture shall not allot such debenture unless the person has entered into a trust deed that meets with the requirements of section 68 and has appointed a trustee who is a person eligible to be appointed or to act as trustee under section 69.

(3) A person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any debenture shall not revoke the trust deed unless the person has repaid all amounts payable under the debenture in accordance with the terms, provisions and covenants of the debenture and the trust deed.

(4) A person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and shall on conviction be punished with a fine not exceeding three million ringgit or imprisonment for a term not exceeding ten years or both.

68 Form and contents of trust deeds

(1) A trust deed shall contain such provisions, covenants, require-

ments, information and particulars as may be specified by the Commission.

(2) A person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any debenture shall deliver a copy of the trust deed to the Commission together with such other particulars, information or documents as the Commission may specify.

69 Persons who can be trustees

(1) A trustee shall be—

(a) a company registered as a trust company under the Trust Companies Act 1949; or

(b) a corporation that is a public company under the Companies Act 1965 or under the laws of any other country which has been allowed by the Commission to act as trustee for the purposes of this Act.

(2) A person shall not be eligible to be appointed or to act as trustee for debenture holders without the approval of the Commission if the person—

(a) is a shareholder who beneficially holds shares in the borrower;

(b) is beneficially entitled to moneys owed by the borrower to it;

(c) has entered into a guarantee in respect of the amount secured or payable under the debenture; or

(d) is a related corporation of—

(i) the persons referred to in paragraphs (a) to (c); or

(ii) the borrower.

(3) An application made by a corporation referred to in paragraph (1)(b) or an application for approval made by a person referred to in subsection (2) shall be made to the Commission in accordance with such procedure or other requirement as may be specified by the Commission.

(4) Notwithstanding the provisions of subsection (2), a person is not prevented from being appointed or from acting as trustee by reason only that—

(a) the borrower owes to the trustee or any related corporation of the trustee any moneys, so long as such moneys are—

(i) moneys that do not, at the time of the appointment or at any time within a period of three months after the debentures are first offered for subscription or purchase or in respect of which an invitation to subscribe for or purchase is made, exceed one-tenth of the amount of the debentures proposed to be issued within that period and do not, at any time after the expiration of that period, exceed one-tenth of the amount the borrower owes to the holders of the debentures; or

(ii) moneys to which the trustee or any related corporation of the trustee is entitled to as trustee for holders of any debenture of the borrower, in accordance with the terms, provisions or covenants of the debenture or the trust deed; or

(b) the trustee or a related corporation of the trustee, despite being beneficial owners in the shares of the borrower, do not have the right to exercise more than one-twentieth of the voting power at any general meeting of the borrower.

(5) Where an application has been made to the Commission under subsection (3), the Commission may, subject to such terms and conditions as it thinks fit—

(a) allow a corporation to act as trustee for the purposes of this Act; or

(b) approve a person to be appointed or to act as trustee.

(6) In exercising its discretion whether to allow a corporation to act as a trustee under paragraph (5)(a) or approve a person to be appointed or to act as trustee under paragraph (5)(b), the Commission shall have regard to—

(a) the interests of holders of any debenture; and

(b) the ability of the trustee to safeguard the interests of such debenture holders as required by the provisions and covenants of the trust deed and the provisions of this Act.

(7) The Commission may revoke a decision to allow a corporation to act as trustee or an approval of a person to be appointed or to act as trustee under subsection (5) where the trustee has failed to comply with any term or condition imposed under subsection (5) or has contravened any provision of this Act.

(8) A trustee who—

(a) contravenes subsection (1) or (2); or

(b) fails to comply with a term or condition imposed by the Commission under subsection (5),

(8) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

70 Existing trustee to continue to act until new trustee takes office

Notwithstanding the provisions of section 43 of the Trustee Act 1949 or any term, provision or covenant in the debenture or trust deed, an existing trustee shall continue to act as trustee until a new trustee is appointed and has taken office as trustee.

71 Replacement of trustee

(1) Where no provision has been made in the debenture or trust deed for the appointment of a successor to a retiring trustee, the borrower shall, within one month after becoming aware of the intention of the trustee to retire, appoint as successor to the retiring trustee a trustee who is a person eligible to be appointed or to act as trustee under section 69.

(2) A Court may, on the application of the borrower, a debenture holder or the Commission—

(a) appoint, as trustee, a person who is eligible to be appointed or to act as trustee under section 69 if—

(i) the trustee has not been validly appointed; or

(ii) the trustee has ceased to exist; or

(b) terminate the appointment of an existing trustee and appoint in his place, as trustee, a person who is eligible to be appointed or to act as trustee under section 69 if—

(i) the existing trustee is not eligible to be appointed or to act as trustee under section 69;

(ii) the existing trustee fails or refuses to act in accordance with the provisions or covenants of the trust deed or the provisions of this Act;

(iii) a receiver is appointed over the whole or a substantial part of the assets or undertaking of the existing trustee and has not ceased to act under that appointment, or a petition is presented for the winding up of the existing trustee (other than for the purpose of and followed by a reconstruction, unless during or following such reconstruction the existing trustee becomes or is declared to be insolvent); or

(iv) the trustee is under investigation for conduct that contravenes the Trust Companies Act 1949, the Trustee Act 1949, the Companies Act 1965 or any securities law.

(3) A borrower who contravenes subsection (1) shall be guilty of an offence.

72 Duties of the borrower

(1) A borrower shall—

(a) use its best endeavours to carry on and conduct its business in a proper and efficient manner;

(b) provide a copy of the trust deed to—

(i) a debenture holder;

(ii) the trustee; or

(iii) any other person as may be allowed by the Commission,

(b) if they request a copy and upon payment of such reasonable sum as may be imposed by the borrower;

(c) make all of its financial and other records available for inspection by—

(i) the trustee;

(ii) an officer or employee of the trustee authorised by the trustee to carry out the inspection; or

(iii) an approved company auditor appointed by the trustee to carry out the inspection,

(c) and give any person carrying out the inspection any information, explanation or other assistance that the person may require; and

(d) comply with any direction issued by the Commission under subsection 89(1).

(2) A borrower who contravenes—

(a) paragraph (1)(a) shall not be guilty of an offence;

(b) paragraph (1)(b) or (1)(c) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit;

(c) paragraph (1)(d) shall be guilty of an offence.

(3) Where a borrower contravenes paragraph (1)(b) or (1)(c), the Commission may direct the borrower to comply with the provisions of those paragraphs.

(4) A borrower who fails to comply with a direction of the Commission issued pursuant to subsection (3) shall be guilty of an offence.

73 Duty of borrower to replace trustee

(1) A borrower shall take all reasonable steps to replace a trustee as soon as is practicable after becoming aware that—

(a) the trustee has ceased to exist;

(b) the trustee has not been validly appointed;

(c) the trustee is not eligible to be appointed or to act as trustee under section 69;

(d) the trustee has failed or has refused to act as trustee in accordance with the provisions or covenants of the trust deed or the provisions of this Act;

(e) a receiver is appointed over the whole or a substantial part of the assets or undertaking of the existing trustee and has not ceased to act under that appointment, or a petition is presented for the winding up of the existing trustee (other than for the purpose of and followed by a reconstruction, unless during or following such reconstruction) the existing trustee becomes or is declared to be insolvent); or

(f) the trustee is under investigation for conduct that contravenes the Trust Companies Act 1949, the Trustee Act 1949, the Companies Act 1965 or any securities law.

(2) A borrower who contravenes subsection (1) shall be guilty of an offence.

74 Duty of borrower to inform trustee about charge, etc

(1) Where a borrower creates a charge, it shall—

(a) give the trustee written details of the charge within twenty-one days after it is created; and

(b) if the total amount to be advanced on the security of the charge is indeterminate and the advances are not merged in a current account with bankers, trade creditors or any other person, give the trustee written details of the amount of each advance within seven days after it is made

(2) A borrower who contravenes subsection (1) shall be guilty of an offence.

75 Duty of borrower to give trustee and Commission quarterly reports

(1) A borrower shall, within one month after the end of each quarter—

(a) deliver to the trustee a quarterly report that sets out the information required by subsections (3), (4), (5) and (7);

(b) lodge a copy of the report with the Registrar; and

(c) deliver a copy of the report to the Commission.

(2) For the purpose of this section—

(a) the first quarter shall be a period of three months ending on a day fixed by the borrower by written notice to the trustee, provided that the day fixed shall be less than six months after the first issue of a debenture under the trust deed; and

(b) each of the subsequent quarters shall be for periods of three months, or for such shorter time as the trustee may allow in special circumstances.

(3) The report for a quarter shall include details of—

(a) any breach of any limitations on the amount the borrower may borrow;

(b) any failure by the borrower and each guarantor to comply with the terms, provisions or covenants of the debenture or the trust deed or contravention of the provisions of this Act during the quarter;

(c) any event that has happened during the quarter that has caused, or could cause, one or more of the following:

(i) any amount secured or payable under the debenture to become immediately payable;

(ii) the debenture to become immediately enforceable;

(iii) any other right or remedy under the terms, provisions or covenants of the debenture or the trust deed to become immediately enforceable;

(d) any circumstance that has occurred during the quarter that would materially prejudice—

(i) the borrower, any of its subsidiaries, or any of the guarantors, as the case may be; or

(ii) any security or charge included in or created by the debenture or the trust deed;

(e) any substantial change in the nature of the business of the borrower, any of its subsidiaries or its guarantors, as the case may be, that has occurred during the quarter;

(f) any of the following events that has happened in the quarter:

(i) the appointment of a guarantor;

(ii) the cessation of liability of a guarantor for the payment of the whole or part of the moneys for which it was liable under the guarantee; or

(iii) a change of name of a guarantor;

(g) the net amount outstanding on any advances at the end of the quarter if the borrower has created a charge where—

(i) the total amount to be advanced on the security of the charge is indeterminate; and

(ii) the advances are merged in a current account with bankers, trade creditors or any other person; and

(h) any other matter that may materially prejudice the interests of debenture holders.

(4) If money is owed to a borrower during the quarter by a related corporation of the borrower, not being such amounts that the borrower deposits with a licensed institution in the normal course of the borrower's business, the report must also include details of—

(a) the total amount owing by the related corporation during the quarter; and

(b) the total amount owing by the related corporation at the end of the quarter.

(5) If a borrower has assumed a liability of a related corporation during the quarter, the report shall include details of the extent of the liability assumed during the quarter and the extent of liability as at the end of the quarter.

(6) For purposes of subsections (4) and (5), the report—

(a) shall distinguish between amounts owing and assumptions of liability that are secured and those that are unsecured; and

(b) may exclude any deposit, loan or assumption of liability on behalf of the related corporation if it has—

(i) guaranteed the repayment of the debentures of the borrower; and

(ii) secured the guarantee by a charge over all of its property in favour of the trustee for the holders of the debentures of the borrower.

(7) If a prospectus issued in connection with an issue of, offer for subscription or purchase of, or an invitation to subscribe for or purchase, any debenture includes a statement relating to a particular purpose or project for which moneys received by a person in response to the issue offer or invitation are to be applied, the report shall include details of the progress that has been made towards achieving that purpose or completing that project.

(8) The report shall—

(a) be made in accordance with a resolution of the directors; and

(b) specify the date on which the report is made.

(9) Where a borrower fails to deliver the report to the trustee, the trustee shall inform the Commission of that fact.

(10) A borrower who contravenes this section shall be guilty of an offence.

76 Duty of borrower to inform trustee and Commission of occurrence of material event

(1) Notwithstanding section 75, a borrower shall inform the trustee and the Commission as soon as possible after the borrower becomes aware—

(a) of the happening of any event that has caused or could cause, one or more of the following:

(i) any amount secured or payable under the debenture to become immediately payable;

(ii) the debenture to become immediately enforceable; or

(iii) any other right or remedy under the terms, provisions or covenants of the debenture or the trust deed to become immediately enforceable; or

(b) of any circumstance that has occurred that would materially prejudice—

(i) the borrower, its subsidiaries or its guarantors; or

(ii) any security or charge included in or created by the debenture or the trust deed.

(2) A borrower who contravenes subsection (1) shall be guilty of an offence.

77 Duty of borrower where prospectus states purpose or project for which moneys are to be applied

(1) Where the prospectus relating to a debenture contains a statement as to the particular purpose or project for which amounts secured or payable under the debenture to which the trust deed relates are to be applied and the borrower intends to change the purpose or project for which such amounts are to be applied after the debenture has been issued to debenture holders, the borrower shall—

(a) notify the Commission; and

(b) give a notice in writing that is approved by the Commission under subsection (2) to each debenture holder.

(2) A notice referred to in subsection (1) may be approved by the Commission if the notice—

(a) specifies the purpose or project for which amounts secured or payable under the debenture would in fact be applied;

(b) offers to repay such amounts to each debenture holder; and

(c) contains such information and particulars as may be approved by the Commission.

(3) The borrower shall not be liable to repay the amount secured or payable under the debenture issued by the borrower under subsection (1) where the debenture holder does not demand in writing for the repayment of such amounts within fourteen days after receipt of the notice or such longer period as may be specified in the notice.

(4) Where the Commission is of the opinion that the new purpose or project is contrary to the approval or to the terms or conditions of the approval granted under subsection 32(5), the Commission may disallow the borrower from pursuing the new purpose or project for which amounts secured or payable under the debenture are to be applied and direct repayment of such amounts to each person from whom such amounts were received.

(5) Where a borrower receives a notice referred to in paragraph 82(1)(m), subsection 89(4) or 89(5), the borrower shall be liable to repay the amount secured or payable under the debenture issued by the borrower to any person to whom such amounts are owed or from whom such amounts were received.

(6) Subject to subsection (4), a notice given by the borrower under paragraph (1)(b) shall have effect as if the purpose or project specified in the notice is the purpose or project specified in the prospectus.

(7) Notwithstanding the provisions of subsection (1), the Commission may, on the written application of any borrower or of its own accord, make an order relieving such person from, or approving any variation of, the requirements of this section.

(8) A borrower who contravenes this section shall be guilty of an offence and shall on conviction be punished with a fine not exceeding

three million ringgit or imprisonment for a term not exceeding ten years or both.

78 Obligations of directors of borrower to deliver financial statements

(1) The directors of every borrower shall deliver to the trustee and the Commission and lodge with the Registrar such financial statements of the borrower as may be specified by the Commission.

(2) Subject to subsection (3), the directors of the borrower shall deliver to the trustee and the Commission a copy of the borrower's annual audited accounts within two weeks from the date of the borrower's annual general meeting.

(3) Where the borrower is a listed corporation that is required to submit information to the Commission under section 99D of the Securities Industry Act 1983, the borrower shall not be required to deliver its annual audited accounts to the Commission under this section.

(4) Where the directors of a borrower do not deliver to the trustee a copy of such financial statements of the borrower as may be specified by the Commission under subsection (1) or a copy of the borrower's annual audited accounts under subsection (2), the trustee shall inform the Commission of that fact.

(5) Where the directors of a borrower contravene or fail to take all reasonable steps to secure compliance with subsection (1) or (2), each director shall be guilty of an offence.

79 Borrower to issue document evidencing indebtedness, etc

(1) The borrower shall, within two weeks or such other period as may be specified by the Commission, after the acceptance of the moneys in response to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, a specified number or value of debentures, give to that person a document that acknowledges, evidences or constitutes an acknowledgment of the indebtedness of the borrower in respect of the receipt of moneys in response to the issue, offer or invitation.

(2) A document issued by the borrower in respect of any moneys received by the borrower in response to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, any debenture that certifies that a person named in the document—

(a) is the registered holder of a specified number or value of debentures issued by the borrower; and

(b) is subject to the provisions and covenants contained in a trust deed referred to or identified in the document.

(2) shall be deemed to be a document evidencing the indebtedness of the borrower in respect of such moneys.

(3) A borrower shall not accept or retain subscriptions to a debenture issue in excess of the amount of the issue as disclosed in the prospectus unless the borrower has specified in the prospectus—

(a) that it expressly reserves the right to accept or retain over-subscriptions; and

(b) a limit expressed as a specific sum of money on the amount of over-subscriptions that may be accepted or retained, being an

amount not more than twenty-five per centum in excess of the amount of the issue as disclosed in the prospectus.

(4) A borrower who contravenes subsection (1) or (3) shall be guilty of an offence.

80 Duties of guarantors

(1) Where a borrower is required to enter into a trust deed under section 67 in relation to any debenture, a guarantor in respect of such debenture shall—

(a) use its best endeavours to carry on and conduct its business in a proper and efficient manner;

(b) make all of its financial or other records available for inspection by—

(i) the trustee;

(ii) an officer or employee of the trustee authorised by the trustee to carry out the inspection; or

(iii) an approved company auditor appointed by the trustee to carry out the inspection,

(b) and give such persons carrying out the inspection any information, explanation or other assistance that they may require;

(c) furnish the borrower with any information relating to itself which is required under subsection 75(3) to be contained in the quarterly report, within fourteen days from the date the borrower requests for such information by notice in writing or within such other period which shall not be less than fourteen days as may be specified in the notice; and

(d) where it creates a charge—

(i) give the trustee written details of the charge within twenty-one days after it is created; and

(ii) give the trustee written details of—

(A) the amount of each advance made within seven days after it is made; or

(B) where the advances are merged in a current account with bankers, trade creditors or any other person, the net amount outstanding on the advances at the end of every three months.

(2) A guarantor who contravenes paragraph (1)(a) shall not be guilty of an offence.

(3) A guarantor who contravenes paragraph (1)(b) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit.

(4) Where a guarantor contravenes paragraph (1)(b), the Commission may direct the guarantor to comply with the provisions of that paragraph.

(5) A guarantor who fails to comply with a direction of the Commission issued pursuant to subsection (4) shall be guilty of an offence.

(6) A guarantor who contravenes paragraph (1)(c) or (1)(d) shall be guilty of an offence.

81 Obligations of directors of guarantor to deliver financial statements

(1) The directors of every guarantor shall deliver to the trustee and the Commission and lodge with the Registrar such financial statements of the guarantor as may be specified by the Commission.

(2) Subject to subsection (3), the directors of the guarantor shall deliver to the trustee and the Commission a copy of the guarantor's annual audited accounts within two weeks from the date of the guarantor's annual general meeting.

(3) Where the guarantor is a listed corporation that is required to submit information to the Commission under section 99D of the Securities Industry Act 1983, the guarantor shall not be required to deliver its annual audited accounts to the Commission under this section.

(4) Where the directors of a guarantor do not deliver to the trustee a copy of such financial statements of the guarantor as may be specified by the Commission under subsection (1) or a copy of the guarantor's annual audited accounts under subsection (2), the trustee shall inform the Commission of that fact.

(5) Where the directors of a guarantor contravene or fail to take all reasonable steps to secure compliance with subsection (1) or (2), each director shall be guilty of an offence.

82 Duties of trustees

(1) The trustee of a trust deed that is entered into under section 67—

(a) shall exercise reasonable diligence to ascertain whether the assets of the borrower and of each guarantor which are or may be available, whether by way of security or otherwise, are insufficient or are likely to become insufficient to repay the amount secured or payable under the debenture to which the trust deed relates as and when it becomes due;

(b) shall satisfy itself that the provisions of a prospectus relating to the debenture do not contain any matter which is inconsistent with the terms, provisions and covenants of the debenture and the trust deed;

(c) shall exercise reasonable diligence to ascertain whether the borrower or each guarantor has committed any breach of the terms, provisions or covenants of the debenture or the trust deed or has contravened any of the provisions of this Act;

(d) shall do everything in its power to ensure that the borrower or each guarantor remedies any breach known to the trustee of the terms, provisions or covenants of the debenture or the trust deed or any contravention of the provisions of this Act unless the trustee is satisfied that the breach or contravention will not materially prejudice the debenture holder's interest or any security for the debenture;

(e) shall, where the borrower or the guarantor fails to remedy any breach of the terms, provisions or covenants of the debenture or the trust deed or any contravention of the provisions of this Act, call for a meeting of debenture holders and place before the

meeting proposals for the protection of the interests of the debenture holders as the trustee considers necessary or appropriate and obtain their directions;

(f) shall ensure that the borrower and each guarantor complies with Division 7 of Part IV of the Companies Act 1965, to the extent that it applies to the debenture;

(g) shall notify the Commission as soon as practicable if—

(i) the borrower has contravened section 74 or 75; or

(ii) a guarantor has contravened paragraph 80(1)(d);

(h) shall notify the Commission as soon as practicable where the trustee discovers that it is not eligible to be appointed or to act as trustee under section 69;

(i) shall give the debenture holders a statement explaining the effect of any proposal that the borrower submits to the debenture holders before any meeting that—

(i) the Court calls in relation to a scheme of arrangement or compromise under subsection 176 (1) of the Companies Act 1965; or

(ii) the trustee calls under subsection 87(1);

(j) shall comply with any directions given to it at a debenture holders' meeting referred to in sections 86, 87 and 88 unless—

(i) the trustee is of the opinion that the direction is inconsistent with the terms, provisions or covenants of the debenture or the trust deed or the provisions of this Act or is otherwise objectionable; and

(ii) the trustee has either obtained, or is in the process of obtaining, an order from the Court under section 91 to set aside or vary that direction;

(k) shall apply to the Commission for a direction under subsection 89(1) where the trustee upon due inquiry is of the opinion that the assets of the borrower and the guarantor which are or should be available, whether by way of security or otherwise, are insufficient or are likely to become insufficient to repay the amount secured or payable under the debenture to which the trust deed relates when it becomes due;

(l) shall apply to the Court for an order under section 91 where—

(i) the trustee upon due inquiry is of the opinion that the assets of the borrower and the guarantor which are or should be available, whether by way of security or otherwise, are insufficient or are likely to become insufficient to repay the amount secured or payable under the debenture to which the trust deed relates when it becomes due; or

(ii) the borrower has failed to comply with a direction made by the Commission under subsection 89(1); and

(m) shall, where the prospectus relating to the debenture contains a statement as to the particular purpose or project for which such amounts are to be applied and—

(i) it appears to the trustee that the purpose or project has

not been achieved within the time stated in the prospectus or where no time is stated, within a reasonable time; or

(ii) it is the trustee's opinion that notice is necessary for the protection of the interests of debenture holders,

give a notice in writing to the borrower requiring it to repay the amounts secured or payable under the debenture to which the trust deed relates within one month after the notice is given and deliver a copy of that notice to the Commission, unless the trustee is satisfied of any or all of the following:

(A) that the purpose or project has been substantially achieved or completed; or

(B) that the interests of debenture holders have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time.

(2) For the purposes of paragraphs (1)(k) and (1)(l), a trustee in making any application to the Commission or to the Court—

(a) shall have regard to the nature and kind of security given when the debentures were first issued or, if no security was given, shall have regard to the position of debenture holders as unsecured creditors of the borrower; and

(b) may rely on any certificate or report given or statement made by any advocate, auditor or officer of the borrower or the guarantor if it has reasonable grounds for believing that the advocate, auditor or officer was competent to give or make the certificate, report or statement.

(3) A trustee who contravenes subsection (1) shall not be guilty of an offence.

83 Exemptions and indemnification of trustee from liability

(1) Subject to this section, a term, provision or covenant of a debenture or a trust deed or a term of a contract with holders of debentures secured by a trust deed shall be void in so far as the term, provision or covenant, as the case may be, would have the effect of—

(a) exempting a trustee from liability for contravention of any provision of this Act or for breach of trust or for failure to show the degree of care and diligence required of it as trustee; or

(b) indemnifying a trustee against liability for contravention of any provision of this Act or for breach of trust or for failure to show the degree of care and diligence required of it as trustee,

unless the term, provision or covenant—

(aa) releases the trustee from liability for anything done or omitted to be done before the release is given; or

(bb) enables a meeting of debenture holders to approve the release of a trustee from liability for anything done or omitted to be done before the release is given.

(2) For the purpose of paragraph (1)(bb)—

(a) a release is approved if the debenture holders who vote for the resolution hold seventy-five percent of the nominal value of

the debentures held by all the debenture holders who attend the meeting and vote on the resolution; and

(b) a debenture holder attends the meeting and votes on the resolution if—

(i) such debenture holder attends the meeting in person and votes on the resolution; or

(ii) if proxies are permitted, the debenture holder is represented at the meeting by a proxy and the proxy votes on the resolution.

84 Indemnity of trustee

(1) A trustee is not liable for anything done or omitted to be done in accordance with a direction given to the trustee by the debenture holders at any meeting called under section 86, 87 or 88.

(2) A trustee may, in addition to any other rights under the trust deed, seek reimbursement by deducting out of any moneys coming into the trustee's hands from the borrower all reasonable costs incurred in explaining the effect of any proposal that the borrower submits to the debenture holders in the circumstances set out in paragraph 82(1)(i).

85 Duty of auditor to trustee for debenture holders

(1) An auditor of a borrower shall, within seven days after furnishing the borrower with any balance sheet, profit and loss account or any report, certificate or other document which he is required by the Companies Act 1965 or by the debenture or trust deed to give to the borrower, send a copy of such balance sheet, profit and loss account, report, certificate or other document by post to every trustee for the holders of debentures of the borrower.

(2) Where, in the performance of his duties as auditor of a borrower, the auditor becomes aware of any matter which, in his professional opinion, is relevant to the exercise and performance of the powers and duties imposed on the trustee—

(a) by this Act; or

(b) under the trust deed,

(2) the auditor shall, as soon as practicable after becoming aware of the matter, report the matter to the borrower and the trustee.

(3) Where, in the performance of his duties as auditor for the borrower, the auditor becomes aware—

(a) of any matter which, in his professional opinion, may constitute a contravention of any provision of this Act; or

(b) of any irregularities that may have a material effect on the ability of the borrower to repay any amount under the debenture,

(3) the auditor shall immediately report the matter to the Commission.

(4) The auditor shall not, in the absence of proof of malice on his part, be liable to any action for defamation at the suit of any person in respect of any statement made in the circumstances referred to in subsection (1), (2) or (3).

(5) An auditor who—

(a) contravenes subsection (1) or (2) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit;

(b) contravenes subsection (3) shall be guilty of an offence.

86 Duty of borrower to call a meeting

(1) A borrower shall call a meeting of debenture holders if—

(a) debenture holders who together hold ten per cent or more of the nominal value of the issued debentures to which the trust deed relates direct the borrower to do so;

(b) the direction is given to the borrower in writing at its registered office; and

(c) the purpose of the meeting is to—

(i) consider the financial statements or annual audited accounts that were last delivered to the trustee under section 78 or 81;

(ii) give the trustee such directions as the meeting thinks proper; or

(iii) Consider any other matter in relation to the trust deed.

(2) Where a borrower is required to call a meeting, it must give notice of the time and place of the meeting to—

(a) the trustee;

(b) the borrower's auditor; and

(c) any debenture holder whose name is entered on the register of debenture holders or record of depositors, as the case may be,

(2) in accordance with the provisions of subsections (3) and (4).

(3) For the purpose of subsection (2), notice to joint holders of a debenture must be given to the joint holder named first in the register of debenture holders or record or depositors, as the case may be.

(4) A borrower may give notice to a debenture holder—

(a) personally;

(b) by sending it by post to the address of the debenture holder in the register of debenture holders; or

(c) by any other means that the terms, provisions or covenants of the debenture or the trust deed permit.

(5) A notice of meeting posted to a debenture holder shall be taken as being given three days after it is posted, unless the terms, provisions or covenants of the debenture or the trust deed provide otherwise.

(6) A trustee may appoint a person to chair a meeting of debenture holders called under subsection (1) and where the trustee does not exercise this power, the debenture holders present at the meeting may appoint a person to chair the meeting.

(7) A borrower who contravenes subsection (1) or (2) shall be guilty of an offence.

87 Power of trustee to call a meeting

(1) Where a borrower or guarantor fails to remedy any breach of the terms, provisions or covenants of a debenture or a trust deed or any contravention of any provision of this Act when required by the trustee, the trustee may—

(a) call a meeting of debenture holders;

(b) inform the debenture holders of the failure at the meeting;

(c) submit proposals for the protection of debenture holders' interests to the meeting; and

(d) ask for directions from the debenture holders in relation to the matter.

(2) A trustee may appoint a person to chair a meeting of debenture holders called under subsection (1) and where the trustee does not exercise this power the debenture holders present at the meeting may appoint a person to chair the meeting.

(3) A trustee is entitled to be reimbursed by the borrower for any costs incurred in calling for a meeting of debenture holders in pursuance of any of its duties or functions under this Act or any term, provision or covenant of the debenture or the trust deed.

88 Court may order a meeting of debenture holders

(1) Without limiting the effect of section 90 or 91, the Court may make an order under either of those sections for a meeting of all or any of the debenture holders to be held to give directions to the trustee.

(2) An order made under subsection (1) may direct the trustee to—

(a) place before the debenture holders any information concerning the interests of the debenture holders;

(b) place before the debenture holders any proposal to protect the interests of the debenture holders that the Court directs or the trustee considers appropriate; and

(c) obtain the debenture holders' directions concerning the protection of the interests of the debenture holders.

(3) The meeting shall be held and be conducted in such manner as the Court may direct.

(4) A trustee may appoint a person to chair the meeting and where the trustee does not exercise this power, the debenture holders present at the meeting may appoint a person to chair the meeting.

89 Powers of Commission to protect interests of debenture holders

(1) The Commission may, on the application of a trustee under paragraph 82(1)(k) or of its own accord where a trustee fails or refuses to act, issue a written direction to a borrower imposing restrictions on the activities of the borrower as the Commission thinks necessary for the protection of the interests of debenture holders.

(2) The Commission shall serve the written direction issued under subsection (1) at the borrower's registered office in Malaysia.

(3) The Commission in issuing a direction under subsection (1) shall first give the borrower an opportunity to be heard in relation to the application.

(4) Where a prospectus relating to any debenture contains a statement as to the particular purpose or project for which amounts secured or payable under the debenture are to be applied and—

(a) it appears to the Commission that the purpose or project has not been achieved within the time stated in the prospectus or, where no time is stated, within a reasonable time;

(b) it is the Commission's opinion that notice is necessary for the protection of the interests of debenture holders; and

(c) the trustee in relation to the debenture has failed or refused to act under paragraph 82(1)(m),

the Commission may, upon due inquiry, direct the borrower in writing to repay the amounts secured or payable under the debenture issued by the borrower within one month after the notice is given, unless the Commission is satisfied on any or all of the following:

(aa) that the purpose or project has been substantially achieved or completed; or

(bb) that the interests of debenture holders have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time.

(5) Where a prospectus relating to any debenture contains a statement as to the particular purpose or project for which the amounts secured or payable under the debenture are to be applied and the Commission becomes aware, by means other than upon notification by a borrower under subsection 77 (1), that such amounts are in fact used or intended to be used for a purpose or project not specified in the prospectus, the Commission may, upon due inquiry, direct the borrower in writing to repay such amounts to each person from whom such amounts were received or if the debentures have been issued, to each debenture holder, within one month after the notice is given.

90 General power of Court to give directions and determine questions

Where a trustee applies to the Court for any direction in relation to the performance of the trustee's functions or to determine any question in relation to the interests of debenture holders, the Court may give any direction and make any declaration or determination in relation to the matter or make any ancilliary or consequential orders that the Court considers appropriate.

91 Specific Court powers

(1) Where a borrower, trustee or the Commission applies to the Court for an order under the provisions of this Act or pursuant to any term, provision or covenant of a debenture or a trust deed, the Court may make any or all of the following orders:

(a) an order staying an action or other civil proceedings before a Court by or against a borrower or a guarantor;

(b) an order restraining a borrower from paying any moneys to the debenture holders or holders of any other class of debentures;

(c) an order that any security for the debentures be enforceable immediately or at the time the Court directs, whether or not the debentures are irredeemable or redeemable only on the happening of a contingency;

(d) an order appointing a receiver of any property constituting security for the debentures;

(e) an order restricting advertising by a borrower for deposits or loans;

(f) an order restricting borrowing by a borrower;

(g) an order varying or rescinding any order made by the Court under this Act; or

(h) any other order that the Court considers appropriate to protect the interests of existing or prospective debenture holders.

(2) In deciding whether to make an order under subsection (1), the Court shall have regard to the rights of all creditors of the borrower.

Subdivision 2 General

92 Register of debenture holders

(1) Subject to subsection (2), every borrower which issues debentures, not being debentures transferable by delivery, shall keep a register of debenture holders at its registered office or at some other place in Malaysia.

(2) Where the borrower is a company, the borrower shall comply with the provisions of section 70 of the Companies Act 1965 that relate to the obligation to keep a register of debenture holders and a branch register of debenture holders.

(3) The register shall contain particulars of—

(a) the names and addresses of debenture holders; and

(b) the amount of debentures held by them.

(4) The register shall be open for inspection by registered debenture holders or shareholders of the borrower except when duly closed under subsection (5).

(5) A register is deemed to be duly closed—

(a) if it is closed in accordance with the provisions contained in—

(i) the constituent documents of the borrower;

(ii) the debentures or debenture stock certificates;

(iii) the trust deed; or

(iv) any other document relating to or securing the debenture; and

(b) where it is closed for such periods as is specified in any of the documents mentioned in subparagraphs (5)(a)(i), (5)(a) (ii), (5)(a)(iii) and (5)(a)(iv), provided that such period does not exceed, in the aggregate, thirty days in any calendar year.

(6) A borrower shall, upon request, supply every registered debenture holder or shareholder of the borrower with a copy of the register of debenture holders, or such part thereof, on the payment of a reasonable sum as may be specified by the borrower.

(7) The copy of the register of debenture holders referred to in subsection (6) need not include the particulars of any debenture holder other than the name and address of the registered debenture holder and the debentures held by him.

(8) If inspection is refused, or a copy is refused or not forwarded within a reasonable time after a request has been made pursuant to this section, the borrower and every officer of the borrower who is in default shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred thousand ringgit.

(9) A borrower issuing debentures may keep at any place outside Malaysia a branch register of debenture holders which shall be deemed to be a part of the borrower's register of debenture holders, and the provisions of Division 4 of Part V of the Companies Act 1965 shall, with such adaptations as are necessary, apply to and in relation to the keeping of a branch register of debenture holders.

(10) Notwithstanding the provisions of subsections (1) to (9), the Commission may, either on the written application of any borrower referred to in subsection (1) or of its own accord, make an order relieving such borrower from, or approving any variation from, the requirements of this section relating to the maintenance of a register of debenture holders, subject to such terms and conditions as it deems fit,

(11) A borrower and every officer of the borrower who is in contravention of subsection (1), (3) or (9) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred thousand ringgit.

93 Specific performance

A contract with a borrower to take up and pay for any debenture of the borrower may be enforced by an order for specific performance.

94 Perpetual debentures

Notwithstanding any rule of law or equity which disallows perpetual debentures, a condition contained in any debenture or any trust deed relating to a debenture shall not be invalid by reason only that the debenture is—

(a) irredeemable;

(b) redeemable only on the happening of a contingency, however remote; or

(c) redeemable on the expiration of a period, however long.

95 Reissue of redeemed debentures

(1) Where a borrower has redeemed any debenture—

(a) unless any provision to the contrary, whether express or implied, is contained in the constituent documents of the borrower or any contract entered into by the borrower; or

(b) unless the borrower has shown an intention that the debenture shall be cancelled by passing a resolution to that effect or by some other act,

(1) the borrower shall have and shall be deemed to have had the power to reissue the debenture, either by reissuing the same debenture or issuing any other debenture in its place.

(2) The reissue of a debenture or the issue of one debenture in place of another under subsection (1) shall not be regarded as an issue of a new debenture for the purpose of any provision limiting the amount or number of debentures that may be issued by the borrower.

(3) After the reissue, the person entitled to the debenture shall have and shall be deemed to have had the same priorities as if the debenture had never been redeemed.

(4) Where a borrower has deposited any of its debentures to secure advances on a current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the borrower having ceased to be in debit while the debentures remain so deposited.

Division 5 Unit Trust Schemes and Prescribed Investment Schemes

96 Definition

In this Division, unless the contrary intention appears—

"deed" means a document having the effect of a deed and, where applicable, includes a supplementary deed.

97 Requirement for trustee and deed

(1) Subject to subsection (2), every person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any unit shall—

(a) ensure that a trustee who has been approved by the Commission under section 98 and who is eligible to be appointed or to act as trustee under section 99 has been appointed;

(b) enter into a deed that has been registered under section 102 and that meets with the requirements of section 103 or ensure that there is in force a deed that has been registered under section 102 and that meets with the requirements of section 103; and

(c) comply with the requirements and provisions of this Act.

(2) No person except a management company approved by the Commission under section 98 or a person authorised to act on behalf of a management company that has been approved by the Commission under section 98 shall—

(a) issue;

(b) offer for subscription or purchase; or

(c) invite any person to subscribe for or purchase,

(2) any unit.

(3) A person who contravenes subsection (1) or (2) shall be guilty of an offence.

98 Approval of trustee and management company

(1) No person shall act or be appointed to act as trustee and trustee or as a management company in relation to a unit company trust scheme or prescribed investment scheme without obtaining the prior approval of the Commission to act as trustee or as a management company.

(2) The Commission may, subject to such terms and conditions as it thinks fit, approve—

(a) a company to act as a management company of a unit trust scheme or a prescribed investment scheme; and

(b) a person who is eligible to be appointed or to act as trustee

under section 99, to act as trustee of a unit trust scheme or a prescribed investment scheme.

(3) The Commission may, at any time, by reason of a breach of a term or condition subject to which the approval was granted under this Division or by reason of a contravention of this Act or any securities law, revoke such approval.

(4) Without prejudice to subsection (1), the Commission may impose such other terms and conditions as it thinks fit while the approval is in force, but if the terms and conditions proposed to be imposed are likely to prejudice the interests of the management company or trustee, as the case may be, the Commission shall give the management company or trustee an opportunity to be heard.

(5) An application for an approval under subsection (2) shall be made to the Commission in accordance with such procedure or other requirement as may be specified by the Commission.

(6) A trustee or a management company who contravenes subsection (1) shall be guilty of an offence.

99 Persons who can be trustees

(1) A person shall not be eligible to be appointed or to act as trustee for unit holders without the approval of the Commission if the person—

(a) is a shareholder who beneficially holds shares in the management company;

(b) is beneficially entitled to moneys owed by the management company to it; or

(c) is a related corporation of—

(i) the persons referred to in paragraphs (a) and (b); or

(ii) the management company.

(2) An application for approval by a person referred to in subsection (1) shall be made in accordance with such procedure or other requirement as may be specified by the Commission.

(3) Notwithstanding the provisions of subsection (1), a person is not prevented from being appointed or from acting as trustee by reason only that—

(a) the moneys that the management company owes to the trustee or any related corporation of the trustee are moneys to which the trustee or any related corporation of the trustee is entitled to as trustee, in accordance with the provisions or covenants of the deed; or

(b) the trustee or a related corporation of the trustee, despite being beneficial owners in the shares of the management company, do not have the right to exercise more than one-twentieth of the voting power at any general meeting of the management company.

(4) The Commission may, subject to such terms and conditions as it thinks fit, approve a person to be appointed or to act as trustee where an application has been made to the Commission pursuant to subsection (1).

(5) In exercising its discretion under subsection (4) the Commission shall have regard to—

(a) the interests of holders of any unit; and

(b) the ability of the trustee to safeguard the interests of unit holders as required by the provisions and covenants of the deed and the provisions of this Act.

(6) The Commission may revoke an approval granted under subsection (4) where the trustee has failed to comply with any term or condition imposed under subsection (4) or has contravened any provision of this Act.

(7) A trustee who—

(a) contravenes subsection (1);

(b) fails to comply with a term or condition imposed by the Commission under subsection (4),

(7) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

100 Existing trustee to continue to act until new trustee takes office

Notwithstanding section 43 of the Trustee Act 1949 or any provision or covenant in the deed, an existing trustee shall continue to act as trustee until a new trustee is appointed and has taken office as trustee.

101 Replacement of trustee

(1) Where no provision has been made in the deed for the appointment of a successor to a retiring trustee, the management company shall, within one month after becoming aware of the intention of the trustee to retire, appoint as successor to the retiring trustee a trustee who has been approved by the Commission under section 98 and who is a person eligible to be appointed or to act as trustee under section 99.

(2) The Commission may, on the application of the management company, a unit holder or of its own accord—

(a) appoint, as trustee, a person who is eligible to be appointed or to act as trustee under section 99 if—

(i) a trustee has not been validly appointed; or

(ii) the trustee has ceased to exist; or

(b) terminate the appointment of an existing trustee and appoint in his place, as trustee, a person who is eligible to be appointed or to act as trustee under section 99 if—

(i) the existing trustee is not eligible to be appointed or to act as trustee under section 99;

(ii) the existing trustee fails or refuses to act in accordance with the provisions or covenants of the deed or the provisions of this Act;

(iii) a receiver is appointed over the whole or a substantial part of the assets or undertaking of the existing trustee and has not ceased to act under that appointment, or a petition is presented for the winding up of the existing trustee (other than for the purpose of and followed by a reconstruction, unless dur-

ing or following such reconstruction the existing trustee becomes or is declared to be insolvent); or

(iv) the trustee is under investigation for conduct that contravenes the Trust Companies Act 1949, the Trustee Act 1949, the Companies Act 1965 or any securities law.

(3) Except for subparagraph (2)(a)(ii), a trustee shall be given the opportunity to be heard before the Commission takes any action under subsection (2).

(4) A management company who contravenes subsection (1) shall be guilty of an offence.

102 Registration of deed

(1) The management company shall submit the deed referred to in paragraph 97(1)(b) to the Commission for registration and such deed shall not have effect unless so registered.

(2) On an application for registration of a deed, the Commission may—

(a) register the deed;

(b) register the deed with such revisions or subject to such terms and conditions as it deems fit; or

(c) refuse to register the deed.

(3) An application under subsection (2) shall be made in accordance with such procedure or other requirement as may be specified by the Commission.

(4) The Commission shall refuse to register a deed under paragraph (2)(c) if—

(a) it appears to the Commission that the deed does not comply with the requirements of this Act or any other requirement as may be specified by the Commission;

(b) the making available of, offer for subscription or purchase of, or invitation to subscribe for or purchase, a unit to which the deed relates has not been approved by the Commission under section 32; or

(c) the trustee referred to in paragraph 97(1)(a) has not been appointed for the purposes of the deed.

(5) Subject to subsection (4), the Commission shall register a deed together with an application for its registration.

103 Contents of deed

A deed shall contain such provisions, covenants, requirements, information and particulars as may be specified by the Commission.

104 Modification of deed through supplementary deed

(1) A modification may be made to a deed only by a deed expressed to be supplementary to the principal deed and submitted by the management company to the Commission for registration, and a supplementary deed shall not have effect unless it has been so registered.

(2) On an application for registration of a supplementary deed, the Commission may—

(a) register the supplementary deed;

(b) register the supplementary deed with such revisions or subject to such terms and conditions as it deems fit; or

(c) refuse to register the supplementary deed.

(3) The Commission shall refuse to register a supplementary deed under paragraph (2)(c) if it appears to the Commission that the supplementary deed does not comply with the requirements of this Act or any other requirement as may be specified by the Commission.

(4) The supplementary deed submitted for registration shall be accompanied by—

(a) a resolution of not less than two-thirds of all unit holders at a unit holders' meeting duly convened and held according to the provisions and covenants of the deed sanctioning the proposed modification to the deed; or

(b) a statement from the trustee and the management company certifying that in their opinion such modification, alteration or addition does not materially prejudice the interests of unit holders and does not operate to release the trustee or the management company from any responsibility to the unit holders.

(5) The Commission may require the management company, in any application for registration of a supplementary deed, to obtain a resolution under paragraph (4)(a) if in the Commission's opinion any modification, alteration or addition to the deed may prejudice the interests of unit holders.

(6) A supplementary deed proposing any modification, alteration or addition to the deed which—

(a) would increase the maximum service charge or annual management fee payable to the management company, whether payment is made out of the property or assets of the unit trust scheme or prescribed investment scheme or otherwise; or

(b) would increase the maximum payment allowed to be made out of the property or assets of the unit trust scheme or prescribed investment scheme to the trustee by way of remuneration for the trustee's services,

(6) shall be submitted for registration accompanied by a resolution under paragraph (4)(a).

(7) A supplementary deed upon registration under this section shall be deemed to be part of the deed to which it relates for the purposes of this Act.

(8) A person who contravenes subsection (1) shall be guilty of an offence.

105 Deed to be lodged with Commission

The management company shall lodge a deed with the Commission within seven days after the deed has been registered under section 102 or 104.

106 Duties of a management company

(1) A management company who is required to enter into a deed under section 97—

(a) shall carry on and manage its business and the unit trust

scheme or prescribed investment scheme, as the case may be, in a proper, diligent and efficient manner;

(b) shall carry on and manage its business in accordance with the provisions and covenants of the deed, the provisions of this Act, any securities law and any regulations made thereunder;

(c) shall provide a copy of the deed to—

(i) a unit holder; or

(ii) a trustee,

(c) upon request for a copy of the deed and on payment of such reasonable sum as may be imposed by the management company;

(d) shall make all financial or other records of a unit trust scheme or a prescribed investment scheme available for inspection by—

(i) a trustee;

(ii) an officer or employee of the trustee authorised by the trustee to carry out the inspection; or

(iii) an approved company auditor appointed by the trustee to carry out the inspection,

(d) and give such persons carrying out the inspection any information, explanation or other assistance that they may require in relation to those records; and

(e) shall make a copy of the deed available for inspection without charge to any member of the public.

(2) Except as may be prescribed by way of regulations made under section 159, a management company shall not act as principal in the sale and purchase of securities, property and assets to and from the unit trust scheme or prescribed investment scheme.

(3) A management company shall not make improper use of its position in managing the unit trust scheme or prescribed investment scheme to gain, directly or indirectly, an advantage for itself or for any other person or to cause detriment to the interests of unit holders of such unit trust scheme or prescribed investment scheme.

(4) A management company shall not, without the prior approval of the trustees, invest any moneys available under the deed in any securities, property and assets in which the management company or any officer of the management company has a financial interest or from which the management company or any officer of the management company derives a benefit.

(5) A management company who contravenes—

(a) paragraph (1)(a) shall not be guilty of an offence;

(b) paragraph (1)(c), (1)(d) or (1)(e) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit;

(c) paragraph (1)(b) or subsection (2), (3) or (4) shall be guilty of an offence.

(6) Where a management company contravenes paragraph (1)(c), (1)(d) or (1)(e), the Commission may direct the management company to comply with all or any of the provisions of those paragraphs.

(7) A management company who fails to comply with a direction of

the Commission issued pursuant to subsection (6) shall be guilty of an offence.

107 Duty of management company to lodge returns, etc

(1) A management company—

(a) shall lodge with the Commission—

(i) the annual report of a unit trust scheme or a prescribed investment scheme within two months after the end of each financial year of the unit trust scheme or prescribed investment scheme; and

(ii) the annual report of the management company within six months after the end of each financial year of the management company; and

(b) shall deliver to the Commission such other statements, documents, books and other particulars as may be required by the Commission.

(2) Any document required to be lodged with or delivered to the Commission by a management company under subsection (1) shall be signed by at least one of the directors of the management company.

(3) A management company shall—

(a) send to every unit holder without charge a copy of the document referred to in subparagraph (1)(a)(i) within two months after the end of each financial year of the unit trust scheme or prescribed investment scheme; and

(b) where a unit holder requests for the document referred to in subparagraph (1)(a)(ii) and any additional copies of the document referred to in subparagraph (1)(a)(i), send to the unit holder the document requested for within two months after the request is received and upon payment of a reasonable sum as may be determined by the management company.

(4) A management company shall ensure that all financial statements required to be lodged with or delivered to the Commission or required for distribution to any unit holder relating to the unit trust scheme or prescribed investment scheme shall comply with approved accounting standards.

(5) A management company who contravenes subsection (1), (2), (3) or (4) shall be guilty of an offence.

108 Duty of management company to replace trustee

(1) A management company shall take all reasonable steps to replace a trustee as soon as practicable after becoming aware that—

(a) the trustee has ceased to exist;

(b) the trustee has not been validly appointed;

(c) the trustee is not eligible to be appointed or to act as trustee under section 99;

(d) the trustee has failed or refused to act as trustee in accordance with the provisions or covenants of the deed or the provisions of this Act;

(e) a receiver is appointed over the whole or a substantial part of the assets or undertaking of the existing trustee and has not

ceased to act under that appointment, or a petition is presented for the winding up of the existing trustee (other than for the purpose of and followed by a reconstruction, unless during or following such reconstruction the existing trustee becomes or is declared to be insolvent); or

(f) the trustee is under investigation for conduct that contravenes the Trust Companies Act 1949, the Trustee Act 1949, the Companies Act 1965 or any securities law.

(2) A management company who contravenes subsection (1) shall be guilty of an offence.

109 Duties of trustee

(1) A trustee shall take custody and control of all securities, property and assets of a unit trust scheme or prescribed investment scheme and hold it in trust for the unit holders in accordance with the deed, such requirements as may be specified by the Commission, the provisions of this Act, all applicable securities laws and any regulations made thereunder.

(2) A trustee of a deed entered into under section 97 shall—

(a) satisfy itself that the provisions of a prospectus relating to any unit trust scheme or prescribed investment scheme do not contain any matter which is inconsistent with the provisions and covenants of the deed;

(b) exercise reasonable diligence to ascertain whether the management company has committed any breach of the provisions or covenants of the deed or has contravened any of the provisions of this Act;

(c) do everything in its power to ensure that the management company remedies any breach known to the trustee of the provisions or covenants of the deed or any contravention of the provisions of this Act unless the trustee is satisfied that the breach will not materially prejudice the unit holders' interests;

(d) notify the Commission as soon as practicable of any irregularity, any breach of the provisions or covenants of the deed, any contravention of the provisions of this Act or any inconsistency between the provisions of the prospectus and the provisions or covenants of the deed as referred to in paragraph (a) which, in the trustee's opinion, may indicate that the interests of the unit holders are not being served;

(e) give the unit holders a statement explaining the effect of any proposal that the management company submits to the unit holders before any meeting that—

(i) the Court orders in relation to a scheme of arrangement or compromise under subsection 176(1) of the Companies Act 1965; or

(ii) the trustee may call under section 115; and

(f) comply with any direction given to the trustee at a unit holders' meeting referred to in section 114, 115 or 116 unless—

(i) the trustee is of the opinion that the direction is inconsistent with any provision or covenant of the deed or the provisions of this Act or is otherwise objectionable; and

(ii) the trustee has either obtained, or is in the process of obtaining, an order from the Court under section 123 to set aside or vary that direction.

(3) A trustee who contravenes subsection (1) or (2) shall not be guilty of an offence.

110 Duty of trustee to wind up scheme

(1) Where a management company is in liquidation or where, in the opinion of the trustee, a management company has ceased to carry on business or has, to the prejudice of the unit holders, failed to comply with any provision or covenant of the deed or contravened any of the provisions of this Act, the trustee shall summon a meeting of the unit holders—

(A) by sending by post a notice of the proposed meeting at least twenty-one days before the date of the proposed meeting, to each unit holder's last known address or, in the case of joint unit holders, to the joint unit holder whose name stands first in the records of the management company at the joint unit holder's last known address; and

(B) by publishing, at least twenty-one days before the date of the proposed meeting, an advertisement giving notice of the meeting in a national language newspaper published daily and circulating generally throughout Malaysia, and in one other newspaper as may be approved by the Commission.

(2) If at any meeting summoned under subsection (1) a resolution is passed by a majority in number representing at least three-fourths of the value of the units held by unit holders voting at the meeting that the unit trust scheme or prescribed investment scheme be wound up, the trustee shall apply to the Court for an order confirming the resolution.

(3) On an application by the trustee, if the Court is satisfied that it is in the interest of the unit holders, the Court may confirm the resolution and may make such orders as it thinks necessary or expedient for the winding-up of the unit trust scheme or prescribed investment scheme.

(4) A trustee who contravenes subsection (1) or (2) shall not be guilty of an offence.

111 Duties of management company and trustee under general law

The duties of a management company and a trustee imposed on them by this Act and the deed are in addition to and not in derogation of the duties which are otherwise imposed on them by any other law.

112 Exemptions and indemnification of trustee from liability

(1) Subject to subsection (2), a provision or covenant contained in a deed or a term of a contract with the holders shall be void in so far as the provision, covenant or term, as the case may be, would have the effect of—

(a) exempting a trustee under the deed from liability for contravention of any provision of this Act or for breach of trust or

for failure to show the degree of care and diligence required of a trustee; or

(b) indemnifying a trustee against liability for contravention of any provision of this Act or for breach of trust or for failure to show the degree of care and diligence required of a trustee.

(2) Subsection (1) shall not invalidate—

(a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or

(b) any provision, covenant or term enabling such a release to be given—

(i) on the agreementthereto of a majority of not less than three-fourths of the holders of units voting at a meeting summoned for the purpose; and

(ii) either with respect to specific acts or omissions or on the trustee ceasing to act.

113 Indemnity of trustee

(1) A trustee is not liable for anything done or omitted to be done in accordance with a direction given to him by the unit holders at any meeting called under section 114, 115 or 116.

(2) A trustee may, in addition to any other rights under the deed, seek reimbursement by deducting out of any moneys coming into the trustee's hands from the management company, all reasonable costs incurred in explaining the effect of any proposal that the management company submits to the unit holders in the circumstances set out in paragraph 109(2)(e).

114 Duty of management company to call meeting of unit holders

(1) A management company shall call for a meeting of unit holders if—

(a) not less than fifty unit holders or one-tenth of all unit holders direct the management company to do so;

(b) the direction is given to the management company in writing at its registered office; and

(c) the purpose of the meeting is—

(i) to consider the most recent financial statements of the unit trust scheme or prescribed investment scheme;

(ii) to give to the trustee such directions as the meeting thinks proper; or

(iii) to consider any other matter in relation to the deed.

(2) Where a management company is required to call a meeting under subsection (1), it shall do so within twenty-one days after the direction is given to the management company in writing at its registered office.

(3) Where a management company is required to call a meeting under subsection (1) or pursuant to any provision or covenant of the deed, it shall give notice of the time and place of the meeting—

(a) by sending by post a notice of the proposed meeting at least

seven days before the date of the proposed meeting, to each unit holder at the unit holder's last known address or, in the case of joint unit holders, to the joint unit holder whose name stands first in the records of the management company at the joint unit holder's last known address; and

(b) by publishing, at least fourteen days before the date of the proposed meeting, an advertisement giving notice of the meeting in a national language newspaper published daily and circulating generally throughout Malaysia, and in one other newspaper as may be approved by the Commission.

(4) A meeting summoned in accordance with a provision or covenant contained in a deed shall be held at the time and place specified in the notice and advertisement, being a time not later than two months after the giving of the notice and—

(a) be chaired by such person as is appointed in that behalf by the unit holders that are present at the meeting; or

(b) where no such appointment is made, be chaired by a nominee of the trustee,

(4) and shall be conducted in accordance with the deed or, if the deed makes no provision, as directed by the chairman of the meeting.

(5) A notice of meeting posted to a unit holder shall be taken as given three days after it is posted, unless the deed provides otherwise.

(6) A management company who contravenes subsection (1), (2) or (3) shall be guilty of an offence.

115 Power of trustee to call a meeting

(1) Where a management company fails to remedy any breach of the provisions or covenants of the deed or any contravention of the provisions of this Act, any securities law or regulations made thereunder when required by the trustee, the trustee may—

(a) call a meeting of unit holders;

(b) inform the unit holders of the failure at the meeting;

(c) submit proposals for the protection of interests of unit holders; and

(d) ask for directions from unit holders in relation to the matter.

(2) A trustee may appoint a person to chair a meeting of unit holders called under subsection (1) and where the trustee does not exercise this power the unit holders present at the meeting may appoint a person to chair the meeting.

116 Court may order a meeting of unit holders

(1) Without limiting the effect of section 123, the Court may make an order for a meeting of all or any of the unit holders to be held to give directions to the trustee.

(2) An order made under subsection (1) may direct the trustee to—

(a) place before the unit holders any information concerning the interests of the unit holders;

(b) place before the unit holders any proposal to protect the interests of the unit holders that the Court directs or the trustee considers appropriate; and

(c) obtain the unit holders' directions concerning the protection of the interests of the unit holders.

(3) The meeting shall be held and be conducted in such manner as the Court may direct.

(4) A trustee may appoint a person to chair the meeting and where the trustee does not exercise this power the unit holders present at the meeting may appoint a person to chair the meeting.

117 Register of unit holders

(1) Every management company shall keep a register of unit holders and enter into the register—

(a) in the case of a unit holder who is an individual, the name, address, the number of the identity card issued under the National Registration Act 1959, if any, of that individual; or

(b) in the case of a unit holder that is a corporation, the name, registered address and registration number of that corporation, if applicable.

(2) The management company shall enter into the register—

(a) the number of units held by each unit holder;

(b) the date on which the name of each person was entered in the register as a unit holder;

(c) the date on which any person ceased to be a unit holder; and

(d) any other relevant information or particulars of the unit holder,

(2) within the previous seven years.

(3) Notwithstanding anything in subsections (1) and (2), a management company may keep the names and particulars relating to persons who have ceased to be unit holders of the unit trust scheme or prescribed investment scheme in a separate register.

(4) The register of unit holders shall be *prima facie* evidence of any matters inserted therein in accordance with the provisions of this Act.

(5) Where a unit trust scheme or prescribed investment scheme has more than fifty unit holders, the management company shall, unless the register of unit holders is in such a form as to constitute in itself an index, keep an index of the names of the unit holders in a convenient form and shall, within fourteen days after the date on which any alteration is made in the register of unit holders, make any necessary alteration in the index.

(6) The index shall, in respect of each unit holder, contain sufficient indication to enable the account of that unit holder in the register to be readily found.

(7) Any person who contravenes subsection (1), (2), (5) or (6) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit.

118 Where register is to be kept

(1) A register of unit holders and the index shall be kept at the registered office of a management company in Malaysia.

(2) Any person who contravenes subsection (1) shall be guilty of an

offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit.

119 Closure and inspection of register

(1) A management company may, on giving not less than fourteen days' notice to the Commission, close the register of unit holders at any time, but no part of the register shall be closed for more than thirty days in the aggregate in any calendar year.

(2) Any unit holder may request the management company to furnish him with an extract from the register in so far as it relates to his name, address, number of units held by him and amounts paid on those units, and the management company shall, on payment in advance of a reasonable fee as it may require, cause any extract so requested to be sent to that person within twenty-one days or within a period which the Commission considers reasonable in the circumstances commencing on the day after the date on which the request is received by the management company.

(3) A management company who contravenes subsection (2) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit.

120 Power of Court to rectify register

(1) Any unit holder, trustee or other person aggrieved by the inclusion or exclusion, or the manner of inclusion or exclusion, of any name in the register may apply to the Court for the rectification of the register, and the Court may refuse the application or may order the rectification of the register and the payment by the management company of any damages sustained by any party to the application.

(2) On an application under subsection (1), the Court may decide—

(a) on any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between unit holders or alleged unit holders, or between registered unit holders or alleged registered unit holders, on the one part and the management company on the other part; and

(b) generally, any question necessary or expedient to be decided for the rectification of the register.

121 Branch register

(1) Notwithstanding the provisions of section 117, a management company may cause to be kept in any place outside Malaysia a branch register of unit holders of a unit trust scheme or prescribed investment scheme which shall be deemed to be part of the register of unit holders.

(2) A management company shall deliver to the Commission a notice of the location of the office where any branch register is kept and of any change in its location and, if the branch office is permanently closed, of its closure, and any such notice shall be delivered within one month after the opening of the office or of the change or closure, as the case may be.

(3) A branch register shall be kept in the same manner in which the principal register is required by this Act to be kept.

(4) A management company shall transmit to the office at which its principal register is kept a copy of every entry in its branch register as soon as may be practicable after the entry is made, and shall cause to be kept at that office, duly entered up from time to time, a copy of its branch register, which shall for all purposes of this Act be deemed to be part of the principal register.

(5) A management company may close a branch register and thereupon all entries in that register shall be transferred to some other branch register or to the principal register.

(6) A person who contravenes subsection (2), (3) or (4) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit.

122 Rights of trustee, executor, administrator in relation to a deceased unit holder

(1) A trustee, executor or administrator of the estate of any deceased person who was registered or beneficially entitled to be registered as a unit holder of any unit trust scheme or prescribed investment scheme may become registered as the unit holder in respect of the holdings of the deceased person as trustee, executor or administrator of that estate and shall, in respect of such holdings, be entitled to the same rights as he would have been entitled to if the holdings of the deceased person had remained registered in the name of the deceased person.

(2) A unit held by a trustee, executor or administrator of a deceased person in respect of a particular trust may, with the consent of the management company, be marked in the register or branch register in such a way as to identify it as being held in respect of the trust.

(3) Except as provided in this section, no notice of any trust expressed, implied or constructive shall be entered on a register or branch register, and no liability shall be affected by anything done in pursuance of subsection (1) or (2) or pursuant to any law outside Malaysia which corresponds to the provisions of this section.

123 Power of Court to make orders

(1) A Court may make any order that it considers appropriate to protect the interests of existing or prospective unit holders.

(2) If a trustee applies to a Court for any direction in relation to the performance of the trustee's functions or to determine any question in relation to the interests of unit holders, the Court may give any direction or make any declaration or determination in relation to the matter that the Court considers appropriate, including such ancillary or consequential orders as may be necessary.

124 Disapplication of Division 5 of Part IV

(1) The provisions of Division 5 of Part IV shall not apply to an issue, offer or invitation made to a person or a class of persons, or made in respect of a unit trust scheme or prescribed investment scheme or a class of unit trust schemes or prescribed investment schemes as the Minister may, on the recommendation of the Commission, prescribe by order published in the *Gazette*.

(2) A prescription made under subsection (1) may specify the provisions of Division 5 of Part IV to which an issue, offer or invitation shall not apply.

(3) The Minister, on the recommendation of the Commission, may from time to time by order published in the *Gazette,* vary, delete, add to, substitute for, or otherwise amend the prescription made under subsection (1) and upon such publication, the prescription as varied, deleted, added to, substituted for or otherwise amended, shall come into full force and effect and shall be deemed to be an integral part of this Act as from the date of such publication or such later date as may be specified in the order.

PART IVA AGREEMENT OR ARRANGEMENT FOR TRANSFER OF BUSINESS

124A Definitions

"124A In this Part, unless the context otherwise requires—

"business" means any activity which a licensed person, exempt fund manager or exempt futures find manager carries on pursuant to its licence or which it is allowed to carry on as the case may be, and includes all property derived from or, used in or for the purpose of, carrying on such activity and all rights and liabilities arising from activity;

"exempt fund manager" has the same meaning as in the Securities Industry Act 1983;

"exempt futures fund manger" has the same meaning as in the Futures Industry Act 1983;

"liabilities" includes debts, duties and obligations of every kind, whether present, future, vested or contingent;

"licensed dealer" means a person licensed under subsection 12(1) of the Securities Industry Act 1983;

"licensed fund manager" means a person licensed under subsection 15A(1) of the Securities Industry Act 1983;

"licensed futures broker" means a person licensed under subsection 16(1) of the Futures Industry Act 1993;

"licensed futures fund manger" means a person licensed under subsection 16A(1) of the Futures Industry Act 1993;

"licensed futures trading adviser" means a person licensed under subsection 17(1) of the Futures Industry Act 1993;

"licensed Investment adviser" means a person licensed under subsection 14(1) of the Securities Industry Act 1983;

"property" means any movable or immovable property and includes—

(a) in relation to any property, any right, interest, title, claim, chose in action, power or privilege, whether present, future, vested or contingent or which is otherwise of value;

(b) any conveyance executed for conveying, assigning appointing, surrendering or otherwise transferring or disposing of im-

movable property, of which the person executing the conveying is proprietor, possessed or entitled to a contingent right, either for the whole interest or for any less interest;

(c) securities;

(d) any negotiable instrument, including any bank note, bearer note, Treasury bill, divided warrant, bill of exchange, promissory note, cheque and negotiable certificate of deposit;

(e) any mortgage or change, whether legal or equitable, guarantee, lien or pledge, whether actual or constructive, letter of hypothecation or trust receipt, indemnity, undertaking or other means of securing payment or discharge of a debt or liability, wether present, future, vested or contingent; and

(f) any other tangible or intangible property.

"securities account" means an account established by a central depository for a depositor for the recording of securities and for a dealings in such securities by the depositor;

"security" includes a mortgage or charge, whether legal or equitable, debenture, bill of exchange, promissory note, guarantee, lien or pledge, whether actual or constructive, hypothecation, indemnity, undertaking or other means of securing payment or discharge of a debt or liability, wether present, future, vested or contingent.

124B Application to High Court to Facilitate Agreement or Arrangement for Transfer of Whole or Part of Business of Licensed Persons, Exempt Fund Manager and Exempt Futures Fund Manager

124B(1) Where in the case of—

(a) a licensed dealer or licensed futures broker, the Minister, on the recommendation of the Commission, has granted his approval;

(b) a licensed fund manager, licensed investment adviser, licensed futures fund manger or licensed futures trading adviser, the Commission has granted its approval; and

(c) an exempt fund manager or exempt futures fund manager, the Commission has granted its approval,

in relation to an agreement or arrangement—

(A) for the sale, disposal or transfer in any manner of the whole or any part of the business of a licensed dealer, licensed fund manager, licensed investment adviser, licensed futures broker, licensed fund manger, licensed futures trading adviser, exempt fund manger or exempt futures fund manager;

(B) for the amalgamation or merger of a licensed dealer, licensed fund manager, licensed investment adviser, licensed futures broker, licensed futures fund manager, licensed trading adviser, exempt fund manage or exempt futures fund manager with any other person; or

(C) for the reconstruction of a licensed dealer, licensed fund manager, licensed investment adviser, licensed futures broker, licensed futures fund manager, licensed futures trading adviser, exempt fund manager or exempt futures fund manager,

the entity whose business is to be transferred, referred to as "the transferor", and the entity to whom the transfer is to be made, referred

to as "the transferee", may make a joint application to the High Court by way of ex parte originating summons for such order of the Court as may be required by them to facilitate or enable the agreement or arrangement being given effort to.

124B(2) In an application to the High Court under subsection (1) there may be sought all or any of the following orders:

(a) specifying the date on and from which the agreement or arrangement shall take effect, being a date earlier or later than the date of the application (in this section referred to as "the transfer date");

(b) vesting any property held by the transferor, either alone or jointly with any other person, in the transferee either alone or, as the case may be, jointly with such person, on and from the transfer date, in the same capacity, upon the trusts, and with the subject to the powers, provisions, and liabilities applicable to that matter respectively;

(c) for any existing instrument, whether in the form of a deed, will or otherwise, or order of any court, under or by virtue of which any property became or will become vested in the transferor, to be construed and to have effect as if for any reference in that instrument to the transferor there were substituted a reference to the transferee;

(d) for any existing agreement to which the transferor was a party to have effect as if the transferee had been a party to the agreement instead of the transferor;

(e) for any securities account or other account maintained by or on behalf of a transferor for a client to become a securities account or other account maintained by or on behalf of the transferee for the client, subject to such conditions as are applicable between the transferor and its client;

(f) for any securities account or other account maintained by or on behalf of the transferor as principal to become a securities account or other account maintained by or on behalf of the transferee as principal;

(g) for any existing instruction, order, direction, mandate, power of attorney, authority, undertaking or consent, whether or not in relation to an account, given to the transferor, either alone or jointly with another person, to have effect, in respect of anything due to be alone, as if given to the transferee either alone or, as the case may be, jointly with the other person;

(h) for any monies received from commission; interest and other sources payable by any person to the transferor to be payable by the person to the transferee;

(i) for any negotiable instrument or order for payment of money drawn on or given to or accepted or endorsed by the transferor or payable at the place of business of the transferor, whether so drawn, given, accepted or endorsed before, on or after the transfer date, to have the same effect on and from the transfer date as if it had been on, given to or accepted or endorsed by the transferee or were payable at the place of business of the transferee;

(j) for the custody of any document or property held by the transferor as pledgee or custodian, as the case may be, immediately before the transfer date to pass to the transferee and the rights and obliga-

tions of the transferor under any pledge or custody agreement relating to any such document or property to be transferred to the transferee;

(k) for any security held before the transfer date by the transferor or by a nominee of, or trustee for, the transferor, as security for the payment or discharge of any liability of any person, to be held by the transferee or, as the case may be, to be held by that nominee or trustee as the nominee of, or trustee for, the transferee and to the extent of those liabilities be available to the transferee as security for the payment or discharge of those liabilities; and where any such security extends to future advances or future liabilities; and where any such security extends to future advances or future liabilities, to be held by, and to be available, as previously mentioned, to the transferee as security for future advances by, and future liabilities to, the transferee in the same manner in all respects as future advances by, or future liabilities to, the transferor were secured by such security immediately before the transfer date;

(l) where any right or liability of the transferor is transferred to the transferee, for the transferee to have the same rights, powers and remedies, and in particular the same rights and powers as to taking or resisting, and in particular the same rights and powers as to taking or resisting legal proceedings or making or resisting applications to any authority, for ascertaining, protecting or enforcing that right or resisting that liability as if it had at all times been a right or liability of the transferee, including those rights or liabilities in respect of any legal proceedings or applications to any authority pending immediately before the transfer date by or against the transferor.

(m) for any judgment or award obtained by or against the transferor and not fully satisfied before the transfer date to be enforceable by or, as the case may be, against the transferee;

(n) for all such other incidental, consequential and supplemental orders as are necessary to secure that the agreement or arrangement shall be fully and effectively carried out.

124B(3) On the hearing of any application under subsection (2), the High Court may grant an order in the terms applied for, or with such modifications or variations as the High Court deems just or proper in the circumstances of the case.

124B(4) Where the order of the High Court granted under subsection (3) provides for the transfer of any property or business vested in or held by the transferor, either alone or jointly with any other person, then, by virtue of the order, that property or business shall, on and from that transfer date, became vested in or held by the transferee either alone, or, as the case may be, jointly with such other person, and the order shall have effect according to its terms notwithstanding anything in any written law or any rule of law, and shall be binding on any person affected, regardless that the person so affected is not a party to the proceedings under this section or any other related proceedings, or had no notice of the proceedings under this section or of other related proceedings.

124B(5) The order of the High Court granted under subsection (3)

shall, subject to the directions of the High Court, be published by the transferee in at least one national language daily newspaper and one English language national daily newspaper as approved by the Commission.

124B(6) The transferor shall, within thirty days from the date the order of the High Court was granted under subsection (3), lodge an authenticated copy of such order together with the agreement or arrangement approved by the Minister or the Commission, as the case may be, with—

(a) the Registrar of Companies; and

(b) the appropriate authority, if any, performing the functions of registering or recording dealings in any movable property transferred pursuant to the order.

124B(7) Where an order of the High Court granted under subsection (3) vests any alienated land, or any share or interest in any alienated land, in the transferee—

(a) the High Court shall, where such alienated land is in Peninsular Malaysia, including the Federal Territory of Putrajaya, pursuant to subsection 420(2) of the National Land Code 1965, cause a copy of the order to be served on the Registrar of Titles or the Land Administrator immediately after the order is granted so that the Registrar of Titles or the Land Administrator can effect the provisions of subsections 420(2), 420(3) and 420(4) respectively;

(b) where such alienated land is in Sabah, the transferee shall, as soon as practicable after the order has been granted, present an authenticated copy of such order to the Registrar for the registration of the vesting of the alienated land or of the share or interest in alienated land as provided under subsection 114(2) of the Land Ordinance of Sabah;

(c) where such alienated land is in Sarawak, the transferee shall, as soon as practicable after the order has been granted, produce an authenticated copy of such order to the Registrar for the registration of the vesting of the alienated land or of the share or interest in alienated land in the transferee as provided under section 171 of the Land Code of Sarawak; or

(d) where such alienated land is in the Federal Territory of Labuan, the transferee shall, as soon as practicable after the order has been granted, produce an authenticated copy of such order to the Registrar for the registration of the vesting of the alienated land or of the share or interest in alienated land as provided under subsection 114(2) of the Land Ordinance of Sabah as modified by the Federal Territory of Labuan (Modification of Land Ordinance) Order 1984.

124B(8) An order of the High Court granted under subsection (3) may relate to any property or business of the transferor outside Malaysia and, if it so relates, effect may be given to it either in accordance with any reciprocal arrangements relating to enforcement of judgments that may exist between Malaysia and the country, territory or place outside Malaysia where the property or business is or, where there are no such arrangements, in accordance with the law applicable in such country, territory or place.

PART V ENFORCEMENT AND INVESTIGATION

125 Appointment of Investigating Officers of the Commission

(1) The Commission may appoint such number of investigating officers to be known as Investigating Officers of the Commission as it considers necessary for the purposes of carrying out investigation of any offence under this Act, the Securities Industry Act 1983, the Securities Industry (Central Depositories) Act 1991 and the Futures Industry Act 1993.

(2) An Investigating Officer of the Commission appointed under subsection (1) shall have all the powers given to any person for the purposes of carrying out investigation of any offence under this Act, the Securities Industry Act 1983, the Securities Industry (Central Depositories) Act 1991 and the Futures Industry Act 1993.

126 Examination of licensed persons

(1) The Commission may, from time to time, examine, without any prior notice, the books or other documents, accounts and transactions of a licensed person.

(2) For the purposes of this section and section 127, "licensed person" means a licensed person as defined in section 2 and includes—

(a) a stock exchange, an exempt fund manager and a recognised clearing house as defined in the Securities Industry Act 1983;

(b) a central depository, an authorised depository agent and an authorised nominee as defined in the Securities Industry (Central Depositories) Act 1991; and

(c) an exchange company, an exempt futures fund manager and clearing house, as defined in section 2 of the Futures Industry Act 1993.

127 Production of licensed person's books, etc

(1) For the purposes of an examination under section 126 the licensed person under examination and its directors and officers shall accord any person carrying out the examination access to all its books or other documents and accounts, including documents of title to its assets, all securities held by it in respect of securities transactions, all its cash, and all such documents, information and facilities as may be required by that person for the purpose of the examination, and shall produce to that person all such books or other documents, accounts, titles, securities or cash, and give all such information, as he may require, but so far as is consistent with the conduct of the examination, such books or documents, accounts, titles, securities and cash shall not be required to be produced at such times or at such places as may interfere with the proper conduct of the normal daily business of that licensed person.

(2) Notwithstanding subsection (1), any person authorised by the Commission in writing for this purpose may take possession of any books or other documents, accounts, titles, securities or cash to which he has access under subsection (1) if in his opinion—

(a) the inspection of them, the copying of them, or the making of extracts from them cannot reasonably be undertaken without taking possession of them;

(b) they may be interfered with or destroyed unless he takes possession of them; or

(c) they may be needed as evidence in any legal proceedings, whether civil or criminal, which may be instituted under or in connection with any securities law or any other written law.

(3) No licensed person and no director or officer of the licensed person shall—

(a) fail to allow access to, give possession of or produce, its books or other documents, accounts, titles, securities or cash; or

(b) fail to give information or facilities in accordance with subsections (1) and (2).

128 Powers of Investigating Officers of the Commission

(1) An Investigating Officer of the Commission carrying out an investigation may enter any place or building and may—

(a) inspect and make copies of or take extracts from any book, minute book, account, register or document;

(b) where he has reason to believe that an offence has been committed against a securities law, search for, seize, take possession of and detain any object, article, material, thing, property, book, minute book, account, register or other document including any travel or other personal document, which may be used as evidence; and

(c) search any person who is in, or on, the premises and, for the purpose of such search, detain the person and remove him to such place as may be necessary to facilitate the search, and seize, take possession of and detain any object, article, material, thing, property, book, minute book, account, register or other document including any travel or other personal document found on the person.

(2) An Investigating Officer of the Commission may search any person whom he has reason to believe has on his person any object, article, material, thing, property, book, minute book, account, register or other document including any travel or other personal document necessary, in his opinion, for the purpose of investigation into any offence under any securities law, and for the purpose of such search may detain the person for such period as may be necessary to have the search carried out, which shall not in any case exceed twenty-four hours without the authorisation of the Magistrate, and may remove him into custody at such place as may be necessary to facilitate the search.

(3) An Investigating Officer of the Commission making a search of a person under subsection (1) or (2) may seize, take possession of and detain any object, article, material, thing, property, book, minute book, account, register or other document including any travel or other personal document found upon such person for the purpose of the investigation being carried out by him.

(4) No female person shall be searched under this section except by another female person.

(5) An Investigating Officer of the Commission may by notice in

writing require any person to produce to him such object, article, material, thing, property, book, minute book, account register or other document as are in the custody or under the control of that person.

(6) An Investigating Officer of the Commission may seize, take possession of and detain for such duration as he deems necessary any object, article, material, thing, property, book, minute book, account, register or other document produced before him as required under subsection (5).

(7) A person who—

(a) refuses an Investigating Officer of the Commission, while exercising his powers under this Part, access to any premises or part thereof, or fails to submit to the search of his person;

(b) assaults, obstructs, hinders or delays an Investigating Officer of the Commission in effecting any entrance which he is entitled to effect;

(c) fails to comply with any lawful demands of an Investigating Officer of the Commission in the execution of his duties under this Part or

(d) rescues or endeavours to rescue any thing which has been duly seized,

(7) shall be guilty of an offence and shall on conviction be punished with a fine not exceeding one million ringgit or imprisonment for a term not exceeding five years or both.

(8) An Investigating Officer of the Commission may grant permission to any person to inspect any book, minute book, account, register or other document seized and taken possession of by the Investigating Officer of the Commission under this section if such person is entitled to inspect such book, minute book, account, register or other document under this Act.

(9) Subsection (1) shall not be construed as limiting or affecting any similar powers conferred on any person under any other law.

129 Procedure by Investigating Officer on seizure of property

(1) A list of all things seized in the course of an inspection or investigation made under this part and of the place or building in which they are respectively found shall be prepared by the Investigating Officer of the Commission conducting the inspection and signed by him.

(2) The occupant of the place or building entered under subsection 128(1), or some person in his behalf, shall in every instance be permitted to attend during the inspection, and a copy of the list prepared and signed under subsection (1) shall be delivered to such occupant or person at his request.

(3) An Investigating Officer of the Commission shall, unless otherwise ordered by any court, on the close of investigations or any proceedings arising therefrom, release any property seized, detained or removed by him or any other Investigating Officer of the Commission, to such person as he determines to be lawfully entitled to the property, if he is satisfied that it is not required for the purpose of any prosecution or proceedings under any securities law, or for the purpose of any prosecution under any other written law.

(4) A record in writing shall be made by the Investigating Officer of the Commission who releases any property under subsection (3) in respect of such release specifying therein the circumstances of, and the reason for, such release.

(5) Where the Investigating Officer of the Commission is unable to determine the person who is lawfully entitled to the property or where there is more than one claimant to such property, the Investigating Officer of the Commission shall report the matter to a Magistrate who shall then order that the property be dealt with as provided for in section 130.

(6) For the purpose of this section and of sections 130 and 131, "property" includes books and other documents.

130 Procedure by Magistrate in respect of property seized

(1) Where a report is forwarded to the Magistrate by an Investigating Officer of the Commission under subsection 129 (5), the Magistrate shall make such order as he thinks fit respecting the delivery of such property to the person entitled to the possession of the property or, if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person entitled to the property is known, the Magistrate may order the property to be delivered to him on such conditions, if any, as the Magistrate thinks fit, and shall, if he makes such order, cause a notice to be served on such person informing the person of the terms of the order and requiring him to take delivery of the property within such period from the date of the service of the notice (not being less than forty-eight hours) as the Magistrate may in such notice prescribe.

(3) If the person to whom property has been ordered to be delivered under subsection (2) neglects or omits to take delivery of such property within the period prescribed, the Magistrate may, where such property is subject to speedy and natural decay or where in his opinion its value is less than fifty ringgit, direct that such property be sold and the net proceeds of such sale shall, on demand, be paid over to the person entitled thereto.

(4) If the person entitled to the possession of such property is absent from Malaysia and the property is subject to speedy and natural decay or the Magistrate to whom its seizure is reported is of the opinion that its sale would be for the benefit of the owner or that the value of such property is less than fifty ringgit, the Magistrate may, at any time, direct it to be sold and subsection 131(4) shall apply to the net proceeds of such sale.

(5) If the person entitled to the property is unknown, the Magistrate may direct that the property be detained in the custody of the Investigating Officer of the Commission.

(6) Notwithstanding subsection (5), if the person entitled to the property is unknown and it is shown to the satisfaction of the Magistrate that such property is of no appreciable value, or that its value is so small as, in the opinion of the Magistrate, to render impracticable the sale, as provided in section 131, of such property or as to make its detention in the custody of the Investigating Officer of the Commis-

sion unreasonable in view of the expense or inconvenience that would thereby be involved, the Magistrate may order such property to be destroyed or otherwise disposed of, either on the expiration of such period after the publication of the notification referred to in [subsection 131 (1)] as he may determine or forthwith as he thinks fit.

131 Procedure in respect of property detained in Investigating Officer's custody

(1) Where a Magistrate has directed under subsection 130 (5) that any property seized be detained in the custody of an Investigating Officer of the Commission, the Chairman acting on behalf of the Commission, shall issue a public custody notification specifying the articles of which the property consists and requiring any person who has any claim to make a claim within six months from the date of such public notification.

(2) Every notification under subsection (1) shall, if the property has a value of fifty ringgit or more, be published in the *Gazette*.

(3) If within three months from the publication of a notification under subsection (1) no person establishes a claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, such property may, after the expiration of such period of three months, be sold on the order of the Chairman acting on behalf of the Commission.

(4) If within six months from the publication of a notification under subsection (1) no person has established a claim to such property, the ownership of such property, or, if sold, of the net proceeds of such sale, shall upon the expiration of such period of six months pass to and become vested in the Federal Government.

(5) Where the property referred to in subsection (1) is subject to speedy and natural decay or the Chairman acting on behalf of the Commission is of the opinion that its value is less than fifty ringgit or where its custody involves unreasonable expense and inconvenience, such property may be sold at any time, and subsections (1), (2), (3) and (4) shall, as nearly as may be practicable, apply to the net proceeds of such sale as they apply to the property.

132 Surrender of travel documents

(1) Notwithstanding any written law to the contrary, if an Investigating Officer of the Commission has grounds to believe that any person, who is the subject of an investigation in respect of an offence under a securities law suspected to have been committed by such person, is likely to leave Malaysia, the Investigating Officer of the Commission, with the approval of the Commission, may by written notice require such person to surrender his certificate of identity, passport or exit permit, or any other travel document in his possession.

(2) A notice under subsection (1) shall be served in the manner specified in section 134.

(3) A person on whom a notice under subsection (1) is served shall comply with such notice forthwith, failing which he may be arrested and taken before a Magistrate.

(4) Where a person is taken before a Magistrate under subsection

(3), the Magistrate shall, unless such person complies with the notice under subsection (1) or satisfies the Magistrate that he does not possess a travel document, by warrant commit him to prison—

(a) until the expiry of a period of fourteen days from the date of his committal; or

(b) until he complies with the notice under subsection (1),

(4) whichever occurs earlier.

(5) For the purpose of subsection (4), a certificate signed by the Public Prosecutor to the effect that the person has complied with the notice under subsection (1) shall be sufficient warrant for the Superintendent of Prison to discharge such person.

(6) An Investigating Officer of the Commission may, with the approval of the Commission, by notice issued to any Immigration Officer, request that any person who is the subject of an investigation in respect of an offence under a securities law be prevented from leaving Malaysia.

(7) The Immigration Officer, upon being notified of a request made under subsection (6), may require the person who is the subject of an investigation in respect of an offence under a securities law to surrender his certificate of identity, passport or exit permit or any other travel document in his possession to the Immigration Officer.

(8) Subject to any order issued or made under any written law relating to banishment or immigration, "immigration officer" means any person appointed under section 3 of the Immigration Act 1959/63.

(9) No legal proceedings shall be instituted or maintained against the Government, an immigration officer, an officer of the Commission, a public officer or any other person, in respect of anything done under this section.

133 Forcible entry

(1) For the purpose of exercising his powers under paragraph 128(1)(b) an Investigating Officer of the Commission may enter any place or building by force, if necessary.

(2) Notwithstanding subsection (1), no Investigating Officer of the Commission shall enter any premises by the use of force without a search warrant by a Magistrate unless he has reasonable grounds for believing that, by reason of the delay in obtaining a search warrant any object, article, material, thing, accounts, book or other document referred to in paragraph 128 (1)(b) may be interfered with or destroyed or the object of any entry is likely to be frustrated.

134 Power to call for examination

(1) If an Investigating Officer of the Commission carrying out an investigation under any securities law suspects or believes on reasonable grounds that any person can give information relevant to a matter that he is investigating, the Investigating Officer of the Commission may by notice in writing to such person require such person—

(a) to give to the Investigating Officer of the Commission all reasonable assistance in connection with the investigation; and

(b) to appear before a specified Investigating Officer of the Commission or specified Investigating Officers of the Commission to be examined orally.

(1A) An Investigating Officer of the Commission exercising his authority under paragraph (1)(b) shall reduce into writing any statement made by the person examined under subsection (1).

(2) A person referred to in subsection (1) shall be legally bound to answer all questions relating to such case put to him by the Investigating Officer of the Commission and to state the truth, whether or not the statement is made wholly or partly in answer to questions, and shall not refuse to answer any question on the ground that it tends to incriminate him.

(3) A statement made by any person under this section shall be taken down in writing and signed by the person making it or affixed with his thumb print, as the case may be, after it has been read to him and after he had been given an opportunity to make any correction he may wish:

> Provided that where the person examined refuses to sign or affix his thumb print on the statement, the Investigating Officer of the Commission shall endorse thereon under his hand the fact of such refusal and the reason therefor, if any, stated by the person examined.

(3A) In an examination of a person under subsection (1), an Investigating Officer of the Commission or Investigating Officers of the Commission examining the person may give directions about who may be present during the examination, or during any part of it.

(4) Any statement made and recorded under this section shall be admissible as evidence in any proceeding in any Court.

(5) Any person who—

(a) fails to appear before an Investigating Officer of the Commission as required under subsection (1);

(b) refuses to answer any question put to him by an Investigating Officer of the Commission as required under subsection (2) or neglects to give any information which may reasonably be required of him and which he has in his power to give; or

(c) knowingly furnishes to an Investigating Officer of the Commission information or statement that is false or misleading in any material particular,

(5) shall be guilty of an offence and shall on conviction be punished with to a fine not exceeding one million ringgit or imprisonment for a term not exceeding five years or both.

(6) For the purposes of this section and any other provision of Part V, any notice that is given shall, if practicable, be served personally on the person specified n such notice.

(7) In the case of a corporation, the notice may be served on the secretary or other like officer of the corporation or on any person who is responsible for the management of the affairs of the corporation.

(8) Where the person specified in a notice given under this section or any other provision of Part V cannot by the exercise of due diligence be found, the notice may be served by leaving a copy thereof for him with some adult member of his family or with his servant residing with him.

(9) When the person specified in any notice given under this section or any other provision of Part V cannot by the exercise of due dili-

gence be found, and service cannot be effected as directed by subsection (8), a copy of the notice shall be affixed to some conspicuous part of the house or such other place in which the person specified in the notice ordinarily resides, and in such case the notice shall be deemed to have been duly served.

(10) If upon an investigation made under this Act it appears to the Investigating Officer of the Commission that there is sufficient evidence or reasonable ground of suspicion to justify the commencement or continuance of any proceedings against any person, the Investigating Officer of the Commission shall require the complainant, if any, and so many of the persons who appear to such Investigating Officer of the Commission to be acquainted with the circumstances of the case as he thinks necessary, to execute a bond to appear before any Court therein named and to give evidence in such proceedings.

(11) If any complainant or person referred to in subsection (10) refuses to execute a bond under that subsection, the Investigating Officer of the Commission shall report such refusal to the Court which may thereupon in its discretion issue a warrant or summons to secure the attendance of such complainant or person before itself to give evidence in the proceedings concerned.

135 Destruction, concealment, mutilation and alteration of records

Any person who—

(a) destroys, conceals, mutilates or alters; or

(b) sends or attempts to send or conspires with any other person to remove from his premises or send out of Malaysia,

any record or account in his possession that is required to be produced under this Part with intent to defraud any person, or to prevent, delay or obstruct the carrying out of an examination, audit or investigation, or the exercise of any power under this Act shall be guilty of an offence and shall on conviction be punished with to a fine not exceeding ten million ringgit or imprisonment for a term not exceeding ten years or both.

PART VI GENERAL

136 Conduct of prosecution

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

(2) *(Deleted)*

137 General penalty

(1) Any person who contravenes a requirement or any provision of this Act shall be guilty of an offence.

(2) Where no penalty is expressly provided for an offence under this Act, a person who is guilty of the offence shall on conviction be punished with a fine not exceeding one million ringgit or imprisonment for a term not exceeding five years, or both; and in the case of a continuing offence the offender, in addition to the penalty provided in

this subsection, shall be punished with a daily fine not exceeding five thousand ringgit for every day during which the offence continues after conviction.

138 Offences by bodies corporate

(1) Where a person convicted in respect of any offence under this Act is a body corporate, it shall only be punished with the fine provided for such offence.

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

(3) Where a person who is an employee of a body corporate contravenes any provision of this Act, that body corporate shall be deemed to have contravened such provision.

(4) For the purposes of this section, "officer", in relation to a director of a corporation, includes—

(a) a person occupying or acting in the position of a director of the corporation, by whatever name called, and whether or not validly appointed to occupy or duly authorised to act in the position;

(b) a person in accordance with whose directions or instructions the directors of the corporation are accustomed to act; and

(c) if the corporation is incorporated outside Malaysia—

(i) a member of the corporation's board;

(ii) a person occupying or acting in the position of director of the corporation's board, by whatever name called, and whether or not validly appointed to occupy or duly authorised to act in the position; and

(iii) a person in accordance with whose directions or instructions the members of the corporation's board are accustomed to act.

139 Compounding of offences

(1) The Chairman of the Commission may, with the consent in writing of the Public Prosecutor, compound any offence under this Act or regulations made under this Act which is prescribed to be a compoundable offence by accepting from the person reasonably suspected of having committed such offence a sum of money not exceeding such amount as may be prescribed.

(2) Upon receipt of the sum of money referred to in subsection (1), no further proceedings shall be taken against such person in respect of such offence and where possession has been taken of any property or document such property or document shall be released, subject to

such conditions as may be imposed in accordance with the conditions of the composition.

(3) All sums of money received under this section shall be paid into the Federal Consolidated Fund.

140 Protection of informers and information

(1) Where any complaint made by an officer of the Commission states that the complaint is made in consequence of information received by the officer making the complaint, the information referred to in the complaint and the identity of the person from whom such information is received shall be secret between the officer who made the complaint and the person who gave the information, and everything contained in such information, the identity of the person who gave the information and all other circumstances relating to the information, including the place where it was given, shall not be disclosed or be ordered or required to be disclosed in any civil, criminal or other proceedings before any court, tribunal or other authority.

(2) If any book, paper or other document, or any visual or sound recording, or other matter or material which is given in evidence or liable to inspection in any civil, criminal or other proceedings before any court, tribunal or other authority contains any entry or other matter in which any person who gave the information is named or described or shown, or which might lead to his discovery, the court, tribunal or authority before which the proceedings are held shall cause all parts thereof or passages therein to be concealed from view or to be obliterated or otherwise removed so far as is necessary to protect such person from discovery.

(3) Any person who gives the information referred to in subsection (1) knowing that the information is false shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding ten years or to both.

(4) Subsections (1) and (2) shall not apply to any investigation into, or prosecution of, any offence under subsection (3).

141 Offences under securities law are seizable offences

Every offence punishable under a securities law shall be a seizable offence, and a police officer not below the rank of Inspector, or an Investigating Officer of the Commission appointed under subsection 125 (1), may arrest without warrant any person whom he reasonably suspects to have committed or to be committing any such offence.

142 Duty of Investigating Officer to make over arrested person to the police

If an Investigating Officer of the Commission appointed under subsection 125 (1) makes an arrest under section 141 he shall without unnecessary delay make over the person so arrested to the nearest police officer or, in the absence of a police officer, take such person to the nearest police station, and thereafter the person arrested shall be dealt with in accordance with the law relating to criminal procedure for detention under section 117 of the Criminal Procedure Code as if he had been arrested by a police officer.

143 Detention of arrested person

Notwithstanding any other provision in any other written law relating to criminal procedure, a Magistrate authorising the detention of a person arrested under section 141 shall authorise the detention of the person arrested in the custody of the police.

144 Public servants and public officers

(1) All members of the Commission or any of its committees or any officer, servant or agent of the Commission while discharging their duties as such members, officers, servants or agents shall be deemed to be public servants within the meaning of the Penal Code and public officers for the purposes of the Evidence Act 1950 or any other written law which the Minister may, on the recommendation of the Public Prosecutor, prescribe.

(2) Without affecting the generality of subsection (1), an Investigating Officer of the Commission shall be deemed to be a public servant for the purposes of the Penal Code, and a public officer for the purposes of the Criminal Procedure Code and the Evidence Act 1950 or any other written law which the Minister may, on the recommendation of the Public Prosecutor, prescribe.

145 Power to engage persons to render assistance

The Commission may, either generally or in a particular matter, engage under such terms and conditions of engagement as the Commission may determine from time to time, any person who is not an officer of the Commission to render such assistance as the Commission may require or specify in connection with the performance of its functions, or the discharge of its duties under a securities law, or to perform or discharge the same on behalf of and in the name of the Commission.

146 Power to review

(1) The Commission may review its own decision under this Act upon an application made by any person who is aggrieved by such decision.

(2) An application to the Commission to review its own decision shall be made within thirty days after the aggrieved person is notified of such decision.

147 Decision of Commission shall be final

Except as otherwise provided in this Act, any decision made by the Commission under this Act, whether an original decision by it or a decision upon being reviewed under subsection 146 (1), shall be final.

148 Obligation of secrecy

(1) Except for any of the purposes of this Act or for the purpose of any civil or criminal proceedings under any written law or where otherwise authorised by the Commission or subject to section 124 of the Evidence Act 1950, no member of the Commission or any of its committees or any officer, servant or agent of the Commission or any person attending any meeting of the Commission or any of its commit-

tees shall disclose any information which has been obtained by him in the course of his duties and which is not published in pursuance of this Act.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding five years or to both.

149 Assistance to police or other public officer

Notwithstanding section 148, the Commission may, at its own initiative, or at the request of a public officer—

(a) supply to a police officer or any other public officer a copy of any book or other document seized, detained or taken possession of under section 128 or of any record of examination made under section 134, or of any statement made under subsection 134 (3), or of any book or other document produced under subsection 128 (2), or otherwise in the course of any examination under section 134, and such police officer or other public officer may make use of such copy of such book statement, record or other document as may be necessary or expedient in relation to the exercise of his powers, the performance of his functions, or the discharge of his duties, in respect of any person; or

(b) allow a police officer or any other public officer to have access to and inspect any property, book, other document, article or thing which had been produced before, or seized, detained or taken possession of by an Investigating Officer under this Act, and such police officer or other public officer may make such use of any knowledge gained by such access or inspection as may be necessary or expedient in relation to the exercise of his powers, the performance of his functions, or the discharge of his duties, in respect of any person.

150 Assistance to and co-operation with foreign supervisory authorities

(1) Notwithstanding any provision to the contrary in this Act, the Commission may, upon receiving a written request from a foreign supervisory authority for assistance to investigate into an alleged breacn of a legal or regulatory requirement which the foreign supervisory authority enforces or administers, provide assistance to the foreign supervisory authority by carrying out investigation of the alleged breach of the legal or regulatory requirement or provide such other assistance as the Commission thinks fit.

(2) In this section, "foreign supervisory authority" means a foreign authority which exercises functions corresponding to the functions of the Commission under a securities law or any person outside Malaysia exercising regulatory functions and in respect of which the Commission considers desirable and necessary to render assistance in the interest of the public.

(3) For the purposes of subsection (1), the provisions of Part V shall, with such adaptations as are necessary, apply and have effect accordingly as if the breach of the legal or regulatory requirement were an offence under a securities law.

(4) In determining whether it is in the interest of the public to

render assistance under subsection (1), the Commission shall have regard to—

(a) whether the foreign supervisory authority will pay to the Commission any costs and expenses incurred for providing the foreign supervisory authority with the assistance; and

(b) whether the foreign supervisory authority will be able and willing to provide reciprocal assistance within its jurisdiction in response to a comparable request for assistance from the Commission.

151 Power of Commission to require information

Where under this Act, power is given to the Commission to require any person, or where any person is required under this Act, to submit to the Commission any information, document or book, the Commission may require that the same shall be submitted within such period, at such intervals, in such manner, in such form, and in writing or by means of any visual recording (whether of still or moving images) or sound recording, or any electronic, magnetic, mechanical or other recording whatsoever, on any substance, material, thing or article, as the Commission may set out in the specification.

152 Disclosure of information to Commission

(1) The Commission may, by notice in writing, require any person to disclose to the Commission such information as the Commission may specify in the notice as it deems expedient for the due administration of Part IV.

(2) Where any information is required to be disclosed to the Commission under subsection (1), the person to whom the notice is directed shall not—

(a) disclose or cause to be disclosed any information that is false or misleading;

(b) disclose or cause to be disclosed any information from which there is a material omission; or

(c) engage in, or aid, or abet, conduct that is misleading or deceptive or is likely to mislead or deceive the Commission.

(3) Without prejudice to subsection (2), where a person referred to in subsection (1) becomes aware that—

(a) any information disclosed to the Commission under subsection (1) is false or misleading;

(b) any information disclosed to the Commission under subsection (1) is information from which there is a material omission; or

(c) the person's conduct is misleading or deceptive or is likely to mislead or deceive the Commission,

(3) the person shall advise the Commission of the facts and shall take such action as the Commission may require.

(4) A person who contravenes subsection (2) or (3) shall be guilty of an offence and shall on conviction be punished with a fine not exceeding one million ringgit or imprisonment for a term not exceeding ten years or both.

153 Civil liability of person in contravention of this Act

(1) A person who suffers loss or damage by reason of, or by relying

on, the conduct of another person who has contravened any provision of Part IV or any regulations made under this Act may recover the amount of the loss or damage by instituting civil proceedings against the other person whether or not that other person has been charged with an offence in respect of the contravention or whether or not a contravention has been proved in a prosecution.

(2) Notwithstanding the provisions of any written law relating to limitation of time, an action under subsection (1) may be begun at any time within six years from the date on which the cause of action accrued or the date on which the person referred to in subsection (1) became aware of the contravention, whichever is the later.

154 Officers of Commission may represent Commission in civil proceedings

Notwithstanding the provisions of any written law—

(a) in any civil proceedings by or against the Commission; or

(b) in any other civil proceedings in which the Commission is required or permitted by the court to be represented or to be heard, or is otherwise entitled to be represented or to be heard,

any officer of the Commission authorised by the Chairman for the purpose may, on behalf of the Commission, institute such proceedings or appear as an advocate therein, and may make all appearances and applications and to do all acts in respect of such proceedings on behalf of the Commission.

155 Commission may recover loss or damage

(1) The Commission may, if it considers that it is in the public interest to do so, recover on behalf of a person who suffers loss or damage by reason of, or by relying on, the conduct of another person who has contravened any provision of Part IV or any regulations made under this Act the amount of the loss or damage by instituting civil proceedings against the other person whether or not that other person has been charged with an offence in respect of the contravention or whether or not a contravention has been proved in a prosecution.

(2) Notwithstanding the provisions of any written law relating to limitation of time, an action under subsection (1) may be begun at any time within six years from the date on which the cause of action accrued or the date on which the Commission became aware of the contravention, whichever is the later.

156 Reference to conduct

(1) A reference to engaging in conduct is a reference to the doing or refusing to do any act, including the making of an agreement or the giving of effect to a provision of an agreement.

(2) Where, in a proceeding under Part IV in respect of conduct engaged in by an issuer, it is necessary to establish the state of mind of the issuer, it shall be sufficient to show that a director, employee or agent of the issuer, being a director, employee or agent by whom the conduct was engaged in within the scope of the director's, employee's or agent's actual or apparent authority, had that state of mind.

(3) Conduct engaged in on behalf of an issuer—

(a) by a director, employee or agent of the issuer within the scope of the director's, employee's or agent's actual or apparent authority; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the issuer, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent,

(3) shall be deemed to have been engaged in by the issuer.

(4) Where, in a proceeding under Part IV in respect of conduct engaged in by a person other than an issuer, it is necessary to establish the state of mind of the person, it shall be sufficient to show that an employee or agent of the person, being an employee or agent by whom the conduct was engaged in within the scope of the employee's or agent's actual or apparent authority, had that state of mind.

(5) Conduct engaged in on behalf of a person other than an issuer—

(a) by an employee or agent of the person within the scope of the actual or apparent authority of the employee or agent; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent,

shall be deemed to have been engaged in also by the first-mentioned person.

157 Attempts, abetments and conspiracies

A person who—

(a) attempts to commit any offence under this Act;

(b) does any act in furtherance of the commission of any offence under this Act; or

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

shall be guilty of such offence and shall be punished with or be liable to the penalty provided for such offence.

158 Written notices, circulars, conditions or guidelines

(1) The Commission may, generally in respect of this Act or any securities law or in respect of any particular conditions of this Act or any securities law, issue such written notices, circulars or guidelines as the Commission considers desirable.

(2) Subject to this Act or unless the contrary intention is expressly stated, the Commission may require a person to whom the provisions of Part IV apply to give effect to all written notices, circulars, conditions or guidelines issued by the Commission within such period as may be specified by the Commission.

(3) A person to whom the provisions of Part IV apply shall give effect to all written notices, circulars, conditions or guidelines issued by

the Commission under subsection (1) within such period as may be prescribed by the Commission.

(4) Where a person referred to in subsection (2) fails to give effect to any written notice, circular, condition or guideline issued by the Commission, the Commission may, after giving such person a reasonable opportunity to be heard, take such action as the Commission deems fit.

(5) For the purposes of subsection (4), the Commission may take any one or more of the following actions against a person for filing to give effect to any written notice, circular, condition or guideline issued by the Commission under Divisions 1, 3, 4 and 5 of Part IV:

(a) direct the person failing to give effect to any written notice, circular, condition or guideline to comply with, observe, enforce or give effect to such written notice, circular, condition or guideline;

(b) impose a penalty not exceeding five hundred thousand ringgit on the person failing to give effect to any written notice, circular, condition or guideline;

(c) issue a public reprimand against the person failing to give effect to any written notice, circular, condition or guideline;

(d) issue a caution letter or a reprimand letter against the person failing to give effect to any written notice, circular, condition or guideline;

(e) refuse to accept or consider any submission under section 32;

(f) in the case of a promoter or a director of a corporation, in addition to the actions that may be taken under paragraphs (a) to (e), the following actions may be taken by the Commission:

(i) impose a moratorium on, or prohibit any trading of or any dealing in, the corporation's securities or in any other securities which the Commission deems fit by the promoter or director or any persons connected with the promoter or director; or

(ii) issue a public statement to the effect that, in the Commission's opinion, the retention of office by the director is prejudicial to the public interest.

159 Power to make regulations

(1) The Commission may, with the approval of the Minister, make such regulations as may be expedient or necessary for the better carrying out of the provisions of this Act.

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

(a) prescribing forms for the purposes of this Act;

(b) prescribing fees to be paid in respect of any matter required for the purposes of this Act;

(c) prescribing the principles and rules governing the conduct of all persons or parties involved in a take-over offer, merger or compulsory acquisition;

(d) all matters relating to proposals referred to in subsection 32 (2);

(e) all matters which by this Act are required or permitted to be prescribed.

(3) Regulations made under this section may provide for the imposition of penalties which shall not exceed twenty-five thousand ringgit for any offence thereunder.

(4) Regulations may provide that all or any of the provisions of this Act—

(a) shall not have effect in relation to any specified person or persons or any particular class of persons, either generally or as otherwise provided in the exemption, from all or any of the provisions of any regulations made under this section; and

(b) shall have effect in relation to any specified person or persons or any particular class of persons to such extent as is prescribed.

160 Indemnity

The Commission, any member of the Commission or of any committee established by the Commission, the Chairman and any officer of the Commission shall not be liable to an action or other proceedings for damages for or on account of, or in respect of, any act done or statement made, omitted to be done or made, in pursuance of or in execution of a securities law or in the performance of any function, or in exercise of any power, conferred or expressed to be conferred by or under a securities law:

Provided that such act, statement, performance of function or exercise of power was done or made in good faith.

PART VII REPEAL AND TRANSITIONAL PROVISIONS

161 Repeal

Sections 5 and 6 of the Securities Industry Act 1983 and section 179 of the Companies Act 1965 (in this Part referred to as the "repealed sections") are hereby repealed.

162 Saving

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

163 Continuance of other rights, liabilities, etc under the repealed sections

(1) Subject to the provisions of this Act, any right, privilege, obligation or liability acquired or accrued under the repealed sections or any legal proceedings or remedy in respect of such right, privilege, obligation or liability shall not be affected and any such legal proceedings or remedy may be instituted, continued or enforced as if this Act had not been made.

(2) All applications pending under the repealed sections shall be dealt with under this Act by the Commission as if they had been made under the provisions of this Act.

164 Continuance of criminal and civil proceedings

(1) Subject to the provisions of this Act, neither the repealed sec-

tions nor anything contained in this Act shall affect any person liable to be prosecuted or punished for offences committed under the repealed sections before the appointed day, or any proceedings brought or sentence imposed before that day in respect of such offence.

(2) Subject to the provisions of this Act, any proceedings, whether civil or criminal, or cause of action pending or existing immediately before the appointed day, by or against the Capital Issues Committee or the Panel On Take-Overs And Mergers or any person acting on behalf of the Capital Issues Committee or the Panel On Take-Overs And Mergers may be continued or instituted by or against the Capital Issues Committee or the Panel On Take-Overs And Mergers as it might have been continued or instituted by or against the Capital Issues Committee or the Panel On Take-Overs And Mergers or such person if this Act had not been passed.

(3) Any appeal brought or any leave to appeal applied for on or after the appointed day against a decision given in any legal proceedings before that day may be brought by or against the Commission as it might have been brought by or against the Capital Issues Committee or the Panel On Take-Overs And Mergers if this Act had not been passed.

165 Transitional and savings

(1) All actions, regulations, orders, directions, notifications, approvals, decisions and other executive acts, howsoever called, made, given or done under, or in accordance with, or by virtue of, the provisions of the Companies Act 1965 or the Securities Commission (Unit Trust Scheme) Regulations 1996 before the commencement of this Act shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been made, given, or done under, or in accordance with, or by virtue of, the corresponding provisions of the Companies Act 1965 or the Securities Commission (Unit Trust Scheme) Regulations 1996 as amended by this Act, and shall continue to remain in force and have effect in relation to the persons to whom they apply until amended, revoked or rescinded under, in accordance with, or by virtue of, the corresponding provisions of the principal Act as amended by this Act.

(2) Nothing in this Act shall affect any person's liability to be prosecuted or punished for offences committed under the Companies Act 1965 or the Securities Commission (Unit Trust Scheme) Regulations 1996 before the commencement of this Act or any proceedings brought or sentence imposed before the date of commencement of this Act in respect of such offence.

(3) Nothing in this Act shall affect any right, privilege, obligation or liability acquired, accrued or incurred under the Companies Act 1965 or the Securities Commission (Unit Trust Scheme) Regulations 1996 before the commencement of this Act and any legal proceedings, remedy or investigation in respect of such right, privilege, obligation or liability shall not be affected and any such legal proceedings, remedy or investigation may be instituted, continued or enforced as if this Act had not been enacted.

(4) Nothing in this Act shall—

(a) affect the validity of any securities or the operation of any trust deed or deed issued or executed before the commencement of this Act;

(b) apply in relation to an issuer, borrower, guarantor or trustee or any other person in respect of any securities that have been issued or offered for subscription or purchase or in respect of which an invitation to subscribe for or purchase securities has been made before the commencement of this Act; or

(c) require the appointment of any trustee or the execution of any trust deed in respect of any debenture issued before the commencement of this Act, where there was no such requirement before the commencement of this Act.

165(4A) Any condition imposed in relation to an approved given by the Central Bank of Malaysia or terms of a debenture approved by the Central Bank of Malaysia pursuant to paragraph (e) of Part I of the First Schedule to the Banking and Financial Institutions Act 1989 [*Act 372*] before 1 July 2000 may, after 1 July 2000, be varied or modified by the Commission under section 32 of the Act.

165(5) Where, upon the commencement of this Act, securities may be issued, offered for subscription or purchase or where an invitation to subscribe for or purchase securities has been made on the basis of any prospectus issued before the commencement granting an exemption is obtained, issue such supplementary, prospectus and take such other action to ensure that the issue, offer or invitation complies with the requirements of this Act.

165(6) The Commission may, by a direction in writing given to any issuer referred to in subsection (5) determine what action is to be taken by that issuer and how any difficulty arising in respect of the provision introduced or amended by this Act may be overcome.

165(7) Nothing in this Act shall—

(a) affecting the validity or operation of any interest or deed, to which Division 5 of Part IV of the Companies Act 1965 applies, issued or executed before the commencement of this Act, or

(b) apply in relation to the management company by or on whose behalf any interest to which Division 5 of Part IV of the Commission Act 1965 applies and which have been issued before the commencement of this Act or in relation to the trustee for the holders of any such interest.

166 Prevention of anomalies

If any difficulty arises with respect to the foregoing saving and transitional provisions, the Minister may by order make such modifications in those provisions as may appear to him necessary for preventing anomalies:

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

Schedule 1 (Subsection 32A (1))

Classes or Categories of Securities or Classes or Categories of Transactions Not Subject to Subsection 32 (4)

1 The issuance of securities by or guaranteed by the Federal or any State Government or the Central Bank of Malaysia.

2 Securities of a private company other than debentures.

3 Bonus issues of securities of a corporation which is not listed.

4 All trades in securities effected in the money market.

5 Making available or creation of, or issuance or execution of—

(a) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;

(b) cheques or other bills of exchange, a banker's draft or a letter of credit; or

(c) a banknote, a statement showing a balance in a current, deposit or savings account, or (by reason of any financial obligation contained in it) a charge or other disposition of property, or an insurance policy.

6 All trades in securities effected on a stock market of a stock exchange which is approved by the Minister pursuant to subsection 8 (2) of the Securities Industry Act 1983.

7 An offer or invitation to enter into an underwriting agreement or is made or issued to an underwriter under such an underwriting agreement.

8 An issue or allotment of securities to an underwriter under an underwriting agreement.

9 An offer or invitation with respect to securities of a corporation which is not listed made to existing members or debenture holders of such corporation by means of a rights issue and is not an offer to which section 46 applies.

10 The making available, offering for subscription or purchase of or issuing an invitation to subscribe for or purchase, securities of a corporation to existing members of a company within the meaning of section 270 of the Companies Act 1965.

11 Issuance or allotment of securities by a corporation pursuant to the exercise of a warrant, convertible note, option or transferable subscription right, in respect of which the Commission has given its prior approval under subsection 32 (4).

12 An offer for purchase or an invitation to purchase existing securities of an unlisted corporation by an existing holder of those securities.

13 The making available of, offering for subscription or purchase of, or making an invitation to subscribe for or purchase, securities of a corporation incorporated outside Malaysia pursuant to an employee share or employee share option scheme.

14 The listing of securities that are issued by way of bonus issue arising from a capitalisation of unappropriated profits.

15 The issuance of notes pursuant to a notes issuance facility or revolving underwriting facility as may be specified by the Commission.

Schedule 2 (Section 38)

Excluded offers or excluded invitations to which sections 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52 and 53 of Division 3 of Part IV shall not apply

1 An offer or invitation to enter into an underwriting agreement or an offer or invitation made to an underwriter under such an agreement.

2 With respect to the securities of a corporation which are not listed, an offer or invitation made to existing members or debenture holders of such corporation by means of a rights issue and is not an offer to which section 46 applies.

3 An offer or invitation made to a company that is registered as a trust company under the Trust Companies Act 1949 or a corporation that is a public company under the Companies Act 1965 or under the laws of any other country which has been allowed by the Commission to be a trustee for the purposes of this Act.

4 An offer or invitation made to a unit trust scheme or prescribed investment scheme.

5 An offer or invitation made to a person licensed as a dealer under the Securities Industry Act 1983.

6 An offer or invitation made exclusively to persons outside Malaysia.

7 An offer or invitation made to a closed end fund approved by the Commission.

8 An offer or invitation made to a person licensed as a fund manager under the Securities Industry Act 1983 or any person declared to be an exempt fund manager under that Act.

9 An offer or invitation made to a person who acquires securities pursuant to an offer, as principal, if the aggregate consideration for the acquisition is not less than two hundred and fifty thousand ringgit or its equivalent in foreign currencies for each transaction whether such amount is paid for in cash or otherwise.

10 An offer or invitation made to an individual whose total net personal assets exceed three million ringgit or its equivalent in foreign currencies.

11 An offer or invitation made to a corporation with total net assets exceeding ten million ringgit or its equivalent in foreign currencies based on the last audited accounts.

12 An offer or invitation made to a licensed offshore bank as defined under the Offshore Banking Act 1990.

13 An offer or invitation made to an offshore insurer as defined under the Offshore Insurance Act 1990.

14 An offer or invitation made with respect to any sale of a unit in a unit trust scheme or a prescribed investment by a personal representative, liquidator, receiver or trustee in bankruptcy or liquidation, as the case may be, in the normal course of realisation of assets.

15 An offer or invitation made in relation to trades in securities effected on a stock market of a stock exchange which is approved by the Minister pursuant to subsection 8(2) of the Securities Industry Acts 1983.

16 An offer or invitation of securities made or guaranteed by the Federal or any State Government or the Central Bank of Malaysia.

17 An offer or invitation in respect of securities of a private company.

18 An offer or invitation pursuant to a take-over offer which complies with the relevant law applicable to such offers.

19 An offer or invitation in respect of a trade in securities effected in the money market.

20 An offer or invitation made to employees of a corporation or its related corporation pursuant to an employee share or employee share option scheme.

21 An offer or invitation made prsuant to a scheme of arrangement or compromise under section 176 of the Companies Act 1965 or a restructuring scheme under Pengurusan Danaharta Nasional Berhad Act 1998.

22 An offer or invitation made to a licensed institution as defined in the Banking and Financial Institutions Act 1989 or an Islamic bank as defined in the Islamic Banking Act 1983.

23 An offer or invitation made to an insurance company registered under the Insurance Act 1996.

24 An offer or invitation made to a statutory body established by an Act of Parliament or an enactment of any State.

25 An offer or invitation made to a pension approved by the Director General of Inland Revenue under section 150 of the Income Tax Act 1967.

26 An offer or invitation made by or to Danamodal Nasional Berhad.

27 An offer or invitation in respect of securities of a corporation made to existing members of a company within the meaning of section 270 of the Companies Act 1965.

Schedule 3 (Section 39)

Excluded issues to which sections 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 and 53 of Division 3 of Part IV shall not apply

1 An issue made to an underwriter under an underwriting agreement.

2 An issue in respect of securities of a corporation which are not listed made to existing members or debenture holders of such corporation by means of a rights issue and is not an issue or allotment to which section 46 applies.

3 An issue made to a company that is registered as a trust company under the Trust Companies Act 1949 or a corporation that is a public company under the Companies Act 1965 or under the laws of any other country which has been allowed by the Commission to be a trustee for the purpose of this Act.

4 An issue made to a unit trust scheme or prescribed investment scheme.

5 An issue made to a person licensed as a dealer under the Securities Industry Act 1983.

6 An issue made exclusively to persons outside Malaysia.

7 An issue made to a closed end fund approved by the Commission.

8 An issue made to a person licensed as a fund manager under the Securities Industry Act 1983 or any person declared to be an exempt fund manager under that Act.

9 An issue made to a person who acquires securities pursuant to an offer, as principal, if the aggregate consideration for the acquisition is not less than two hundred and fifty thousand ringgit or its equivalent in foreign currencies for each transaction, whether such amount is paid for in cash or otherwise.

10 An issue made to an individual whose total net personal assets exceed three million ringgit or its equivalent in foreign currencies.

11 An issue made to corporation with total net assets exceeding three million ringgit or its equivalent in foreign currencies based in the last audited accounts.

12 An issue made to a licenced offshore bank as defined under the Offshore Banking Act 1990.

13 An issue made to an offshore insurer as defined under the Offshore Insurance Act 1990.

14 An issue made with respect to any sale of a unit in a unit trust scheme or a prescribed investment scheme by a personal representative, liquidator, receiver or trustee in bankruptcy or liquidation, as the case may be, in the normal course of realisation of assets.

15 An issue made in relation to trades in securities effected on a stock market of a stock exchange which is approved by the Minister pursuant to subsection 8(2) of the Securities Industry Act 1983.

16 An issue of securities made or guaranteed by the Federal or any State Government or the Central Bank of Malaysia.

17 An issue in respect of securities of a private company.

18 An issue in respect of securities which are acquired pursuant to a take-over offer which complies with the relevant law applicable to such offers.

19 An issue in respect of a trade in securities effected in the money market.

20 An issue in respect of securities which are acquired by employees of a corporation or its related corporation pursuant to an employee share or employee share option scheme.

21 An issue made pursuant to a scheme of arrangement or compro-

mise under section 176 of the Companies Act 1965 or a restructuring scheme under the Pengurusan Danaharta Nasional Berhad Act 1998.

22 An issue made to a licensed institution as defined in the Banking and Financial Institutions Act 1989 or an Islamic bank as defined in the Islamic Banking Act 1983.

23 An issue made to an insurance company registered under the Insurance Act 1996.

24 An issue made to a statutory body established by an Act of Parliament or an enactment of any State.

25 An issue made to a pension fund approved by the Director General of Inland Revenue under section 150 of the Income Tax Act 1967.

26 An issue made by or to Danamodal Nasional Berhad.

27 An issue of securities by a corporation pursuant to the exercise of an option, a warrant or a transferable subscription right, in respect of which a prospectus has been registered under this Act.

28 An issue of shares by a corporation pursuant to a provision contained in a convertible note, whether the note was issued by that corporation or by another corporation, in respect of which a prospectus has been registered under this Act.

29 An issue in respect of shares or units in a unit trust scheme or prescribed investment scheme which are issued in satisfaction of dividends payable by the issuer to the holders of existing shares or units that were issued pursuant to a prospectus.

30 An issue of securities of a corporation made to existing members of a company within the meaning of section 270 of the Companies Act 1965.

31 A bonus issue of securities made by a corporation.

Schedule 4 (Section 66)

Issues of, offers for subscription or purchase of, or invitations to subscribe for or purchase, debentures to which sub-division 1 of Division 4 of Part IV and section 92 of sub-division 2 of Division 4 of Part IV shall not apply

1 An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made by the Federal or any State Government or any statutory body.

2 An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures guaranteed by the Federal Government or the Central Bank of Malaysia.

3 An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures which by their terms may only be held by members of the issuer.

4 An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures which by their terms may only be held by a single holder of those debentures.

5 An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made in relation to trades in securities effected on a stock market of a stock exchange which is approved by the Minister pursuant to subsection 8(2) of the Securities Industry Act 1983.

6 An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures in respect of trades in debentures effected in the money market.

7 An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made pursuant to a scheme of arrangement or compromise under section 176 of the Companies Act 1965 or a restructuring scheme under the Pengurusan Danaharta Nasional Berhad Act 1998.

8 An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made by or to Danamodal Nasional Berhad.

9 An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made exclusively to persons outside Malaysia.

10 An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures to existing members of a company within the meaning of section 270 of the Companies Act 1965.

Schedule 5 (Subsection 66(2))

Issues of, offers for subscription or purchase of, or invitations to subscribe for or purchase, debentures to which sections 72, 74, 75, 76, 77, 78, 80, 81, 82, 84, 86, 87, subsections 89(4) and 89(5) of Division 4 of Part IV shall not apply

1 An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a company that is registered as a trust company under the Trust Companies Act 1949 or a corporation that is a public company under the Companies Act 1965 or under the laws of any other country which has been allowed by the Commission to be a trustee for the purposes of this Act.

2 An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a unit trust scheme or prescribed investment scheme.

3 An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a person licensed as a dealer under the Securities Industry Act 1983.

4 An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a closed end fund approved by the Commission.

5 An issue of, offer for subscription or purchase of, or invitation to

subscribe for or purchase, debentures made to a person licensed as a fund manager under the Securities Industry Act 1983 or any person declared to be an exempt fund manager under that Act.

6 An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a person who acquires securities pursuant to an offer, as principal, if the aggregate consideration for the acquisition is not less than two hundred and fifty thousand ringgit or its equivalent in foreign currencies for each transaction, whether such amount is paid for in cash or otherwise.

7 An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to an individual whose total net personal assets exceed three million ringgit or its equivalent in foreign currencies.

8 An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a corporation with total net assets exceeding ten million ringgit or its equivalent in foreign currencies based on the last audited accounts.

9 An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a licensed offshore bank as defined under the Offshore Banking Act 1990.

10 An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to an offshore insurer as defined under the Offshore Insurance Act 1990.

11 An issue of, offer for subscription or purchase of, or invitation to subscribe for or pu rchase, debentures of a private company.

12 An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a licensed institution as defined in the Banking and Financial Institutions Act 1989 or an Islamic bank as defined in the Islamic Banking Act 1983.

13 An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to an insurance company registered under the Insurance Act 1996.

14 An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a pension fund approved by the Director General of Inland Revenue under section 150 of the Income Tax Act 1967.

Chapter MX

Securities Regulation in Mexico

Hogan Lovells BSTL, S.C.

I. LEGAL SYSTEM

§ MX:1 Generally
§ MX:2 Mexico, a civil law country
§ MX:3 Interrelationship between various organizations of government
§ MX:4 —Legislative Branch
§ MX:5 Interrelationship between Various Organizations of Government—The Executive Power
§ MX:6 —Judiciary Branch
§ MX:7 Role of courts and administrative agencies in interpretation of laws—Binding effect
§ MX:8 —Suits for *Amparo*
§ MX:9 —Administrative agencies

II. SECURITIES REGULATORY FRAMEWORK

§ MX:10 History and Development: the New Securities Market Law
§ MX:11 Regulatory scheme; identification and creation of main legal bodies
§ MX:12 Regulation under the General Law of Business Organizations (GLBO)
§ MX:13 Regulation under the Foreign Investment Law (FIL)
§ MX:14 Negotiable Instruments and Credit Transactions Law (NICTL)
§ MX:15 New Securities Market Law

III. PUBLIC SECURITIES MARKET

§ MX:16 Relevant institutions and organizations
§ MX:17 Basic Statistical Information—Brokerage Firms
§ MX:18 Basic statistical information—Investment funds
§ MX:19 —Banks
§ MX:20 —Other financial institutions

IV. DISCUSSION OF REGULATIONS REGARDING SUBSTANTIVE SECURITIES MATTERS

§ MX:21 Creation, Regulation and Organization of Securities Regulatory Organizations

§ MX:22 Creation, regulation and organization of securities regulatory organizations—Governmental agencies
§ MX:23 —Ministry of the Treasury and Public Credit
§ MX:24 —National Banking and Securities Commission (CNBV)
§ MX:25 —Banco de México
§ MX:26 —National Insurance and Bonding Commission (CNSF)
§ MX:27 —National Pension Fund System Commission (CONSAR)
§ MX:28 —Mexican Stock Exchange
§ MX:29 —Securities deposit institutions
§ MX:30 —Derivatives exchanges
§ MX:31 Definition of security
§ MX:32 Public Offerings and exempted offerings—Definitions of public offering
§ MX:33 —Regulatory scheme
§ MX:34 —Transactions subject to a special treatment
§ MX:35 —Exempted offerings
§ MX:36 Registration and continuing disclosure requirements of public companies
§ MX:37 —Required documents for registration under *Circular Única de Emisoras*
§ MX:38 —Disclosure Requirements
§ MX:39 —Expedited registration and exempt securities
§ MX:40 — —Registration without public offering
§ MX:41 —Preventive registration
§ MX:42 —Suspension of trading or delisting
§ MX:43 —Proxy solicitation
§ MX:44 Fraud, manipulation and insider trading—Legal provisions
§ MX:45 —Definition of privileged information
§ MX:46 — —First Element: Knowledge of Relevant Events
§ MX:47 — —Second element: not available to the public through the exchange
§ MX:48 — —Third element: influence on the stock quote and prices of securities
§ MX:49 — —Special restrictions—Increase in participation
§ MX:50 — —Insiders/blackout periods
§ MX:51 —Exemptions
§ MX:52 —Enforcement
§ MX:53 Tender offers and compulsory offers—Jurisdictional basis for regulation of tender offers by the Commission
§ MX:54 —Compulsory offers
§ MX:55 Accounting and auditing
§ MX:56 —Certain requirements with respect to issuers
§ MX:57 —Developments in the accounting requirements applicable to brokerage firms
§ MX:58 International securities transactions
§ MX:59 —Provisions of Mexican Law applicable to transactions by foreigners involving securities issued by Mexican corporations—In general

§ MX:60 —Restrictions on foreign investment
§ MX:61 —Special rules for investments in the forbidden zone
§ MX:62 —Purchases of foreign securities by Mexican persons
§ MX:63 Mutual funds and mutual fund operating companies
§ MX:64 —General provisions applicable to mutual funds
§ MX:65 Particular types of mutual funds
§ MX:66 —Variable income mutual funds
§ MX:67 —Debt instrument mutual funds
§ MX:68 —Capital mutual funds
§ MX:69 —Limited purpose mutual funds
§ MX:70 —Pension funds
§ MX:71 Entities authorized to trade in securities
§ MX:72 Definition of Intermediation under the SML
§ MX:73 Types of Intermediation Activities
§ MX:74 —Intermediation of registered securities
§ MX:75 —Intermediation of unregistered securities; unlisted shares representing capital stock of legal entities
§ MX:76 —Other unregistered securities
§ MX:77 —Intermediation with securities issued abroad
§ MX:78 —Other Intermediation Activities
§ MX:79 Intermediaries of the securities market
§ MX:80 Authorized from the Commission to trade securities; brokerage firms
§ MX:81 —Branch offices
§ MX:82 —Affiliates
§ MX:83 —Ownership structure; brokerage firms
§ MX:84 —Affiliates
§ MX:85 —Permissible activities
§ MX:86 Operating requirements for brokerage firms
§ MX:87 —Affiliates
§ MX:88 Oversight and regulation by Commission—Brokerage firms and affiliates
§ MX:89 —Credit organizations
§ MX:90 —Operating companies of mutual funds and of pension funds
§ MX:91 Oversight and regulation by the Commission—Operating companies of mutual funds and of pension funds—Authorized services
§ MX:92 Oversight and regulation by Commission—Afores; operating company of pension funds
§ MX:93 Distribution companies

V. RECENT TRENDS AND DEVELOPMENTS

§ MX:94 Generally

Appendix MX-1. Securities Market Law

Appendix MX-2. General Regulations Applicable to Issuers of Securities and Other Participants in the Securities Market

Appendix MX-3. Foreign Investment Law

I. LEGAL SYSTEM

§ MX:1 Generally

Mexico is a country with a vast history and a nation with strong roots. In recent years, Mexico has witnessed internal political transitions and has been transformed after years of a peaceful political life into a country of stable, but not immense growth. As Mexico transitions to a legitimate democracy and its leaders work to create stronger and better economic and political mechanisms, it is helpful to review its political history, and in particular, to study the influence of securities markets and securities regulation in Mexico's development.

The constitutional amendments of 2024 marked a significant turning point in Mexico's governance. Key among these changes is the reduction of Supreme Court Justices from 11 to 9, coupled with the introduction of popular elections for federal and state judges beginning in 2025. These reforms aim to enhance accountability and public trust in the judiciary but have raised concerns about judicial independence. Such shifts in governance could have downstream effects on the interpretation of laws affecting the securities market, as judicial decisions increasingly reflect public sentiment.

§ MX:2 Mexico, a civil law country

Mexico is a civil law country in contrast to common law countries, such as the U.S., Canada and England. Unlike common law courts, Mexican courts do not follow stare *decisis* doctrine, and under the Mexican legal system there are no jury trials.

The origins of Mexico's legal system are both ancient and classical, borrowing heavily from the Greek, Roman and French legal systems. Thus, the Mexican legal system is more similar to the Latin American and continental European systems than the U.S. legal system.

Mexico was originally inhabited by a number of Amerindian civilizations, including the Olmecs, Mayas, Toltecs and Aztecs. Mexico was under Spanish rule for three centuries before achieving independence (early in the 19th century) on September 27, 1821 (contrary to popular belief, the date of Mexican independence is not on "*Cinco de Mayo*"). Shortly after Mexico attained its independence, a plan for a constitutional monarchy failed and a republic was proclaimed in December 1822.

Mexico's first constitution was enacted in 1824, giving birth to federalism and to important legal concepts such as the establishment of a Public, Representative, and Democratic Republic.[1] After a period of rebellions, presidential destitutions, and chaos, the 1824 Constitu-

---

[Section MX:2]

[1]"Historia de la Constitución de México" Released by starmedia.com 2001.

tion was abrogated by a new constitution in 1857. Although the new constitution did not deter continued political unrest and upheaval in Mexico, it was instrumental in Mexico's defense from the French invasion and throughout the empire of "*Maximiliano de Habsburgo*" (this version of the constitution remained in effect until 1917).

In 1910, a revolution erupted in Mexico stemming from severe social and economic issues, which lasted for ten years and gave birth to the 1917 Constitution. The 1917 constitution is still in force, although it has been amended on several occasions in order to address both social and political changes over the years.

Some of the most important amendments to the constitution are those related to the electoral process; these changes in the election laws have served to provide a better and more comprehensive exercise of democracy in Mexico.

After Mexico's Revolution in 1929, the Institutional Revolutionary Party ("PRI") was created under a different name. PRI emerged as a coalition of interests and kept the political competition peaceful. PRI controlled Mexico's national government for 71 years, winning every presidential race and most gubernatorial races until the presidential election of Vicente Fox Quesada of the National Action Party ("PAN") in 2000. President Fox, the first chief executive elected in a free and fair election, was sworn-in on December 1, 2000.[2] Following the elections in 2000, Mexico began a slow, but stable transition into a legitimate democracy.

The devaluation of the peso in late 1994 and the subsequent political transitions have thrown Mexico into its worst recession in over half a century, thereby creating an uncertain social and political state. Ongoing economic and social concerns include, among other things, low wages, under employment for a large segment of the population, inequitable income distribution, and few opportunities for the large Amerindian population in the impoverished southern states. Nevertheless, the nation continues to make an impressive recovery despite these setbacks.

President Enrique Peña Nieto implemented a national political pact that was signed on December 2, 2012, known as "*Pacto por México*". The pact's framework is composed of 95 public policy proposals based on three guiding principles:

- The strengthening of the Mexican State.
- The democratization of the economy and politics, as well as the expansion and effective implementation of social rights.
- The participation of citizens as key actors in the design, implementation, and evaluation of public policies.

The pact has resulted in major amendments to the telecommunications, energy, finance, and education legal frameworks among others.

---

[2]Ayala Anguiano Armando, "Epopeya de México de Juárez al PRI" Fondo de Cultura Económica, 1999.

Moreover, an important amendment to the Constitution on financial discipline and fiscal responsibility matters was published in the Federal Official Gazette on May 26, 2015. The purpose of this amendment is to establish a new legal framework for the sustainable management of public finances, including the responsible and moderate use of public indebtedness.

To summarize, the amendment to the Constitution includes the following:

- An amendment to article 25 that makes reference to a public finances and financial system stability principle that is to be observed in the formulation and implementation of the National Development Plan, and in the corresponding state and municipal plans.
- An amendment to article 73 that extends the authority of Congress to establish general laws on public debt and fiscal responsibility. As a result of the foregoing a General Law of Public Debt will be enacted as secondary legislation, which will set forth limits and conditions for the indebtedness of states and municipalities.
- An amendment to article 74 that sets forth the obligation of states and municipalities to publish all of their public borrowing in a single registry. Secondary legislation will establish minimum guidelines of information to be filed before such public registry, such as debtor's and creditor's data, amount, interest rate, term, guarantee, and source of payment.
- An amendment to article 79 that increases the authority of the Federal Superior Audit Office to supervise debt and guarantees granted by the Federal Government for the public borrowing of states and municipalities. Such amendment also increases the authority of state audit offices with respect to internal controls regarding actions adopted by states and municipalities in terms of funds, local resources, and public debt.
- An amendment to article 108 that provides for public officials to be accountable for the mishandling of public funds and public debt.
- An amendment to article 117 which sets forth that states and municipalities may obtain financing with the purpose of investment, restructuring or refinancing productive public investments, and prohibits them from allocating resources provided by such financing to the payment of current expenses. This amendment also sets forth that states and municipalities may obtain short-term loans, provided they do not exceed the maximum limits and conditions specified in the corresponding legislation. Such short-term loans must be paid no later than three months before the end of the corresponding administrative term, during which no new loans may be contracted.

In recent years, Mexico's legal system has undergone significant reforms to adapt to modern commercial practices, with a special focus

on digital economy regulations and international trade agreements. As Mexico continues to strengthen its legal framework, the implementation of the T-MEC (USMCA) has introduced new compliance obligations for businesses operating in Mexico, particularly in the fields of intellectual property, labor rights, and environmental protections. These reforms are gradually harmonizing Mexican laws with global standards.

§ MX:3 Interrelationship between various organizations of government

The official name of the country is "United Mexican States" It is divided into 32 States. Mexico City is the capital of the Republic. Guadalajara and Monterrey are two of the major industrial hubs. Other important cities include Tijuana, Ciudad Juárez, León, Querétaro, Puebla, Veracruz, Villahermosa and Mérida.

As of 2024, the population of Mexico is over 135 million people. Mexico is the most populous Spanish speaking country in the world. People between the ages of 15 and 64 comprise 65.99% of the population, while 26.93% are 14 years of age or younger. The population of Mexico City alone is over 21 million, thereby constituting the largest concentration of people in the Western Hemisphere.

The Federal Government is divided into three branches: executive, legislative, and judicial, each with specific powers granted by the Constitution.

§ MX:4 Interrelationship between various organizations of government—Legislative Branch

The Legislative Branch resides in the bicameral Federal Congress, which is divided into the following:

1. The Senate, which is comprised of 128 seats; 96 seats are elected by popular vote to serve a six-year term, and the remaining 32 seats are allocated based on each party's popular vote.
2. The House of Representatives which is comprised of 500 seats: 300 members are elected by popular vote to serve three-year terms and the remaining 200 member seats, also serving three year terms, are allocated based on each party's popular vote.

Elections were held on June 2, 2024. These elections included the presidential race, where MORENA's candidate won decisively, along with elections for all 128 Senate seats and 500 seats in the House of Representatives.

The main structure and responsibilities of the Legislative Branch are specified in articles 50 through 79 of Mexico's Constitution. The Congress holds two ordinary sessions per year. The first session begins on November 1 and continues until December 31; the second session begins on April 15 and may continue until July 15. A Permanent Committee (*Comisión Permanente*), consisting of thirty-seven members (eighteen senators and nineteen representatives), under-

takes the legislative responsibilities during congressional recess. The President may call the Congress for extraordinary sessions to deal with important legislation or extraordinary matters.

The powers of the Congress include the right to pass laws, impose taxes, declare war, approve the national budget, approve, or reject treaties and conventions executed with foreign countries, and ratify diplomatic appointments. The Senate addresses all matters concerning foreign policy, approves international agreements, and confirms presidential appointments. The House of Representatives, much like the United States House of Representatives, addresses all matters pertaining to the government's budget and public expenditures.

In some instances, both chambers share certain powers, such as the power to establish committees to discuss particular government issues and question government officials. The representatives have the power to appoint a provisional president. In the event of impeachment, the two chambers are convened jointly as a General Congress. Each legislative chamber has a number of committees that study and introduce bills. If there is disagreement between the chambers on a bill, a joint committee is appointed to draft a compromise version.[1]

§ MX:5 Interrelationship between Various Organizations of Government—The Executive Power

The Executive Power is headed by the President, who is elected for a period of six years without possibility of re-election. The President is assisted by 18 Secretaries of various Ministries, which include the Department of Agriculture, Livestock, Rural Development, Fishery and Food, the Department of Communications and Transport, the Department of Foreign Affairs, the Department of Labor and Social Welfare, and the Department of Tourism, among others, and by the Attorney General (whose appointment requires the consent of the Senate). The President is both the Chief of State and head of the government. There is no Vice-President.

The President guides Mexico's relations with other nations, and also executes treaties, which later must be ratified by the Senate. The President also regulates imports and exports with leave of Congress.

For at least 70 years when the PRI party candidates were in office, the president was deemed to have the power to designate his successor going into the presidential elections. Because PRI was the ruling party and controlled Mexico's electoral existence and political life, the President's announcement was understood as the proclamation of the new president, and was deemed the perfect successor "political party dictatorship."

As a result of significant electoral reforms, Mexican political parties now run internal elections to determine who will run for president. "Presidential power to appoint successor" has been abandoned.

[Section MX:4]

[1]Federal Government, www.geographic.org.

Some of the current constitutional powers of the President are:

- Supreme executive power to run and administer the country.
- The power to appoint Mexican Ambassadors.
- The power to nominate Supreme Court Justices.
- The power to veto laws.
- The power to introduce bills into Congress for their analysis.

The elected president began her term on December 1, 2024.

The year 2024 has been a pivotal year for Mexican politics due to the highly contested elections, where the ruling party secured major victories, reinforcing its legislative control. Based on that gained control of even a super-majority in both the Senate and the House of Representatives, a flurry of constitutional and statutory changes are being swiftly passed. Among those changes, judicial reform stands out as it involves the reduction of Justices in the Supreme Court from 11 to 9 members, and based on current rules in place all judges at both the federal and state level will be replaced by persons elected by popular vote scheduled to occur at the federal level in June 2025 and June 2027.

The constitutional reforms of 2024 have also expanded the powers of the Executive Branch, enabling the President to propose sweeping legislative changes more efficiently under expedited procedures. This change, while streamlining governance, has raised concerns among market participants regarding the stability of the regulatory environment, particularly in areas like financial and securities law, where sudden changes could disrupt long-term investment strategies.

§ MX:6 Interrelationship between Various Organizations of Government—Judiciary Branch

The Supreme Court of Justice is the head of the Judiciary Branch. The Supreme Court has 11 justices who are nominated by the President and appointed by the Senate; justices serve 15-year terms. The Electoral Tribunal, collegiate, unitary and district tribunals, district courts, and the Council of the Federal Judiciary sit below the SC. Based on the judicial reform, the number of justices will be reduced to nine, and their tenure to 10 years.

The Organic Law of the Judicial Power regulates the activities of the Judicial Power setting forth its authority, composition, and functions. The Federal Council of the Judiciary is empowered to administer, supervise, and discipline the Judicial Power, except for the Supreme Court. Besides the existence of federal courts, each of the thirty-one states has its own civil and criminal courts, which act and are governed by local laws.

Federal and State courts suffer a multitude of grievous problems. These problems include corruption of judges and administrative personnel; the inefficiency and incompetence of judges and other personnel; lack of sufficient and modern technical equipment as a result of very limited budgets; and inadequate facilities. Federal

judges and Federal courts are the best and most efficient because they have comparatively larger budgets and more modern technical equipment, which is due in large part to the excellent work of the Council of the Federal Judiciary. Recently, Mexico has enacted a number of federal statutes dealing with organized crime, rights of handicapped persons, elderly people, children and teenagers, e-commerce; domestic violence; anti-discrimination; transparency and public access to government information, etc.

The judicial reforms enacted through the 2024 constitutional amendments have significantly reshaped the Mexican judiciary. With the Supreme Court reduced to nine members and judges at all levels now subject to popular election, the potential for shifts in judicial interpretation of financial and securities laws has increased. While intended to democratize the judiciary, these changes could introduce variability in judicial decisions, impacting the predictability of rulings in complex securities disputes.

§ MX:7 Role of courts and administrative agencies in interpretation of laws—Binding effect

Based on different political and constitutional grounds, the role of judges in interpreting law, and thereby in creating and updating the Mexican legal system, is limited compared to the role of judges in, for example, the United States or the United Kingdom.

The Supreme Court or the Circuit Courts are the only courts authorized to set binding judicial precedents in Mexico through a strict process called "jurisprudence" which is regulated under the *Amparo* Law (*Ley de Amparo*). The jurisprudence set thereby is binding for judicial and administrative courts, but not for administrative agencies.

Notwithstanding the above, there are other general binding judicial resolutions, such as cases of Constitutionality Actions (*Acciones de Inconstitucionalidad*), which are general challenges to the constitutionality of a law or administrative acts. The resolutions reached in these cases may also apply generally if 8 out of the 11 Justices of the Supreme Court consent (as mentioned above, the number will be dropped to six out of nine Justices based on an ongoing revamping of the entire judicial system whereby members of the judiciary will be replaced by new persons elected by popular vote in June 2025 and June 2027).

In addition, there are other constitutional actions of non-binding nature, such as competence controversies (*Controversias Constitucionales*). Such controversies are typically between independent constitutional organs—like, the Federation and a State or Constitutional County (*Municipio*), or two Counties of different States, or two or more States, or two different power branches within the same State (e.g., judiciary and administrative local powers)—and argued before the Supreme Court. The Supreme Court resolutions on such cases are non-binding precedents.

All other judicial resolutions under Mexican law are non-binding; in

fact, they are very rarely even quoted in claims or actions brought before Mexican courts.

§ MX:8 Role of courts and administrative agencies in interpretation of laws—Suits for *Amparo*

According to doctrine, the writ for Amparo (*Juicio de Amparo*) is an original Mexican recourse to defend particular constitutional rights against the acts of public agencies. Because in Mexico's liberal human rights system only public agencies may violate human rights (constitutional rights), therefore, the writ for Amparo is not available against acts of private entities. This is yet another difference from constitutional actions in common law countries.

Through the writ for Amparo (meaning, writ for *Protection*), only those claims on public agencies' violations of constitutional rights explicitly provided for in the text of the constitution may be heard, which strongly limits the extent of these actions. Usually, such rights only comprehend legality and due process matters, whereas most other constitutional rights have been just slightly broached in Mexican Jurisprudence.

The basic difference between the writ for Amparo and other common law writs, such as the writ of certiorari or the writ of habeas corpus, is that the writ for Amparo involves a series of constitutional writs in itself; that is, it is, at least theoretically, a broad defense action against all constitutional violations, and not a particular action to protect certain constitutional rights.

A general principle governing the writ for Amparo is the so-called *Otero Principle*, created by Mariano Otero, a widely recognized member of the 1917 Mexican constitutional convention. Mr. Otero believed that constitutional writs should only extend its protection as individual rulings; thus, the second paragraph of the Constitution of the United Mexican States in force (article 107) states as follows: when granted, the writ for Amparo may only benefit and protect particular interests, and shall not constitute general binding precedents.

To create binding precedents, the Supreme Court and Circuit Courts must follow the strict process of jurisprudence under the Amparo Law. Jurisprudence is set upon five consecutive Amparo resolutions with the same holding, with no resolution against them, and under specific voting conditions. The Supreme Court may directly overturn jurisprudence by setting new criteria in case of any discrepancy between two sets of precedent.

§ MX:9 Role of courts and administrative agencies in interpretation of laws—Administrative agencies

A few decades ago, Administrative Agencies were first introduced in Mexico under the Organic Law of the Federal Public Administration, (*Ley Orgánica de la Administración Pública Federal*), issued originally in December 1976. The regulation of Administrative Agencies (*Organ-*

ismos Descentralizados) and State-Owned Companies (*Paraestatales*) is still extremely poor in Mexico. Administrative agencies' independence and capacity to create or interpret regulations is extremely limited. These limitations stem from the fact that Agencies depend on public appointments and funds, and also because there are severe restrictions and prohibitions to private investment or foreign equity for certain State-reserved and priority matters.

Nevertheless, certain Administrative Agencies, like the National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores*), the National Insurance and Bonding Commission (*Comisión Nacional de Seguros y Fianzas*) and the National Commission for Defending Financial Services' Customers (*Comisión Nacional de Seguros y Fianzas,*) are taking the lead in the Agencies' sector and currently have broad authority to regulate the financial sector and maintain jurisdiction over disputes on securities and banking matters. The resolutions of the Agencies may be appealed within the Administrative Courts.

Administrative Courts in Mexico may also create binding precedents for inferior courts. Administrative Courts may create this binding precedent by adhering to specific procedures similar to those followed by the Supreme Court or the Circuit Courts. Even so, this type of binding precedent does not oblige judicial courts and may, in any case, be challenged by writ for *Amparo* with federal courts, which are subject to the jurisprudence set by the Supreme Court and Circuit Courts.

II. SECURITIES REGULATORY FRAMEWORK

§ MX:10 History and Development: the New Securities Market Law

The history of Mexican securities regulation can be traced back to the last decade of the 19th century, when the first commercial regulations were introduced in the Commerce Code published on October 7, 1889, which is currently still in force. Throughout the 20th century, important commercial institutions were gradually introduced and laws regulating corporations, securities and credit operations were passed. Nevertheless, Mexican commercial institutions, including securities, always remained a step behind the latest international figures.

The first Mexican Stock Exchange began operations on October 21, 1895 (adopting its current name on May 21, 1910), but it was not until the last quarter of the 20th century (1985) when the securities markets re-emerged that a completely new Securities Market Law was passed. In 1995, the main regulatory body for securities trading in Mexico, the National Banking and Securities Commission (the "Commission"), was created as an independent and specialized public agency, which is overseen by the Ministry of Treasury and Public Credit (the "Ministry").

The 1985 Securities Market Law was an important milestone for se-

curities trading in Mexico, but it lacked the requisite specific regulation for trading in an aggressive and advanced commercial and securities markets. The 1985 Securities Market Law was the first attempt to create a regulatory scheme for securities in Mexico. In 2005, a New Securities Market Law was passed. This time the law more closely resembled securities' regulations in America. In particular, it sought to define some of "hardest points" in Mexican commercial laws such as corporate transparency, corporate governance, fiduciary duties, minority rights; and, of course, manager and director liabilities, as well as sanctions and prevention of insider trading.

In the following pages you will find a brief introduction to the primary scheme for securities regulation in Mexico, including the structure and operation of the main regulatory bodies of the Mexican securities market.

In 2023, significant reforms were introduced to the Securities Market Law aimed at enhancing market transparency and investor protection. These reforms included the establishment of stricter disclosure norms for issuers and a more comprehensive approach to combating market manipulation. The National Banking and Securities Commission (CNBV) was also granted enhanced powers to oversee new financial instruments and innovations such as cryptocurrencies and blockchain-based securities.

§ MX:11 Regulatory scheme; identification and creation of main legal bodies

The Mexican securities regulatory scheme is divided between general commercial laws affecting the securities market and specific securities market laws. Both sets of laws are essential to understand the basic operational framework of corporations, shareholders' rights, and public and private offerings in Mexico.

There are two basic groups of the securities market regulatory bodies: i) the first includes the Securities Market Law and the Mutual Funds Law (formerly known as the Investment Companies Law and amended on June 13, 2014), which provides the general operational framework for securities commercial acts and mutual funds; and ii) the second group is comprised of several general regulations issued by the Commission.

The Commission regulates the securities market by issuing General Regulations and by authorizing public and private offerings. It also oversees the general activities of participants in the securities market.

The recent updates to the Securities Market Law also included new provisions for Environmental, Social, and Governance (ESG) compliance. The Ministry of Finance, in collaboration with the CNBV and Banco de México, is now tasked with issuing ESG regulations, ensuring that issuers adopt best practices in sustainable governance.

Please bear in mind that a detailed analysis of securities' market laws is included in another section of this Chapter, this section is intended only to provide an overview.

§ MX:12 Regulation under the General Law of Business Organizations (GLBO)

In Mexico, Commercial corporations are regulated under the General Law of Business Organizations (*Ley General de Sociedades Mercantiles*, "GLBO"). Banking institutions, insurance and cooperative companies are regulated by specific legal bodies. Public companies are regulated by the New Securities Market Law, which is intended to complement the provisions of the GLBO. Public companies must be incorporated in Mexico as capital stock companies ("SA"), which are regulated by the GLBO; once the company has been incorporated as a capital stock company, it is then amended to be incorporated into a stock market company ("SAB").

Besides capital stock companies, the GLBO regulates five other types of companies, and joint ventures. Because joint ventures do not create a different entity, they are not actually corporations; notwithstanding they are deemed as commercial entities for tax purposes.

Limited liability companies are also regulated in the GLBO; they have specific characteristics, for instance, they must not have more than 50 partners and they may not go public without first transforming into an SA.

SA companies in Mexico must have at least two shareholders. The administration of SA companies relies on a board of directors or a sole manager and has a surveillance body or a sole statutory auditor, who is in charge of auditing the administration and management of the SA.

Shareholders have a preferential right to acquire new shares issued for capital stock increases, as well as the right to oppose resolutions radically amending the corporate by-laws (or merger or spin-off resolutions) by resigning to the SA. By structure, ordinary shareholders meetings may be held with the representation by 50% of the capital stock convened at the meeting. Extraordinary shareholders' meetings must be held with the representation by 75% of the capital stock convened at the meeting.

Shareholders single partner companies were forbidden until March of 2016, when the GLBO was amended and a new regime in which one shareholder can constitute a company was created. These companies are called simplified stock companies (*sociedades por acciones simplificadas*). Under this regime, people can establish a micro or small business, through an online application at no cost.

The liability of the shareholders is limited up to the amount of their contributions. They must qualify as micro and small companies, so their annual income must be up to $5,000,000.00 MXN. Also, they are not subject to the requirement of formalizing their incorporation through a public deed or any other formality.

In alignment with recent amendments, the requirement for Sociedades Anónimas Promotoras de Inversión Bursátil (SAPIBs) to transform into Sociedades Anónimas Bursátiles (SABs) within 10

years was abolished. This change offers greater flexibility for companies in choosing their corporate structure while retaining market access.

§ MX:13 Regulation under the Foreign Investment Law (FIL)

The importance of foreign relations in political, economic, cultural, scientific and technological matters has become critical to effectively participate in an international economy. Considering that the value of assets depends entirely on the economic and political status of a country, the regulations by each government must provide certainty and security to investors. The Foreign Investment Law published on December 23, 1993 ("*Ley de Inversión Extranjera*" "FIL") is specifically designed to provide legal certainty on foreign investments and the regulation of foreign investments.

Along with the FIL, the Foreign Investment National Commission ("FINC") designs the rules necessary to promote foreign investment and creates through general resolutions guidelines for the application of legal provisions and statutes on foreign investment.

The 2023 reforms to the Foreign Investment Law reinforced Mexico's commitment to foreign investment protection by incorporating arbitration mechanisms into the regulatory framework, ensuring expedited dispute resolution.

§ MX:14 Negotiable Instruments and Credit Transactions Law (NICTL)

The foreword of the Negotiable Instruments and Credit Transactions Law ("NICTL") contains general theory, but also refers to negotiable instruments, such as compensation, protest, a third-party guarantee, bill of exchange, etc. Even though today the NICTL refers to eight negotiable instruments, initially the NICTL referred only to the bill of exchange, promissory note, check, liabilities, deposit certificates and the pledge certificate. The participation and housing certificates were added later.

Other recognized negotiable instruments contained in the preliminary Title of this Law are regulated by several laws. For instance, the share of stocks is regulated in the GLBO and the bill of lading is regulated in the Navigation Law; the certificate of capital, the bank bonds and the subordinate liabilities are all regulated in the Financial Institutions Law.

There are other types of negotiable instruments regulated by the Civil Code, such as the civil instrument at bearer or at command. These types of instruments were originally included in the NICTL.

The 2023 reforms also introduced hedge funds into the Investment Funds Law. These funds are now recognized as distinct financial instruments that can trade across diverse asset classes, catering exclusively to institutional or qualified investors. This development aims to diversify investment options in the Mexican financial market.

Recent amendments expanded the scope of negotiable instruments to include blockchain-based securities and smart contracts, provided they meet transparency and enforceability standards under Mexican law.

§ MX:15 New Securities Market Law

The new Securities Market Law was published in the Federal Official Gazette on December 30, 2005.

III. PUBLIC SECURITIES MARKET

§ MX:16 Relevant institutions and organizations

While in theory many stock exchanges could operate in Mexico, to date the only stock exchange in Mexico is the Mexican Stock Exchange (*Bolsa Mexicana de Valores*, "MSE"). The MSE's trading floor is located in Mexico City with an information center in the city of Monterrey, Nuevo León, Mexico. Transactions in the money and capital markets are carried out through electronic means.

Nevertheless, on 29 August 2017 the Ministry granted a concession to operate as a stock exchange under the observation of the Commission to Bolsa Institucional de Valores, S.A. de C.V. ("BIVA (Bolsa Institucional de Valores)"), becoming the only competitor to MSE in four decades. BIVA (Bolsa Institucional de Valores) started operations in the second trimester of 2018 once technical and operational adjustments were implemented and trial procedures were completed.

The MSE is currently composed of 36 members, all of whom were brokers authorized by the Commission prior to their entry into the MSE. Brokerage firms (*casas de bolsa)* are the entities commonly authorized by the Commission to trade securities in Mexico.

It is important to note that although almost all trading of securities registered with the MSE is conducted by brokerage firms, banks also play a role as issuers, purchasers and, sometimes, traders of securities. Under certain circumstances, operating companies of investment companies may also trade registered securities.

Insurance and bonding companies are significant institutional investors in the stock market. Auxiliary credit organizations (which comprise warehouses, leasing and factoring companies, credit unions and currency exchange houses) must perform transactions through brokerage firms.

In Mexico, the money market transactions are operated by *Servicios de Integracion Financiera, S.A. de C.V.* ("SIF") and its main shareholders are the members of the MSE. *MexDer, Mercado Mexicano de Derivados, S.A. de C.V.* is in charge of the Mexican futures and derivatives market, and its main shareholders are brokerage firms, exchange houses, banks and several financial entities.

The depository of the securities traded in Mexico is an entity named *S.D. Indeval, S.A. de C.V.*, which operates also as a clearinghouse. A

trust named "Asigna" operates as clearing and liquidation chamber of the Mexican derivatives market.

The Mexican Association of Securities Intermediaries (*Asociación Mexicana de Intermediarios Bursátiles*) and the Mexican Academy of Financial Law (*Academia Mexicana de Derecho Financiero*) are the principal associations related to the MSE.

§ MX:17 Basic Statistical Information—Brokerage Firms

As of November 2024, the following brokerage firms are authorized to operate in Mexico:

- *Acciones y Valores Banamex, S.A. de C.V., Casa de Bolsa (Grupo Financiero Banamex)*
- *Actinver Casa de Bolsa, S.A. de C.V. (Grupo Financiero Actinver)*
- *Barclays Capital Casa de Bolsa, S.A. de C.V. (Grupo Financiero Barclays México)*
- *BTG Pactual Casa de Bolsa, S.A. de C.V.*
- *Bursamétrica Casa de Bolsa, S.A. de C.V.*
- *Casa de Bolsa Banorte Ixe, S.A. de C.V. (Grupo Financiero Banorte)*
- *Casa de Bolsa BASE, S.A. de C.V. (Grupo Financiero Base)*
- *Casa de Bolsa BBVA Bancomer, S.A. de C.V. (Grupo Financiero BBVA Bancomer)*
- *Casa de Bolsa Credit Suisse (México), S.A. de C.V. (Grupo Financiero Credit Suisse México)*
- *Casa de Bolsa Finamex, S.A.B. de C.V.*
- *Casa de Bolsa Santander, S.A. de C.V. (Grupo Financiero Santander México)*
- *Casa de Bolsa Multiva, S.A. de C.V. (Grupo Financiero Multiva)*
- *Casa de Bolsa Ve por Más, S.A. de C.V. (Grupo Financiero Ve por Más)*
- *CI Casa de Bolsa, S.A. de C.V.*
- *Deutsche Securities, S.A. de C.V., Casa de Bolsa*
- *Evercore Casa de Bolsa, S.A. de C.V.*
- *GBM, Grupo Bursátil Mexicano, S.A. de C.V., Casa de Bolsa*
- *Goldman Sachs México, Casa de Bolsa, S.A. de C.V.*
- *HSBC Casa de Bolsa, S.A. de C.V. (Grupo Financiero HSBC)*
- *Interacciones Casa de Bolsa, S.A. de C.V. (Grupo Financiero Interacciones)*
- *Intercam Casa de Bolsa, S.A. de C.V. (Intercam Grupo Financiero)*
- *Inversora Bursátil, S.A. de C.V. (Grupo Financiero Inbursa)*
- *Invex, Casa de Bolsa, S.A. de C.V. (Invex Grupo Financiero)*
- *Kuspit Casa de Bolsa, S.A. de C.V.*
- *J.P. Morgan Casa de Bolsa, S.A. de C.V. (J.P. Morgan Grupo Financiero)*
- *MASARI Casa de Bolsa, S.A.*

- *Merrill Lynch México, S.A. de C.V., Casa de Bolsa*
- *Monex Casa de Bolsa, S.A. de C.V. (Monex Grupo Financiero)*
- *Morgan Stanley México, Casa de Bolsa, S.A. de C.V.*
- *Punto Casa de Bolsa, S.A. de C.V.*
- *Scotia Inverlat Casa de Bolsa, S.A. de C.V. (Grupo Financiero Scotiabank Inverlat)*
- *UBS Casa de Bolsa, S.A. de C.V. (UBS Grupo Financiero)*
- *Valores Mexicanos Casa de Bolsa, S.A. de C.V.*
- *Value, S.A. de C.V., Casa de Bolsa (Value Grupo Financiero)*
- *Vector Casa de Bolsa, S.A. de C.V.*
- *Vifaru, S.A. de C.V., Casa de Bolsa*

These firms are authorized by the Comisión Nacional Bancaria y de Valores (CNBV) to operate in the Mexican financial market.

Please note that the list of authorized brokerage firms may change over time due to mergers, acquisitions, or regulatory updates. For the most current information, it is recommended to consult the official CNBV website or contact the CNBV directly.

§ MX:18 Basic statistical information—Investment funds

As of September 2024, the number of mutual funds listed in the Mexican Stock Exchange (MSE) is as follows:

- Variable income mutual funds: 347
- Debt instruments mutual funds: 289
- Discretionary mutual funds: 25
- SIEFORES (pension funds): 11

The SIEFORES are categorized as follows:

- Siefore Básica de Pensiones
- Siefore Básica 60-64
- Siefore Básica 65-69
- Siefore Básica 70-74
- Siefore Básica 75-79
- Siefore Básica 80-84
- Siefore Básica 85-89
- Siefore Básica 90-94
- Siefore Básica 95-99
- Siefore Básica Inicial
- Siefores Adicionales

These figures are based on the latest data available from the Comisión Nacional del Sistema de Ahorro para el Retiro (CONSAR), as of September 2024.

Number of Issuers

As of December 2022, the Mexican Stock Exchange (BMV) reported the following number of listed issuers:

- Equity Market: 140 issuers
- Debt Market: 148 national issuers

The inclusion of hedge funds as a regulated investment vehicle under the 2023 amendments to the Investment Funds Law marks a pivotal change. This new category allows institutional investors to access diverse asset classes, broadening the investment landscape in Mexico while adhering to stringent regulatory oversight to ensure market stability.

§ MX:19 Basic statistical information—Banks[1]

As of November, 2024, Mexico's banking sector comprises:

- Commercial Banks: 50 institutions
- Development Banks: 6 institutions

Development banks in Mexico play a crucial role in financing economic and infrastructure development. They include:

- Nacional Financiera, S.N.C. (NAFIN)
- Banco Nacional de Obras y Servicios Públicos, S.N.C. (BANOBRAS)
- Banco Nacional de Comercio Exterior, S.N.C. (BANCOMEXT)
- Sociedad Hipotecaria Federal, S.N.C. (SHF)
- Banco del Ahorro Nacional y Servicios Financieros, S.N.C. (BANSEFI)
- Banco Nacional del Ejército, Fuerza Aérea y Armada, S.N.C. (BANJERCITO)

§ MX:20 Basic statistical information—Other financial institutions

As of November 2024, the financial institutions operating in Mexico are as follows:

- Insurance Companies: 76
- Bonding Companies: 16
- Leasing Companies: 3
- Warehouses: 17
- Currency Exchange Houses: 9

These figures are based on the latest available data from the Mexican financial authorities.

Please note that the number of financial institutions can change over time due to regulatory updates, mergers, acquisitions, and market dynamics. For the most current information, it is advisable to consult the official publications of the Comisión Nacional Bancaria y de Valores (CNBV) or other relevant regulatory bodies.

[Section MX:19]

[1]Source: www.cnbv.gob.mx.

IV. DISCUSSION OF REGULATIONS REGARDING SUBSTANTIVE SECURITIES MATTERS

§ MX:21 Creation, Regulation and Organization of Securities Regulatory Organizations

This section sets forth the main institutional framework of securities regulation with a focus on the design, as well as the powers and objectives entrusted to the organizations.

The 2024 constitutional amendments also underscore the importance of transparency and fiscal responsibility, aligning with broader efforts to strengthen institutional frameworks. The inclusion of fiscal discipline as a constitutional mandate has led to more stringent oversight of securities markets, ensuring that public debt and investment vehicles comply with enhanced accountability standards. These changes highlight a commitment to fostering a stable economic environment conducive to domestic and foreign investment.

§ MX:22 Creation, regulation and organization of securities regulatory organizations—Governmental agencies

As in other jurisdictions, securities regulation authority is divided among various institutions and organizations; there are some private entities as well as governmental agencies. The main regulator for the sector in Mexico is the Ministry that performs most duties in this sector through a semi-independent agency: the Commission. The Central Bank ("*Banco de México*") has specific powers regarding securities, and there are other government agencies such as the National Insurance and Bonding Commission (*Comisión Nacional de Seguros y Fianzas*, "CNSF") and the National Pension Fund System Commission (*Comisión Nacional del Sistema de Ahorro para el Retiro*, "CONSAR"), which are also of relevance.

§ MX:23 Creation, regulation and organization of securities regulatory organizations—Ministry of the Treasury and Public Credit

The Ministry is one of the most important government ministries in Mexico. It is charged with the responsibility of ensuring financial stability in the country.

The President of Mexico has sole power to designate and remove the Secretary of Treasury and Public Credit from office. The Secretary, in turn, designates and coordinates the Deputy Secretaries. Under the Deputy Secretary of the Treasury and Public Credit, a Division for Insurance and Securities is in charge of monitoring the sector.

The Ministry is the agency charged with monitoring the nation's financial system as well as interpreting the laws and regulations of the sector.

The Ministry has some influence but not absolute discretion to

control the semi-independent regulatory Commission of the sector. Among its most important powers, the Ministry approves the regulatory budgets and appoints the chairmen of the Commission and CNSF, and the secretary of the Ministry sits as chairman of the CONSAR.

As part of the legislative reforms of 2023, the Ministry of the Treasury and Public Credit now plays a pivotal role in integrating Environmental, Social, and Governance (ESG) standards into financial regulations. This effort is expected to position Mexico as a leader in sustainable finance across Latin America.

§ MX:24 Creation, regulation and organization of securities regulatory organizations—National Banking and Securities Commission (CNBV)

The Commission is a semi-independent entity under the Ministry's structure, responsible for the supervision and regulation of financial entities, natural persons, and other entities when they perform specific activities regulated under the corresponding laws of the financial sector; its purpose is to protect the interests of the general public. It was created and is regulated by the National Banking and Securities Commission Law and its Regulations.

A Governing Board composed of ten voting board members and the chairman of the Commission governs the Commission. Appointments reflect influence of the different regulatory entities; five of the voting board members are designated by the Ministry, three board members are appointed by the Banco de México, one by the CNSF and one by the CONSAR. The chairman is appointed by the Ministry.

The Commission is entrusted with important powers, some of which are shared or require coordination with other agencies or departments of government. One of the most important duties includes the issuance of regulations, mainly in the form of circulars (*Circulares*) regulating different sectors and entities. Circulars regulate and detail general laws and regulations in various areas of financial activity.

The Commission also has monitoring and enforcement powers and the legal authority to conduct investigations, request information and issue advice and warnings. These can be directed at firms as well as individuals.

The Commission authorization of registration of securities before the National Securities and Brokers Registry is a prerequisite in the process of a public offering or the registration of brokerage firms. The Commission also participates in the approval of certain aspects regarding the internal operation of the MSE.

In light of growing concerns around cybersecurity and digital asset transactions, the CNBV has also been actively involved in issuing new guidelines for the regulation of FinTech companies. These guidelines aim to ensure that digital platforms comply with anti-money laundering (AML) and know-your-customer (KYC) regulations, safeguarding the integrity of Mexico's financial markets.

Following the 2024 amendments, the CNBV was entrusted with additional constitutional mandates to monitor the integration of ESG (Environmental, Social, and Governance) principles into the financial and securities sectors. These responsibilities include enforcing compliance with new reporting standards that align corporate practices with Mexico's international commitments to sustainability and climate change mitigation.

§ MX:25 Creation, regulation and organization of securities regulatory organizations—Banco de México

The Banco de México is the autonomous government agency responsible for monetary policy and is defined as the central bank by a Constitutional provision. For this reason, Banco de México has specific regulatory powers regarding financial institutions and persons in the banking and securities industries. Most of this authority is exercised in conjunction with other agencies such as the Commission, CNSF, CONSAR or the Ministry.

Apart from its main monetary policy powers, Banco de México issues regulations that apply to financial institutions and has veto powers over certain regulations issued by the Commission under determined causes. Banco de México is also responsible for the placement and issuance of governmental securities.

The 2023 reforms expanded Banco de México's authority to oversee and regulate financial technology innovations, particularly regarding the use of blockchain and cryptocurrency in securities markets. This proactive approach seeks to address emerging risks while fostering innovation in digital financial services.

§ MX:26 Creation, regulation and organization of securities regulatory organizations—National Insurance and Bonding Commission (CNSF)

Like the Commission, the CNSF is a semi-independent agency under the Ministry. Its Governing Board is made up of nine voting members, six appointed by the Ministry, one by the Commission, one by the Banco de México, and one by CONSAR plus the Chairman and two vice chairmen who are appointed by the Ministry.

It regulates bonding and insurance companies and intervenes in all aspects of insurance and bonding including their issuance, maintenance and cancellation of securities.

§ MX:27 Creation, regulation and organization of securities regulatory organizations—National Pension Fund System Commission (CONSAR)

This board is composed of the Secretary of the Ministry as chairman, and another 11 members, including chairman of the CONSAR, the chairman of the Commission, the chairman of the CNSF, and officers from labor related government entities.

CONSAR is responsible for the authorization of pension funds (called SIEFORES and AFORES). It also issues regulations for their operation and permitted investments.

§ MX:28 Creation, regulation and organization of securities regulatory organizations—Mexican Stock Exchange

To this date the MSE is the only stock exchange in Mexico operating in Mexico; it is a private entity operating with a concession from the government granted by the Ministry and under observation by the Commission. Nevertheless, BIVA (Bolsa Institucional de Valores) has already obtained a concession to operate as a stock exchange under the observation of the Commission, becoming the only competitor to MSE in four decades. BIVA (Bolsa Institucional de Valores) started operations in the second trimester of 2018.

The structure of the stock exchange is governed by laws regarding its functioning as a stock corporation (*sociedad anónima*) whose shareholders have to be brokerage firms, each owning one share. A board of directors, controlling a large independent percentage, manages the MSE.

The MSE provides the technology and regulatory rules under which the Mexican securities market operates. The primary purpose of the exchange is the listing, trading and recording of trades in stocks, participation certificates, fixed-income instruments and warrants. Its primary functions include the following:

- To facilitate the exchange of securities, credit certificates and other documents registered at the National Securities and Brokers Registry ("NSBR"), as well as to provide the necessary services for underwriting, offering and the exchange of securities.
- To provide information to the public about the securities listed, the issuers and executed transactions.
- Administration of transactions by brokerage firms and their compliance with the applicable legislation.
- Establishing rules and standards to promote fair and equitable market practices at the securities market; monitor and impose disciplinary and corrective measures in the case of breach by brokerage firms or issuers.

The process for the offering, maintenance and delisting of securities requires the participation of the Commission and the NSBR. The MSE may suspend trading of securities under the requisite circumstances and is entitled to sanction its own members.

Subject to the approval of the Commission, the exchange issues its own internal regulations and establishes its own procedures. Its internal regulations include rules regarding the registration of securities for trading, terms and conditions for trading, rights and obligations of issuers and record-keeping duties of brokerage firms and investors.

§ MX:29 Creation, regulation and organization of securities regulatory organizations—Securities deposit institutions

The Institute of Securities Deposit (*S.D. INDEVAL, S.A. de C.V.*, "INDEVAL") is the corporation in charge of the custody, administration, clearing, liquidation and transfer of securities as a public service under concession granted by the Ministry.

Securities deposit institutions must be established as corporations with the favorable opinion of the Commission and Banco de México.

Administration is carried out by a Board of Directors with certain legally compulsory board members coming from government institutions. INDEVAL issues its own internal regulations regulating its activities.

INDEVAL provides various services to the industry including depositing securities from financial institutions, and brokerage firms, receiving notes, managing securities under trusts, and clearing services.

§ MX:30 Creation, regulation and organization of securities regulatory organizations—Derivatives exchanges

Only MexDer acts as the derivatives exchange in Mexico; it is a private entity operating with a concession from the government (granted by the Ministry) and under the supervision of the Ministry, Banco de Mexico and the Commission. MexDer and its clearinghouse Asigna are self-regulatory entities. As with the stock exchange, the clearing and the trading members own the derivatives exchange.

The Ministry, the Commission and, to a lesser degree, Banco de Mexico, interpret the law and establish rules and regulations for the structuring and functioning of the MexDer, its clearinghouse, clearing members, and futures and options traders.

MexDer's self-regulatory powers include issuing its internal regulations, enforcing the regulations and sanctioning its members.

§ MX:31 Definition of security

The Securities Market Law (*Ley del Mercado de Valores* "SML") article 2 defines securities as shares or equity participations, debentures, bonds, option instruments, certificates, promissory notes, bills of exchange, and other credit instruments, whether or not they are regulated or registered with the NSBR, and which: (i) may be traded in securities markets; (ii) are issued in series or in mass; and (iii) represent (a) the capital of an entity, (b) a proportional part of an asset, (c) the participation in a collective credit, or (d) any other individual credit right, in terms of applicable national or foreign laws.

The 2023 amendments also refined the definition of securities to explicitly include digital assets and tokens issued under blockchain technology, provided they meet specific criteria for tradeability and is-

suance as outlined by the Securities Market Law. This change ensures regulatory clarity for novel financial instruments.

§ MX:32 Public Offerings and exempted offerings—Definitions of public offering

A public offering is defined as the offer, with or without price, made within national territory through mass communication means to an undetermined person; to subscribe, acquire, sell or transfer securities by any means.

§ MX:33 Public Offerings and exempted offerings—Regulatory scheme

Public offerings may be, as described under article 2 of the SML, (i) for the subscription or sale of securities; or (ii) for the acquisition of securities. Public offerings for the acquisition of securities may be voluntary or mandatory as explained more fully below. Public offerings are also considered as such when directed to a certain type of investor.

Public offerings for the subscription or sale of securities:

Prior registration is required to make a public offering of securities. An application to request to register securities with the NSBR shall include, among other things:[1]

(i) the deed of incorporation and bylaws of the issuer, and any amendments thereto;

(ii) a preliminary offering prospectus (to be replaced with a final offering prospectus at the time the offer is made); additionally, a document with key information regarding the investment as determined by the Commission in its regulations;

(iii) audited financial statements or, information on the financial situation of the entity. Such information must be prepared pursuant to accounting principles recognized by the Commission;

(iv) a legal opinion issued by an independent attorney, which as applicable must state the following:

a) the due incorporation and existence of the issuer;

b) compliance with the law and the issuers' by-laws;

c) the validity of the resolutions adopted by the entity approving the issuance and public offer of the securities;

d) the validity on the issuance of the securities and its enforcement against the issuer;

e) the authority of those individuals issuing the securities at the time of issuance;

f) the due creation and enforceability of guaranties being granted, and the authority of those acting on behalf of the issuer, as well as, the procedure of foreclosure for the securities that are guaranteed;

[Section MX:33]

[1]Article 85 of the SML.

g) in the case of trusts, the legal creation of the trust and, the validity of the transfer of the title of assets or rights to the trust;

h) all legal aspects of the securities that represent capital or foreign companies regarding their minority rights and a comparison to traded stock companies, as well as their organization, operation, integration and responsibility of its decision making bodies; and,

i) a description of financial entities' similarities and differences on the special regime applicable to such entities under the applicable financial system laws, and on the corporate internal bodies that shall comply with the provisions under the SML.

(v) other specific requirements depend on whether the securities represent economic rights under trust, credit instruments, etc., such as credit ratings, guarantor and guaranty information, among others.

In addition, the opinion must include the opinion of an independent third party that is authorized to issue opinions in tax matters pursuant to the applicable legal provisions, with respect to the tax regime disclosed in the prospectus is applicable to senior development, real estate or indexed bonds.

The Commission may request additional information from the issuer in order to proceed with the corresponding registration.

The issuance prospectus along with any informative supplements (whether preliminary or definitive) shall include the following information:[2]

1. The specific characteristics of the offer, the securities subject to such offer, the rights and obligations arising therefrom, and the proposed use of the proceeds arising from the issuance. A specific plan for distribution of the prospectus among the public shall be mentioned. The final prospectus shall clearly state the price of the security or the interest rate offered;

2. The financial, administrative, economic and legal status of the issuer, as well as the status of its business group;

3. A description of the activities of the issuer and its business group and a description of the commercial, industrial or service sector in which they participate;

4. Integration of issuer's business group;

5. Issuer's capital structure indicating issuances of different series or classes of shares and rights, or distribution of shares among the shareholders. The prospectus should also contain an indication of the person(s) and/or group(s) that have control or a significant influence over the company, the issuer, or makes decisions in the controlling group;

6. Compensation paid to related parties as defined under the SML;

7. Agreement or benefit programs for the members of the board

[2]Article 86 of the SML.

of directors, relevant officers or employees of the issuer, which allow them to participate in the capital distribution mechanics and determination of prices;

8. Relevant operations entered with related parties within, at least, the last three annual periods;

9. Comments and analysis on the financial situation and results of the issuer, including future perspectives;

10. Legal and financial information and independent opinions;

11. With respect to securities issued by financial entities, the equivalent, similarities and differences of their applicable special regime pursuant to the legal framework for financial entities, with respect to those applicable to SABs; and

12. All issuers must include in the prospectus language expressly indicating that the registration of the securities does not imply any type of guarantee on the quality of the issuance certification with regards to the goodness of the issue of the securities, solvency of the issuer or veracity of the information contained in the prospectus.

The SML requires that specific officers, depending on the type of issuer and securities being registered, certify the veracity and integrity of the information contained in the prospectus and any informative supplements or brochures.

Along with the request for registration of the securities, the corresponding issuers should also request the listing of such securities in an authorized stock exchange.

It is important to mention that issuers may also file for a preventive registration of the securities, which must be done pursuant to specific rules issued by the Commission. The preventive registration allows such issuers to promptly initiate a public offering as long as they continue to update the information that needs to be provided to the NSBR and the Commission.

Public offerings may now be registered with a favorable opinion from the relevant stock exchange, simplifying the prior requirement for direct CNBV authorization. This change, introduced in the 2023 amendments, reduces procedural delays for issuers while maintaining regulatory oversight.

§ MX:34 Public Offerings and exempted offerings—Transactions subject to a special treatment

Acquisition public offerings are subject to special treatment. Voluntary acquisition offerings require the prior authorization from the Commission and shall be open for at least 20 business days. The determination of the amount of securities to be sold shall be made proportionally to the ownership of all those persons who agreed to sell the securities, regardless of time of acceptance, within the time frame of the offering. An offer to purchase securities and its characteristics may be amended at any time, as long as such amendment implies a more favorable treatment to the recipients of such offering. Depending on the substance of the amendments, the Commission may request to expand the term under which the offer shall continue to be open.

Public offerings for the acquisition of securities shall be mandatory in instances where a person or group intends to acquire, either directly or indirectly, 30% or more of the shares of a stock corporation (*sociedad anónima*) registered with the NSBR, either through the stock exchange or over the counter, in one or more simultaneous or successive events. In such case, the offer shall be extended to all the securities of the company, including those limited or restricted and even shares without voter rights.

The acquisition offering shall be on the same terms regardless of the class or type of shares acquired. In this case, the offering shall be made either by: (1) a percentage of the capital of the company equivalent to the portion of ordinary shares that will be acquired; or (2) for 10% of said capital, whichever is higher, as long as the offeror limits its final ownership to a percentage that does not imply having control over the company, or for 100% of the capital of the company when the offeror intends to secure control of the company. This percentage may be lower pursuant to prior authorization from the Commission.

Any transaction which offers compensation to any person, and which implies a premium or overprice to the offering, is strictly prohibited, except in instances where specific arrangements are made with third parties that impose obligations to act or to abstain from acting, as long as the arrangements are approved by the board or directors of the company, and are clearly disclosed in the public offering.

There are specific exceptions to this public acquisition offer, but prior confirmation is required.

Additionally, the amendments now allow greater flexibility for voluntary acquisition offerings, reducing procedural barriers for companies seeking to consolidate market positions. This includes updated thresholds for transactions involving minority shareholders, enhancing their protection during acquisition processes.

§ MX:35 Public Offerings and exempted offerings—Exempted offerings

Exempted offerings are those considered as private offerings under articles 8 of the SML, which provides that private offers of unregistered securities may be made within national territory by any person as long as one of the following requirements is met:

a) The offering is made exclusively to institutional or qualified investors;

b) The offering of securities, is made to less than 100 persons, regardless of whether the securities represent one or more classes of securities;

c) The offering is made pursuant to plans or programs applicable generally to employees or groups of employees of the issuer, or of entities controlled by the issuer; or

d) The offering is made to shareholders or partners of entities whose corporate purpose is to interact exclusively or primarily with such shareholders.

The Commission has full authority to approve private offers, which are different to those set forth above.

§ MX:36 Registration and continuing disclosure requirements of public companies

One of SML's primary objectives is promoting the proper and adequate disclosure of information to the investing public; for such purpose the SML, requires that all securities that are subject to a public offering are registered in advance with the NSBR. Once the corresponding securities are duly registered, issuers shall be subject to ongoing periodic reporting obligations, which include the furnishing of information to the NSBR and the MSE, which, in turn, will make this information available to the general public. Reporting obligations may vary depending on the type of securities offered and the transaction involved.

Under the amended Securities Market Law, the streamlined registration process now allows issuers to register securities upon receiving a favorable opinion from the stock exchange where the securities will be listed. This eliminates the need for direct CNBV authorization, accelerating the process and promoting market agility.

§ MX:37 Registration and continuing disclosure requirements of public companies—Required documents for registration under *Circular Única de Emisoras*

As mentioned above, according to article 70 of the SML, all securities subject to public offering or intermediation shall be registered before the NSBR, while articles 85 and 90 of the SML set forth the requirements, information and documentation that are needed for the registration.

The Regulations Applicable to Issuers (*Circular Única de Emisoras* "Regulations") set forth the documents that must be filed in order for registry of the securities to proceed, including the following:

(i) a preliminary offering prospectus and informative supplement;

(ii) certified annual financial statements prepared in accordance with the accounting principles recognized by the Commission, as well as a corresponding opinion and certification from an independent accountant;

(iii) a legal opinion issued by an independent consultant on the requirements of the SML;

(iv) a credit risk rating issued by a securities rating institution;

(v) any information regarding a guarantor or guaranty in the event of an offering of guaranteed securities; and

(vi) the information that is provided to the NSBR shall be simultaneously provided to the investing public, upon issuance of the public offering.

Also, issuers may register securities that are not yet subject to a

public offering or request a preventive registration of securities to be offered to the public later on, but within the corresponding term set forth in such case by the Commission.

The objectives pursued by the SML with the registration of securities for the protection of the investing public and the equilibrium of the exchange market and financial system, are:

(i) to demonstrate the financial reliability of the issuer;

(ii) to prove that the issuer has adequate corporate and financial policies and practices consistent with the interest of the investing public;

(iii) to disclose proper compliance with all the applicable rulings;

(iv) to avoid manipulation by the issuer regarding the yield of corresponding securities; and

(v) to prevent possible conflicts of interest.

The updated registration requirements now include ESG compliance statements, risk assessments for digital assets, and enhanced financial disclosures aimed at ensuring transparency and protecting stakeholder interests.

§ MX:38 Registration and continuing disclosure requirements of public companies—Disclosure Requirements

In addition to the mandatory disclosures, issuers with registered securities are required to disclose certain information periodically upon the occurrence of relevant events.

Article 104 of the SML sets forth the reports and information that must be filed by the issuers with the Commission and the MSE. The Regulations further details the reports and information. Such reports include:

(i) continuous reports on corporate acts and resolutions of the issuer allowed under its by-laws or other legal provisions;

(ii) quarterly reports containing issuers' financial statements and the board of directors comments on its financial status;

(iii) annual reports including certified financial statements and the independent accountant's report and comments;

(iv) reports on corporate restructures, mergers, acquisitions and sale and purchase of assets;

(v) reports of relevant events;

(vi) reports of the issuers' policies and operations; and

(vii) reports on the positions kept by the issuers in derivative financial instruments.

Government entities, trusts or any foreign entities that issue securities are also subject to reporting obligations and disclosure requirements, although these may change in accordance to the type of issuer.

As for relevant events, article 105 of the SML provides that relevant events must be disclosed immediately upon the issuer's acknowledgement of them to the general public through the MSE and such

disclosure may only be delayed if the events are not yet consummated; there is no information of the events in mass media, and there are no unusual variations on the securities' price or volume.

The Commission and the MSE may also require the issuer to immediately inform the investing public and give details with respect to any unusual variation on the securities' price or volume, and about any changes in the supply, demand or price of the securities inconsistent with their historical behavior or which may not be understood in the context of the information available to the general public.

§ MX:39 Registration and continuing disclosure requirements of public companies—Expedited registration and exempt securities

As mentioned above, SML sets forth scenarios in which issuers may register securities that are not yet the subject of a public offering, or issuers may file for preventive registration of securities with the NSBR for future offerings and placements. In both cases and for purposes of such registration, the relevant securities are subject to the exemption only if they meet certain requirements.

Preventive registration procedures have also been updated to align with the new simplified registration regime. These changes are expected to facilitate faster access to capital markets while maintaining transparency and investor protection.

Issuers must report ESG-related developments and material impacts of digital assets or blockchain-based securities on their financial position, in addition to timely disclosure of relevant events as mandated by Article 104.

§ MX:40 Registration and continuing disclosure requirements of public companies—Expedited registration and exempt securities—Registration without public offering

All issuers that wish to register securities which shall not be publicly offered may do so with the NSBR by fulfilling all the requirements applicable to securities in a public offering. However, such issuers shall file an informative brochure instead of an offering prospectus; said brochure must comply with all information requirements applicable to securities registered for public offering. Also, such securities must comply with the applicable listing requirements of the MSE.[1]

§ MX:41 Registration and continuing disclosure requirements of public companies—Preventive registration

Issuers may request from the Commission a preventive registration

---

[Section MX:40]

[1]Article 90 of the SML.

of shares of their capital stock in order for the issuer to perform a public offering of such securities later within the term set forth by the Commission. Upon performance of the relevant public offering, issuers shall comply with all disclosure requirements of information and documentation, and the issuer must ensure that all other legal provisions for a public offering are fulfilled at that moment.

As set forth by Article 92 of the SML, preventive registration allows the successive issuance and placement of one or more series of securities during a given term and for a maximum circulation amount, but with the understanding that the issuer shall be in compliance with all information disclosure obligations and legal provisions. Preventive placement may be terminated in the event the issuer does not carry out the first placement in accordance with the terms set forth in the placement program authorized by the Commission.

Generic preventive registration of securities is also allowed, as provided by Article 93 of the SML. Such registration may include securities that are part of a placement program and allow the issuer to carry out an unlimited number of issuances of the securities registered.

However, generic preventive registration may only be approved by the Commission for securities issued by the following entities:

(i) the Federal Government;

(ii) the Bank of Mexico;

(iii) the Institute for the Protection of Bank Savings (*Instituto para la Protección al Ahorro Bancario*);

(iv) multilateral financial entities to which Mexico is party;

(v) credit institutions (only in the case of debt for terms of one year or less); and

(vi) variable income, debt instrument, capital or limited purpose investment mutual funds, as well as investment companies specialized in retirement funds, for shares representative of their capital stock.

It is important to note that issuers who obtain the generic preventive registration of securities are exempt from fulfilling the following requirements set forth by the SML:

(i) previous authorization by the Commission of any advertising for such securities;

(ii) information and documentation requirements applicable to regular public offerings;

(iii) disclosure of reporting obligations applicable to regular issuers.

Also, the issuers of securities registered under this modality are not obliged to list them with the MSE, with the exception of investment companies specialized in retirement funds.

The special treatment of these securities under the SML may be questionable considering that they attract a large amount of public investment, but such treatment is understandable when it is

considered that the Mexican Federal Government, generally, guarantees these securities. However, this special treatment is suspicious in the case of credit institutions and mutual funds. However, it can be explained by the fact that these entities are subject to approval and surveillance by the banking section of the Commission. Such surveillance focuses on assuring compliance with the legal provisions that regulate the financial sector and not on specific aspects of the exchange markets, which may result in an inadequate regulation of the investors' interest and the exchange market.

Other entities, such as certain government bodies, foreign governments and international multilateral financial organizations may also request generic preventive registration to issue debt under the SML.

§ MX:42 Registration and continuing disclosure requirements of public companies—Suspension of trading or delisting

In accordance with articles 107 and 108 of the SML, the Commission may sanction an issuer with suspension or deregistration of a security or may cancel the registration of securities before the NSBR upon request of the corresponding issuer. Issuers that have listed securities cancelled are no longer considered securities issuers and lose the status, thereby nullifying the special regime previously granted by the SML.

The Commission may suspend the registration of a security to an issuer as a preemptive measure for up to 60 business days to avoid disordered market conditions or operations. Specific actions for which an issuer may be sanctioned with suspension of registration are:

(i) default of disclosure obligations;

(ii) default of policies governing participation in the exchange market and failure to keep their shareholders' interests;

(iii) actions or operations against the SML or practices not sanctioned by the stock market; or

(iv) issuer's request of cancellation of securities.

The suspension measure has the effect of suspending the stock quote of the securities before the securities exchange, and shall not exempt the issuer from complying with all other obligations under the SML. A suspension of the registration and listing may not exceed the 60-day term without prior notification of the affected issuer granting such issuer the right to dispute any such findings.

Cancellation of registry or delisting may be applied in the event the Commission deems it necessary to protect the interest of the investing public. Pursuant to article108 of the SML, cancellation of securities shall apply when the issuers breach the law severely or repeatedly, or when the securities do not fulfill the listing requirements of the securities exchange. In such cases the Commission shall require the issuer to make a public offering of the securities involved. Said public offering shall be subject to certain rules and shall be offered first to the stockholders of the company that do not have control of the securities,

and specific rules governing the price at which the securities shall be offered. Also, for at least six months after cancellation, the issuer shall place in a trust all resources required to purchase (at the same price) the securities of investors that have not attended the offering.

The public offering must be performed within the six months following the Commission's order for the sale of the securities, and the relevant issuer shall be unauthorized to offer securities to the investing public within the year following cancellation of registry. The terms and percentages required by the SML for public acquisition offerings shall also be observed.

In order for an issuer to request voluntary delisting of its registered securities, it must have approval from the stockholders holding at least 95% of the shares representing the capital stock of the issuer. Once the resolution is adopted, a public offering of the relevant securities shall follow, in accordance with the applicable regulation and requirements. The Commission shall review the terms and characteristics of the offering in order to determine, in certain circumstances, if the number and value of the securities in the hands of the investing public justify exempting the issuer from engaging in the public offering.

Once the Commission has been provided with evidence that there are no outstanding payments, cancellation of registered debt instruments may be completed.

§ MX:43 Registration and continuing disclosure requirements of public companies—Proxy solicitation

Proxy solicitation was not regulated by the first SML. The first SML did not include any specific provisions regarding the powers of attorney for representation of the shareholders at meetings. However, the new SML includes a provision that suggests the beginning of specific regulation of proxy solicitation.

Because Mexican public companies listed at the securities exchange are traditionally family-owned or owned by a group of close friends and business partners, participation of independent stockholders in the decisions and management of such companies has been limited and reserved to the controlling groups. This explains the limited development of proxy solicitation regulation for public companies in Mexico.

Proxies in the Mexican legal system are used primarily to avoid travel to the place where a particular shareholders' meeting is held, and are granted routinely to reliable persons so that they may vote at meetings where common decisions are made. In the absence of specific regulation, general commercial rules regulate proxies in the same manner that rules govern powers of attorney. Therefore, pursuant to commercial rules, granting proxies did not require complex formalities.

However, article 49 of the new SML states that individuals ap-

pointed in proxies may represent shareholders of public companies at shareholders' meetings. Proxy letters shall be granted in a specific format prepared by the issuer containing certain requirements set forth by the SML and shall be made available to shareholders by the intermediary or by the issuer.

The political reforms following the 2024 constitutional amendments emphasize greater public engagement in governance, which may influence corporate governance practices. For instance, the broader democratic reforms could lead to stricter requirements for shareholder disclosures and proxy solicitations, aligning with increased demand for transparency and accountability at all levels of governance and commerce.

§ MX:44 Fraud, manipulation and insider trading—Legal provisions

Fraud, manipulation and insider trading in the Mexican stock market were not subject to regulation until 1983, whereupon the SML was amended in order to introduce article 16 Bis. Article 16 Bis of the repealed SML contained legal provisions regulating securities transactions by persons with privileged or insider information such as: "those persons who have privileged information shall refrain from entering into transactions, whether for their own benefit or that of third parties, for any kind of securities, the price of which may be influenced by such dispersing information."

Since the enactment of the new SML in 2005, the regulation of fraud, manipulation and insider trading practices in Mexico has been modified and improved. Among other things are expanding the scope of when persons are deemed to have access to privileged information, the restrictions imposed on such persons, and the sanctions for violation of restrictions.

Article 363 of the SML lists those persons who are deemed to have access to privileged information and are, thus subject to restrictions when performing transactions involving securities. Among the persons considered to have access to privileged information are the following:

(i) board members, statutory auditors, general managers, principal officers and external auditors of the issuer or its comptrollers;

(ii) holders of 10% or higher interest in an issuer;

(iii) board members, statutory auditors, general managers and principal officers that hold 10% or higher interest in an issuer;

(iv) board members, statutory auditors, general managers and principal officers of independent service providers of the issuer during a relevant event, as well as entities that have any financial, administrative, operational, economic or legal relation or connection with the issuer and to whom the relevant event or participation in the relevant event is attributed to;

(v) issuers holding 5% or higher interest in issuer financial entities;

(vi) holding companies that control 5% or higher interest in financial entities or persons who hold 10% or more of any financial entities when at least one of them is an issuer of securities;

(vii) board members, general managers and principal officers of financial entities or controlling companies of financial entities;

(viii) persons that have a significant influence on the issuer or its economic group; and

(ix) any person with decisive power in an issuer.

In addition, persons involved in unusual transactions (transactions that do not correspond to such persons' historical investment behavior), who presumably had access to privileged information through the persons listed in article 363, are also subject to insider restrictions information. SML considers that spouses, close relatives and partners or business associates of persons with access to privileged information fall within this category.

All holders of privileged information have a confidentiality obligation with respect to the privileged information and shall refrain from disclosing it to third parties unless they are obliged to do so as a consequence of their employment or appointment. Also, they may not perform any transactions or instruct any transactions based on privileged information that may affect the price of the securities, and they cannot provide such privileged information to third parties (except as a consequence of their employment or appointment) nor issue any recommendations or give advice regarding securities whose characteristics may be influenced by such information. However, stock market intermediaries (brokers) that execute transactions related to privileged information may be excused from liability if they are following client instructions (with the understanding that the clients may not advise them before of such effect). However, clients will not be excused from liability under the SML.

An injured party may claim before the court, damages suffered as a result of the actions of a person trading with insider information. The statute of limitations for such claims is 5 years after the execution of the transaction. The SML does not limit its application to Mexican territory; it also provides that any violation to its provisions outside Mexico, which have effect within Mexico, may also be subject to sanctions under this Law.

Other provisions to safeguard the Mexican stock market include articles 368–370 of the SML, including, among others, the following prohibitions:

(i) disclosure of false or misleading information by any means, including a prospectus or mass media of a given security or the financial, administrative, operational, economic or legal situation of a given issuer;

(ii) manipulation of the market (interference with supply and demand of a security that affects its volume or price to obtain a benefit);

(iii) execution of simulated transactions;

(iv) interference with the computer systems used by the securities exchanges or its system suppliers;

(v) participation in transactions in which there is a conflict of interest;

(vi) any infraction to correct usage and practice of the market; and

(vii) ordering or interfering in the execution of transactions with securities for self-benefit or that of third parties, with the knowledge of the existence of instructions issued by other clients of an intermediary for the same security.

Disclosure of false or misleading information includes the total or partial omission of relevant information in the prospectus, informative brochure or supplements by an issuer, intermediary, external auditors and consultants, independent experts, attorneys, price providers or security rating institutions, or if erroneous information is included in such documents.

In recent years, the Mexican government has taken a more aggressive stance in prosecuting insider trading and market manipulation. This has been supported by increased cooperation with international regulatory bodies such as the SEC and IOSCO. Mexican law enforcement agencies are now better equipped with digital forensics tools to track illicit market activities, reflecting the broader global trend of digitizing financial surveillance.

§ MX:45 Fraud, manipulation and insider trading—Definition of privileged information

Article 362 of the SML sets forth that the "knowledge of relevant events that have not been disclosed to the public by the issuer, through the exchange in which its securities are listed, shall be considered privileged information for the purposes of this Law". Also, "it shall not be required that the person is familiar with all the characteristics of the relevant event in order to have privileged information if such person with access to information is able to affect the price of the securities of a given issuer."

The definition of privileged information under Mexican law has evolved with the digitalization of financial markets. Information relating to financial technologies, algorithms, and big data analytics can now be classified as privileged if it has the potential to impact securities prices. This reflects the growing intersection of technology and finance, prompting Mexican regulators to adapt to the complexities of modern trading environments.

§ MX:46 Fraud, manipulation and insider trading—Definition of privileged information—First Element: Knowledge of Relevant Events

The definition of privileged information contained in article 16 of the former SML referred to the knowledge of actions, facts or events

capable of influencing the prices of securities, thereby including all kinds of information. However, the current definition refers to the knowledge of "relevant events" which is closely related to the concept of relevant information, which according to article 2 of the SML, is "all the information of an issuer, required to be acquainted with its actual and current financial, administrative, operational, economic and legal situation and risks, as well as the information of the group it belongs to, if applicable, regardless of its position within the group, in the understanding that it affects such situation, and is information which is necessary in order to make reasonable investment decisions and to calculate the price of the securities issued by such issuer, pursuant to analysis usages and practices of the Mexican stock market."

There is no doubt that the phrase knowledge of relevant events has evolved to address the formerly vague definition (i.e., "knowledge of actions, facts or events"), and now provides a more explicit and precise guideline closely linked to relevant information, including the type of information of an issuer that can affect the stock quote and price of a security.

§ MX:47 Fraud, manipulation and insider trading—Definition of privileged information—Second element: not available to the public through the exchange

The condition in the SML which requires that privileged information be kept from the investing public, is meant to encourage regulated disclosure of information by the issuers, thereby giving equal investing opportunities to all investors without exception. To avoid unfair practices in the market, the SML prohibits the disclosure of information that may benefit only a few privileged persons while harming the general investing public.

As mentioned before, the Law and the Commission's Regulations require that issuers disclose periodic information, as well as relevant information upon the occurrence of certain events so that such data will be available to the public when making investing decisions. The information shall also be given to the securities exchange for its disclosure.

Relevant information may also be disclosed to the public through other means, including mass media. This usually occurs when the source of the information is not the issuer, but other events or agents that affect the issuer's environment.

§ MX:48 Fraud, manipulation and insider trading—Definition of privileged information—Third element: influence on the stock quote and prices of securities

The SML provides that information shall be considered privileged if it is capable of influencing the stock quote and prices of the corresponding securities.

The securities exchange is authorized to certify the stock quote and

prices of securities listed with it. The MSE does the listing on a daily basis, taking into account the prices of the securities traded that day; the securities exchange then discloses an official price quote for the securities traded in Mexico. In addition, it is possible to carry out over-the-counter, secondary market or face-to-face transactions that may be closed at prices not necessarily listed by the securities exchange.

The SML does not set forth how important the price variation arising from the disclosure of privileged information must be in order for it to be considered illegal, but the SML does limit the scope of the provision to the mere act of disclosing such privileged information to the general public. The importance of price variation still remains a matter for the courts to answer.

§ MX:49 Fraud, manipulation and insider trading—Definition of privileged information—Special restrictions—Increase in participation

Any person acquiring, through a single or several transactions, successively or simultaneously more than 10% but less than 30% of the outstanding stock of an issuer, shall be required to disclose such acquisition(s) to the general public through the Mexican Stock Exchange the next business day following the transaction.

Similarly, any Related Person increasing or decreasing the amount of stock they own in a registered issuer by 5%, in a single or several transactions, successively or simultaneously, shall inform the public of any such situation within the following day on which such circumstance occurs.

Any person or group of persons holding 10% or more of the capital stock of the issuer, or any Relevant Managers or members of the Board of Directors, undertaking any transactions underlying issuer's securities shall inform the Commission of such transactions.

§ MX:50 Fraud, manipulation and insider trading—Definition of privileged information—Insiders/blackout periods

In accordance with the SML an "insider" as defined in the SML, except for those who may have had access to privileged information due to their relationship to the insider, is subject to a three months blackout period where no sale or purchase transactions can be undertaken of securities issued by the issuer to whom they are connected; further, insiders may only perform transactions underlying issuer's securities through public offers.

The amended Securities Market Law also shortened the blackout period for certain insider transactions from three months to two months, provided these transactions are disclosed to the market in real time and meet enhanced reporting standards for transparency.

§ MX:51 Fraud, manipulation and insider trading—Exemptions

Article 367 of the SML provides that certain insiders will not be

subject to black out periods if the transaction involves transfers of shares to irrevocable trusts for employee options and retirement programs, public offerings in connection thereto, or the exercise of any options or agreements in connection with such stock option plans.

§ MX:52 Fraud, manipulation and insider trading—Enforcement

Undertaking any practices specifically prohibited or restricted by SML will result in economic sanctions for amounts ranging from the equivalent of 10.000 to 100.000 minimum wagers effective in Mexico City, and can also result in criminal prosecution with penalties ranging from 2 to 15 years in prison, in accordance to the actual benefit obtained in the unlawful transaction. The Ministry has the authority to begin criminal prosecution provided, however, the Ministry obtains an opinion from the Commission prior to pressing charges.

§ MX:53 Tender offers and compulsory offers—Jurisdictional basis for regulation of tender offers by the Commission

Although tender offerings are now specifically regulated under the SML, any tender offer that fulfills the requirements mentioned above shall be deemed as a public offering and therefore subject to the authorization and requirements of the Commission. Additionally, article 97 of the SML regulates tender and requires the following:

(i) The minimum term of the offer shall be 20 business days.

(ii) The assignation of the offer shall be made on a pro-rata basis, regardless of the moment of acceptance within the term of the offer.

(iii) The offer and its characteristics can be modified at any time prior to expiration of its term as long as such modifications imply more favorable conditions to tenders; if modifications are substantial, sufficient publicity shall be made. Any person or group who accepted the tender will be able to revoke it without any penalty whatsoever.

§ MX:54 Tender offers and compulsory offers—Compulsory offers

Under the SML, any entity or individual who wants to acquire 30% or more of the stock of an issuer in one or a series of transactions shall have to issue an offer either for: i) at least the same percentage of the capital stock intended to be acquired or an additional 10% of the totality of the stock of the issuer if obtaining control of the issuer is not intended; or, ii) for the totality of the stock of the issuer if the goal is to acquire corporate control of the issuer. In both cases, the offer will be based on the percentage of shares intended to be acquired and not their class or series. The Commission can relieve entities or individuals from such obligations in cases of restructures, capital reductions, foreclosure on guaranties, issuers unfitness for business, donations or estate inheritances, or other transactions where the interests of minorities are protected as determined by the Commission.

§ MX:55 Accounting and auditing

In this section we will discuss the relevant references to accounting and auditing guidelines and principles to which issuers and brokers are subject. The purpose is not to analyze these principles in detail, but rather to highlight their origin. The source of the principles is not the Commission, rather they are the result of the efforts of several professional organizations and government entities, including but not limited to the Mexican Institute of Public Accountants ("MIPA"), which have organized themselves since 2002, into the Mexican Council for the Research and Development of Financial Information Standards, A.C. ("CINIF") which developed the Mexican Financial Information Standards, ("*Normas de Información Financiera*" "MFIS"), and the implementation of the International Financial Reporting Standards established by the International Accounting Standards Board.

At the beginning of 2009, the financial statements of issuers were prepared pursuant to the MFIS and were subject to auditing and reporting by the standards issued by the MIPA. Participants in the market acknowledged the importance of having one set of standards of the highest quality in accounting that may be applied anywhere in the world and allow the comparison of financial entity information from one country to another one over the same preparation bases, increasing investor confidence.

Thus, the CNBV issued principles for the adoption in Mexico of the International Financial Reporting Standards putting issuers that trade in Mexico at the same level of disclosure and transparency international requirements of financial information. The establishment of one sole, complete, consistent and comparable set of standards of the highest quality and of international acceptance brings benefits to the market and the public with respect to the preparation of financial statements of issuers with presence in several countries and those issued in the Mexican market by foreign issuers.

§ MX:56 Accounting and auditing—Certain requirements with respect to issuers

All issuers are bound to comply with the specific accounting and auditing provisions set forth in the SML and must submit all accounting and business performance obligations following these standards in addition to any other data that they are subject to provide pursuant to the Commerce Code and the GLBO. According to the SML, the information must be submitted quarterly with a full report at the end of each calendar year.

Pursuant to article 33 of the Regulations, issuers with registered securities shall provide their annual financial statements prepared by the accounting standards that apply to the nature of the issuer, accompanied by an external auditor report.

In general, the financial statements must be prepared in accordance with the International Financial Reporting Standards issued by the

International Accounting Standards Board, except as provided in articles 78 Bis, 78 Bis 1 and 79.[1] These financial statements must also comply with the content obligations set forth by the article 172 of the GLBO and be submitted for approval to the general annual shareholders' meeting of the company. The financial statements will include a profit and loss statement, a balance sheet, a statement of changes in the financial condition, and a report from the statutory auditor for the shareholders' meeting to review.[2]

Auditing and reviewing by the external auditor as well as opinions or reports must be prepared based on the International Quality Control, Auditing, Review, Other Assurance, and Related Services Pronouncements issued by the International Auditing and Assurance Standards Board of the International Federation of Accountants.

The financial statements presented by the financial institutions must be prepared in accordance with accounting standards issued by the competent Mexican authorities. The above, also applies to the financial statements of issuers that through their subsidiaries predominantly engage in financial activities.

With respect to financial statements of issuers whose main activity is credit granting, financial lease or financial factoring, must be prepared and audited in accordance with the accounting standards applicable to multiple purpose financial institutions, regulated referred in article 87-D, section V of the General Law of Auxiliary Credit Organizations and Activities.

The financial statements of foreign issuers must be prepared according to any of the following options: (i) International Financial Reporting Standards issued by the International Accounting Standards Board, (ii) accounting principles generally accepted by the Unites States commonly known as US GAAP, or (iii) accounting principles applicable in the country of origin of the issuer.[3]

With respect to financial statements of foreign issuers that are financial institutions, those should be prepared in accordance with any of the options provided in sections (i) through (iii) of article 79 of the Regulations, or in accordance with accounting standards issued by the competent Mexican authorities, depending on the type of financial institution in question.

In the event issuers with registered securities perform corporate restructuring they shall provide the Commission with financial statements with proforma figures on the financial position and the results of the issuer as of the respective restructuring had taken effect in the same quarter from the previous fiscal year. The proforma financial information must be prepared in accordance with article 81 Bis of the Regulations.

[Section MX:56]

[1]Article 78 of the Regulations.

[2]Article 172 of the GLBO.

[3]Article 79 of the Regulations.

Financial statements of the associates different form the issuers, shall be prepared according: (i) International Financial Reporting Standards issued by the International Accounting Standards Board (*Consejo de Normas Internacionales de Contabilidad*), or (ii) the financial reporting standards recognized and issued by the Mexican Financial Reporting Standards Board, A.C. *(Consejo Mexicano de Normas de Información Financiera, A.C.*).

§ MX:57 Accounting and auditing—Developments in the accounting requirements applicable to brokerage firms

Brokerage firms also must apply the MFIS and other rules as listed in the SML and the Regulations. However, brokerage firms are also subject to additional rules, given their role as the principal intermediaries in the local securities market. In this particular area, the SML has created a brand new body of rules that the brokerage firms must follow:

- The brokerage firms must keep their accounting records in accordance with the accounting concepts and operational rules that the SML indicates. Approval of these accounts is required for the brokerage firms to be able to complete their annual reporting and possible distribution of dividends.[1]
- The brokerage firms are subject to specific monthly and quarterly reporting obligations based on unaudited financial statements, in addition to the full year audited financial statements that they must submit at the end of each calendar year.

A brief comment with respect to the accounting of mutual funds:

Similarly, mutual funds are subject to essentially the same bookkeeping and reporting obligations as brokerage firms. These requirements are in addition to the specific operating rules imposed on these entities by the Mutual Funds Law (*Ley de Fondos de Inversión* "MFL").[2] Some of the most relevant issues reflected in the MFL are the following:

- The Commission will confirm the accounting criteria that mutual funds must apply in their financial reporting, in addition to the basic accounting requirements set forth by the Commerce Code;
- The accounting records and books must be kept at the offices of the company, where any possible review and auditing activities will be performed, including those that the Commission is able to review under its jurisdiction;
- The Commission will set the rules for the approval of financial statements by the management company of each mutual fund, including their regularity and content; annual financial statements

---

[Section MX:57]

[1]See articles 44 and 288 of the SML.

[2]Article 76 of the MFL *et seq*.

must include a report by the external independent auditors appointed by the board of directors of the management company;

- Mutual funds must publish and distribute their financial statements, subject to the Commission's regulations, in printed or electronic means of wide circulation or publication of the management company, distribution company and appraisal company of the mutual fund, and through the web page of the mutual fund's management company, under the responsibility of the management that approved such statements; and
- Mutual funds must provide the Commission, its investors and the public in general with information related to any relevant event, through the means of communication dictated by the Commission.

Based on its review authority, the Commission is empowered to control the activities of mutual funds and sanction them in case of breach. Commission review and sanctioning authority may include the following:

- Confirm the accounting rules and principles to which mutual funds, management companies, distribution companies and appraisal companies must comply
- Review the financial statements and order their publication;
- Review the performance and order the possible suspension of directors, auditors, officers and employees and suspend them for a period of three months to five years if they are proven to fail in their obligations, particularly their technical capabilities, honorability and credit history for the performance of their functions, or repeatedly or grossly incur in breaching the provisions of the SML or its related regulations (including the removal of external independent auditors);
- Perform regular inspection visits to ensure proper compliance of obligations imposed by the MFL in terms of management, organization, functioning, processes, internal control systems, risk management and asset management, and special visits outside of the annual plan to address a specific situation such as correcting an operation issue, changes in accounting, legal, economic, financial or management, among others;
- Intervene with the intention of suspending, regularizing or resolving operations that put the solvency, stability or liquidity of mutual funds, management companies, distribution companies and appraisal companies at risk, or order the partial suspension of activities.
- Review the operations and regulate the advertisement rules and other similar rules requiring mutual funds to disclose their operations with the general public, with the intention that the advertised information is expressed clearly and precisely in order not to induce the public to error or confusion;
- Determine the dates for suspension of operations;
- Impose sanctions for violations to the SML or its related regulations;
- Review the operations and regulate the advertisement rules

and other similar rules requiring mutual funds to disclose their operations with the public at large;

- Authorize the investment prospectuses mutual funds want to publish for distribution to the general public;
- Order the temporary suspension of the placement of mutual fund shares upon disordered market conditions, or the definitive suspension due to transactions not in accordance with healthy market uses or practices; and
- Formulate observations or objections to the appraisal of a mutual fund's shares, and suspend the appraisal service of a mutual fund when the Commission determines there is a conflict of interest between the fund and the appraisal company.

§ MX:58 International securities transactions

There are two possible forms in which transactions with securities involve cross border operations, either those performed by foreign investors with respect to Mexican issuers quoted in the Mexican markets, or those where Mexicans may invest in foreign securities. Because the SML is the primary statute covering transactions performed in Mexico and regulating Mexican issuers, these types of operations are intended to be covered only in a territorial approach. Accordingly, because the transactions involving Mexicans acting in other jurisdictions are covered by the laws and regulations of those respective countries, we will not endeavor to cover those transactions here, but will consider only those activities taking place within the Mexican securities market.

§ MX:59 International securities transactions—Provisions of Mexican Law applicable to transactions by foreigners involving securities issued by Mexican corporations—In general

In essence, the general rule is that there are no restrictions for foreigners to acquire Mexican securities, including the shares of newly created or existing companies, or for that matter their assets. A significant effort of deregulation and the activation of several investment and foreign trade treaties have resulted in the elimination of most limitations on the areas or percentages in which foreign investors could freely participate. The FIL as amended to date has only kept a rather small list of activities where there are still some activities and industries where foreigners find some limitations to the otherwise general investment freedom that exists.[1]

The basic categories of restrictions imposed by the FIL are as follows:

- Areas reserved to the Mexican State: In the case of these activi-

---

[Section MX:59]

[1]Articles 5, 6 and 7 of the FIL.

ties no private investment of any kind is allowed to be performed, regardless of whether the investors are Mexican or foreign. The activities in this case are those specifically reserved for the Mexican State to perform as indicated in article 28 of the Mexican Constitution, including but not limited to exploration and production of oil and hydrocarbons (which as a result of the energy reform, oil may be exploited through state-owned companies or through certain types of service contracts with private companies; the private sector may also participate in storage, transportation and distribution activities for natural gas), nuclear energy generation, transmission and distribution of electricity, postal services, telegraph services and issuance of currency.

- Areas reserved to Mexican Investment: In this second category we find activities where private investment is allowed, but only when performed by Mexican investors wherein foreign investment is altogether banned. In this category, we find activities such as national land freight transportation services, development financial institutions and certain technical and professional services as provided by the specific regulations.
- Activities where foreign investment is restricted to a minority position: This category encompasses activities where although foreign investment is allowed, the equity participation is limited to minority positions not to exceed 49%, thereby ensuring that Mexican investors hold the majority and control the relevant companies. In this category, we find activities such as producing and commercializing explosives and firearms, newspaper publishing and circulation, shares in companies that own farming, livestock or forest lands, fishing along the coast and in the restricted area, management of ports, companies that commercially exploit vessels and radio (depending on the reciprocity on this matter of the country that is the origin of the foreign investment).
- Activities requiring a special clearance for foreigners to hold a majority position: This list covers activities where foreign investment is allowed, but where in order for foreign investors to hold equity participation in excess of 49% a specific approval from the Foreign Investments National Commission is required. In these cases, the Foreign Investments National Commission is expected to consider the particular circumstances of the proposed investment and analyze whether there are reasons to prevent the increase or allow the majority participation by the foreign investors. In this category, we find activities such as companies that commercially exploit vessels in high traffic, operation of public service airports, private schooling, legal services, and construction, operation and exploitation of railroads.
- A final category applies regardless of the activities performed by an existing company. If a transaction exceeds the value threshold set annually by the Mexican Congress, a ruling from the Foreign Investments National Commission is required for the divestiture to be allowed. As of November 2024, the applicable purchase price

threshold is approximately US $1,200,000,000.00 (subject to annual updates in local currency based on inflation and market conditions).

This category and its associated rules aim to ensure that significant, established industries with strategic value or relevance to the national interest are not transferred to foreign investors without a thorough analysis. The Mexican state retains the right to block such changes of control if it identifies risks to sovereignty, economic stability, or national security. The review process now incorporates considerations for sustainability, technological innovation, and alignment with Mexico's international trade agreements, reflecting a modernized approach to foreign investment policies.

In addition to observing the limitations that may apply depending on the specific activity that a foreign investor wishes to engage in, the FIL created the Foreign Investments National Registry as a depository of information that must be completed by all Mexican companies in which there is foreign investment. While the information in the Foreign Investments National Registry is not public, it does provide statistical data that the Mexican State uses to gauge the origin, size, and overall details of investments made in Mexico.

We note that in the case of public companies, the rules imposed by the FIL equally apply in spite of their stock being quoted in the securities market. The only potential difference is that where foreign investment is channeled through institutional investors, mutual funds or other global investment tools, then only the first tier of investors will formally appear in the Foreign Investments National Registry.

§ MX:60 International securities transactions—Restrictions on foreign investment

There are two important caveats to the general rules listed in the previous section that the reader must be acquainted with. These have to do with free trade agreement benefits and the notion of neutral investment as set forth by the FIL.

Since 1993, Mexico has gradually but consistently entered into a full network of international agreements for trade and investments designed to avoid double taxation, thereby creating the largest number of these agreements of almost any country in the world. For the purposes of this Section, it is relevant to note that there are some significant exceptions to the limitations set forth by the FIL allowing investors from the treaty countries to enjoy benefits not otherwise available to companies/persons of other nations. For example, under the North American Free Trade Agreement it is possible for companies located in the U.S. or Canada to establish affiliates in Mexico that can operate as national investors in the areas of banks, insurance, bonding, currency exchange, warehouse deposits, leasing, invoicing, and non-bank financial institutions, among others. Based on the availability of these benefits, it is necessary for the relevant investors to perform the required research to analyze whether they are eligible for any specific benefits under applicable treaties.

Likewise, since 1993 and the establishment of the FIL, the notion of "neutral investment" was introduced into the foreign investment legal framework. Pursuant to article18 of the FIL, the Foreign Investment National Commission may authorize the issuance of a special series of shares with limited corporate rights that will, in turn, enable foreign investors to participate in the equity of a Mexican company without the special series of shares being taken into account to determine the existence of foreign investment in that entity. Hence once authorized for companies where foreign investment is either restricted or capped, the special series generates an investment opportunity not otherwise available through normal series of shares. The special shares may be authorized in all sorts of companies, except for state-owned companies performing the state restricted activities. Such shares may represent up to the percentage that the Foreign Investment National Commission authorizes and will also only give its holders limited voting rights in the few specific items that the corresponding clearance indicates.

The idea behind the neutral investment shares is for Mexican companies to be able to host additional funding through foreign investors who find it possible to participate in these entities directly through standard securities and who may find it attractive to invest in these companies even where specific control is held by Mexican shareholders.

§ MX:61 International securities transactions—Special rules for investments in the forbidden zone

Article 27 of the Mexican Constitution indicates that foreigners may not acquire the direct ownership of real estate located in a zone that forms a belt around the country. This zone is defined as an area that is 100 kilometers wide in the border areas and 50 kilometers wide in the coastal zones and is commonly referred to as the "restricted zone"

Foreign investors that wish to acquire real properties in the restricted zone must abide by the following rules:

- If they wish to operate an industrial or commercial establishment they may set up a Mexican company that will act as the owner of record. The critical issue is that this entity will be entirely subject to Mexican laws and must include in its by-laws the "Calvo Clause" a provision banning foreign jurisdiction or the application of foreign laws to resolve any dispute concerning its assets or activities in Mexico. The acquisition of real estate pursuant to this alternative must be recorded with the Ministry of Foreign Affairs.[1]
- If they wish to own a piece of property destined for housing and/or tourist purposes, then they will need to set up a trust agreement with a Mexican bank acting as the trustee. For the duration of the trust, the bank will hold the nominal title to the land and constructions, and the foreign investor, as the beneficiary under the

---

[Section MX:61]

[1]Articles 10 and 10-A of the FIL.

trust, will hold all other rights, including the use and enjoyment, and the possible sale, lease or other arrangement concerning that property. These trusts are set up after approval is issued by the Ministry of Foreign Affairs and the Calvo Clause is incorporated therein. The trust may be valid for a term of up to 50 years and renewed for additional terms of the same duration.[2]

§ MX:62 International securities transactions—Purchases of foreign securities by Mexican persons

Because of the territorial nature of the SML, there are virtually no provisions dealing with transactions involving the purchase by Mexican investors of securities overseas. The rationale is that it should be up to the statutes in those other countries to regulate those activities in their own jurisdictions.

In spite of the foregoing, it is worth recognizing that the previous trend by which Mexican issuers quoted and interacted with foreign securities markets has changed. The following summarizes commentary about these changes:

- A good number of Mexican companies have created opportunities for accessing foreign investors by creating securities that are deposited into a trust. The certificates evidencing those deposits, in the case of the U.S., take the form of American Depository Receipts (ADR's) that are then quoted in stock markets in that country.
- Other Mexican companies have removed their securities from the Mexican securities market for the simple reason that they have been bought out by a foreign holding company whose shares are traded in an international securities market. In this scenario, the new parent company finds it unnecessary or inconvenient for the subsidiary to be trading independently in the Mexican securities market and may thus elect to cancel its registration pursuant to the SML.
- On the other hand, there are some international securities that may wish to participate in the Mexican securities market. In these instances, the SML sets within the local market an international quotation system that results in stock quotes in local currency for those international securities. Foreign securities may participate in such international quotation system provided: (a) they are not registered before the NSBR; (b) the issuers, their home market or the security itself has characteristics recognized by the Commission issued through applicable regulations, and (c) the foreign issuer complies with the requirements of the internal regulations of the local security exchange.[1]

As provided by the Regulations Applicable to Securities Exchanges,

---

[2]Articles 10–14 of the FIL.

[Section MX:62]

[1]Article 263 of the SML.

a foreign market may be considered a "recognized market" if the following conditions are met:

- The issuers are under a legal framework that protects the investors interests, bans insider trading and has rules against agents with conflicts of interest;
- The foreign market has specific rules concerning the disclosure of relevant data and information, including an annual audit at the least by an external independent auditor, and that such information is disclosed to the public in an accessible and continuous manner;
- The issuers are required to publish their financial information prepared consistently with the standards published by the International Accounting Standards Board, US GAAP or their local accounting principles (as complementary notes to the financial statements are disclosed);
- They are supervised and regulated by an authority with similar functions to those of the Commission, and are a member of any of the International Organization of Securities Commissions, the European Union, the Organization for Economic Cooperation and Development, or the Integrated Latin American Market; and
- There are institutions for the deposit custody, management and transfer of securities with automated systems for their handling.[2]
- Securities exchanges may enter into agreements with foreign securities exchanges to facilitate access to their negotiation systems, with the previous authorization from the Commission. The Commission analyzes the impact it will have on the Mexican stock market and the particularities of the foreign securities exchange and its regulatory principles.
- When the entire foreign securities market has not been recognized, it is then possible to recognize a foreign company as a "recognized issuer" if the securities are registered or regulated before their Securities Commission or equivalent authority in a State that is a member of the International Organization of Securities Commissions, and are distributed in the member countries of such organization. Securities that comply with the preceding conditions may be listed in the international quotation system.

§ MX:63 Mutual funds and mutual fund operating companies

As in other countries, the MFL is designed to foster the operation of mutual funds that allow investors to diversify the securities and markets in which they invest by having the operating companies adopt the decisions through sophisticated research of where and when to buy and sell specific securities or debt instruments in various markets.

With Mexico's further integration into the global markets, the number of mutual funds operating in Mexico has grown in size and

[2]Article 8 of the Regulations.

importance. While foreign mutual funds are not authorized to operate in Mexico, the local mutual funds have an institutional relationship with many foreign mutual funds to share information and agree on shared investment opportunities for the benefit of their mutual clients.

§ MX:64 Mutual funds and mutual fund operating companies—General provisions applicable to mutual funds

The organization and operation of mutual funds requires prior approval issued by the Commission and submitted by an operating company. The application to operate a mutual fund must comply with the following requirements:[1]

- Submit the format by-laws of the mutual fund;
- Provide information on the founding partner regarding its authorization to act as a mutual fund operating company;
- Submit a draft of the information prospectus to be presented to the public indicating all relevant data regarding all policies for the purchase and sale of their securities, the timing for all investment decisions, the commitments on disclosure of information and performance, risks for the investor, and, in general, the operational guidelines that the mutual fund will follow; and
- The entities or individuals that will provide management, distribution, appraisal, rating, deposit and custody, provision of prices, accounting and other services as determined by the Commission.

The purpose of a mutual fund is for the investment of funds generated by the sale of the shares of their capital stock among the public at large through financial intermediary services, the investments being allocated to the specific assets that their investment committees designate and as allowed by the MFL.[2] In particular, the investment assets that are eligible for operation by a mutual fund are those listed below:[3]

- Securities, titles, and documents officially recorded to be traded pursuant to the SML or the international quotation system; and
- Other cash instruments, goods, rights or loans documented in contracts or instruments, including derivative instruments, are covered and authorized by the Commission in general rules, as well as goods that are subject to commerce that can form part of a mutual fund pursuant to the investment regime for each type of mutual fund provided in the MFL and other regulations issued by the Commission.

Mutual funds must adopt one of two formats (i.e., either open or

---

[Section MX:64]

[1]Articles 8 and 9 of the MFL.

[2]Article 5 of the MFL.

[3]Article 2-I of the MFL.

closed mutual funds).[4] Open-ended funds are those that must purchase their own shares, whereas closed-end funds are banned from purchasing their own shares. Furthermore, as specified by the Commission, the mutual funds may be distinguished by criteria of diversification, specialization of the investment regime, investment objective and prospect, among others.[5] In any event, mutual funds are required to be rated by a recognized rating agency to assess the risk of its assets and the transactions it performs, and the quality of its management, all in accordance with the general rules issued by the Commission to this end.[6]

The authorization to create and operate a mutual fund cannot be assigned and must refer to one of four different types of mutual funds:[7]

- Variable rent investments mutual fund;
- Debt instrument investments mutual fund;
- Capital investments mutual fund; or
- Limited purpose investments mutual fund.

Precisely because their securities are traded in the public, the mutual funds must be recorded with the NSBR.[8]

Mutual funds are usually organized as part of the operation of a financial group. Hence many mutual funds are created to allocate resources to specific areas of industry, geographical strategies or other specific investments. By having numerous mutual funds, the financial groups can cater to the needs and requirements of their clients who may want to diversify their risks and create a specific portfolio investment by buying stock in different mutual funds. The entity that heads the financial group (usually a bank or brokerage firm) or a specific managing company will be the one controlling the activities of the mutual funds. In this format, the financial groups compete against each other by disclosing and advertising the results and yields that their mutual funds are generating.

Mutual funds do not have a shareholders meeting, board of director or statutory examiner. Instead, the functions of the shareholders meeting are performed by the founding partner, and the functions of the board of directors are performed by the operating company. Surveillance is assigned to the examiner of the management company.[9]

Operating companies perform a critical role in the management of a mutual fund. They submit the authorization to the Commission to incorporate a mutual fund, and are responsible for approving the individuals that render services to the mutual fund, establish and review the fund's investment policies, dictate measures for compliance

---

[4]Article 7 of the MFL.

[5]Article 7 of the MFL.

[6]Article 17 of the MFL.

[7]Article 6 of the MFL.

[8]Article 8 of the MFL in fine.

[9]Article 10 of the MFL.

with the prospectus, analyze and evaluate the fund's management, among others.[10]

In addition to the requirement that mutual funds be organized as variable capital stock corporations pursuant to the general rules of the GLBO, they also must comply with the following rules:[11]

- They may have an indefinite duration;
- Their domicile must be within the Mexican territory;
- Their minimum capital must be consistent with the benchmark set forth by the Commission in general rules;
- Their capital must be variable, with the fixed capital shares represented by a single series and class of shares subscribed by the founding partner and not being subject to withdrawal. Fixed capital shares cannot be transferred or affected without the Commission's clearance.
- Variable capital-shares can be of different series with different rights as indicated in its by-laws; they grant their holders the right to participate in the fund's utilities, request the acquisition or repurchase of shares, request reimbursement in the event of the fund's dissolution and winding up; and as long as they represent at least 0.5% of the fund's capital or maintain an investment in the fund equivalent to 100,000 investment units, exercise responsibility actions against the operating company or the members of the board of directors of the operating company;
- They may hold treasury shares to be sold as indicated by the board of directors of the operating company;
- There are no preemptive rights unless it is provided in the prospectus; and
- The original by-laws as well as any amendments thereto must be authorized by the Commission before being recorded in the Public Registry of Commerce.

The board of directors of a mutual fund's operating company of mutual funds must comply with the obligations set forth in the by-laws and those applicable to directors set forth in the GLBO. They must perform their duties in attention the duties of care and loyalty established in the SML. The board of directors of the operating company is responsible for setting forth the maximum limits of ownership per investor, provide adjustment mechanisms for those exceeding those levels for any reason and determine the policies for investors to comply with such limits in the prospectus.[12]

It is possible for foreign financial institutions to participate in the capital stock of an operating company, a share distribution company or controlling affiliate (as defined by the Regulation of Financial Groups Law), through their incorporation in Mexico as an affiliate of such foreign financial institution. The affiliates are governed by ap-

[10]Article 11 of the MFL.

[11]Articles 8 Bis and 14 Bis of the MFL.

[12]Articles 13 and 14 of the MFL.

plicable international treaties and their incorporation must be authorized by the Commission. The foreign financial institution must hold directly or indirectly, at all times, at least 51% of the capital stock of the affiliate operating company or share distribution company.[13] These foreign affiliates once authorized to operate in Mexico cannot, however, then subsequently establish other affiliates outside of Mexico.[14]

Mutual funds are limited to the performance of the following activities:[15]

- Buy, sell or invest in assets that are consistent with their corporate purpose;
- Enter into short-term loans or repurchase agreements on securities, or with derivative financial instruments;
- Buy their own shares, except for closed-end mutual funds or capital investment mutual funds which shares are not quoted in the securities market;
- Buy or sell shares of other mutual funds that are quoted in the securities market;
- Obtain loans from domestic or international financial or non-financial institutions;
- Issue debentures needed to comply with their obligations; and
- Any other activities expressly authorized by the Commission in general rules.

In order to comply with their corporate purposes and the activities authorized by the statute, mutual funds must retain third parties qualified to perform specific services, including but not limited to the following:[16]

- Management of assets;
- Distribution of shares of the mutual fund;
- Appraisal of shares of the mutual fund (to be performed by specialized appraisal companies which base their price determination on updated securities, documents or financial instruments that make up the assets of the fund, provided by the price provider or through the prices obtained using the valuation methods authorized by the Commission);[17]
- Rating of the mutual fund;
- Delivery of prices of investment assets;
- Deposit and custody of investment assets;
- Accounting services for mutual funds;
- Administration services for the mutual fund; and
- Other activities expressly authorized by the Commission in the general rules.

---

[13]Article 62 of the MFL *et seq.*

[14]Article 71 of the MFL.

[15]Article 15 of the MFL.

[16]Article 32 of the MFL.

[17]Article 44 of the MFL *et seq.*

Capital mutual funds, however, are not required to hire the distribution of shares, rating, delivery of prices of investment assets or management services.

Mutual funds are restricted from performing the following activities:

- Receiving cash deposits;
- Granting security interests over their properties, goods, securities or other assets (except as strictly required to perform their corporate goals in limited circumstances);[18]
- Securing the obligations of third parties;
- Repurchasing or selling shares issued at a price other than the one set forth by the appraisal company retained taking into consideration the commissions that correspond to each share series (mutual funds that are quoted in the stock market shall comply with the repurchasing provisions set forth by the SML for issuers);
- Performing active lending activities, except for short-term loans on securities; and
- Any other restrictions set forth by statute.

§ MX:65 Particular types of mutual funds

As mentioned above, the MFL contemplates four different types of mutual funds:[1]

- Variable rent investments mutual funds;
- Debt instrument investments mutual funds;
- Capital investments mutual funds; or
- Limited purpose investment mutual funds.

Let us analyze the basic elements of each of these of mutual funds.

§ MX:66 Particular types of mutual funds—Variable income mutual funds

These mutual funds invest in shares, debentures and other securities that represent debt instruments and that the MFL collectively defines as "securities" for these types of mutual funds (including, as authorized by the Commission, other securities, rights, documents, agreements cash deposits and other commercial goods). The Commission will determine the limits that exist in the maximum percentages that may be invested for a single issuer in variable income instruments and the maximum amount of the securities of an issuer that may be held by a single mutual fund, and the minimum percentages to be held in securities whose liquidity allows it to acquire shares of its capital stock, and the minimum percentages to be held in other variable income shares, instruments or documents that have a maturity of no more than 3 months and in other specific types of variable

[18]Article 15 of the MFL paragraphs II, V and VI.

[Section MX:65]

[1]Article 6 of the MFL.

income instruments. The Commission may consider variations based on the diversification of assets and the promotion of other types of investments.[1]

§ MX:67 Particular types of mutual funds—Debt instrument mutual funds

As its name would suggest, this type of mutual fund invests exclusively in debt related instruments that the MFL collectively defines as "securities" for this type of mutual fund. The Commission will determine the limits that exist in the maximum percentages that may be invested for a single issuer in debt instruments and the maximum amount of the securities of an issuer that may be held by a single mutual fund, and the minimum percentages to be held in securities whose liquidity allows it to acquire shares of its capital stock. The Commission may consider variations based on the diversification of assets and the promotion of other types of investments.[1]

§ MX:68 Particular types of mutual funds—Capital mutual funds

As its name would suggest, this type of mutual fund invests exclusively in shares, equity participation, debentures or other instruments of companies that the mutual fund is promoting ("target companies"). The Commission will determine the generic characteristics of the target companies that can be invested in, the maximum percentages that may be invested in shares or equity participation of a single target company, the maximum amount that may be invested in debentures and bonds issued by a target company, and the maximum percentages of the total assets of a mutual fund that may be invested in shares or equity participation issued by target companies; any transitory funds not allocated to target companies must be invested in cash instruments or with other mutual funds. The Commission may consider variations based on the diversification of assets and the promotion of other types of investments. Capital mutual funds must enter into a promotion agreement with each target company that will set forth the conditions to which the investment shall be subject to.[1]

§ MX:69 Particular types of mutual funds—Limited purpose mutual funds

This type of mutual fund invests exclusively in the assets that are

---

[Section MX:66]

[1]Article 22 of the MFL.

[Section MX:67]

[1]Article 25 of the MFL.

[Section MX:68]

[1]Articles 27 and 28 of the MFL.

specifically determined in its by-laws and investment prospectus. The investments in this type of mutual fund will be subject to the general rules issued by the Commission. It must indicate the percentage of its assets that may be held in the specific type of investments that it was designed to perform; any transitory funds not allocated to target companies must be invested in cash instruments or with other mutual funds.[1]

§ MX:70 Particular types of mutual funds—Pension funds

At a ground-breaking event in the early 1990's, the Mexican Congress enacted legislation that led to the creation of the mandatory savings pension funds. All employers must make contributions that their employees will be entitled to receive when they retire. The individual employees are holders of an "Afore" account where those retirement funds are deposited. The funds that are deposited and that have had very significant growth are held by mutual funds called "Afores" which, in turn, assign the investments of those funds to management companies called "Siefores".

The entire structure of the Afore accounts, Afores operation and Siefores' decisions, has been closely monitored to prevent any abuses or excesses by the companies administering those funds. The strict nature of those rules initially led to restrictions on those funds by making them only eligible for investment in government rated debt instruments. While those rules proved a safe ground for the funds being accumulated, they also created an artificial barrier to greater growth and yield for the employees' assets. Hence the National Pension Funds System Commission has been slowly authorizing a greater amount of flexibility in the percentages and amounts that Siefores may allocate to other types of securities and not only government-rated debt instruments. Based on the amounts that are involved, any decision concerning how these funds are invested has a significant impact on the economy in instances where a source of resources for growth in some industries may be important for the country's overall growth. The operation of this Afore system is a significant market that must be carefully analyzed based on the most relevant impact it has and will continue to have, especially in a country with some of the lowest savings patterns as compared to other OECD members.[1]

§ MX:71 Entities authorized to trade in securities

One of the purposes of the SML is to regulate the offering and intermediation of securities (1 section II).

[Section MX:69]

[1]Articles 30 and 31 of the MFL.

[Section MX:70]

[1]The OECD has performed several studies to compare their members in several economic data, including the amount of savings per citizen. For more information, *see* www.oecd.org.

In this section, we will first define the concept of "intermediation" under the SML in order to have a clear picture of the activities regulated in the trading of securities.

Secondly, we will classify, taking into account the SML's four types of intermediation activities, each of which is subject to certain specific terms and conditions.

Finally, we will address the financial entities authorized to trade securities, considering the type of intermediation activities performed.

§ MX:72 Definition of Intermediation under the SML

Article 2 section XV of the SML defines the concept of "securities intermediation" (*intermediación con valores*) as follows: The regular and professional performance of any of the following activities:

a) Acts performed in order to bring together the offer and the demand of securities.

b) The execution of transactions with securities on behalf of third parties, acting as an agent, representative or otherwise, and executing the corresponding legal acts either in its own name or in representation of the third party.

c) The negotiation of securities in its own capacity with the general public or with other intermediaries acting in their own capacity or on behalf of third parties.

In order for any of the previous activities to be considered, under the SML, as securities intermediation, they must be performed: (i) by entities that usually or repeatedly carry out such activities, and (ii) on a professional basis. If any of the previous requirements are not met, then the activities shall not be deemed securities intermediation.

Although there is no description in the SML as to what shall be understood of the terms "regular" or "professional" they should be considered in connection with the entities authorized to trade securities. For example: (i) entities whose main purpose or one of its purposes is to trade securities; (ii) entities authorized by the authority to do so; (iii) entities that trade securities on an ongoing and regular basis; and (iv) entities that have the professional experience and skills to perform any such activities.

The activity mentioned in section a) above, refers to the typical brokerage transaction in which an entity acts just as an intermediary between the seller of the security and the buyer. In this sense, both seller and buyer perform by themselves all the acts regarding the trading of the security.

Section b) above refers to the activity in which an entity (intermediary) executes securities transactions acting as an agent of a third party (principal). The entity, as an agent, shall execute all legal acts on behalf of the principal. Depending on the relationship established between principal and agent, the latter (intermediary) may act either (i) in its own name, or (ii) in the name of the principal.

Finally, the activity referred in section c) above entails the negotia-

tion of securities by an entity (intermediary) acting by itself and in its own capacity in transactions with the general public or other intermediaries acting: (i) in its own capacity (i.e., as in this case c)); or (ii) on behalf of third parties (i.e., as in case b)).

§ MX:73 Types of Intermediation Activities

According to Article 9 of the SML, we could divide the intermediation activities as follows: (i) intermediation of registered securities; (ii) intermediation of unregistered securities; and (iii) intermediation with securities issued abroad. This classification is based on the kind of securities to be traded. Depending on the activity or security, the intermediation may be performed by different entities.

§ MX:74 Types of Intermediation Activities—Intermediation of registered securities

The intermediation of securities registered with NSBR can only be performed by financial entities duly authorized to act as a intermediary of the securities market" The authorization of financial entities is analyzed in the following section.

On the other hand, the SML provides the regulation of certain companies authorized to manage negotiation systems to facilitate securities transactions. Under articles 232, the performance of activities aiming to provide access to negotiation systems that allow the contact between offer and demand of securities by centralizing positions to execute transactions may be developed by stock exchanges, companies that manage systems to facilitate securities transactions, and entities or individuals that develop over-the-counter negotiation systems with regards to registered securities different than those reserved to the stock exchanges, or unregistered securities for over-the-market systems in which institutional and qualified investors participate.

§ MX:75 Types of Intermediation Activities—Intermediation of unregistered securities; unlisted shares representing capital stock of legal entities

An "intermediary of the securities market" may be able to provide brokerage services of unlisted securities (i.e., private placement of securities), only referred to shares representing capital stock of legal entities, as provided in the SML. However, in no event may the "intermediary of the securities market" participate on behalf of third parties in the execution of the transactions.

Other unlisted securities different than shares of the capital stock of legal entities, cannot be traded by "intermediaries of the securities market".

On the other hand, the private offer, promotion, commercialization and negotiation of shares representing the capital stock of legal entities not listed in the NSBR can be carried out: (i) through centralized information systems (called off-stock exchange systems) that facilitate

the performance of such activities; (ii) by any individual or legal entity,[1] without the need of any kind of authorization from the government;[2] and (iii) as long as only "qualified investors" and "institutional investors" participate and negotiate in such systems. In this case, such activities may be performed without the participation of an "intermediary of the securities market". Also, brokerage firms and credit organizations may offer mediation (*mediación*), deposit and administration services regarding such shares, but they cannot, in any case, act on behalf of third parties in the execution of the transactions.[3] The foregoing is provided in Articles 232 and 260 of the SML.

§ MX:76 Types of Intermediation Activities—Other unregistered securities

The SML does not expressly state the persons authorized to act as intermediary of unregistered securities, but it does state that intermediaries may provide the service of intermediation of unregistered securities only with respect to shares representing capital stock of legal entities. Thus, it shall be understood that any person may perform the trading and intermediary activities of unlisted securities other than unlisted shares representing capital stock of legal entities.

§ MX:77 Types of Intermediation Activities—Intermediation with securities issued abroad

The intermediation activities concerning securities operating abroad or issued in accordance with foreign legal provisions, which are subject to being listed under the international quotation system of a stock exchange, shall only be provided through such system. That is, the SML does not regulate the intermediation activities concerning offshore securities, but the entity performing such activities shall be subject and comply within the applicable regulatory framework.

§ MX:78 Types of Intermediation Activities—Other Intermediation Activities

Unless otherwise provided above, any person may perform the purchase and sale of securities as long as the SML does not provide to the contrary. In other words, any person may trade securities not regulated under the SML.

[Section MX:75]

[1]The persons that develop systems for the private offer and negotiation of shares as provided in Article 260 of the SML, shall not be subject to the overview of the Commission, unless in the case of financial entities.

[2]However, certain information shall be provided to the Commission for statistical purposes.

[3]Articles 232 and 260–261 of the SML.

§ MX:79 Intermediaries of the securities market

According to Article113 of the SML, the "intermediaries of the securities market" shall be the following: (i) brokerage firms; (ii) credit organizations (i.e., banks); (iii) mutual funds operating companies; (iv) pension funds managing companies ("Afores"); (v) distribution companies of shares of mutual funds; and (vi) other financial entities authorized to act as distribution companies of shares of mutual funds.

The organization and operation of (i) the brokerage firms is regulated under the SML, and (ii) the entities referred in (ii) through (vi) above shall be subject to the provisions contained under the financial system laws that regulate each one of them and the regulations derived thereto.

On the other hand, Banco de México, as the central bank, is authorized to trade with securities. However, pursuant to the SML, it is not considered an intermediary because its activities refer to its position of being the Mexican central bank.

§ MX:80 Authorized from the Commission to trade securities; brokerage firms

In order to operate as a brokerage firm, it is necessary to obtain an authorization granted by the Commission; these are published in the Federal Official Gazette (as well as its amendments) and cannot be transferred in any manner whatsoever. Brokerage firms shall be incorporated as stock corporations (*sociedades anónimas*) considering the special provisions contained in the SML.[1]

The applications for the authorization of brokerage firms shall comply with certain requirements and attach different documents regarding the legal, financial, business or other aspects of the corporation and its shareholders.[2]

Brokerage firms may perform activities in foreign markets where they have obtained prior authorization by the Commission and subject to the applicable provisions.

§ MX:81 Authorized from the Commission to trade securities; brokerage firms—Branch offices

On the other hand, the Commission may authorize the opening in Mexico of a branch office of a foreign brokerage firm; however, it cannot perform intermediation activities.[1]

[Section MX:80]

[1]Article 114 of the SML.

[2]Article 115 of the SML.

[Section MX:81]

[1]Article 159 of the SML.

§ MX:82 Authorized from the Commission to trade securities; brokerage firms—Affiliates

Affiliates may be authorized (following the same procedure as brokerage firms) by the Commission to act as intermediaries of the securities market. In addition to the provisions of the SML and general rules issued thereto, international treaties or agreements shall also govern the affiliates. The affiliates may be able to perform the same activities as the national brokerage firms unless otherwise provided in the international treaty or agreement.[1]

§ MX:83 Authorized from the Commission to trade securities; brokerage firms—Ownership structure; brokerage firms

The capital stock of brokerage firms shall be integrated by an ordinary participation ("O" shares) and may also include an additional part up to 40% of the ordinary participation (series "L"), subject to the approval of the Commission.[1]

Both series ("O" and "L") can be freely subscribed, unless they are foreign governments foreign, in which case they may only participate directly or indirectly in the capital stock of brokerage firms in certain events related to temporary prudential measures such as a bailout, when control of the firm is obtained through government entities that have no authority and its internal decision-making is independent of the foreign government, and when participation is indirect and does not imply control of the firm.

Series "L" shares shall have limited voting rights and may have preferred dividends rights.

The acquisition of Series "O" shares, through one or more successive or simultaneous transactions, by one person or group of persons, shall be: (i) notified in the case of the acquisition of 2% of the capital stock of the brokerage firm; (ii) previously approved by the Commission in the case of an acquisition of 5% through 29% of the capital stock of the brokerage firm; and (iii) previously approved by the Commission in the case of an acquisition of 30% of the capital stock or the control of the brokerage firm. When the acquiring party of the control of a brokerage firm is another brokerage firm, both corporations shall be merged.[2]

[Section MX:82]

[1]Articles 160–162 of the SML.

[Section MX:83]

[1]Article 117 of the SML.

[2]Article 119 of the SML.

Any merger or spin-off involving a brokerage firm shall be subject to the prior authorization of the Commission and shall follow a specific procedure.[3]

§ MX:84 Authorized from the Commission to trade securities; brokerage firms—Affiliates

On the other hand, foreign financial institutions are able to invest in affiliates, as long as the activities performed by them in the country in which they are incorporated are the same kind of the activities of the affiliate.[1]

The capital stock of affiliates shall be integrated by Series "F" shares that shall represent at least 51% of the capital stock. Series "F" and/or "B" shares shall represent the rest of the capital stock. Series "F" shares can only be acquired by a controlling affiliate company or, directly or indirectly, by a foreign financial institution. Series "F" and/or "B" shares shall be governed under the provisions of Series "O" shares.[2] Series "F" shares shall only be transferred prior to the authorization of the Commission.

§ MX:85 Authorized from the Commission to trade securities; brokerage firms—Permissible activities

Article 171 of the SML enlists all the activities and services that brokerage firms may be entitled to perform. The main activities are the following: (i) place securities through public offers and provide services in public acquisition offers; (ii) execute purchases, sales, repurchase agreements and lend securities, either on its behalf or on behalf of third parties; (iii) grant loans for the acquisition of securities (with guaranty over the same); (iv) perform transactions with derivative financial instruments; (v) promote and market securities; (v) obtain the recognition of market and securities in the international quotation system; (vi) manage securities portfolios; (vii) receive deposits in management or custody; (viii) provide financial or securities counseling; (ix) act as common representative of security holders; (x) trade foreign currency and precious metals; (xi) act as trustee; and (x) others.

---

[3]Articles 132-134 of the SML.

[Section MX:84]

[1]Article 163 of the SML.

[2]Article 165 of the SML.

§ MX:86 Operating requirements for brokerage firms

Prior to the commencement of operations, the brokerage firm shall satisfy certain requirements before the Commission; otherwise, the Commission may deny the commencement of operations.[1]

The administration of the brokerage firms shall be entrusted to a board of directors and a general director.[2] Not more than 15 members shall incorporate the board of directors. Each member shall have an alternate member.[3] At least 25% of the members shall be independent. The members of the board of directors shall fulfill the following criteria (at the moment they are appointed and during their position): technical quality, honorability, a favorable credit record and skills and experience in the financial, legal or management areas.[4] The SML also provides a black list of the individuals that cannot be members of the board of directors of a brokerage firm.

There are specific criteria that the independent members shall comply with (at the moment they are appointed to their position) and there is also a black list of the persons that cannot be appointed as independent members.[5]

Each member of the board of directors shall comply with conflict of interest and confidentiality provisions and obligations. The majority of the members shall be Mexican residents for tax purposes.

The shareholders representing 10% of the ordinary capital stock of a brokerage firm shall have the right to appoint and remove one member of the board of directors. The other shareholders may remove such member only if the rest of the members are also removed.[6]

The board of directors shall have an audit committee, which shall be subject to the general provision set forth by the Commission.[7]

The board of directors shall have meetings on at least four occasions each year and/or when a meeting is called by (a) the president; (b) at least 25% of the members; or (c) by any of the examiners of the corporation.[8]

The general director and the immediate directors underneath the general director shall fulfill certain specific requirements both at the

---

[Section MX:86]

[1]Article 116 of the SML.

[2]Article 122 of the SML.

[3]Article 123 of the SML.

[4]Article 124 of the SML.

[5]Article 125 of the SML.

[6]Article 124 of the SML.

[7]Article 126 of the SML.

[8]Article 127 of the SML.

moment they are appointed and during the tenure they hold the position.[9]

The surveillance body of the corporation shall be at least one statutory examiner (and alternate) appointed by the shareholders of the Series "O" and one statutory examiner (and alternate) appointed by shareholders of the Series "L".[10]

On the other hand, the Commission shall establish, through general rules, the minimum capital stock that brokerage firms must meet based on the activities and services carried out, and its sufficiency to cover possible losses arising from risks incurred. In addition, brokerage firms shall maintain a global capital *vis-a-vis* its operation risks according to the general rules issued by the Commission. Also, the Commission shall determine the maximum percentages of operation with respect to one same person, entity or group of persons that are considered to be the same client.[11]

A brokerage firm, according to the percentages and requirements established by the Commission, may invest its paid and reserved capital to the following: (i) furniture, real estate, installation costs and other necessary costs for the performance of its corporate purpose; (ii) equity in limited liability companies providing them managing services and/or in foreign financial institutions with the same type of activities, and (iii) securities and other activities as provided in its corporate purpose.[12]

Brokerage firms that participate in placing securities or providing common representation services shall have procedures and mechanisms in order to effectively control the confidentiality and security of the information arising from its activities.[13] Also, brokerage firms shall follow and comply with specific procedures and rules regarding its daily operation and its relation with its customers, depending on the activities performed (e.g., confidentiality, liability, information, conflict of interest, instructions, agreements, amendments, beneficiaries, account statements, accounting provisions, conservation of documents, financial statements and outsourcing services among others).

§ MX:87 Operating requirements for brokerage firms—Affiliates

The board of directors shall not consist of more than 15 members (plus the alternate members). At least 25% of the members shall be independent.

The series "F" shareholders representing at least 51% of the capital stock shall appoint the majority of the members (half plus one) and

[9]Article 128 of the SML.

[10]Article 131 of the SML.

[11]Articles 172–174 of the SML.

[12]Article 213 of the SML.

[13]Article 166 of the SML.

for each additional 10% of series "F" shares exceeding such percentage they shall be given the right to appoint an additional member. The series "B" shares shall have the right to appoint the rest of the members.[1]

The surveillance body shall be integrated by at least one statutory examiner (and alternate) appointed by series "F" shareholders and by one statutory examiner (and alternate) appointed by the series "B" shareholders.[2]

§ MX:88 Oversight and regulation by Commission—Brokerage firms and affiliates

The Commission is the authority empowered to inspect and overview the performance of the brokerage firms and affiliates. In this regard, the Commission is able to order preventive or corrective measures (the SML lists examples of different measures) that brokerage firms must comply with.[1]

The Commission may order, under certain cases, the partial suspension of the performance of one or more activities of a brokerage firm.[2]

Moreover, the Commission may order the intervention over the administration of a brokerage firm in circumstances when the authority considers there could be damage to the clients or creditors of the corporation.[3] The general counsel appointed shall be subject to certain requirements, registries and procedures.

Also, the Commission has the authority to revoke the authorization granted to a brokerage firm under certain cases listed in a limited manner.[4]

When a foreign authority intends to inspect an affiliate, it should submit its request to the Commission in accordance with Article 358 of the SML.[5]

On the other hand, brokerage firms are subject to periodic reports to be provided to the Commission in accordance with general guidelines issued by the Commission.[6]

§ MX:89 Oversight and regulation by Commission—Credit organizations

The Credit Institutions Law (*Ley de Instituciones de Crédito*, "CIL")

[Section MX:87]

[1]Article 168 of the SML.

[2]Article 169 of the SML.

[Section MX:88]

[1]Articles 135–136 of the SML.

[2]Articles 137–138 of the SML.

[3]Article 141 of the SML.

[4]Articles 153–154 of the SML.

[5]Article 170 of the SML.

[6]Article 212 of the SML.

regulates the banking and credit services and the organization and operation of credit institutions. The CIL provides that the banking and credit services can only be provided through multiple banking institutions (i.e., commercial banks) and development banking institutions, (i.e., federal government development banks).[1] Multiple banking institutions and development banks, together with public trusts incorporated by the Federal Government for economic development; and regulatory banking organizations make up the Mexican Banking System.[2]

Banks are authorized to provide typical banking and credit services such as: (i) receipt of deposits, (ii) receipt of loans and credits, (iii) granting of loans and credits, (iv) issuing banking bonds; (v) issuing subordinated debentures, (vi) issuing credit cards, (vii) assuming third party obligations and the issuance of letters of credit, and (viii) acting as trustee, among others.[3]

However, banks are also authorized to trade securities under the terms provided in the CIL and the SML, multiple banking institutions may perform the activities provided in article 46 of the CIL only if authorized by their corporate purpose and previous authorization from the Commission.

Article 53 of the CIL provides that a securities transaction performed by the banks on their own behalf shall be carried out under the terms provided in the CIL, the SML and shall be subject to the inspection and overview of the Commission.

When the transactions refer to securities listed in the NSBR, the transaction shall be carried out through the intermediation of brokerage firms except in the following cases: (i) securities issues, accepted or guaranteed by credit institutions, (ii) transactions exempted by Banco de México through general rules considering reasons of credit or exchange rate policy, and (iii) transactions exempted by the Ministry (with the previous the opinion of Banco de México and the Commission) under the following criteria: (a) finance new companies or new activities, (b) transfer important quantities of the capital stock of companies, and (c) other purposes not adjusted to the normal mechanisms of the market.[4]

The repurchase agreements of securities executed by banks shall be performed subject to the applicable rules and to some specific terms and conditions listed in Article 54 of the CIL.

The repurchase agreements on and lending of securities on behalf of third parties can be performed by banks without the intermediation of brokerage firms, but subject to the general rules issued by Banco de

---

[Section MX:89]

[1]Articles 1–2 of the CIL.

[2]Article 3 of the CIL.

[3]Article 46 of the CIL.

[4]53 of the CIL.

México. Also, the trade of securities executed by banks in compliance with trusts, commissions or other agreements shall be subject to the provisions applicable and the general rules issued by the Banco de México (with the previous opinion of the Commission).

§ MX:90 Oversight and regulation by Commission—Operating companies of mutual funds and of pension funds

The SML provides that operating companies of mutual funds and of pension funds could act as "intermediaries of the securities market". Mutual funds are regulated under the MFL and the pension funds under the Pension Funds System Law (*Ley de los Sistemas de Ahorro para el Retiro*, "PFSL").

§ MX:91 Oversight and regulation by the Commission—Operating companies of mutual funds and of pension funds—Authorized services

The organization and general operation of mutual funds has been broadly described above.

The purpose of the mutual fund operating companies is to render certain administrative services to the mutual funds when they are hired to perform such services. Mutual fund operating companies are stock corporations duly authorized by the Commission. It is important to mention that mutual fund operating companies may be independent of any financial institution.

Mutual fund operating companies may be authorized to provide the following services to mutual funds, in addition to managing the fund's assets: (i) distribution of shares of mutual funds (see below in connection with operation of distribution companies, which terms and conditions are also applicable to mutual fund operating companies); (iii) valuation of shares of mutual funds (an express authorization to perform this activity is needed); (iv) deposit and custody of assets; (v) accounting services for mutual funds; (vi) portfolio management for third parties; (vii) acting as trustee; and (viii) other similar services authorized by the Commission.[1] Mutual fund operating companies may jointly render the services previously set forth, provided they comply with the applicable provisions of each service contained in the MFL to mutual funds.

The administration of assets of mutual fund services are performed through the following activities: (a) the execution of the different transactions entitled to the mutual funds (i.e., buy, sell or invest in assets that are consistent with their corporate purpose; enter into short-term loans or repurchase agreements on securities, or with derivative financial instruments; buy or sell shares of other mutual funds that are quoted in the securities market; obtain loans from do-

---

[Section MX:91]

[1]Article 39 Bis of the MFL.

mestic or international financial or non-financial institutions), in the name and on behalf of the mutual fund receiving the services; (b) managing the placing of securities representing a debt of a mutual fund in order to comply with its purpose; and (c) managing securities portfolios of mutual funds and third parties, in accordance with the SML.[2]

§ MX:92 Oversight and regulation by Commission—Afores; operating company of pension funds

An Afore is an operating company (stock corporation) of pension funds duly authorized by the National Pension Funds System Commission. In particular, the main purpose of an Afore is to manage individual accounts of employees and their investments, as well as operate mutual funds specialized in pension funds ("Siefores").[1] In this sense, an Afore is authorized to provide the following services to a Siefore (similar to the services provided by a mutual fund operating company to a mutual fund, but specialized to pension funds): (i) administration services, and (ii) distribution and repurchase of shares of the capital stock of the Siefores they represent.

§ MX:93 Distribution companies

The SML provides that distribution companies of shares of mutual funds and financial entities having said character could act as "intermediaries of the securities market". Such companies are regulated under the MFL.

The purpose of the distribution companies is to render to mutual funds the service of distribution of shares of mutual funds. Such service shall be referred by mutual funds either to distribution companies or mutual fund operating companies. Distribution companies are stock corporations duly authorized by the Commission.[1] Distribution companies may be independent to any financial institution.[2]

The service of distribution of shares of mutual funds consists of the following activities: promotion and advice to third parties, and issuing instructions to buy or sell mutual fund shares issued by the mutual fund that hired such services or by order of the client that intends to acquire or convey them. In no instance may a distribution company act in its own name with the general public regarding shares of mutual funds, and must comply with valuation prices for the shares.[3]

The service of distribution of shares of mutual funds can also be

---

[2]Articles 15 and 39 of the MFL.

[Section MX:92]

[1]Article 18 of the PFSL.

[Section MX:93]

[1]Article 33 of the MFL.

[2]Article 40 of the MFL.

[3]Article 40 of the MFL.

provided by financial entities such as credit institutions, brokerage firms, insurance companies, credit unions, among others, under the supervision of the Commission.[4]

Mutual fund operating companies, distribution companies and financial entities authorized to act as distribution companies, must use the services of individuals authorized (who shall comply with certain requirements) by the Commission to execute with the general public activities such as consulting services, promotion, buying and selling of mutual fund shares, provided they comply with the requirements of technical quality, honorability and satisfactory credit history.[5]

V. RECENT TRENDS AND DEVELOPMENTS

§ MX:94 Generally

The SML now allows for the securitization of credit and collectable rights by non-financial institutions. This secondary market is expected to experience a consistent growth in the coming years. Further implementation will require precise legal and financial engineering considering the almost non-existent precedents in Mexico on these issues.

Also, the SML allows for an easier pathway for companies to become public, clearer corporate governance regulations, more specific definitions on conduct considered to be unlawful, specific sanctions for negligent or careless officers and directors and an overall need for issuers to be more transparent in their day to day transactions. This is certainly expected to increase overall investments and general activity in the securities sector.

Finally, the enactment in January 2014 of a financial reform established the bases for a new era in the Mexican financial sector, with the amendment to a total of 34 statutes, with the purposes of: (i) encouraging healthy competition; (ii) promoting lending activities by development banks and commercial banks; (iii) maintaining a solid and prudent financial sector; and (iv) promote increased efficiency for financial institutions an related entities. Particularly in terms of the securities market, the reform's purpose includes making the operations of the securities market more efficient and improving the performance of its players, in a framework that provides clarity for investors, authorities, intermediaries and other participants. Part of its objective is to get a larger number of investors to participate in the debt and capital markets, and establish a solid sale practices by credit institutions and brokerage firms in securities transactions, and applying such provisions to mutual funds operating companies. The Commission also plays an important role with increased authority to provide discipline in the markets that it regulates, supervises and penalizes, with specific authorities regarding control and regulation,

[4]Article 40 of the MFL.

[5]Article 35 of the MFL.

and publicity of information. With respect to mutual funds, the reform provided important changes to update the corporate regime that governs mutual funds and its operating companies, simplifying some of the formalities, costs and timeframes applicable to their incorporation and operations. Thus, the reform provides increased legal certainty to the financial sector, which is expected to grow and show benefits both for users and for the financial institutions with the offer of better financial products, access to credit lines and competitive rates, and create a an improved and more sophisticated financial culture in Mexico.

APPENDIX MX-1

Securities Market Law

SECURITIES MARKET LAW *(Ley del Mercado de Valores)*

Title I Preliminary Provisions

Article 1

This Law is of public policy and for general adherence throughout Mexico, and has the purpose of developing the securities market in an equal, efficient and transparent manner; protecting investors' interests; minimizing the systemic risk; fostering a healthy competition, and regulating the following:

I. The registration, updating, suspension and canceling of the registration of securities before the National Securities Registry and the organization of the Registry.

II. The offering and trading of securities.

III. The corporations which place shares within the stock market and out of the stock market as referred to in this Law; as well as the special regime to be observed in connection with legal entities which are controlled by such corporations or those in which they have a significant influence or with those which control them.

IV. The obligations of legal entities issuing securities, as well as persons executing transactions with securities.

V. The organization and operation of brokerage firms, stock markets, securities depository firms, central securities counterparties, price providers, securities rating institutions and corporations which manage systems to facilitate securities transactions.

VI. The development of securities negotiation systems which allow performing transactions with the same systems.

VII. The liability in which persons who perform or fail to perform acts or facts regulated under this Law will incur.

VIII. The powers of the stock market authorities.

Article 2

For the purposes hereof, the following terms must have the following meanings:

I. Commission; the National Banking and Securities Commission;

II. Consortium; the group of legal entities linked amongst them by one or more individuals who integrating a group of individuals have control over the first ones;

III. Control; the capacity of a person or group of persons, to carry out any of the following acts:

a) To, impose, directly or indirectly, decisions in general shareholders', partners', or equivalent bodies' meetings, or to appoint or remove the majority of directors, managers or their equivalent, of a legal entity.
b) Maintaining the rights which, directly or indirectly, allow exercising the vote with respect to more than fifty per cent of a legal entity's capital stock.
c) To, directly or indirectly, direct the administration, strategy or main policies of a legal entity, either by owning securities, by means of an agreement or by any other manner.

IV. Relevant Officers; the chief executive officer (*director general*) of a corporation subject to this Law, as well as the individuals who being employed, in charge or under commission within the corporation or the legal entities controlled by it or which control such corporation, adopt decisions that affect in a significant manner the administrative, financial, operating or legal situation of the corporation or the business group of the corporation, without including in this definition, the board members of the corporation subject to this Law.

V. Issuer; the legal entity which applies for and, if the case may be, obtains and maintains the registration of its securities before the Registry. Likewise, trustee institutions are included hereunder, when the same act as trustee, only in relation with the corresponding patrimony under trust.

V Bis. Simplified issuer, the legal entity other than that which has the character of issuer in terms of the previous section of this article, that requests and, where appropriate, maintains the simplified registration of its securities in the Registry, in accordance with the general provisions issued for this purpose by the Commission. Likewise, those fiduciary institutions will be included when they act with the aforementioned character, provided that the trust assets have not been transferred directly or indirectly by the person having the character of issuer in terms of the previous section V.

VI. Financial Entities; the controlling corporations of financial groups, general deposit warehouses, financial leasing companies, financial factoring companies, foreign exchange firms, bonding companies, insurance companies, financial corporations of limited purposes, brokerage firms, banking institutions, mutual funds, mutual fund's operating companies, retirement funds administration companies and other legal entities considered as financial entities by the laws regulating the Mexican financial system.

VII. Relevant Event; the acts, facts or events, of any nature, which influence or may influence the prices of securities registered in the Registry. The National Banking and Securities Commission must establish under General Provisions, including but not limited to, the acts, facts or events considered as relevant events, as well as the criteria to be followed by the issuers in order to determine when an event is considered as such.

VIII. Subsidiary; a corporation authorized to be organized and operate pursuant to this Law as a brokerage firm, in which the majority of

its capital stock is held by a foreign financial institution or by a controlling subsidiary company.

IX. Group of Persons; the persons who have agreements, of any nature, to take decisions in a same sense. It is understood that, unless otherwise proved, a group of persons is comprised by:

a) The persons who have blood, affinity or civil relationship up to the fourth degree, spouses, and common-law spouses.

b) Companies which are part of the same consortium or business group, and the person or group of persons who have control over said companies.

X. Business Group; group of legal entities organized under, direct or indirect, participation of capital stock schemes, in which a same company maintains control over said legal entities. Financial groups formed pursuant to the Law to Regulate Financial Groups (*Ley para Regular las Agrupaciones Financieras*) will also be considered as Business Groups.

XI. Significant Influence; entitlement of rights which allow, directly or indirectly, exercising the vote in regards of at least twenty per cent of a legal entity's capital stock.

XII. Relevant Information; all information from an issuer necessary to know the real and current financial, administrative, operational, economic and legal situation, and its risks, as well as, in its case, the information of the business group to which it belongs, regardless of its position within the group, provided that it influences or affects such situation, and that is necessary for the reasoned decision-making for investing and price estimation of securities issued by the own issuer, pursuant to the customs and practices for analyzing the Mexican stock market.

XII Bis. Simplified registration, that registration of securities in the Registry granted by the Commission to a simplified issuer in terms of articles 70 Bis and 90 Bis of this Law, as well as the provisions issued for this purpose by the Commission.

XIII. Foreign Financial Institution; a financial entity incorporated in a country which has signed an international treaty or agreement with Mexico, which allows the establishment of subsidiaries within national territory.

XIV. Derivative Financial Instruments; the securities, agreements or any other legal act which value is referred to one or more underlying assets, securities, rates or indexes.

XV. Trading of Securities; the customary and professional performance of any of the following activities:

a) Acts to contact the supply and demand of securities.

b) Execution of securities' transactions on behalf of third parties as an agent, principal or under any other figure, intervening in the corresponding legal acts personally or on behalf of third parties.

c) Securities' trading with the general public or with other intermediaries who act in the same way or on behalf of third parties.

XVI. Qualified Investor; the person who customarily has income, assets or the qualitative characteristics that the Commission establishes by means of general provisions. The Commission will be able to establish different types of qualified investors In the referred regulations.

XVII. Institutional Investor; a person who pursuant to the federal laws has such capacity or is a financial entity, including when acting as trustee under trusts that pursuant to the laws are considered as institutional investors.

XVIII. Public Offering; the offering, with or without price, carried out within national territory by means of massive communication media and to an undetermined person, to subscribe, acquire, sell or transfer securities, under any concept.

Any offer made in accordance with the terms of the preceding paragraph, directed to certain classes of investors, in accordance with the provisions contained in this Law and in the general provisions issued for this purpose by the Commission, shall also be considered a public offer.

The offer that is made in the terms of the preceding paragraph, aimed to certain classes of investors will also be considered a Public Offering.

XIX. Related Persons; those comprised under any of the following cases with respect to an issuer:

a) The persons who control or have significant influence over a legal entity that is part of the business group or consortium to which the issuer belongs, as well as the board members or directors and relevant officers of the members of such group or consortium.

b) The persons having decision-making power within a legal entity which is part of a business group or consortium from which the issuer is a part of.

c) The spouse, common-law spouse and the persons who have consanguinity or civil relationship up to the fourth degree or affinity relationship up to the third degree, with individuals comprised under any of the cases stated under sections a) and b) above, as well as the common stockholders and co-owners of the individuals mentioned under such sections with whom they maintain business relationships.

d) The legal entities which are part of the business group or consortium from which the issuer is part of.

e) The legal entities in which any of the persons referred to under sections a) and c) above, exercise control or significant influence.

XX. Decision-Making Power; the capacity of fact to influence in a decisive manner on the resolutions adopted in the shareholders' meetings or board of directors' meetings or on the management, conducting and performance of business of an issuer or legal entities controlled by it or those in which it has a significant influence. Unless otherwise proved, it is assumed that there is decision-making power in a legal entity, from the persons under any of the following cases:

a) Controlling shareholders.
b) Individuals linked to an issuer or legal entities part of the business group or consortium to which it is part of, through life or honorable positions, or any other analog or similar title.
c) The persons who have transferred control of the legal entity under any title and free of charge or at a value lower to market or book value, in favor of individuals with whom there is blood, affinity or civil relationship up to the fourth degree, the spouses or the common-law spouses.
d) Whoever instructs board members or relevant officers of the legal entity, to take decisions or execute transactions in a company or in the legal entities controlled by it.

XXI. Registry; the National Securities Registry.

XXII. Ministry; the Ministry of Treasury and Public Credit.

XXIII. Controlling Subsidiary Company; a Mexican company authorized to be incorporated and operate as a controlling company under the Law to Regulate Financial Groups, and in which the majority of its capital stock is held by a foreign financial institution.

XXIV. Securities; shares, partnership interests, debt instruments, bonds, options, certificates, promissory notes, bills of exchange and any other negotiable instruments, named or unnamed, registered or not before the Registry, able to circulate within the stock markets referred to in this Law, issued in series or bulk and representing the capital stock of a legal entity, a proportional part of a good or the participation of a joint credit or any right of an individual credit, under the applicable terms of national and foreign laws.

The before mentioned terms can be used either in singular or plural without being changing their meaning.

Article 3

The stock market corporations must provide the necessary in order for the legal entities controlled by them to perform the corresponding acts to comply with provisions under articles 28, sections I to III, V and VII, 31, 44, first paragraph and sections I, III to V, XII and XIII, 47 and 104 to 106 of this Law. Notwithstanding that the stock market corporations adopt the resolutions, determinations and information applications referred to in the above-mentioned articles, in order to be implemented, they must observe the formalities required by the corresponding corporate bodies of the controlled legal entities, subject to the laws and other applicable provisions governing them, including foreign corporations.

The stock market corporations and the legal entities controlled by them, are considered a same economic unit for the effects of information disclosure, accounting and execution of transactions referred to in article 28, section III and 47 this Law herein, notwithstanding the obligations that other laws impose to such legal entities. Regarding

legal entities controlled by stock market corporations which are also controlled by other stock market corporation, the obligations established hereunder regarding such legal entities shall be fulfilled by the stock market corporation which directly controls them.

Obligations imposed hereunder to corporate bodies of the stock market corporations regarding the legal entities controlled by them, must not be applicable when the latter are stock market corporations as well.

Article 4

The legal acts executed in violation of the established in this Law, will cause, in its case, the payment of damages and losses and the imposition of administrative and criminal sanctions regulated hereunder, without such violations causing the invalidity of the acts in protection of good faith of third parties, unless expressly established otherwise by this Law.

Article 5

The commercial laws, stock market and commercial customs, and federal civil laws, as quoted, must be suppletory to this Law.

The Federal Executive Branch, by means of the Ministry, may interpret this Law for administrative effects.

Article 6

The transmission of information for the purpose of promoting, commercializing and publicizing securities, aimed to the general public, must be subject to the prior authorization of the Commission. Notwithstanding the foregoing, such Commission may, by means of general provisions, establish the cases in which it is not required to fulfill such requirement.

It is forbidden to promote or commercialize messages related with securities subject to public offering or placing, which content is not included under the placement prospectus, supplements, brochures or information documents authorized by the Commission.

The dissemination of information related to securities subject to simplified registration, for promotion, marketing or advertising purposes, shall not require the approval of the Commission, provided that it complies with the provisions of the preceding paragraph and is carried out through a stock exchange, in accordance with its internal regulations.

The disclosed information related to a public offering of securities must be consistent and make reference to the prospectus, supplement, brochure or information document, in the way determined by the Commission by means of general provisions.

The promotion, marketing and publicity related to the services or transactions of the stock market intermediaries, brokerage firms, securities depository firms, securities central counterparties, price

providers, securities rating institutions and corporations which manage systems to facilitate securities transactions, shall not require the authorization provided under the first paragraph of this article, but will be subject to the rules and criteria established by the Commission by means of general provisions.

The Commission may order the rectification, suspension, or cancellation of the information which it considers to be against the provisions under this article.

Article 7

In order for securities to be subject of public offering within the national territory, the same must be registered before the Registry.

The public offering of securities issued within Mexico or by Mexican legal entities abroad, directly or through trusts or similar or equivalent figures, must be notified to the Commission describing the main characteristics of the offer and pursuant to the general provisions issued by the Commission.

Persons carrying out securities' public offering pursuant to the above paragraph, must expressly establish in the document used for its communication, that the securities under the offer may not be offered, nor traded within national territory, unless performed under the terms of article 8 hereunder.

Article 8

Private securities offering not registered in the National Securities Registry within national territory can be performed by any person, provided that the following requirements are fulfilled:

I. It is exclusively directed to institutional or qualified investors.

II. The securities representing the capital stock of legal entities, or the equivalent, are offered to less than one hundred persons or entities, regardless of the fact that one or more classes or series are being offered.

III. It is performed under plans or programs generally applicable to employees of the company issuing the securities or legal entities under its control or which control it.

IV. It is aimed to stockholders or shareholders of legal entities which corporate purpose is exclusively or mainly related with them.

The Commission, subject to the rules approved by its Governing Board, will have the capacity to authorize private offerings different to the mentioned in the above sections; therefore for such purposes, it will consider the communication media to be used, the number and kind of investors to be aimed by the corresponding offering, distribution of securities, as well as the intended terms and conditions to be provided thereat.

Article 9

The trading of securities registered before the Registry may be

performed only by authorized financial entities, pursuant to the provisions of this and other laws, to act as intermediaries of the stock market.

The intermediaries may render their services regarding securities not registered before the Registry, only with regard to shares representing the capital stock of legal entities, in compliance to this Law.

Securities trading activities of securities issued abroad or issued pursuant to foreign laws, that are capable of being listed in the international quotation system of a stock market, can be performed only through such system.

Except for the provisions of the above paragraphs, the purchase and sale of securities can be performed by any person, provided that this Law does not state anything in the contrary.

Article 9 Bis.

The Secretariat, after obtaining the opinion of the Commission and the Bank of Mexico, shall establish general provisions on matters of sustainable development, as well as to strengthen gender equity, aimed at promoting, reporting and evaluating the adoption of best practices in these matters by publicly traded companies, stock market investment promotion companies, issuers, simplified issuers, brokerage houses, stock exchanges, securities depository institutions, central securities counterparties, price providers, companies that manage systems to facilitate securities transactions and securities rating institutions.

Title II Stock Market Corporations

Article 10

Corporations under any of the following cases, are subject to the provisions of this Law:

I. Those adopting the regime of or being incorporated as investment promotion corporations.

II. Those obtaining registration in the Registry of any number or series of shares representing its share capital or negotiable instruments representing said shares, in which case they will have the character of publicly traded corporations, except in the case of securities subject to simplified registration.

The investment promotion corporations are not subject to surveillance of the Commission, unless they register securities before the Registry.

Article 11

The corporations seeking to be incorporated by means of the public subscription mechanism provided by article 90 of the General Law of Business Organizations (*Ley General de Sociedades Mercantiles*), must register their shares representing their capital stock before the Regis-

try and must obtain authorization from the Commission to perform their public offering, in compliance of the requirements herein.

Chapter I Investment promotion corporations

Article 12

The corporations may be incorporated as investment promotion corporations or adopt such regime, if the same fulfill the special provisions contained under this Law and, when not provided herein, the provisions of the General Law of Business Organizations.

The corporations that, once incorporated, seek to adopt the regime referred hereunder, must previously adopt a resolution through the extraordinary shareholders meeting. The shareholders voting against such resolution may exercise their separation right at a shares' book value on the date of exercise, once the corresponding resolution enters into effect.

The corporate name of the corporations referred to in this article must be freely formed as provided by article 88 of the General Law of Business Organizations, adding to their corporate name the legend "Investment Promotion" (*Promotora de Inversión*) or its abbreviation "I.P." (*P.I.*).

Article 13

In addition to including in their bylaws the requirements established under article 91 of the General Law of Business Organizations, and without prejudice to article 16, sections I to V hereunder, investment promotion corporations may include in their bylaws provisions that:

I. Impose restrictions, of any nature, to transfer ownership or rights, with regards to shares of a same series or class representing their capital stock, other to the provisions of article 130 of the General Law of Business Organizations.

II. Set forth shareholders' exclusion causes or to exercise separation rights, withdrawal, or else, to amortize shares, in addition to the provisions of the General Law of Business Organizations, as well as the price and basis for its determination.

III. Allow the issuance of shares, different to the ones stated under articles 112 and 114 of the General Law of Business Organizations, which:

a) Do not grant voting right or that the vote is restricted for some matters.
b) Grant not economic corporate rights different to the voting rights or exclusively the voting right.
c) Limit or increase profits' distribution or other special economic rights, except for the provisions of article 17 of the General Law of Business Organizations.
d) Grant the right to veto or require the favorable vote of one or more shareholders regarding the general shareholders meeting resolutions.

III. The shares mentioned under this section will count to determine the required quorum to legally declare and vote in the shareholders meetings, exclusively in the matters regarding which voting rights are granted to their holders.

IV. Implement mechanisms to be observed in case the shareholders do no reach agreements regarding specific issues.

V. Increase, limit or deny the subscription preference rights referred to in article 132 of the General Law of Business Organizations. On such regards, different publicity means to the ones stated under such legal provision may be provided.

VI. Allow limiting damages and losses caused by board members and relevant officers, deriving from acts performed or decisions adopted, under the terms of article 33 hereunder.

The certificates of shares representing the capital stock of the investment promotion corporations must include, in its case, the provisions of this article.

Section I Administration and surveillance

Article 14

The administration of investment promotion corporations must be entrusted to a board of directors.

Article 15

Investment promoter corporations can adopt for their administration and surveillance, a regime related to the integration, organization and performance of the stock market corporations, in which case, the requirement of independence of the board members is not mandatory.

When adopting the before mentioned regime, the board members and chief executive officer of the corporation, must be subject to the provisions related to organization, function and responsibilities provided hereunder for the stock market corporations; otherwise, they will be subject to the regime of organization, functions and responsibilities provided under the General Law of Business Organizations.

Investment promoter corporations which adopt the regime hereunder shall not be subject to the provisions of article 16, section II of this Law; nevertheless, they must have an external independent auditor and a committee formed by board members who exercise the functions of surveillance in replacement of the statutory auditor figure.

Section II Shareholders meetings and agreements amongst shareholders

Article 16

Shareholders of the investment promotion corporations, have the right to:

I. Appoint and revoke in a general shareholders meeting a member of the board of directors, when individually or jointly, they hold ten per cent of the shares with voting rights, including limited or restricted, without applying the percentage referred to in article 144 of the General Law of Business Organizations. Such appointment may be revoked only by the other shareholders, when also revoking the appointment of all other members of the board, in which case the revoked individuals shall not be appointed as members of the board during the twelve months following the date of revocation.

II. Appoint a statutory auditor when, individually or jointly, they hold ten per cent of the shares with voting rights, including limited or restricted, or without voting rights, without applying the percentage referred to in article 171 of the General Law of Business Organizations. Such right shall not be exercised whenever the company is under the regime provided under article 15 of this Law, by means of which the statutory auditor is not required.

III. Request from the chairman of the board of directors or, in its case, any of the statutory auditors, with regards to any of the matters with respect to which they have voting rights, to call at any time a general shareholders meeting, or else, to adjourn only once the voting on any matter with respect which they consider they are not duly informed, for three calendar days and without need of a new call, provided that, individually or jointly, they hold ten per cent of the capital stock of the corporation, without applying the percentages referred to in articles 184 and 199 of the General Law of Business Organizations.

IV. Exercise a civil liability action against the officers in benefit of the company, as provided by article 163 of the General Law of Business Organizations and without the need of a resolution of the general shareholders meeting when, individually or jointly, they hold fifteen per cent or more of the shares with voting rights, including limited or restricted or without voting rights. Such action may also be exercised with regards with statutory auditors for the corresponding effects in accordance with article 171 of such law.

In case that the liability regime applicable to stock market corporations is adopted, the shareholders may not exercise any action under provisions of article 38 hereunder.

V. Judicially oppose, pursuant to article 201 of the General Law of Business Organizations, to the resolutions of the general shareholders' meetings, provided that they hold voting rights with respect to the corresponding matter, when holding individually or jointly, twenty per cent or more of the capital stock, without applying the percentage referred to in such provision. The foregoing, in addition to the provision of article 13, section III, paragraph d) hereunder.

VI. Covenant among them:

a) Obligations consisting of not developing commercial business which may compete with the company, limited in time, matter and geographic scope, but such limitations may not exceed from three years, regardless of other provisions set forth in any other applicable laws.

b) Rights and obligations establishing sale or purchase op-

tions of the shares representing the capital stock, such as:

1. That representing one or more shareholders may only transfer all or part of their stock, if the purchaser binds himself/itself to acquire also part or all of the stock of other(s) shareholder(s) under the same terms.
2. That one or more shareholders may request to another shareholder the transfer of all or part of his stock, when they accept an acquisition offer, under the same terms.
3. That one or more shareholders have the right to transfer or acquire from another shareholder, who must in turn be compelled to transfer or acquire, as the case may be, all or part of the stock which is the purpose of the transaction, at a determined or determinable price.
4. That one or more shareholders are bound to issue and pay certain number of shares representing the capital stock, at a determined or determinable price.

c) Transfer and other legal actions regarding the ownership, disposition or exercise of rights of first refusal referred to in article 132 of the General Law of Business Organizations, regardless of whether such acts are carried out with other shareholders or with third parties.

d) Agreements for exercising the voting right in shareholders meetings, without applying article 198 of the General Law of Business Organizations.

e) Agreements for the transfer of stock through public offerings. The covenants referred to herein will not be enforceable against the company, except for judicial resolution.

Article 17

Investment promotion corporations, with prior agreement of the board of directors, may repurchase the shares representing their capital stock without applying the prohibition established under the first paragraph of article 134 of the General Law of Business Organizations.

Such companies may carry out the repurchase of the corresponding shares with their shareholder's equity, in which case they may maintain them without the need of a decrease in their capital stock, or else, charging it to the capital stock provided that it is resolved to cancel them or convert them into issued but unsubscribed shares to be kept in the treasury. Corporations with fixed capital may convert the shares acquired under this article in unsubscribed shares to be kept in treasury.

The placing, in its case, of shares acquired under the terms of this article, shall not require any shareholders' meeting resolution, without

prejudice the board of directors' resolutions regarding this matter. The issued unsubscribed shares kept in treasury may be subscribed by the shareholders. For purposes of this paragraph, the provisions of article 132 of the General Law of Business Organizations are not applicable.

For so long as the shares are owned by the company, such shares cannot be represented nor voted in shareholders meetings of any kind, nor any corporate or economic rights can be exercised regarding them.

Article 18

Investment promotion corporations are not required to publish their financial statements, pursuant to article 177 of the General Law of Business Organizations.

Section III Stock market investment promotion corporations

Article 19

Investment promotion corporations may apply for registration before the Registry of the shares representing their capital stock or negotiable instruments representing said shares provided that:

I. Prior to the registration of the relevant securities, the shareholders' meeting agrees to:

a) Modify their corporate name adding the legend "Stock Market" ("*Bursatil*") or its abbreviation "B".

b) Perform the necessary amendments to the by-laws in order to adequate the integration of capital stock to the regime applicable to stock market corporations, as well as to provide the causes and effects of the cancellation of the registration before the Registry per article 108, section I hereunder. Under no circumstances said by-laws may contemplate any of the provisions contained in article 13, sections I to III of this Law.

I. The shareholders meeting, in addition to the before mentioned, must identify the person or group of persons which have control of the corporation, who must subscribe the minutes of such shareholders meeting, acknowledging their conformity there to.

II. The board of directors has, at the time of registration before the Registry, at least one independent board member who fulfills the requirements provided under article 26 hereunder.

III. The corporation has a committee that supports the board of directors in the performance of the activities related to corporate practices, in accordance with stock market corporations. Such committee will be formed exclusively with members of the board of directors and must be chaired by an independent board member.

The corporation may decide on assigning to said committee the auditing activities provided under this Law for stock market corporations, in which case the provisions of articles 15 and 16, section IV of this Law, will be applicable.

IV. The secretary of the board of directors certifies the shareholding of each shareholder.

Article 20

The investment promotion corporations which obtain the registration before the Registry of the shares representing their capital stock or negotiable instruments representing such shares, may place in the stock market with or without public offering of said securities, provided that:

I. Expressly and notoriously provide under the offering memorandum or information brochure used to place the securities:

a) The differences in the organization regime, functioning regime, information disclosure and, in its case, quoting and maintenance requirements, in connection with the stock market corporations.

b) Repealed.

c) Repealed.

II. Repealed.

Article 21

In order to obtain and maintain the registration resend to in article 19 hereunder, investing promotion corporations, must be subject to the provisions of articles 48, 49, section IV and second to last and last paragraphs, 53 to 57, 83 to 92 and 95 to 112 of this Law.

The Commission may, by means of general provisions, reduced the applicable requirements for registration and maintenance, before the Registry, of the shares representing the capital stock of the stock market investment promotion corporations or the negotiable instruments representing said shares, as well as regarding information disclosure, in connection with the requirements pursuant to this Law for stock market corporations.

The stock markets will be bound to verify on a regular basis the quality and fulfillment, by the stock market investment promotion corporations, of the programs referred to in article 19, section I, paragraph c) hereunder. Said stock markets must inform the Commission of any violations observed with regards to such programs, within a term of five business days after becoming aware thereof.

It will be considered a cause for cancellation of the registration before the Registry, of the shares representing the capital stock of stock market investment promotion corporations or the negotiable instruments that represent the same, any significant breach to of the programs referred to in the above paragraph, event under which case the correspondent corporation, prior to the cancellation of the registration, must be bound to perform a takeover bid, within the term of one hundred and eighty calendar days following the date in which it is requested by the Commission, or else, when the term of three years of the mentioned program has been completed whichever is first, in accordance to the provisions of article 108, section I of this Law. Until

the afore mentioned tender offer is performed, the Commission may decree, as a preventive measure, the suspension of the registration of the relevant securities before the Registry, in order to avoid producing disordered conditions in the market.

Chapter II Stock Market Corporations

Article 22

Public limited companies that have shares representing the share capital or credit instruments representing said shares, registered in the Registry, will freely form their corporate name in accordance with the provisions of article 88 of the General Law of Commercial Companies, and must additionally add to their corporate name the expression "Bursátil" or its abbreviation "B".

The stock market corporations are subject to the special provisions contained under this Law and, with regards to any matters not provided hereunder, by the General Law of Business Organizations.

The financial entities which obtain the registration before the Registry of the shares representing their capital stock or negotiable instruments representing them, must be subject to the provisions of the special laws of the financial system which regulate them and other secondary provisions issued pursuant to said laws, as well as to the following:

I. The shareholders will have the rights established under articles 48 to 52 hereunder.

II. The capital stock must be formed pursuant to the laws related to the financial system that regulates them. When such laws do not regulate said formation, the entity will be subject to the provisions hereunder.

Financial entities may issue unsubscribed shares to be kept in the treasury, as well as acquired and place the shares representing there capital stock, under the terms provided under articles 53, 56, and 57 of this Law, and except for corporations for the variable income, debt, capital and limited purpose mutual funds, which will be subject to, as applicable, the Mutual Funds Law (*Ley de Fondos de Inversion*), or specialized pension funds as provided by the Savings Retirement Systems Law (*Ley de los Sistemas de Ahorro para el Retiro*) and general provisions created under said laws.

III. The disclosure of information, in addition to the provisions of special laws of the financial system that regulate them and secondary provisions created by such laws, will be subject of the propositions of articles 104 to 106 hereunder and the general provisions issued pursuant to this Law, except for the investment on debt, variable rate and specialized in retirement funds, which will be subject to the Investing Corporations Law, Savings Retirement Systems Law and general provisions created pursuant to such laws.

IV. The integration, organization and performance of the corporate bodies, including management and oversight, must comply with the provisions of special laws of the financial system that govern them

and the secondary provisions created under said laws, except for controlling corporations which are subject matters to the provisions of this Law.

Notwithstanding the above and with the mentioned exception, the functions established hereunder for shareholders meetings, board of directors, corporate practices and auditing committees, and the chief executive officer of the stock market corporations, must be performed in the corresponding financial entities, by a corporate body or person, under the provisions of the special laws of the financial system and the provisions created pursuant to them. When the corresponding special regulations do not establish any of the functions, the financial entity must be subject regarding said functions to the provisions hereunder.

V. The shareholders, as well as the officers in charge of the corporate bodies and persons in charge of the management and oversight of the financial entity, shall be liable respond for their acts under the terms in which, in its case, are established by the special laws of the financial system which regulate them and pursuant to the applicable commercial and common laws.

Regarding controlling corporations of financial groups, the shareholders and the persons in charge of the management and oversight of the entity, must be subject in connection to functions, duties and responsibilities, to the provisions hereunder.

Section I Management

Article 23

Stock market corporations will entrust their management to a board of directors and a chief executive officer, who will perform the functions established herein.

Article 24

The board of directors of the stock market corporations will be composed of up to twenty one members, from which, at least twenty five per cent must be independent. For each proprietary board member there corresponding alternate may be appointed, in the understanding that alternate members of independent members must be also independent.

Under no circumstances may the person who acted as external auditor of the corporation or of any board entity from the business group or consortium of the corporation within twelve months before the date of appointment can be acts a board member of the stock market corporations.

Likewise, the board of directors will appoint a secretary who will not be a member there for and will remain in charge of the obligations and responsibilities established hereunder.

The board members will continue in their position, even when the term for witch they were appointed has concluded or by resignation,

for a term of up to thirty calendar days, even when there is no appointment of the new members or when they have not taken possession of the office, without being subject to the provisions of article 154 of the General Law of Business Organizations.

The board of directors may appoint temporary board members, without the need of holding a shareholders meeting, in case any event mentioned in the above paragraph or under article 155 of the General Law of Business Organizations occurs. The Shareholders meeting of the corporation will ratify said appointments or will appoint new board members in the shareholders meeting following such temporary appointment, without prejudice article 50, section I of this Law.

Article 25

The board of directors, in order to perform the functions established hereby, will count with one or more committees to be established for such purposes. The committee(s) which develops the activities of corporate practices and auditing referred to in this Law will be exclusively formed with independent board members and by a minimum of three members appointed by the board, as proposed by the chairman of the board. Regarding stock market corporations controlled by a person or group of persons who hold fifty per cent or more of the capital stock, the committee of corporate practices may be formed, at least, with a majority of independent board members provided that said circumstance is disclosed to the public.

When by any circumstances, the minimum number of committee members who perform the auditing functions are missing and the board of directors has not appointed alternate board members as established under article 24 hereunder, any shareholder can request the chairman of the board to call within three calendar days, a shareholders meeting so that the meeting makes the corresponding appointment. In case the call is not made within the mentioned term, any shareholder can appear before the judicial authority of the corporation's domicile, to require a judge to call the meeting. In case that the meeting is not held or being held there is no appointment, the judicial authority of the corporation's domicile, by request and proposal of any shareholder, will appoint the corresponding board members, who will be in office until the general shareholders meeting makes the appointment.

Article 26

The independent board members and, in its case, their corresponding alternates, must be selected based on their professional experience, capacity and prestige, considering that by their characteristics they can develop functions free of conflict of interests and without being subject to personal, patrimony or economic interests.

The shareholders meeting in which the board members are appointed or ratified or, in its case, in the one in which said appointments or ratifications are informed, will evaluate the independence of

their members. Notwithstanding the above, under no circumstance the following persons may be appointed or perform as independent board members:

I. The relevant officers or employees of the corporation or the legal entities that form the business group or consortium from which the corporation is part of, as well as the statutory auditors of the same. The before mentioned limitation is applicable to those individuals who discharged said positions during the twelve immediate months prior the date of their appointment.

II. Individuals who have significant influence or decision-making power in the corporation or in any of the legal entities from the business group or consortium from which the corporation is part of.

III. The shareholders that are part of the group of persons who have control over the corporation.

IV. The clients, service providers, suppliers, debtors, creditors, stockholders, board members or employees of an important client, service provider, supplier, debtor or creditor.

A client, service provider or supplier is considered important when the corporation's sales represent more than ten per cent of total sales of the client, service provider or supplier, during the twelve months prior to the appointment. Likewise, a debtor or creditor is considered important when the credit amount is higher than fifteen per cent of the assets of the company or its counterparty.

V. Those with consanguinity, affinity or civil relationship up to the fourth degree, the spouses, common-law spouses, as well as any other individuals from the mentioned under section I to V of this article.

The independent board members that during their office stop being independent, must inform the board of directors of such circumstance during the next board meeting at the latest.

The Commission, prior due process of the corporation and the corresponding board member, and in accordance with its Governing Board, may object the qualification of independence of the board members, when there are elements that evidence the lack of independence pursuant to the provisions of sections I to V of this article, in which case they will lose the characteristics of independence. The Commission will have a term of thirty business days as of the notice performed by the stock market corporation under the applicable provisions, to object, in its case, the corresponding board members independence; once said term has passed without the Commission issuing an opinion, it will be understood that there is not objection. The foregoing, without prejudice that the Commission may object said independence, when later being aware that during the office of a board member the same is under any of the cases provided under this article.

Article 27

The board of directors must meet, at least, four times during each fiscal year. The chairman of the board of directors or of the committees which perform corporate practices and auditing activities referred to in this Law, as well as the twenty five per cent of the company's

board members, may call for a board members meeting and include in the items of the agenda the items that they consider convenient.

The external auditor of the company may be called for the board of directors meetings, as a guest with voice and without vote, being bound to refrain from being present in those items of the agenda in which there is a conflict of interest or that may compromise his/her independence.

Article 28

The board of directors must take care of the following matters:

I. Establish general strategies to conduct the business of the company and legal entities controlled by it.

II. Supervise the performance and conducting of the company and the legal entities controlled by it, considering the relevance of the latter in the financial, administrative and legal situations of the company, as well as the performance of the relevant officers. The foregoing based on the provisions of Section II of this Chapter.

III. Approve, with the prior opinion of the corresponding committee:

a) The policies and regulations for the use or enjoyment of assets part of the company's patrimony and the legal entities controlled by it, on behalf of related persons.

b) The transactions, each one individually, with related persons that the company or the legal entities controlled by it intend to perform.

The following transactions will not require approval of the board of directors, provided that the same are carried out in accordance with the policies and regulations approved by the board:

1. The transactions which by virtue of their amount are irrelevant for the company or the legal entities controlled by it.
2. The transactions performed between the company and the legal entities controlled by it or in those in which the company has significant influence or between any of them, provided that:
   i) They are part of the ordinary and customary business.
   ii) They are considered to be carried out at market prices or documented with appraisals performed by external specialized agents.
3. The transactions performed with employees, provided that the same are performed under the same circumstances as with other client or as a result of general labor compensations.

c) The transactions performed, either simultaneously or consecutively, that because of their characteristics can be considered as a single transaction and which are intend to be performed by the company or the legal entities con-

trolled by it, within a term of a fiscal year, when they are unusual or not recurrent, or else, the amount represents based on the amounts corresponding to the close of the latest quarter in any of the following cases:

1. Acquisition of goods equal to or of a hire higher value than five per cent of the company's consolidated assets.
2. Granting of guarantees or the assumption of liabilities for an amount equal to or higher to five per cent of the company's assets.

c) Investment in debt securities and banking instruments are exempted, provided that the same are performed pursuant to the policies approved by the board for such purpose.

d) The appointment, election and, in its case, removal of the company's chief executive officer and his/her integral compensation, as well as the policies for appointment and integral compensation of the other relevant officers.

e) The policies for granting loans or any kind of credits or guaranties to related persons.

f) The exemptions for a board member, relevant officer or person with decision making power, to take advantage of business opportunities for him/her or in favor of third parties, that correspond to the company or the legal entities controlled by it or in those in which it has a significant influence. The exemptions for transactions which amounts are lower to the one mentioned under paragraph c) of this section, may be delegated in a committee in charge of the auditing or corporate practices functions referred to in this Law.

g) The rules related to internal control and internal auditing of the company or the legal entities controlled by it.

h) The company is accounting policies, in accordance with the accounting principles acknowledged or issued by the Commission by means of general provisions.

i) The company's financial statements.

j) The hiring of the legal entity that renders services of external auditing and, in its case, the additional or complementary services. When the determinations of the board of directors are contrary to the opinions of the corresponding committee, such committee must instruct the chief executive officer to disclose such circumstance to the investing public, by means of the stock exchange in which the company's shares or negotiable instruments that represent such shares are being quoted, in accordance with the terms and conditions established by the stock exchange's internal regulations.

IV. Bring before the general shareholders meeting to be held by virtue of the fiscal year's closing:

a) The reports referred to in article 43 of this Law.
b) The report that the chief executive officer furnishes in accordance with article 44, section XI of this Law, attaching the report of the external auditor.
c) The opinion of the board of directors regarding the content of the chief executive officer's report mentioned in the above paragraph.
d) The report mentioned under article 172, section b) of the General Law of Business Organizations in which the main policies and accounting criteria and information regarding the preparation of the financial information are contained.
e) The report regarding transactions and activities in which the board participated pursuant to this Law.

V. Follow up the main risks to which the company and the legal entities controlled by it are exposed, identified based in the information raised by the committees, the chief executive officer and the legal entity that renders the external auditing services, as well as the systems of accounting, internal control and internal auditing, registry, filing or information, which can be performed by means of a committee that performs auditing functions.

VI. Approve policies of information and communication with the shareholders and the market, as well as the board members and relevant officers, in order to fulfill with the provisions hereunder.

VI. Determine the actions to be taken to solve the irregularities that the board is aware of and to implement the corresponding corrective actions.

VIII. Establish the terms and conditions that the chief executive officer must observe when exercising powers of attorney for acts of ownership on behalf of the company.

IX. Order the chief executive officer to disclose to the public the relevant events of which it has knowledge. The foregoing without prejudice to the chief executive officers' obligation established under article 44, section V of this Law.

X. The other obligations established under this Law or provided under the company's by-laws, in accordance with this Law.

The board of directors is responsible for the oversight of the compliance of the resolutions of the shareholders meetings, surveillance that can be performed by means of a committee that carries out the auditing functions stated under this Law.

Article 29

The members of the board of directors will perform their duties trying to create value in benefit of the company, without favoring a determined shareholder or group of shareholders. Indeed, they must act diligently adopting reasoned decisions and fulfilling with the other duties imposed by virtue of this Law or the by-laws.

Subsection A Duty of care

Article 30

The members of the board of directors, when carefully exercising the duties that this Law and the by-laws impose on such corporate body, must act in good faith and in the highest interests of the company and the legal entities controlled by it, for such purpose thy may:

I. Request information of the company and the legal entities controlled by it, which is reasonably necessary for decision making.

For such purpose, the company's board of directors may establish, with the prior opinion of the committee that performs auditing functions, rules that set forth the manner in which said requests must be furnished and, in its case, the scope of the requests by the board members.

II. Request the presence of relevant officers and other persons, including external auditors, who may contribute or furnish elements for the decision making in the board of directors meetings.

III. Postpone the board of directors meetings, when a member has not been called or the call was not time by made or, in its case, when a member did not receive the information furnished to the other members. Said postponement will be for up to three calendar days, being the board able to meet without need of a new call, provided that the deficiency was corrected.

IV. Deliberate and vote, requesting the presence, if so is decided of, exclusively the members and the secretary of the board of directors.

Article 31

The members of the board of directors, the relevant officers and the other persons that act on behalf of the stock market corporation, must provide the necessary in order to fulfill this Law, so that the provision of article 3 hereunder.

The information furnished to the company's board of directors by the relevant officers and other employees, either from the company and the legal entities controlled by it, must be issued by the persons responsible for its content and elaboration.

The members of the board of directors and other persons who perform a job, charge or agency in any on the legal entities controlled by a stock market corporation or those over which it has significant influence, will not breach the discretion and confidentiality established under this or other laws, when furnishing information pursuant to the provisions hereunder to the board of directors of the stock market corporation, related to such legal entities.

Article 32

The members of the board of directors of the stock market corporations will breach the duty of care and will be subject to liability under

the terms of article 33 hereunder, when they cause an economic damage to the company or the legal entities controlled by it or those in which it has significant influence, by virtue of occurring any of the following accurse:

I. Refrain from attending except for just cause as determined by the shareholders meeting, to the board meetings and, in its case, committee meetings from which they are part of, and that by virtue of their absence the corresponding corporate body cannot hold a meeting.

II. Fail to disclose to the board of directors or, in its case, to the committees of which they a are a part of, known relevant information necessary for the accurate decision-making of said corporate bodies, except if they are bound by virtue of law or agreement to maintain secrecy or confidentiality thereof.

III. Breach the duties imposed by this Law or the company's bylaws.

Article 33

The liability consisting in indemnifying damages and losses caused to the company or the legal entities controlled by it or those in which it has significant influence, by breaching the duty of care of the board members of the stock market corporations, resulting of acts or adopting decisions in the board or from those that they do not take by virtue of not being able to legally hold a meeting, will be joint between the liable parties who adopted the decision or caused that such corporate body failed to hold a meeting. Said indemnification may be limited under the terms and conditions expressly stated in the bylaws or by resolution of the shareholders meeting, provided that these are not fraudulent or bad faith acts, or else, illegal acts pursuant to this and other laws.

The stock market corporations may agree on indemnifications and hire in favor of the members of the board of directors insurances, guaranties or bonds that cover the amount of indemnifications for the damages caused by their performance to the company or the legal entities controlled by it or those in which it has significant influence, except if it is related to fraudulent, bad faith or illegal acts pursuant to this or other laws.

Subsection B Duty of loyalty and illegal acts or facts

Article 34

The members and secretary of the board of the stock market corporations, must keep confidentiality in relation to the information and matters of which they have knowledge by virtue of their position when said information or matters are not public.

The members and, in its case, the secretary of the board of directors, who have conflict of interests in any matter, shall refrain from participating and being present when delivering and voting said mat-

ter, without such situation affecting the required quorum to declare valid the mentioned meeting.

The board members will be jointly liable with those who preceded them in their position, for irregularities incurred by them if, knowing them, they failed to communicate in writing to the committee that performs the functions of auditing and to the external auditor. Likewise, said board members are bound to inform the auditing committee and the external auditor, all irregularities that during the term of their office, they have knowledge and which are related with the company or the legal entities controlled by it or those in which it has significant influence.

Article 35

The members and secretary of the board of directors of stock market corporations will incur in disloyalty before the company and, consequently, will be liable of damages and losses caused to the same or to the legal entities controlled by it or those in which it has significant influence, when, without legitimate cause, by virtue of their job, position or charge, obtain economic benefits for them or in favor of third parties, including to a determined shareholder or group of shareholders. Likewise, the members of the board of directors will incur in disloyalty before the company or the legal entities controlled by it or those in which it has significant influence, being liable of damages and losses caused to them, when incurring in any of the following conducts:

I. Vote in the board of directors meetings or take resolutions related with the patrimony of the company or the legal entities controlled by it or those in which it has significant influence, with conflict of interests.

II. Fail to disclose, regarding the matters discussed in the board and committees meetings from which they are part of, the conflict of interests regarding the company or the legal entities controlled by it or those in which it has significant influence. For such effect, the board members must specify the details of the conflict of interests, unless they are bound by virtue of law or agreement to keep secrecy or confidentiality on such regards.

III. Favor with prior knowledge, a determined shareholder or group of shareholders of the company or the legal entities controlled by it or those in which it has significant influence, in detriment or loss of other shareholders.

IV. Approve the transactions executed by the company or the legal entities controlled by it or those in which it has significant influence, with related persons, without adjusting to or fulfilling the requirements established by this Law.

V. Take advantage for themselves or in favor of third parties, of the use or enjoyment of assets which are part of the patrimony of the company or the legal entities controlled by it, in violation of the policies approved by the board of directors.

VI. Misuse relevant information that is not of public knowledge, re-

lated to the company or the legal entities controlled by it or those in which it has significant influence.

VII. Take advantage of or exploit business opportunities that correspond to the company or the legal entities controlled by it or those in which it has significant influence, for their own benefit or for third parties, without the board of directors' authorization.

For such effect, it will be considered, unless proved otherwise, that a business opportunity from the company or the legal entities controlled by it or those in which it has significant influence is being used or exploited, when a board member, directly or indirectly, performs activities which:

a) Are the ordinary and customary business of the company or the legal entities controlled by it or those in which it has significant influence.

b) Imply the execution of an operation or a business opportunity which is originally directed to the company or the legal entities mentioned in the above paragraph.

c) Involve or pretend to involve in commercial or business projects to be developed by the company or the legal entities mentioned in paragraph a) above, provided that the board member had prior knowledge of it.

The provisions under the first paragraph of this article, as well as sections V to VII of the same, are also applicable to the persons that have decision making power within the company.

On regards with legal entities over which a stock market corporation has significant influence, the liability due to disloyalty will be charged to the members and secretary of the board of directors of said company who contributed to obtaining, without legal cause, the benefits referred to in the first paragraph of this article.

Article 36

The members and secretary of the board of directors of stock market corporations, shall abstain from performing any of the following conducts:

I. To generate, disclose, publish or furnish information of the company or of the legal entities controlled by it or of those in which it has significant influence to the public, or else, related to the securities of any of them, knowing that it is false or misleading, or to order to perform any of said conducts.

II. To order or cause failure to register transactions performed by the company or by the legal entities controlled by it, as well as to alter the registries to hide the actual nature of the transactions executed, affecting any concept of the financial statements.

III. To hide, omit or cause to be hidden or omitted the disclosure of relevant information that under the terms of this Law should be disclosed to the public, shareholders or securities' holders, except as otherwise provided hereunder.

IV. To order or accept the entering of false data within the accounting of the company or legal entities controlled by it. It is presupposed

that, unless otherwise proved, the data included within the accounting is false when the authorities, while exercising their capacities, require information related to the accounting books and the company or legal entities controlled by it do not have it, and it is not possible to prove the information that supports the accounting books.

V. To destroy, modify or order to destroy or modify, totally or partially, the accounting systems or entries or the documents which originate the accounting entries of the company or legal entities controlled by it, prior to the expiration of the legal terms of conservation and with the purpose of hiding its registration or evidence.

VI. To destroy, modify or order to destroy or modify, totally or partially, information, documents or files, including electronic, with the purpose of preventing or obstructing the Commission from supervising.

VII. To destroy or order to destroy, totally or partially, information, documents or files, including electronic, with the purpose of manipulating or hiding the company's relevant information to those with legal interest in knowing it.

VIII. To furnish before the Commission false or altered documents or information, with the purpose of hiding their actual content or context.

IX. To alter the assets or liabilities accounts, or the agreements' conditions, to perform or order to register nonexistent transactions or expenses, to overstate the actual ones or intentionally perform any illegal or forbidden by law act or operation, producing by any of such events a damages in the corresponding company's patrimony or of the legal entities controlled by it, in economic benefit of themselves, either directly or by means of a third party.

The provisions hereunder will also be applicable to persons who exercise decision making power within the company.

Article 37

The liability consisting in indemnifying damages caused by virtue of acts, facts and omissions mentioned under articles 34, 35 and 36 of this Law, will be joint amongst the responsible persons who adopted the decision and it will be enforceable as consequence of the damages caused to the company or the legal entities controlled by it or those in which it has significant influence and, in all events, the liable persons will be removed from office.

Under no circumstance may the affected company agree in the contrary, nor provide under its by-laws, compensations, benefits or liability disclaimers, which limit, substitute or compensate the obligations for the liability stated under the legal concepts mentioned under the above paragraph, nor hire in favor of any persons insurances, guaranties or bonds that cover the amount of indemnification for the caused damages.

Subsection C Liability actions

Article 38

The liability deriving from the acts referred to in this Chapter, will

be exclusively in favor of the company or the legal entity controlled by it or in favor of the one over which it has significant influence that suffers the patrimonial damage. The liability action may be exercised:

I. By the stock market corporation.

II. By the shareholders of the stock market corporation that, jointly or individually, own the shares with voting rights, including limited or restricted, or without voting rights, which represent five per cent or more of the capital stock of the stock market corporation.

The plaintiff may settle in trial the indemnification amount for damages and losses, provided that the terms and conditions of the corresponding stipulation are first submitted for the approval of the board of directors. The lack of said formality is a cause of relative nullity.

The exercise of the actions referred hereunder will not be subject to the fulfillment of articles 161 and 163 of the General Law of Business Organizations. In any case, said actions shall comprise the total amount of the liabilities in favor of the company or the legal entities controlled by it or those in which it has significant influence and not only the personal interest of the plaintiff(s).

The action referred to in this article exercised by any of the persons mentioned under sections I and II above, in favor of the legal entities controlled by it or those in which it has significant influence, will be independent from the actions which exercise correspond to the own legal entities or their shareholders as provided under articles 161 and 163 of the General Law of Business Organizations.

The actions which have the purpose of demanding liability as provided hereunder, will prescribe in five years beginning on the date on which the act or fact that caused the patrimonial damage in case was performed.

In any case, the persons that, as considered by the judge, have exercised the action referred to in this article, with recklessness or bad faith will be sentenced to pay costs as established under the Commercial Code.

Article 39

The liability that this Law charges to the members and secretary of the board of directors, as well as the relevant officers of the stock market corporations, will be enforceable even when the shares representing the capital stock of this kind of corporations, are placed amongst the public by means of negotiable instruments that represent such shares, issued by trustee institutions under trusts, in such case the action referred to in article 38 hereunder, may be exercised by the trustee institution or by the holders of said negotiable instruments that represent the percentage of capital stock referred to in section II of said article.

Article 40

The members of the board of directors will not incur, individually or

jointly, in liability for damages caused to the company or the legal entities controlled by it or those in which it has significant influence, deriving from executed acts or adopted decisions, when acting in good faith, when any of the following extenuating circumstances takes place:

I. They fulfill the requirements under this Law or the by-laws to approve the matters which are concern of the board of directors or, in its case, the committees from which they are part of.

II. They take decisions or vote before the board of directors meetings or, in its case, committee meetings from which they are part of, based on the information provided by relevant officers, the legal entity which renders external auditing services, which capacity and credibility do not create motivation of reasonable doubt.

III. Based on the available information at the time of the decision, they have selected the most accurate choice, under their best knowledge, or the negative patrimonial effects have not been advisable.

IV. They fulfill the shareholders agreements, provided that the same does not violate the law.

Section II Surveillance

Article 41

The surveillance of the performance, conducting and execution of the stock market corporations' business and the legal entities controlled by it, considering the relevance that the latter have in the financial, administrative and legal situations of the stock market corporations, will be in charge of the board of directors by means of the committees created to carry out such activities regarding corporate practices and auditing, as well as by means of a legal entity which performs the external auditing of the corporation, each one under the scope of their own competence, as provided herein.

The stock market corporations will not be subject to the provisions of article 91, section V of the General Law of Business Organizations, nor will it be applicable to such corporations articles 164 to 171, 172, last paragraph, 173 and 176 of said Law.

Article 42

The board of directors, when performing its activities of surveillance, will be assisted by one or more committees in charge of developing the following activities:

I. Regarding corporate practices:
   a) To furnish opinion to the board of directors regarding the matters assigned under this Law.
   b) To request the opinion of independent experts when advisable, to accurately perform its activities or when required, as provided by this Law or general provisions.
   c) To call upon shareholders meetings and include on the agenda of the same, the matters considered convenient.

d) To support the board of directors in order to elaborate the reports mentioned under article 28, section IV, paragraphs d) and e) of this Law.
e) The others established by this Law or the company's by-laws, in accordance with the functions that this Law assigns.

II. Regarding auditing:
a) To furnish opinion to the board of directors regarding the matters assigned under this Law.
b) To evaluate the performance of the legal entity which renders external auditing services, as well as to analyze the report, opinions, advice and information furnished and issued by the external auditor. For such purpose, the committee may require the presence of said auditor when considered as convenient, without prejudice that it shall meet with the auditor at least once per year.
c) To discuss the financial statements of the company with the persons responsible of drafting and reviewing it, and based on it, recommend or deny its approval to the board of directors.
d) To inform the board of directors about the status of the internal control and internal auditing of the company or the legal entities controlled by it, including the irregularities that, in its case, it detects.
e) To elaborate the opinion mentioned under article 28, section IV, paragraph c) of this Law and submit it for consideration of the board of directors for latter submission before the shareholders meeting, supporting it, amongst other elements, on the report of the external auditor. Said opinion must state, at least:
1. Whether the policies and accounting and information criteria followed by the company are adequate and sufficient considering the particular circumstances of the same.
2. Whether said policies and criteria have been constantly applied to the information submitted by the chief executive officer.
3. Whether as a consequence of paragraphs 1 and 2 above, the information submitted by the chief executive officer reflects, in a reasonable manner, the financial situation and results of the company.
f) To support the board of directors in order to elaborate the reports stated under article 28, section IV, paragraphs d) and e) hereunder.
g) To supervise that the transactions mentioned under article 28 section III, and article 47 hereunder are carried out in accordance with the provisions of this Law, as well as the policies deriving of the same.

h) To require the opinion of independent experts in the cases that it considers convenient to procure the correct performance of its functions or when required by virtue of this Law or general provisions.

i) To require from the relevant officers and other employees of the company or the legal entities controlled by it, reports related to the elaboration of financial information and of any other kind considered necessary for the performance of its activities.

j) To investigate the possible violations of which it has knowledge, of transactions, rules and policies of operation, internal control system and internal auditing and accounting registry, either of the company or the legal entities controlled by it, for which it will review the documentation, registries and other evidence, with the necessary degree and extent to perform such supervision.

k) To receive comments from the shareholders, board members, relevant officers, employees and, in general, any third party, regarding the matter referred to in the above paragraph, as well as to perform the actions that under its opinion are reasonable in connection with such remarks.

l) To request periodical meetings with the relevant officers, as well as the delivery of any kind of information related with the internal control and internal auditing of the company or any legal entity controlled by it.

m) To inform the board of directors regarding important irregularities detected under its functions and, in its case, the corrective actions adopted or to propose the actions to be applied.

n) To call upon shareholders meetings and to require to have included in the agenda of said meetings the matters considered as convenient.

o) To supervise that the chief executive officer complies with all the agreements of the shareholders and board of directors meetings, pursuant to the instructions that, in its case, the shareholders or board meeting give.

p) To supervise that mechanisms and internal controls are established in order to verify that the acts and transactions of the company and the legal entities controlled by it, comply with the applicable laws, as well as to implement methods which permit to fulfill with the above.

q) The other established hereunder or provided under the company's bylaws, in accordance with the functions assigned by this Law.

Article 43

The presidents of the committees that exercise the corporate prac-

tices and auditing functions will be appointed and/or removed from their position exclusively by the general shareholders meeting. Said presidents may not chair the board of directors and must be elected based on their experience, known capacity and professional prestige. Likewise, they must elaborate an annual report regarding the activities corresponding to said bodies and furnish it before the board of directors. Said report must include, at least, the following matters:

I. Regarding corporate practices:
   a) Remarks regarding the performance of the relevant officers.
   b) Transactions with related persons, during the fiscal year being informed, specifying the characteristics of the significant transactions.
   c) Emoluments packages or integral compensations to the individuals mentioned under article 28, section III, paragraph d) of this Law.
   d) The exemptions granted by the board of directors under the terms of provisions of article 28, section III, paragraph f) of this Law.

II. Regarding auditing matters:
   a) The status of the internal control system and internal auditing of the company and legal entities controlled by it and, in its case, the description of its deficiencies and deviations, as well as the aspects which require an improvement, taking into consideration the opinion, reports, communications and information of the external auditing, as well as the reports issued by independent experts who rendered their services during the term covered by the report.
   b) The mention and follow up of the preventive and corrective measures implemented based on the results of the investigations related with the violation of rules and policies of operation and accounting registry, either from the company or the legal entities controlled by it.
   c) The performance evaluation of the legal entity which renders the external auditing services, as well as the external auditor in charge of it.
   d) The description and assessment of additional and complementary services that, in its case, the legal entity in charge of performing the external auditing renders, as well as the rendered by independent experts.
   e) The main results of revisions to the company's financial statements and the legal entities controlled by it.
   f) The description and effects of the modifications to the accounting policies approved during the period covering the report.
   g) The measures adopted by virtue of the remarks considered relevant, raised by shareholders, board members,

employees and, in general, any third party, regarding accounting, internal control and matters related with internal or external auditing, or else, deriving from the complaints regarding facts that consider irregular in the administration.

h) The follow up on agreements of the shareholders and board of directors meetings.

In order to elaborate the reports referred to under this legal provision, as well as for the opinions stated under article 42 of this Law, the corporate practice and auditing committees must listen to the relevant officers; in case there is a difference in the opinion with the latter, such differences will be stated under said reports and opinions.

Section III Performance, conducting and execution of the corporate business

Article 44

The performance, conducting and execution functions of the corporate business and the legal entities controlled by it, will be responsibility of the chief executive officer, pursuant to the provisions of this article, subject to the strategies, policies and regulation approved by the board of directors.

The chief executive officer, will have the broadest capacity to represent the company in administration acts, lawsuits and collections, including special capacities that in accordance with the law require a special clause. In relation with acts of ownership it is required to observe the provisions under article 28, section VIII of this Law.

The chief executive officer, without prejudice of the foregoing, must:

I. Submit for approval of the board of directors the business strategies of the company and legal entities controlled by it, based on the information that the latter furnish to him/her.

II. Fulfill the agreements of the shareholders and board of directors meetings, pursuant to the instructions that, in its case, the shareholders or board of directors meetings give.

III. Propose to the audit committee, the rules of the internal control system and the internal auditing of the company and the legal entities controlled by it, as well as to execute the rules approved by the board of directors of such company.

IV. Subscribe the company's relevant information, jointly with the relevant officers in charge of preparing it, within the scope of his/her competence.

V. Disclose relevant information and events which should be disclosed to the public, in accordance with this Law, being responsible for the content and timing of such information, even when the disclosure thereof is delegated to third parties except for intentional misconduct or gross negligence of said third parties

VI. Fulfill the provisions corresponding to the acquisition transactions and placing of shares of the own company.

VII. Execute, by himself/herself or by means of an empowered officer, within his/her competence or by instructions of the board of directors, the applicable corrective and responsibility actions.

VIII. Verify, in its case, that the shareholders contributions are made.

IX. Fulfill the legal and by-laws requirements with regard to the dividends paid to shareholders.

X. Assure that the company's accounting, registry, filling or information systems are maintained.

XI. Elaborate and furnish to the board of directors the report referred to in article 172 of the General Law of Business Organizations, except for the provision under paragraph b) of said article.

XII. Establish internal mechanisms and controls which permit to verify that the acts and transactions of the company and legal entities controlled by it, have been performed in accordance with applicable law, as well as to follow up on the results of said internal mechanisms and controls and to take the necessary measures in its case.

XIII. Exercise the responsibility actions referred to in this Law, against related persons or third parties that presumably have caused damage to the company or the legal entities controlled by it or those in which it has significant influence, except that by decision of the board of directors of the stock market corporation and with prior opinion of the committee in charge of the auditing functions, the caused damage is not relevant.

XIV. The other established hereunder or provided under the company's bylaws, in accordance with the functions that this Law assigns.

Article 45

The chief executive officer, in order to perform his/her functions and activities, as well as to duly fulfill the obligations established by this or other laws, will be assisted by the relevant officers assigned for such purpose and by any employee of the company or the legal entities controlled by it.

The chief executive officer, when performing, conducting and executing the company's business, must provide the necessary in order for the legal entities controlled by the company may fulfill the provisions referred to in article 31 herein.

The reports related to the financial statements and the information regarding financial, administrative, economic and legal matters referred to in article 104 of this Law, must be subscribed, at least, by the chief executive officer and other relevant officers who are in charge of the finance and legal areas or their equivalents in the competence of their corresponding areas, who will be responsible for the content of such information. Likewise, this information must be furnished to the board of directors for consideration and, in its case, approval, with the supporting documentation.

Article 46

The chief executive officer and the other relevant officers will be

subject to the provisions of article 29 herein, within their corresponding competences, so that they will be liable for damages deriving from their corresponding functions. Likewise, the exceptions and limitations of liability due to extenuating circumstances under articles 33 and 40 of this Law are applicable to them.

In addition, the chief executive officer and other relevant officers will be responsible for damages caused to the company or legal entities controlled by it, due to:

I. Lack of timely and diligent attention, for imputable causes to them, to the requests of information and documentation that within the scope of their competences are required from the board members.

II. Knowingly, furnishing or disclosing false or misleading information.

III. The occurrence of any conducts under articles 35, sections III and IV to VII and 36 of this Law, being applicable the provisions of articles 37 and 39 hereunder.

Section IV Shareholders meetings and rights

Article 47

The general ordinary shareholders meeting, in addition to the provisions of the General Law of Business Organizations, will meet to approve the transactions to be performed by the company or legal entities controlled by it, within a fiscal year, when representing twenty per cent or more of consolidated assets based on the amounts corresponding to the preceding quarter, independently of how they are executed, either simultaneously or successively, but that due to their characteristics could be considered as a single operation. In such meetings the shareholders with voting rights may vote, including those with a limited or restricted vote.

Article 48

The stock market corporations can state under their by-laws clauses to prevent the acquisition of shares which grant control of the company, by third parties or the shareholders, either directly or indirectly, provided that such clauses:

I. Are approved in an extraordinary general meeting of shareholders in which twenty percent or more of the share capital represented by the shareholders present did not vote against.

II. Repealed.

III. Repealed.

IV. Do not contravene the provisions of this Law regarding mandatory takeover bids, nor do they thwart the exercise of the acquirer economic rights. Any by-laws' clause provided under this article which fails to comply with the before mentioned requirements will be null by virtue of law.

The stock market companies may not establish the clauses referred

to in article 13, sections I to III hereunder, except for the provisions of article 54 under this Law.

Article 49

The shareholders of the stock market corporations, without prejudice to the provisions established in other laws or in their by-laws, will have the following rights:

I. To have at their disposal, within the company's offices, information and documents related to each one of the items on the agenda of the corresponding shareholders meeting, free of charge and at least fifteen calendar days in advance to the meeting.

II. To prevent that the general shareholders meeting handles matters in the agenda titled as general matters or their equivalent.

III. To be represented at the shareholders meetings by persons who evidence their capacity by means of proxy forms elaborated by the company and at their disposal by means of the intermediaries of the stock market, with at least fifteen calendar days in advance to holding each meeting.

The mentioned forms must have at least the following requirements:

a) Notoriously state the corporate name of the company, as well as the corresponding agenda.
b) Have blank spaces for the instructions of the person granting the power.

III. The secretary of the board will be bound to verify the observance of the provision under this section and will inform about it to the meeting, which will be stated under the corresponding minutes.

IV. To enter into agreement between them, under the terms established under article 16, section VI of this Law.

The execution of the agreements mentioned under section IV of this article and its characteristics, must be notified to the company within five business days following its execution in order to be disclosed to the investing public by means of the stock exchanges in which its shares or negotiable instruments representing them are quoted, under the terms and conditions established thereat, as well as to communicate its existence under the annual report referred to in article 104, section III, paragraph a) of this Law, remaining for disposal of the public, at the company's office. Said agreements will not be effective before the company and their violation will not affect the vote's validity at shareholders meetings, but they will be effective between the parties once disclosed to the investing public.

The members of the board of directors, the chief executive officer and the person appointed by the legal entity to render external auditing services, may assist the shareholders' meetings of the company.

Article 50

The shareholders owning voting shares, including limited or restricted, who individually or jointly have ten per cent of the capital stock of the company will have right to:

I. Appoint and revoke in a general shareholders meeting a member of the board of directors. Such appointment may be only revoked by the other shareholders when also revoking the appointment of the other board members, in which case the revoked individuals may not be appointed again during the twelve months following their revocation.

II. Require the president of the board of directors or the committees which carry out the functions of corporate practices and auditing referred to in this Law, at any time, to call a general shareholders meeting, without being applicable for such purpose the provisions of article 184 of the General Law of Business Organizations.

III. Require to be adjourned only once, by three calendar days and without need of a new call, the voting of any matter regarding which they consider they are not informed enough, without being applicable for such purposes the percentage mentioned under article 199 of the General Law of Business Organizations.

The shareholders of the capital stock's variable part of a stock market corporation will not have the right to withdraw stated under article 220 of the General Law of Business Organizations.

Article 51

The shareholders with voting rights, including limited or restricted, who individually or jointly have twenty per cent or more of the capital stock, may judicially oppose to the resolutions of the general shareholders meetings regarding which they have voting rights without being applicable the percentage stated under article 201 of the General Law of Business Organizations.

Article 52

The shareholders of the stock market corporations, when exercising their voting rights, must observe the provisions of article 196 of the General Law of Business Organizations. For such effect, it is assumed, unless otherwise proved, that a shareholder has in a determined operation an interest contrary to the company or legal entities controlled by it, when having control of the company it votes in favor or against the execution of transactions obtaining benefits which exclude other shareholders or said company or legal entities controlled by it.

The actions against the shareholders who violate the provision stated in the above paragraph will be exercised pursuant to the terms of article 38 hereunder.

Section V Special provisions applicable to the issuance of shares of stock market corporations

Article 53

The stock market corporations, including those of fixed capital, may issue unsubscribed shares to be maintained in treasury, to be later

subscribed by the public, provided that the same comply with the following:

I. That the general extraordinary shareholders meeting approve the maximum amount of the capital increase and the conditions under which the corresponding issuances must be performed.

II. That the subscription of the issued shares is performed by means of public offering, prior registration before the Registry, in both cases, complying with the provisions under this Law and the general provisions deriving from it.

III. That the amount of subscribed and paid capital is announced when giving publicity to the authorized capital represented by the issued and not subscribed shares.

The preference right to subscribe, referred to in article 132 of the General Law of Business Organizations, will not be applicable when dealing with increases of capital by means of public offerings.

Article 54

The stock market corporations must disclose, through the stock exchange in which they are listed, the characteristics of the composition of their share capital and the rights or restrictions by series or class of their shares.

Article 55

Repealed.

Article 55 Bis

The shareholders' meeting of publicly traded corporations and of publicly traded investment promoting corporations may delegate to the board of directors the power to increase the share capital and to determine the terms of the subscription of shares, including the exclusion of the right of preferential subscription in relation to the issues of shares that are the subject of delegation.

In the event that the shares issued pursuant to this article are offered exclusively to institutional and qualified investors or shareholders with preferential subscription rights, their placement will not require a placement prospectus, nor prior updating in the Registry. The company that carries out the offer will disclose to the public the terms of the capital increase and the subscription of issued shares, through the stock exchange in which its securities are listed.

The disclosure of the terms of the capital increase may be made on the same day that the offer is carried out.

Once the placement of the shares referred to in this article has been carried out, the issuer will request the updating of its registration in the Registry, within the time periods determined by the Commission through general provisions.

Article 56

The stock market corporations may acquire shares representing

their own capital stock or negotiable instruments which represent said shares, without being applicable the prohibition under the first paragraph of article 134 of the General Law of Business Organizations, provided that:

I. The acquisition is performed in a national stock exchange.

II. The acquisition and, in its case, the alienation in the stock exchange, is performed at market price, unless in the cases of public offerings or auctions authorized by the Commission.

III. The acquisition is performed with charge to the shareholders' equity, in which case they may hold them without need to perform a capital stock decrease, or else, with charge to the capital stock, in which case the shares will be converted into unsubscribed shares to be kept in treasury, without need of a shareholders meeting agreement. The fixed capital corporations may convert the shares they acquire in connection with this article into unsubscribed shares to be kept in treasury.

In any case, the amount subscribed and paid capital must be announced when giving publicity to the authorized capital represented by the issued but unsubscribed shares.

IV. The ordinary shareholders meeting expressly agree, for each fiscal year, the maximum amount of resources which can be assigned for the acquisition of own shares or negotiable instruments which represent said shares, with the only limitation that the total amount of resources which may be assign to said purpose, under no circumstance will exceed the total amount of the net profits of the company, including the retained ones.

V. The company is on time regarding payment of obligations deriving from debt instruments registered before the Registry.

VI. The maintenance requirements of the stock exchange in which its securities are listed are met.

The own shares or the negotiable instruments which represent them and which belong to the company or, in its case, the unsubscribed issued shares which are kept in the treasury, may be placed between the investing public without need of resolution from the shareholders meeting or agreement from the board of directors. For purposes of the provisions under this paragraph, article 132 of the General Law of Business Organizations is not applicable.

Meanwhile the shares remain in the property of the company, these may not be represented nor voted in shareholders meeting, nor may their corporate or economic rights be exercised.

The legal entities controlled by a stock market corporation may not acquire, directly or indirectly, shares representing the capital stock of the stock market corporation to which they are linked or the negotiable instruments which represent said shares. The acquisitions performed by means of investment companies are exempted of the before prohibition.

The provisions under this article will be also applicable to acquisitions or alienations carried out over derivative products or optional instruments which have as underlying shares representing the capital

stock of the company, which are subject to liquidation in kind, in which case the provisions under sections I and II hereunder will not be applicable to acquisitions or alienations.

The acquisitions and alienations referred to in this article, the reports that regarding said transactions should be filed before the shareholders meetings, the regulations of information disclosure and the form and terms in which these transactions are informed to the Commission, the stock exchange and the public, are subject to general provisions issued by the Commission.

Article 57

The persons related to a stock market corporation and the trustees of trusts executed with the purpose of establishing plans of options to buy shares for employees and pension funds, retirements, seniority bonus and any other bonus with similar purposes, created directly or indirectly, by any stock market corporation, while operating the shares or negotiable instruments which represent shares representative of the company's capital stock, must observe the provisions of articles 366 and 367 hereunder.

Chapter III Foreign companies and other issuers

Article 58

Foreign companies which request to register securities representing their capital stock before the Registry must prove to the Commission that they have minority rights equal or superior to the ones applicable to stock market corporations, as well as that their corporate bodies maintain an organization, operation, integration, functions, responsibilities and internal controls at least equivalent to the ones of stock market corporations.

Article 59

Foreign companies which request and, in its case, obtain the registration before the Registry of securities representing their capital stock or negotiable instruments representing said securities, will not be subject to the provisions under articles 23 to 57 herein.

Article 60

The federal government, autonomous organizations, states, municipalities and majority state-owned companies, either federal, state or municipal, in their capacity of issuers, when carrying out acts against the provisions hereunder, will respond for the damages that, by virtue of their irregular administrative activity, cause to the goods and rights of individuals, under the terms of applicable laws regarding liability of the State and, in its case, the common laws.

Title III Stock market certificates, optional instruments and other provisions

Chapter I Stock market certificates

Article 61

The domestic or foreign legal entities which pursuant to the legal provisions and regulations have legal authority to issue negotiable instruments, may issue stock market certificates, subject to the provisions herein.

Article 62

The stock market certificates are negotiable instruments which represent:

I. The individual participation of their holders in a joint credit, in charge of legal entities.

II. Some of the rights referred to in article 63 of this Law, in relation to property placed in trust.

Said certificates may be preferred or subordinated or even have different priority, in the right to collect from their holders and may be issued by unilateral declaration of intent.

Article 63

The stock market certificates may be issued by means of an irrevocable trust which patrimony placed in it may be formed, in its case, with the product of the resources obtained by virtue of its placing. The certificates issued by virtue of a trust must be named "trust stock market certificate *"certificados Bursátiles fiduciarios"*). Likewise, said instruments will incorporate and represent any of the following rights:

I. The right to a portion of the ownership right or the title of goods or rights placed in trust.

II. The right to a portion of the profits returns and, in its case, the salvage value of the profits or rights placed in trust with such purpose.

III. If applicable the right to a portion of the resulting from the sale of goods or rights which form the patrimony in trust.

IV. The right to receive payment of capital and, in its case, interests or any other amount.

Only the credit institutions, the brokerage firms and the operating companies of mutual funds may act as trustees in trusts which purpose is to issue stock market certificates. The foregoing with independence that said financial entities issue stock market certificates on their own behalf.

Article 63 Bis

The manager of the trust property that issues the stock market certificate trusts indexed, will have prohibited:

I. Having any kind of relation with the ones that generate or determine the indexes, financial assets or benchmarks, and

II. Maintain the custody of the trust property.

Article 63 Bis 1

The Stock Market Certificate Trust:

I. Whose funds from the issuance are allocated for investments in shares, equity participation or financing of Mexican companies, either directly or indirectly through various investment vehicles shall include the expression "in development" ("*en desarrollo*") in the denomintation of the Stock Market Certificate trust.

II. Whose funds from the issuance are allocated to investments in property development, marketing or administration in companies that perform such investments or in negotiable instruments or rights of any kind on such real properties or a combination of any of the above shall include the expression "real estate" ("i*nmobiliario*") in the denomination of the Stock Market Certificate trust.

III. Representing the rights of the assets, securities, properties, financial instruments, derivatives or other assets that seek to replicate the behavior of one or more indexes, financial assets or benchamrks, should include the expression "indexed" ("*indizado*").in the denomination of the Stock Market Certificate trust

The trust stock market certificate referred to in paragraphs I – III hereunder, that is registered in the National Registry of Securities, must be listed and negotiated throughout the trading sessions in the stock exchange. The Commission may determine through general regulations, the characteristics of the issuance of each one of said stock market certificates for the purpose of their registration in the Registry.

Article 64

Stock Market certificates must contain:

I. The legend of being stock market certificates and instruments for benefit of the bearer.

II. Place and date of issuance.

III. Corporate name of the issuer and its corporate purpose. The States and municipalities shall only state their denomination. Regarding trusts, additionally the purpose for which the same were executed must be stated, without it being necessary to include the corporate purpose of the trust institution.

IV. The amount of the issuance, number of certificates and, when so provided, the series that form it, the book value of each one of them as well as the specification of the purpose to be assigned to the resources obtained from the issuance of each one of their series.

V. The rights that will be granted to their holders. As well as the kind of interest or yield that, in its case, will be earned.

VI. In its case, the term for the payment of capital and interests or returns.

VII. If applicable, the conditions and forms of amortization.

VIII. Place of payment.

IX. Issuer's obligations to give, do or not do before the holders on behalf of the issuer, and in its case, from guarantor, co-signor, trustee and from the company that manages the trust property if there is one, and any another third parties

X. The causes and conditions for early termination, in its case.

XI. The specification of the guaranties granted for the issuance, in its case.

XII. The name and signature of the legal representative or attorney-in-fact of the legal entity, who must have authority for acts of administration and to subscribe negotiable instruments under the terms of applicable laws, as well as for acts of ownership when assets of the company are encumbered or affected, such as collateral or payment of said assets.

XIII. If applicable, the signature of the common representative of the holders, stating his/ her acceptance and statement of having evidenced the execution and existence of the goods subject of the guaranties of the issuance, as well as his/her obligations and capacity.

These requirements will not be necessary if the stock market certificates do not need to be registered in the Registry.

XIV. The authorities of the holders meetings, and if applicable, other committees.

The provisions set forth in paragraphs V and XIV above, in accordance with article 64 Bis 1, hereunder.

The issuance of the stock market certificates may be documented in different series, which will grant to their holders the rights provided under each one of them. In this case, the holders with the same series will have the same rights.

Regarding the issuance of the trust stock markets certificate of development, and it provides the possibility of making the capital calls this Law refers to, it must specify the terms and conditions that could be made including the rights and conditions of the holders.

In the event a trustee issues one or more series of the trust stock market certificates under one trust, they may establish that the properties or rights affected in the accounts or sub accounts that correspond to each series could only be allocated to the execution of the obligations that coincide with each series without being able to be used for the execution of the obligations under different series, even in the case of bankruptcy or bankruptcy of the issuing trust.

The stock market certificates may have coupons attached for the payment of interests and, in its case, for partial amortizations, which can be separately negotiated. The instruments may document one or more certificates and will remain deposited in any of the securities depository firms regulated under this Law.

Article 64 Bis

Trust agreements for the issuance of stock market certificated of development, real – estate or indexed shall provide for investments in properties and rights referred to in article 63 Bis 1 herein, if applicable, as well as to the terms and conditions under which such investments will be made.

For indexed trust stock market certificates, the trust agreement shall establish that its purpose is the issuance of securities, such as investment in the assets or the execution of the operations that allow for the replication of an index, financial assets or benchmarks, except that by means of the general regulations the Commission authorizes various investments.

When the indexed trust stock market certificate is explicitly seeking higher yields to those of the index, financial assets or benchmarks they shall anticipate the hiring of an operating company of mutual funds for the administration and management of the trust property.

Article 64 Bis 1

The documents of issuances relating to trust stock market certificates of development or real –estate if applicable, that are registered in the Registry should establish the following previsions and minimum rights:

I. The general holders meeting of the trust stock market certificates of development or real –estate shall meet when called by the trustee with at least 10 day advance notice, through the stock exchanges where trust stock market certificates are traded in the terms of the general regulations issued by the Commission.

   The authorities of the general holders meetings are the following:

   a) Approve changes in the investment regime of the trust property.
   b) Determine the removal of the company that manages the trust property.
   c) Approve the transactions to be performed when representing 20% or more of the trust property based on figures corresponding to the end (closing) of the immediate previous quarter, considering in its case the investment commitments of the capital calls regardless of whether those operations are executed simultaneously or successively over a period of twelve months counted from the execution of the first operation, but that could be considered as one.

II. The rights of the holders of the trust stock market certificates of development or real estate are the following:

   a) Oppose judicially to the resolutions of the general holders meetings, when they represent individually or in the ag-

gregate 20% or more of the number of trust stock market certificates that are circulating, and provided that the claimants have not attended the meeting or have given their vote against the resolutions and have filed the corresponding lawsuit within a period of fifteen days following the date when the resolutions were adopted, noting in the lawsuit the unfulfilled contractual provisions or the infringement of the legal provisions and the breaching concepts.

The execution of the disputed resolutions may be suspended by the judge provided that the claimants' grant sufficient guarantee to cover any damages that may be caused to the other holders for the failure to comply with those resolutions, in case the judgement declared the opposition to be groundless or unfounded.

The judgment delivered with respect to the opposition shall be legally valid to all the holders. All of the oppositions on contrary of one same resolution should decided in one sole judgment.

b) Execute responsibility actions against the company that manages the trust property for the breach of its obligations, when individually or in the aggregate they represent 15% or more of the number of trust stock market certificates of development or real – estate that are circulating.

The actions aimed at demanding responsibility in the terms of this article shall prescribe five years following the date that caused the corresponding property damage.

c) Designate a member of the technical committee for the tenancy, individually or in the aggregate of each 10% of the total number of trust stock market certificates of development or real – estate that are circulating. Such designation may be revoked by the rest of the holders when at the same time they revoke the appointment of all members of the technical committee or the equivalent committee; in this case the ones that were substituted may not be appointed during the twelve months following the revocation.

d) Request the common representative to call for a general holders meeting, which can be postponed only once for three days without the need of another call for a general holders meeting, the vote on any matter for which they consider are not sufficiently informed, when individually or in the aggregate represent 10% or more of the number of trust stock market certificates that are circulating.

e) Have the information and documents related to the information on the agenda at their disposal free of charge and with at least 10 days prior to that date of the general holders meeting, in the domicile that is indicated in the call.

f) Enter into agreements for the voting in the general holder meetings. In any case they shall notify the trustee, including their characteristics, within 5 days following the holding of the meeting, to be disclosed by the same trustee to the public investors through the stock exchange were they trade the trust stock market certificates concerned herein, in the terms of the general regulations issued by the Commission.

III. The trustee issuer should have a technical committee made up of at least 25% of independent members.

Independent member is any person who meets the provisions of article 24, second paragraph and 26 of this Law. They will consider the independence as to the trustee as well as for the company that manages the trust property or to whom those duties are assigned.

Likewise, the incorporation documents of the trustee issuer and the relevant documents of the issuance should foresee the authorities of the technical committee that this article refers to.

The members of the technical committee could enter into agreements to exercise the voting rights in the sessions. Such agreements and characteristics should be notified to the trustee, within 5 days following the holding of the general holders meeting; in order to be disclosed by the same trustee to the public investors through the stock exchange were they trade the trust stock market certificates of development or real – estate concerned herein.

The Commission will establish general regulations to prevent conflicts of interest when resolving the matters of the technical committee.

Article 64 Bis 2

The issuance of trust stock market certificate of development that is carried out under the capital calls that is registered in the Registry will be made by the unilateral declaration of intent. Issuers under this system will be able to exercise the option to require the holders, after the placement of a portion of the issuance, to make additional contributions to the trust property resources for the performance of trust purposes.

The system of the capital call will imply the modification in the number of the negotiable instruments and in the amount of the issuance and must comply with what is stipulated in the trust and in the bond indenture, which would be part of the corresponding negotiable instrument.

The trust and the bond indenture of the trust stock market certificates of development that are issued foreseeing the system of the capital call must provide at least the following:

I. The amounts until which the capital call could be made. It is prohibited to extend the total amount of the issuance when the issuer has already made a capital call out of the trust property, except with the consent of 65% of the corresponding holders.

II. The obligation for the holders of the trust stock market certificates of development to make a minimum startup contribution to the trust property at the moment of the placement, through the acquisition of the certificates. Such minimum start-up contribution could not be less than 20% of the total amount that the issuance can amount to.

III. The written consent that the issuer has the option to make the capital calls.

IV. The contractual penalties that the issuer applies in the event one or more of the holders of the trust stock market certificates of development do not comply with the time and form of the capital calls, the consecuences that will be generated on the other holders, as well as the actions that the issuer could execute in relation with the capital call in question. It should aslo specify the procedure to modify the contractual penalties listed herein.

V. Any other general rs established by the Commission.

The bond indenture of the stock certificates of development must be stated before the Commission.

Article 64 Bis 3

The supplier of the index, financial assets or benchmark of reference shall not have any relation with the provisions of article 2 paragraph XIX of this Law, in relation with the manager of the trust property.

Chapter II Optional Instruments

Article 65

The corporations or foreign legal entities similar to the corporations, which pursuant to legal provisions and regulations have legal personality to subscribe negotiable instruments, may issue optional instruments subject to the provisions established herein.

The brokerage firms and the credit institutions may issue optional instruments referred to an underlying asset, provided that they may operate them pursuant to their corporate purpose.

Article 66

The optional instruments are negotiable instruments which grant their holders rights to buy or sell, in exchange of the payment of additional paid-in-capital:

I. Regarding optional instruments to buy, the right to acquire from the issuer of the instrument an underlying asset by means of the payment of an exercise price previously determined during a term or a pre-established date.

II. Regarding optional instruments to sell, the right to sell to the is-

suer of the instrument an underlying asset in an exercise price previously determined during a term or a pre-established date.

The underlying assets may only be shares of corporations registered before the Registry or negotiable instruments which represent said shares; groups or baskets comprised of shares representing the capital stock or negotiable instruments representing shares of two or more of the mentioned companies; shares or instruments equivalent to shares quoted in the international quotation system, as well as national and international share price indexes of markets recognized by the Commission. The Bank of Mexico may authorize through general regulations other underlying assets related to the aforementioned, when the characteristics contribute to the orderly development of the securities market.

The legal entity which issues the instruments may be free of its obligation by means of paying in cash the differences resulting on its behalf between the exercise price and the value of reference, when so agreed.

Optional instruments must be issued with the names corresponding to additional paid-in-capital and exercise price, provided in national currency or in percentage, in connection with the index price of the underlying asset.

Optional instruments may be issued attached with other securities, in which event they may be separately negotiated as of the date determined in the bond indenture.

Article 67

Optional instruments must contain the following:

I. The legend of being optional instruments, either for purchasing or selling. These instruments may be for benefit of the bearer.

II. Place and date of issuance.

III. Corporate name of the instrument's issuer.

IV. Identification data of the underlying asset, as well as the corresponding coverage.

V. The term of enforceability of the optional instruments, as well as the period or dates established for the exercise of the right conferred under the instruments.

VI. The number of optional instruments, the additional paid-in-capital which shall pay the first acquirer to the person who issues them, as well as the number and kind of underlying assets covered by the optional instruments. Regarding underlying assets referred to an index, it must be provided in monetary terms or in investment units, identifying said underlying and the procedure to identify it.

VII. The exercise price, as well as the form and place for liquidation. Regarding optional instruments to be liquidated in cash, the basis to determine the amount of their liquidation must be provided.

VIII. Conditions of circulation before extraordinary events regarding the underlying assets and optional instruments, as well as the procedures for the exercise, liquidation and adjustments which, in its case, are applicable.

IX. Name and signature of the legal representative or attorney-in-fact of the person issuing the instruments, who must have general powers for acts of administration and to subscribe negotiable instruments under the terms of the applicable instruments.

X. Signature of the common representative of the instruments' holders, stating his/her acceptance of the charge, as well as his/her obligations and capacity.

Chapter III Other provisions

Article 68

Articles 81, 109 to 116, 130, 151 to 162, 164, 166 to 169, 174, second paragraph, 216, 217, sections VIII and X to XII, 218 to 221 and 223 to 227 of the General Law of Negotiable Instruments and Credit Transactions ("*Ley General de Títulos y Operaciones de Crédito*") are applicable to stock markets certificates and optional instruments. The publication of the notice of meeting may be carried out in any newspaper of nation-wide circulation.

The issuance of participation certificates registered before the Registry, the opinion, as well as the expert's report or appraisal referred to under article 228-H of the General Law of Negotiable Instruments and Credit Transactions, may be performed by credit institutions or securities rating institutions.

Article 69

The issuers of securities representing debt of their own, which are placed within national territory and must be registered in the Registry, must appoint a common holders' representative of the same. In the indenture or corresponding instrument the rights and obligations of the common representative must be provided, as well as the terms and conditions for removal and appointment of a new one. In case that the before mentioned is not provided thereat, the regime regarding the common representative of bondholders provided under the General Law on Negotiable Instruments and Credit Transactions will be applicable alternately. The Commission may issue general regulations protecting the holder's rights, to determine in what other cases the issuers of securities must designate the aforementioned common representative.

The provisions of the above paragraph will not apply to securities preventively registered pursuant to article 93 herein.

Title IV Registration and offer of securities

Chapter I Registration

Article 70

The Registry will be public, the Commission will be in charge of it

and the securities subject to public offering and trading in the stock market will be registered before it accordingly. Furthermore, they will register in the Registry the mutual funds fully organized in terms of Mutual Funds Law. (*Ley de Fondos de Inversión*)

Article 70 Bis

Legal entities may obtain and maintain the simplified registration of their securities in the Registry, provided that the following requirements are met:

I. It is carried out by simplified issuers that meet the characteristics determined by the Commission in the general provisions.

II. The amount of the issue of said securities and the accumulated amount per issuer or trustor, in the case of fiduciary securities backed by assets, does not exceed the maximum established in the general provisions issued for this purpose by the Commission.

III. They are offered exclusively to institutional or qualified investors.

In order for the Commission to carry out the simplified registration of securities, it will be sufficient for the simplified issuer, together with the corresponding stock exchange, to request it from the Commission, provided that they attach the prior favorable opinion of said stock exchange, reporting that the listing requirements provided for in its regulations have been met.

Likewise, with respect to said securities, the Commission will refrain from reviewing the documentation included in the aforementioned application.

Article 71

The Registry will contain the entries and registration annotations related to:

I. Securities registered in accordance with articles 85, 90 and 90 Bis of this Law.

II. The securities preventively registered pursuant to articles 91 and 94 herein.

III. The mutual funds, as well as the representative shares of their capital stock.

Likewise, the Registry will contain information related with overseas public offerings of securities issued within the Mexico or by Mexican legal entities, directly or by means of trusts or similar or equivalent figures. Said information will be for statistics purposes and will not constitute an entry or registration annotation.

Article 72

The Registry will be carried out by means of assigning electronic files by each issuer in which files will be registered the entries corre-

sponding to registration, suspension, cancellation and other acts of registry nature related to the issuers and the registered securities.

Article 73

The files on the Registry will be recorded in three different parts in accordance with the following:

I. General information on issuers or simplified issuers.
II. Registration of securities or securities subject to simplified registration.
III. Annotations.

Article 74

The part of the folio relating to general information on stations or simplified stations will contain:

I. The registration number of the station or simplified station.
II. The name of the station or simplified station.
III. The type or nature of the station or simplified station.
IV. The general information on the station or simplified station.

Article 75

The part of the file related to the registration of securities will contain:

I. The registration of each kind of security.

II. Type of securities and their main characteristics.

III. Information of the public deed or document of issuance, in its case.

IV. Name of intermediary underwriter, in its case.

V. Date and amount placed, stating the kind of offer.

VI. Information of the common representative, if applicable.

VII. Information of trustee and main characteristics of the trust agreement, in its case.

VIII. Information related to the administrative act containing the resolution regarding the registration and, in its case, its suspension or cancellation.

IX. The other registration entries related with the registration.

The modifications related to the number, class, series, amount, term or rate and other characteristics of the securities, as well as the public deed and the documents or minutes in which the same are documented, will update the registration.

Changes to the number, class, series, amount, term or rate and other characteristics of the securities will give rise to the updating of the registration. In the case of securities subject to simplified registration, it will be sufficient for the simplified issuer, together with the corresponding stock exchange, to request it from the Commission.

Changes to the number, class or series of the securities, resulting from capital calls, will not require prior updating of the registration

in the Registry, it being sufficient to notify the Commission, once the securities have been placed and within the period established in the general provisions issued by the Commission, for the purposes of the latter carrying out the corresponding update.

Article 76

The part of the file related to the annotations will contain any annotation in the Registry in connection with the corporate acts of the issuer which have no effect to update the registration.

In any case, the information of the public deed, document or minutes will be noted.

Article 77

The Registry will have an appendix by each file which will be part of it and will contain the placement prospectus, supplements or original information brochures and other documents which have served as base to carry out each registration of securities, their modifications, suspensions, cancellations and other acts of registration nature.

Article 78

The Commission may carry out rectifications to the registrations and annotations due to errors, either officially or as requested by the interested party.

The material errors must be corrected with a new registration entry, without eliminating the entry containing the error from the Registry.

Article 79

The registrations before the Registry will have declarative effects and they do not confirm the legal acts that are null in accordance with applicable laws, nor they imply certification regarding the viability regarding the securities registered in the same or regarding the solvency, liquidity or credit viability of the issuer.

By virtue of the foregoing, the content, accuracy, truthfulness and timeliness of the information and documentation correspond to the exclusive responsibility of the persons who subscribe to it, and does not imply any certification or opinion or recommendation of the Commission, the placing intermediary or the stock exchange in question, on the solvency, liquidity or credit quality of the issuer or the quality of the securities.

Article 80

The statistic information under the Registry related to overseas public offering of securities issued within Mexico or by Mexican legal entities, directly or by means of trusts or similar or equivalent figures, will contain the corporate name of the legal entity which issues the corresponding securities, the kind of securities and their main

characteristics, date and amount placed and the corporate name of the intermediary underwriter.

The corresponding information must be notified to the Commission by the issuer, in compliance with article 7, second paragraph herein.

Article 81

The obligations imposed by this Law on issuers and simplified issuers of securities registered in accordance with article 71, sections I, II and III shall be enforceable as long as the registration of the securities registered in the Registry has not been cancelled by the Commission, in accordance with the provisions of this legal order.

The registration before the Registry will have legal effects at the time that the securities are effectively placed. Regarding the registration of securities without public offering, they will have effects at the time of registration.

The securities registered before the Registry will be enforceable on their face, being the provision under article 1391 of the Commerce Code applicable, even in the cases in which the registration before the Registry has been suspended or cancelled.

Securities registered in the Registry will be deemed to be authorized as an object of investment by institutional investors when the financial laws applicable to them establish, for such purpose, the registration granted by the Commission. Without prejudice to the foregoing, institutional investors may only acquire such securities when their investment regime expressly provides for it.

Article 82

The certificates, documents and official communications regarding registrations, suspensions, cancellations and other acts with registry nature which are carried out based on the information contained in the equipments and electronic systems of the Registry, as well as the copies obtained from said equipments and systems, in which the official seal of the Commission and the autographic signature of the corresponding public officer are stamped, will have legal attested validity for all the corresponding legal effects.

Article 82 Bis

The registration of the mutual funds in the Registry will contain the registration entries and annotations pertaining to its constitution as well as the rest of the corporate practices.

The section of the Registry in which the mutual funds are registered will be held by assigning electronic folios for each mutual fund. These electronic folios will consist of the entries relating the constitution, mergers, spins offs and any other registration acts relative to the mutual funds that in terms of the Mutual Funds Law should be registered. Likewise, the Registry will preserve an appendix for each folio that forms an integral part thereof, and will incorporate the

minutes of the board of directors of the company operating the mutual funds to provide them with management services that have been used as the basis to conduct the registration in question.

In addition, such Registry will leaflet the prospectus information to the public investors including the modifications authorized by the Commission.

Article 82 Bis 1

The folios in which the mutual funds register will contain the following information:

I. Corporate name and that of the company operating that provides the mutual fund with management services.
II. The description of the mutual fund in relation with its investment regime as well as its formalities and quality.
III. Date of the incorporation.
IV. The domicile of the company operating the mutual fund that provides them with management services.
V. Any other corporate acts of the mutual fund.

Article 82 Bis 2

The registrations related to the mutual funds in the Registry will have declarative effects and will not validate the judicial acts that are void in accordance with the applicable Laws. They will also have effects as of the date of its registration.

Chapter II Securities' public offering

Article 83

The public offerings of securities may be:

I. Of subscription or alienation.
II. Of acquisition.

Public offerings of securities referred to in this Law shall require prior authorization from the Commission, except those made with securities subject to simplified registration.

Article 84

The transactions carried out by virtue of a public offering of securities quoted in any stock exchange must be agreed within the stock exchanges.

Section I Registration and offer to issue or to alienate

Article 85

The legal entities which seek to obtain the registration of their se-

curities before the Registry, must attach to the corresponding application the following documents:

I. Public deed containing the articles of incorporation as well as their amendments.

II. Placing prospectus and, in its case, information supplement, preliminaries to be replaced the day when the offer begins at the latest which, in all cases, will have the requirements referred to in article 86 herein. Said documents will be communicated and furnished to the general public, in accordance with general regulations issued by the Commission.

The issuers of securities representing a liability with a life spam equal or less than a year will not be bound to file the mentioned prospectus or supplement.

Additionally, they must file a document with key information for the investment, that must contain the requirements that the Commission determines through general regulations. The documents with key information for the investment will be part of the placing prospectus.

III. Audited annual financial statements of the legal entity, or else, by virtue of the nature of the legal entity, the information of its financial situation and operating results, carried out in any case in accordance with the accounting principles issued or acknowledged by the Commission.

The financial statements and the financial information referred to in this section must be attached to the opinion issued by the external auditor appointed by the legal entity which renders the professional auditing services.

IV. Legal opinion issued by an external independent attorney regarding the matters referred to in article 87, section II herein.

V. In case of debt instruments and debt trust salvage instruments, a rating regarding the risk of the issuance performed by at least one securities' rating institution. The debt trust salvage instruments are considered those which only grant rights for payment of principal and interest in charge of the patrimony conveyed in trust.

VI. Information of guarantor, regarding guaranteed instruments, as well as the guaranties, their creation and form of execution.

VII. Additional information regarding the above sections that the Commission determines by means of general provisions.

Regarding trust instruments, the information referred to in this article must be furnished with regards to the patrimony placed in trust. When the fulfillment of obligations in connection with the securities issued under the terms of the trust totally or partially depend of the settlor of the trust, the administrator of the patrimony placed in trust, the guarantor, or any other third party, these persons must file the information that the Commission determines by means of general provisions, in connection with the aspects referred to in this article.

The issuer and the intermediate underwriter of the offer shall not publicly offer, promote, disclose or in any form disclose, the intentions to subscribe or alienate the corresponding securities, until it is not filed before the Commission and put at disposal of the public for diffusion, the preliminary placement prospectus and, in its case, informa-

tion supplement, pursuant to the provisions of section II under this article.

The states; municipalities; decentralized regulatory agencies; either federal, state or municipal; government-controlled development banks; trustees of trusts from which negotiable instruments representing shares of the capital stock of two or more legal entities are created; foreign companies, and foreign entities or organizations other than the mentioned under article 93, section IV, herein, which apply for registration of their securities or are settlor in trusts which issue or contribute goods or rights to the same for the issuance and authorization of the public offerings, will file the same information referred to in this article or, in its case, the one that substitute it or is equivalent, pursuant to the general provisions issued by the Commission.

The foreign legal entities may request the registration of securities representing capital, debt in charge of or guaranteed by them, issued pursuant to national or foreign laws, before the Registry.

The provisions of the preceding paragraphs, as well as articles 87, 88 and 89 of this Law, shall not apply to securities subject to simplified registration and shall only be subject to the assumptions of the articles that expressly indicate their application to said securities, as well as the provisions issued for this purpose by the Commission.

Article 86

The issuers who pretend to obtain the registration of their Securities before the Registry, in order to carry out a public offering, must elaborate a placing prospectus or information supplement, preliminary and definitive, which must attach to the application of registration, including relevant information and including the rights and obligations of the offeror and of whom, in its case, accepts the offer.

The mentioned prospectus or supplement must include, in any case, the following information, pursuant to the general provisions issued by the Commission:

I. The characteristics of the offer and the securities subject to the same, the corresponding rights and obligations, the purpose of the resources and the distribution plan amongst the public. The definitive prospectus must additionally include the price or rate.

II. The financial, administrative, economic and legal situations of the issuer, as well as, in its case, the entrepreneurial group to which it belongs, as far as it is relevant to the same.

III. The description and business of the issuer including the situation that it maintains and, in its case, the entrepreneurial group to which it belongs, in the commercial, industrial or service sector in which they participate, when it is relevant, as well as the risk factors and contingencies to which it is exposed.

IV. The integration of the entrepreneurial group to which, in its case, it belongs.

V. The structure of the capital stock stating, in its case, the different series or classes of shares and the rights under said shares, as

well as the distribution of the shares amongst the shareholders, including the person or group of persons which have control or significant influence or exercise decision-making power on the holding of the entrepreneurial group.

VI. The compensations, of any nature, that the issuer grants to individuals who pursuant to this Law have the nature of related persons.

VII. The agreements or programs in benefit of the members of the board of directors, relevant officers or employees of the issuer, which allows them to participate in the capital stock, describing their rights and obligations, distribution mechanic and determination of prices.

VIII. The relevant transactions executed with related persons, at least for the last three fiscal years.

IX. The opinions and analysis of the administration regarding the operation results and financial situation of the issuer, including its outlook.

X. The report and opinion referred to in sections III and IV under article 85 herein.

XI. Regarding financial entities which pretend to obtain the registration of the shares representing their capital stock or negotiable instruments which represent them before the Registry, the description, in its case, of the equivalences, similarity and differences of the special regime applicable pursuant to the laws which regulate the financial system that regulates them and the secondary provisions created from said laws, in connection with the provisions for the stock market corporations, including the corporate bodies which will fulfill with the functions that this Law provides for the shareholders meetings, the board of directors, the committees which carries out functions regarding corporate practices and auditing, and the chief executive officer, of the mentioned stock market corporations. The foregoing in order to evidence the fulfillment of the provisions of article 22, section IV herein.

XII. The representations under oath and the signature, on behalf of the persons who must subscribe the prospectus and corresponding supplement, in which they expressly state within the scope of their liability that they have not knowledge of the relevant information that has been omitted, falsified or mislead.

The issuers who obtain the registration before the Registry of their securities must include in a notorious form in the placing prospectus, supplement or information brochure, a legend by means of which they expressly state that said registration does not imply certification of the viability of the securities, solvency or the issuer or about the accuracy or truthfulness of the information contained in the prospectus, nor it ratifies the acts that, in its case, were performed against the laws.

The Commission may request to broad, detail, modify or complement the information that, at its judgment, must be included or attached to the prospectus, supplement or information brochure, when it favors the quality, clarity and degree of disclosure of the information to the public. Likewise, the Commission, by means of general pro-

visions, attending the nature of the issuer and the issuance, may establish additional or equivalent requirements to the provided in this article, as well as exemptions to the same.

Article 86 Bis

Legal entities seeking simplified registration of their securities in the Registry must prepare, through the placement intermediary, in accordance with the terms of article 177 Ter of this Law, a placement prospectus or abbreviated, preliminary and definitive information supplement, in accordance with the general provisions issued for this purpose by the Commission. In the case of simplified registration without a public offering, a preliminary and definitive information prospectus must be prepared, so the provisions of article 90 of this Law will not apply to them.

In the placement prospectuses, information supplements or abbreviated information prospectuses, a legend must be included in a conspicuous manner, which expressly indicates that their simplified registration in the Registry does not imply certification of the quality of said securities or of their solvency, liquidity, credit quality or future performance by the Commission, as well as that the simplified issuer will not be supervised by the Commission by virtue of the aforementioned registration, even if it is subject to supervision for any other circumstance.

Article 87

The elaboration of the external audit and the legal opinion that the issuers attach to their application to obtain the corresponding registration before the Registry must be subject to the following:

I. The external audit opinion must be elaborated based on the rules and procedures for auditing issued or acknowledged by the Commission and, in all cases, it must be about the following:

a) The reasoning of the financial information.
b) The fondness to applicable accounting principles.
c) The financial statements elaborated by the issuer.

II. The legal opinion issued by an external attorney must be about, if applicable, the following aspects:

a) The accurate incorporation and legal existence of the issuer.
b) The fondness of the by-laws to the provisions under this Law and the provisions of general nature that are created from it, regarding corporations which seek to register shares representing their capital stock or negotiable instruments which represent them.
c) The legal validity of the agreements of competent organisms, in its case, which approve the issuance and public offerings of the securities subject to registration.
d) The legal validity of the securities and their enforceability against the issuer, as well as the capacity of the individuals who subscribe them, at the time of the issuance.

e) The duly execution and enforceability of the guaranties and capacity of the individuals who granted them, as well as the procedure established for their performance regarding guaranteed instruments.
f) The legal validity and enforceability of the trust agreement, as well as the legal acts for the transfer of ownership or title over goods or rights placed in trust,if applicable, regarding issuances by means of trusts.
g) Regarding instruments representing the capital stock of foreign corporations, about the legal aspects related to the equivalences of minorities' rights required for stock market corporations, as well as in connection with the organization, functioning, integration, functions and responsibilities of their corporate organisms.
h) Regarding financial entities, regarding the equivalences, similarity and differences of the special regime applicable pursuant to the laws which regulate the financial system that regulates them and the secondary provisions created from said laws, in connection with the corporate organisms which will fulfill the functions that this Law provides for the shareholders meetings, the board of directors, the committees which carries out functions regarding corporate practices and auditing, and the chief executive officer, of the mentioned stock market corporations.
i) Any other aspect complying with the general regulations issued by the Commission.

Furthermore, it shall also be accompanied by the opinion of an independent third party authorized to issue a report on tax matters pursuant to the laws of said regulation, to rule on the tax regime disclosed in the placement prospectus place or information supplement that proves to be applicable in the issuance of the trust stock market certificates of development, real estate or indexed.

Article 88

The placing prospectus or information supplement elaborated by virtue of a public offerings, which is used to divulge information regarding securities or issuers to the general public, must contain legends related to the truthfulness and integrity of the information, complying with the general provisions issued by the Commission and be subscribed by the following persons:

I. Two delegate members of the board regarding shares representing the capital stock of legal entities, who must exclusively subscribe the placing prospectus or definitive information supplement, validating the information contained in the preliminary; it must all be approved by the board of directors.

II. The issuers' chief executive officer and the financial and legal officers, or their equivalent.

Regarding public offerings, when subscribing the prospectus or

supplement they will perform it in accordance with the laws and administrative or regulatory provisions.

III. The legal representative, agent or attorney-in-fact of the intermediate underwriter.

IV. The legal representative, agent or attorney-in-fact of the legal entity which provides external auditing services and by the external auditor, who may be the same person in connection with the corresponding report and opinions resulting from the public offering.

V. The external independent attorney who renders the legal opinion resulting from the public offering.

VI. Any other person due to its relevance or participation in the issuance determined by the general regulations issued by the Commission referred to on this article.

Article 89

The issuers who request the registration of securities before the Registry, independently of the kind of security, must simultaneously promote the quotation of the same in any stock exchange and furnish the same information that they delivered to the Commission, so it is made available for the public, except for the cases referred to in article 93 herein.

The stock exchange will deliver to the applicant, prior to the conclusion of the application for quoting securities, an opinion about the fulfillment of the requirements provided under its internal regulations, including the disclosure of information contained under the corresponding placing prospectus, supplement or information brochure. The applicant must deliver to the Commission a copy of the before mentioned opinion.

Section II Registration without offer

Article 90

The issuers who pretend to obtain the registration of securities before the Registry, without a public offering, must request it to the Commission being subject to the provisions of the above Section, in the understanding that in substitution of the placing prospectus they must deliver an informative brochure, which will include the information stated under articles 86 and 89 of this Law, except for the provisions referred to the public offering and the requirement stated under article 88, section III herein.

The issuers, who pretend to obtain the registration by means of the procedure established herein, must fulfill with the quoting requirements of the corresponding stock exchange which result applicable.

Article 90 Bis

For the purposes of the simplified registration of securities, it will be necessary for the placement intermediary to review the information and documentation relating to the simplified issuer and that corresponding to the securities subject to registration.

The information and documentation subject to review referred to in the previous paragraph will be established in the manuals of the placement intermediaries, in accordance with the principle of self-regulation, observing the provisions issued for such purpose by the Commission.

Once said review has been carried out, the simplified issuer, together with the placement intermediary, will request from the corresponding stock exchange the listing and the favorable opinion for registration in the Registry.

The corresponding stock exchange will review that the information and documentation that makes up the request for simplified registration complies with the requirements established in its internal regulations and, if it so determines, will issue its favorable opinion so that, together with the issuer, it requests the simplified registration to the Commission.

It will be sufficient for the Commission to have the favorable opinion of the corresponding stock exchange, in order to grant the simplified registration of the security in the Registry, taking effect in accordance with the second paragraph of article 81 of this Law.

Once the simplified registration in the Registry has been granted by the Commission, the stock exchange in question will proceed to list the corresponding securities.

The Commission will establish in the general provisions that it issues regarding simplified registrations, differentiated regulations regarding the requirements that simplified issuers must meet at the time of obtaining registration in the Registry in relation to their equity, assets, liabilities or income, financing capacity, characteristics and transparency of their corporate governance and the offer of the securities subject to simplified registration and even, recognizing various market segments or niches, in the same way, it will promote the greatest possible participation of small and medium-sized companies, in accordance with the general provisions issued for such purposes by the Commission.

The general provisions applicable to simplified issuers and securities subject to simplified registration must be approved and, where appropriate, modified by the Board of Governors of the Commission.

The simplified registration referred to in this article shall have declaratory effects and may not be considered as a validation, confirmation, opinion, recommendation or endorsement of legal acts by the placing intermediary, the stock exchange in question or the Commission, in relation to the securities subject to registration or the simplified issuer in question, its solvency, liquidity or credit quality, in accordance with the second paragraph of article 79 of this Law.

Section III Preventive registration

Article 91

The corporations may request to the Commission the authorizations

of the preventive registration of shares representing their capital stock before the Registry, pursuant to the modality of private quoting, attaching to their application the documents that the Commission determines by means of general provisions.

The preventive registration pursuant to the modality of prior quoting will have the effect of allowing the company to perform the public offering of shares subject to said registration act, within a term to be determined by the Commission by means of general provisions, provided that the company is up-to-date with its obligations of delivering information and at the time that it pretends to perform the corresponding placing, comply with the provisions of Section I of this Chapter, as well as the other legal and administrative provisions applicable at the date of the placing.

The stock exchanges must provide the applicable measures for the establishment of the quotation referred to in this article.

Legal entities seeking simplified registration of their securities may not request preventive registration from the Commission, in any of its forms, and therefore the provisions of Articles 92 to 94 of this Law will not apply to them.

Article 92

The legal entities may request to the Commission the preventive registration of securities representing debt in the Registry, pursuant to the placement program in accordance with the general regulations determined by the Commission.

The registration referred to in the above paragraph must allow the issuance and placing of one or more series of securities, successively, during a term and for a maximum outstanding amount or to be fixed, provided that the issuer is up-to date in its obligations of delivering information and at the time that it pretends to perform the corresponding placing, comply with the provisions under Section I of this Chapter, as well as the other legal and administrative provisions applicable at the date of the placing.

In case that the issuer does not carry out the first placing of the securities under the corresponding program, within a term to be determined by the Commission by means of general provisions, as of the date in which the preventive registration is granted, the same will expire remaining without effects by virtue of law.

Once the corresponding placement has been performed, the Commission must proceed to carry out the registration before the Registry.

Article 93

The Commission will register before the Registry, prior application of the interested party, in a preventive manner and pursuant to the generic modality, securities of a same kind or class, either being part or not of a placing program. Said registration, will have the general effects and will allow the issuer to carry out issuances of the securities subject to said registration without limitation.

Said Commission may only grant the preventive registration under the generic modality, regarding securities issued by:

I. Mexico, including the ones guaranteed by it.

II. The Bank of Mexico.

III. The Institute for the Savings Protection *"Instituto para la Protección al Ahorro Bancario"*).

IV. The multilateral financial organizations of international nature in which Mexico is a party.

V. The credit institutions, regarding debt instruments representing a liability in its charge for terms equal or lower to a year.

VI. Investment funds in debt instruments, variable-income, capital and hedge funds, as well as investment companies specializing in retirement funds, in the case of shares representing their share capital.

The Ministry, by means of general provisions, may determine other securities as subject of a generic registration under the terms of this article.

The issuers who obtain the generic registration will not be subject to the provisions under articles 6, 85 to 89 and 104 to 107 herein. Likewise, said issuers will not be bound to quote the securities purpose of said registration in any stock market, unless, regarding investment companies of debt instruments, variable rate and specialized in retirement funds.

This article will be applicable to the securities referred to in sections I and II of this article, that are subject to public offering in the nations' territory or overseas, or else, subject of private offering in which case the article 90 herein will not be applicable.

Article 94

The autonomous organizations may request the registration of securities representing debt in charge of them, in a preventive form and pursuant to the generic modality, when in accordance with the laws that regulate them it is permitted to agree on public debt at their charge. The foregoing will also be applicable for the issuance of securities representing debt in charge of foreign countries and other corresponding levels of government.

The multilateral financial organizations of international nature of which Mexico is part of, may request the registration of securities representing a debt in their charge, in a preventive form and pursuant to the generic modality, provided that in accordance with the treaty or agreement which creates them may issue such securities. When issuing said kind of securities they may perform it in accordance with national or foreign laws.

Section IV Takeover bids

Article 95

Takeover bids may be voluntary or mandatory and are subject to

the provisions of this Law and to the general provisions issued by the Commission.

Public offers for the acquisition of securities subject to simplified registration shall be subject to the mechanisms that the simplified issuers themselves establish in their bylaws, and therefore the provisions of Articles 96 to 103 of this Law shall not apply to them.

Article 96

The persons, who seek to obtain authorization from the Commission to perform a voluntary or mandatory takeover bid, must attach to the corresponding application the following:

I. Information prospectus containing the information established by the Commission by means of general provisions. Said prospectus, may omit the information related to final price and amount, as well as the one that is possible to know only until the day prior to the beginning of the acquisition public offering.

II. In its case:

a) Public deed or certified copy which contains the general or special powers of attorney of the legal representative or attorney-in-fact of the offeror. Additionally, regarding legal entities, a statement from the board of directors' secretary or the equivalent is necessary, stating that the legal representative or attorney-in-fact has the necessary and sufficient capacity to perform the offer and that such has not been revoked, modified or limited to the date of the filing.

b) Copy of the shareholders meeting minutes certified by the board of directors' secretary or the resolution of the offeror's board of directors or from the equivalent corporate organisms, determining to carry out the takeover bid.

c) Copy of prior agreements with other acquirers, shareholders or board members from the issuer of the securities subject of the offer, related to said offer. In case that the agreements are verbal, the main characteristics of the same must be stated.

III. Other documentation and information that the Commission, in connection with the previous paragraphs, requires by means of general provisions.

Subsection A Voluntary takeover bids

Article 97

The voluntary takeover bids must comply with the following terms and conditions:

I. The minimum term of the offer shall be twenty calendar days.

II. The assignment of the offer shall be pro rata, regardless of the time of accepting it within the offers' term.

III. The offer and its characteristics may be modified at any time prior to its conclusion, provided that it implies a more favorable treatment to the recipients of the same or it is so established in the corresponding prospectus. In case that the modifications are relevant under the Commission's criteria, the offer's term shall be extended for a period which cannot be lower to five business days. In any case, the public must be informed of the modifications by the same means which were used to inform the offer. The persons who accepted the offer will have the right to decline their acceptance in case of relevant modifications, without any penalty.

The offeror and, in its case, the persons who form the group of persons or entrepreneurial group to which it belongs, must not, directly or indirectly, perform transactions with securities subject to the offer, out of the offer, since the moment in which the offer was agreed or decided to be performed and until its conclusion.

Subsection B Mandatory takeover bids

Article 98

The person or group of persons who pretend to acquire or reach by any means, directly or indirectly, property title of thirty per cent or more of the ordinary shares of a corporation, which shares are registered before the Registry, within or out of a stock exchange, through one or several transactions of any nature, simultaneous or consecutive, must be bound to perform the acquisition by means of a public offering in accordance with article 97 and the following characteristics:

I. The offer will be extensive to the different company's shares, including those with limited vote, restricted or without voting rights.

II. The offered compensation must be the same, independently of the class or kind of share. Without prejudice to the foregoing, the offeror must disclose, in its case, the assumed commitments or agreements with affirmative and negative covenants executed under the terms of article 100 hereunder, either with the company or with the holders of the securities to be acquired.

III. The offer will be performed:

a) For the percentage of the capital stock of the company which equals the portion of ordinary shares to be acquired in connection with the total amount of shares or for ten per cent of the capital stock, whichever is higher, provided that the offeror limits its final shareholdings as a result of the offer to a percentage which does not imply the company's control.

b) For one hundred per cent of the capital stock when the offeror seeks to obtain the company's control.

IV. The offer will state the maximum amount of shares of the same offer and, in its case, the minimum shares conditioned for acquisition. In case the corresponding offer results in the acquisition of one

hundred per cent of the capital stock of the company, the article 89, section I of the General Law of Business Organizations will apply.

The acquisitions of securities convertible into ordinary shares or negotiable instruments which represent such shares, as well as optional instruments or derivative products that can be liquidated in kind which have as underlying said shares or negotiable instruments, will be computed in order to determine the percentage referred to in the first paragraph of this article.

Article 99

The Commission may authorize the performance of takeover bids for lower percentages to the ones stated under section III, paragraph b) of article 98 hereunder, when it is so justified, taking into consideration the rights of all shareholders and specially from minorities and provided that the application for authorization is attached with the minutes by means of which the company's board of directors approval is evidenced, prior favorable opinion of the committee carrying out functions regarding corporate practices.

Article 100

The offeror of a mandatory takeover bid may not, on his behalf or through a third party, reimburse, deliver or furnish any compensation which implies a premium or surcharge to the offer's amount, in favor of a person or group of persons linked to the final recipient of the offer.

The before mentioned limitation does not include the payment of compensations deriving from the execution of agreements related to the offer which impose a person affirmative or negative covenants in benefit of the offeror or the company, provided that said agreements had been approved by the company's board of directors, hearing the opinion of the committee which carries out functions regarding corporate practices, as well as the same which were previously disclosed to the public.

The offeror must declare in the offer's prospectus, under oath, the inexistence of payments other that the compensation's amount which is the purpose of the offer.

Article 101

The corporation and legal entities controlled by it, as well as the board of directors and relevant officers of the corporation, must abstain themselves from carrying out acts or transactions which damage the company and which have the purpose of obstructing the offer's development, since the moment it becomes of their knowledge and up to the conclusion of its term, without prejudice to the applications of the provisions of clauses referred to in article 48 herein.

The corporation's board members, within ten business days after the offers beginning, must elaborate, hearing the committee which

carries out functions regarding corporate practices, and disclosing to the investing public by means of the stock exchange through which the company's securities are quoted and in the terms and conditions established by the stock exchange, their opinion regarding the offer's price and the conflict of interests that, in its case, have each member regarding the offer. The board of directors' opinion may be attached to another issued by an independent expert hired by the company.

Likewise, the company's board members and the chief executive officer must disclose to the public, together with the opinion mentioned under the paragraph above, the decision to be taken in regards with their own securities.

The Commission may require the offeror to extend the term of a takeover bid, or else, reduce the term within which the board members of the stock market corporation disclose to the investing public the opinions mentioned under the second and third paragraphs under this article, when it considers that said acts contribute for the investment decision-making.

Article 102

The person or group of persons who performed the public offering referred to in article 98 hereunder regarding a corporation which in turn is holder or owner of thirty per cent or more of the ordinary shares of another corporation which capital stock shares or negotiable instruments representing them are registered before the Registry, are not bound to carry out a mandatory takeover bid regarding the last corporation, provided that the same represents less than fifty per cent of consolidated assets of the corporation which was the purpose of the offer.

Without prejudice to the foregoing, the Commission may exempt the obligation to carry out a mandatory takeover bid, in the following cases:

I. Acquisitions at market price which result in an ordinary shares redistribution between members of a same group of persons, surviving or not in said group, provided that the acquirers had been shareholders of the company for more than five years and the group of persons which maintain control as a result of the acquisition has had during said term a relevant percentage of the capital stock.

II. Capital stock decreases in which the corresponding participation of the person or group of persons results in thirty per cent or more of the total amount of ordinary shares.

III. The company's viability as a running business is at risk and the ordinary shares are acquired as a consequence of increases of capital or corporate restructurings such as mergers, spin-offs, acquisition and sales of assets and capitalization of liabilities, provided that a positive opinion from the board of directors is obtained, prior to the agreement of the committee which carries out functions regarding corporate policies.

IV. Execution and adjudication, judicial or extrajudicial, of guaranties on shares, deriving from a debt which guaranty is granted in favor of financial entities, including when acting as trustee.

V. Acquisitions obtained by estate, legacy or gifts, from spouses, common-law spouses, as well as the persons with whom there is consanguinity, affinity or civil relationship up to a fourth degree.

VI. Transactions consisting in protecting the interests of the company's minority shareholders. The authorization referred to in this section will be granted by the Commission, prior resolution of its Governing Board.

Article 103

The person or group of persons that being bound to carry out a takeover bid do not do so or obtain control of the company against the provisions of article 98 hereunder, shall not exercise the corporate rights deriving from the shares or negotiable instruments acquired in violation of said provision, nor from those later obtained when being in a violation, being null all the agreements consequently taken. In case the acquisition has represented all the ordinary shares, the holders of the other series of shares shall have full voting rights until the corresponding offer is carried out.

Acquisitions violating the provisions of said article 98 will be affected of nullity, and the person or group of persons who carry them out will be liable before the other shareholders for the damages caused by virtue of the violation of obligations herein provided.

Chapter III Obligations of issuers

Article 104

The issuers with securities registered before the Registry are bound to file before the Commission and the stock exchange in which they quote their securities, relevant information for immediate communication to the general public by means of the stock exchange, through the reports below stated:

I. Continuous reports related to the corporate acts, resolutions adopted by the corporate organisms and notices which by virtue of the foregoing should be performed, in compliance with the corporate provisions or the applicable law.

II. Quarterly reports containing financial statements, as well as comments and analysis of the administration regarding operation results and financial situation of the issuer.

The reports referred to in this section must be subscribed under the terms established in article 88, section II, this Law herein.

III. Annual reports comprising:

a) The annual financial statements or their equivalent, in connection with the issuer's nature, attached to the report of external audit, as well as a report which fulfils the requirements established under article 86, sections II to IX, XI and XII, of this Law.

The reports and external auditor report referred to in this section, must fulfill, as corresponding, the require-

ments established under articles 87, section I, and 88, sections II and IV, herein.

When the report referred to in this section is furnished for approval of the shareholders meeting held because of the fiscal year closing, it may be used in substitution of the one referred to in article 172 of the General Law of Business Organizations, provided that said report contains the information referred to in section IV of article 28 herein.

b) Provisions of article 43 hereunder, in connection with the activities of the committees which carry out functions regarding corporate practices and auditing.

IV. Reports regarding corporate restructurings such as mergers, spin-offs, acquisitions or sales of assets approved by the shareholders meetings or the board of directors of the issuer.

The reports referred to in this section, must be subscribed in the terms established by article 88, section I, of this Law and, in its case, section IV of said legal provision, when an external auditor opinion is required.

V. Reports regarding relevant events, in compliance with the provisions under article 105 herein.

VI. Reports regarding policies and transactions referred under article 28, section III herein.

VI. Bis. Reports regarding the positions held by the issuers of derivative financial instruments, including, among others, elements that determine the commission, underlying, notional or reference values and payment conditions of such positions at the time of disclosure of the information, as well as the possible contingencies that the abovementioned position represents with respect to the financial situation of the issuer.

For purposes of this section, notional or reference value of the derivative financial instrument shall mean the number of specific units referenced under the agreement such as, the number of certificates or coins, weight or volume units, among others.

VII. The others which contain information and documentation determined by the Commission by means of general provisions.

The financial statements of the issuers must be elaborated in accordance with the accounting principles issued or acknowledged by the Commission. The corporations which shares representing their capital stock or negotiable instruments which represent them are registered before the Registry will be exempt of the requirement to publish their financial statements, pursuant to article 177 of the General Law of Business Organizations.

Regarding trust instruments, the information referred to in this article must be furnished in regards with the patrimony under trust. When the fulfillment of obligations, in connection with the securities issued under the trust, depends totally or partially on the settlor, the administrator of the patrimony under trust, the guarantor, or any other third party, must file the information that the Commission

determines by means of general provisions in connection with the matters referred to in this article.

The states, municipalities, decentralized regulatory agencies either federal, state or municipal; government-controlled development banks; trustees of trusts from which negotiable instruments representing shares of the capital stock of two or more legal entities are created; foreign companies, and foreign entities or organizations other than the mentioned under article 93, section IV, herein, will file the same information referred to in this article or, in its case, the one that substitute it or is equivalent, pursuant to the general provisions issued by the Commission.

The Commission will issue general provisions that establish the requirements, terms and conditions to be contained under the information mentioned under this article.

The stock exchanges shall regulate in their internal regulations the obligations, requirements, terms and conditions that the information referred to in this article must comply with with respect to simplified issuers, so that the provisions of articles 105 and 106 of this Law shall not apply to them.

The Commission shall establish in the applicable general provisions the minimum content that the regulations of the stock exchanges must establish in relation to the information that simplified issuers must disclose in compliance with the previous paragraph, as well as the cases in which investors may request, through the stock exchange in question, clarification of the information disclosed by the simplified issuer of whose securities they are holders.

Article 105

Issuers are bound to disclose by means of the stock exchange in which their securities are quoted, for immediate communication to the public and under the terms and conditions established by the stock exchange, the relevant events at the time they have knowledge of them and they may only postpone the disclosure when the following conditions are met:

I. The acts, facts or events are not accomplished.

II. There is no information on mass media.

III. There are not unexpected fluctuations on the price and volume of securities transactions, considering such movements as any change in the supply or demand of securities or in their price, which is not consistent with the historic behavior and that there is not explanation from the information available to the public.

When disclosing the relevant events under the terms established in the first paragraph of this article, the issuers must communicate to the public all the relevant information in connection with said events.

The issuers which seek to postpone the disclosure of a relevant event under the terms of this article, must adopt the necessary measures to guarantee that the corresponding information is exclusively known by the persons whose access is indispensable and

have a written control with the name of the persons who had access to the corresponding event, the information and documents which were known and the date and hour when said circumstances occurred. Said written control must be at the Commissions disposition and must be preserved throughout a period of 5 years followed by the publication of the event herein.

The Commission or the stock exchange on which the securities are listed shall have the power to require issuers to publish a relevant event when the information existing in the market, in the opinion of the Commission or the stock exchange in question, is insufficient, imprecise or confusing, or to rectify, ratify, deny or expand on any event that has been disclosed to the public by third parties.

Article 106

Issuers with securities registered before the registry are bound to immediately inform the investing public, as required to do so by the Commission or the stock exchange where their securities are listed subject to the terms and conditions provided under the internal regulations of the stock exchange, the causes which at their judgment, originated any of the following events:

I. Unexpected movements in the market related to price or volume of the securities' transactions.

II. Changes on the supply and demand of their securities or securities' price, which are not consistent with historical behavior and which cannot be explained with the information available for the public.

Likewise, as requested by the Commission or the stock exchange in which their securities are listed, they will have the authority to request from the issuers the publication of a relevant event that explains the causes that originated such event, as well as to furnish additional information when the existing information in the market according to the Commission or the stock exchange is insufficient, inaccurate or confusing, or else, to rectify, ratify, deny or increase any event which was communicated by third parties to the public and that due to its interpretation the same may affect or influence the quoting of the issuers' securities.

In the event the issuers ignore the causes that originated the events referred to in this article, they must provide a statement on such regards.

Chapter IV Suspension of securities' registration before the Registry

Article 107

The Commission may decree, as a preventive measure, to suspend the registration of securities from an issuer before the Registry, for a term of up to sixty business days, in order to avoid producing, or when disordered conditions or transactions already exist, which are not in accordance with the customs and practices of the market or in cases in which the issuers of the corresponding securities:

I. Violate the obligations imposed by articles 104 to 106 herein.

II. Do not follow policies regarding their activities and participation in the stock market, in accordance with the interests of their shareholders. The Commission may issue general provisions of which the minimum aspects to be observed by the issuers are contemplated in connection with the mentioned policies.

III. Carry out acts or transactions against this Law or the customs and stock market practices.

IV. Start the cancellation process referred to in article 108 herein.

In the case of simplified issuers, the powers of the Commission indicated in the previous paragraph will be exercised upon prior notice from the stock exchange on which its securities are listed, in the terms and periods determined by the Commission itself, through the general provisions issued for this purpose.

In order for the above suspension to continue for a longer term, the Commission shall grant to the corresponding issuer the right of due diligence.

The suspension of the registration before the Registry will have the effect of suspending the price quotation of the securities on the stock exchange and it will not discharge the issuer of complying with this Law.

In the case of simplified broadcasters, the extension indicated in the previous paragraph may be determined by the Commission, following a duly justified request from the corresponding stock exchange, exhausting the right of hearing of the simplified broadcaster in question.

Chapter V Cancellation of securities registration before the Registry

Article 108

The Commission may cancel the registration of securities before the Registry under any of the following cases, provided that based on the Commission's opinion the interests of the investing public have been safeguarded and additionally the requirements under this article are complied with:

I. Regarding corporations which shares representing capital stock or other negotiable instruments that represent them are registered before the Registry, when committing serious or repeated violations against this Law, or else, when their securities do not comply with the maintenance requirements of the stock exchange, in which cases the corresponding company shall be bound, prior request from the Commission, to carry out a public offering within a term of up to a hundred and eighty calendar days, beginning on the date that said request has effects, being applicable the provisions of articles 96, 97, 98, sections I and II, and 101, first paragraph, herein, as well as the following rules:

a) The offer must be addressed exclusively to the shareholders of the holders of negotiable instruments that represent the issuer's shares, which are not part, at the time of

the Commissions' request, of the group of persons which has control over the company.

b) The offer must be carried out at least at the highest price resulting from the quotation price and the book value price of the shares or negotiable instruments that represent said shares, in accordance with, in the second case, the last quarterly report filed before the Commission and the stock exchange before the offer's beginning, adjusted when said value had been modified in accordance with the criteria applicable to the determination of relevant information, in which case, the most recent financial information of the company must be considered and, with respect with the determination of the book value, a certification from an empowered officer of the issuer shall be filed.

The quotation value in the stock exchange shall be the average price determined by volume of the transactions performed during the last thirty days in which shares or negotiable instruments representing them were traded, prior to the offer's beginning, during a term of up to six months. In case that the number of days in which the shares or negotiable instruments representing them, during the mentioned term, is less than thirty, the days with effective trading will be considered. When there did not exist trading activities during said term, the book value will be considered.

In case that the company has more than one series of shares quoted, the above mentioned average shall be determined for each one of the series to be canceled, considering as quotation price for the public offering of all series the highest average.

c) The company bound to carry out the offer shall place in a trust for a period of at least six months, beginning on the date of cancellation, the necessary resources to acquire at the same offers price the securities from the investors who did not participate in it.

The Commission may exempt from the obligation to carry out the takeover bid referred to in the preceding paragraph, when the listing of the issuer's shares is suspended. The Commission shall establish in general provisions the requirements that issuers must meet for the case provided for in this paragraph.

The person or group of persons who has control over the company at the time the Commission performs the request mentioned under the first paragraph of this section, will be alternatively liable with the company of the fulfillment of the provision herein.

The Commission may order, at the Company's expense, to carry out an appraisal by an independent expert with the purpose of determining the offers price, when considered indispensable in order to protect the interests of the investing public.

The corporations, to which the registration before the Registry of the shares representing their capital stock or negotiable instruments representing said shares was cancelled, may not place securities again amongst the investing public for a period of one year as of the corresponding cancellation.

II. The issuers' request to do so, prior resolution of the general extraordinary shareholders meeting and the affirmative vote of the shareholders with or without voting right who represent ninety five per cent of the capital stock.

Once the mentioned shareholders resolution is obtained a takeover bid shall be carried out in accordance with the provisions stated in section I of this article.

In order to evaluate the viability of the securities' cancellation before the Registry, the Commission will consider the following circumstances:

a) Number of investors who attended the offer.
b) Percentage of capital owned by such investors.
c) Characteristics of the investors who did not attend the offer and, in case of being known, the circumstances for which they abstained of accepting said offer.

Likewise, the Commission may establish, by means of general provisions, exceptions to the obligation of carrying out the before mentioned public offering, when by virtue of the low number of securities placed amongst the investing public and their value justify it, but in any case it shall place the trust referred to in paragraph c) of section I of this article.

III. Regarding instruments other than those specified in paragraphs I and II hereunder, when duly evidenced to the Commission to be up-to-date on its payment obligations deriving from the instruments or, in its case, the resolution from the shareholders meeting determining the registry's cancellation. The resolutions must be adopted by the shareholders that represent at least ninety-five percent of the securities.

Likewise, the Commission may cancel the registration of the securities referred to in the previous paragraph, when the issuer is not up to date with its obligations arising from the securities and, additionally, has failed to provide the information referred to in article 104, sections II and III, of this Law, during a fiscal year.

The board of directors of corporations which carry out a public offering under the terms of this article shall communicate their opinion to the public regarding the offer price, in compliance of article 101 hereunder.

The corporations which suffered the cancellation of their registration before the Registry of shares representing their shares representing their capital stock or negotiable instruments representing said shares, shall no longer be stock market corporations, being subject by virtue of law to the General Law of Business Organizations, or else, to the provisions under this Law in case that they adopt the modality of investment promotion corporation.

The Commission may authorize the use of different criteria in order to determine the offers price, based in the financial situation and perspectives of the corresponding company, provided that the company has the approval of its board of directors, with the prior opinion of the committee that carries out functions of corporate practices, under which is contained the causes to justify a different price, supported by the report from an independent expert.

Article 108 Bis

The Commission shall cancel the simplified registration of securities from the Registry, when so requested by the simplified issuer or, where applicable, the corresponding stock exchange in the following cases:

I. At the request of the stock exchange, when so determined by the simplified issuer, following a resolution by its extraordinary general shareholders' meeting and when it is up to date with its securities obligations.

II. At the request of the stock exchange, when the simplified issuer has not complied with any of the obligations referred to in article 104 of this Law.

III. At the request of the simplified issuer, when extraordinary events occur that prevent the continuity of the business of the simplified issuer or the fulfillment of its obligations under its securities, in accordance with the regulations of the corresponding stock exchange, as well as with the provisions issued for this purpose by the Commission.

The stock exchanges, in accordance with the principle of self-regulation, will establish in their regulations the assumptions, requirements and mechanisms for the cancellation of the simplified registration of securities with or without an offer, and may add to those mentioned in this article, in order to safeguard the interests of investors.

Title V Securities acquisitions subject to disclosure

Article 109

The person or group of persons who acquire, directly or indirectly, in or out of a stock exchange, by means of one or more transactions of any nature, simultaneously or successively, ordinary shares of a corporation, registered before the Registry, which results in a shareholding equal or higher to ten percent and lower to thirty per cent of said shares, shall be bound to inform the public such circumstance, no later than the next business day after the occurrence of the circumstance, by means of the corresponding stock exchange and subject to the terms and conditions established thereat. Regarding group of persons, they shall disclose their individual shareholdings of each member of said group.

Likewise, the before mentioned person or group of persons, shall

inform their intention or not to acquire a significant influence of the corresponding company, under the terms of the preceding paragraph.

Article 110

The persons related to a corporation which shares representing its capital stock are registered before the Registry, that directly or indirectly increase or reduce in five per cent their participation on said capital stock, by means of one or more transactions, simultaneous or successive, shall be bound to inform the public of such circumstance, no later than the next business day following said circumstance, by means of the corresponding stock exchange and subject to the terms and conditions established by the exchange.

Likewise, they shall express their intention or not to acquire a significant influence or to increase it, under the terms of the paragraph above.

Article 111

The person or group or persons who directly or indirectly have ten per cent or more of the shares representing capital stock of corporations registered before the Registry, as well as the members of the board of directors and relevant officers of said companies, shall inform the Commission and, in the cases established under general provision, to the public, of the acquisitions or alienations carried out with said securities, within the terms stated by the Commission under the mentioned provisions.

Article 112

The acquisition of securities convertible into ordinary shares, negotiable instruments representing them, and optional instruments or derivative products subject to be liquidated in kind, which have as underlying said shares or negotiable instruments, will compute for the purpose of calculating the percentages referred to in articles 109 to 111 hereunder.

The transactions carried out over shares representing the capital stock of financial entities registered before the Registry, in addition to the provisions under this Law, shall be subject to the authorizations and notices stated under the corresponding laws of the financial system and secondary provisions applicable to the corresponding entity.

The Commission will establish, by means of general provisions, the form and terms in which the information stated under articles 109 to 111, shall be furnished.

Title VI Stock market intermediaries

Article 113

The following are intermediaries of the stock market:

I. Brokerage firms.

II. Credit institutions.

III. Operating companies of investment companies and administration companies of retirement funds.

IV. Shares distributing companies of investment companies and financial entities authorized to act under the nature of distributing companies.

Brokerage firms will be subject to this Law regarding their organization and operation.

Credit institutions, operating companies of investment companies, administrators of retirement funds, shares distributing companies of investment companies and the financial entities authorized to act as distributing companies, regarding their organization and operation, shall observe the provisions of the financial system laws which regulates them and other provisions that are created from them.

Chapter I Brokerage Firms

Section I Organization

Article 114

In order to organize and operate as a brokerage firm it is required to have the authorization of the Commission, subject to agreement from its Governing Board. Said authorization will be granted to corporations that are organized in accordance with the special provisions contained herein and, that which is not anticipated by this Law, by the provisions of the General Law on Negotiable Instruments and Credit Transactions. By its nature, these authorizations will not be transmissible and will not imply certification in regard to the solvency of the brokerage firm involved.

The granted authorizations including any modifications will be published in the Federation's Official Gazette at the cost of the interested party.

Article 115

The authorization applications to organize and operate as a brokerage firm shall be accompanied by the following documentation:

I. The draft of the corporate by-laws should include the following:

a) The corporate name shall contain the phrase "brokerage firm" *"casa de bolsa"*).

b) The characteristics of the technological infrastructure, as well as the security measures to preserve the integrity of the information.

c) The corporate address shall be located within national territory.

d) The corporation shall act as a brokerage firm performing the activities and services anticipated by this Law.

II. Shareholder information and relations. Indication of the amount of capital stock they will contribute and the origin of declared resources, including the probable board members, the chief executive officer and the corporation's officers.

III. Corporate organizational plan that explains the following aspects:

a) Activities and services provided.
b) Security Measures in order to preserve the integrity of information.
c) Provisions of geographic coverage stating the regions and branches in which they pretend to operate.
d) Corporation's Financial viability study.
e) The relative basis of the organization and internal control.
f) The basis for profit applications, wherein the corporation will not distribute dividends during the first three fiscal years, applying net profit to capital reserves.

IV. The conduct manual including policies for settlement of potential conflicts of interest in conducting their activities. Such manuals shall contain the regulations complying with the general regulations issued by the Commission.

V. Receipt of bank deposit in local currency or, given the case, of government securities and their market price, deposited in financial entities in favor of the Federal Treasury, for a quantity equal to ten percent of the minimum capital with which the corporation should operate.

The main and, given the case, the accessories of said deposit will be returned to the applicant in case of desisting; in the event that the application is denied, or when transactions are initiated in anticipation of the terms of this Law. In the event that the agreed authorization is revoked according to Article 153, paragraph I to III, of this Law, the deposit amount will be enforced.

VI. Additional documentation and information that the Commission, in accordance with the previous paragraphs, requires through general provisions, subject to agreement from its Governing Meeting.

The Corporate by-laws of brokerage firms, including any modifications, shall be approved by the Commission. Once the approval has been received, it shall be recorded in the Public Registry of Commerce. In any case, the referenced brokerage firms shall furnish the Commission, within ten days following to the holding of the corresponding meeting, a copy authorized by the secretary of the board of directors, of the minutes of the meeting, and, when necessary, public deed that consists of the same formalization. Dealing with increases in capital, the brokerage firms will not be required to have the above mentioned authorization, but in all cases they shall furnish to the Commission, with at least fifteen business days of anticipation of the date in which they will seek to perform the increase of capital, the information of the referenced shareholders in paragraph II of this article, term when the Commission may oppose the performance of the referred increase in the event that they consider that an impediment exists for those

whom are referred to as shareholders of the corresponding brokerage firm.

Article 116

The brokerage firm shall verify to the Commission, with at least thirty business days of anticipation of the initiation of its transactions or in the occasion of later incorporation to its corporate purpose of one or more activities or services referred to in Article 171 of the Law herein, the compliance of the following requirements:

I. That they maintain the minimum capital stock paid according to the activities to perform and services to provide.

II. That the board members, the chief executive officer, the officers that occupy seniority positions immediately inferior to his and, given the case, the attorneys-in-fact to perform transactions with the public and the exchange operators, comply with the established requirements in this Law and the general provisions issued by the Commission.

III. That they maintain the necessary infrastructure and internal controls to perform activities and provide services, pursuant to the applicable provisions, including in the event of contracting with a third party to obtain necessary services to develop the corporate purpose.

The Commission may deny the total or partial beginning of transactions when compliance with the above article cannot be verified.

Article 117

Capital stock of the brokerage firm will be formed by an ordinary portion and may be also formed by an additional part.

The ordinary capital stock of a brokerage firm will be composed of "O" series shares.

In its case, the additional capital stock will be represented by "L" series shares, which may be issued up to an amount equal to forty percent of the ordinary capital stock, previously authorized by the Commission.

The representative shares of the "O" and "L" series will be available to all, with exception of foreign entities that shall not in any case participate in the capital stock of the brokerage firm except in the following matters:

I. When they do so on temporal prudential measures such as subsidiary or financial support.

The brokerage firms listed in the provisions mentioned in this paragraph shall provide the Commission with the information and documentation that evidences compliance with the aforementioned, within fifteen days following the date on which they could find themselves in such situation. The Commission will have a period of ninety business days counting from the day they receive the corresponding information and documentation to resolve, with the previous consent of the

Governing Board, if the participation in question falls under the exception provided in this paragraph.

II. When the corresponding participation implies that is has the control of the brokerage firm in terms of article 2 paragraph III hereunder and is conducted through legal entities such as funds, governmental development entities, among others, with the previous discretionary authorization by the Commission in accordance with the Governing Board, whenever in their judgment such persons prove:
   a) They do not exercise actions of authority.
   b) The decision making entities operate independently from the foreign government in question.

III. When the corresponding participation is indirect and does not imply the control of the brokerage firm in terms of article 2 paragraph III hereunder; without prejudice of the notices or requests of authorization that must be made as provided by this Law.

"L" series shares will be of limited vote and will grant voting rights only in the matters related to change of corporate purpose; merger; spin-off; transformation; dissolution and liquidation; cancellation of the quoting on the stock exchange, and the inscription within the Registry of shares representing the capital stock or of negotiable instruments that represent them.

Moreover, the "L" series shares may confer rights to receive an accumulative and preferential dividend, as well as a dividend superior to the shares representing ordinary capital, provided that it is established within the corporate by-laws of the company. In no case will the dividends of this series be inferior to those of the "O" series.

The shares will be of equal value and within each series they will confer their holders the same rights.

The brokerage firms may issue shares that are not subscribed, that will be conserved in the treasury, which they will not compute in order to determine the limits of shareholdings that this Law refers to. The persons who subscribe said shares will receive the respective certificates against the total payment of the nominal value and the premiums that, in its case, fix the corporation.

Article 118

The shares representing capital stock of the brokerage firms shall be paid fully in money in the act of being subscribed. The aforesaid shares will be maintained in escrow in one of the deposit institutions for securities regulated in this Law, which in no case will be obligated to deliver them to the owners.

When the brokerage firms' capital stock exceeds the minimum, at least fifty percent shall be paid, provided that this percentage is not inferior to the established minimum. In regard to variable capital corporation, the minimum capital stock will be made up of shares without the right to be withdrawn. In no case may the variable portion of the capital stock be superior to the minimum.

The brokerage firms, upon announcement of their capital stock, shall provide at the same time information regarding the paid in capital.

Article 119

The acquisition, through one or various simultaneous or successive transactions, of "O" series shares of the capital stock of a brokerage firm, by a person or group of persons, will be subject to the following requirements:

I. To Inform the Commission of the acquisition of two percent of the ordinary stock, within three days after reaching the said percentage.

II. To Obtain prior authorization from the Commission, when seeking to acquire five percent or more of the ordinary capital stock, without it representing a major percentage of the indicated in the following section or the control of the brokerage firm. For this reason, they shall provide the Commission with the information regarding the relationship of the persons who seek to acquire the shares, indicating the capital to be subscribed, the form of payment including the origin of the resources with which it will be performed.

III. To Obtain, before the acquisition, the authorization from the Commission, subject to agreement from the Governing Board, when seeking to acquire thirty percent or more of the ordinary shares, or else, the control of the brokerage firm, case in which they shall attach the following hereunder:

a) The Relationship and information between the persons who seek to acquire shares, indicating the capital they will subscribe, the form in which they will pay and the origin of the resources with which they will perform said payment.
b) A general operating plan that contemplates the aspects mentioned in Article 115, section III, of this Law.
c) Other documentation and information that the Commission, in relation with the previous paragraph, requires through general provisions, subject to agreement from the Governing Board.

When the acquirer of control is a brokerage firm, it shall proceed to carry out the merger of both in accordance with the applicable provisions for mergers under this Law.

Article 120

The brokerage firms shall abstain, if applicable, from carrying out the registration in the registry as provided in articles 128 and 129 of the General Law of Business Organizations of those transfers of shares performed in contravention with the provisions in articles 117 and 119 of this Law, having to inform such circumstance to the Commission within the five business days following the moment in which they gain knowledge of it.

When the acquisitions and other legal acts through which directly or indirectly the ownership shares representing the capital stock of one of the brokerage firms is obtained contravene the provisions under articles 117 and 119 hereof, the proprietary and corporate rights inherent to the corresponding shares of the brokerage firm shall be suspended and therefore may not be exercised, until it is proven that the authorization or corresponding resolutions has been obtained or the requirements that this Law provides have been satisfied.

Article 121

The brokerage firms, upon calling the general shareholders meeting, shall list in the agenda all of the matters brought to the meeting, including those classified under general matters or their equivalents. Likewise, they shall dispose to the shareholders, with at least fifteen calendar days of anticipation of the holding of every meeting, the documentation and information regarding the matters that will be discussed at the meeting.

The persons attending meetings in representation of the shareholders may accredit their capacity by means of proxies elaborated by the company, which shall have the following requirements:

I. Notorious statement of the corporate name, as well as the respective agenda.

II. Contain blank space for the instructions that state the grantor to exercise the proxy.

The brokerage firm shall have the proxy forms available for the shareholder representatives, during the period referred to in the first paragraph of this article, so that the same may be promptly delivered to the corresponding representatives.

The board secretary will be obligated to make sure of the observance of the provisions in this article and to notify the meeting, keeping record of it in the corresponding minutes.

Section II Administration and surveillance

Article 122

The administration of the brokerage firm shall be entrusted to a board of directors and a chief executive officer, in their respective competences.

Article 123

The brokerage firms' board of directors shall be composed of a maximum of fifteen members, of whom, at least, twenty five percent shall be independent. For each member there will be a respective alternate member designated, in the understanding that the alternate members of the independent members shall also have the same nature.

Likewise, the board of directors shall have the support of the secretary, who will be appointed by the majority of the members of the

body or by the general shareholders meeting, and shall be subject to the obligations and responsibilities established by this Law.

Article 124

The appointment of the brokerage firms' board members shall fall upon persons who have technical ability, honor, satisfactory credit history, knowledge and experience in finance, law or administration.

The board members with a conflict of interest in any matter shall abstain themselves from participating and from being present during the deliberation and voting of said matter, without this situation affecting the required quorum for the holding of the boards' meeting. Likewise, those who are board members shall maintain absolute confidentiality in respect to all acts, facts, or events relative to the brokerage firm when the information is not public, as well as all the deliberations that take place by the board, without prejudice of the obligation that the brokerage firm has to maintain all information that is requested by competent authorities under this Law.

Board members may in no case be:

I. The officials and employees of the brokerage firm, with the exception of the chief executive officer and the corporate directors that occupy positions with the inferior immediate seniority, without these constituting more than a third part of the board of directors.

II. The spouses, common-law spouses and the persons who have consanguinity or civil relationship up to a fourth degree or affinity relationship with more than two board members.

III. The persons who have litigation pending against the brokerage firm involved.

IV. People convicted of proprietary crimes, as well as those unable to execute business or to hold employment in a position of public service or in the Mexican financial system.

V. The bankrupt who have not been rehabilitated.

VI. Public officers that perform functions of inspection and vigilance, or functions of regulation of the brokerage firms, unless the federal government participates in their capital stock.

VII. The persons who have filled the position of external auditor of the brokerage firm or of one of the businesses that pertains to the business group, during the twelve months immediately prior to the appointment date.

The board members of the brokerage firms that participate in the board of directors of other financial entities shall disclose said circumstances to the shareholders meeting in the act of their appointment.

The majority of the board members shall be residents of the national territory, in terms of the provisions of the Federal Fiscal Code.

The shareholders who represent ten percent of the ordinary capital of the brokerage firm will have the right to appoint and revoke an advisor by means of a general shareholders meeting, without appliance of the percentage to which article 144 of the General Law of Business Organizations makes reference to. Such appointment will may only be revoked by the remaining shareholders, when revoking

the appointment of the other advisor, case in which the substituted persons may not be named as such during the twelve months immediately following the date of resignation.

Article 125

The position of independent advisor of the brokerage firm shall fall upon persons outside of the board of the corresponding entity that meet the requirements and conditions determined by the Commission, subject to agreement from the Governing Board, by means of general provisions, that will state under which cases they will no longer be considered independent directors for the purpose of this article.

Independent directors may in no case be:

I. Employees or officers of the brokerage firm.

II. Shareholders that without being an employee or officer of the brokerage firm have decision making power in the corporation.

III. partners, employees or associates of companies that provide advice or consultation services to the brokerage firm or to its corporations that pertain to the same business group, whose perceptions, during the twelve months prior to the date of appointment, have represented ten percent or more of the total earnings of said corporations or associations.

IV. Clients, suppliers, debtors, creditors, partners, directors, or employees of the corporation that is an important client, supplier, debtor, or creditor of the brokerage firm.

A client or supplier is considered important when the services that they provide to the brokerage firm or the sales that they make to it, represent more than ten percent of the total client or supplier services or sales, respectively, during the twelve months prior to the date of appointment. Likewise, a debtor or creditor is considered important when the amount of credit is more than fifteen percent of the assets of the brokerage firm or its counterparties.

V. Employees of the foundation, association, or civil company that receive important donations from the brokerage firm.

Donations are considered important when they represent more than fifteen percent of the total donations received by the foundation, association, or civil company to which it relates, during the twelve months prior to the date of the appointment.

VI. The general directors or high level directors of a corporation in whose board of directors, the chief executive officer or high level directors participate in the brokerage firm.

VII. Spouses, common-law spouses and the persons who have consanguinity or civil relationship up to the first degree or affinity relationship, with one of the above mentioned persons in paragraphs III to VI, or until the fourth degree, with one of the mentioned persons in paragraphs I, II and VIII of this article.

VIII. Persons who have occupied a position of direction or administration in the brokerage firm or in the financial group in which, in its case, belongs to the entity, during the twelve months immediately before the date of appointment.

Article 126

The board of directors shall have an auditing committee.

The Commission, prior agreement from the Governing Board, will establish by means of general provisions the minimum functions that the auditing committee shall perform, as well as the relative rules for its integration, periodicity of its meetings and the opportunity and sufficiency of the information that should be considered.

Article 127

The board of directors of the brokerage firms shall meet, at least, four times during each fiscal year and when it is summoned by its president, by at least twenty-five percent of the directors, or by whomever from the statutory auditors of the brokerage firm.

The external auditor of the brokerage firm may assist the meetings of the board of directors in order to give information about matters related to the development and the results of the auditing, in which case he may be present only during the review of the corresponding matter, in the capacity of a guest with voice and without vote.

Article 128

Appointments by the chief executive officer of the brokerage firms and the officers that occupy positions of the immediate inferior hierarchy shall fall upon persons who have honor, satisfactory credit history and that meet the following requirements:

I. Being resident of the national territory in terms of the Federal Fiscal Code's provisions.

II. Having provided at least five years of their services in high level decisive positions which require knowledge and experience in finance and administration.

III. Not falling under the impediments to be a director mentioned in the paragraphs III to VII of article 124 of this Law.

Article 129

The brokerage firms shall verify that the persons who are appointed as directors, statutory auditors, chief executive officers and officers with inferior level to the Chief Financial Officer, comply prior to the initiation of its office and during the development of the same with the requirements mentioned in this Law. The Commission may establish, by means of the general provisions, the criteria of integration of files that evidence the compliance of the mentioned in this article, as well as the integration of the evidence documentation.

The persons mentioned in the previous paragraph shall manifest in writing:

I. That they are not under any of the positions referred to in paragraphs III to VII of article 124 of this Law referring to board members and paragraph III of article 128 in the case of the chief executive officer and officers that the first paragraph of this article refers to.

II. That they know the rights and obligations that they assume while accepting the corresponding position.

The brokerage firms shall inform the Commission of the appointments, resignations, and removals of directors, statutory auditors, chief executive officer, and officers with next inferior level to the Chief Financial Officer, within ten business days following after said case occurs, expressly manifesting, in case of appointments, that the persons comply with the applicable requirements.

The directors, officers and trustee delegates of the brokerage firm in order to accredit their status and authority, will exhibit a certification of their appointment issued by the secretary of the board of directors.

Article 130

The brokerage firms shall implement a remuneration system in accordance with the general regulations established by the Commission. The board of directors shall be responsible for the approval of the remuneration system, policies and procedures established; to define its scope and determine the personnel subject to the system as well as to monitor its proper functioning.

Such system shall consider all remunerations, whether granted in cash or through other mechanisms of compensation, and must at least comply with the following:

I. Delimitate the responsibilities of the corporate organs responsible for the implementation of remuneration schemes.

II. Establish policies and procedures to regulate ordinary and extraordinary remuneration of the persons subject to the remuneration system.

In any case, the policies and procedures that limit or suspend the extraordinary remuneration shall at the same time be established in the employment conditions of the brokerage firm.

III. Establish the periodic review of the policies and procedures of payment as for other necessary adjustments.

IV. Other aspects the Commission may establish by means of general provisions.

The Commission, with the opinion of the Bank of Mexico, may enforce the capitalization requirements in addition to the ones set forth in article 173 if this Law, when the brokerage firms contravene its obligations concerning their remuneration system.

Article 130 Bis

The Board of Directors shall constitute a remuneration committee whose purpose will be the implementation, maintenance and evaluation of the remuneration system referred to in article 130 herein, for which it will have the following roles:

I. Propose the remuneration policies and procedures, as well as any eventual modifications made to them for approval of the Board of Directors.

II. Inform the Board of Directors on the functioning of the remuneration system.

III. Other aspects the Commission may establish by means of general regulations.

The Commission will identify by means of general regulations, the way the remuneration committee shall be organized, meet and work.

Furthermore, the Commission in accordance with the criteria determined by general regulationss may exempt the brokerage firms from having a remuneration committee.

Article 131

The brokerage firms' body of surveillance will be integrated by at least a statutory auditor appointed by the shareholders of "O" series and by a statutory auditor appointed by the shareholders of "L" series when this type of share exists, as well as its respective alternate. The appointment of statutory auditors shall be done in special meetings for each series of shares. It will be applicable to the shareholders meetings that meet with this purpose, the general provisions for general ordinary shareholders meetings provided in the General Law of Business Organizations.

The statutory auditors of the brokerage firms shall comply with the established requirements in paragraph I of article 128 of this Law.

Section III Mergers and spin-offs

Article 132

The merger of two or more brokerage firms, or of any corporation with a brokerage firm, shall be authorized by the Commission, subject to agreement by the Governing Board. Said merger will be performed subject to the basis hereunder:

I. The corporations will furnish the projects agreed upon by the general shareholders meetings relative to the merger, agreement of merger, the merger plan of the respective corporations with indication of the stages that they shall carry out and the present financial statements of the corporations, as well as the projected figures for the merged corporation.

II. The merger agreement, as well as the respective minutes of the special meetings, shall be registered in the Public Registry of Commerce once they have received the authorization referred to in this article. The merger will be effective as of the date of registry.

III. The basis, procedures and mechanisms of protection shall be adopted in favor of the clients.

IV. The merger agreements adopted by the respective general extraordinary shareholders meeting will be published in the Federations' Official Gazette and in two newspapers of broad circulation in the city where the corporation is located, once it has been registered with the Public Registry of Commerce.

V. The corporation's creditors may judicially oppose to the merger within the ninety calendar days following the date of publication that the previous paragraph refers to, with the only objective to receive payment for their credit, without the opposition suspending the effects of it.

VI. The Commission, prior agreement of its Governing Board, may establish by means of general provisions other documentation and information that in connection with the above paragraphs should be furnished.

The merger of a brokerage firm that belongs to a financial group, as merging or merged entity, is subject to the provisions of article 10 of the Law to Regulate Financial Groups, the provisions of this article shall not apply.

Article 133

The authorizations in order to organize and operate as brokerage firms, that participate in the merger process as merging company, will be revoked by virtue of Law once the merger has legal effects.

Article 134

The spin-off of brokerage firms shall be authorized by the Commission, prior agreement of its Governing Board. Said spin-off will be carried out subject to the following basis:

I. The company that spins-off one of its units will file: the draft of the shareholders meeting minutes that contain the agreements from the general extraordinary shareholders meeting relative to the spin-off; draft of the by-laws' modifications of the company that spins off one of its units; draft of the by-laws of the company that is spun off and financial statements that evidence the financial situation of the company that spins off one of its units; as well as the projection of financial statements of the companies resulting from the spin-off.

II. The agreements of the general extraordinary shareholders meeting relative to the spin-off, the minutes of the meeting, as well as the articles of incorporation of the spun-off company, will be registered in the Public Registry of Commerce once the authorization referred in this article is obtained. The spinoff will have legal effects as of the date of its registration.

III. The basis, procedures and mechanisms of protection which will be adopted in favor of the clients.

IV. The spin-off agreements adopted by the general extraordinary shareholders meeting of the company that spins off one of its units will be published in the Federations' Official Gazette and in two newspapers of broad circulation in the city in which the company that spins-off one of its units is located, once it is registered in the Public Registry of Commerce.

V. The companies' creditors may judicially oppose to the spin-off, within the ninety calendar days following to the date of publication that is referred to in the above paragraph, with the only objective to obtain payment for their credits, the opposition does not suspend the effects of the spin-off.

VI. The Commission, prior agreement from its Governing Board, may establish through means of general provisions, the additional documentation and information that in connection to the previous paragraphs should be provided.

The spun-off company will not be authorized to be organized and operate as a brokerage firm.

By virtue of the spin-off, no active or passive transactions may be transferred from the brokerage firm to the spun-off company, unless authorized by the Commission.

Section IV Preventive and corrective measures, suspension of transactions, intervention, revocation of authorizations and dissolution and liquidation

Article 135

In the exercise of its functions of inspections and surveillance, the Commission, by means of general provisions approved by its Governing Board, will establish the preventive and corrective measures to be complied by the brokerage firms, taking as basis the global capital referred to in article 173 herein.

For purposes of the above paragraph, the Commission may establish different categories, depending on whether the brokerage firms maintain a global capital superior or inferior to the required in accordance to the applicable provisions.

The Commission shall define, by means of general provisions, the measures to be applicable in function of the fulfillment to the motioned global capital, as well as the criteria for its application.

The rules issued by the Commission shall establish the minimum corrective and special measures in addition to the ones the brokerage firms must have according to the category in which they have been classified.

The Commission must disclose the category in which the brokerage firms are classified in the terms and conditions that such Commission establishes by means of the general regulations.

For the issuance of the general regulations, the Commission must comply with article 136 of this Law.

The corrective measures should aim to prevent, and if applicable, amend the problems that the brokerage firms cause, arising from their operations and may affect their financial stability or solvency.

The Commission must notify the brokerage firms in writing of the corrective measures that they must observe in terms of this section, as to verify their performance in accordance with the provisions herein. In the notice mentioned herein the Commission must define the terms and deadlines in order to comply with the corrective measures referred to by this article and 136 as follows.

The provisions of this article and article 136 of this Law, will apply notwithstanding the provisions established by the Commission in accordance with this Law and other similar provisions.

The brokerage firm must consider the implementations of the corrective measures in their by-laws, obligating themselves to adopt any applicable acquirements.

The adoption of any corrective measure imposed by the Commission based on this article and article 136 herein, as well as provisions derived from them and if applicable, the penalties and revocation process that are caused by their breach, will be considered as public and corporate interest and the suspension measures will not apply, in order to protect the interests of the public investors.

The corrective measures imposed by the Commission based on this article and on article 136 of this Law, as well as the provisions derived from them will be considered as preventive measures.

Article 136

For purposes of article 135, the following shall be observed:

I. When the brokerage firms do not comply with the capitalization index or its established components in accordance with the provisions of article 173 of this Law and any other arising provisions, the Commission shall order the application of the corrective measures mentioned as follows, that correspond to the category in which the brokerage firm in questions is to classified, in terms of the provisions referred to in the previous article:

a) Inform the Board of Directors its classification, as well as the causes that motivated them, for which they must present a comprehensive assessment detailed report indicating their financial status to bring compliance to the regulatory framework, including the wording of the main indicators that reflect the stability and solvency of the brokerage firm, as well as any other observations if applicable that the Commission has addressed.

In the event the brokerage firm in question is part of a financial group, it must inform its situation in writing to the chief executive officer and the chairman of the Board of Directors of the controlling company;

b) Within a seven day period, file a capital restoration plan with the Commission for its approval that has an increase in its capitalization index, which could contemplate a program to improve operational efficiency, rationalization expenditures, increased profitability, contributions to the capital stock and limits to the operations that the brokerage firm in question can perform in accordance with its corporate purpose or the risks arising from such operations. The capital restoration plan shall be approved by the Board of Directors of the brokerage firm in question before being submitted to the Commission.

The referred brokerage firm shall determine in its capital restoration plan, that under this subsection, they

must submit periodic goals, as well as the deadline within which they will comply with the capitalization referred to on other similar provisions.

The Commission through its Governing Board shall resolve on the capital restoration plan that has been filed in a maximum period of sixty days followed by the filing of said plan.

The brokerage firm where applicable in the provisions of this subsection shall comply with the capital restoration plan within the deadline established by the Commission, which in no case may exceed two hundred sixty days following the day the brokerage firm gets notified of the corresponding approval. To determine the deadline for compliance with the capital restoration plan, the Commission shall take into consideration the category where the brokerage firm is classified, its financial status and overall conditions that prevail in financial markets. The Commission, prior approval of its Governing Board, may exclusively extend the deadline for a maximum period of ninety days only once.

The Commission will monitor and verify the compliance with the capital restoration plan, notwithstanding the applicability of the corrective measures depending on the category where the brokerage firm in question is classified;

c) Suspend the payment to the shareholders of the dividends from the brokerage firm totally or partially, as well as any other mechanism or act that implies a transfer of property benefits. If the brokerage firm in question belongs to a financial group, the terms provided herein will also be applicable to the controlling company in question, as to the financial entities or companies that are part of such group.

The provisions of the preceding paragraph shall not apply regarding payment of the dividends made by financial entities or companies that are part of the same group, different from the brokerage firm in question, when said payment applies to the capitalization of the brokerage firm.

d) Suspend the reward programs of the shares representing the capital stock of the brokerage firm in question totally or partially, and in the event of belonging to a financial group, it will aslo apply to the controlling company of said group.

e) Defer or cancel the interest payments totally or partially and if applicable, defer or cancel, totally or partially the payment of the principal or convert into shares up to the amount necessary to cover capital shortfalls, beforehand and prorratedly, of subordinated debentures that are in

circulation according to the nature of such obligations. This corrective measure will apply to those subordinated debentures that have provided it for in their issuance certificate or issuance documents.

The brokerage firms that issue subordinated debentures as referred to in the prior paragraph, shall include in the corresponding bond indenture, issuance certificate in the informative prospectus, as well as in any other instrument that documents the issuance, the characteristics of the same and the possibility that the implementation of said measure may proceed when the corresponding clauses occur pursuant to the provisions of article 135 of this Law, without it being a breach of contract by the issuing brokerage firm.

f) Suspension of the compensations payment and extraordinary bonuses in addition to the regular salary of the Chief Financial Officer and of the officers that follow in two lower levels in the organizational chart, as well as not granting new compensations in the future for the Chief Financial Officer and officers, until the brokerage firm reaches the required capitalization established by the Commission in terms of article 173 of this Law. This provision shall be contained in agreements and other documentation that regulates the conditions of employment.

g) Abstain from agreeing to increases in the current amounts in loans granted to related parties, considered as related in terms of the general regulations applicable to the brokerage firm.

h) Other minimum corrective measures that, if applicable, are established in article 135 of this Law.

II. When a brokerage firm complies with the minimum capitalization index required and its components in accordance with article 173 of this Law, and the arising regulations, it will be classified in the category that includes such minimum. The Commission shall order the application of the following minimum corrective measures:

a) Inform the Board of Directors its classification, as well as the causes that motivated them, for which they must present a comprehensive assessment detailed report indicating their financial status to bring compliance to the regulatory framework, including the wording of the main indicators that reflect the stability and solvency of the brokerage firm, as well as any other observations if applicable that the Commission has addressed.

In the event the brokerage firm in question is part of a financial group, it must inform its situation in writing to the chief executive officer and the chairman of the Board of Directors of the controlling company;

b) Abstain to enter into agreements whose implementation causes the capitalization index to fall below the level required by the applicable provisions.

c) Other minimum corrective measures that, if applicable, are established in article 135 of this Law.

III. Regardless of the minimum corrective measures applied in accordance with sections I and II of the herein article, the Commission may order to the corresponding brokerage firm, the application of the following additional special corrective measures:

a) Define concrete actions to not deteriorate their capitalization index.

b) Hire the services of external auditors or other third parties specialized in carrying out special audits on specific issues.

c) Abstain from agreeing to increases in the salaries and payments of the officers and other general officials except for the agreed salary reviews respecting at all times the acquired labor rights.

The provisions of this paragraph will also apply to the payments due to legal entities different from the brokerage firm in question, when such legal entities make the payments to the employees or officers of the brokerage firm.

d) Replace officers, managers, statutory auditors or external auditors, whose new positions are named by the same brokerage firm. The foregoing without prejudice of the authority of the Commission referred to in article 393 of this Law to determine the removal or suspension of the members of the Board of Directors, chief executive officer, statutory auditors, managers, officers, trustee delegates and other officers that can bind the brokerage firm with their signature, or

e) Others that the Commission determines, based on the results of its surveillance, as to the healthy financial and banking practices.

For the application of the measures referred to in this section, the Commission may consider, among other elements, the category in which the brokerage firm has been classified, their overall financial situation, compliance with the regulatory framework and the capitalization index, as well as the principal indicators that reflect the stability and solvency, the quality of the accounting and financial information and the compliance in the reporting of such information.

IV. When the brokerage firms do not comply with the capital supplements established in accordance with the provisions of article 173 of this Law and in the arising provisions, the Com-

mission shall order the application of the following minimum corrective measures:

a) Suspend the payment to the shareholders of the dividends by the brokerage firm totally or partially, as well as any other mechanism or act that implies a transfer of property benefits. If the brokerage firm in question belongs to a financial group, the terms provided herein will also be applicable to the controlling company in question, as to the financial entities or companies that are part of such group.

b) Other minimum corrective measures that, if applicable, are established in article 135 of this Law.

V. When the brokerage firms maintain a capitalization index and its components above those required in accordance with the applicable provisions, and comply with the capital supplements referred to in article 173 of this Law, and the arising provisions, the preventive or corrective measures shall not apply.

Article 137

The Commission may order the partial suspension of the brokerage firms' activities that incur in the events referred to in this Law, as well as of those that request prior resolution from their general extraordinary shareholders meetings.

The partial suspension may be referred to the performance of one or more activities, as well as to transactions with certain types of securities or new transactions.

The Commission shall, in its case, order the brokerage firm to adopt the necessary measures to correct the causes that gave origin to the suspension and that were necessary to preserve the integrity of the market or protect the assets of the clients of the brokerage firm. The suspension will not imply that it affects the compliance of the transactions that have been celebrated prior to the commencement of notification of the order of the Commission, unless it refers to illegal transactions that presumes that the client or the brokerage firm acted fraudulently or in bad faith.

Article 138

The Commission may, prior due process, suspend or limit in a partial manner the activities of a brokerage firm, when it is located in any of the cases hereunder:

I. That it does not have the necessary infrastructure or internal controls in order to perform its activities and services, pursuant to the applicable provisions.

II. That it fails to comply with or does not fulfill any of the requirements for the initiation of transactions.

III. Performing different transactions from those authorized pursuant to its corporate purpose.

IV. Failing to fulfill the necessary requirements in order to perform specific transactions, established in the general provisions.

V. Performing transactions that imply a conflict of interest in prejudice of its clients or intervening in transactions prohibited by this Law or in the provisions that emanate from it.

VI. Repeatedly omitting to fulfill the requirements of the financial authorities by virtue of the exercise of its authority.

VII. Intervening in transactions with securities not registered in the Registry, except in the cases previously mentioned in this Law.

VIII. Performing transactions with securities outside of the exchange, in contravention to what is established in this Law.

IX. Declaration by the judicial authority in bankruptcy proceedings.

X. Determination that there are errors in the accounting records or that the accounting records do not appear duly and opportunely registered, hence not reflecting its actual financial situation.

The order of suspension that this article refers to is without prejudice to the sanctions that, given the case, result to be applicable in terms of the mentioned in this Law and other provisions.

Article 139

The provisions in articles 137 and 138 of this Law will be applied without prejudice to the powers that are attributed to the Commission in accordance with this Law and other applicable provisions.

Article 140

When by virtue of the supervision performed by the Commission, it detects transactions of a brokerage firm that are in violation of the laws that regulate them or the general provisions from which they are derived, the Commission may:

I. Dictate the necessary measures to reorganize the irregular transactions, stating a term in which it shall be carried out, as well as, in its case, exercise the actions that proceed in terms of the law.

II. To arrange that in accordance with article 138 herein, they suspend the execution of the irregular transactions or proceed to the liquidation of the same.

Article 141

The Commission may declare the management intervention of the brokerage firms, when in its judgment there may be any type or irregularities that affect its stability, solvency or liquidity and place in danger the interests of its clients or creditors.

To this effect, the president of the Commission may propose to the Governing Board the declaration of management intervention of the brokerage firm and the appointment of the individual that will be in charge of the management of the corresponding intermediary, with the capacity of receiver-manager as mentioned in the terms of this article.

The stock market intermediaries' union recognized by the Commission as self-regulatory bodies and that carry out certifications in the terms established in article 229, in the third to last paragraph of this Law, shall implement mechanisms so that persons interested in occupying the position of receiver-manager of a brokerage firm or act as member of the consulting board as referred to in article 146 of this Law, may register in a record that will be performed for such effect, if they comply with the certification of the above mentioned organizations.

In order to be certified or registered in the mentioned Registry, the persons interested in acting as receiver-manager shall file their written applications to one of the trade unions mentioned in the previous paragraph, with the documents that accredit the compliance with the established requirements in the article 128 of this Law, without being applicable the provision in paragraph VI of article 124 of the same law and comply with the requirements that will establish the organism to which it refers. The persons interested in registering in the Registry as members of the consulting board shall present, together with their application, the documentation that evidences that they meet the established requirements in article 124 of this Law and that they are not found among any of the cases of inadmissibility foreseen in the aforementioned article.

The Commission will designate the receiver-manager from the group of certified persons of one of the trade unions mentioned in this article. In case of declaring an intervention in which there are no stock market intermediaries' trade unions acknowledged by the Commission to act as self-regulatory bodies, or else, they do not have the mechanisms referred to in the third paragraph of this article, the Commission may designate a receiver-manager and, in its case, the members of the consulting board, by agreement of its Governing Board, provided that the appointed persons meet the requirements mentioned in this Law in order to perform said positions.

Article 142

The persons who obtain registry in the Registry referred to in article 141 of this Law, shall comply with probity and diligence in the functions derived from their appointment either as receiver-manager or members of the consulting board, in accordance with this Law and other applicable provisions, shall keep due confidentiality with regard to the information to which they have access in exercise of their functions.

Article 143

The official communication that contains the receiver-manager appointment and its revocation, shall be registered in the Public Registry of corresponding to the domicile of the intervened intermediate, without additional requirements that the respective official communication of the Commission wherein the above mentioned appoint-

ment consists of, the replacement of receiver-manager or his revocation when the Commission authorizes to lift the intervention.

In the event that because of just cause, the receiver-manager or a member of the consulting board resigns from their position, the Commission will have a term of up to thirty calendar days to designate the individual who will replace them. The corresponding replacement shall be observed as mentioned in article 141 herein.

Article 144

The receiver-manager will have all the authority that is required for the administration of the intervened company and full capacity for acts of ownership, of administration and of lawsuits and collections, with the powers that require special clause pursuant to law, in order to execute and issue negotiable instruments, in order to file criminal complaints and to desist from the before mentioned and to grant general or special power of attorney that is considered to be suitable, and to revoke those which were granted by the intervened brokerage firm and those which were conferred.

Article 145

The receiver-manager will exercise his authority without subordinating neither to the shareholders meeting nor to the board of directors. As of the moment that the management intervention begins, all the authority of the board of directors will be subordinated to the receiver-manager and to the powers of attorney of the persons who the receiver-manager determines. The shareholders meeting may continue to meet regularly to find out about the matters that they are responsible for and the same may be done by the board in order to be informed about the matters that the receiver-manager considers convenient for the functioning and for the transactions that the company performs, as well as to provide opinions regarding the matters that the receiver-manager submits for consideration. The receiver-manager may call shareholders meetings and board of directors meetings with the purposes that he considers necessary or convenient.

Article 146

In order to perform his functions, the receiver-manager may have the support of a consulting board, which will be composed of a minimum of three and a maximum of five persons, appointed by the Commission, within those that are found registered in the registry that is referred to in the third paragraph of article 141 of this Law.

The consulting board will meet, prior call of the receiver-manager, to discuss the matters that he desires to submit for the board's consideration. Each meeting will raise detailed minutes that contain the most relevant matters and the resolutions of the corresponding meeting.

The members of the consulting board may only excuse themselves

from assisting the meetings that have been called when there is just cause. In an equal manner, they may be abstained from knowing and making a pronouncement regarding the matters that are submitted to them, when a conflict of interests exists, in which case they shall bring this to the knowledge of the Commission.

Article 147

The receiver-manager shall keep the inventory of the assets and liabilities of the intervened brokerage firm and forward them to the Commission within thirty calendar days following the day he assumes possession of his position, together with a business plan which expresses the actions to be developed in order to exercise his function, as well as, in its case, to comply with that which is ordered by the Commission pursuant to the provisions in article 140 of this Law.

Article 148

The receiver-manager shall formulate a quarterly activity report, as well as a report regarding the integral situation of the brokerage firm, which should inform to the Commission and the general shareholders meeting about the content of said documents.

When having called a meeting that does not meet with the necessary quorum, the receiver-manager shall publish in two newspapers with the broadest circulation in national territory an announcement directed to the shareholders indicating that the referenced documents are available for their disposition, mentioning the place and time in which they may be consulted. Likewise, they shall send to the Commission a copy of the referenced report and informative report.

The receiver-manager shall exercise the applicable legal actions to determine the economic responsibilities that, in its case, exist and clarify the responsibilities that in terms of law and other provisions result applicable.

Article 149

The fees of the receiver-manager and of the assistant personnel that said receiver hires for fulfillment of their functions, as well as of those corresponding to the consulting board provided in article 146 of this Law, will be covered by the intervened brokerage firm. For these reasons, the Commission may establish by means of the general provisions the criteria by means of which the payment of said fees will result, considering the financial situation of the intermediate and having as a main principle the evolution of the remunerations in the stock market system of the country.

The Commission will provide services of assistance and legal defense to those receiver-managers that are designated by the Commission in terms of this Law; to the assistance personnel that said receivers hire; as well as the members of the consulting board mentioned in article 146 of this Law, regarding the acts that they perform in the exercise

of the functions that this Law entrusts on to them, when the brokerage firm in reference does not have sufficient liquid resources to face said assistance and legal defense.

The assistance and legal defense that is referred to in this article, will be charged to the resources that the Commission has for these reasons, in accordance with the general provisions approved by the Governing Board of the same Commission. For the purposes hereof, the Ministry, hearing the opinion of the Commission, will establish the necessary mechanisms to cover the costs that derive from the assistance and legal defense mentioned in this article.

Article 150

The Commission shall agree to the lifting of the intervention when the irregularities that have affected the stability or solvency of the intermediate have been corrected.

In the event that in a non-extendable term of nine months as of the declaration of the intervention, it has not been possible to correct the irregularities, the Commission, considering the result of the report formulated by the consulting board, will proceed pursuant to article 153 herein.

When the Commission agrees to lift the management intervention, it shall inform the head of the Public Registry of Commerce that has performed the annotation that refers to the first paragraph of article 143 of this Law, with the purpose to cancel the respective registration.

Article 151

The receiver-manager shall formulate a final report of his management that will include the actions taken during the intervention and the financial situation of the corresponding brokerage firm.

The mentioned report shall be furnished to the general shareholders meeting in terms of article 148 of this Law, and should furnish a copy of the same to the Commission.

The receiver-manager will continue to perform this position, until the appointment of the new manager, liquidator or receiver has been recorded with the Public Registry of Commerce and has begun its functions.

Article 152

Regarding intervened brokerage firms, the Commission will continue to exercise its supervision authority, conferred to it by this Law and other applicable provisions.

Article 153

The Commission, in accordance with the Governing Board and subject to the granting of due process, may revoke the authorization to operate as a brokerage firm, when the intermediate that it refers to:

I. Is not incorporated or does not file the information of its registration before the Public Registry of Commerce, within a term of six months as of the date of its authorization.

II. Has not paid the minimum capital stock at the time of its incorporation.

III. Does not initiate its transactions within a term of six months beginning as of its registration in the Public Registry of Commerce.

IV. Obtains the authorization to be incorporated and operate through false documentation, information, or documentation, provided that there are authentic elements that sustain said presumption.

V. Yields losses that reduce its capital to a level inferior to the minimum. The Commission may establish a term that is not less than fifteen business days in order to restore the necessary amount of capital to maintain the operation of the brokerage firm within the legal limits.

For the purpose of the above mentioned paragraph, the terms to carry out the calls for shareholders meetings will not be applicable, as mentioned in the General Law of Business Organizations.

VI. Provides, with the intent to deceive, false, imprecise or incomplete information to the financial authorities that as consequence do not reflect the true financial, administrative, economic and legal situation.

VII. Noncompliance with the preventive or corrective measures referred to in article 136 of this Law.

VIII. Repeats the situations or conducts that caused the partial suspension of his activities referred to in articles 137 and 138 of this Law.

IX. Repeated noncompliance with the provisions relative to the separation of cash and securities of its clients in respect to the assets of the brokerage firm.

X. Repeated noncompliance with the provisions applicable to accounting and operating.

XI. Repeated violation, due to a cause imputable to the intermediate, of compliance of obligations derived from the hired transactions.

XII. Commits serious or reiterated infringements to the applicable legal or administrative provisions.

XIII. Refrains from performing its corporate purpose during a term of six months.

XIV. Begins the process of dissolution and liquidation.

XV. Is declared bankrupted by the judicial authority.

Article 154

The Commission, by request of the brokerage firm and prior agreement from its Governing Board, may revoke the authorization to operate in such capacity, being that it complies with the following hereunder:

I. The shareholders meeting of the brokerage firm has agreed to the dissolution and liquidation and has approved the financial statements in which registered obligations on the corporation's behalf have

not been found, derived from the transactions reserved as intermediary.

II. The corporation has filed to the Commission the mechanisms and procedures in order to perform the delivery and transfer of the securities or cash of its clients, as well as the estimated dates for its application.

III. The corporation has filed to the Commission the financial statements, approved by the shareholders meeting, together with the opinion of an external auditor that includes the opinion of the auditor related to components, accounts or specific portions of the financial statements, where the status of the registrations are confirmed as referred to in the previous paragraph I.

Article 155

The Commission will publish, in the Federation's Official Gazette and in two newspapers of broad circulation in the country, the declaration of revocation and shall be registered in the Public Registry of Commerce that corresponds to the corporate domicile of the brokerage firm. The revocation will place the company in a dissolution and liquidation status without the need of agreement from the shareholders meeting.

Article 156

The dissolution and liquidation of the brokerage firms will be governed by the provisions in chapters X and XI of the General Law of Business Organizations, with the following exceptions:

I. Appointment of the liquidator will fall upon to the shareholders meeting, when the dissolution and liquidation has been voluntarily agreed upon by said body and subject to the proceedings mentioned in article 154 of this Law.

The brokerage firms shall inform the Ministry of the liquidator appointment, within five business days following his appointment.

The Ministry may oppose its veto against the appointment of the individual who will exercise the position of liquidator, when he considers that he does not have the sufficient technical ability, honor and satisfactory credit history for the fulfillment of its responsibilities, does not gather the established requirements or has committed serious or repeated infringements to the current law or the general provisions from which it is derived.

II. The appointment of the liquidator may fall upon credit institutions, on to brokerage firms, upon the body of Administrative Service and Alienation of Goods, or on to individual or legal entities that have the experience in the liquidation of financial entities.

When the appointment of the liquidator falls upon persons, it shall be observed that they meet the requirements mentioned in article 128, the first paragraph and paragraphs I and III, of this Law, without applying the provisions in paragraph VI of article 124 of the same law, these should also be recorded before the Registry of the Federal Specialists Institute on Bankruptcy Proceedings (*Instituto Federal de*

Especialistas de Concursos Mercantiles), or else have the certification of a trade union acknowledged as a self-regulatory body by the Commission.

Referring to legal entities in general, the persons designed to fulfill the activities related to this function, shall meet the requirements as referred to in the two previous paragraphs.

The Service of Administration and Alienation of Goods (*Servicio de Administracion y Enajenacion de Bienes*) may exercise the position of liquidator with its personnel or through those authorized as such. The authorization may be made in favor of credit institutions, brokerage firms or individuals that meet the requirements mentioned in this paragraph.

The institutions or persons who have an interest against the brokerage firm shall abstain from accepting the position of liquidator stating such circumstances.

III. The Ministry will carry out the designation of liquidator when the dissolution and liquidation of the corresponding brokerage firm is consequence of the revocation of its authorization pursuant to the above mentioned in article 153 of this Law.

The Ministry may designate as liquidator any person referred to in the previous paragraph, provided that they observe the requirements provided in the mentioned paragraph.

In case that because of just cause the liquidator appointed by the Ministry resigns to his position, he shall appoint, within fifteen calendar days following the resignation's effects, the individual that will replace him.

In the cases referred to in this article, the responsibility of the Ministry will be limited to the designation of the liquidator, so that the acts and results of the actions of the liquidator will be his exclusive responsibility.

IV. In the fulfillment of his function, the liquidator shall:

a) Elaborate a report regarding the integral situation of the brokerage firm. In the event that the report acknowledges that the brokerage firm is in the situation for bankruptcy proceedings, he shall request the declaration from the bankruptcy judge pursuant to the Bankruptcy Proceedings Law (*Ley de Concursos Mercantiles*), informing the Ministry of such.

b) Furnish to the Ministry for the approval of the proceedings to perform the delivery and transfer of securities or cash of its clients derived from transactions of the brokerage firm by third parties, as well as the estimated date of application.

c) Without prejudice to the provision in the previous clause b), to orchestrate and adopt a dated business plan which contains the necessary procedures and measurements so that the corporation's obligations derived from the transactions reserved for brokerage firms, are concluded or transferred to other intermediaries of the securities market; at the latest, within one year following to the date they have protested and accepted their appointment.

d) Charge what is due to the brokerage firm and pay what is owed. For purposes of the above, in the first term the liquidator shall separate and perform the delivery or transfer of the securities or cash of its clients derived from transactions of the brokerage firm by third parties, pursuant to what is mentioned in clause b) of this paragraph.

In the case of securities or cash of the brokerage firm's clients, derived from transactions by third parties are not sufficient to meet their obligations, in protection to the interests of the brokerage firm clients, the liquidator shall set aside the assets that provide the brokerage firm with preferential payment from transactions that comply with the agreement carried out by its clients, in compliance with its purpose, including the payment of transactions performed by the intermediate for third parties. The foregoing, always and when the referenced securities, cash or assets, are not affected in guaranty of other commitments or do not violate the rights of the third party creditors.

In case the referenced assets are not sufficient to cover the corporation's liabilities, the liquidator shall apply for bankruptcy.

e) Call a general shareholders meeting, at the end of his management, to present a complete report of the process of liquidation. Said report shall contain the final balance of the liquidation.

In the event that the liquidation is not concluded within the twelve months immediately following, beginning on the date the liquidator has accepted and protested his position, the liquidator shall call a shareholders meeting with the purpose of furnishing a report regarding the status of the liquidation mentioning the reasons why it has not been possible to be concluded. Said report shall contain the corporation's financial statements and shall be available at all times for the shareholders. Without prejudice to the stated in the following paragraph, the liquidator shall call a shareholders meeting in the terms previously described, during each year of the liquidation, in order to present the cited report.

When the liquidator has called the meeting, it does not meet with the necessary quorum, he shall publish in two newspapers of major circulation in the national territory, an announcement directed to the shareholders indicating that the reports are available, mentioning the place and time in which they may be consulted.

f) Promote, before the judicial authority, the approval of the final balance of the liquidation, in cases where it is not

possible to obtain the approval of the shareholders of said balance in terms of the General Law of Business Organizations, because such meeting, however it is called, did not meet the necessary quorum; or else, because the meeting objects said balance in a groundless manner according to the liquidator's opinion. The above said is without prejudice to the legal actions that correspond to the shareholders in terms of the laws.

g) Advise the competent judge that the physical and material impossibility to carry out the liquidation of the corporation exists, so that he may order the cancellation of their registration in the Public Registry of Commerce, that will give effect after one hundred and eighty calendar days beginning on the judge's orders.

The liquidator shall publish in two newspapers of major circulation in the national territory, an announcement directed to the shareholders and creditors regarding the request of the competent judge.

The interested parties may oppose before judicial authority this cancellation during a term of sixty calendar days following the announcement.

h) Exercise the legal actions that have been placed there to determine the economic responsibilities that, in its case, exist and define the responsibilities in terms of the law and other provisions that are applicable.

i) Abstain from buying for himself or for another, the goods property of the brokerage firm in liquidation, without express consent of the shareholders meeting.

For the liquidation proceedings of the brokerage firms, where the Service of Administration and Alienation of Goods serves as liquidator, the Federal Government may assign resources to such decentralized body of the Federal Public Administration, for the sole purpose of performing the expenses related to publications and other endeavors related to such procedures, when such expenses may not be paid by the assets of the corresponding brokerage firms concerned due to lack of liquidity, in which case, it shall be constituted as a creditor of the latter.

Article 157

The Commission will exercise the responsibilities of supervision only in regard to the compliance of the proceedings that are referenced to in clause b) of paragraph IV of article 156 of this Law. The above mentioned without prejudice to the conferred responsibilities in the current law regarding the felonies referred to under Chapter II of Title XIV this Law herein.

Article 158

The bankruptcy of the brokerage firms will be governed by the pro-

visions in the Bankruptcy Proceedings Law, with the following exceptions:

I. The Ministry shall request the declaration of the bankruptcy of a brokerage firm, when elements exist that may be revised about the assumptions of the bankruptcy declaration.

II. Once the bankruptcy is declared, the Ministry, in defense of the interests of the creditors, may request the proceeding begins in the stage of bankruptcy, or the anticipated stage of conciliation, in which case the judge will declare the bankruptcy.

III. The position of conciliator or trustee in bankruptcy will correspond to the individual that for this purpose is designated by the Ministry in a term not longer than ten business days. Said appointment may fall on credit institutions, on individual or legal entities that meet the requirements mentioned in paragraph II of article 156 of this Law, or in the Service of Administration and Alienation of Goods, who may exercise with their personnel or through agents designated for this purpose, who shall comply with the requirements referenced by paragraph II of article 156 of this Law.

IV. Once the bankruptcy is declared, he in charge of the administration of the brokerage firm shall furnish for the judge's approval the proceedings to complete the delivery or transfer of securities or cash of its clients, derived from transactions of the brokerage firm on behalf of third parties, as well as the dates of its application. The judge, prior to his approval, will hear the opinion of the Ministry.

V. The Commission will exercise the responsibilities of supervision only in regards to the compliance with the mentioned proceedings in the previous paragraph.

If the Commission detects any violation, it shall warn the judge.

For the liquidation proceedings of the brokerage firms, where the Service of Administration and Alienation of Goods serves as liquidator, the Federal Government may assign resources to such decentralized body of the Federal Public Administration, for the sole purpose of performing the expenses related to publications and other endeavors related to such procedures, when such expenses may not be paid by the assets of the corresponding brokerage firms concerned due to lack of liquidity, in which case, it shall be constituted as a creditor of the latter.

Section V Representation and subsidiary offices of foreign brokerage firms

Subsection A Representation Offices

Article 159

The Commission, prior agreement from the Governing Board, may authorize the establishment in national territory of foreign brokerage firm representation offices.

Said representation offices may not perform trading activities with

securities, either by their own or by third parties. The activities that the representation offices perform will be subject to the general provisions that the Ministry issues.

The Commission, prior agreement of the Governing Board, may declare the revocation of the corresponding authorizations when the referenced offices do not adjust to the provisions referred to in this article, without prejudicing the application of established sanctions of the current Law and other laws.

The representation offices will be subject to the inspection and surveillance of the Commission.

Subsection B Subsidiaries

Article 160

The subsidiaries, in order to organize and operate as such, will require the authorization granted by the Commission, prior agreement from the Governing Board. Due to their nature, these authorizations will not be transferable.

The authorizations that are granted to the subsidiaries, as well as their modifications, will be published in the Federation's Official Gazette at the cost of the interested party.

Article 161

The subsidiaries will be regulated by the provisions in the corresponding treaties and international agreements; in the current section; in the provisions contained in this Law applicable to the brokerage firms and in the general provisions of the subsidiaries to which effect the Ministry issues.

The Ministry will be responsible for the interpretation of administrative effects of the provisions regarding financial services that are included in the treaties or international agreements mentioned in the prior paragraph, as well as to provide for its observance.

Article 162

The financial authorities, in the scope of their respective competences, will guarantee the compliance of the commitments of national nature that in its case is assumed by Mexico, in the terms established in the applicable treaty or international agreement.

The subsidiaries may perform the same transactions as brokerage firms, unless the applicable treaty or international agreement establishes any type of restriction.

Article 163

The exterior financial institutions, in order to invest in the capital stock of a subsidiary, shall perform in the country where they are incorporated, directly or indirectly, in accordance with the applicable

legislation, the same type of transactions that the corresponding subsidiary is authorized to perform in Mexico pursuant to that which is mentioned in the current Law and the general provisions referred to under article 161 herein.

The subsidiaries in which capital a subsidiary holding company participates, are exempt of the provisions stated in the above paragraph, in accordance with the Law to Regulate Financial Groups and the mentioned provisions in the referenced paragraph.

Article 164

The application for authorization to organize and operate as a subsidiary, shall comply with the requirements established in the current Law and in the general provisions as referred to in article 161 of the same.

Article 165

The capital stock of the subsidiaries shall be made up of "F" series shares that will represent at least fifty-one percent of said capital. The remaining forty-nine percent of capital stock shall be made up indistinctly or jointly of "F" and "B" series shares.

The "F" series shares shall be acquired only by a subsidiary holding company or, directly or indirectly, by an exterior financial institution, except in the case referred to in the last paragraph of article 163 of this Law, referring to the shares representing capital of the subsidiaries.

The series "F" and "B" shares of the subsidiaries shall be regulated by the provisions in this Law for the series "O" shares of the brokerage firms. The exterior financial institutions or the subsidiary holding companies owners of the series "F" shares of a subsidiary will not be subject to the provisions under articles 119 and 120 of this Law, regarding their shareholdings series "B" shares.

For all matters related to foreign governments the provisions of article 120 of this Law shall apply.

Article 166

The series "F" shares representing capital stock of a subsidiary, shall exclusively be alienated with authorization from the Commission, prior agreement from the Governing Board.

Except in the case that the acquirer is a foreign financial institution, a subsidiary holding company or a subsidiary, in order to carry out the alienations shall modify the subsidiary's by-laws whose shares are the purpose of the operation. Subsidiaries shall comply with the provisions in this Chapter.

When the acquirer is a foreign financial institution, a subsidiary holding company or a subsidiary, shall observe the provisions in paragraph I and in the last paragraph of article 167 of this Law.

Article 167

The Commission, subject to agreement from the Governing Board,

shall authorize the foreign financial institutions, the subsidiary holding companies or the subsidiaries, the acquisition of shares representing capital stock of a brokerage firm, provided that the following requirements are fulfilled:

I. The foreign financial institution, the subsidiary holding company or the subsidiary, as the case may be, shall acquire shares that represent at least fifty-one percent of capital stock, case in which the provisions in article 119 of this Law will not be applicable.

II. The brokerage firms' by-laws whose shares are subject to alienation are modified, in order to comply with the provision in the current section. In the event that the acquirer is a subsidiary, the brokerage firm shall merge with it.

For all matters related to foreign governments the provisions of article 117 of this Law shall apply.

Article 168

The board of directors of the subsidiaries shall be made up of a maximum of fifteen board members, of which at least twenty-five percent shall be independent pursuant to article 125 of this Law. For each board member a respective alternate shall be appointed, in the understanding that the alternate board members of the independent board members shall have the same nature.

The appointment of the members of the board of directors shall be performed in a special meeting for each series of shares. The meetings held with this purpose, as well as those that have the purpose of designating statutory auditors for each series of shares, the provisions for the general ordinary shareholders meetings provided in the General Law of Business Organizations will be applicable.

The "F" series shareholder who represents at least fifty-one percent of the capital stock will appoint half plus one of the board members and for each ten percent of the shares of this series that exceed this percentage, he/she will have the right to appoint another board member. The "B" series shareholders will appoint the remaining board members. The appointment of a minority board member may only be revoked when all of the others from the same series are revoked, case in which they shall not be designated with such capacity during the twelve months immediately following the revocation.

The independent board members shall be appointed in a proportional way pursuant to the foregoing paragraphs.

In the case of subsidiaries in which at least ninety-nine percent of the securities representing the capital stock are property, directly or indirectly, of a foreign financial institution or a subsidiary holding company the number of board members shall be freely determined.

The majority of the board members and the chief executive officer of the subsidiaries shall reside in the national territory, in terms of the provisions of the Federal Fiscal Code.

Article 169

The subsidiaries' surveillance body will be made up of at least on

statutory auditor appointed by the "F" series shareholders and one statutory auditor named by the "B" series shareholders when these type of shares exist, as well as their respective alternates.

Article 170

The Commission, regarding the subsidiary, shall have all the capacity that is attributed by this Law regarding brokerage firms. When the supervising authorities of the country of origin of the foreign financial institution, owner of shares representing capital stock of a subsidiary or a subsidiary holding company, as the case may be, wish to perform subsidiary inspection visits, shall apply for it before the mentioned Commission, adjusting itself to the provisions in article 358 herein.

Chapter II Operation, activities and services of brokerage firm

Article 171

The brokerage firms may perform the activities and provide the following services, adjusting to the provisions in this Law and other general provisions that for such purpose the Commission issues:

I. Place securities through public offerings, including securities subject to simplified registration, as well as provide services in public acquisition offers. They may also carry out over-allotment and stabilization operations with the securities subject to placement through public offering.

II. Perform purchases, sales, repurchase and loaning of securities transactions, on its own behalf or on behalf of third parties, as well as international transactions and international arbitration.

III. Law as market makers regarding securities.

IV. Grant loans or credits for the acquisition of guaranteed securities.

V. Assume the capacity of creditor and debtor before central securities counterparties, as well as to assume joint and several obligations regarding transactions with securities performed by other securities market intermediaries, for the purpose of compensation and liquidation before said central counterparties, of those whom they are shareholders.

VI. Perform transactions with derivative financial instruments, on their own behalf or on behalf of third parties.

VII. Promoting or marketing securities. In the case of securities subject to simplified registration, the characteristics of the services for promoting or marketing them will be carried out in accordance with the general provisions issued for this purpose by the Commission.

VIII. Perform the necessary acts to obtain the recognition from markets and securities quotation in the international quotation system.

IX. Manage securities portfolios by taking investment decisions in the name of and on behalf of third parties.

X. Provide the services of financial or investment consultant in securities, analysis and issuance of investment recommendations.

XI. Receive deposits in administration, in custody or in guarantee on behalf of third parties, of securities and general commercial documents.

XII. Law as administrator and executor of security pledges.

XIII. Assume the capacity of common representative for securities holders.

XIV. Law as a trustee.

XV. Offer to other intermediaries the supplier of external services necessary to adequately operate the brokerage firm or said intermediaries.

XVI. Operate with currencies and metal coins.

XVII. Receive resources from their clients in concept of their transactions with securities or derivative financial instruments entrusted to them.

XVIII. Receive loans and credit from credit institutions or organizations which support the stock market, in order to perform their activities.

XIX. Issue subordinated debentures of obligatory conversion to instruments representative of their capital stock, in accordance with the provisions in article 64 of the Credit Institution Law, as well as the optional instruments and stock market certificates, for the performance of their activities.

XX. Invest its paid in capital and reserves of capital in accordance to this Law.

XXI. Law as liquidator of other brokerage firms.

XXII. Law as distributors of shares of investment companies.

XXIII. Perform transactions in foreign markets, on its own behalf or on behalf of third parties, in this last case, under trusts, agencies and commissions, and exclusively perform on behalf of clients that may participate in the international quotation system. The foregoing without prejudice of the trading services that they render regarding securities quoted in the international quotation system of the stock exchanges.

XXIV. Offer mediation, deposit, and administration services for shares representing capital stock of legal entities, not registered in the Registry, under no event may they participate on behalf of third parties in performing transactions.

XXV. The analogous, connected or complementary of the before mentioned, authorized by the Ministry, by means of the general provisions.

The provisions issued by the Commission pursuant to this article may not be referred to as those activities and services which regulation is conferred, by this or other laws, to the Ministry or the Bank of Mexico.

Section I Capital and diversification requirements

Article 172

The Commission, prior resolution of its Governing Board, will

determine by means of general provisions the amount of minimum capital stock of the brokerage firms in function of the activities that they perform and service they provide.

Article 173

The brokerage firms shall maintain a net capital that may be expressed by an index and it may not be inferior to the amount that results from adding up the capital requirements, in terms of the general regulations issued by the Commission, prior to resolution of their Government meeting. Such capital requirements shall be related to market risks, credit risks, operational risks and other risks, in which their operations may incur, and should not be less than the minimum set by the Commission under the general regulations referred to on the first paragraph of this article.

The net capital will be determined pursuant to the provisions established in the regulations and will consist of various parts, in which a basic capital shall be defined, which at the same time will feature two sections, in one of them being the fundamental capital. The basic capital and fundamental capital in terms of the market risks, credit risks, operational risks and other risks in which their operations may incur, shall not be lower than the minimum set by the Commission under the regulations referred to on the first paragraph of this article.

The capital requirements set by the Commission shall aim to safeguard the financial stability and solvency of the brokerage firms, as well as to protect the interests of the public investors.

The net capital will be composed by capital contributions, as well as retained utilities and capital reserves without prejudice that the Commission may allow the addition or deduction other asset concepts in said net capital subject to the terms and conditions set by the Commission in the referred general regulations.

When exercising its authority to issue the general regulations referred to in this article, the Commission should take into consideration the usage of the international stock market related to the adequate global capitalization of the brokerage firm, the time that it will determine the classification of the assets, contingent liabilities and other transactions, defining the treatment that corresponds to the different groups of assets and transactions resulting from the aforementioned classifications.

Regardless of the capitalization index referred to in this article, the brokerage firms must maintain capital supplements above the minimum required for such capitalization index, determined by general regulations set by the Commission. To determine such supplements, the Commission may take into consideration various factors such as the need for a margin of capital to operate above the minimum, the economic cycle and risks that the characteristics of each brokerage firm or its operations may represent for the stability of the financial system or the economy as a whole.

In case breaching the capital supplements that the previous paragraph refers to, the Commission may apply the corrective measures referred to in articles 135 and 136 of this Law.

In the regulations referred to on this article, the Commission shall establish the procedure to calculate the capitalization index. This calculation is made based on the acknowledgment made to the various components of the net capital in accordance with the general regulations referred to in this article, as well as based on the requirements stated on the first paragraph of this article and in the capital supplements applicable to the brokerage firms, as well as the information regarding each brokerage firm which may be disclosed to the public.

When the Commission, through its surveillance function, requests an adjustment to the accounting requirements as a corrective measure to the brokerage firms, related to its assets, liabilities and capital transactions that at the same time may result in modifications to their capitalization index or to the capital supplements, the Commission shall implement the necessary actions for the calculation of the indexes or supplements in accordance with the provisions of this article and in the applicable regulations, in which case it shall previously hear the arguments of the affected brokerage firm, and resolve within a term of three business days.

If the corrective measure referred to in the previous paragraph causes the brokerage firm to register a capitalization index, its components or capital supplements at levels below those required under the general regulations referred to in this article, such measure shall be agreed by the Governing Board of the Commission considering the elements provided by the brokerage firm in question.

The calculation of the capitalization index, its components or the capital supplements that in terms of this article result from the adjustments required by the Commission, will be the one used for all the legal purposes.

Article 173 Bis

The brokerage firms shall evaluate, at least once a year if the current capital is sufficient to cover possible losses arising from risks that such brokerage firms may incur in different scenarios, including those in which adverse economic conditions prevail in accordance with general regulations set by the Commission,

The results of the evaluation of the brokerage firms must be submitted within the terms, form and with the information determined by the general regulations set by the Commission.

Also, brokerage firms whose capital is not sufficient to cover the losses that the brokerage firms estimate in the evaluations referred to in this article, shall attach to an action plan to such results with the capital projections that in its case will enable them to cover the expected losses. Such plan shall adjust to the requirements that the Commission establishes for its filing in the general regulations previously mentioned.

Article 174

The Commission, prior resolution from the Government meeting, may determine by means of general provisions the maximum operation of the brokerage firms regarding the same person, entity or group of persons that in accordance with the same provisions should be considered for these purposes as one client.

Article 175

The general provisions referred to under article 174 of this Law, shall procure conditions of security for the transactions and adequate intermediate trading services, as well as to avoid the establishment of dependent relationships for the brokerage firms.

Section II Operation Rules

Article 176

The brokerage firms that seek to receive loans or credit in order to perform their activities; grant loans or credit for the acquisition of securities; perform repurchasing or loaning of securities; perform transactions with derivative financial instruments; operate with currency or coin metals or act as trustees pursuant to this Law, will be subject, for the performance of said activities, to the general provisions that for this purpose are issued by the Bank of Mexico.

The brokerage firms shall be prohibited to grant credit or loans with guaranty of:

I. Subordinated debentures in charge of credit institutions, brokerage firms, or holding companies of financial groups.

II. Rights over trusts, mandates or commissions that at the same time have as purpose the liabilities mentioned in the above paragraph.

III. Shares representing capital stock of credit institutions, brokerage firms or holding companies of financial groups, property of any person that maintains five percent or more of the capital stock of the corresponding credit institution, brokerage firm or holding company.

In regard to shares other than the ones mentioned in the above paragraph, representative of capital stock of credit institutions, brokerage firms, holding companies or any financial entity, the brokerage firms shall give notice to the Commission with thirty calendar days of anticipation.

Article 177

The brokerage firms that participate in the placing of securities or provide common representation services, shall have mechanisms and procedures for the purpose of control, confidentiality, and security of information generated as a result of their performance.

The brokerage firms that act as market makers will adjust to the operation terms and conditions, established in the markets in which they participate.

Article 177 Bis

The brokerage firms that participate in the placement of securities shall:

I. Verify that the offering memorandum, information brochure or information supplement, representative instruments of securities, and other documents that are part of the structure or the communication of the placement, comply with the applicable legal provisions, considering the details of the offer in question, including the obligations regarding the disclosure;

II. Act in compliance with the Law, the general regulations arising from it and the agreements executed with the issuers in virtue of the provided services.

III. Elaborate an evaluation of the issuer that intends to execute the offer, using general recognized and accepted methods for such purposes.

Brokerage firms shall be liable for any damages caused by failure to comply with the provisions of this article, with the understanding that the veracity of the information and documentation used to structure the operation shall be the exclusive responsibility of the issuer and failure to comply shall give rise to the appropriate legal liabilities.

Article 177 Ter

Brokerage firms that participate in placements of securities subject to simplified registration shall be required to:

I. Review that the information and documentation referred to in Article 90 Bis complies with the provisions of the manuals that the brokerage firms themselves must issue, in accordance with the provisions issued by the Commission, as well as the provisions of the regulations of the stock exchange where the listing is intended.

II. Structure operations with securities subject to simplified registration, having to integrate, review and disseminate all the information necessary for their issuance, as well as for their listing before the corresponding national stock exchange, in accordance with the general provisions issued for this purpose by the Commission and those incorporated in the corresponding manual.

III. Comply with the provisions of sections I, II and III of Article 177 Bis of this Law.

IV. The placement intermediary shall be obliged to inform institutional or qualified investors of the risks inherent to the securities subject to simplified registration, in accordance with the provisions issued for this purpose by the Commission.

Brokerage firms shall be liable for any damages and losses caused by failure to comply with the provisions of this article, with the understanding that the veracity of the information and documentation used for the structure of the operation shall be the exclusive

responsibility of the simplified issuer and its failure to comply shall give rise to the corresponding legal liabilities.

Article 178

The brokerage firms, upon placing shares for public offering, shall adjust to the maximum limits of the general regulations issued by the Commission which will consider the adequate distribution of securities among the investing public as to the existence of possible conflicts of interest. Additionally, the brokerage firms will keep a record of all the applications and orders they receive for the subscription, sale or purchase of said securities, as well as the assignments in accordance with the regulations referred to in this article.

Article 179

The brokerage firms may not operate out of the stock exchanges the securities quoted within, except if they were authorized by the Commission, prior resolution of its Governing Board; in which case, it may determine the transactions that without being agreed at the stock exchange, may be considered as performed within it. The transactions with securities quoted in stock exchanges that foreign brokerage firms perform in overseas markets, are exempted from the requirement of authorization previously established.

The exercise of authority by the Commission referred to in the above paragraph will be subject to registration and the disclosure to the public of the corresponding transactions in the exchanges pursuant to the general provisions issued by the Commission, prior resolution of its Governing Board.

The Commission may establish in the mentioned provisions the securities that may be operated out of the exchange, without need of authorization, provided that the performed transactions are informed to the institution for deposit of securities in which the securities are deposited.

The above mentioned is not applicable to the transfer of securities to brokerage firms requested by clients, provided that the brokerage firms have not participated in the operation that originated them.

Article 180

The brokerage firms, who receive instructions from third parties regarding transactions with securities, shall have an automatic system for the reception, registry, direction of orders and assignment of transactions.

The brokerage firm automatic systems that, in addition to the mentioned service in the previous paragraph, perform the execution of the corresponding transactions, shall incorporate mechanisms in order to transmit said orders to the negotiation systems in which they operate.

The systems to which this article refers to shall have the minimum

requirements as established by the Commission by means of general provisions.

Article 181

The reception and transmission of orders and assignment of transactions of global accounts administered by brokerage firms, will adjust to the general provisions issued by the Commission.

To this effect, it shall be understood by global account those administered by brokerage firms, foreign financial entities, credit institutions or operating corporations of investment companies, in which the transactions of various clients are registered following their individual and anonymous instructions before a brokerage firm with which they execute a securities trading agreement.

Article 182

The brokerage firms shall maintain the securities that they acquire on their own behalf or on behalf of third parties deposited in a securities depository firm or in an institution indicated by the Commission regarding securities that by their nature may not be deposited in the mentioned institutions. Said deposit shall be performed directly or by means of other intermediaries of the stock market that in accordance with its authorized regime may maintain securities deposited in the mentioned institutions.

Article 183

The brokerage firms may only act as trustees in business linked with their own activities and may receive any class of goods, rights, cash or securities in reference to transactions or services that they are authorized to perform. Likewise, in these trusts, goods, rights or securities different to those previously stated, may be affected, exclusively in the cases that the Ministry authorizes, by means of general provisions.

Article 184

Prior to the performance of the trustee activities, the brokerage firms shall establish the necessary measures to prevent conflicts of interest that may originate from providing trustee services and that are provided to their clients, as well as to avoid practices that affect a healthy operation or that are detrimental to the interests of the persons who their services are rendered to.

Likewise, the brokerage firms, in their trustee capacity, shall be adjusted to the provisions in the General Law on Negotiable Instruments and Credit Transactions; develop their assignment, and exercise their authority by means of trustee delegates. The mentioned trustee delegates shall satisfy the requirements of technical capacity, honor and satisfactory credit history, in the terms established in article 193 of this Law.

Article 185

The brokerage firms that act as trustee institutions, will respond civilly for damages and prejudices caused by the lack of compliance with the conditions or terms mentioned in the trust.

In the act of execution of the trust or in its modifications, provision may be established of the formation of a technical committee, as well as of the rules for its operation and responsibilities of the trustee. When said brokerage firms work in accordance with the reports or resolutions of this committee, they will be free of any responsibility, provided that the execution or enforcements of such reports or resolutions fulfill the purposes set out in the trust agreement and comply with the applicable legal provisions.

The personnel that the mentioned brokerage firms use directly or exclusively for the performance of trusts, may not form part of the brokerage firm's personnel, in which case it will be considered at the service of the patrimony placed in trust. However, the rights that assist these individuals pursuant to the law, will be exercised against said brokerage firms, which, in its case, in order to comply with the resolutions that the competent authority dictates, will affect, in the measure that is necessary, the goods, rights, currency or securities of the trust.

In case of lack of expressly agreed proceedings by the parties in the execution agreement of the trusts that have as a purpose guaranteeing the fulfillment of obligations, the proceedings established in the Title Three Bis of the Code of Commerce, by request of the trustee, will apply.

Article 186

The brokerage firms that act as trustees are prohibited to:

I. Use the goods, rights, currency, or securities placed in trust, when they have the discretional authority to manage said assets, for the performance of transactions in virtue of which they result or may result as debtors or beneficiaries:

a) The members of the board of directors, the chief financial officer, or officers that have the level immediately below to that of the chief financial officer, or their equivalents, as well as the statutory auditors or external auditors of the brokerage firm.
b) The trustee delegates or the members of the technical committee of the respective trust.
c) The ascendants or descendants in the first grade, or the spouses or the common-law spouses of the mentioned individuals in the previous sections a) and b).
d) The companies in whose capital the individuals have a majority referenced to in the above sections a) and c) or the same brokerage firm.

II. Execute transactions on their own behalf, except those authorized by the Bank of Mexico by means of general provisions, when they do not imply a conflict of interest.

III. Respond to the trustees or beneficiaries of the breach of contract of debtors for the goods, rights or securities that they acquire, except if it is their fault according to the provision in the final part of article 391 of the General Law on Negotiable Instruments and Credit Transactions or guarantee the reception of yields through funds which investment is entrusted to them.

If at the end of the trust, the goods, rights or securities were not paid by the debtors, the trustee shall transfer them, together with the cash, goods, and other rights or securities that form the trust's patrimony, to the trustee or beneficiary, as the case may be, abstaining from covering the amount.

It will be inserted in the trust agreements, in a notorious form, the provisions in this section and a declaration from the trustee in the sense that he undeniably informed its content to the persons from whom he received the goods to be placed in trust.

IV. Law as trustee in trusts by means of which resources are received, directly or indirectly, from the public through any act that causes direct or contingent liabilities, except regarding trusts formed by the Federal Government by means of the Ministry and from those by means of which securities are issued that are registered in the Registry pursuant to this Law, including the issuance of certificates of ordinary participation, as exception to the provision of article 228-B of the General Law on Negotiable Instruments and Credit Transactions, as well as stock market certifications.

V. Law in trusts by means of which limitations or prohibitions contained in the financial laws are evaded or to carry out operations reserved to the other financial entities comprising the Mexican financial system.

VI. Execute trusts that administer sums of money that contribute periodically to consumer groups integrated by means of marketing systems, aimed for the acquisition of determined goods or services, including the provided under the Federal Consumer Protection Law.

VII. Administer rural property.

When regarding trust transactions executed by the Federal Government or that, for the effects of this article, it is declared of public interest through the Ministry, the term established in paragraph III of article 394 of the General Law on Negotiable Instruments and Credit Transactions will not be applicable.

Any agreement that contravenes the provisions in this article will be null by virtue of law.

Article 187

The brokerage firms that act as trustees that, when required to do so, fail to furnish the reports of their administration during a term of fifteen business days, or when they are declared by final sentence, liable for the losses or impairment suffered by the goods placed in trust or impairment for gross negligence, their removal as trustees will proceed.

The actions to request reports, in order to demand the liability of

the mentioned brokerage firms and in order to request removal, will correspond to the beneficiary or its legal representatives, and in absence of these parties to the district attorney, without prejudice that the trustee may reserve himself the right to exercise this action in the act of the executing the trust agreement or the amendments to the same.

In the case of resignation or removal, the provisions in article 385 of the General Law on Negotiable Instruments and Credit Transactions will apply.

Section III Sales practices

Article 188

The brokerage firms, in the handling of the accounts of their clients, shall act professionally and are prohibited to:

I. Perform transactions with securities where quotation is suspended.

II. Guarantee, directly or indirectly, yields; assume the obligation to return the main principal of the resources that they have been given for the performance of securities transactions, unless involving repurchase agreements or security loans; be responsible for the losses that their clients may suffer as a consequence of said transactions, or in any form assume the risk of the variations of the differential price or rate in favor of their clients.

III. Act against the interest of their clients.

IV. Provide recommendations on consulting services without complying with this Law or the general regulations that arise from it.

Article 189

The brokerage firms are responsible for the existence, authenticity, and integrity of the securities that are placed by means of public offerings, including those that are deposited in securities depository firms or in institutions stated by the Commission involving securities that due to their nature may not be deposited in the above.

Likewise, the brokerage firms are obligated to excuse themselves from fulfilling, without responsibility, the instructions of their clients that contravene this Law and other provisions derived from it, as well as the applicable rules in the negotiation system through which they perform transactions.

The brokerage firms, when providing consulting services, shall issue recommendations and execute transactions that are reasonable. To determine if the transactions and recommendations are reasonable, congruency shall exist between:

I. The profile of the client or account.

II. The financial product and its adaptation to the profile of the client or account.

III. The policy for the diversification of the investment portfolio

established by the brokerage firms, in terms of the general regulations issued by the Commission.

The transactions performed without observing the congruency referred to in this article may not arise from the advice of the brokerage firms and can only be carried out with the prior instruction of the client, and the mentioned entities shall keep such document as integral part of the corresponding client record. The brokerage firms shall be responsible for the damages and loses caused to the client by the breach of the provisions established in this article.

In no event shall it be understood that the advice in the terms of this article guarantees the outcome or success of investments and their yield.

The clients will respond before the brokerage firm for the damages caused to it, when they order, authorize or allow acts or securities transactions knowing that they are prohibited by law to do so, when they contravene the provisions in the agreement entered into with the brokerage firm or when they do not deliver the amount of the investments. The attorneys-in-fact to execute transactions with the public who take part in the referred acts or transactions on behalf of the brokerage firm will be jointly and severally liable with the client before the mentioned brokerage firm, when they had knowledge of said irregularities.

Article 190

The brokerage firms that provide consulting services to their clients shall determine the profiles of each of them or their accounts, assigning a level of tolerance to the risk in each case, as appropriate.

The Commission through general regulations shall determine the elements that the brokerage firms shall take into consideration to establish the policies and guidelines to integrate the profiles of their clients or their accounts, considering at least the assessment of the financial situation, knowledge and experience of the client as well as the investment objectives.

In addition, in the regulations referred to in this article, the Commission shall establish the minimum elements that the brokerage firms shall take into consideration in their policies and guidelines to execute an analysis of the financial product and determine its profile, including its risk and complexity.

Article 190 Bis

The brokerage firms shall have a committee responsible for the analysis of the financial products whose integration and function shall be subject to the general regulations that for such purpose are issued by the Commission.

The referred general regulations shall include the functions of the committee responsible for the analysis of the financial products which will be required to perform at least the following:

I. Elaborate the policies and guidelines to which the brokerage firms in the provision of consulting services and non-consulting shall be subject to, including those related to preventing conflicts of interest. Such policies shall be approved by the board of directors.
II. Approve the investors profile type for which or whom it is reasonable to invest in a certain financial product in accordance with their characteristics.
III. Determine the guidelines and limits for the composition of the investment portfolio attending to the characteristics of the securities and the investment profiles of the clients.
IV. Authorize the market offerings or acquisitions by reason of consulting services of new financial products, considering the available information in the market or their particular risks, pursuant to the criteria established for such purposes, except in the event of Securities issued by the united Mexican States or by Bank of Mexico.
V. Keep track of the performance of the financial products that the Committee itself determines.

In no event shall the members of the committee responsible for the analysis of the financial products act or serve in matters that have conflicts of interest.

Article 190 Bis 1

The brokerage firms shall have internal control mechanisms for the compliance of the present Law and the general regulations arising from it in matters of consulting services and non-consulting services, subject to the general regulations issued by the Commission.

The board of directors of the brokerage firms shall assign one person responsible for the compliance to the provisions in matters of consulting services and non-consulting services, who will have at least the following functions:

I. Verify the compliance of the provisions related to the clients profile, the financial products, as well as the sufficiency of the evaluation and analysis of the reasonable recommendations or transactions.
II. Monitor the adherence to the policies and guidelines established by the product analysis committee and board of directors, if applicable.
III. Verify the existence of the internal control mechanisms and infrastructure adequate for the rendering of the consulting services and non-consulting services.
IV. Assess compliance with the policies and guidelines to avoid any conflict of interest.
V. Premanenty assess and revise the behavior of the persons who provide the consulting investment services and non-consulting services, both in transactions conducted on their own as well

as those on behalf of their clients, according to mechanisms approved by the board of directors.

Article 191

The brokerage firms shall provide their clients with the information related to the financial products provided, the activities and services provided, as well as the charged fees, for which they must have guidelines for the communication of such information. The Commission may issue general provisions that establish the minimum elements for the communication of this information as to the determination of the concepts and criteria to charge the fees.

The brokerage firms should include in the financial statements the result of the calculation yield of the investment portfolio of their clients. Said calculations will be carried out under the general provisions established by the Commission.

Section IV Investor's Protection

Article 192

The brokerage firms may in no case disclose news or information of the transactions that they perform or services they provide, but to the holders, clients, principals, trustees, trust beneficiaries, beneficiaries, legal representatives of the foregoing, or those who were granted power of attorney to dispose from the account or to intervene in the operation or service, except when requested by them for tax purposes, by means of the Commission, by the judicial authority as a result of an order in judgment in which the holder is a party or defendant and the federal tax authorities.

The employees and officers of the brokerage firms, in the terms of the applicable provisions, for violation of the secret established thereat, and the brokerage firms will be held liable, to repair the damages caused, in case of disclosure of the secret.

The provisions in this article do not affect the obligation of the brokerage firms having to provide the Commission with all kinds of information and documents that, in exercise of their supervising functions, are requested in connection with the transactions that they execute and the services they provide, or else, in order to attend requests of foreign financial authorities, in accordance with the provisions established in article 358 herein.

Article 193

The brokerage firms which receive instructions from third parties, perform transactions in the stock exchange or provide trustee services, shall use the services of individuals in order to operate in the exchange, to perform transactions with the public of consulting, promotion, purchasing and selling of securities or in order to act as trustee delegates, as applicable, authorized by the Commission,

provided that they have technical quality, honor and satisfactory credit history. In any case the corresponding powers of attorney shall be granted.

Said authorization will be granted to the individuals that prove to have technical quality, honor, and satisfactory credit history, before a trade union acknowledged by the Commission as a self-regulatory organization. Regarding exchange operators, additionally they will have to fulfill the requirements provided in the internal regulation corresponding to stock exchange. The foregoing in accordance with the general provisions issued by the Commission.

In no event the individuals referred to in this article may offer their services simultaneously to more than one financial entity, except when they form part of the same financial group or if they act as share distributors of investment corporations.

Article 194

The brokerage firms, when for any circumstance cannot apply the resources to the corresponding purpose the same day of reception, shall, if the impediment for their application persists, deposit them in a credit institution no later than the following business day or acquire shares representing capital stock of an investment company in debt instruments, depositing them in the account of the corresponding client, or else, investing them in short term repurchase agreements of government securities. In both cases, the funds shall be registered in different accounts to those which form part of the brokerage firm's assets.

Article 195

The brokerage firms which receive instructions from third parties for the performance of transactions with securities and, that under articles 219 and 220 of this Law, direct said instructions for execution and liquidation through another brokerage firm, shall transfer to the later the money resources that, in their case, are given by the third parties, the same day as their receipt.

Article 196

The brokerage firms may not dispose of the received resources from a client or its securities for purposes other than the ordered or hired by the client.

Article 197

The brokerage firms may not perform transactions in which conditions and terms agreed to significantly separate from the healthy customs and practices of the market.

Article 198

The brokerage firms will respond before their clients for the acts

performed by their board members, directors, attorneys-in-fact and employees in the fulfillment of their responsibilities, without prejudice to the civil or criminal responsibilities in which they personally may incur.

Section V Hiring

Article 199

The operations that brokerage firms carry out with their investor clients and on their behalf shall be governed by the provisions contained in the stock brokerage contracts, which for this purpose may be entered into in writing, by handwritten signature, or by means of a Data Message and electronic signature of the parties, granted in accordance with the Commercial Code, unless, as a consequence of the provisions of this or other laws, a different form of contract is established.

By means of the securities trading agreement, the client will confer a mandate to the brokerage firm in order to, on his behalf, perform the transactions authorized by this Law, in name of the same brokerage firm, except that, by the nature of the operation, it should be conferred on name and representation of the client, without it being necessary in both cases that a corresponding power of attorney is granted in a public deed.

Article 200

As consequence of the securities trading agreement:

I. The brokerage firm in the performance of its position will act in accordance with the client's instructions received by the attorney-in-fact in order to perform transactions with the public designated by the own brokerage firm or by whom in case of temporary absence is designated by it. Any definitive situation of the designated attorney-in-fact to manage the account will be communicated to the client, including the name and, in its case, the number of the new authorized attorney-in-fact, in the account statement of the month on which the substitution takes place.

The clients may instruct the performance of transactions through properly accredited legal representatives, or else, by means of persons authorized in writing fur such effect in the agreement.

The brokerage firms may advise their clients on investments made stating the responsibilities arising from their advice, regardless of whether they agreed or not to discretional management in the agreement.

It shall be understood that the brokerage firms provide consulting services when they do personalized recommendations by any means to their clients or such entity performs transactions in discretional agreements without the participation of the client. When the brokerage firms execute the instructions that their clients give them outrightly and unconditionally, it will be in the understanding that they are not

providing consulting services. In the case of recommendations provided verbally, the brokerage firms will be required to keep an electronic record or in writing state the date and time in which they were given, as well as the necessary data to identify the securities of each recommendation.

Also, the brokerage firms may promote or commercialize securities generally regardless of the client's profile, when due to the characteristics of such securities they may adjust to the needs of the investors, without the need to formulate personalized recommendations. The Commission shall set forth in general regulations the type of securities that will trigger this statutory presumption according to the type of the investor.

II. Unless the discretional management of the account is agreed, the instructions of the client for the execution of specific transactions or movements in the account of the same, may be made in writing, verbal, electronic, or telephonic form, specifying in all cases, the type of operation or movement, as well as the type, kind, class, issuer, quantity, price and any other characteristic necessary to identify the securities of each operation or movement in the account.

The parties may freely agree to the use of any means of communication, for the sending, exchange, or, in its case, confirmation of the orders of the investing clients and other notices to be performed in accordance with the agreement, as well as the cases in which any of them require another confirmation by those means.

III. The client instructions for the performance of transactions on his behalf will be performed by the brokerage firm in accordance with the reception and assignment of transaction system established pursuant to the general provisions issued by the Commission.

IV. The brokerage firm will elaborate a receipt for each operation performed in accordance to the client's instructions that will contain all the information needed for its identification and the amount of the operation. This receipt and its accounting registry number will remain available for the investor at the office of the brokerage firm where his account was open, regardless that each operation is reflected in the account statement that should be sent to the investor pursuant to this Law.

V. In the case that the parties agree on the use of electronic means, computing or telecommunications for sending, exchanging or in its case confirmation of orders and other notices that should be given, including the reception of account statements, they have to precise the passwords of reciprocal identification and the responsibilities that its use has.

The identification passwords that are agreed to be used pursuant to this article will replace the autograph signature, so that the document or technical evidence, in which they appear, will produce the same effects that the laws grant to written documents by the parties and, consequently, they will have equal probative value.

VI. The brokerage firm will be authorized to execute in name and representation of the client, the endorsements and assignments of expedited nominative values or endorsed in favor of the client that the client confers to the brokerage firm in deposit, in administration or in custody.

VII. In no event will the brokerage firm be bound to comply with the instructions that it receives for managing the account, if the client has not provided the resources or securities necessary for it; or if in the account, credit balances for the sufficient amount to execute the corresponding instructions do not exist.

VIII. When in the agreement the discretional management of the account is specifically agreed, the transactions that the brokerage firm performs on behalf of the client will be ordered by the attorney-in-fact in order to perform transactions with the public, designated by the brokerage firm for said purpose, without prior authorization or client ratification for each operation being necessary.

It is understood that the account is discretional, when the client authorizes the brokerage firm to act on its free will, in accordance with its own judgment of prudence and caring for the investments as their own, in accordance with the third paragraph sections I, III, IV and V of article 189 herein as well as the general framework of action that shall include the minimum elements pursuant to the general regulations issued by the Commission.

The investor may limit the discretionary authority to the performance of determined transactions or the managing of specific securities, being at any time able to revoke said authority, this revocation will be effective as of the date in which it was notified in writing to the brokerage firm, without affecting pending transactions from liquidating.

IX. All the securities and effective property of the client that are deposited in the brokerage firm, will be understood to be specially and preferably assigned for payment of the remunerations, expenses or any other debt that exists in favor of the brokerage firm by virtue of the fulfillment of the securities trading intermediation that was conferred to it, so that the client may not withdraw said securities or cash without paying his debts.

X. The parties shall agree in the securities trading agreements, in a clear manner, the ordinary and default interest rates that may be caused by virtue of the service and transaction purpose of the agreements, as well as the formulas of adjustment to said rates and the form in which its modification will be notified. The agreed rates will be applied equally to the debts that are enforceable to the brokerage firm as well as to the client.

In absence of express agreement, the applicable rate will be equal to the result of the arithmetic average of the yield generated by the ten companies of investment in debt instruments with the most profitability during the six months prior to the date in which the event that originated the rate is updated.

XI. The parties shall agree in the securities trading agreements, that the client grants his consent in order for the Commission to investigate acts or facts that contravene the provisions in this Law, so that it may perform inspection visits regarding such acts or facts, as well as to summon him, require the information that may contribute to the adequate development of the investigation and request his appearance to testify on the matter.

XII. The brokerage firms may not enterinto securities trading

agreements, in which their attorneys-in-fact are co-holders of their respective accounts, in order to perform transactions with the public or stock exchange operators.

Article 201

In the agreements between the brokerage firms and their clients, the investor owner of the account may at any time appoint or change beneficiary.

In the event of death of the owner of the account, the brokerage firm shall deliver the corresponding amount to the beneficiary expressly appointed in writing, in the proportions established for each of them.

If applicable, the beneficiary will have the right to elect the delivery of certain securities registered in the account or the amount of its sale.

If there were no beneficiaries, the amount shall be delivered in accordance with common legislation.

Article 202

The lack of formality required by this Law or by the agreement of the parties, regarding acts or transactions agreed between the brokerage firms and their investing clients, produces the nullity of said acts or transactions.

In case of modifications to the agreements, said intermediaries will send to their clients, duly signed by their legal representative, via registered mail with acknowledgement receipt and precisely to the last address notified by the client, the corresponding amendment agreement, which terms may be objected within twenty business days following the date of reception. If not completed in this form, after this term, the agreement will be understood as accepted and will have full legal effects even without the client's signature.

Prior to the conclusion of the term established in the above paragraph, any act or instruction performed by the client in accordance with the terms of the amendment agreement will be considered accepted, with full legal effects.

When the parties have agreed the use of telegraph, telex, telefax, or any other electronic means, of computing or telecommunications, the amendments to the agreements executed may be performed through the same, observing the term and modalities for the expression of consent referred to in this article.

Article 203

The brokerage firms shall send their clients, within the first five business days following the closing of the month, an authorized account statement with the lists of all the transactions performed that reflect the position of securities of said clients to the last day of the month's closing, as well as the position of securities of the prior

month's closing. It must also contain other information pursuant to general regulations issued by the Commission.

This document will have the effects of global invoice regarding the transactions stated there at.

The mentioned account statements, except agreed otherwise, shall be sent precisely to the last address notified by the client to the brokerage firm. In its case, the entries that appear in the same may be objected in writing or through any means agreed upon by the parties, within the seventy business days following the date of reception. It is assumed, unless otherwise proved, that acceptance exists with the content of the account statements, when the clients do not object within the above mentioned term. The client may authorize the brokerage firm to allow him to consult the referenced account statements via electronic means instead of sending them to his address.

The client, in order to make corresponding objections on time, will have available and may obtain in the offices of the brokerage firm, a copy of the account statement as of the day following the closing of the account. In the event that the client considers himself/herself affected because an operation is not reflected in his account statements, despite of the said client having delivered the necessary resources in order to execute it, in order to make objections he/she shall evidence before the brokerage firm, or corresponding instance, the delivery of the resources in favor of the brokerage firm, pursuant to the agreement.

The actions that have the purpose off demanding the responsibility from the brokerage firm for the services that under this Law are granted to its clients, will prescribe within two years as of the act or fact that originated them.

Article 204

To establish a securities pledge, it will be sufficient to enter into a written contract, as well as to request from an institution for the deposit of securities the opening or increase of one or more accounts in which the securities must be deposited as collateral, without it being necessary to endorse and deliver the securities subject to the pledge, or to record them in the registers of the issuer or simplified issuer of the securities. The parties may guarantee one or more transactions under the same contract.

In order to execute the security pledge, it is sufficient to execute the agreement in writing, as well as to request a securities depository firm, the opening or increase of one or more accounts in which they shall deposit in guarantee, without being necessary to perform the endorsement and delivery of the securities purpose the pledge, nor the annotation in the registries of the issuer of the securities. The parties may guarantee one or more transactions within a single agreement.

The parties may agree that the property of the securities granted in pledge will transfer to the creditor, in which case will be obligated to refund the debtor, given that he complies with the corresponding

obligation, other portions of the same kind; the established provisions being applicable, in connection with the repurchase and repurchaser, respectively, in articles 261 and 263, first part, of the General Law on Negotiable Instruments and Credit Transactions. In this case, the provisions related to the opening of accounts are not applicable as established in the above paragraph and the guarantee will be perfected by means of the legal delivery of the securities to the creditor, through the proceedings that for assignments in account are applicable to the securities depository firms.

The parties in the security pledge agreements may agree to the extrajudicial sale of the securities given in guarantee as long as they observe the following minimum proceedings of execution:

I. That the parties jointly appoint the executor of the security pledge and, upon agreement, the administrator of said guarantee; appointments that may fall on a brokerage firm or a credit institution, other than the creditor. The appointment of the executor may be conferred to the administrator of the guaranty.

The procedure for the replacement of the executor shall be provided in the agreement, for the cases of performance impossibility or if some conflict of interest occurs between the executor and the creditor or the debtor of the guaranteed obligation.

II. If upon expiration of the guaranteed obligation or when the security pledge should be executed again, the creditor does not receive payment or the amount of the pledge is increased, or they have not agreed to an extension of term or the novation of the obligation, he shall request from the executor extrajudicial sale of the securities affected in guaranty, on its behalf or through the administrator of the guaranty,

III. From the petition mentioned in the prior paragraph, the creditor or, in its case, the administrator of the guaranty, will notify the grantor of the pledge, who may oppose to the sale only by the actions hereunder: paying the amount of the debt; handing the document that proves the extension of term or the novation of the obligation; giving the receipt of its delivery to the creditor, or, demonstrating the execution of the missing guaranty.

IV. If the grantor does not pay the amount of the debt, hands the document that evidences the extension of term or the novation of the obligation, gives the receipt of its delivery to the creditor or does not verify the execution of the missing guaranty, the executor will order the sale of the securities of the pledge at market price, up to the amount necessary to cover the principal and agreed interests, which will be given in payment to the creditor. The sale will be performed in accordance with the parties' covenants, which may be carried out outside of the stock exchange.

When the parties in the agreements of the security pledge agree to the conveyance of the property of the pledged securities, they may additionally agree that if is a breach in the guaranteed obligations, the creditor shall keep the property of the pledged securities, up to the amount of the guaranteed obligations with no need for an execution procedure or judicial resolution and that the amount of the pledged

securities be applied to the payment of the debtor's payment obligations, considering them at their market value. The effect of said application to the payment will extinguish the guaranteed obligations up to the amount of the market value of the pledged securities granted.

If the market price of the pledged securities do not cover the totality of the guaranteed obligations, the creditor shall keep any actions to claim the rest of the debt. If the guarantees exceed the guaranteed obligations, the creditor shall return the excess to the debtor. In the event the parties preform the application to the payment in accordance with the previous paragraph, it will be in the understanding that the application to the payment was carried out by the consent of the parties as a payment method of the obligations of the debtor and not as the execution of the security pledge.

The parties shall agree the terms for determining the market value of the pledged securities granted in the corresponding agreement.

In the security pledge agreements it is possible to agree that the grantor of the same may substitute, at creditor's satisfaction, the securities granted in guaranty, before the notifications provided in paragraph III of this article are carried out.

When the administrator of the guaranty is not creditor of the guaranteed obligation he may act as executor, to execute the security pledge agreement and to affect the corresponding securities on behalf of its clients, in exercise of the mandate that for such effect the clients grant him, provided that they have not agreed with such clients the discretional management of their account.

In the account statements that the brokerage firms send to their clients the elements corresponding to security pledges executed by them will be highlighted, with the information necessary for the identification of the securities granted in pledge. The account statement will serve as protection for the securities until the termination of the security pledge agreement.

Section VI Accounting and external auditing

Article 205

The acts or agreements of a brokerage firm that signify variation or modification of the assets, liabilities, capital or imply a direct or contingent obligation, including their off-balance-sheet item, shall be recorded in accounting the same day in which it occurs.

The accounting, the books and corresponding documents and the term they should be maintained, will be governed by the general provisions issued by the Commission.

Article 206

The funds and securities of the brokerage firms' clients shall be registered in a different account from those that form part of the assets of the brokerage firm.

Article 207

The brokerage firm in the transactions of trusts, mandates or commissions, will open special accounting records for each agreement, recording within and in its own accounting the money and other goods, securities or rights that are conferred to them, including the increases or reductions for the respective products or expenses.

The balances of the off-balance-sheet item of the accounting record of the brokerage firm shall invariably match with the special accounting records.

In no case will these goods be affected to the fulfillment of other obligations that are not derived from the trust or from those that third parties have against them, in accordance with the Law.

Article 208

The brokerage firms shall record or document in electronic or digital means all communications with their clients regarding the consulting services, promotion, purchase and sales of securities or with trustees related to the activities mentioned above, as well as keep such recordings or documents for a term of at least five years as an integral part of the accounting of the brokerage firm, without prejudice to the provisions in the last paragraph, section III of article 212 herein. Such information and documentation shall be at the disposition of the Commission at all times, who may request immediate delivery.

Article 209

The brokerage firms may microfilm, digitally, optically, or magnetically record or in any other means authorized by the Commission, the books, registries, and documents in general that they are bound to have in accordance with laws and by means of general provisions mentioned by the Commission, in accordance with the technical basis for its handling and conservation established by the same.

The original camera negatives obtained by the microfilm system and the first copy that is obtained from the optical or magnetic discs with digitalized images, including the copies obtained by means of this technology, duly certified by authorized personnel by the corresponding brokerage firm, will have in trial the same probative value as the original books, registries and documents.

Article 210

The Commission, by means of general provisions, will state the basis for approval of the financial statements on behalf of the brokerage firms' administrators; for their disclosure through any means of communication including electronic, optical or any other means of technology, including the procedure to adjust the revision that of the same carries out the Commission.

The Commission will establish, by means of general provisions, the form and content that the financial statements of the brokerage firms

shall have; similarly, it may order that the financial statements are divulged with the pertinent modifications when they contain errors or alterations and in the established terms.

The brokerage firms will be exempted of the requirement to publish their financial statements, in accordance with article 177 of the General Law of Business Organizations.

The annual financial statements shall be approved by an external independent auditor, who will be appointed directly by the board of directors of the brokerage firm involved.

The Commission, by means of general provisions, may: establish the characteristics and requirements that the independent external auditors shall fulfill; determine the content of their opinions and other reports; issue measures for a correct alternation of said auditors in the brokerage firms; as well as, state the information that shall be disclosed in their reports regarding other services, and in general, of the professional relationships or of businesses that they have or maintain with the brokerage firm that they audit, or with related companies.

Article 211

The Commission will issue the rules for the maximum estimation of the assets of brokerage firms and for the rules for the minimum estimation of their obligations and responsibilities.

Section VII Other provisions

Article 212

The brokerage firms, in terms of the general provisions issued by the Ministry, listening to the prior opinion of the Commission, will be obligated to:

I. Establish measures and procedures to prevent and detect acts, omissions or transactions that could favor, provide help, aid or cooperation of any kind for the commission of the crime provided in article 139 or 148 Bis of the Federal Criminal Code or that could be located in the events of article 400 Bis of the same Code.

II. File to the Ministry, by means of the Commission, reports regarding:

a) The acts, transactions and services that they perform with their clients and users, relative to the above section.

b) All acts, transactions or services that may be located in the assumption mentioned in section I of this article or that, in its case, could contravene or violate the adequate application of the provisions stated in the same, that perform or in which any member of the board of directors, director, officer, employee or attorney-in-fact intervenes.

The reports referred to in this section, pursuant to the general regulations in this article, will be prepared and filed taking into consideration, at least, the modalities that are referred to in said

regulations; the characteristics that the actions, transactions and services referred to in this article shall have in order to be reported, taking into account their amounts, frequency, and nature, the monetary and financial instruments with which they perform, and the commercial and stock market practices observed in the locations where they take place; as well as the regularity and the systems through which the information will be transmitted. The reports shall refer at least to tranactions that are defined as: relevant, internal preoccupying and unusual, those related to international transfers and those related to cash transactions in foreign currency.

III. Pursuant to that established by the Ministry in the mentioned general provisions, have rules regarding the procedures and criteria that shall be observed regarding:

a) The adequate knowledge of their clients and users, for which they shall consider the background, specific conditions, economic or professional activity and the markets in which they operate.
b) The information and documentation that they shall obtain for the opening of accounts or execution of agreements relative to the transactions and services that they provide and that clearly evidence the identity of their clients.
c) The form in which they shall safeguard and guarantee the security of the information and documentation relative to the identification of their clients and users or those who have been, as well as of those acts, transactions and services reported according to the this article.
d) The terms by which to provide training to the interior of the brokerage firm on the information regarding this article. The general provisions referred to in this article, will indicate the terms for their fulfillment.
e) The use of automated system that contribute to the compliance of the measures and procedures established in the general regulations referred to in this article.
f) The establishment of those internal structures that must function as compliance areas, within each brokerage firm.

Said intermediaries shall maintain, for at least ten days, the information and documentation referred to in section c) of this paragraph, without prejudice to the provisions in this or other applicable laws.

The Ministry will be authorized to require and to successfully obtain, by means of the Commission, information and documentation related with the acts, transactions and services referred to in section II of this article. Likewise, the Ministry will be authorized to obtain additional information from other persons with the same purpose and to provide information to the competent authorities.

The brokerage firms shall immediately suspend any act, transaction or services with clients or users that the Ministry of Treasury and Public Credit informs them through a list of blocked users considered confidential. The list of blocked users will have the purpose of preventing and detecting acts, omissions or transactions that could fall in the

statutory presumptions provided for in the articles referred to in section I of this article.

The suspension obligation mentioned in the preceding paragraph will cease to have effect when the Ministry of Treasury and Public Credit removes the client or user in question from the list of blocked users.

The Ministry of Treasury and Public Credit will establish in the general regulations referred to in this article, the parameters to determine the introduction or removal of users from the list of blocked users.

The fulfillment of the obligations mentioned in this article will not imply transgression of any established in article 192 of this Law.

The general provisions referred to in this article shall be observed by the brokerage firms, as well as by the members of the board of directors, managers, officers, employees and respective attorney-in-facts, therefore, the entities as well as the individuals mentioned will be responsible for the fulfillment of the obligations that are established by said provisions.

The violation to the provisions referred to in this article will be sanctioned by the Commission in accordance to the procedure referred to in article 391 of this Law, with a fine which corresponds from 10% trough 100% of the amount of the act, transaction or service preformed to a client or user that had been informed that he is part of the list of blockes users referred to in this article; with a fine that corresponds from 10% through 100% of the amount of the unusual operation not reported, or, if applicable, operations of interrelated series of the same client or user, that should have been reported as unusual operations; troubling cases of relevant internal operations related to international transfers and cash transactions in foreign currency, not reported, as well as to the noncompliance with any of the subsections a), b), c) or e) section III of this article, will be sanctioned with a fine from 30,000 to 100,000 days of salary and on the other events of noncompliance with this section and the provisions arising from it a fine from 5,000 to 50,000 days of salary will apply.

The officers of the Ministry of Treasury and Public Credit and the National Banking and Securities Commission, the brokerage firms members of the board of directors, managers, officers, employees and attorney-in- fact shall abstain from giving the reports and other documentation and information referred to in this article, to persons or authorities other than those expressly authorized in the similar provisions to request, receive or retain such documentation and information. The violation to these obligations will be sanctioned in terms of the applicable Law.

Article 213

The brokerage firms, subject to the percentages and other requirements that the Commission establishes by means of general provisions, prior resolution of its Governing Board, may invest their paid in capital and capital reserves in:

I. Furniture, real estate, expenses of installation and others necessary for the performance of its corporate purpose.

II. Representative instruments of the corporations' capital stock referred to in articles 214 and 215 of this Law.

III. Securities and other active transactions in accordance with its purpose.

In no case may the brokerage firms participate in corporations that are not of limited responsibility.

The Commission may establish in the general provisions referred to in the first paragraph of this article, a minimum investment regime for the resources of the paid in capital and capital reserves that it procures to maintain adequate conditions of solvency and liquidity.

Article 214

The brokerage firms may invest in representative instruments of the companies' capital stock that provide complimentary or auxiliary services in their administration or in the performance of its purpose, as well as of real estate companies that are owners or administrators of goods assigned for their offices.

The companies and corporations referred to in the above paragraph will be subject to the general provisions issued by the Commission, including their inspection and surveillance.

Article 215

The brokerage firms may invest, directly or indirectly, in representative instruments of the foreign financial entities' of capital stock which perform the same kind of transactions that the brokerage firm is involved in, provided that they have the prior authorization of the Commission.

Brokerage firms, with prior authorization from the Commission, may invest in the share capital of investment companies, investment company operating companies, financial technology institutions, retirement fund managers, as well as in investment companies specializing in retirement funds, under the terms of applicable legislation and, when they are not part of financial groups, in auxiliary credit organizations and exchange houses. These entities may use the same or similar names, act jointly and offer complementary services, as applicable to each entity.

The brokerage firms, prior authorization from the Commission, may invest in the capital stock of investment corporations, operating companies of investment corporations, administrators of retirement funds, as well as in the investment corporations specialized in retirement funds, in terms of the applicable legislation and, when they do not form part of financial groups, in one of the auxiliary organizations of the credit and foreign exchange firms. Said entities will be able to use equal or similar denominations, to act in a joint manner and to offer complementary services.

The respective requests shall be accompanied by the document that explains the policies to resolve the probable conflicts of interest that may occur in the performance of its transactions with the public.

Likewise, the brokerage firms may invest in the capital stock of stock exchanges, securities depository firms and central counterparties of securities, without the necessity of the Commissions' authorization.

The investments referred to under article 214 of this Law, as well as in this article, carried out by brokerage firms in whose capital the Federal Government participates, will not be computed in order to consider them as companies with state participation and, therefore, will not be subject to the applicable provisions to the entities of the public federal administration.

Article 216

The brokerage firms may perform their activities in foreign markets, pursuant to the mentioned in this Law, in the general provisions that for this reason are issued by the Commission, subject to agreement from the Governing Board, and subject to the laws of the country in which such activities are performed.

Article 217

The brokerage firms shall notify the Commission, with at least thirty business days of anticipation, of the opening, change of location and closing of their offices.

For the closing of offices, together with the announcement referred to in this article, the measures adopted to assure the continuity of services to the clients shall be informed. The Commission may oppose to the closing of the office involved, in the case of the brokerage firm failing to file these measures and until their satisfactory performance is verified.

In the assumption that the brokerage firms open or change their offices without providing relative notice, or in its operation they infringe the provisions of this article, the Commission may precede to the closing of the same, assuring that the services received by the clients are covered in an adequate manner. Prior to said resolution, the Commission shall hear the brokerage firms involved.

The brokerage firms may carry out their activities through offices, branches or agencies of credit institutions, but in all cases, shall give the notification referred to in this article.

Article 218

The brokerage firms shall close their doors and suspend transactions on the days appointed by the Commission by means of the general provisions.

The days appointed in the mentioned terms will be considered non business days for legal purposes when it is determined as such by the Commission.

Article 219

The brokerage firms may hire with third parties the services for the performance of the activities that pursuant to this Law may be carried out, provided that prior authorization is granted by the Commission and that they are subject to the general provisions mentioned in the following paragraph.

The Commission, prior resolution from the Governing Board, shall establish by means of the general provisions, the services that could be subject to agreement with third parties, including those that for the lack of relevance with the purpose of the brokerage firm will not require authorization.

Article 220

The brokerage firms that seek to obtain the authorization referred to in article 219 of this Law, shall comply with the following requirements:

I. To file to the Commission a report that specifies the services to be hired and their risks, including the criteria and procedures to select the service provider. Said criteria and procedures will be oriented to evaluate the technical and financial capacity and human resources of the provider, in order to provide the service with adequate levels of performance, confidentiality and security.

The brokerage firms shall maintain available to the Commission the documentation that evidences the applied selection procedure.

II. To have policies and procedures to monitor the performance of the service provider and the fulfillment of its contractual obligations that shall contain aspects relative to:

a) The quantity, quality, and cost of the agreed services, specifying the performance goals and forms of measurement of the same.
b) The restrictions or conditions, regarding the possibility of the service provider subcontracts, as well as of the provided service.
c) The confidentiality and security of the clients' information and accounts.
d) The responsibilities of the brokerage firm and service provider, the procedures to monitor the fulfillment of the responsibilities, including the guarantees and indemnifications in the case of non-fulfillment.
e) The commitment of the service provider to perform, by request of the brokerage firm, the registry, the information and the technical aid relative to the services provided to the brokerage firm, to its auditors and to the supervisors.
f) The mechanisms for the resolution of disputes relative to the service agreement.
g) The measures that assure the continuity of the business, including the procedures of contingency that include a recovery plan in case of disaster.

h) In case that the services are performed by a provider located in the exterior, said provider shall accept, in writing, to agree to the provisions of this Law.

III. To have plans to evaluate and report to the board of directors the performance of the service provider, including the fulfillment of the applicable regulations related to said service.

The board of directors will be responsible for the approval and verification of the fulfillment of the policies and criteria used to select the service providers contracted by the brokerage firm in terms of the above mentioned in this article, including the services that they grant and activities that they perform under the protection of said policies and criteria.

The chief executive officer will be responsible for the implementation of the policies and criteria referred to in the previous paragraph.

Article 221

The hiring of the services referred to in article 219 of this Law will not exempt the brokerage firms nor its board members, officers and employees, from the obligation to strictly observe the established in the current Law and in the general provisions that originate from it.

The legal provisions relative to the stock market secrecy will be extensive to the service providers involved. Said provisions will also be applicable to the representatives, officers and employees of the service providers even when they cease to work or provide their services to the mentioned providers.

The Commission may request information, including books, records and documents, from third parties who provide the before mentioned services, including performing inspection visits and to decree the measures that it considers necessary to ensure the continuity of the services that the brokerage firm provides to their clients, the integrity of the information and the agreement to the established in this Law.

Article 222

The lending of services will be regulated by an agreement executed by the brokerage firm and the service provider, in which they shall specify the rights and obligations of the parties.

Article 223

The Commission may issue general provisions in relation to the minimum aspects that the agreements shall comply with, in terms of the established in article 222 of this Law, without prejudice to the provision in article 220, section II of the same.

Article 224

The Commission may establish prudential rules oriented to preserve the liquidity, solvency and stability of the brokerage firms, regarding internal controls, corporate practices and auditing, administration of

risks and transparency and equity in the transactions and services, in protection of the public and the users and clients in general.

For the rendering of consulting and non-consulting services the brokerage firms shall have separate and independent areas of business independent to the other business areas, pursuant to the general regulations issued by the Commission.

Title VII Investment advisors

Article 225

The persons who without being intermediaries of the stock market perform in a regular and professional manner services of administration of securities portfolios, making investment decisions in name and on behalf of third parties, as well as those who render consultancy in a regular and professional manner regarding investment in securities, analysis, issuance of individual investment recommendations, will have the capacity of investment advisors.

In order to be an investment advisor, registration with the Commission is required. In the case of natural persons, they must prove that they are honorable and have a satisfactory credit history, as well as the corresponding certification granted by a trade association recognized by the Commission as a self-regulatory body, in terms of the general provisions issued by the Commission. In the case of legal persons, they must be civil companies in terms of common legislation, or corporations or limited liability companies in terms of the General Law of Commercial Companies and comply with the following requirements:

I. That the corporate purpose states the performance of the activities identified in the previous paragraph.

II. State in their By-Laws that in the performance of their purpose the investment advisors shall adjust to the provisions of this Law, and in other applicable regulations.

III. To have establishments destined exclusively to the performance of their corporate purpose.

IV. That they attach to their application the list and information of the persons who directly or indirectly hold a stake in the investment advisor's share capital, indicating the capital they will subscribe to, the manner in which they will pay it, as well as the origin of the resources with which said payment will be made.

V. To submit the conduct manual that includes policies of the settlement of potential conflicts of interests in conducting their activities together with the request. Said manuals shall contain standards pursuant to the general regulations issued by the Commission.

VI. That they submit with the application the certification of their representatives, granted before a professional association recognized by the Commission as a self-regulatory body, in terms of the general provisions issued by the Commission, to provide securities portfolio management services by making investment decisions on behalf of

and for the account of third parties, as well as investment advice on securities, analysis and issuance of investment recommendations on an individual basis.

Investment advisors who are legal entities, in the provision of their services, must contract the services of natural persons who have the certification referred to in the previous paragraph.

The Commission will establish, through general provisions, the additional requirements to those provided for in this Law, which investment advisors, both natural persons and legal entities, must meet in order to obtain registration.

VII. Where applicable, the requirements referred to in Article 225 Bis 1 of this Law.

The investments advisors whose shareholders, partners, members of the board of directors, as well as officers, attorneys-in-fact and employees do not participate in the capital or in the administration bodies, nor have any relation of dependency with credit institutions, brokerage firms, mutual fund operating companies, shares distributing companies of investment companies, shares distributing companies and the financial entities, securities rating institutions, shall add the term "independent" to their name. On the contrary, they will be required to revel to their clients such situation at the time of the agreement.

The companies that register in terms of this article, shall provide before the Commission the information of their registration in the Public Registry of Commerce, in a term that should not extend more than fifteen business days as of the date of the registration. What can we do to help clients adapt to any regulatory issues and challenges faced in their local jurisdictions?

Repealed.

The transfer of shares or corporate interests may only be made to a person who meets the requirements indicated in section IV of this article, as well as those provided for in the general provisions issued by the Commission, to be a shareholder of an investment advisor.

Investment advisors must inform the Commission of the transfer of any of their shares or corporate interests, or when one of the partners has transferred his rights, provided that it is less than ten percent of its share capital, within three business days after the investment advisor has registered said transfer in the registry indicated in article 128 of the General Law of Commercial Companies. For this purpose, investment advisors must provide the documentation that proves what is established in the previous paragraph.

Investment advisors must request prior authorization from the Commission, when they intend to acquire ten percent or more of the share capital; in such case, they must submit to the Commission the list of persons who intend to acquire the shares, indicating the capital they will subscribe to, the manner in which they will pay it, as well as the source of the resources with which said payment will be made, in terms of section IV of this article.

The Commission will have a period of ninety business days to decide on the authorization of the transfer of shares.

Article 225 Bis

Investment advisors that are incorporated as corporations in accordance with the General Law on Commercial Companies may request authorization from the Commission to act as founding partner of investment funds referred to in article 30 of the Investment Funds Law.

Investment advisors that obtain the authorization referred to in the previous paragraph may provide said investment funds with the service of managing the portfolio of Investment Assets, making investment decisions in the name and on behalf of said funds, and may therefore charge administration and performance fees, in accordance with the provisions of this Law, the Investment Funds Law and the general provisions issued for this purpose by the Commission.

The Commission shall establish, through general provisions, the minimum amount of capital that investment advisors that obtain the authorization referred to in this article must maintain, which must be fully paid.

Investment advisors who obtain the authorization referred to in this article may exclusively carry out the activities of founding partner, in which case they will be exempt from the requirement referred to in article 225, second paragraph, section I, of this Law.

The Commission may revoke the authorization referred to in this article in accordance with the causes established by means of general provisions, without this implying the cancellation of its registration in the Registry referred to in article 225 of this Law, unless the investment advisor exclusively carries out the activities of founding partner, in terms of the previous paragraph.

The administration of investment advisors who obtain the authorization referred to in this article will be in charge of a board of directors, the form of integration of which will be determined by the Commission through general provisions.

Article 225 Bis 1

The application to obtain the authorization referred to in article 225 Bis of this Law must be accompanied by the following:

I. Bylaws that provide, within their corporate purpose, the performance of the activities referred to in article 225 Bis of this Law; as well as that, in the performance of its purpose, the investment advisor must comply with the provisions of this Law, the Investment Funds Law and other applicable provisions.

II. General operating plan that includes at least:

   a) The operations to be carried out in accordance with this Law and the Investment Funds Law, as appropriate.

   b) Security measures to preserve the integrity of the information.

   c) Forecasts of geographic coverage, indicating the regions and places in which it is intended to operate.

d) The study of the financial viability of the company.
e) The bases relating to its organization and internal control.

III. Manual of policies and procedures that must contain the rules that the Commission determines for this purpose through general provisions.

IV. List and information of the persons who directly or indirectly intend to maintain a share in the capital stock of the investment advisor, which must contain, in accordance with the general provisions issued for this purpose by the Commission, the following:
a) The amount of the capital stock that each of them will subscribe and the origin of the resources that they will use for this purpose.
b) The financial situation, in the case of natural persons, or the financial statements, in the case of legal persons, in both cases for the last three years.
c) That which allows verifying that they have integrity and a satisfactory credit and business history.

V. List of the probable directors, general director, main executives and commissioner of the company, accompanied by the information that proves that they have integrity and a satisfactory credit and business history.

VI. The other documentation and information that the Commission requires for this purpose through general provisions.

Article 225 Bis 2.

The Commission, after being granted a hearing, may revoke the authorization referred to in Article 225 Bis in the following cases:

I. Repeatedly failing to comply with the provisions of the information prospectus for the investing public of the investment funds referred to in Article 30 of the Investment Funds Law.

II. Carrying out operations on behalf of the investment funds referred to in Article 30 of the Investment Funds Law, other than those permitted by said Law.

III. When, for reasons attributable to those who provide the investment funds with the services of appraisal of the shares representing their share capital, the operations carried out are not reflected in the accounting or in the appraisal of the latter.

IV. Entering into a process of dissolution and liquidation.

V. If the investment advisor, through its legal representative, so requests.

VI. If the investment advisor's registration is cancelled in accordance with the reasons established in article 227 Bis of this Law.

VII. Any other reasons established for such purpose by the Commission through general provisions.

Article 226

Investment advisors, in the performance of their services shall:

I. They must have a mandate that enables them to give instructions to securities market intermediaries or foreign financial institutions of the same type to carry out transactions with securities in the name and on behalf of their clients, or be authorized to do so in the contracts entered into by the client with such intermediaries or institutions. In any case, they must stipulate, in the mandate or contract entered into, the responsibilities arising from their services.

II. Document in name of the corresponding client the transactions with securities that are ordered on his behalf. Also, they shall keep the recommendations and the information provided on the activities, services and financial products that they offer. Additionally they shall keep a written or electronic record stating the date and time that the clients required to perform a transaction, as well as the necessary information to identify the securities relating each transaction.

III. Inform their clients when they are ina position of conflict of interests, expressly indicating what it consists of.

IV. Repealed.

IV. Observe the rules of self-regulation issued by the self-regulatory body of which they are members of, in its case.

V. Certify their technical capacity, honorability, and satisfactory credit history, before a self-regulatory body recognized by the Commission, in regards to the services they provide to the public, or use the services of individuals that have said certification.

VII. Repealed.

VI. The propaganda or advertising to the public shall be subject to the provisions set forth in article 6 of this Law.

VII. Be subject to the provisions of articles 188, section IV; 189, third paragraph, sections I–III, as to paragraphs four and five; 190, except as set out in the last and second to last paragraph; 191, except the last paragraph; 200 section VIII, second paragraph of this Law, as well as the general regulations issued by the Commission in terms of such articles. If they are investment advisors that are not independent, in addition to the foregoing, the maximum limits referred to in article 178 shall be applicable, regarding the recommendations they make and they shall also adjust to the provisions in article 190, second to last and last paragraph of this Law.

IX. To comply with the provisions of Articles 188, Sections III and IV; 189, third paragraph, Sections I to III, fourth and fifth; 190, 191, except for the last paragraph; 193, 200, Sections II and VIII, second paragraph of this Law, as well as the general provisions issued by the Commission in terms of such articles. In the case of investment advisors who are not independent, in addition to the above, the maximum limits referred to in Article 178 shall apply to them, with respect to the recommendations they make.

The intermediaries of the securities market will be exempted of responsibility before their clients, when the performance of transactions is performed in fulfillment of the instructions sent by investment advisors, in terms of section I of this article. In these statutory

presumptions, the provisions of article 190 if this Law will not apply to the intermediaries of the securities market. The foregoing, without prejudice of the provisions in article 189, second paragraph of this Law.

The Commission may issue general provisions relating to the financial, administrative and operational information, as well as information relating to the provision of services that investment advisers must submit to it on a regular and ongoing basis, as well as the minimum information that must be disclosed regarding managed investments.

Article 226 Bis

In the prevention and detection of actions, omissions or transactions that could favor, provide help, assistance or any type of cooperation for the offenses referred to in articles 139 or 148 A of the Federal Criminal Code or, if applicable, article 400 A of such Code, in order to assist with the intermediaries of the securities market, the investment advisors, in terms of general regulations issued by the Ministry with the prior opinion of the Ministry, they shall:

I. Conduct a proper knowledge of their clients for which they must gather information and documentation proving their background, specific conditions and economic or professional activities.

II. For the opening of accounts or agreements related to the services they will provide, they shall gather information and documentation that fully proves the identity of their clients.

III. Submit to the Ministry through the Commission reports on:

a) Acts, transactions and services performed with their clients.

b) Every act, service or transaction performed or in which a member of the board of directors intervenes or any other equivalent entity, administrator, manager, officer, employee or attorney-in-fact of the investment advisors that, if applicable may contravene or violate the adequate application of the mentioned obligations in this article.

The reports referred to in this section, in accordance with the general regulationss mentioned in this article, will be prepared and filed considering at least the modalities referred to in such regulations; the characteristics, referred to in this article, that the acts, services and transactions need to have to be reported, considering their amounts, frequencies and nature, the monetary and financial instruments and commercial and stock practices that are observed in the places where they are performed; as well as the periodicity and systems through which they will be transmitting the information. The reports shall at least make reference to transactions defined as internal troubling and unusual.

IV. Designate before the Commission a representative for the compliance of the obligations referred to in this article.

V. Have an automated system that contributes to the compliance of measures and procedures established in the general regulations referred to in this article.

VI. Train personnel regarding the subject matter of this article.

The compliance of the obligations referred to in this article will be verified in the terms and conditions of general regulations issued by the Ministry.

The investment advisors shall retain for at least five years the information and documentation referred to in section V of this article, notwithstanding the provisions established in this or other statutes.

The Ministry will be empowered to request and obtain, through the Commission, information and documentation related to the acts, transactions and services referred to in section III of this article. The Ministry shall also be empowered to obtain additional information of other persons with the same purpose and to provide information to the competent authorities.

The violation to the provisions referred to in this article will be sanctioned by the Commission according to the procedure mentioned in article 391 of this Law, with a fine that corresponds from 10% through 100% of the amount of the unusual operation not reported, or, if applicable, operations of interrelated series of the same client or user, that should have been reported as unusual operations; troubling cases of relevant internal operations, as well as the noncompliance with any of the sections I, II, V or VI of this article, will be sanctioned with a fine from 30,000 to 100,000 days of salary and in the event of non compliance with this section and the provisions arising from it a fine from 5,000 to 50,000 days of salary will apply.

The public servers of the Ministry and the Commission, the investment advisors, its members of the board of directors or equivalent organs, officers, managers, employees and attorneys-in-fact shall abstain from giving the reports and other documentation and information referred to in this article, to persons or authorities other than those expressly authorized in the related statutes to request, receive or retain such documentation and information. The violation to these obligations will be sanctioned in terms of the applicable Law.

Article 227

The investment advisors will be prohibited from:

I. Receive any type of remuneration from issuers or simplified issuers for the promotion of the securities they issue or from persons related to such issuers.

II. Receiving any type of remuneration coming from intermediaries of the national or foreign securities market. These prohibitions will not apply when the investment advisors provide consulting services to stock market intermediaries as their client.

III. Receiving in deposit, in administration or in custody, or guarantee on behalf of third parties, money or securities that belong to their clients, directly from them or originating from the accounts that they handle, except in the event of involving the remunerations for providing their services.

IV. Offering guaranteed yields or act against their clients' interest.

V. Acting as co-owners in the agreements of stock market intermediaries of their clients.

The investment advisors will respond to their clients for the damages they cause, in the terms of the applicable provisions, in the case of breach of the above mentioned or of the obligations agreed to in the service agreements that they execute.

Article 227 A

The Commission, after a hearing with the investment advisor, may cancel the registry referred to in article 225 of this Law, in the following cases:

I. If the investment advisor performs transactions that contravene the provisions referred to on this Law or ant arising from it.

II. If the investment advisor does not carry out the operations for which it was granted the registration referred to in article 225 of this Law, within a period of six months continuously. The same period shall apply to investment advisors who exclusively carry out the activities of founding partner, in terms of article 225 Bis of this Law.

III. If its directors or partners have intervened in operations that infringe the provisions of this Law or other regulations derived from it.

IV. If the investment advisor, through its attorneys-in-fact, requests it.

V. In the event of individuals when they cease to meet the requirements of honorability, solid credit history or do not have the corresponding certification.

VI. In the case of investment advisors who exclusively carry out the activities of founding partner referred to in article 225 Bis of this Law, when they operate with a minimum capital lower than that established by the Commission in general provisions and do not reconstitute it within the period set by the Commission.

VII. In the case of the persons referred to in the previous section, when the Commission has revoked their authorization to operate as founding partner, in terms of article 225 Bis of this Law.

VIII. In compliance with what is ordered by the competent authority.

The cancellation of the registry will disqualify the company from carrying out the operations referred to in articles 225 and 225 Bis, from the date on which it is notified. The cancellation of the registration in the Registry will put the company in a state of dissolution and liquidation without the need for the agreement of the shareholders' meeting.

The Commission will promote the designation of the liquidator before the judicial, if within sixty calendar days from the notification of the cancellation of the registration, the liquidator had not been designated. When the Commission notices that there is an impossibility to liquidate the investment advisor, it will inform the judge to order the cancellation of its registration in the Public Register of Commerce, which shall take effect after three hundred sixty calendar days from the injunction.

The interested parties may oppose this cancellation within the referred sixty calendar day period before the judicial authority.

Title VIII Self-Regulatory Organizations

Article 228

The self-regulatory bodies will have the purpose of implementing standards of conduct and operation amongst its members in order to contribute to the healthy development of the securities market.

The brokerage firms and the central counterparties of securities, by ministry of this Law, will have the capacity of self-regulatory bodies.

Additionally, the trade unions of intermediaries of the securities market or investment advisors that are recognized by the Commission, prior resolution of its Governing Board, will have the referenced capacity.

Article 229

Self-regulatory bodies, based on their type and activities, may issue rules regarding:

I. The entrance, exclusion and separation requirements of the members.

II. The policies and regulations that must be followed when hiring with the clients to which their members provide their services.

III. The revelation of distinct or additional information derived from this Law.

IV. The fortification of the ethical conduct of its members and other persons involved with them.

V. The policies and regulations regarding the conduct of its members and of other persons involved with them for the purpose of employment, charge or commission, knowing and agreeing to the applicable rules, including the healthy use and practices of the securities market.

VI. The requirements of technical capacity, honor and satisfactory credit applicable to their personnel's union.

VII. The procurement of efficiency and transparency of the securities market.

VIII. The process for the adoption of rules and the verification of their fulfillment.

IX. The disciplinary and corrective measures that will apply in case of breach, including the procedures to make them effective.

In addition, trade associations of securities market intermediaries or investment advisors that obtain recognition as a self-regulatory body by the Commission may carry out, among others, certifications in accordance with the provisions of articles 141, 193 or 226, section VI, of this Law, provided that for such purpose they comply with the general provisions established for this purpose by the Commission itself. When there are no self-regulatory bodies recognized by the Commission that comply with the aforementioned provisions, the Commission may make the designations or grant the authorizations referred to in said legal provisions, without the need for said certification.

Additionally, the trade unions of the securities market or of investment advisors that obtain the acknowledgement of the self-regulatory body on behalf of the Commission, may carry out certifications in terms of the provisions in articles 141, 193, or 226, section VI, of this Law, provided that for this reason they adjust to the general provisions that to this effect the Commission establishes. When a self-regulatory body recognized by the Commission that complies with the mentioned provisions does not exist, the Commission may make the designations or grant the authorizations making reference to the said provisions, without the necessity of said certification. Self-regulatory bodies will carry out periodic evaluations regarding the fulfillment of the rules that they issue. The results of said evaluations shall be presented to the Commission, within five business days following the date in which they are conducted, when they may have as a consequence administrative infractions or crimes, without prejudice to the responsibility of supervision that corresponds to the Commission. Likewise, said bodies shall create a registry of the corrective and disciplinary measures that they apply, which will be available to the Commission.

The self-regulatory rules that they issue, in terms of the above mentioned in this article, may not contravene the established in the present Law.

Article 230

The Commission may issue general provisions in which it establishes the requirements that the self-regulatory bodies shall comply with in order to obtain the acknowledgement referred to in article 228 of this Law, as well as for their regular operation.

Article 231

The Commission will have the authority to:

I. Veto the self-regulatory rules issued by the self-regulatory bodies.

II. Order the removal or destitution of the board members and directors of the self-regulatory bodies, when they commit serious infractions or repeated infractions contained in this Law and other general provisions that derive from it, regardless of the economic sanctions pursuant to this or other corresponding laws.

III. Revoke the acknowledgement of the self-regulatory bodies when they commit serious infractions or repeated infractions contained in this Law and in other general provisions that derive from it.

In order to proceed in terms of the above mentioned in sections II and III of this article, the Commission shall have the prior agreement of its Governing Board.

Title IX Stock market and non-stock market negotiation systems

Chapter I Preliminary provisions

Article 232

The activities which have the purpose of providing access to negotiation systems which allow them to contact with the supply and demand of securities, centralizing bidding for the performance of transactions, can be developed by:

I. Stock exchanges.

II. Corporations that administer systems which facilitate transactions with securities.

III. Individuals or corporations who develop non-stock market negotiation systems.

The activities referred to in this article, which have as a purpose, shares representing capital stock of a corporation or negotiable instruments that represent said shares, registered in the Registry, including the securities quoted in the international quotation system, will be considered a public service and will be reserved to the stock exchanges.

Dealing with securities recorded in the Registry, different than those mentioned in the previous paragraph, including shares representing capital stock not registered in said Registry, the activities mentioned in this provision could be provided in an indistinct form by the organizations indicated in previous sections I and II.

The persons referred to in section III of this legal precept, will solely be able to provide the referenced activities regarding shares representing capital stock not registered in the Registry, as long as they exclusively participate in the institutional and qualified investment transactions.

Article 233

The shareholders listed in stock exchanges, can perform out of these transactions with said securities, provided that they adjust the ap-

plicable provisions to the acquisitions of securities in order to disclose and mandatory takeovers bids, as applicable.

Chapter II Stock exchanges

Section I Organization

Article 234

In order to organize and operate as a stock exchange, a concession from the Federal Government is required, which will be granted discretionally by the Ministry, with the opinion of the Commission, to the corporations organized pursuant to the special provisions contained in this Law and, for what is not provided herein, in the provisions of the General Law of Business Organizations.

The granting of concession will be solved in attention to what is best for the development and possibilities of the market.

The concessions granted, including their modifications, will be published in the Federation's Official Gazette at the cost of the interested party.

Article 235

The requests for a concession to organize and operate as a stock exchange shall be attached by the following documentation:

I. Draft of by-laws of a corporation in which the following shall be included:

a) The corporate name shall contain the phrase "stock exchange" "*bolsa de valores*").
b) The term of the corporation will be indefinite.
c) The corporate domicile shall be located within national territory.
d) The corporate purpose will be to act as a stock exchange.

II. Shareholder information and relations, indicating the amount of capital stock that they will contribute and the origin of the declared resources, including the probable board members, the chief executive officer and main corporation's officers.

III. Corporate organization plan that comprises the following aspects:

a) The indication of the securities regarding to which they seek to grant their services.
b) The premises, installations and platforms of negotiations that they shall use for the agreement of transactions with securities.
c) Security measures in order to preserve the integrity of information.
d) The draft of internal regulations which fulfills the requirements referred to in this Law.

e) The operation handbooks of policy and procedure.
f) The description of the audit programs that it will carry out to its members and to the issuers that quote their securities in them with the intention of verifying their obligations, provided in the internal regulations of the stock exchange.
g) The description of the programs that they will implement to monitor that the processes of price formation are done with transparency, correction and integrity.

IV. Bank deposit receipt in local currency or, in this case, of government securities at market price, deposited in financial entities in favor of the Federal Treasury, for a quantity equal to ten percent of the minimum capital with which the corporation should operate.

The principal and, in its case, interests of said deposit will be returned to the applicant in case of waiver, as well as in event that the application is denied or when transactions are initiated in the terms of this Law. In case that the agreed authorization is revoked according to Article 269, paragraph I to III, of this Law, the amount of deposit will be enforced.

V. The policies and regulations that will be used for the issuers that quote their securities, including the intermediaries of the stock exchange and the attorneys-in-fact that participate in them, fulfill the provisions in the internal regulation.

VI. Additional documentation and information that the Commission, in connection with the previous paragraphs, requires through general provisions.

The stock exchanges' by-laws, including any modifications, shall be approved by the Ministry. Once the approval has been obtained, it shall be recorded in the Public Registry of Commerce. In any case, the referenced stock exchanges shall furnish the Ministry, within ten days following the holding of the corresponding meeting, a copy authorized by the secretary of the board of directors, of the minutes of the meeting, and, when necessary, public deed where such minutes is formalized. Dealing with increases in capital, the stock exchanges will not be required to have the above mentioned authorization, but in all cases they shall furnish to the Ministry, with at least fifteen business days of anticipation of the date in which they will seek to perform the increase of capital, the information of the referenced shareholders in paragraph II of this article, term in which the Ministry could oppose the performance of the referred increase in the event that they consider that an impediment exists for those whom are referred to as shareholders of the corresponding stock exchanges.

Article 236

The stock exchanges must prove to the Commission, with at least thirty business days of anticipation of the commencement of its activities, the fulfillment of the following requirements:

I. That they have the minimum capital stock paid in.

II. That the board members, the chief executive officer, the officers

that occupy seniority positions immediately inferior to his, and in this case, the statutory auditors, comply with the established requirements in this Law and the general provisions issued by the Commission.

III. That they maintain the necessary infrastructure and internal controls to perform activities and render their services, pursuant to the applicable provisions.

The Commission may deny the total or partial beginning of transactions when compliance with the above article cannot be proved.

Article 237

The stock exchanges shall have the minimum capital as established by the Ministry be means of the general provisions.

The stock exchanges' capital stock will be exclusively formed by ordinary stock, in which the rights and obligations of its holders will not be limited or restricted in any way. The stocks will be of equal value and will confer to its holders the same rights and obligations.

The sole subscription and payment of shares representing capital stock will not give right to its holder to perform transactions in the stock exchanges; in which only the members that fulfill the requirements that are established in their interior regulations will be able to trade.

The shares representing the stock exchanges' capital stock will be of free subscription.

The brokerage firms, credit institutions, insurance and bonding institutions, investment companies, operating companies of investment companies and administrators of retirement funds, may invest, with charge to their capital, in shares representing the stock exchanges' capital stock. The persons who own directly or indirectly ten percent or more of the capital of the aforementioned entities, may in no event participate in the capital stock of the stock exchange.

The foreign governments shall not be able to participate, directly or indirectly in the capital stock of the brokerage firms, except in the following cases:

I. When it is done because of temporal prudential measures such as subsidiaries or bailouts.

The stock exchanges that fall in the provision of the preceding paragraph shall provide the Ministry the information and documentation that proves compliance with the above, within 15 calendar days following by the day they fall within such provision. The Ministry will have 90 calendar days following receipt of the corresponding information and documentation to decide whether the participation in question falls in the exception provided for in this section.

II. When the corresponding participation implies that is has the control of the stock exchange, in terms of article 2, section III of this Law, and it is performed through legal entities such as funds, developing governmental entities, among others, prior

discretional authorization of the Ministry, whenever in its judgment such persons prove that:

a) They do not exercise authority functions.

b) Their decision-making bodies operate independently of the foreign government in question.

III. When the corresponding participation is indirect and does not imply control of the stock exchange, in terms of article 2 section III of this Law; without prejudice of the authorization applications that need to be performed in accordance to the provisions in this Law.

Article 237 Bis

The stock exchanges shall abstain from registering in the registry referred to in articles 128 and 129 of the General Law of Business Organizations those transfers of shares carried out in contravention of the provisions of the previous article and shall inform such situation to the Ministry within a term of five business days after becoming aware of it.

Whenever the acquisitions and other legal acts through which, directly or indirectly, the ownership of representative shares of the stock capital of a stock exchange are obtained by violating the provisions mentioned in the preceding article, the economic and voting rights attached to the corresponding shares of the stock exchange shall be suspended and therefore may not be exercised until it is established that the authorization or appropriate ruling has been obtained or that the requirements established in this law have been complied.

Article 238

The shares representing the brokerage firms' capital stock shall be paid fully in money in the act of being subscribed. The mentioned shares will be maintained in deposit in any of the securities depository firm regulated in this Law, which in no case will be obligated to deliver them to the owners, except when their inscription is obtained in the Registry, and in its case, public offering, in terms of the established in article 266 of this Law.

When the stock exchanges' capital stock exceeds the minimum, at least fifty percent must be paid, provided that this percentage is not inferior to the minimum established. In regards to corporations with variable capital, the minimum capital stock will be formed by shares without right to withdraw. In no case may the variable portion of the capital stock be more than the minimum.

The stock exchanges, upon announcement of their capital stock shall provide their paid in capital.

Article 239

No person or group of persons may acquire directly or indirectly, by

means of one or various operation of any nature, simultaneous or successive, the control of shares representing a stock exchange's capital stock for more than ten percent of the total of said shares. The Ministry may authorize as an exception a greater percentage.

Section II Administration and surveillance

Article 240

The administration of the stock exchanges shall be entrusted to a board of directors and a chief executive officer, in their respective competences.

Article 241

The stock exchanges' board of directors must be composed of a minimum of five and a maximum of fifteen members of which, at least, twenty five percent shall be independent, pursuant to the requirements of independence above mentioned in this Law for stock market corporations. For each member a respective alternate member will be designated, in the understanding that the alternate members of the independent members must also have the same nature.

In no case may the independent board members be the individuals who participate in the capital stock of financial entities or carry out these positions, jobs or commissions, except involving independent members of any of the mentioned financial entities.

The shareholders that individually or jointly have ten percent of the shares representing the capital stock may appoint in the general shareholders meetings a director and a statutory auditor, as well as revoke said appointments, without applying the percentages referred to in articles 144 and 171 of the General Law of Business Organizations. Such appointments, may only be revoked when they also revoke the appointment of all of the other board members or statutory auditors, as the case may be, in which case they may not be appointed with such capacity during the twelve months immediately following said revocation.

Article 242

The board of directors may establish the committees it deems necessary for the best performance of the company's functions, but in any case it must have committees responsible for the admission of members, the list of issuers and simplified issuers, auditing, regulations, surveillance and sanctions. The audit committee must be chaired by an independent director.

These committees will be organized and operate in accordance with the self-regulation rules established by the relevant stock exchange.

Article 243

The stock exchanges will be subject to the above mentioned in

articles 26, second to last and last paragraphs, 121, 123, second paragraph, 124, first, second and second to last paragraphs, 127 to 129, 131, second paragraph, 132 to 134, 205, 209 to 211, and 218 of this Law. The responsibilities provided in articles 132 and 134 will be competence of the Ministry.

The documentation and the registries relative to the transactions performed in the market, as well as the information provided by its members or issuers, must be conserved during a term of at least five years.

The Commission will establish by means of general provisions the rules to which the stock exchanges will be subject to in the application of their shareholders' equity.

Documentation and records relating to transactions carried out on the stock exchange, as well as information provided to them by their members, issuers or simplified issuers, must be kept for a period of at least five years.

Section III Activities and services

Article 244

The stock exchanges will perform the following activities:

I. The established in articles 232 and 255 of this Law, for which they must develop:

a) Negotiation operating systems.
b) Systems in order to divulge information to the public.
c) Follow-up and monitoring systems of the transactions performed in their negotiation operating systems, as well as in relation to the fulfillment of the requirements of quoting and maintenance of the quoting of securities.

II. Establish the premises, facilities and automatic mechanisms that facilitate the execution of transactions with securities on behalf of its members, as well as promoting the negotiation of securities.

III. Quote securities for their negotiation in the systems they establish, by request of their issuers, provided that they satisfy the requirements determined by their interior regulations.

IV. Establish special lists of securities called:

a) International Quotation System, and
b) Securities subject to simplified registration.

The above, in accordance with the general provisions issued for this purpose by the Commission and the internal regulations of the stock exchanges.

V. Provide and maintain available to the public information regarding the quoted securities in the same and their issuers, including the disclosed by them, as well as the transactions in it and the international quotation system that they perform.

VI. Certify the market quotation of securities, as well as the transactions executed in them.

VII. Establish the necessary measures in order for the transactions executed in them to be subject to the applicable provisions.

VIII. Issue rules of self-regulation that regulate its activities and those of its members and monitor its fulfillment in order to impose disciplinary and corrective measures, as well as establish measures in order for the transactions that they perform to be adjusted to the applicable provisions.

IX. Propose to the authorities the introduction of new products and facilities for the negotiation of securities, including those necessary for transactions involving securities subject to simplified registration.

X. Enter into agreements with other national or foreign stock exchanges, aimed to facilitate the access to their negotiating systems.

XI. Analogous, connected or the complementary of the above, that are authorized by the Ministry, by means of general provisions.

Article 245

The stock exchanges' negotiation operating systems must permit their members to participate in equal conditions. For this reason, said systems must satisfy the following requirements:

I. Give access to the information regarding bidding, transactions, or performed acts and the market in general.

II. Identify the parties in the transactions, as well as the date and time of execution, price, volume and amount of the transaction, class and type of securities and form of liquidation.

III. Detect irregularities in the procedures of the receipt of bids and execution of transactions, as well as to avoid the alteration and falsification of the transaction records.

IV. Contain security measures in order to access the database that they maintain.

V. Assure the continuity in the negotiation of securities.

VI. Contemplate contingency plans in order to avoid the interruption, alteration, limitation and other acts or facts that impede the negotiation of the securities.

VII. Have mechanisms to maintain the integrity of the securities market.

Additionally, the stock exchanges shall have automated systems that allow safeguarding and protecting the access to the information that they receive in relation with the issuers and the content of the same, as long as it is not divulged to the public investor by their conduct.

The stock exchanges shall privilege the use of electronic means for which they will have to establish passwords of reciprocal identification which will replace the autograph signature, in order to permit access to their automated systems.

Article 246

The stock exchanges will only permit brokerage firms to operate in them. In any event, said brokerage firms shall comply with the stock exchanges' interior regulations requirements.

Article 247

The stock exchanges will be obligated to formulate interior regulations that contain the rules applicable to:

I. The requirements that the stock exchanges shall comply with in order to operate with securities quoted in them, as well as the cases of suspension or exclusion of them and the persons who represent them.

II. The rights and obligations of the stock exchange, its members and issuers that quote their securities, including the disciplinary and corrective measures applicable in case of breach and the procedures to make them enforceable.

III. The requirements that in addition to the established in article 193 of this Law, must be complied with in order to be authorized to operate in the stock exchange, by the attorney-in-facts of the brokerage firms.

IV. The quoting, maintenance and cancellation requirements of securities quoted in the stock exchange and depending on the type of securities involved, they shall contemplate those related with the financial situation of the issuer and its shareholders, corporate governance, diversification of the shareholding and the others necessary for the securities to have a broad circulation.

Likewise, the special negotiation modalities shall be provided which, in its case, the stock exchanges determine for the issuers that do not comply with the mentioned maintenance requirements, including parameters that avoid disordered conditions of the market or manipulation of prices.

V. The requirements of the progressive adoption programs which are referred to in article 19, section I, paragraph c) of this Law must contain, as well as the procedures to follow in order to periodically verify the levels of advance and fulfillment to said programs, by the stock market investment promotion corporations.

VI. The terms in which the transactions shall be performed with securities quoted in the exchange, the form in which they must carry out their registries and the cases in which the suspension of quotation of securities is applicable in particular or of the market as a total.

VII. The rules of operation subject to the members who choose to participate as market makers.

VIII. The requirements and procedures for the quotation of securities in the international quotation system as well as those relative to the suspension and cancellation of the quotation system.

IX. The terms in which the transactions with securities in the international quotation system must be performed, as well as the obligations of those who operate in said system.

X. The attributions to supervise that the processes of price formation are carried out in an accurate form, with transparency and integrity.

XI. The process for the adoption and supervision of rules of self-regulation.

XII. The terms and conditions for the delivery and reception of the information that the issuers and securities rating institutions are bound to furnish to the public.

XIII. The basis for the audit practice to its members or the issuers that quote their securities in them, with the purpose of verifying the fulfillment of the obligation at their charge, provided in the regulations.

XIV. The measures to assure the continuity in the negotiation of securities, as well as the contingency plans to avoid the interruption, alteration, limitation, and other acts or facts that impede said negotiation.

The above, considering, among others, the type of issuer, the characteristics of the securities offering, or the type or class of securities, considering in a differentiated manner those requirements related to the financial situation of the issuer, the corporate governance, the diversification of the securities and other elements necessary to adapt them to the type of market linked to the regime of the corresponding stock exchange listing section and others necessary for the securities to have a wide circulation.

The regulations and its modifications shall be submitted to the prior authorization of the Commission, which may formulate remarks and modifications when it considers that the regulations are not adjusted to the provisions in this Law or to the market customs and practices. The rules of self-regulation will not require authorization, but in any event, the Commission will have veto authority in connection with said rules.

Article 248

The stock exchanges may suspend the quoting of securities up to a term of twenty business days in any of the following cases:

I. When the issuers abstain from furnishing, on time and form, the information that pursuant to applicable general provisions has to be disclosed to the market.

II. With the purpose to avoid creation or when already disordered conditions exist or transactions are not in accordance with the market customs and practices.

III. When the issuers of the securities no longer comply with the maintenance requirements provided in their internal regulations.

For such effect the stock exchanges must give notice to the issuer and the Commission the same day, which may order to lift the suspension. Such suspension may last for more than twenty business days, provided that the Commission authorizes so, prior hearing of the issuer of the corresponding securities. Notwithstanding the foregoing the Commission may, prior to granting the mentioned right of due process (hearing), decree as a preventive measure that the suspension continues for a term not to exceed forty business days and in addition to the twenty business days referred in the first paragraph of this article, in order to avoid producing or when disordered conditions already exist or transactions are not in accordance with the market customs and practices.

The stock exchanges may also, prior Commission's authorization,

cancel the quoting of the securities in the cases referred to in sections I and II of this article, regarding serious or repeated violations by the issuers. In order to determine the resolution, the Commission must previously hear the interested issuer.

Notwithstanding the foregoing, the Commission may order to the stock exchanges, in writing or by means of any communication media that permits reliable proof thereof, the suspension of the securities quoting, as preventive measure, for a term not to exceed sixty business days, in order to avoid producing or when disordered conditions already exist or transactions are not in accordance with the market customs and practices or in those cases in which the issuers violate their obligations pursuant to this Law, the general provisions created from this Law or the maintenance of quoting requirements established under the internal regulations of the stock exchanges. In order for the before mentioned suspension to continue for a longer term, the Commission shall grant the right of sue process (hearing) to the corresponding issuer, being applicable the provisions in the last paragraph of article 107 herein.

Stock exchanges may suspend trading or cancel the listing of securities subject to simplified registration, in the cases provided for in sections I to III of the first paragraph of this article, and must give notice on the same day to the simplified issuer and, where applicable, subject to the provisions of articles 107 and 108 Bis of this Law.

Article 249

The fees that the stock exchanges charge for services related to the quoting and maintenance of securities and transactions in the market, must be authorized by the Commission, which will have the authority to make remarks and order modifications during the authorization proceeding.

Stock exchanges must make available to the public for consultation, free of charge and immediately, the information that issuers or simplified issuers provide them in compliance with the provisions of this Law and other general provisions emanating from it.

Article 250

The stock exchanges may invest in instruments representing the capital stock of other stock exchanges and derivative financial instruments, securities depository firms, central counterparties of securities, clearing houses of derivative financial instruments, corporations that manage systems to facilitate securities transactions, price providers, companies that render complementary or auxiliary services of administration or in the performance of their corporate purpose as well as real estate companies that are owners or managers of real estate used as their offices.

The companies referred in the above paragraph are subject to the inspection and surveillance of the Commission when the stock exchanges have control over the same.

Article 251

In order for the stock exchanges to invest, directly or indirectly, in instruments representing the capital stock of national or foreign entities of the same kind or that carry out functions equivalent to the securities depository firms or central counterparties of securities, will require the Commission's authorization.

Article 252

The Commission may issue general provisions regarding the information that shall be periodically furnished by the stock exchanges to the financial entities, so it may require information, reports, entries, records, minutes' books, supplemental, documents, correspondence and in general, the information that it considers necessary in the form and terms stated un the mentioned provisions.

Article 252 Bis

The stock exchanges will require prior authorization of the Commission to enter into the agreements referred to in section X of article 244 of this Law. To grant such authorization it must consider the impact in the liquidation and the Mexican stock market depth and the particularities of the foreign stock markets in question, evaluating if the market complies with the principal regulations that this Law provides for the international markets, as well as the existence of information exchange agreements or reciprocity, customs and practices of the market that are compatible with the national market. Additionally the Commission may establish through general regulations the requirements the stock exchanges are required to have in order to obtain the referred authorization.

In the framework of agreements referred to in section X article 244 of this Law, the Commission, in accordance with the general regulations, may authorize that a public offering of securities issued in markets with the ones the stock exchange has entered into the referred agreements, be recognized as such in national territory and registered in the National Securities Registry.

The general provisions referred to in the previous paragraph shall be intended to generate a framework of legal certainty in the issuance of the authorizations referred to in the previous paragraph, to establish the framework of rights and obligations applicable to both the issuers and the simplified issuers whose public offerings are listed, as well as to the Mexican stock exchanges that request the respective authorization, as well as to ensure proper compliance with the guiding principles of the National Securities Registry, among others.

Chapter III Non-stock market negotiation systems

Section I Companies that manage systems to facilitate the transactions with securities

Article 253

In order to be organized and operate as a company that manages systems to facilitate transactions with securities the Commissions' authorization is required, prior resolutions of its Governing Board. Said authorization will be granted to corporations organized in accordance with general provisions contained in this Law and, in that not provided herein, by the General Law of Business Organizations. Due to their nature, these authorizations are not transferable.

Article 254

The authorization applications to be organized and operate as a company that manages systems to facilitate transactions with securities must have the following documents attached:

I. Draft of a corporation's by-laws.

II. List and information of the shareholders, as well as the likely board members, chief executive officer and main officers of the corporation.

III. General plan of operations that contains the minimum elements determined by the Commission by means of general regulations.

IV. The conduct manual including policies for settlement of potential conflicts of interest in conducting their activities. Such manuals shall contain the regulations complying with the general regulations issued by the Commission.

V. Other documentation and information that the Commission, in connection with the above sections, requires by means of general provision, prior resolutions of its Governing Board.

The companies that manage systems to facilitate transactions with securities must give notice to the Commission of the modifications that they perform to the documents stated in this article, within ten business days following the date in which they perform the modifications. The Commission may object to the mentioned modifications, within the twenty business days following the date in which it receives the corresponding notice, when the modifications are not adjusted or contravene the provisions of this Law and other laws. In any event, the changes made to the documentation mentioned will be effective until the end of the referred twenty-day term.

Article 255

The companies that manage systems to facilitate transactions with securities will perform the following activities:

I. Divulge quotations with the purpose of directing applications or orders to carry out transactions with securities, financial derivative

instruments and other financial assets, by means of the use of automatic or communication equipment.

II. Provide information related to the quotations of securities, financial derivative instruments and financial assets, regarding the services they render.

III. Render services by means of communication systems or equipment related to the divulgation of quotations to carry out transactions.

IV. The other provided in their by-laws.

The transactions with securities carried out by means of the systems referred to in this article will be considered executed out of the exchange.

Article 256

The provision of information carried out by the companies that manage systems to facilitate transactions with securities to a price provider, shall be furnished in an identical manner and with the same opportunity, cost and delivery means, to any other price provider that requests so.

Article 257

The companies that manage systems to facilitate transactions with securities may only render the services referred to in sections I and III in article 255 of this Law to credit institutions and brokerage firms and other national or foreign institutional investors. Additionally when it is about operations with financial derivatives and foreign currency will be able to provide their services to foreign financial entities the same type as those listed.

The companies that manage systems to facilitate securities operation should ensure that the operations they perform through their systems the persons mentioned in the previous paragraph, always have as a counterpart credit institutions or brokerage firms.

The financial entities mentioned in the previous paragraph, may exclusively operate on their own account in the referred companies that manage systems to facilitate securities operations. When it comes to retirement funds of administration companies and mutual funds' operating companies it will be in the understanding that they operate on their own when they perform operations on behalf of the investment company they are managing.

The activities of providing information referred to in section II of article 255 herein may be provided by any person.

Article 258

The companies that manage systems to facilitate transactions with securities are prohibited to assume the nature of counterparty of any of the users in the transactions that they direct by means of their systems.

Article 259

The Commission, prior agreement of the Governing Board, will au-

thorize the merge or spin-off of the companies that manage systems to facilitate transactions with securities, in terms of the provisions of articles 132 to 134 herein.

The Commission may issue general provisions related to the information that the companies which manage systems to facilitate transactions with securities shall furnish in a continuous and periodic manner.

The Commission may establish prudential regulations oriented to persevere the quality of the activities and services of the companies managing systems to facilitate securities operations by means of internal controls, segregation of duties, prevention of conflicts of interest, corporate and auditing practices, transparency and fairness in the activities and services, in protection of the market in general.

Section II Non-stock market negotiation systems with shares not register before the Registry

Article 260

The private offering, promotion, marketing and negotiation of shares representing the capital stock of legal entities, not registered before the Registry, by means of systems of centralized information that facilitate the performance of said activities, may be carried out by means of any person and without the need of obtaining authorization from the financial authorities, provided that they exclusively participate in such systems and in the negotiation of shares institutional and qualifies investors. Without prejudice to the foregoing, the persons who carry out the offer shall notify the Commission, for statistical purposes, in terms and conditions of the offering within the ten business days following its execution, as well as to furnish to the interested parties in participating in the relevant information.

The offer, promotion, marketing and negotiation of the before mentioned shares may be carried out without the intervention of stock market intermediaries. The brokerage firms and the credit institutions may offer services of mediation, deposit and administration of said shares, without in any case being able to participate on behalf of third parties in the execution of the transactions.

The brokerage firms may provide the systems of centralized information for the offering and negotiation of shares pursuant to the provisions in this article.

Article 261

The persons who develop systems for the private offering and negotiation of shares, pursuant to the provisions of article 260 herein, will not be subject to the supervision of the Commission, except regarding financial entities.

Chapter IV International Markets

Article 262

The brokerage firms may establish a special quoting of securities which will be named the international quotation system. Additionally, they may establish agreements that aim to facilitate the access to their negotiating systems with other national or foreign stock exchanges.

The negotiation of securities in said system may only be performed directly by brokerage firms and credit institutions.

When it comes to the agreements to facilitate the access to the negotiating systems, the Commission through general regulations will regulate the way to negotiate the securities upheld in such agreements, as well as the events to suspend access to the referred systems or participants, or to revoke the respective authorization. The brokerage firms are the only ones that may participate in such systems; the securities may not be traded outside of such systems and the operations will be considered as traded in the stock market.

Article 263

Foreign securities satisfying the following requirements may be quoted in the international quotation system:

I. That are not registered before the Registry.

II. That the issuers or the origin market of the negotiable instrument or own negotiable instruments receive, in accordance with their characteristics, the recognitions stated by the Commission by means of general regulations.

III. That they satisfy the requirements established in the internal regulations of the corresponding exchange.

The general provisions issued by the Commission pursuant to section II in this article, shall consider, amongst other aspects, the direct participation of the brokerage firms and credit institutions in the proceedings for the quotation of their securities and, in its case, the other that may correspond to the issuers so that their securities are quoted in the international quotation system; the obligation of divulging to the investing public, with the same opportunity, the same information that the issuer of the securities provides in the markets of origin; the execution of agreement between he exchanges that assure the disclosure of the information in the mentioned conditions; the subscription of agreements of assistance and exchange of information between regulatory authorities, as well as the international customs and practices that are compatible with the legal provisions of the country.

Article 264

The securities transactions representing the capital stock of a legal entity, their equivalent or references to said securities, quoted in the

international quotation system, will be considered as performed in the stock exchange.

Chapter V Common provisions

Article 265

The stock exchanges may not assume the nature of counterparty of their members in the transactions directed by means of their negotiation systems.

Article 266

The stock exchanges and companies that manage systems to facilitate transactions with securities may apply for registration before the Registry and, in its case, the public offering of the shares representing their capital stock, provided that the same are subject to the provisions for the stock market corporations.

Article 267

The stock exchanges and companies that manage systems to facilitate transactions with securities must maintain, during a term of five years the written, automatic or voice registries of the transactions that they perform by means of their negotiation systems, identifying the parties, class or series, number, volume, price and kind of transaction and, in its case, the form of liquidation.

Chapter VI Revocation and dissolution and liquidation

Article 268

The Ministry, as proposed by the Commission, or else, listening to its opinion and prior right of due diligence, may revoke the concession to operate as a stock exchange, when any of the cases referred to in article 269 herein are updated. Regarding companies that manage systems to facilitate transactions with securities, the Commission will be in charge of the corresponding authorizations, when any of the cases provided in article 269 are updated.

Article 269

The Ministry or the Commission, as applicable, may revoke the permit or authorization to operate as stock exchanges or company that manages systems to facilitate transactions with securities, when:

I. They are not incorporated or the information related to the registration in the Public Registry of Commerce is not furnished, within a term of one hundred and eighty calendar days, as of the date in which the permit or authorization was notified, as the case may be.

II. The minimum capital was not paid at the time of incorporation, regarding stock exchanges.

III. They do not initiate transactions within a term of six months as of the inscription before the Public Registry of Commerce.

IV. Stop performing their corporate purpose for a term of six months.

V. Start the process of dissolution and liquidation.

VI. Are declared in bankruptcy proceedings by judicial authority.

VII. Commit serious or repeated infringements to the legal or administrative provisions applicable to them.

Article 270

The dissolution and liquidation, as well as the bankruptcy proceedings of the stock exchanges, will be governed by the provisions in the General Law of Business Organizations and the Bankruptcy Proceedings Law, except for the following matters:

I. The position of liquidator, conciliator or receiver will correspond to the person that for such effect the Ministry authorizes.

II. The Ministry may request the declaration of bankruptcy proceedings.

Title X Securities deposit, liquidation and clearing

Article 271

The centralized service of deposit, storage, administration, compensation, liquidation and transfer of securities is considered a public service and may only be developed by securities depository firms and the Bank of Mexico. The service of compensation may be rendered by central counterparties of securities, in terms of the provisions in Chapter II of this Title.

Chapter I Securities depository firms

Section I Organization

Article 272

In order to be organized and operate as an institution for the deposit of securities, a concession from the Federal Government is required, which will be discretionally granted by the Ministry, listening to the opinion of the Commission and the Bank of Mexico, to the corporations organized pursuant to the special provisions contained in this Law and, in the matters not provided herein, by the General Law of Business Organizations.

The concessions granted, as well as its modifications, will be published in the Federation's Official Gazette at the interested party's expense.

Article 273

The applications for concessions to be organized and operate as a securities depository firm must have the following documents attached:

I. Draft of the by-laws of a corporation in which the following must be provided:

a) The corporate name must contain the legend "securities depository" "*institución para el depósito de valores*").
b) The term of the company will be indefinite.
c) The corporate domicile must be located within national territory.
d) The corporate purpose will be to act as a securities depository firm.

II. List and information of the shareholders, indicating the amount of capital stock that they will subscribe and the origin of the resources declared by them, as well as the probable board members, chief executive officer and main officers of the company.

III. General operation plan of the company that comprises, at least, the following aspects:

a) The indication of the securities regarding the services it intends to render.
b) The mechanisms and systems to be used for the deposit, storage, administration, compensation, liquidation and transfer of securities.
c) The measures to be adopted to permit the exercise of the rights of the securities subject to deposit.
d) The draft of the internal regulations that covers at least the aspects referred to under this Law, as well as the corresponding handbooks.

IV. Receipt of the banking deposit in national currency or, in its case, of government securities for its market price deposited in financial entities in favor of the Treasury of the Federation, for an amount equal to ten per cent of the minimum capital which the company has to have.

The principal and, in its case, interests of said deposit will be returned to the applicant in case of waive, as well as in case that the application is denied or when transactions are initiated in terms of the provisions herein. In case that the concession is revoked pursuant to article 299, section I to III, herein, the amount of the deposit will be enforced.

V. The policies and rules to be used in order for the depositors to fulfill the provisions of their internal regulations.

VI. The other documentation and information that the Ministry, in connection with the above sections, requires by means of general provisions.

The by-laws of the securities depository firms, as well as its amendments, must be approved by the Ministry. Once the approval is obtained it may be registered in the Public Registry of Commerce. In any case, the referred firms will furnish to the mentioned Ministry, within ten business days following the corresponding meeting, certified copy by the secretary of the board of directors, of the meeting's minutes and, when applicable, public deed in which is evidenced the formalization of the same. Regarding increases of capital, the securi-

ties depository firm will not require the mentioned authorization, but in any case must file to the Ministry, with at least fifteen calendar days in advance to the date in which pretend to perform the increase of capital, the information of the shareholders referred to in section II in this article, term in which the Ministry may oppose to the performance of said increase in the event that it considers that any impediment exists for the corresponding persons to be shareholders of the securities depository firm.

Article 274

The securities depository firms must have the minimum capital stock established by the Ministry by means of general provisions.

The capital stock of the securities depository firms will be exclusively formed by ordinary shares in which the rights and obligations of their holders are not limited nor restricted in any manner. The shares will be of equal value and confer the same rights and obligations to their holders.

Article 275

The shares representing the capital stock of securities may only be acquired by the Bank of Mexico, brokerage firms, credit institutions, administrators of retirement funds, investment companies, operating corporations of investment companies, financial entities that distribute shares of investing companies and entities that act with such nature, institutions of insurances and bonds, holding companies of financial groups, stock exchanges, central counterparties of securities and other persons authorized by the Ministry.

No person or group of persons may acquire directly or indirectly, through one or various simultaneous or successive transactions, shares that represent ten percent or more of the capital stock of one institution for the deposit of the securities. The Ministry will be able to authorize exceptionally a higher percentage.

The shares representing the capital stock must be maintained in deposit in the same institution.

Shares may only be transferred to a person that has the requirements to be a shareholder mentioned in this article. When by any reason a shareholder no longer satisfies the requirements established under this Law, he must be separated from the company in terms of the applicable provisions. In case said separation causes a reduction in the minimum capital stock, the other shareholders will proportionally contribute the necessary amount to reestablish it.

Section II Administration

Article 276

The administration of the securities depository firms will be

entrusted to a board of directors and a chief executive officer in their corresponding competences.

Article 277

The board of directors of the securities depository firms will be comprised of a minimum of five and maximum of fifteen members, from which at least twenty five per cent must be independent, pursuant to the independence requirements provided for the stock market corporations. For each member a respective alternate may be appointed, in the understanding that the alternate directors of the independent directors must have the same nature.

The board must have the participation of a representative from the Bank of Mexico, as well as an individual who represents the institutions of development banks appointed by the Ministry, when the Bank of Mexico or any development bank are shareholders of the corresponding institution for deposit of securities, in which event they will have the nature of independent.

In any case the persons who participate in the capital stock of financial entities or that perform the same charges, positions or commissions, except regarding independent directors in any of the mentioned financial entities may be independent members.

Article 278

The board of directors may establish the committees that it considers necessary for the best performance of the company's functions, but in any case it must have at least a committee in charge of the auditing functions, which will be chaired by an independent director.

Article 279

The securities depository firms will be subject to the provisions of article 26, second to last and last paragraphs, 121, 123, second paragraph, 124, first, second and second to last paragraphs, 127 to 129, 131, second paragraph, 132 to 134, 205, 206, 209 to 211, 218, 236, 241, last paragraph and 243, second paragraph, herein. The authority provided in articles 132 and 134 will be competence of the Ministry.

The Commission may establish by means of general provisions the rules to which the securities depository firm must be subject in the application of their shareholders' equity.

The Commission may issue general regulations concerning the information that must be provided periodically by the institutions for the securities deposit to the financial authorities, for which it may require data, records, reports, minute book, auxiliaries, documents, correspondence and in general, any risk information, preventions of conflicts of interest, corporate and auditing practices, transparency and fairness concerning the activities and services offered by the institutions for the securities deposit.

Section III Activities and services

Article 280

The securities depository firms must perform the following activities

I. Render the services of deposit, storage, administration, compensations, liquidation and transfer of securities in the Registry, in favor of:

a) National or foreign financial entities.
b) Other persons who meet the characteristics established by the Commission by means of general provisions.

II. Render the services of deposit, storage, administration, compensations, liquidation and transfer of securities and other services inherent to the functions of financial entities, national or foreign credit institutions or foreign securities depository firms. As well as to receive said services from the corresponding entities, subject to the general provisions issued by the Commission.

III. Deliver securities that it maintains in deposit, by means of annotations carried out on behalf of their depositors by virtue of the transactions performed in said securities or pursuant to instructions received from clients, as well as to register by means of entries the patrimonial rights of depositors.

IV. Render services for compensation and liquidation of transactions with securities performed by the depositors, without assuming the nature of counterparty in said transactions.

V. Operate negotiation systems in order for their depositors to execute securities loan transactions, being applicable the provisions in article 258 herein.

VI. Intervene in transactions by means of which a security pledge of securities that are deposited is executed, without responsibility before an eventual performance of the pledge, except that they act in a negligent manner or in contravention of the depositor's instructions.

VII. Carry out the registry of shares representing the capital stock of corporations and perform the corresponding registrations in terms and for the effects under articles 128 and 129 of the General Law of Business Organizations.

VIII. Issue certifications of the acts performed in the exercise of their position.

IX. Manage the securities received in deposit, as requested by the depositor, in which event they may perform the economic rights deriving from the same. Regarding depositors with an overseas address, the securities depository firms may exercise the corporate rights inherent to the instruments, provided that, in each case, receive written instruction in the sense in which they must comply with such representation.

X. Carry out the necessary acts to perform their corporate purpose.

XI. Formulate and publish statistics with information obtained by the provision of its services and activities, as well as to perform and communicate studies on such information; provided that the required information is not confidential.

XII. The analogous, related or complementary activities to the above, that are authorized by the Ministry pursuant to general regulations.

Article 281

The securities depository firms may intervene in the capital stock of national and foreign companies which render complementary or auxiliary services to those of their corporate purpose, as well as of securities central counterparties, provided that they are authorized by the Ministry, listening to the Commission and Bank of Mexico.

The companies referred to in the above paragraph will be subject to the inspection and surveillance of the Commission when the institutions for securities depository firms have control over the same.

Article 282

The securities subject to deposit in the securities depository firms may be represented in multiple certificates or in a single certificate that represents part or the total of the securities object of the issuance or the deposit. Such certificates may be issued electronically in the form of data messages with advanced electronic signature in accordance with the provisions of the Commercial Code and in accordance with the general regulations issued by the Bank of Mexico, which include among other things, the certificates that may be issued by electronic means as well as specific and security characteristics that they shall contain for such effects. The certificate printouts may be substituted electronically in terms of this paragraph in accordance with general regulations issued by the Bank of Mexico.

Regarding nominative securities, the certificates that represent them will be issued with the mention of being deposited in the corresponding institution for deposit of securities, without need to express the name, address or nationality of the holders in the document. The foregoing will produce the same effects as the endorsement in administration referred to in article 283 herein.

Likewise, when the issuer or simplified issuer so stipulates, securities may be issued that do not have coupons attached. In this case, the certificates issued by the aforementioned institution will serve as said coupons for all legal purposes.

Issuers or simplified issuers shall be obliged to issue and exchange the necessary securities, where applicable, with the respective coupons, when so required by the securities depository institution to meet requests for withdrawal of securities deposited therein.

Securities depository institutions may act as representatives of issuers or simplified issuers in order to carry out the acts referred to in the preceding paragraph.

Article 283

The deposit service referred to in this Chapter will be executed by

means of the delivery of securities to the institution for deposit of securities which will open accounts in favor of depositors. Additionally, in terms of the services of deposit of securities stated in electronic, optical or any other technology, their receipt shall comply with the provisions stated in the Commercial Code.

Once the deposit has been executed, the transfer of the deposited securities will be performed by means of entries in the registry of the depository firm without need of physical delivery of the securities, nor their annotation in the same or, in its case, in the registry of their issuances.

Regarding nominative securities, the certificates that represent them must be endorsed in administration to the institution for deposit of securities. This kind of endorsement will have as a sole purpose to justify the holding of the securities the exercise of the functions that this chapter provides to the securities depository firms and to legitimize the own institutions to carry out the endorsement stated in the last paragraph of this article, without creating in its favor any right different to the expressly stated in the same.

The personal defenses of the obligor prior to the transference are not eligible against the acquirer of nominative securities by the procedure established in this article.

When the nominative securities are no longer deposited in the securities depository firms, the effects of the endorsement in administration will stop and the depositary institution must endorse them, without responsibility, to the depositor that requests the return, being said securities subject to the general regime established in the commercial laws and other applicable laws.

Article 284

The deposits executed by the depositors will always be performed in their name, stating, in its case, which ones are by their own account and which ones on account of third parties.

Article 285

The depositor will be responsible for the existence, authenticity and integrity of the securities subject to deposit and the validity of the transactions that are inherent to them; therefore, the securities depository firms will not have responsibility of the defects, legitimacy or nullity of the securities or transactions.

Article 286

The securities depository firms will be responsible for the storage and duly maintenance of securities, remaining authorized to maintain them in their premises, in any credit institution, or else, in the Bank of Mexico, in addition to the provisions of article 280, section II, herein.

Article 287

The securities depository firms will replace to the depositors, certificates of the same par value, kind and class to the ones deposited.

Article 288

With the purpose of securities depository firms exercising the economic rights deriving from the securities that they maintain in deposit, the following will be observed:

I. When an issuer determines the payment of dividends, interests or other compensations or the amortization of securities, it must inform in writing to the securities depository firms, the next business day to holding the corresponding meeting or adopted the corresponding resolution, the rights that the holders of their securities may exercise, indicating the certificates and coupons against which those rights will be effective, as well as the terms for the exercise, informing, also, with at least five business days in advance to the date in which the fixed term will initiate for the exercise of said rights.

The issuer or simplified issuer must comply with the obligations to the securities depository institutions arising from the exercise of the property rights indicated above on the day that such obligations become due. The securities depository institutions will credit their depositors with such rights on the business day following the day on which they have made them effective.

When the delivery of the securities is not fulfilled or, regarding shares, the temporary certificates are not replaced with permanent certificates after the legal term has elapsed, the securities depository firms will inform such circumstances to the Commission.

II. When the holders of securities held by securities depository institutions are required to provide cash in order to exercise the rights referred to in the preceding section, these must be delivered to them at least two business days prior to the expiration of the term decreed by the issuer or simplified issuer for said exercise. In the event that the respective payments are not made within the aforementioned term, the securities depository institutions will not be obliged to exercise the corresponding rights, and will therefore have no liability if they do not carry out the aforementioned administrative acts.

Article 289

The securities depository firms, in order to exercise the economic rights referred to in article 228 herein, will issue a certification of the certificates or coupons that they have in their possession, and must deliver the same to the issuer within sixty calendar days after the date of compliance of the issuer, except for the provisions in article 282, fourth paragraph, herein, in which event the certifications will also contain the necessary information to identify the rights to be exercised.

Article 290

The securities depository firms will issue to the depositors the non-negotiable certifications of the deposited securities, which complements, in its case, with the list of holders of said securities that the depositors elaborate for such effect, will serve, respectively, for:

I. Evidencing the shareholdings of the securities and the right to

assist to meetings and, regarding shares, to carry out the registration in the registry mentioned in articles 128 and 129 of the General Law of Business Organizations.

The requirements provided in articles 128, section I, and 129 of the General Law of Business Organizations, will not be enforceable regarding companies which shares are deposited in a securities depository institution. Without prejudice to the foregoing, regarding shares that grant different rights the corresponding series or class must be stated.

From the date in which the certifications mentioned in this section are issued, until the business day following the corresponding meeting, the depositors must not withdraw the securities that the certifications provide.

II. Legitimize the exercise of the rights granted by the securities, including the procedural ones in trial, in which it is necessary to exhibit the securities.

The persons who pretend to call a shareholders meeting or a securities holders meeting in terms of this Law, the by-laws, the bond indenture or the corresponding title, must furnish to the securities depository firms a set of the notice of meeting at the latest the business day prior to its publication. Moreover, they must inform with an anticipation of no less than five business days to the date of closing the assistance registration. Prior to holding any meetings and in order to update the corresponding registrations, the depositors will be bound to furnish to the person who called the meeting, the lists of holders of the corresponding securities.

The certificates must expressly refer to the type and quantity of securities that they represent from the issuer or simplified issuer.

Article 291

The certifications made by the chief executive officer or officers of the securities depository firms, that have the capacity for it, regarding the rights deriving from the registrations relative to the services that provide said institutions to the depositors, will be enforceable, provided that they are attached with the documents in which the origin of the acts that created them is evidenced, also certified by the individuals mentioned.

Article 292

The securities depository firms, by judicial request or arbitrator appointed by the parties, will open a special account regarding the deposited securities that are purpose of the litigation and will immobilize the relative certificates not registering any operation on them until the final sentence or award that ends the dispute is communicated to them. The foregoing without prejudice to the exercise of the corporate rights that correspond to securities depository firms pursuant to this Law, deriving of the endorsement in administration carried out in its favor.

Article 293

The securities depository firms, as requested by the depositors, will update the certifications referred to in article 290 herein issued prior to carrying out the corresponding meeting, provided that it is requested at the latest on the business day prior to holding the meeting.

The person that chairs the meeting will be bound to adjust the shareholders registry book and to grant the right to participate in the corresponding meeting to those who evidence having the corresponding certifications for such effect.

The securities depository firms, when substituting the corresponding certifications, will notify such act to he/she who called the meeting, as well as to the depositors of the corresponding securities, the same day of the substitution, issuing consequently a new certification without responsibility for said institutions.

Article 294

The securities depository firms must formulate their internal regulations, contemplating, at least, applicable rules to:

I. The deposit of securities or deposit in administration of securities that implies the delivery, as well as the proceedings for delivery or return, or else, to elaborate deposit certifications.

II. Proceedings to determine the nomenclatures of the securities on which they render their services of deposit and liquidation.

III. The proceedings that must be followed for the annotation in account, compensation and liquidation of the transactions that are carried out with regards to the securities subject to deposit.

IV. Proceedings for the exercise and, in its case, payment of the economic rights relative to the deposited securities.

V. The rights and obligations of the depositors, as well as the agreements executed amongst them.

VI. The modalities for rendering the services.

VII. The applicable proceedings for the event of breach of transactions with deposited securities, executed amongst the depositors.

VIII. The contractual penalties in the event of breaches.

The regulations and its amendments must be submitted for authorization by the Commission and the Bank of Mexico, which may formulate remarks and modifications when they consider that the regulations are not adjusted to the provisions herein or to the customs and practices of the market.

Section IV Other provisions

Article 295

The securities depository firms will not give news or information of the deposits and other transactions or services that they perform or in which they intervene, unless to the depositor, its legal representatives

or to whom power of attorney to dispose from the account or to intervene in the operation or service was granted, except when requested by the judicial authority by virtue of the judicial decision in trial in which the depositor is party of or plaintiff and the federal tax authorities, by means of the Commission, for fiscal purposes.

The employees and officers of the securities depository firms, in the terms of applicable provisions, due to violation of the secret stated and the securities depository firms must be bound to, in case of disclosure of the secret, repair the damages caused.

The provisions in this article does not affect the obligation that the securities depository firms have to provide to the Commission all kind of information and documents that, in exercise of their supervising functions are requested in connection with the transactions that they execute and the services they provide, or else, in order to attend requests of foreign financial authorities, in accordance with the provisions in article 358 herein. Additionally, the provisions of this article do not affect the obligations of the securities depository firms to provide the Bank of Mexico the requested information, including the ones related to the securities holdings that their depositors maintain on their own account or on the account of third parties in accordance with the provisions on article 350 of this Law and other legal provisions applicable.

Article 296

The securities depository firms will send to their depositors, within the first five business days after the monthly close, an account statement which includes the detailed movements registered during the term comprised since the last close.

The depositors may object in writing or by any means agreed with the securities depository firms, the entries that appear in the account statements, within the sixty business days following the date of reception. It is considered that acceptance with the content of the account statement exists, when the depositors do not carry out objections within the before mentioned term.

Article 297

The fees that the securities depository firms collect for their services must be authorized by the Commission, which will have authority to formulate remarks and order modifications.

Section V Revocation, dissolution and liquidation

Article 298

The Ministry, by proposal of the Commission or the Bank of Mexico, or else, hearing the opinion of said authorities, and prior granting of due process, may revoke the concession to operate as a securities depository firm, in the cases referred to in article 299 herein.

Article 299

The Ministry may revoke the concession to operate as a securities depository firm when:

I. It is not incorporated or the information related to the registration in the Public Registry of Commerce is not furnished, within a term of one hundred eighty calendar days, as of the date in which the concession was notified.

II. The minimum capital was not paid at the time of incorporation.

III. It does not initiate transactions within a term of six months as of the inscription before the Public Registry of Commerce.

IV. Repeatedly fails, due to cause imputable to it, to fulfill the obligations deriving from the agreements executed with the users of its services.

V. Stops performing its corporate purpose for a term of six months.

VI. Starts the dissolution and liquidation process.

VII. Is declared in bankruptcy proceedings by judicial authority.

VIII. Commits serious or repeated infringements to the legal or administrative provisions applicable to them.

Article 300

The dissolution and liquidation, as well as the bankruptcy proceedings of the securities depository firms, will be governed by the provisions in the General Law of Business Organizations and the Bankruptcy Proceedings Law, except for the following matters:

I. The position of liquidator, conciliator or receiver will correspond to the person that for such effect authorizes the Ministry.

II. The Ministry may request the declaration of bankruptcy proceedings.

Chapter II Central counterparties of securities

Section I Organization

Article 301

The activities that have as a purpose reducing the risks of obligation breaches on behalf of the intermediaries of the stock market, assuming the nature of reciprocal debtor and creditor of rights and obligations deriving from transactions with securities previously agreed on its own and on behalf of third parties between said intermediaries, by means of novation, are considered a public service and may be performed only by central counterparties of securities.

In order to be organized and operate as a central counterparty of securities, the concession of the Federal Government is required, which will be discretionarily granted by the Ministry, prior opinion of the Commission and the Bank of Mexico, to the corporations organized pursuant to the special provisions contained under this Law and, in

the not provided herein, by the General Law of Business Organizations.

The concessions granted for said effects, as well as their amendments, will be published in the Federation's Official Gazette at the interested party's expense.

Article 302

The applications for concessions in order to be organized and operate as central counterparties of securities must contain the following documents attached:

I. Draft of the by-laws of a corporation in which the following must be provided:

a) The corporate name must contain the legend "central counterparties of securities" "*contraparte central de valores*").
b) The term of the company will be indefinite.
c) The corporate address must be located within national territory.
d) The corporate purpose will be to act as central counterparties of securities.

II. List and information of the shareholders, indicating the amount of capital stock that they will subscribe and the origin of the resources declared by them, as well as the probable board members, chief executive officer and main officers of the joint bodies referred to in article 306 herein.

III. General operation plan of the company which must contain, at least, the following aspects:

a) The indication of the type of transactions in regards to which it pretends to act as central counterparty of securities.
b) The system and mechanisms of risk management to limit and reduce the exposure of the central counterparty of securities before the participants, the form in which the mentioned counterparty will have access to sufficient funds to promptly fulfill with its obligations and operative, prudential and self-regulatory rules to be instrumented. Said system will have the purpose of assuring the fulfillment of the obligations deriving from the transactions in which the central counterparty of securities acts as reciprocal creditor and debtor.
c) The measures to be adopted for the operative and financial supervision of the stock market intermediaries' which are its shareholders and for which it will act as reciprocal debtor and creditor.
d) The draft of the internal regulations that cover at least the aspects referred to in this Law.

IV. Receipt of the bank deposit in national currency or, in its case, of government securities for its market price deposited in financial

entities in favor of the Federation's Treasury, for an amount equal to ten per cent of the minimum capital which the company must have.

The principal and, in its case, interests of said deposit will be returned to the applicant in case of desistance, as well as in case that the application is denied or when transactions are initiated in terms of the provisions herein. In case that the concession is revoked pursuant to article 320, sections I to III, herein, the amount of the deposit and the interests will be enforced.

V. The policies and rules relative to the resources that it will receive from its reciprocal debtors and creditors in order to assure the fulfillment of their obligations, as well as the investment program of said resources and the procedure for their application.

VI. The other documentation and information that the Ministry, in connection with the above sections, requires by means of general provisions.

The central counterparty of securities' by-laws, as well as its amendments, must be approved by the Ministry. Once the approval is obtained it may be registered in the Public Registry of Commerce. In any case, the referred institutions will furnish to the mentioned Ministry, within ten business days following the corresponding meeting, a certified copy by the secretary of the board of directors, of the meeting's minutes and, when applicable, public deed in which the formalization of the same is evidenced. Regarding increases of capital, the central counterparties of securities will not require the mentioned authorization, but in any case they must file to the Ministry, at least fifteen calendar days in advance to the date on which it pretends to perform the increase of capital, the information of the shareholders referred to in section II in this article, term in which the Ministry may oppose to the performance of said increase in the event that it considers that any impediment exists for the corresponding persons to be shareholders of the corresponding central counterparties of securities.

Article 303

The central counterparties must have the minimum capital stock established by the Ministry by means of general provisions.

The ordinary shares representing the capital stock of the central counterparty of securities may only be acquired by the stock exchanges, securities depository firms, brokerage firms, credit institutions or persons authorized by the Ministry.

The shares representing the capital stock of which the brokerage firms and credit institutions are holders of, are furnished as collateral to assure the prompt and opportune payment of obligations that said entities have in front of the company, the same must be deposited in an institution for deposit of securities. The foregoing without being applicable article 139 of the General Law of Business Organizations.

When the canceled share represents the minimum portion of the capital stock, the board of directors that canceled it must call on a general extraordinary shareholders meeting, in order for it to agree

the corresponding modification to the by-laws, in a term not exceeding six months as of the date of cancellation.

Article 304

Neither a person nor group of persons may acquire, directly or indirectly, by means of one or several simultaneous or successive transactions, shares that represent ten per cent or more of the capital stock of central counterparty securities. The Ministry may exceptionally authorize a higher percentage.

Section II Administration

Article 305

The administration of the central counterparty of securities will be entrusted to a board of directors and a chief executive officer in their corresponding competences. The board of directors of the central counterparty of securities will be comprised of a minimum of five and maximum of fifteen members, from which at least twenty five per cent must be independent, pursuant to the independence requirements provided for the stock market corporations. Each member may be appointed a respective alternate, in the understanding that the alternate directors of the independent members must have such same nature.

Under no circumstance may the independent members be persons who participate in financial entities' capital stock or those who perform in the same charges, positions or commissions, except regarding independent directors in any of the mentioned financial entities.

Article 306

The board of directors of the central counterparty of securities must have at least three joint bodies which will be in charge respectively of carrying out the following functions:

I. The first will determine and apply the system of risk administration and will issue rules of an operative character, prudential and self-regulatory applicable to the company and the reciprocal debtors and creditors.

II. The second will supervise the fulfillment of the rules mentioned in the above section.

III. The third will apply the disciplinary measures for violation of the rules mentioned in section I above.

Section III Activities and services

Article 307

The central counterparties of securities must perform the following activities:

I. Function as reciprocal debtor and creditor in transactions with

securities previously executed, in terms of the provisions in article 301 herein. They may only act within the following nature:

a) With persons authorized pursuant to this or other laws to render services of securities trading in the stock market, that are their shareholders, who may participate by their own behalf and on behalf of third parties.

b) In transactions different to the provided in this section when authorized by the Ministry, hearing the opinion of the Bank of Mexico and the Commission.

I. The counterparties of securities will assume such nature regarding legal and administrative provisions that result applicable, as well as to the rules that regulate the relationship between said counterparties and their shareholders.

II. Establish and apply the proceedings to manage risks and face breach of obligations.

III. Demand to their liquidator shareholders resources to reduce the risk on the transactions with securities in which they are reciprocal creditor and debtor, in case the shareholders stop fulfilling their obligations before the central counterparty of securities. Said resources must be maintained in a fund of contributions created by the own company.

IV. Demand to their liquidator shareholders, regarding the transactions with securities in which they are reciprocal creditor and debtor, the necessary resources for the correct operation of the risk management system, which must be maintained in a compensation fund, created by the company, with the purpose of converting into mutual with their shareholders the breach of obligations and, in its case, losses.

V. Receive and manage the resources mentioned in sections III and IV above.

VI. Perform on their own behalf sales and loan of securities transactions in order to fulfill the obligations of the operation in which it is central counterparty of securities, hiring the services of a person that in terms of this or other laws is authorized to render services of securities trading.

VII. Agree on credits and loans to perform its corporate purpose, pursuant to the provisions issued by the Bank of Mexico.

VIII. Guarantee the transactions referred to in sections VI and VII herein.

IX. Issue certifications of the acts that they carry out in the performance of its functions.

The certifications on behalf of the chief executive officer or officer of the central counterparties of securities that have authority for it, in which the breach of obligations of its reciprocal creditors and debtors before the company is evidenced, will be enforceable, provided that the documents to evidence the obligations that originated them are attached, also certified by the mentioned individuals.

X. Participate in the capital stock of national or foreign companies that represent complementary or auxiliary services to those of its corporate purpose, prior authorization of the Ministry.

XI. Carry out the necessary acts to perform their corporate purpose.

XII. The analog, connected or complementary to the foregoing, that are authorized by the Ministry, by means of general provisions.

Article 308

The persons authorized pursuant to this or other laws to render services of securities trading in the stock market must agree amongst them whether they will liquidate and compensate the transactions that they execute with any central counterparty of securities, in which case, they will appoint one.

The persons referred to in this article that do not compensate and liquidate any operation with securities by means of a central counterparty of securities, will be bound to previously inform said circumstance to their clients.

Article 309

The obligations that the central counterparties of securities have with their reciprocal debtors and creditors will extinguish by compensation up to the corresponding amount.

The liquidation of cash and securities balances or goods product of obligations that survive after the compensation mentioned in the above paragraph will be performed by means of financial entities authorized by this and other laws in order to carry out the corresponding transfers.

Article 310

The resources referred to in article 307, sections III and IV, herein, that the central counterparties of securities receive from the stock market intermediaries which are its shareholders will be transferred in property for the exclusive purpose stated in each section.

Article 311

The central counterparties of securities must inform the Commission, the Bank of Mexico and to the persons that execute transactions in which they are reciprocal debtor and creditor, when they stop assuming such nature regarding any of these. In this event they will be authorized to terminate early the obligations of said person and to apply without restriction any of the resources received to assure the fulfillment of obligations.

Article 312

The central counterparties of securities may divulge the information of their procedures to manage risks, of their financial resources and the amount of resources received to guarantee the fulfillment of obligations of their debtors and creditors.

Article 313

The central counterparties of securities must maintain their recip-

rocal debtors and creditors informed on the fulfillment or breach of obligations, as well as the contributions that must be performed and the excesses of the same.

Article 314

The central counterparties of securities must have special accountings, in the terms determined by means of general provisions by the Commission, in order to register the resources that it receives of authorized persons in accordance with this or other laws, to grant services of trading in the stock market that are shareholders, either on their behalf as on behalf of third parties.

Article 315

The central counterparties of securities must formulate an internal regulation, which must contain, at least, the rules applicable to:

I. The requirements that the persons must fulfill pursuant to this or other laws to be authorized to render services of intermediation, in order for the company to be reciprocal debtor and creditor, as well as the cases in which will not assume or will stop having said nature.

II. The proceedings and systems by means of which the transactions will compensate and liquidate.

III. The rights and obligations of the company and the persons stated in section I of this article.

IV. The proceedings to manage risks; the mechanisms to obtain financial resources that allow to cover their obligations; the operative and prudential rules applicable to the central counterparty of securities and to its reciprocal debtors and creditors; the process for the adoption and supervision of said rules, as well as the rules of self-regulation that are issued; the disciplinary and corrective measures to be applied in case of breach, as well as the proceeding to enforce them.

V. The procedure for the application of resources referred to in sections III and IV in article 307 herein.

VI. The proceedings to modify the regulations.

The regulations and its amendments must be submitted for authorization of the Commission and the Bank of Mexico, which may formulate remarks and modifications when they consider that the regulations are not adjusted to the provisions herein or to the customs and practices of the market. The rules of auto-regulation will not require authorization, but in any case, the Commission and the Bank of Mexico will have authority of veto in connection with said rules.

Article 316

The Commission, without prejudice to the provisions in other articles, regarding the central counterparties of securities, will have the following authorities:

I. Supervise the transactions of risk management, the sufficiency of

resources to fulfill with their obligations, the fulfillment of operative, prudential and self-regulatory rules, as well as the disciplinary measures in case of breach.

II. Order the modifications to the procedures of risk management and the form of applying resources to fulfill their obligations.

III. Issue the necessary regulation to foster the correct operation and administration of risks of the central counterparties of securities, the fulfillment of the transactions in which they are reciprocal debtor and creditor and the efficiency of the procedures and systems of compensation and liquidation, as well as the adequate investments of their funds.

The authorities contained in sections II and III of this article will be exercised jointly by the Commission and the Bank of Mexico.

The Commission and the Bank of Mexico, in their scope of competence, may request all the information and documents determined by means of general provisions.

Article 317

The fees that the central counterparties of securities charge for their services must be authorized by the Commission, which will have authority to formulate remarks and order modifications during the process of authorization.

Article 318

The Central counterparties of securities are subject to the provisions in articles 26, second to last and last paragraphs, 121, 123, second paragraphs, 124, first, second and second to last paragraph, 127 to 129, 131, second paragraph, 132 to 134, 205, 206, 209 to 211, 236, 237, second paragraph, 238, 241, last paragraph and 243, second paragraph, herein. The authorities provided in articles 132 and 134 are competence of the Ministry.

The Commission may establish by means of general provisions the rules to which the central counterparties of securities must be subject to in the application of their shareholders' equity.

Section IV Revocation, dissolution and liquidation

Article 319

The Ministry, by proposal of the Commission or the Bank of Mexico, or else, hearing the opinion of said authorities, and prior granting of due process, may revoke the concession to operate as central counterparty of securities, in the cases referred to in article 320 herein.

Article 320

The Ministry may revoke the concession to operate as a central counterparty of securities when:

I. It is not incorporated or the information related to the registration in the Public Registry of Commerce is not furnished, within a term of one hundred eighty calendar days, as of the date in which the concession was notified.

II. The minimum capital was not paid at the time of incorporation.

III. It does not initiate transactions within a term of six months as of the inscription before the Public Registry of Commerce.

IV. Repeatedly fails, due to cause imputable to it, to fulfill the obligations deriving from the agreements executed with the users of its services.

V. Stops performing its corporate purpose for a term of six months.

VI. Starts the process of dissolution and liquidation.

VII. Is declared in bankruptcy proceedings by judicial authority.

VIII. Commits serious or repeated infringements to the legal or administrative provisions applicable to them.

Article 321

The dissolution and liquidation, as well as the bankruptcy proceedings of the central counterparty of securities, will be governed by the provisions in the General Law of Business Organizations and the Bankruptcy Proceedings Law, except for the following matters:

I. The position of liquidator, conciliator or receiver will correspond to the person that for such effect authorizes the Ministry.

II. The Ministry may request the declaration of bankruptcy proceedings.

III. The resources referred in article 307 sections III and IV, herein, are intended for the purpose corresponding to the provisions of said sections.

The exceeding resources stated in the mentioned section III, received from its shareholders on behalf of third parties which transactions with securities had been totally compensated and liquidated, may be excluded or separated from the process of dissolution, liquidation or bankruptcy proceedings of the central counterparty of securities and returned to the corresponding shareholders, who will accept them on their own name and on behalf of third parties.

The same regime will be applicable to the mentioned exceeding resources, received from shareholders, on their own behalf, provided that there are no obligations on its behalf and in favor of the central counterparty of securities.

Title XI Other entities that participate in the stock market

Chapter I Price providers

Article 322

The activities that have the purpose of rendering usual and professional services of estimate, determination and providing or supplying

updated prices for the appraisals of securities, financial derivative instruments in markets acknowledged by the financial authorities or indexes, as well as the transmission of information related with said activities, will be reserved to the price providers.

For the purposes of this Law, updated price for appraisal will be understood as that price of the market or theoretical obtained based in algorithms, technical criteria and statistics and appraisal models, for each one of the securities, financial derivative products or indexes. Within the updated prices for appraisal the relative to repurchase and loan of securities transactions as well as the transactions with financial derivative instruments will be included.

The exclusive transmission or disclosure of any kind of prices regarding securities, related or indexes, by electronic, telecommunication or printed means, will not be considered as providing or supplying of prices.

Article 323

In order to be organized and operate as a price provider the authorization of the Commission is required, prior resolution of its Governing Board. Said authorization, will be granted to the corporations organized pursuant to the general provisions contained in this Law and, in the not provided herein, by the General Law of Business Organizations. Due to its nature, these authorizations are not transferable.

Article 324

The applications for authorization to be organized and operate as a price provider must have the following attached:

I. Draft of the corporations' By-Laws.

II. List and information of the shareholders, as well as the probable board members, chief executive officer and main officers.

III. General operation plan.

IV. Internal handbooks containing at least the following:

a) The description of the methodology and the appraisal models of the securities, financial derivative instruments and indexes, as well as the algorithms and technical and statistical criteria.

b) The technology for determination of the interests, discount and equivalent rates.

c) The information sources to be used in order to render their services.

V. Policies and means to be used to provide or supply the prices.

VI. Draft of ethics code that will rule the performance of the company, as well as the board members and other officers involved in the process of estimation, determination and providing or supplying of updated prices.

VII. The other documentation and information that the Commis-

sion, in connection with the above sections, requires by means of general provisions, prior resolution of its Governing Board.

The price providers must notify the Commission regarding the modifications carried out to the documentation mentioned in this article, within the ten business days following the date of the modification. The Commission may object the mentioned modifications, within twenty business days following the date in which it receives the corresponding notice, when the modifications are not adjusted nor contravene the provisions in this Law and other applicable provisions. In any event, the changes made to the referred documentation shall be effective as of the end of the referred twenty-day term.

Article 325

The price providers will carry out the following activities:

I. Render services of estimate, determination and providing or supplying updated prices for the appraisals of securities, financial derivative instruments or indexes, as well as the transmission of information related with said activities, adjusting to the methodologies and models referred to in article 324, section IV herein.

II. Publish and disclose ratings issued by securities rating institutions.

III. Measure investment financial risks performed by financial entities, as well as to publish and disclose them when having their authorization.

IV. Determine and disseminate interest rate indices and instruments representing debt issued by issuers or simplified issuers.

V. The other contemplated in their by-laws.

Article 326

The price providers must have an ethics code that will rule the performance of the company, as well as the board members and other officers involved in the process of estimation, determination and providing or supplying of updated prices. The Commission may establish, by means of general provisions, minimum requirements to be contemplated by the price providers in the elaboration of the ethics code referred to in this article.

Article 327

The price providers must have a committee of appraisal in charge of carrying out the following functions:

I. Propose the methodology for the appraisal of securities, financial derivative instruments and indexes, as well as to review such methodologies in order to have them updated.

II. Solve the controversies and remarks that theirs clients or authorities have regarding the appraisal methodologies.

Article 328

The price providers must notify the Commission the updated prices

for the appraisal of securities, financial derivative instruments and indexes, the same day they estimate them. Likewise, the price providers must notify the modifications they carry out on said prices the same day they agree upon them.

In case there are unexpected events in the authorized methodologies, the price providers must notify the Commission at the time of their application, the alternative estimation procedure that they will use stating the reasons that justify the use of the same.

Article 329

The shareholders, members of the board of directors, chief executive officer, officers and members of the appraisal committee, of the price providers, may not have, directly or indirectly, shares representing the capital stock of financial entities that use the services of the price provider, nor to perform or have the position of shareholder, directors, statutory auditor or officer of said entities. The foregoing is not applicable to the investment performed in shares representing the capital stock of investment companies.

Article 330

The price providers must maintain, during a term of five years, the prices updated for appraisals of securities financial derivative instruments and indexes, as well as the information relative to the variables used in their estimation and other information or documents related to the activities that they perform.

Article 331

The price providers are prohibited of furnishing to one or more of their users prices updated for the appraisal related with a same security, financial derivative instruments or indexes, that differ of the delivered regarding a same date, to other users, including their modifications.

Likewise, the price providers are prohibited to provide updated prices for appraisal when they have a conflict of interest regarding the appraisal of the securities, financial derivative instruments and indexes.

Article 332

The Commission, prior resolution of its Governing Board, and prior due diligence of the interested party, may decree the revocation of the authorization to be organized and operate as price provider, when they:

I. Stop rendering their services without just cause, during a term of more than six months.

II. Commit serious or repeated infringements to the provisions in this Law or the general provisions that are created from it.

III. Are declared in bankruptcy proceedings, or else, agrees their dissolution and liquidation.

Article 333

The Commission, prior resolution of its Governing Board, will authorize the merge or spin-off of the price providers, pursuant to the provisions of articles 132 to 134 herein.

The Commission may issue general provisions related to the financial, administrative and operative information that the price provides must provide in a continuous and periodic manner.

Additionally, the Commission may establish regulations related to the internal controls, prevention of conflict of interests, corporate and auditing practices, transparency and fairness in the services of the price providers.

Chapter II Rating institutions

Article 334

The activities that have as a purpose the usual and professional rendering of services consisting in the study, analysis, opinion, evaluation and report regarding the credit quality of securities, must be reserved to securities rating institutions.

In order to be organized and operate as securities rating institutions the authorization of the Commission, prior resolution of its Governing Board is required. Said authorization, will be granted to the corporations organized pursuant to the general provisions contained in this Law and, in the not provided herein, by the General Law of Business Organizations. Due to its nature, these authorizations are not transferable.

Article 335

The applications for the authorization in order to be organized and operate as rating institutions, must have the following attached:

I. Draft of the corporations' By-Laws.

II. List and information of the shareholders, as well as the probable board members, chief executive officer and main officers.

III. General operation plan.

IV. Internal handbooks containing at least the following:

a) Description of the rating process in which the scale, nomenclatures and interpretation of the rating must be explained.

b) Policies and disclosure means to the public regarding opinions, ratings and analysis issued, as well as their modifications.

V. Draft of an ethics code which will rule the performance of the company, as well as the board members and other officers involved in

the process of opinion of the credit quality of the securities on which they render their services, adjusted to international standards.

VI. The other documents and information that the Commission, in connection with the above sections, requires by means of general provisions, prior resolution of its Governing Board.

The securities rating institutions must notify the Commission regarding the modifications carried out to the documentation mentioned in this article, within the ten business days following the date of the modification. The Commission may object the mentioned modifications, within twenty business days following the date in which it receives the corresponding notice, when the modifications are not adjusted or contravene the provisions in this Law and other applicable provisions. In any event, the changes made to the referred documentation shall be effective as of the end of the referred twenty-day term.

Article 336

The securities rating institutions must have an ethics code that will rule the performance of the company, as well as the board members and other officers involved in the study, analysis, opinion, evaluation and report regarding the credit quality of securities on which they render their services, adjusted to international standards required in this area.

The Commission may establish, by means of general provisions, minimum requirements to be contemplated by the securities rating institutions in the elaboration of the ethics code referred to in this article.

Article 337

The shareholders, members of the board of directors, chief executive officer, statutory auditors, and officers of securities rating institutions, may not have, directly or indirectly, shares representing the capital stock of financial entities to which they grant ratings in terms of this Law, nor to perform or have the position of shareholder, directors, statutory auditors or officer of said entities. The foregoing is not applicable to the investment performed in shares representing the capital stock of investment companies.

Article 338

In no case may securities rating agencies enter into contracts regarding securities issued by issuers or simplified issuers with which their shareholders, directors or managers involved in the process of determining the credit quality of said securities have conflicts of interest.

Article 339

The securities rating institutions must disclose to the public the rating they perform regarding securities registered before the Regis-

try or to be registered in the same, as well as their modifications and cancellations, through the means established by the Commission by means of general provisions. Said ratings must be performed pursuant to the rating process referred to in section IV of article 335 herein.

Rating agencies must establish specific processes for rating securities subject to simplified registration, in accordance with the general provisions issued by the Commission.

Likewise, the Commission will establish in the mentioned provisions, the financial, administrative and operative information that the securities rating institutions must provide.

The Commission will establish regulations related to the internal controls, prevention of conflict of interests, corporate and auditing practices, transparency and fairness in the services of the securities rating institutions.

Article 340

The Commission, prior resolution of its Governing Board and prior due process of the interested party, may decree the revocation of the authorization to be organized and operate as securities rating institutions, when they:

I. Commit serious or repeated infringements to the provisions in this Law or the general provisions that are created from it.

II. Are declared in bankruptcy proceedings, or else, agrees their dissolution and liquidation.

Article 341

The securities rating institutions will be subject to the provisions under article 330 herein.

The Commission will authorize, prior resolution of its Governing Board, the merger or spin-off of the securities rating institutions, in terms of the provisions in articles 132 to 134 herein.

Title XII External auditing and other services

Article 342

Legal entities that request the registration of securities in the Registry, issuers, simplified issuers, brokerage firms, stock exchanges, securities depository institutions and central securities counterparties must observe the provisions of this Title regarding the requirements that must be met by the legal entity that provides them with external audit services, as well as the external auditor who signs the opinion corresponding to the financial statements.

Article 343

The external auditors who subscribe the opinion of the financial statements in representation of the legal entities that provide the ser-

vices of external services, must have honorability; meet the personal and professional requirements established by the Commission by means of general provisions and be partners of a legal entity that render professional services of auditing of financial statements, and that comply with the requirements of quality control that the Commission will establish in the mentioned provisions.

In addition, the aforementioned external auditors, the legal entity of which they are partners and the partners or persons who form part of the audit team, shall not be found in any of the cases of lack of independence established for this purpose by the Commission, through general provisions, which consider, among other aspects, financial links or economic dependence, provision of services additional to auditing and maximum periods during which external auditors may provide external audit services to legal entities that request the registration of securities in the Registry, issuers, simplified issuers, brokerage firms, stock exchanges, securities depository institutions and central securities counterparties.

Article 344

Law graduates and independent experts who issue opinions in terms of this Law must meet the requirements set forth in the provisions referred to in article 343 of this Law, except for what refers to being a partner in a legal entity where they provide professional services. These requirements will also be applicable, as appropriate, to the legal entity that provides professional services to the broadcaster or simplified broadcaster in question, of which, where appropriate, they are partners or for which they work.

Additionally, the law graduates referred to in this provision may not maintain reciprocity agreements with the external auditors hired by the broadcaster or simplified broadcaster, when they imply the existence of business relationships for the provision of their professional services that may lead to conflicts of interest.

Article 345

The external auditor and attorney, as well as the legal entities from which they are partners will be bound to maintain the documentation, information and other elements used to elaborate the audit, report or opinion furnished to the public by virtue of the provisions of this Law, for a term of at least five years. They may use automatic or digitalized means in order to maintain the corresponding information and files.

In the case of simplified issuers, external auditors will provide the stock exchange on which their securities are listed with the reports and other evidence on which they base their opinions and conclusions. Likewise, if during the audit or as a result of the audit they find irregularities that affect the liquidity, stability or solvency of the simplified issuer, they must notify the supervisory body within said issuer.

Article 346

The reports of external auditing and the opinions of the attorneys

or external independent experts that are delivered to the issuers for effects of the requests of registration of securities, authorization of public offering and fulfillment of the obligations of delivery and divulgation of information that to such issuers imposes this Law, are disclosed information to the public directly for said persons, regardless that the own issuer is who performs the own delivery and disclosure to the public.

The external audit opinions and the opinions of law graduates or independent external experts that are delivered to simplified issuers so that they, in turn, provide them to brokerage firms and stock exchanges, will have the same effects of disclosure to the public indicated in the previous paragraph.

The provisions of this article will also be applicable to the opinions, reports, studies and credit ratings prepared by experts, appraisers, rating institutions and other persons who provide their services to issuers or simplified issuers.

Article 347

Persons who provide external audit services, as well as opinions, reports or opinions provided for in this Law, shall be liable for any damages and losses caused to the broadcaster or simplified broadcaster that hires them, when:

I. Due to inexcusable negligence, the report or opinion that they rendered has defects or omissions that by virtue of their profession or work would be part of the analysis, evaluation or study that originated the report or opinion.

II. Intentionally, in the report or opinion they:

a) Omit relevant information from which they have knowledge when it should be contained in their report or opinion.

b) Include false or misleading information, or else, adapt the result with the purpose to pretend a situation different to the corresponding to reality.

c) Recommend the celebration of an operation, choosing from their alternatives, in its case existing, for the one that knowingly will generate patrimonial effects notoriously detrimental for the company or for a determined group of shareholders or holders of securities.

d) Suggest, accept, favor or propose that a determined transaction is performed in contravention to the accounting principles issued or acknowledged by the Commission.

The actions for the illegal acts referred to in this article will be exercised in terms of the provisions in article 38 herein, or else, regarding debt instruments, by the common representative of the securities' holders, prior agreement of the holders meeting.

Article 348

The persons referred to in article 347 of this Law, will not incur in

liability for damages caused, deriving from the services or opinions issued, when acting in good faith and without fraud any of the following extenuating circumstances is updated:

I. Render their report or opinion based on information furnished by the persons to whom they render their services to.

II. Render their report or opinion subject to the procedures and, in its case, methodologies that they have to elaborate the analysis, evaluation or study corresponding to their profession or activity.

Title XIII Financial authorities

Article 349

The Commission, the Ministry and the Bank of Mexico, without prejudice to the functions referred to in other articles of this and other laws, will have the authority established under this Title.

Article 350

The Commission will have supervision authority, in terms of its Law, in connection with the stock markets intermediaries, self-regulatory organizations, stock exchanges, investment advisors, corporations that manage systems to facilitate securities transactions, securities depository firms, central counterparties of securities, securities rating institutions and price providers.

For such purpose, the Commission may carry out inspections visits to any of the mentioned entities or persons and require from them, within the terms and form established by the own Commission, all the information and documentation necessary to verify the fulfillment of this Law and the observance of the general provisions that are created from it.

The persons referred to in this article, must file the information and documentation requested, within their corresponding competences, by the Commission, the Ministry and the Bank of Mexico, within the terms, conditions and other characteristics established by the same.

The Commission will carry out the supervision of the financial entities referred to under this article, even when the same are under dissolution and liquidation or are declared in bankruptcy proceedings, in the terms stated under this Law.

The Commission, as a result of its supervision authorities, may formulate remarks and, in its case, order the adoption of measures tending to correct the facts, acts and irregular omissions that it detected by virtue of said functions, under the terms of this Law.

Article 351

The Commission shall have supervisory powers over broadcasters, and may, for this purpose and in order to verify compliance with this Law and the observance of the general provisions emanating from it, carry out inspection visits and request all kinds of information and

documentation related to the activities carried out by broadcasters, within the time limits and in the manner established by the Commission itself. The provisions of this paragraph, as well as the provisions contained in articles 354, 355, 356, 357 and 358 Bis of this Law, shall not be applicable to simplified broadcasters.

The Commission shall be empowered to recognize the accounting standards to which the aforementioned broadcasters must adhere in the preparation and formulation of their financial statements or equivalent, and may make distinctions by type of broadcaster, including simplified broadcasters. Likewise, the Commission may issue accounting standards in the event that the standards recognized under the terms of this paragraph are insufficient, there are different alternatives regarding accounting treatment or they do not reflect the financial situation of the issuers in a real and updated manner.

Additionally, the Commission may, with the exception of simplified issuers and in order to protect the interests of the investing public:

I. Order to call shareholders or securities holders meetings, in the cases or notorious urgency and without the need of the corresponding judicial authority.

II. Appear without a voice and a vote to the shareholders or securities holders meetings.

The Commission, regarding foreign companies or international multilateral financial organizations which have securities registered before the Registry, will supervise said issuers based on collaboration agreements executed with international organizations with supervision and regulation functions similar to said Commission.

Article 351 Bis

In order to preserve financial stability, prevent disruptions or alterations in the functioning of the financial system or the payment system as well as to facilitate the proper performance of their duties, the Ministry, Bank of Mexico and the Commission must, at the request of the interested party and in terms of the agreements referred to in the last paragraph of this article, exchange information they have with each other, when obtained:

I. In the exercising of their duties;

II. As a result of their performance in coordination with other entities, persons or authorities or else,

III. Directly from other authorities.

The restrictions regarding the reserved or confidential information in terms of the applicable legal provisions may not be used oppose the authority referred to in the previous paragraph. The recipient of the information that relates to this article will be administratively and criminally responsible in terms of the applicable legislation, for the communication to third parties of confidential or reserved information.

For the purpose of the provisions of this article, the authorities mentioned in this article shall enter into agreements to be able to exchange information specifying the information to be exchanged and

determine the terms and conditions with which they must comply. Such agreements shall also define the level of confidentiality or reserved information, as well as the respective control instances, to which they will inform the events where the delivery of information is denied or the delivery is made after the deadline.

Article 352

The Commission will have inspection and surveillance authority regarding the legal entities which render external auditing services under the terms of this Law, including the partners or employees of said entities who are part of the auditing team, having the authority, in order to verify the fulfillment of this Law and the observance of the general provision, to:

I. Require all kind of information and documentation.

II. Practice inspection visits.

III. Require the appearance of partners, representatives and other employees of the legal entities which render services of external auditing.

IV. Acknowledge standards and proceedings for auditing which the legal entities that render services of external auditing must observe when reporting or issuing opinions related to the financial statements or issuers, being authorized to make distinctions by kind of entity or issuer. Likewise, the Commission may issue standards or applicable proceedings, or else, when at the Commission's opinion the acknowledged standards are insufficient in terms of this paragraph.

The exercise of the authorities referred to in this article will be circumscribed to the reports, opinions and auditing practices that in terms of this Law the legal entities which render services of external auditing practice.

Legal entities that provide external audit services to simplified issuers, including partners or employees of those that form part of the audit team, shall not be subject to the provisions of this article.

Article 353

The Commission will have inspecting and surveillance authority regarding the attorneys who render opinions required by this Law and having the authority, in order to verify the fulfillment of this Law and the observance of the general provision, to:

I. Require all kind of information and documentation.

II. Practice inspection visits.

III. Require the appearance of the attorney and other employees of the attorney who participate on the elaboration of the legal opinions issued in compliance of this Law.

Law graduates who issue opinions required by simplified broadcasters will not be subject to the provisions of this article.

Article 354

The Commission, when exercising its inspection and surveillance

authority referred to in articles 159, last paragraph, 214, last paragraph, 250, last paragraph and 281, last paragraph of this Law, and in order to verify the fulfillment of this Law and the observance of the general provisions created from it, may:

I. Require all kind of information and documentation.

II. Practice inspection visits.

III. Require the appearance of the shareholders, representatives and other employees of the corresponding person or entity.

Article 355

The Commission has the authority to investigate, in the administrative area, acts and facts that presumably constitute or may constitute an infringement to the provisions of this Law or the general provisions created from it.

For such purpose, as well as to verify the fulfillment of the provisions herein and the general provisions, the Commission will have the authority to:

I. Require all kind of information and documentations to any person or authority that could contribute to the development of the corresponding investigation.

II. Carry out inspection visits to any person who may contribute to the development of the investigation.

III. Require the appearance of persons who may contribute or furnish elements to the investigation.

IV. Hire the services of auditors and other professionals who help with said function.

Article 356

In the performance of the appearances referred to under this Law, the Commission will state the questions that it considers appropriate, in which case the appearing party must respond, under oath, the questions stated thereat.

The inspection visits referred to in this Title may be ordinary, special or of investigation.

The ordinary visits will be those carried out pursuant to the annual program approved by the Commission's president.

The special visits will be those that, without being included in the annual program referred to under the above paragraph, are performed under any of the following cases:

I. In order to examine and, in its case, correct the special operative situations.

II. In order to follow up the results obtained in an inspection visit.

III. When there are changes or modifications in the accounting legal, economic, financial or administrative situation of an issuer or financial entity.

IV. When a financial entity begins transactions after the elaboration of the annual program referred to under the third paragraph of this article.

V. When acts, facts or omissions appear in issuers or financial entities that have not been originally contemplated in the annual program referred to in the third paragraph of this article, which motivate to perform the visit.

VI. When deriving from international cooperation.

The investigation visits will be carried out provided that the Commission has indications from which the execution of any conduct that presumably contravenes the provisions of this Law and the general provisions created from it may be concluded.

Article 357

The financial entities, the issuers and the other individuals or legal entities subject to an inspection visit under the terms of this Law and other general provisions, will be bound to allow the personnel appointed by the Commission, the immediate access to the place or places subject to the visit, their offices, headquarters and other premises, including the unrestricted access to documentation and other sources of information that they consider necessary in order to fulfill their functions, as well as to provide the necessary physical space in order to carry out the visit and to facilitate the required computing, office and communication equipment.

In the documentation referred to in the above paragraph, it is comprised, including but not limited to, the general or specific information contained in reports, records, book's minutes, auxiliary books, correspondence, automatic systems for processing and maintaining data, including any other technical proceedings established with said purpose, either magnetic files or microfilmed, digitalized or recorded documents, and optical processes for consulting or any other nature.

Article 358

The Ministry, the Commission and the Bank of Mexico, in their sphere of competence, will be empowered to provide to the foreign financial authorities all kind of information they consider appropriate to meet the requirements made, such as documents, files, records, statements and other evidence that such authorities have in their possession by exercising their power.

For the purpose of the preceding paragraph, the authorities must have signed an information exchange agreement with the financial authorities in question, in which the principle of reciprocity is provided.

The Commission will be empowered to provide to the foreign financial authorities protected information by confidentiality provisions in its possession obtained directly in the exercise of its powers. Also, the Bank of Mexico will be empowered to provide to the foreign financial authorities protected or non-protected information by confidentiality provisions obtained by other authorities of the country, only when it is expressly authorized in the information exchange agreement, by virtue of which it would have received such information.

In any event, the Commission and the Bank of Mexico may abstain from providing the information referred to in the previous paragraphs when the use it is intended for is different from that for which it was requested, is contrary to public order, national security or to the terms agreed in the information exchange agreement in question.

The Ministry, the Commission and the Bank of Mexico shall establish coordinating mechanisms to issue the information referred to in this article to the foreign financial authorities.

The transmission of the information made in terms of this article will not imply transgression of reservation, confidentiality, secrecy or any similar concept that must be observed pursuant to the applicable legal provisions.

Article 358 Bis

The Commission, as requested by the authorities mentioned in article 358, and based in the principle of reciprocity may carry out inspections visits to the issuers that have securities registered before the National Securities Registry concerning their obligations as an issuer or subsidiaries of the entities. At the Commission's discretion, the visits may be performed by means of said authorities or, with the cooperation of the foreign financial authorities in question, may allow the latter to conduct it.

The request mentioned in the above paragraph must be performed in writing, at least thirty calendar days in advance and must contain the following:

I. Description of the visit's purpose.

II. Legal provisions applicable to the purpose of the application.

The Commission may request a report of the obtained results from the foreign financial authorities that perform visits in the terms of this article.

Article 359

In connection with the relevant information that had been made public when the acts involved with said information may be considered a case of infringement provided under this Law or in the general provisions created from it, The Commission for the knowledge of the public and in order to protect the interests of the investors and the market in general, may inform publicly, that it is carrying out an investigation regarding facts or actions related to presumptions of violations referred to in this Law or in general provisions arising from it in the exercise of their duties.

The delivery of the information made in terms of this article will not imply transgression of reservation, confidentiality, secrecy or any similar concept that must be observed pursuant to the applicable legislations.

Article 360

The Commission, in exercising the powers referred to in this Law,

may indicate the manner and terms in which financial entities, issuers, simplified issuers and other natural or legal persons from whom it requests information, must comply with its requirements.

Likewise, the Commission may employ indistinctly the following coercive measures, in order to fulfill its determinations:

I. Warning with reprimand.
II. Fine of 100 to 5,000 days of wage.
III. Additional fine by each day that the infringement persists.
IV. Temporal closing, partial or total.
V. Assistance of police.

In case the coercive measure is insufficient, it is possible to request to the corresponding authority to proceed against the defaulter for disobedience to a legitimate authority order.

Article 361

For purposes of the provisions under article 360 herein, the federal authorities and the security or police bodies must render in an expedite manner the support requested by the Commission.

Regarding public security bodies of states or municipalities, the support will be requested pursuant the terms of the laws which regulate the public security or, in its case, pursuant to the agreements of administrative cooperation executed with the Federation.

Title XIV Stock market infringements and prohibitions and crimes

Chapter I Stock market infringements and crimes

Article 362

Knowledge of relevant events that have not been disclosed to the public by the issuer or simplified issuer through the stock exchange on which its securities are listed constitutes privileged information for the purposes of this Law.

It is not necessary for the person to know all the characteristics of the relevant event in order to have privileged information, provided that the portion to which there is access may influence in the quoting or price of an issuer's securities.

Article 363

For the purposes of this Law, the following are considered to have privileged information regarding an issuer or simplified issuer, unless proven otherwise:

I. The members and secretary of the board of directors, the commissioners, the general director and other relevant directors, as well as the factors and the external auditors of the issuer, simplified issuer or legal entities that it controls.

II. Persons who, directly or indirectly, hold ten percent or more of the shares representing the share capital of an issuer, simplified issuer or negotiable instruments representing said shares.

III. The members and secretary of the board of directors, the commissioners, the general director and other relevant directors, the factors and the external auditors or the equivalents of the above, of legal entities that, directly or indirectly, hold ten percent or more of the share capital of the issuer or simplified issuer.

IV. The members and secretary of the board of directors, the commissioners, the general manager and the directors who occupy the hierarchical level immediately below that of the latter, the regulatory comptroller, the factors and employees, or the equivalents of the above, of securities market intermediaries or persons who provide independent or personal services subordinate to an issuer or simplified issuer, in any relevant event that constitutes privileged information, as well as the legal entity, whether or not it has the character of an issuer or simplified issuer, that had any financial, administrative, operational, economic or legal relationship or link with the issuer or simplified issuer to whom the relevant event in question is attributed, or that has participated in any capacity in the act, fact or event related to said event.

V. The shareholders who, directly or indirectly, hold five percent or more of the share capital of financial entities, when these have the character of issuers or simplified issuers.

VI. Shareholders who, directly or indirectly, hold five percent or more of the share capital of the controlling companies of financial groups, as well as those who directly or indirectly hold ten percent or more of the share capital of other financial entities, when all of them form part of the same financial group and at least one of the members of the group is the issuer or the simplified issuer.

VII. The members and secretary of the board of directors, the chief executive officer and the officers who have the next immediate lower level to the chief executive officer, the controller and agents of holding companies and financial entities referred to in the above paragraph.

VIII. The person or group of persons who have significant influence on the broadcaster or simplified broadcaster and, where applicable, on the companies that make up the business group or consortium to which the broadcaster or simplified broadcaster belongs.

IX. Persons who exercise control over the broadcaster or simplified broadcaster.

X. Those persons who carry out transactions with securities different to their historic investment patterns in the market and that could have reasonably had access to privileged information by means of the persons referred to in sections I to IX above. It is understood that the following persons could have reasonably had access to privileged information:

a) The spouses or the common-law spouses of the persons referred to in sections I to IX of this article.
b) The persons who have a link by means of consanguinity, affinity or civil relationship up to the fourth grade, with the persons referred to in sections I to IX of this article.

c) The shareholders, associates and co-owners of the persons referred to under sections I to IX of this article.

d) Those have had contact or any kind of communication, by any means, with the persons referred to on sections I through IX of this article, as well as to those referred in the previous subsections a) through c).

The persons referred to in this article, are bound to keep confidentiality of the information to which they have access to, so they must abstain from using or transferring it to other persons, except that by virtue of their occupation, position or commission, the persons to whom it is transferred or furnished should know the information.

In order to calculate the percentages referred to under sections II, III, V, VI y VIII under this article, the shares property of another person over which the shareholders has legal custody will compute or the shares placed in trust on which the shareholders are settlor or beneficiary.

Article 364

The persons who have privileged information under no case will:

I. To carry out or instruct the carrying out of operations, directly or indirectly, on any type of securities issued by an issuer or simplified issuer, or securities representing them, the price or quotation of which may be influenced by said information as long as it is of a privileged nature. This restriction shall also apply to optional securities or derivative financial instruments that have said securities or securities as underlying assets.

II. Render or transfer the information to other persons, except that by virtue of their occupation, position or commission, the persons to whom it is transferred or furnished should know the information.

III. Issue recommendations on any type of securities issued by an issuer or simplified issuer, or securities representing them, the price or quotation of which may be influenced by such information as long as it is of a privileged nature. This restriction shall also apply to optional securities or derivative financial instruments that have such securities or securities as underlying assets.

The stock market intermediaries who have privileged information may carry out transactions regarding the securities to which said information refers to, on behalf of third parties not related to them, provided that the specific order and conditions of the operation proceed from the client, without counseling existing nor recommendation from the intermediate and with independence of the infringements to this Law in which the client, in its case, may incur.

Those who had executed an operation having as counterparty persons who have operated with privileged information may sue before the corresponding courts the applicable indemnification.

The action provided for in the preceding paragraph shall be subject to a statute of limitations of five years from the date of the transaction. To this end, the Commission shall provide the judicial authority hear-

ing the relevant proceedings with all the documentation necessary for the investigation of the proceedings. In the event that the transaction concerns securities with simplified registration, it shall be the stock exchange on which the securities have been listed that shall provide the competent judicial authority with the information required for the investigation of the proceedings.

The transactions performed by persons with privileged information, in contravention to the provisions herein including those agreed out of national territory which have any effect within said territory, will be subject to the sanctions that this Law sets forth.

Article 365

The persons referred to in Sections I to IX of Article 363 of this Law shall be prohibited from acquiring, directly or indirectly, securities issued by an issuer or simplified issuer to which they are linked or securities representing them, for a period of three months from the last sale they have made of the securities or securities indicated. This prohibition shall also apply to sales, but in relation to the last acquisition they have made.

The terms referred to in this article will not be applicable to transactions that:

I. Intermediaries of the stock market, investment corporations and institutions of insurances and bonds perform on their own behalf.

II. Have as a purpose securities issued by credit institutions, representing a liability on their charge.

III. They represent acquisitions or transfers of securities made by directors or employees of an issuer, simplified issuer or legal entities controlled by it, acquired on the occasion of the exercise of options derived from benefits or plans granted to employees, previously approved by the shareholders' meeting of the issuer or simplified issuer in question and which provide for general and equivalent treatment for directors or employees who maintain similar working conditions.

IV. Represent acquisitions or alienations of securities carried out by officers or employees of an issuer or legal entities controlled by it, acquired by virtue of exercising options derived from compensations or plans granted to employees, previously approved by the shareholders meeting of the corresponding issuer and which provide a general and equivalent treatment for officers and employees which have similar job conditions.

IV. Carry out the shareholders, board members, officers, managers, agents, external auditors, commissioners and secretaries of joint bodies, independent service providers and counselors in general of the investment companies of variable rate and debt instruments to which is applicable this article, regarding the shares representing the capital stock of said investment companies.

V. Expressly authorize the Commission, in connection to:

a) Corporate restructurings such as mergers, spin-offs, acquisitions or asset sales which represent at least ten per cent of the assets and sales of the prior issuer's fiscal year.

b) Reorganizations of the issuer's shareholdings, when it is regarding volumes superior to one hundred per cent of its capital stock.
c) Public offerings.
d) Preference rights in case of subscription of shares.
e) Alienations of securities of a series in order to acquire other series of the same issuer with the obtained resources.
f) Obtain liquidity to face urgency cases, acts of god and *force majeure.*

The provisions of the first paragraph of this article will be applicable to transactions with optional instruments or derivative financial instruments which have as underlying the securities issued by the issuer or negotiable instruments representing them.

The transactions that are performed in contravention of the provisions of this article, including those agreed out of the national territory which have any patrimonial or legal effect within the territory, will be subject to the sanctions that this Law establishes.

Article 366

The persons referred to in sections I to IV of article 363 of this Law and the trustees of trusts that are established for the purpose of establishing stock option plans for employees and of the pension, retirement or seniority bonus funds of the staff of an issuer, simplified issuer or legal entities that it controls and any other fund with similar purposes, established directly or indirectly by said issuer or simplified issuer, may only sell or acquire from the issuer or simplified issuer with which they are linked, the shares representing their share capital or the credit securities that represent them, through public offering or auctions authorized by the Commission or those carried out directly by the simplified issuers.

The persons and fiduciary institutions referred to in this article, prior to the arrangement of operations, must consult the issuer or simplified issuer with which they are linked, in accordance with the policies, guidelines or mechanisms established for this purpose, whether it has transmitted or intends to transmit orders to acquire or place shares representing its share capital or credit securities representing them, in which case, such persons and fiduciary institutions shall refrain from sending purchase or sale orders, as appropriate, except in the case of public offerings.

The absence of such policies, guidelines or mechanisms shall not excuse the aforementioned persons and fiduciary institutions from their obligation to carry out the consultation referred to in the immediately preceding paragraph, in all cases, through the responsible person designated by the issuer or simplified issuer to operate its repurchase fund, prior to the arrangement of operations.

The provisions of this article shall apply to transactions with optional securities or derivative financial instruments that have as

underlying shares representing the share capital of the issuer or simplified issuer, or credit securities representing them.

Article 367

The persons referred to in the first paragraph of article 366 of this Law, will not be subject to the provisions referred to in said article, in connection with any of the following acts:

I. Transfers of shares made by the issuer in question to irrevocable trust institutions established for the sole purpose of establishing stock option plans for employees and pension funds, retirement funds or seniority bonuses for the staff of an issuer or simplified issuer, legal entities that it controls or that control it and any other fund with similar purposes, provided that the issuer or simplified issuer communicates such circumstance to the public prior to the aforementioned transfers being made, disclosing the conditions and causes that motivate them and complying with the general provisions issued by the Commission. Stock option plans for employees and pension funds, retirement funds or seniority bonuses for the staff of an issuer or simplified issuer, or legal entities controlled by it and any other fund with similar purposes, must be previously approved by the shareholders' meeting of the issuer or simplified issuer in question and provide for general and equivalent treatment for employees who maintain similar working conditions.

II. Placement operations that the issuer or simplified issuer in question carries out with the fiduciary persons and institutions referred to in the first paragraph of this article, when said persons or institutions exercise rights derived from purchase warrants payable in kind issued by the issuer or simplified issuer, the underlying of which corresponds to the shares of the issuer or simplified issuer, or credit securities that represent them. The above, provided that the warrants have been acquired in the secondary market by a person other than the issuer or simplified issuer, or in a public offering.

III. The acquisitions or placements of own shares or securities representing such shares, which the issuer or simplified issuer in question makes with the fiduciary institutions mentioned in this article, provided that the following conditions are met:

a) That the trustee institutions evidence that they had ordered in the exchange, buy or sell bids on the shares of the issuer or negotiable instruments that represent said shares, as well as the maintenance of said bids, during a term of at least one hour, in the corresponding trading session.

b) That the issuer informs to the public, by the means established by the exchange, its intent to participate in an auction, at least ten minutes prior to the transfer to the exchange of the biddings derived from its orders.

b) That the acquisition or placement is carried out by means of auction transactions under the terms of the internal regulations of the corresponding stock exchange in which

event the referred trustee institutions must instruct the presentation of their bid at the same price to the instructed in the orders referred to in paragraph a) above.

III. The acquisitions or placements that the issuer carries out with the persons referred to in article 363, sections I and II, herein, in compliance with the provisions contained in agreements or contracts acknowledged in the corresponding issuer's by-laws, in which rights are established rights in favor of strategic partners which holding of securities is restricted up to a determined percentage of capital stock, provided that the issuer communicates such circumstance to the exchange, through the means established by the exchange.

The Commission, by means of general provisions, may establish additional exemptions to the stated under this article.

Article 368

The dissemination of false or misleading information about securities, or regarding the financial, administrative, economic, operational or legal situation of an issuer or simplified issuer, through placement prospectuses, supplements, brochures, reports and other information documents and, in general, through any mass media, is prohibited.

It will be considered that there is dissemination of misleading information, unless proven otherwise, when in any placement prospectus, supplement, brochure, report, disclosure of relevant event and other information documents, relevant information has been omitted, either totally or partially, by an issuer or simplified issuer, securities market intermediaries, investment advisors, external auditors, law graduates, independent experts, price providers and securities rating agencies, within the scope of their competence, or erroneous information has been included. The above assumption will not be applicable when it concerns information whose disclosure is prohibited by applicable legislation or regulation.

Article 369

The dissemination or delivery of false or misleading information on securities, financial products, or regarding the financial, administrative, economic, operational or legal situation of an issuer or simplified issuer by securities market intermediaries, their representatives or investment advisors is prohibited. The same prohibition shall apply to advisory or non-advisory services in terms of articles 191 and 200, section I, paragraphs four and five of this Law or any other service provided by securities market intermediaries, their representatives or investment advisors.

It is considered that there is dissemination of information that misleads in the provisions referred to in the second paragraph of article 368.

Article 370

The persons who participate or intervene, directly or indirectly, in acts or transactions of the stock market are forbidden to:

I. Manipulate the market.

II. Execute simulation transactions.

III. Distort the correct operation of the negotiation system or computer equipment of the stock exchanges or the corporations which manage systems to facilitate securities transactions.

IV. Intervene in transactions with conflict of interest.

V. Contravene the customs and practices of the market. All acts that go against the finality if this Law or any others that cause damages to goods that this Law protects will be considered contrary to a healthy use or market practice.

VI. Order or intervene in the execution of transactions with securities, in the own benefit or on behalf of third parties, consciously of the existence of one or more instructions ordered by other or other clients of an intermediate of the stock market, on the same value, anticipating to the execution of the same.

For the purposes of this Law, it is understood by manipulations of the market all acts performed by one or more persons, by means of which it is interfered or influenced in the free interaction between supply and demand, provoking to artificially vary the volume or price of securities, with the purpose to obtain a own benefit or for third parties.

It is not considered as market manipulation the execution of stabilization transactions consisting in buying shares or negotiable instruments representing said shares, once the exchange cross has been carried out by virtue of a public offering, regarding the same class, series or kind and provided that there are not bids of higher price to the placing or the once in which the last operation was agreed in the market, whichever is lower.

Article 370 Bis

The members of the board of directors, chief executive officer or its equivalent and other officers of the stock market investment promotion corporation or stock market corporation will be prohibited from altering active and passive accounts or the conditions in the agreements that are party of or their accounting records are based on, or make or order the registration of transactions or non-existent expenditures or to the exaggerate the corporation's real expenditures.

The same prohibition shall apply to the members of the board of directors, chief executive officer or its equivalent and other officers of the issuers of stock certificates referred to in article 62 if this Law or, if applicable, of the trustee, or members of the technical committee of the manager of trust property of stock market trust certificates referred to in article 62 of this Law.

Article 371

The following entities are bound to establish standards, policies and control mechanisms, pursuant to the general provisions issued by the Commission for the transactions with securities carried out by their

board members, officers and employees that by virtue of their employment, position or commission, have or may have access to privileged or confidential information related with the processes of registration of securities before the Registry, public offerings, acquisition or alienation of issuer's shares, or else, of transactions ordered by the investing clients:

I. The stock market intermediaries.

II. The stock exchanges.

III. The securities depository firms and securities central counterparties.

IV. The securities rating institution, the price providers and the corporations which manage systems to facilitate securities transactions.

V. The financial entities that form part of financial groups associated to fullservice banking, brokerage firms, operating companies of investment companies and/or financial entities that distribute shares of investing companies.

VI. The issuers.

VII. Simplified issuers.

VIII. Investment advisors.

Article 372

The board members and secretary of the Commission's Governing Board, as well as the public officers in service of the same, must not intervene in shares representing the capital stock of a corporation, registered before the Registry, except that they carry it out through investment companies, trusts formed for such sole purpose in which they do not intervene in the decisions of investment, in instruments referred to in indexes or baskets of shares or in credit instruments representing shares of capital stock of two or more corporations issued under trusts.

The restriction referred to in the above paragraph will be applicable to transactions with optional instruments or derivative financial instruments, which have underlying shares representing the capital stock of a single corporation registered before the Registry.

Chapter II Crimes

Article 373

Whoever within the national territory performs trading with securities without having the corresponding authorization from the corresponding authority pursuant to this and other laws will be sanctioned with five to fifteen years of prison.

Article 374

Those who carry out any of the following conducts will be sanctioned with three to fifteen years of prison:

I. Carry out public offering of securities not registered before the Registry without the Commission's authorization.

II. Privately offer securities in contravention to the provisions of article 8 herein.

Article 375

The members of the board of directors, as well as the officers, employees or whoever has a position or commission in an intermediary of the stock market, which disposes, for him/her or for a third party, of the resources received from a client or the client's securities, for purposes other than the ordered or hired by the client, causing with it a patrimonial loss to the client in own economic benefit, and is directly or by means of a third party or in favor of a third party, will be sanctioned with five to fifteen years of prison.

The same penalties will be imposed on the members of the board of directors, as well as to persons who perform executive functions, employees, positions or commission, in a stock market intermediary, even when incurring in the conduct of performing illegal transactions or forbidden by Law which result in a patrimonial damage to the corresponding stock market intermediate in own benefit either directly or by means of third party or in favor of the third party.

Article 376

The members of the board of directors, managers, officers, employees attorneys-in-fact to execute transactions with the public, statutory auditors or external auditors, of an intermediary of the stock market, brokerage firms, securities depository firms, securities central counterparties and issuers, who commit any of the following conducts will be sanctioned with two to ten years of prison:

I. Omit to register in the accounting, the transactions carried out or alter the accounting registries or artificially increase or decrease the assets, liabilities, order accounts, capital or results of the mentioned entities, in order to hide the actual nature of the performed transactions or their accounting registry.

II. Register or order to register false information in the accounting, or else, provide false information in the documents, reports, opinions, studies or credit rating, which should be filed before the Commission in compliance with the provisions herein.

III. Destroy or order to destroy, totally or partially, the systems or accounting records or the supporting documentation which originate the respective accounting entries, prior to the legal terms for maintenance and with the purpose to hide their registration.

IV. Destroy or order to destroy, totally or partially, information, documents or files, including electronic, with the purpose of impeding or obstructing the Commission's supervision acts.

V. Destroy or order to destroy, totally or partially, information, documents or files, including electronic, with the purpose of manipulating and hiding it from those who have legal interest in knowing the

data and relevant information of the company, that if known it would have been prevented an affectation of fact or a legal one of the entity, its shareholders or third parties.

VI. File to the Commission false or altered documents or information with the purpose of hiding its real content or context, or else, record or state before the Commission false facts.

Article 377

The members of the board of directors, officers or employees of an intermediary of the stock market or securities depository firm, who gives news or information regarding transactions, services or deposits performed or in which they intervene on behalf of their clients, in contravention of the provisions of articles 192, first paragraph or 295, first paragraph herein, as corresponding will be sanctioned with three to nine years of prison. The same penalty will be applied to those persons who use the before mentioned agreement information without the owners authorization.

Article 378

Anyone who having been removed, suspended or disqualified, by final and binding resolution of the Commission, in the terms provided under article 393 herein, continues performing the functions regarding those from which he was removed or suspended, or else, occupies a job, charge or commission, within the Mexican financial system, despite of being suspended or disqualified for it, will be sanctioned with two to seven years of prison.

Article 379

He/She who by virtue of a mandatory takeover bid of shares representing the corporation's capital stock or negotiable instruments representing said shares, registered before the Registry, carried out under the terms provided in article 98 herein, pay, deliver or provide any compensation, on their own behalf or on behalf of a third party, that implies an economic premium or surcharge to the amount of the offer, in favor of a determined person or group of persons who accept the offer or from whom they appoint, will be sanctioned with two to six years of prison. The same penalties will be imposed to the persons who once accepting the offer under the terms stated in the above paragraph, receive the premium or surcharge.

Article 380

Anyone who being legally or contractually bound to maintain confidentiality, reserve or secrecy, furnishes by any means or transfers privileged information to other persons, will be sanctioned with two to six years of prison.

The same penalties will be imposed to the persons that being bound to legally or contractually maintain confidentiality, reserve or secrecy,

issue or perform recommendations based on privileged information regarding privileged information with securities or financial derivatives that have as implicit securities which quotation or price may be influenced by said information.

Article 381

The persons who using privileged information, carry out or instruct the execution of transactions, by themselves or by means of another third party, with securities or financial derivative instruments that have as underlying securities which price or quotation may be influenced by said information, and that deriving from said operation obtain a benefit for themselves or for a third party, will be sanctioned pursuant to the following:

I. With two to six years of prison, when the amount of benefit is up to 100,000 days of current minimum general wage in the Federal District at the time in which the operation took place.

II. With four to twelve years of prison, when the amount of benefit exceeds 100,000 days of current minimum general wage in the Federal District at the time in which the operation took place.

For the purposes of this article benefit is understood as the obtaining of a profit or the avoiding of a loss.

The benefit and its corresponding calculation will be determined for the purposes of the crime referred to under this article, based on the method established under article 392, section IV, paragraph a) herein.

Article 382

The persons who directly or indirectly participate, in acts of market manipulation in the terms established under article 370, second to last paragraph of this Law, and that obtain a benefit for themselves or for a third party, will be sanctioned pursuant to the following:

I. With two to six years of prison, when the amount of benefit is up to 100,000 days of current minimum general wage in the Federal District at the time in which the operation took place.

II. With four to twelve years of prison, when the amount of benefit exceeds 100,000 days of current minimum general wage in the Federal District at the time in which the operation took place.

For the purposes of this article benefit is understood as the obtaining of a profit or the avoiding of a loss.

The benefit and its corresponding calculation will be determined for the purposes of the crime referred to under this article, based in the method established under article 392, section V, paragraph a) herein.

Article 383

The persons who do any of the following will be sanctioned with five to ten years of prison:

I. Divulge by themselves or by means of a third party, false information of securities, or else, regarding the financial, administrative,

economic or legal situation of an issuer, by means of placement prospectus, supplements, brochures, reports, disclosure of relevant events and else information documents and, in general, of any mass media.

II. Hide or fail to disclose information or relevant events which in terms of this Law must be disclosed to the public or the shareholders or the securities' holders, unless its disclosure was postponed under the terms of this Law.

Article 383 Bis

A sanction with imprisonment of five to ten years will be imposed on the officers, managers, employees, and attorneys-in-fact to enter into transactions with the public of the tock market intermediaries or investment advisors, who on their own behalf or through an intermediary furnish false information about the consultant or non-consultant services provided, the securities or the financial, administrative, economic, operational or legal status of an issuer.

Article 384

Anyone who without consent of the entitled persons, removes or uses the access passwords to the system of reception of orders and assigning of transactions from a stock market intermediary or to the trading operation systems of the stock exchanges, in order to enter bids and perform operation in own benefit or for a third party, will be sanctioned with six months to two years of prison. The penalty provided in this article is independent to the corresponding one for committing other or others crimes provided under this chapter or other applicable laws.

Article 385

Anyone who by their own or by means of a third person or by trade names, by any means of publicity displays themselves before the public as stock market intermediaries, without having authorization of the corresponding authority pursuant to this or other laws will be sanctioned with one year to two years of prison.

Article 386

The members of the board of directors, the chief executive officer and other officers or legal representatives of the investment promotion corporations or stock market corporations which, through the altering of the active or passive accounts of the conditions of the agreements that they execute or order to register transactions or non-existent expenses or that are overstated the actual ones, or that negligently perform any illegal act or operation forbidden by law, generating in any of such events the bankruptcy or damage in the patrimony of the corresponding company or the legal entities controlled by it, in their own economic benefit either directly or by means of a third party, will be sanctioned with three to twelve years of prison.

The same prohibition shall apply to the members of the board of directors, chief executive officer or its equivalent and other officers of the issuers of stock certificates referred to in article 62 if this Law or, if applicable, of the trustee, or members of the technical committee of the manager of trust property of stock market trust certificates that through the alteration of active and passive accounts or the conditions in the agreements that are party of or which their accounting records are based on, or make or order the registration of transactions or non-existent expenditures or to the exaggerate the corporation's real expenditures, or willfully perform any unlawful act or operation prohibited by law, creating in any of these presumptions a loss or prejudice in the corporation's property, or the property of legal entities controlled by it or by the trustee in question, for their own benefit either directly or indirectly or by a third party.

The penalty referred to in this article will be of one to three years of prison when evidencing that the damage and loss has been repaired and indemnified.

The crime provided under this article will not be prosecuted when the persons act under the terms of article 40 herein, as well as in compliance with the laws which regulate the acts referred to in the first paragraph of this article.

Article 387

The shareholders, board members and officers who order or urge officers or employees of an intermediary of the stock market to commit crimes contained under articles 375 to 378 and 384 herein, must be sanctioned with up to half more of the penalties provided under said legal provisions.

Article 388

The crimes provided for in this Law will only be prosecuted at the request of the Secretariat, after receiving the opinion of the Commission; except in the case of the crimes provided for in articles 375, 377, 383, when dealing with operations related to simplified broadcasting stations, 384 and 386 of this Law, in which case the victims, offended parties or the account holders in question may also directly file a complaint.

In order to exercise criminal action related to the crime provided for in article 383, when dealing with operations related to simplified broadcasting stations, the prosecution may request a technical opinion from the Secretariat in order to assess whether or not the elements incorporated into the corresponding investigation file prove the indicated criminal type.

The Commission may abstain from issuing the opinion referred to in this article, regarding crimes in which the damages and losses do not exceed 25,000 days of current minimum general wage in the Federal District, provided that the damage and loss has been repaired to the victim or offended party without need of any authority's act;

regarding facts in which persons who were not previously related with illegal facts that affect the financial system participate; regarding crimes which are not considered as a felony pursuant the terms of article 194 of the Criminal Proceedings Federal Code, and that pursuant to the Commission's opinion the probable responsible individuals efficiently collaborated providing accurate information for the corresponding investigation.

In the cases in which the Commission abstained from issuing the opinion referred to in the first paragraph of this article, it must inform the Ministry regarding such determination.

The crimes contained under this Law will admit only bad faith completion. The criminal action in the crimes referred to in this Law will prescribe in three years as of the day in which the Ministry or person with a legal interest has knowledge of the crime and of the probable responsible person, and if they have not knowledge, in five years as of the date of the crime's commission.

The penalties provided under this Law, except for the stated under article 386, will be reduced to a third when evidenced that the damage or loss has been repaired.

For the matters not provided under this Law regarding crimes, the Federal Criminal Code and the Criminal Proceedings Criminal Code will apply.

Title XV Administrative procedures

Chapter I Preliminary provisions

Article 389

In the administrative proceedings provided under this Law all types of evidence will be admitted related to the acts subject to the procedure as long as the same are offered in the hearing of examination of evidence in the hearing. In the event of verbal testimony by authorities, it shall also be provided in writing.

Once complied with the due process right referred to in article 391 herein, or else, filed the writing for motion for reconsideration of a provisional order, only unknown future evidence will be admitted, provided that the corresponding resolution has not been issued.

The Commission may use the evidence means which it considers necessary, being able to agree on the admissibility of offered evidence. The evidence proposed to the interested party may be rejected only when the same was not furnished pursuant to the law, it is not related with the substance of the case, is irrelevant, unnecessary or contrary to the moral and law. The weighing of evidence will be performed pursuant to the Federal Civil Procedures Code.

Once the evidence stage is concluded the corresponding resolution will be issued without need of prior notification to the interested party.

Article 390

The capacity of the Commission to impose sanctions of an administrative nature will expire in a term of five years as of the next business day in which the conduct was performed or the infringement event updated.

The before mentioned term will be interrupted when starting the related proceedings. It will be understood that the procedure has started when the Commission grants hearing to the probable infringer, under the terms of the provisions of section I of article 391 herein.

In order to calculate the amount of fines as well as other events contemplated by this Law by days of wages, the basis will be the general daily minimum wage in the Federal District on the day that the sanctioned conduct is performed or the event updated.

The fines that the Commission imposes must be paid within fifteen business days following their notification. When the fines are not paid within the mentioned term, the amount of the same will be updated since the month in which the payment should have been made and until the same is carried out, in the terms established under the Fiscal Code for the Federation for this kind of cases.

In case that the infringer pays the fines imposed by said Commission within the fifteen days referred in the above paragraph, a reduction of twenty per cent will be applied, provided that no legal defense is filed.

The fines imposed by the Commission will be enforeced by the Ministry, once the judgment becomes final.

Chapter II Imposition of administrative sanctions

Article 391

The Commission, when imposing sanctions of an administrative nature, will be subject to the following:

I. Hearing will be granted to the alleged infringer, who in a term often business days, as of the next business day following the day in which the corresponding notification has effects, must state in writing whatever is convenient for his/her interests, offer evidence and arguments. The Commission, by the parties' request, may extend the stipulated term once, up to the same term, attending the particular circumstances of the case. The notification will have effects on the next business day following the day on which it was carried out.

II. In case the alleged infringer does not use his right to have a hearing referred to in the previous section within the established term, or else, having exercised the right does not achieve to disappear the charges against him/her, the charged infringements will be evidenced and the corresponding sanction will be applied.

III. The following will be considered in the imposition of sanctions, if applicable:

a) The impact to third parties or to the Mexican financial system that the violation has caused or is causing.

b) In the event of reincidence, the causes which originate it and, in its case, the corrective actions applied by the alleged violator. Those which have incurred in a sanctioned infraction and in addition to the latter, makes the same infringement within the two immediate following years to the date the judgment became final shall be considered as reincident.

The reincidence may be sanctioned with a fine of an amount equivalent to twice the originally foreseen amount.

c) The amount of the transaction in which the respective infringement occurred.

d) The economic condition of the offender in order for the sanction not to be excessive, and

e) The nature of the infringement committed.

IV. In dealing with behavior qualified as gross by this Law, in addition to the provisions in the previous section III, they may take into consideration any of the following aspects:

a) The amount of the property damages caused.

b) The profit obtained.

c) The lack of honesty on the part of the offender, as provided by this Law and the general regulations arising from it.

d) The negligence or malice with which it has acted.

e) That the unlawful behavior referred to in the administrative process constitutes a crime, or

f) Other circumstances that the Commission considers applicable for such effects.

The sanctions will be imposed by the Commission's Governing Board which may delegate such authority, by reason of the infringement's nature or the fine's amount, to the president or other public officers of the own Commission.

Attending to the circumstances of each case the Commission may impose the sanction and warn the infringers, or else, just warn them, considering their personal background, the seriousness of the conduct, that there are no elements to demonstrate that third parties interests are being affected or the financial system itself, or that having caused a damage it has been repaired, as well as the existence of extenuating causes.

In case of legal entities the fines may be imposed to said entities as well as to their board members, officers, managers, employees or attorneys-in-fact who directly incurred or had ordered the performance of the conduct subject to infringement.

The Commission will consider as an attenuating cause when imposing administrative sanctionswhen the supposed infringer evidences before the Commission that the caused damage is repaired, as well as the fact that contributes with information that assists the exercise of the Commission's attributions, in order to clarify responsibilities.

The proceedings for imposing administrative sanctions referred to

in this Law will be started independently of the opinion regarding the crime that, in its case, the Commission issues in terms of article 388 herein, as well as the corresponding criminal proceedings. Likewise, the proceedings will be independent of the damages and losses that, in its case, demand the affected persons for the corresponding acts.

Article 391 Bis

To protect the right of access to the public governmental information, the Commission, subject to the guidelines approved by the governing board shall communicate to the general public, through their website, the sanctions to be imposed for the violations to this law and the provisions arising from it, which shall indicate:

I. The name, designation or business name of the offender:
II. The legal provision violated, the type of sanction imposed, amount or term, as appropriate, the violating behavior; and
III. The status of the resolution, indicating whether it is the final decision or it is likely to be challenged; in the latter case, if a legal defense has been filed and its type, when knowledge of this circumstance is acquired for being duly notified by the competent authority.

In every event, if the imposed sanction is left without effects by a competent authority, such situation shall be published as well.

The foregoing information shall not be considered proprietary or confidential.

Article 392

The infringements to this Law or to the general provisions deriving from it will be sanctioned with an administrative fine to be imposed by the Commission, by virtue of days of wage, pursuant to the following:

I. Fine of 10,000 to 100,000 days of wage, to:
   a) The financial entities, as well as individuals and legal entities regulated by this Law, which violate the requests of information and documentation that within the scope of their respective competences are required by the Ministry, the Bank of Mexico and the Commission, within the terms, conditions and other characteristics established by the same.

      The same sanction will apply to the financial entities, as well as to individuals or legal entities regulated by this Law that do not comply with the delivery of the information that according to applicable regulations need to filed periodically with the Ministry, Bank of Mexico or to the Commission.
   b) The Mexican legal entities which directly or by means of trusts or similar or equivalent figures, carry out securities offering overseas, in contravention of the provision under article 7, second paragraph, herein.

c) The members of committees that exercise functions regarding auditing or corporate practices that abstain themselves from issuing opinions to the board of directors of stock market corporations regarding the matters referred to under sections I, paragraph a) and II, paragraph a) of article 42 herein, as well as the chief executive officers of these corporations who omit to fulfill the obligations provided under article 44, sections IV and V herein. Also, to the heads of the financial and legal areas or their equivalent that breach their revising obligations, in the scope of their competence, as well as subscribing the reports referred to in article 104 of this Law.

d) The board members and the chief executive officer of the stock market corporations who omit to disclose to the investing public their opinion regarding the price of offer and conflict of interests that they would have, as well as the decision to take regarding the securities of their property, pursuant to the provisions under article 101, second and third paragraph, herein.

e) Repealed.

f) Repealed.

g) The persons related to a corporation which shares representing its capital stock are registered before the Registry, which omit to furnish the reports referred to in article 110 herein.

h) The persons or group of persons who, directly or indirectly, have ten percent or more of the shares representing the capital stock of stock market corporations, as well as the members of the board of directors and relevant officers of said corporations, who omit to inform the Commission and, in the cases the Commission establishes by means of general provisions, to the public through the means established by the exchange in which they quote their shares or negotiable instruments that represent them, regarding the acquisition or alienation carried out with said securities, in contravention of the provisions under article 111 herein.

i) The brokerage firms which omit to inform the Commission regarding the acquisition referred to in article 119 herein, in contravention to the provisions of article 120 herein.

j) Repealed.

k) Repealed.

l) The financial entities which use the services of individuals that are not authorized by the Commission, in contravention to the provisions under article 193 herein.

m) The financial entities which omit to register the same

day the acts and agreements that imply variation or modification of the assets, liabilities, capital or imply a direct or contingent obligation, including in their off-balance sheet items, in contravention to the provisions under article 205 herein.

n) The persons who omit to maintain within the established legal term, the documentation and information referred to in articles 243, second paragraph, 267, 330 or 345 herein.

o) The financial entities that in the filing of financial statements are not subject to the general provisions issued by the Commission, in contravention to the provisions under article 210, first paragraph herein.

p) The independent external auditors of issuers or financial entitles which omit to provide the Commission the reports and other elements of judgment on which they support their opinions and conclusions in contravention to the provisions under article 345, second paragraph herein.

q) The financial entities which omit to give notice within the established legal term, of the opening, change of location and closing of offices, as well as to close their doors and suspend transactions on the days determined by the Commission, in contravention to the provisions of article 217 or 218 herein.

r) The brokerage firms that suspend the quoting of securities for more than twenty days without the authorization of the Commission, in contravention to the provisions under article 248, second paragraph herein.

s) The stock exchanges and companies that administer systems to facilitate transactions with securities which do not furnish information that by means of general provisions the Commission establishes, in contravention to the provisions under article 252 or 259, second paragraph herein.

t) The stock exchanges and financial entities that participate in the international quotation system which do not adopt the measures necessary in order for the securities that operate by means of said system are exclusively acquired for institutional or qualified investors, in contravention to the provisions under article 264, second paragraph herein.

u) The persons authorized to render intermediation services in the stock market in contravention to the provisions under article 308 herein.

v) The central counterparties that fail to inform to their reciprocal debtors and creditors of the fulfillment or violation of their obligations, as well as the contributions that they must perform and the excesses of the

same, in contravention to the provisions under article 313 herein.

w) The central counterparties that fail to inform the Commission, the Bank of Mexico and the persons who execute transactions in which they become reciprocal debtor or creditor, the corresponding notice, when they stop assuming such status regarding any of them in contravention to the provisions under article 311 herein.

x) The companies that administer systems to facilitate transactions with securities, the price providers and the securities rating institutions, which do not give notice to the Commission, within a term or ten business days following the date in which they perform modifications to the documentation necessary to be organized and operate as such, in contravention to the provisions under articles 254, last paragraph, 324, last paragraph, or 335, last paragraph herein, as corresponding.

y) The price providers that fail to communicate to the Commission, the same day on which they agree the changes performed to the updated prices for the appraisal of securities, derivative financial instruments and indexes, in contravention to the provisions under article 328 herein.

z) The securities rating institutions that fail to disclose to the public, through the means established by the Commission by means of general provisions, the ratings on securities registered before the Registry or to be registered in the same, as well as their modifications and cancellations, in contravention to the provisions under article 339, first paragraph, herein.

aa) The issuers or entities that omit to establish the guidelines, policies and mechanisms of control referred to in articles 366 third paragraph, or 371 of this Law.

II. Fine of 20,000 to 100,000 days of wage, to:

a) The persons who divulge to the general public, information with purposes of promotion, marketing or publicity of securities without the corresponding authorization, in contravention to the provisions under article 6 herein.

b) The members of the board of directors of stock market corporations, who:

1. Omit to file to the general shareholders meeting carried out with the purpose of the closing fiscal year, any of the reports referred to in sections a) to e) of section IV of article 28, herein.

2. Abstain from determining the corresponding actions in order to repair the irregularities of their knowledge and implement the corresponding corrective measures, as well as to order the chief executive officer to dis-

close to the public relevant events, in contravention to the provisions of sections VII or IX of article 28 herein.

3. Law with lack of diligence when failing to disclose to the board of directors or, in its case, to the committees from which they are part of, known information and that is necessary for the correct decision-making, in contravention of section II under article 32 herein.

c) The presidents of the committees that exercise functions regarding corporate practices or auditing of stock market corporations, that omit to elaborate the annual report of activities and furnish it to the board of directors of the corporation, in contravention to the provisions under article 43, section I and II, herein.

d) The members of the committee that exercise functions regarding auditing, as well as the chief executive officers of stock market corporations, which omit to fulfill with any of the obligations provided under articles 42, section II, paragraph b), j), m) and o), and 44, sections II, VI y XI, herein, as corresponding.

e) The stock market corporations that acquire shares representing their capital stock or negotiable instruments representing them in contravention of the provisions of article 56 herein. Regarding serious or repeated infringements, the Commission may additionally order the suspension of the acquisition of own shares.

f) The persons executing operations in contravention to the provisions of article 57 or 370, sections II, III and VIherein.

g) The issuers or intermediate underwriters that publicly offer, promote, disclose, or in any form disclose the pretensions of subscription or alienation of securities in contravention to the provisions under article 85, third paragraph, herein.

h) The persons authorized to carry out voluntary takeover bids who omit to observe the provisions under article 97 herein.

i) The persons or group of persons that, in contravention of the provisions of article 109 herein, omit to inform for disclosure to the public by means of the corresponding stock exchange, regarding the direct or indirect acquisition, within or out of a stock exchange, of ordinary shares of a corporation that results in a shareholdings equal or larger to ten and lesser to thirty per cent of said shares.

The same sanction will be imposed to those that in contravention of said article omit to inform to the corresponding stock exchange for divulgation to the public their intention or not to acquire a significant influence in the corporation of which acquired ordinary shares.

j) The brokerage firms, stock exchanges, securities deposi-

tory firms and securities central counterparties that fail to submit for approval and, in its case, authorization of the Ministry or Commission as corresponding, their by-laws, as well as their modifications in contravention of the provisions of article 115, last paragraph, 235, last paragraph, 273, last paragraph, or 302, last paragraph, herein.

k) The financial entities that initiate their activities without evidencing to the Commission the compliance of the requirements stated under articles 116 or 236 herein.

l) The persons who acquire shares from financial entities in contravention of any of the articles 119, 167, 239 and 304 herein.

m) The financial entities that fail to have the bodies or committees or persons referred to in articles 126, 242, 278, 306 and 327 herein, as corresponding.

n) The brokerage firms that omit to have or fail to adopt the mechanisms and procedures for the protection and control of confidentiality and security of information referred to in articles 177 and 220, section II, paragraph c) herein, or else, that omit to have the registry referred to in article 178 herein.

o) The financial entities that omit to have an automatic system for the reception, registry, and direction of orders and assignation of transactions, in accordance with general provisions issued by the Commission, in contravention of the provisions under article 180 herein.

p) The stock exchanges or securities depository firms that fail to comply with any of the obligations under articles 203, 284, 287, 290, 292 and 296 herein, as corresponding.

q) The brokerage firms that invest, directly or indirectly, in instruments representing the capital stock of foreign financial entities without previously obtaining the authorization of the Commission, in contravention of the provisions of article 215 herein, or else, that omit to previously obtain the authorization of the Commission to hire with third parties the services necessary for their operation in contravention to the provisions of article 219 herein.

r) The brokerage firms, securities depository firms and securities central counterparties, that fail to formulate their internal regulation pursuant to article 247, 294 and 315 herein, or else, that modify it without obtaining the authorization referred to in articles 247, last paragraph, 294, last paragraph and 315, last paragraph, herein, as applicable.

s) The brokerage firms, securities depository firms and securities central counterparties that for their services charge fees, commissions or tariffs which are not autho-

rized by the Commission, in contravention of the provisions under articles 249, 297 or 317 herein, as corresponding.

t) The stock exchanges that invest directly or indirectly, in instruments representing the capital stock of national or foreign entities of the same kind or that carry out functions equivalent to the securities depository firms or securities central counterparties, without the authorization of the Commission in contravention to the provisions under article 251 herein.

u) The issuers that fail to issue and exchange necessary instruments and, in its case, the corresponding coupons in contravention of the provisions under the fourth paragraph of article 282 herein.

v) The issuers that fail to comply before the securities depository firms with the obligations on their charge arising from the exercise of the economic rights stated under the second paragraph of section I, of article 288, herein.

w) The brokerage firms and credit institutions that fail to deposit in a securities depository firm, the shares representing the capital stock of a central counterparty that are of its property, in order to guarantee the prompt and opportune payment of the obligations that said entities have before the company, in contravention to the provisions under article 303, third paragraph herein.

III. Fine of 30,000 to 100,000 days of wage, to:

a) The persons who carry out public offering of securities within national territory without being registered before the Registry in contravention of the provisions under article 7 herein.

b) The persons who carry out any of the activities provided under articles 9, 114, 159, 160, 234, 253, 272, 301, 322 or 334 herein, without the corresponding authorization.

c) The members of the board of directors of stock market corporations that approve, without having the prior opinion of the corresponding committee any of the matters under section III, sections a), b) and c) of article 28 herein.

d) The members and secretary of the board of directors, as well as the relevant officers of stock market corporations who act with disloyalty or that proceed illegally against the company or legal entities controlled by it or in which it has a significant influence, in contravention of the provisions under articles 34, first paragraph, 35, 36 or 46, sections II or III, herein.

e) The members of the committee that exercises the auditing functions of the stock market corporations that omit to fulfill with the obligations provided under article 42, section II, paragraphs e) and g) herein.

f) The stock market corporations that provide under their by-laws clauses establishing measures to prevent the acquisition of shares that grant control of the company, in contravention to the provisions under article 48 herein.

g) The shareholders who are present and deliberate in an operation in which they have an interest contrary to the company's, in contravention of the provisions under article 52 herein.

h) The stock market corporations that issue other than ordinary shares, without having the authorization of the Commission referred to in article 54, second paragraph, herein.

i) The persons who in contravention of the provisions under article 55 herein:

1. Arrange mechanisms to negotiate and offer in a jointly manner ordinary shares with shares with limited vote, restricted or without vote.
2. Place ordinary shares in trusts which have as a purpose the issuance of participation certificates that represent them, with the objective to impede that all their holders freely exercise their corresponding voting rights.

j) Repealed.

k) The corporations and legal entities controlled by it, as well as the board of directors' members and relevant officers of said companies that, in contravention to the provisions under article 101 herein, carry out acts or transactions with the purpose to obstruct the development of a mandatory takeover bid.

l) The issuers that, in contravention of the provisions under article 104 herein, omit to provide the Commission or the stock exchange, the information or the reports referred to in said article, or when they deliver incomplete information or without complying with the requirements, terms and conditions requested for it. Also, to the issuers that omit to prepare financial statements pursuant to the accounting principles issued or acknowledged by the Commission.

m) The issuers that do not comply with the obligation of control referred to in article 105 last paragraph of this Law, or when the registration is not conducted and maintained in the terms of this article.

n) The issuers with registered securities in the Registry that do not comply with the obligation of informing the investing public, in terms of article 106 of this Law, the causes that have originated the events mentioned in such article. Also, when they omit to inform the invest-

ing public of the information that by the stock exchange and the Commission's request they are required to provide, in accordance with article 106 of this Law.

o) The brokerage firms that fall under any of the events referred to in article 138, sections I to VIII and X, of this Law.

p) The brokerage firms that fall under any of the events of revocations referred to under article 153, sections IV and VI to XII, herein.

q) The representation offices of foreign brokerage firms that perform activities in national territory other thise set forth in the general regulations issued by the Ministry, in contravention to the provisions under article 159, second paragraph herein.

r) The subsidiaries that convey series "F" shares without having authorization from the Ministry, in contravention to the provisions under article 166 herein.

s) The brokerage firms and price providers and investment advisors that contravene articles 186, 188, sections I and II 196, 197, 227 section IV or 331 herein, as applicable.

t) The financial entities that don not excuse themselves in terms of the second paragraph of article 189 of this Law.

u) The members of a committee responsible for the analysis of the financial products, or the person responsible for supervising the compliance with the regulations concerning the consulting or non-consulting services that act against the provisions of articles 190 A or 190 B of this Law and the general regulations arising from such dispositions, as long as no damages are caused.

v) The brokerage firms that omit to maintain a global capital in connection with the risks incurred by their operation, in contravention to the provisions under article 173 herein.

w) The brokerage firms that trade the securities quoted in the stock exchange out of such exchange, without the prior authorization of the Commission, in contravention to the provisions under article 179 herein.

x) The brokerage firms that omit to maintain the securities acquired on their own or from third parties desposited in a securities depository firm or institutions appointed by the Commission in contravention to the provisions under article 182 herein.

y) The brokerage firms and securities depository firms that give notices or information of the transactions and services rendered in contravention to the provisions under articles 192 or 295 herein, as applicable.

z) The individuals authorized by the Commission that

simultaneously offer their services to more than one financial entity in contravention to the provisions in the last paragraph or article 193 herein.

aa) The brokerage firms that omit to deposit the resources of a client in a credit institution no later than the next business day or acquire shares representing the capital stock of a company of investment in debt instruments, in the account of the corresponding client, or, invest them in repurchase agreements of government securities, in contravention of the provisions under article 194 herein.

ab) The brokerage firms that omit to register the funds and securities of clients in a different account to the ones that are part of their assets, in contravention to the provisions under article 206 herein.

ac) The brokerage firms and securities central counterparties that omit to open or do not have special accounting, in contravention to the provisions under articles 207 or 314 herein, as applicable.

IV. Fine to the persons that violate articles 364 or 365 herein, pursuant to the following:

a) Regarding infringements to the provisions under section I in article 364 herein, fine for the amount of one to two times the obtained benefit in the corresponding operation, plus the amount resulting of applying to said benefit a rate equal to the arithmetic average of the yield generated the ten companies of investment in debt instruments with the most profitability during the six months prior to the operation's date. When there is no benefit fine between ten and fifty per cent of the operation's amount.

For the calculation of the benefit any of the following described methods must be applied as the case may be;

1. If the infringer performs the operation in opposition to the operation that originated the infringement, within the ten immediate following business days, as of the date in which the infringer disclosed the information that had the nature of privileged, the calculation will result of the difference between the prices of one and other transactions attending the corresponding volume.
2. In case the relevant event refers to the execution of a public offering, the calculation will result between the price of said offer or that in which the infringer had performed the operation contrary to that which originated the infringement, prior to the offer, considered by the corresponding volume.
3. In other cases the difference between the arithmetic averages of the corresponding securities released by the price providers will be taken, during the five busi-

ness days following the date on which the information was released for public knowledge and the price of the performed operation in attention to the corresponding volume.

b) Regarding infringements to the provisions under sections II and II under article 364 herein, fine of 30,000 to 100,000 days of wage.

c) Regarding the infringements to the provisions under article 365, first paragraph herein, and fine for the amount of one to two times the benefit obtained in the corresponding operation. The benefit will be the result of the difference between the prices of one and other transactions, in attention to the volume of the same. In case there is no benefit, the fine will be for the amount of10,000 to 100,000 days of wage.

V. Fine of 10,000 to 100,000 days of wage, to everyone who directly or indirectly participates in acts which imply market manipulation, when the obtained benefit is not subject of quantification or the same is lower to 5,000 days of wage, in contravention of the provisions under article 370, section I, herein.

If the obtained benefit is quantifiable, the fine to be imposed may be of one to two times said benefit plus the amount resulting of applying to the same a rate equal to the arithmetic average of the yield generated by the ten companies of investment in debt instruments with the most profitability during the six months prior to the operation's date, according to the information given by such corporations to the Commission and for the effects of this article may be consulted in the page or web site address of the Commission.

The calculation of the benefit will be obtained by the difference between the price of the last fact registered in the market, prior to the manipulation act, and the price in which transactions are executed taking advantage of the generated movement, multiplying the obtained difference times the volume of this last transactions. In case the benefit derives of related or connected acts that involve the same securities and is subject of quantification, the calculation will be carried out based in the profit obtained in the same.

Benefit not subject of quantification means all privilege, advantage, benefit, prerogative or exception, present or future, that is obtained as result of market manipulation, in related or connected acts that involve the same securities and which is not subject to be determined in money.

VI. Fine for the amount of up to two times the premium or surcharge of the corresponding operation, if the same is subject of quantification, paid, delivered or furnished, to the persons who incur in conducts that contravene the provisions under article 100 herein.

If said fine is not subject of quantification, a fine of 10,000 to 100,000 days of wage will be imposed.

VII. Fine of 30,000 to 150,000 days of wage, to:

a) The stock market intermediaries that perform brokerage to securities that do not comply with the provisions of article 9 of this Law.

b) The persons that perform any of the activities set forth in articles 9, 114, 159, 225, 234, 253, 272, 301, 322 or 334 of this Law without having the concession, authorization or corresponding registry.

c) The issuers that do not disclose relevant events in terms of the provisions in article 105 of this Law.

d) The brokerage firms that do not have with a remuneration system in terms of article 130 of this Law and the general regulations arising from it.

e) The financial entities or investment advisors that place, distribute or recommend securities subject to a public offer without complyin with the maximum limits established by the Commission, in terms of article 178 of this Law.

f) The financial entities that incur in any of the prohibitions provided in sections III and IV of article 188 of this Law.

g) The financial entities or investment advisors that issue recommendations or make unreasonable transactions in consulting services in contravention with the provisions established in article 189, third paragraph, section I to III of this Law.

h) The financial entities or investment advisors that enter into operations in contravention with the provisions in article 189, fourth paragraph.

i) The financial entities or investment advisors that provide consulting services without having the policies, guidelines or internal mechanisms of control in terms of articles 189, section III, 190, 190 A and 190 B, first paragraph of this Law, or such policies, guidelines or internal mechanisms of control that the Commission establishes by means of general character.

j) The financial entities that do not have committees or persons referred to in articles 190 A and 190 B of this Law, as appropriate.

k) The members of a committee responsible for the analysis of the financial products or the person responsible for supervising the compliance of the provisions concerning the consulting or non-consulting services that act in contravention with the provisons in articles 190 A or 190 B of this Law and the general regulations, as long as no loss or damage is caused.

l) The brokerage firms or investment advisors that omit to give to their clients information, including the total costs charged for the activities and services that they provide or financial products that they offer, or yields of their investment portfolios, in contravention with the provisions of article 191 of this Law and the general regulations arising from it, as appropriate.

m) The financial entities that promote or commercialize securities, different from the ones set forth by the Commission by means of general regulations referred in article 200 section I, last paragraph.
n) The financial entities that do not have the electronic or written registries mentioned in article 200 section I, fourth paragraph and section II, first paragraph of this Law, in terms set forth therein.
o) The financial entities that don't include the information that is determined by the Commission by means of the general regulations referred to in article 203, first paragraph in the statement of account to clients.
p) The financial entities or investment advisors that fail to store, document, or preserve within the legal period established, the documentation and information referred to in articles 208 or 226, section II, of this Law, as appropriate.
q) The financial entities that fail to have separate and independent areas of business for the provisions of investment services, in contravention with the provisions in article 224 of this Law.
r) To the investment advisors that incur in any of the prohibitions set forth in article 227, sections I to III of this Law.
s) To anyone that disseminates false or misleading information in contravention to the provisions of articles 368 or 369 of this Law.
t) The persons that enter into transactions in contravention with the provisions in article 370, sections IV and V, of this Law.
u) The persons that incur in the prohibition set forth in article 370 Bis of this Law.

VI. Fine from 10 per cent to 100 per cent of the transaction to the persons that are required to make a public offer of forced acquisition in terms of the provisions in article 98 of this Law and do not make it, or make the offer without complying with the requirements set forth in such legal provision.

VII. Fine of 10,000 to 100,000 days wage to the offenders of any other provision of this Law or the general regulations arising from it, different from the foregoing and for which there is no specific sanction set forth in this Law.

For the purposes of the provisions under sections IV and V herein, benefit will be understood as obtaining a gain as well as to avoid a loss.

The sanctions provided under this article for the stock market corporations, shareholders, members and secretary of the board of directors, and relevant officers, will be equally applicable to investment promotion corporations, shareholders and other persons who perform any of the stated positions, when the legal provisions subject of the infringement are applicable.

The Commission may abstain from sanctioning the persons and financial entities referred in this Law, provided that the cause for such abstention is justified in accordance with the guidelines that for such effects are issued by the Governing Board of the Commission, and are referred to non-serious actions or omissions, there is no reincidence, no elements to demonstrate that third parties interests are being affected or their own financial systems interests, and that it does not constitute a crime.

The violations to the provisions of articles 6; 8; 9; 44, section V; 98; 104; 105; 106; 107; 114; 159; 160; 178; 188, sections III and IV; 189, third paragraph, sections I to III and fourth paragraph; 190; 190A and 190 B, when it causes damages; 191; 192; 196; 200, sections I, fourth paragraph, and II first paragraph; 203; 205; concerning omissions or alterations of the accountable registry; 208; 212; sections I concerning failure to file before the National Banking and Securities Commission, the documents of identification policies and knowledge of the client and user, and III, subsection a) concerning non-reported operations, as well as section I, subsections e) and f); 224, last paragraph; 225;234; 253; 272; 295; 301; 322; 334; 350, third paragraph; 351, first paragraph; 357; 364; 368; 369 and 370 of this Law, shall all be deemed as serious violations.

The fines referred to in this Law are independent to the suspensions, disqualifications, cancellations, interventions and revocations that may be applicable.

As requested by the president of the Commission, the administrative fines may be condoned partially or totally by the Commission's Governing Board.

In case any of the infringements contained in this article cause property damage or a benefit, a corresponding sanction may be imposed, adding to such sanction up to one and a half times the equivalent amount of such damage or to the benefit obtained by the offender, whichever is greater. Benefit is understood to be the earnings gained or loss avoided loss for itself or for a third party.

Article 393

The Commission, regardless of the economic sanctions that pursuant to this or other laws and in accordance with its Governing Board, may decree the removal or suspension from three months to five years to carry out a job, charge or commission in the financial entities investment advisors or issuers, regarding:

I. The members of the board of directors, statutory auditors, officers of any level, authorized attorneys-in-fact to operate with the public or other exchange operators, trustee delegates and external auditors, of the stock market intermediaries, investment advisors, stock exchanges, securities depository firms, securities central counterparties price providers, companies that administer systems to facilitate transactions with securities and rating institutions, when the same are located under any of the following cases:

a) Fail to have the technical qualification, honorability or satisfactory credit background for the performance of their functions, when said requirements are applicable, as provided herein.

b) Incur in serious or repeated infringements to this Law.

II. The persons who infringe the regulations, policies and systems referred to under article 371 herein.

III. The members and secretary of the board of directors and relevant offices of the issuers, as well as members of the technical committee of the stock market securities trust for development or real-estate registered in the Registry, when they incur in serious or repeated violations to this Law.

IV. The persons who furnish reports, opinions or studies to issuers, that contain false information disclosed to the investing public.

In the cases referred to under sections I, paragraph b), II and III in this article, the Commission may also disqualify to said persons to perform a job, charge or commission within the Mexican financial system, for the same term of three months to five years, without prejudice to the sanctions that pursuant to this or other laws may be applicable.

Additionally, regarding the individuals who obtain authorization under the terms of article 193 herein, the Commission may determine the revocation of it when they fall into any of the cases provided under section I, paragraphs a) and b) herein.

Article 393 Bis

Regardless of the economic sanctions imposed by the Commission under this Law to the issuers who violate the provisions in the second paragraph of article 104 of this Law, for not preparing their financial statements according to accounting principles issued or recognized herein, the Commission will be empowered to require the issuers to modify their financial statements so they can adjust to the referred principles, as well as to the corresponding delivery to the Commission itself and to the stock exchange for its immediate release to the public in general through the stock exchange.

Article 394

For purposes of article 393 herein, it will be understood by:

I. Removal, the separation of an infringer of the job, charge or commission that may have in the financial entity or issuer, at the time of committing the infringement.

II. Suspension, the temporal interruption of functions' performance that the infringer had in the moment in which the infringement was committed; having the opportunity to perform functions other than those that originated the sanction.

III. Disqualification, the temporal prohibition to exercise a job, charge or commission, within the Mexican legal system.

Article 395

The board members and secretary of the Commission's Governing

Board, as well as the public officers of the same who intentionally contravene the provisions established in article 372 herein, will be sanctioned with removal from office under the terms of the Administrative Liability of Public Officers Federal Law (*Ley Federal de Responsabilidades Administrativas de los Servidores Publicos*).

Chapter II Bis

The Auto-Correction Programs

Article 395 A

The financial entities, through their chief executive officer or equivalent and with the opinion of the audit committee or whoever executes the surveillance of the entity, may submit a program of auto-correction for authorization by the Commission, when the financial entity in question, in the performance of its activities, or the audit committee or equivalent organ as a result of the functions conferred, detect irregularities or breaches to the provisions of this Law and other applicable provisions.

The following shall not be subject of an auto-correction program in terms of this article:

I. The irregularities or breaches detected by the Commission in the exercise of its inspection and surveillance duties before the financial entity's filing of the respective auto-correction program.

It will be understood that the irregularity was detected previously by the Commission, in the evento of surveillance duties when the entity has been notified of the irregularity; In the event of the inspection duties, when it has been detected during the inspection visit, or corrected after being requested during the visit.

II. When the contravention to the provisions in question corresponds to one of the crimes contemplated in this Law.

III. When it concenrns any of the violations deemed to be serious in terms of this Law.

Article 395 Bis 1

The auto-correction programs referred to in article 395 A of this Law, shall be subject to the general regulations issued by the Commission, Additionally, they must be signed by the person or area that performs the surveillance duties in the financial entity, and be presented before the board of directors or equivalent committees in the immediate following meeting to the application of authorization filed before the Commission. Also, it shall contain the irregularities or breaches committed indicating the provisions that have been considered to have been breached; the circumstances that originated the irregularities or breach committed, as well as the adopted actions or actions that the corporation pretends to adopt to correct the irregularity or breach that motivated the program.

In the event the financial entity requires a period of time to correct the irregularity or breach committed, the aut-correction program shall include a detailed calendar of activities to be undertaken for this purpose.

If the Commission does not require the financial entity to make modifications or corrections to the auto-correction program within twenty calendar day following its filing, the program will be deemed to be approved in all terms.

When the Commission orders the financial entity to make modifications or corrections with the purpose of adjusting the program to the provisions in this article and other applicable provisions, the financial entity will have five calendar days following receipt of the notice to correct such differences. Such period of time may be extended exceptionally once up to five additional calendar days, prior authorization of the Commission.

If the deficiencies referred to in the previous paragraph are not corrected, the auto-correction program will be deemed to be not filed and, as a consequence the irregularities or breaches committed shall not be subject of another auto-correction program.

Article 395 Bis 2

During the effective term ot the auto-correction program that the Commission authorizes in terms of the previous articles 395 and 395 A, the Commission shall abstain from imposing the sanctions set forth in this Law to the financial entities for the irregularities or breaches whose corrections are contemplated in such programs. Also, during such term the statute of limitations to impose such sanctions shall be interrupted, and shall resume when it is determined that the irregularities and breaches subject to the auto-correction program have not been corrected.

The audit committee or whoever executes the surveillance duties in the financial entities shall continue with the enforcement of the authorized auto-correction program and inform its advances to the board of directors, chief executive officer or the equivalent bodies or persons of the financial entity as well as the Commission in the terms and conditions established by the general regulations referred to in article 395 B of this Law; the foregoing, regardless of the Commission's authority to supervise their progress with the auto-correction program at any time.

If as a result of the audit committee reports or whoever executes the surveillance duties of the financial entity or the tasks of inspection and vigilance of the Commission, the latter determines that the irregularities and breaches subject to the auto correction program were not corrected in the provided term, the corresponding sanction will be imposed increased up to 40 per cent; such amount shall be subject to any increment in terms of applicable tax liabilities.

Article 395 Bis 3

The individuals and other legal entities subject to the supervision of

the Commission may for the authorization of the Commission, an auto-correction program when in the performance of their activities they detect irregularities or breaches to the provisions of this Law and other applicable provisions, subject to the terms of articles 395 A and 395 B of this Law, as applicable.

Chapter III Revision Recourse

Article 396

The parties affected by the acts issued by the Commission which end proceedings of authorization, registry, suspension, cancellation or imposition of administrative sanction, may appear to defend their interests by filing a revision recourse before the Commission's Governing Board, when the act issued by the Commission or the President of the same, or before the President when dealing with acts performed by other public officers, under the terms provided by the Federal Administrative Proceedings Law (*Ley Federal de Procedimiento Administrativo*).

The filing of the revision recourse referred in this article will be optional for the affected party.

The resolution of the revision recourse must be issued within a term that may not exceed of ninety business days after the date in which the recourse was filed, when it should be resolved by the Commission's president, or of a hundred and twenty business days when the resource is competence of the Governing Board.

Chapter IV Complaint proceeding

Article 397

The complaint proceeding will be followed before the president of the Commission whose resolution is final and it will proceed only in the following cases:

I. When without just cause the access to a stock market intermediary to the premises, installations and use of systems that facilitate the performance of transactions that gather the supply and demand of securities, which for such purpose provide the stock exchanges, is denied.

II. When a stock exchange suspends or excludes the operation of a stock market intermediary in the premises, installations and use of systems which facilitate the performance of transactions that gather the supply and demand of securities, arranged by the corresponding stock exchange.

III. When the issuers who pretend to quote their securities in any stock exchange or, in its case, that already had obtained said quoting, the quoting is denied, suspended or canceled without just cause.

IV. When a stock market intermediary is considered affected from a determination or measure adopted by any self-regulatory organization acknowledged by this Law.

The Commission, in order to determine the corresponding resolution, must serve the complaint to the corresponding stock exchange or self-regulatory organization, so that within a term of ten business days, it states arguments and, in its case, furnishes evidence which it estimated appropriate.

Article 398

The Commission, when resolving the complaint procedure may:

I. In case of section I of article 397 herein, confirm the denial or order to the stock exchange to allow the stock market intermediary to access its premises, installations and use of systems that facilitate performance of transactions that gather the supply and demand of securities.

II. Regarding sections II to IV of article 397 herein, confirm the decision of the exchange or self-regulatory organizations, or else, order the lift of the adopted determination or measure.

Chapter V Notices

Article 399

The notices of the requirements, ordinary and special inspection visits, interim equitable relief, requests of information and documentation, summons, service of process, resolutions to impose administrative sanctions or of any act that finished the suspension, revocation of authorizations or concessions and cancellations of authorizations or registration proceedings referred to under this Law, as well as the acts by means of which authorizations, concessions or registrations and administrative resolutions on the recourses of revision and the requests for remission are denied pursuant to this Law, may be carried out in the following manner:

I. Personally, pursuant to the following:

a) In the offices of the financial authorities, under the terms of provisions under article 402 herein.

b) In the address of the interested party, under article 403 and 406 herein.

c) In any place in which the interested party is located, in the cases established under article 404 herein.

II. By means of official communication delivered by courier or certified mail, both with acknowledgement receipt.

III. By means of legal notice, in the cases stated in article 407 herein.

IV. By means of electronic notice, in the case provided in article 408 herein.

Regarding the information and documentation that shall be shown to the inspectors of the Commission subject to an inspection visit, the provisions in article 5 first paragraph of the Banking and Securities National Commission Law and other applicable provisions shall apply.

For the purposes of this chapter, the Ministry, Commission and the Bank of Mexico shall be understood to be financial authorities.

Article 400

The authorizations and concessions issued by this Law, the revocation or cancellations of authorizations or registrations requested by the interested party, the acts that come from procedures filed by the interested party and other acts different to the provided under article 399 herein, may be notified pursuant to said article or by means of delivery of the official communication in which the corresponding act is stated, at the offices of the financial entity that performs the notification, obtaining on a copy of the official communication the signature and name of the persons acknowledging receipt of the same, or else, by means of ordinary mail, telegram, fax, e-mail or courier.

The financial authorities may perform notifications by means of e-mail, when the interested party requests so in writing stating an e-mail address to which the notified resolutions must be transmitted, marinating evidence in the corresponding file of the date and hour in which the same was carried out.

The notification of the acts referred to in this article will have effects the next business day following the date of the notification's service, in case that the same is carried out in the mentioned offices, or at reception in the other cases.

Article 401

The investigation visits and declaration of takeover notifications referred to in this Law will be performed in a single act, without the need of summons.

These notifications must be handled with the chief executive officer of the company and, in absence thereof, with the officer or employee of higher level present thereat. Regarding notifications of investigation visits to individuals the same must be handled with the interested party and, in absence thereof, with a relative or individual at his/her address.

The notifications referred to under this article will have its effects at the moment of being served.

Article 402

The personal notifications may be performed in the financial authorities offices when the interested party appears before the same; he/she who performs the notification will draw up a document in which it will state that the interested party was notified about the official communications letters content in which the administrative act is stated; likewise it will state the other circumstances referred to under the third to last paragraph of article 403 herein. The duplicate of the document will be delivered to the interested party.

In case the interested party denies to sign or receive the before

mentioned official communication or the duplicate of the notification document, such circumstance will be stated on the document without this affecting the validity of the notification.

The personal notifications provided under this article will have its effects the next business day to the date in which the same were performed.

Article 403

The personal notifications may be carried out with the interested party, in the last address provided by it to the corresponding financial authority or in the last address appointed before the own authority in the corresponding administrative proceeding, a document will be drafted in the terms referred to in the third to last paragraph of this article.

In case the interested party is not found in the mentioned address, the public officer in charge of the notification will deliver summons to the person who attends the proceeding, in order for the interested party to await a fixed hour on the next business day and in said summons will warn the interested party that in case of not appearing at the fixed time and day, the summons will be practiced with whoever attends it or in case of being closed said address or that they deny to receive the corresponding notification, it will be carried out by means of instructive pursuant to article 406 herein. The person who carries out the proceeding will draw up a document in the terms provided in the second to last paragraph of this article, stating that the summons was delivered.

The mentioned summons must be elaborated in duplicate and be addressed to the interested party establishing place and date of issuance, date and fixed hour in which the interested party must await the public officer in charge of the notification, who must state his/her name, positions and signature in such summons, the purpose of the appearing and the respective warning, as well as the name and signature of the person who receives it. In case the person denies singing it, such circumstance will be stated on the summons, without affecting its validity.

On the fixed date and hour to practice the summons proceeding, the person in charge of carrying out the proceeding will appear in the corresponding address, and in case the interested party is found, will proceed to draw up the documents in the terms referred to in the third to last paragraph of this article.

In case that the summoned party fails to appear, the notification will be performed with any person who is present in the address in which the proceeding is being practiced; for such purposes a document will be drawn up in terms of the following paragraph.

In any case, whoever carries out the notification will draw up in duplicate a document in which it will state, besides the before mentioned circumstances, his/her name, position and signature; that he/she reported to the address and verified that the same was the cor-

rect one; that he/she served the interested party or the person who attended the appearing, prior identification of said persons, the official communication in which the administrative act subject of notification is stated, stating the identification information of the same; the designation of two witnesses; the place, hour and date of execution; the identification means, and the name of the interested party or the person who attended the proceeding and the appointed witnesses. In case the persons intervening deny signing or receiving the notification document, the same will be stated on the document, without it affecting its validity.

For the witnesses appointment, whoever performs the notifications will request the interested party or the persons who attends the proceeding to appoint them; in case of denial or that the appointed witnesses do not accept the appointment, the appointment will be carried out by the own public officer in charge of the notification.

The personal notification provided under this article will have its effects the next business day to the one in which the same were carried out.

Article 404

In case that the person in charge of the notification carries out the search of the interested party in the address referred to in the fifth paragraph of article 403 herein, and the person with whom the proceeding is handled denies that it is the address of the interested party, whoever performs the proceeding will draw up a document to state such circumstance. Said document will have the requirements provided under the third to last paragraph of article 403 herein.

In the case provided under this article, whoever performs the notification may carry out the personal notification in any place where the interested party is located. For the effects of this notification, whoever performs it will draw up a document in which is sated that the summoned person is personally known to him/her or was identified by two witnesses, besides of stating the provisions under the third to last paragraph of the mentioned article 403, or else document the proceeding before notary public.

The personal notifications provided under this article will have its effects the next working day to the one in which the same were performed.

Article 405

The notifications performed by means of official communication delivered by courier or certified mail with receipt acknowledgment will have effect the next working day to the date acknowledged in the receipt.

Article 406

In case the day and hour stated in the summons left under the

terms stated in article 403 herein, whoever performs the notification finds the address closed or the interested party or whoever attends the proceeding denies to receive the official communication subject of the notification, will make effective the stated warning in the mentioned summons. For such effects the notification will be performed before two witnesses appointed for such effect by means of an instructive to be fixed in a visible place in the address, attaching the official communication in which the act to be notified is stated.

The mentioned instructive will be elaborated in duplicate and will be addressed to the interested party. Such instructive will state the circumstances for which it was necessary to practice the notification by this means, place and date of issuance; name, position and signature of whoever draws up the instructive; the name, identification information and signature of the witnesses; the mention that whoever performs the notification went to the address and verified that the person was the interested party, and the official communications letter identification in which the administrative act is stated.

The instructive will be evidence of the existence of the acts, facts or omissions that were stated in the same. The notifications by means of instructive will start having effects the next business day to the one in which the same were carried out.

Article 407

The notifications by means of legal notices (*edictos*) will be carried out in the event that the interested party has disappeared, died, or the address is unknown or there is an impossibility to have access to it, there is no know representative or address within national territory or the same is overseas without appointing a representative.

For such effects the legal notice will be published three consecutive times in a national newspaper without prejudice that the financial authority communicates the legal notice in its web site of the world wide net named Internet, addressing that the original official communication is at disposal in the address which will also be stated in such legal notice.

The notifications by means of legal notices will have effects the next business day to the date of last publication.

Article 408

The notifications by means of electronic media may be performed provided that the interested party has accepted so or expressly requested so in writing to the financial authorities, by means of the automatic systems and with the security mechanisms established by them.

The notifications by electronic means will have their effects the next business day to the one of the corresponding acknowledgement.

Article 409

Notwithstanding the provisions under this Chapter, the notifica-

tions which were not performed pursuant to the same, are legally performed and will have effects the next business day to the one in which the interested party expresses knowledge of its content.

Article 410

For the effects of this Law, the members of the board of directors, chief executive officers, statutory auditors officers, managers, officers, trustee delegates, comptroller, officers with the next inferior position to the chief executive officer, attorneys-in-fact to execute transactions with the public or to operate in the exchange and other persons who can bound with their signature the companies regulated by this Law, may state in writing to the Commission, address to hear and receive notifications related with acts in connection with the performance of their office, which must be located within national territory.

In case that the persons referred to in the above paragraph fail to appoint an address in the terms of said paragraph, it will be understood as accepted to have as an address the company's domicile where they carry out their charge, job or commission.

For the provisions under this article, it will be considered as the company's domicile the last furnished to the Commission or in the corresponding administrative proceeding.

Article 411

The notifications received by the stock market corporations and the investment promotion corporations of acts that should be known by their shareholders meeting or the board of directors meeting, will be informed to the chairman of the board of directors, who must call the shareholders meeting or corresponding corporate body in order to adopt the corresponding measures.

Unless otherwise provided in other applicable laws, the terms will start as of the next business day to the one in which the notifications has effects.

The provisions under this Chapter related to the requirement of information and documentations carried out by the public officers of the Commission in a visit of inspection are not applicable.

Title XVI Final provisions

Article 412

In cases of notice of a strike and with the purpose of not affecting the interests of the public regarding the availability of cash and securities regarding the stock market intermediaries before the labor suspension and in terms of the Federal Labor Law (*Ley Federal del Trabajo*), the Federal Labor Board (*Junta Federal de Conciliación y Arbitraje*) will furnish the necessary so that during the strike the indispensable number of offices remain open and a number of indispensable employees remain working, in accordance with their amount and

functions. The Federal Labor Board will previously hear the Commission.

Article 413

The credit institutions that execute transactions with securities on their own behalf with the general public and on behalf of third parties in accordance with article 53 and 81 of the Credit Institutions Law (*Ley de Instituciones de Crédito*), or else, in compliance with trusts, agency or commissions, will be subject to the provisions under articles 177, regarding the common representative activities that they develop, 178; 180, to 182, 184, 188 to 191, 193 to 198, 200; 204; 208 and 224 last paragraph herein.

Article 414

The persons who address to the public any kind of analysis or investment recommendations, regardless that they furnish or not their services in stock market intermediaries, when furnishing their recommendations they must be subject to the general provisions issued by the Commission.

Article 415

The expressions investment promotion corporation, stock market investment promotion corporation, stock market corporation, brokerage firm, investments advisors, stock exchange, institution for deposit of securities and securities central counterparty or other to the foregoing in any language are reserved, to be used respectively by the persons who pursuant to this Law may use said expressions, or else, have the corresponding authorizations or permit. The Commission may order the infringer to immediately stop using the expression illegally used, as well as to decree the necessary measures for that.

The application of the provisions in the above paragraph is exempted for self-regulatory organizations or union associations of the entities referred to in the above paragraph, that are authorized by the Commission for such purposes, provided that they do not carry out the activities exclusive for the mentioned entities.

Article 416

The use of electronic means or automatic systems for data processing or telecommunication networks, private or public, for the disclosure of information and documents to the Commission, stock exchange and investing public, will be subject to the provisions contained in the Second Title of the Commerce Code.

Article 417

The information that in terms of this Law and the general provisions deriving from it, has to be furnished to the Commission by the issuers and financial entities referred to under this Law, proceeding

from automatic systems will be at disposal of said authority by any of the following forms:

I. Telematic media, being understood by such the originated in informatics and telecommunication equipment.

II. Material supports of information which have technical compatibility with equipment and programs of the Commission.

The information, once received by the Commission by means of any of these forms, will not be subject to modification or substitution by the issuer, financial entity or receiver authority, except for express determination of the Commission or, in its case, of other competent authorities by virtue of the corrections that are strictly necessary, or else, the clarification of facts and eventual clarification of responsibilities.

The issuers, in order to send or deliver to the Commission, corresponding stock exchange and the investing public, of the information referred to in this Law and the general provisions deriving from it, must use the means referred in this article, in accordance with the general provisions issued by the Commission.

The foregoing is without prejudice that the Commission may require at any time the corresponding information, which must be furnished in writing and with the autograph signature of the corresponding individuals.

Article 418

The information contained in material supports, or coming from telematic processes, provided that the same is validated by the receiving authority and the financial entity or issuer, as well as the information attached to the database of the Commission, will produce the same effects that the laws grant to original documents and, in consequence, will have the same probative value.

Article 419

Unless other term is established in specific provisions, the same may not exceed of three months for the administrative authorities to resolve the corresponding, once the applicable term is elapsed, the resolutions will be understood in negative sense for the applicant, unless in the applicable provisions the contrary is provided. By petition of the interested party, proof of such circumstance must be issued, within two business days following the filing of the corresponding application before the corresponding authority that has to resolve, pursuant to the internal regulations or respective delegating agreement; similar proof must be issued when he specific provisions provide that once the applicable term elapsed the resolution must be understood in an affirmative sense. In case the mentioned proof is not issued within the mentioned term, in its case, the applicable liabilities will be charged.

The filings and terms requirements, as well as other significant information applicable to filings performed by the brokerage firms and

other financial entities duly authorized pursuant to the applicable laws, must be established in general provisions.

When the general writing does not contain the information or fulfill the requirements provided in the applicable provisions, the authority must warn the interested party in writing and only once, so that in a term which cannot be less to then business days cure the omission. Unless another term is established in the specific provisions, said warning must be performed at the latest within half the term of answer of the authority and when the same is not expressed, within the twenty business days following the filing of the initial writing.

Upon notification of the warning, the term for the administrative authorities to solve will be suspended and will be resumed as of the next business day immediate to the date on which the interested party answers. In the event that the warning is not answered in the stated term the authorities will dismiss the initial writing.

If the authorities fail to carry out the requirement of information within the corresponding term, they may not reject the initial writing for being incomplete.

Unless expressly provided on a contrary sense, the terms for the authorities to answer will begin on the next business day immediate to the filing of the corresponding writing.

Article 420

The term referred to in the above article will not be applicable to the proceedings in which by virtue of this Law, the administrative authorities should listen the opinion of other authorities, and the other related with the incorporation, merger, spin-off and liquidation of the brokerage firms and other financial entities duly authorized pursuant to this Law. In these cases the term for the administrative authorities resolve the applicable cannot exceed six months, the other rules referred to in article 402 herein being applicable.

Article 421

The administrative competent authorities, by request of the interested party, may extend the stipulated terms under this Law, without such extension exceeding under no event half the term originally stated in the applicable provisions, when so demanded by the case and they do not have knowledge that third parties' rights are being affected.

Article 422

Provisions under articles 402 to 404 will not be applicable to administrative authorities in the exercise of their supervision capacity.

Article 423

The obtaining of the authorizations provided by this Law on behalf

of the financial authorities, will not exempt the beneficiaries of the same to the compliance of the provisions under other laws.

INTERIM ARTICLES

First.—This Law must become effective after one hundred and eighty calendar days after its publication in the Federation's Official Gazette, except for the provisions in the Tenth and Seventeenth article under these interim articles. Likewise, on the date of this Law becoming effective, the Securities Market Law published in said Gazette on January 2, 1975 will be repealed, except for the provisions under the following interim articles.

Second.—The administrative offences and crimes committed before the effectiveness of this Law, will be sanctioned pursuant to the effective law at the time of committing said administrative offences or crimes.

Third.—The Ministry of Treasury and Public Credit, the Banking and Securities National Commission and the Bank of Mexico (Central Bank), may issue the general provisions referred to under this Law, prior to the beginning of this Law's effectiveness, but in all case under the said provisions must establish that their observance and application will be after this Law's effectiveness date.

Fourth.—In the meantime the Ministry of Treasury and Public Credit, the Banking and Securities National Commission and the Bank of Mexico issue the general provisions referred to under this Law, the current provisions issued before the effectiveness of this Law will apply provided that the same do not oppose to this Law, except for the provisions under articles Ninth and Twelfth of these interim articles.

Fifth.—The investment promotion corporations which request and, in its case, obtain the registration of the shares representing their capital stock or negotiable instruments which represent them, before the National Securities Registry, will be subject to the requirements of registration and maintenance applicable to stock market corporations, until the Banking and Securities National Commission issues the general provisions referred to under article 21 herein.

Sixth.—The corporations that at the time of effectiveness of this Law have registered before the National Securities Registry shares representing their capital stock or negotiable instruments representing them, will acquire by virtue of law the nature of stock market corporations and, consequently, will be subject to the provisions hereunder.

The corporations referred to in the above paragraph will have a term of one hundred and eighty calendar days, beginning on the date of effectiveness of this Law, to adjust their corporate name pursuant to the provisions under article 22, as well as to fulfill the articles related to the integration, organization and operation of their corporate bodies under the terms provided under Chapter II of Title II herein. The foregoing will not affect in any manner the rights corresponding

to the shareholders of the mentioned corporations, under the terms of articles 47 and 52 herein, nor will it free them from complying with articles 53 to 57 and other obligations that by their nature of issuers have under this Law.

Seventh.—The stock market companies' shareholders whose shareholdings are placed, at the effectiveness of this Law, in trusts by means of which the voting rights of several shareholders are exercised in a same manner, or else, the group of shareholders who had granted power of attorney or commission for such purposes, must notify it to the company, within one hundred and eighty calendar days after the effectiveness of this Law, for purposes of disclosure to the investing public.

Eight.—The stock market corporations that had issued shares or arranged the mechanisms mentioned under articles 54 and 55 herein, before the effectiveness of this Law, will not be subject to the restrictions established under said articles, provided that they have complied with the current legal provisions at the moment of issuing said shares or arranging the mechanisms.

The above mentioned restrictions will not be applicable to the stock market corporations mentioned under said paragraph which after the effectiveness of this Law:

I. Carry out modifications to their capital stock, provided that the original portion of ordinary shares is increased or at least said portion is maintained, provided that the issuer's situation justify it and said circumstance is disclosed to the public. In both cases it will be required the authorizations of the Banking and Securities National Commission, which will proceed when it considers that it has been evidenced that the interests of the investing public is not affected.

II. Are merged or spun-off, provided that the surviving company or the spun off company maintain at least the original portion of ordinary shares of the merging company or the company that spins off one of its units. In case that the merged company or the company that spins off one of its units has in addition one of the clauses referred to under article 48 herein, the merging or spun off company may incorporate the same clause to its by-laws at the time of incorporation, without being applicable said legal provision.

Ninth.—As of the effectiveness of this Law, the "Rules for the Organization of the National Securities Registry and Intermediaries" published in the Federation's Official Gazette on April 13, 1993 are repealed.

The registration entries of any kind that are under the National Securities Registry referred to in article 10 of the Securities Market Law which is repealed by means of this Law, will be considered as performed in the Registry referred to under article 70 of this Law. Likewise, the registration entries performed before January 1, 1996, will be kept in the files mentioned in the Rules stated under the above paragraph, whereas the entries subsequent to said date will be filed under electronic files provided herein.

The references that other laws, regulations or administrative provi-

sions make to the section of securities of the National Securities Registry, will be understood as made to the Registry under article 70 herein.

The securities exclusively registered in the special section of the National Securities Registry may be subject of trading within the national territory; provided that the provisions of article 9 herein are fulfilled.

Tenth.—Articles 7, second paragraph, 71, and 80 of this Law, will be effective after one hundred and eighty calendar days following this Law's effectiveness. Until the mentioned articles are effective, the offer to issue or sale overseas securities issued in Mexico or by Mexican legal entities, will be subject to the registration of securities before the National Securities Registry, under the same terms and with the exceptions provided for the special section under the Securities Market Law which is repealed by virtue of this Law.

Eleventh.—Whereas the Commission acknowledges the rules and proceedings for auditing referred to under articles 87, section I and 352, section IV herein, the legal entities who render external auditing services to issuers or financial entities, under the terms of this Law, must render their services based in the rules and proceedings issued by the Mexican Institute of Public Accountants "*Instituto Mexicano de Contadores Publicos, A.C.*")

Twelfth.—On the date of effectiveness of this Law the "Conditions for the acceptance of registration and authorization of the public offering of debt instruments issued by multilateral financial organizations of which Mexico is party" "*Condiciones para la procedencia del registro y autorizacion de oferta publica de titulos de deuda que emitan organismos financieros multilaterales a los que pertenezca Mexico*") and the "Conditions for the acceptance of registration and authorization of the public offering of shares of foreign issuers in the country" "*Condiciones para la procedencia del registro y autorización de oferta pública de acciones de emisoras extranjeras en el pais*") published in the Federation's Official Gazette on September 14, 2000 and March 20, 2000, respectively, will be repealed.

Thirteenth.—The brokerage firms that at effectiveness of this Law operate under the registration that they have in the Section of Intermediaries before the National Securities Registry and Intermediaries current until June 2, 2001, in consequence of being authorized to operate as such pursuant the Securities Market Law that is repealed, will be considered as authorized under the terms of article 114 herein. The brokerage firms stated under the above paragraph will be subject to this Law and the general provisions issued from the same Law.

Fourteenth.—The brokerage firms must state under the agreements that they execute as of the effectiveness of this Law, as well as under other corresponding documentation, the restrictions provided under section III of article 136 of the same that, in its case, are applicable.

Fifteenth.—For the purposes of the provisions under section IV of

article 136 hereunder the subordinated debentures that the brokerage firms had issued prior to the effectiveness of this Law, must be ruled by the general provisions current at the time of issuance.

Sixteenth.—Until the Ministry of Treasury and Public Credit and the Banking and Securities National Commission, as corresponding, publish the amount of minimum capital stock of the brokerage firms, stock exchanges, securities depository firms, securities central counterparties, said financial entities must fulfill with the minimum capital stock that, in its case, results mandatory pursuant the provisions prior to this Law.

Seventeenth.—The requirement referred to under article 184, last paragraph hereunder, will be mandatory after one hundred and eighty calendar days after the effectiveness of this Law.

Eighteenth.—Brokerage firms must fulfill with provisions under articles 190 and 191 hereunder within one hundred and eighty calendar days after the effectiveness of this Law.

The individuals that at the date of effectiveness of this Law have authorization to operate in the exchange or to execute transactions with the public regarding, consulting, promoting, acquisition and sales of securities, will be authorized to act in the terms of article 193 hereunder, as applicable, being subject to the provisions under this Law and other provisions that are issued under this Law.

Nineteenth.—The pledge of securities agreements entered into pursuant to article 99 of the Securities Market Law which is repealed by virtue of this Law, will continue for their fulfillment and performance by the general provisions effective at the time of their execution.

Twentieth.—The union associations that were acknowledged as self-regulatory organizations under the Securities Market Law being repealed may continue operating as such without need of a new acknowledgement by the Commission, being in the future subject to the provisions herein and other provisions that are issued under this Law.

Twenty first.—The brokerage firms, securities depository firms and central counterparties of securities that at the effectiveness of this Law have authorization to act as so, may continue operating without need of obtaining a new authorization, being in the future subject to this Law and other general provisions that are issued under this Law, without prejudice to the terms, conditions and obligations contained under their corresponding authorization titles that do not contravene this Law.

Twenty second.—The brokerage firms, securities depository firms and central counterparties of securities may keep applying the fees authorized by the Commission prior to the effectiveness of this Law until the same are modified, in which event they must be subject to this Law.

Twenty third.—The persons who have authorization to operate mechanisms to facilitate transactions under the terms of article 41, sections IX, of the Securities Market Law being repealed by this Law,

will be considered as authorized to continue operating under the terms established under article 253 herein, being subject in the future to this Law.

Twenty fourth.—The price providers and rating institutions that at the effectiveness of this Law have authorization to act as so, will be considered as authorized to continue operating under the terms established under articles 323 and 334 herein, being subject in the future to this Law.

Twenty fifth.—The price providers and rating institutions that at the effectiveness of this Law have authorization to act as so, will have a term of one hundred and eighty calendar days, after the effectiveness of this Law, to have a code of conduct which is referred to under articles 326 and 336 herein, correspondently.

APPENDIX MX-2

General Regulations Applicable to Issuers of Securities and Other Participants in the Securities Market

TABLE OF CONTENTS

Title One Definitions
Title Two Registration of securities in Registry and their public offering
Chapter One Registration and public offering
Chapter Two Registration without public offering
Chapter Three Preventive registration
Section I Generic registration
Section II Preventive stock registration
Section III Preventive securities registration to be issued under placement programs
Chapter Four Updating, Annotation and cancellation of Registration
Section I Updating of Registration and Annotation
Section II Cancellation of Registration
Chapter Five Public Offer to Buy
Chapter Six Other provisions applicable to the Registration and public offering of securities
Chapter Seven Notices of public offering abroad
Title Three Listing and maintaining securities on a Stock Exchange and trading systems
Chapter One Listing of securities on a Stock Exchange
Chapter Two Maintaining listing on a Stock Exchange
Chapter Three Trading systems
Section I Securities registered in the Registry
Section II Stock and certificates of participation (*certificados de participación*) representing unregistered stock
Title Four Information to be provided to the Commission, the Stock Exchanges and the public investor
Section I Periodical Information
Section II Purchase of securities subject to disclosure
Title Five Disclosure of relevant events
Title Six Purchase of stock by its Issuers
Title Seven Common representatives
Title Eight General Provisions

Transitory Articles

Title I Definitions

Article 1

For purposes of these provisions and in addition to the terms defined in article 2 of the Securities Market Law, the following terms shall have the following meanings:

I. Registration Update, the change of the Registration in regard to the number, class, series or amount of stock or certificates of participation representing stock, registered in the Registry.

In the case of debt securities, asset-backed securities, structured securities and trust securities issued concerning assets other than stock, the change of the Registration regarding the number, maturity date or interest rate of securities, as well as those changes agreed upon by the meeting of the holders of such certificates or instruments.

With regards to trust stock certificates for development, real estate or for energy or infrastructure investment, in the event of a modification in the number of titles or in the amount issued, as well as any other agreed upon in the holders meeting.

II. Agreement, those referred to in the General Provisions applicable to stock exchanges published in the Official Federal Gazette on May 30, 2014 and their respective modifications.

III. External Auditor, the public accountant having the technical capacity certified by a public accountant's association having the majority or representing the greatest number of such professionals, meeting the requirements of independence set forth in article 83 of these provisions and being a partner of a firm that meets the requirements set forth in articles 85 and 86 of these provisions.

IV. Stock Exchange, the stock corporation that obtains a concession from the Ministry of Treasury and Public Credit to act as a stock market in accordance with the terms of the Securities Market Law.

V. Trust stock certificates for investment in energy and infrastructure, to certificates issued by investment trusts in energy and infrastructure that are established in accordance with the applicable fiscal provisions, whose issuance resources are destined to direct or indirect investment in companies, projects or energy or infrastructure assets.

VI. Trust stock certificates of investment projects, to the certificates whose issuance resources are used to finance projects, as well as share investments, equity participations or the financing of companies, either directly or indirectly through one or several investment vehicles.

VII. Partial reliance, when the compliance of the obligations in connection with securities issued depends on at least 20% of an entity or company different from the issuer, and with regards to securities' trusts, when it depends on at least such percentage, on the settlor, the trust, asset manager, the guarantor or any other third party.

VIII. Financial Statements, the general balance sheet, profit and loss statement, statement of variations in net worth and statement of changes in the financial situation or of cash flow of an Issuer or an entity according to the Securities Market Law, including the corresponding notes provided to the Commission, and to the Stock Exchange, for their dissemination to the investing public, prepared in accordance with articles 78, 78 Bis, 78 Bis 1, 79 and 81 of these provisions.

The issuers or entities that must deliver the profit and loss statement referred to in the preceding paragraph may present the "Profit and loss statement" or the "Income Statement" and the "Other Profit and loss statement".

IX. Independent Expert, the recognized person having the technical knowledge necessary to issue opinions regarding

a) The price of shares or of trust stock certificates for development, real estate or for energy or infrastructure investment, issued by a particular issuer and that does not fall under any of the following categories:
   1. Provides external accounting auditing services to or is employee or partner of the firm in which the External Auditor of the Issuer works.
   2. Issues the legal opinion referred to in article 85, section IV of the Securities Market Law or is employee or partner of the firm in which the person that renders such legal opinion works.
   3. Works or performs a job, position or commission in any securities market intermediary that participates for purposes of carrying out any operation of the Issuer in question.

b) Hydrocarbon reserves estimated in accordance with the guidelines on reserve regulation matters issued by the National Hydrocarbon Commission used to determine the economic interest reported by an issuer participating in one or various agreements on exploration and extraction of hydrocarbons or assignments, as well as regarding the appropriateness of methodologies used, the suitability and quality of data they are based on, the information presented, depth and strictness of the process of reserve estimation and its classification based on the relevant definitions used.

X. Market maker, to the stock exchange that signs a market making contract with an issuer, in order for such intermediary to conduct operations on his/her own behalf, with its own resources and permanently, through the development of purchase or outright sales of a security or set of securities issued by the issuer to be operated in the national stock market of variable revenues, to promote liquidity, establish reference prices and contribute to the stability and continuity of such.

XI. Electronic Form, the form issued by the Stock Exchange for the transmission of information through the SEDI, which is referred to in article 74 herein.

XII. Investing public at large or investing public, persons who hold securities of an issuer, other than the latter, provided they do not fall under any of the following categories:

a) That they are non-independent board members or relevant executives.

b) That individually they hold directly or indirectly 30% or more of the common shares or negotiable instruments that represent them, or have decision making power (*poder de mando*[1]) in an issuer.

c) That they are part of a group of persons related by blood or marriage to the second degree or civilly, including in such group their spouses, common law spouses and individuals or entities that act as a group or maintain covenants to vote the same way which places them within any of situations referred to in paragraph b) above.

d) That they have economic ties with the persons referred to in paragraphs b) and c) above.

e) That they act as fiduciaries of trust that are formed in order to establish pension or retirement funds or seniority premiums of the personnel of an Issuer, stock options for employees, as well as any other fund with purposes similar to those mentioned above, formed by the Issuer or in whose trust property the latter has a share. This subsection shall include the funds of the property managers of the issuers of development, real estate or energy and infrastructure investment trust certificates, or those who are entrusted with these duties, when they constitute purchase options plans for securities issued by the issuer for their respective employees.

XIII. Registration, the annotation by the Commission in the Registry with respect to the securities of an Issuer and their characteristics.

XIV. Placement Intermediary, the brokerage firm that signs the placement contract with the Issuer and is responsible for reviewing and analyzing the documentation and information regarding the business and activities of the Issuer and other activities referred to in article 177 Bis of the Securities Market Law, so that the Registration of a certain security is obtained and, if applicable, approval of its public offering, and that places such securities on the market.

XV. Qualified investor:

(a) Basic: the person who maintains on average, during the last twelve months, investments in securities for an amount equal to or greater than 1,500,000 investment units or that has obtained in each year of the last 2 years, gross annual income equal to or greater than 500,000 investment units.

(b) Sophisticated: the person who maintains on average, during the last twelve months, investments in securities in

[1]As defined in Securities Market Law art. 2 section XX.

one or various financial entities, for an amount equal to or greater than 3,000,000 investment units or that has obtained in each year of the last 2 years, gross annual income equal to or greater than 1,000,000 investment units. In addition to the foregoing, the clients who want to be considered as certified qualified investors shall subscribe the format contained in Annex 1 of the general regulations applicable to brokerage firms and credit institutions in matter of investments services, published in the Federal Gazette on January 9th, 2015 and its corresponding modifications.

(c) To participate in restricted public offerings: the individual or legal entity that maintained on average, during the last year, investments in securities equivalent in national currency to at least 20,000,000 investment units.

XVI. Capital calls, to the terms and conditions provided by the issuer of the trust stock certificates for development, real estate or for energy or infrastructure investment, permitting the issuer to exercise the option to require the holders, after the placement of the first part of the issuance, additional contributions of resources to the property of the trust for the execution of its ends, adjusting for it the respective stipulations in the trust and in the corresponding issuance deed, and in compliance with the Securities Market Law.

The capital call mechanism will imply the modification in the number of the securities and in the amount of the issuance and must comply with what is stipulated in the trust and in the issuance deed, of which the corresponding certificate will be a part of.

XVII. Ackowledged foreign stock exchanges, to those referred to in the General Provisions applicable to stock exchanges published in the Federal Gazette on May 30, 2014 and their respective amendments.

XVIII. Restricted Public Offering, to the public offering of securities directed exclusively to institutional and qualified investors to participate in restricted public offerings.

XIX. Unmodified opinion (or favorable) or modified (or unfavorable), to those defined as such in the International Quality Control, Auditing, Review, Other Assurance and Related Services Pronouncements issued by the International Auditing and Assurance Standards Board and International Federation of Accountants.

XX. Corporate restructurings, the mergers, spin-offs, acquisitions or sales of assets that in whichever of such situations represent at least 10% of the assets, 10% of the total consolidated assets and sales of the prior fiscal year of the issuer or 25% of such sales. To for such purposes, the transaction value shall be the greatest between the book value and the market value. It will not be considered a corporate restructuring in the case of sale or transfer of assets that are carried out by companies due to issuances of securities backed by assets.

In the case of real estate trust stock certificates and investment in energy and infrastructure, when any of the transactions arising from the assumptions indicated in the previous paragraph represent at least 20% of the average of the last 12 months of the total consolidated assets of the issuer.

XXI. SEDI, the electronic information sending and dissemination system that is authorized by the Commission for the Stock Exchange involved.

XXII. STIV, the system instrumented by the Commission for the transfer of Securities Information, to send the information referred to in Articles 21 and 24 of these provisions, which is accessed through the Commission's Internet web page at the following address http://www.cnbv.gob.mx. Such page is part of the Commission's Filing Office.

XXIII. STIV-2, to the Securities Information Transference System, instrumented by the Commission in order to send the information referred to in articles 61, 69, 70, 73, 77, 84, 84 Bis, and Titles Fourth and Fifth of these provisions, which is accessed through the Commission's internet webpage at the following address http://www.cnbv.gob.mx, and its use will be governed by Exhibit X of these provisions. Such system is part of the Commission's Filing Office.

XXIV. Structured Securities: Securities with or without the obligation of payment of either principal or interests, issued by trusts, financial entities or any other company, that according to the applicable law is authorized for such purposes, whose return and, if applicable, payment of the principal, is connected to the behavior one or various subjacent, independently from the nature of the evidencing titles or documents.

XXV. Asset-backed Securities: Securities whose source of payment comes from the resources, returns or revenue generated by a set of financial assets that have determined or determinable payments flow, or by any assets destined to assure payment of the issuance, which give the right to receive cash flows within a specified term or, if applicable, the right of property or ownership of those financial assets.

Neither structured securities, nor the shares representing the capital of investment companies referred to in the Mutual Funds Law (*Ley de Fondos de Inversión*) will not be considered asset-backed securities. Similarly, trust stock certificates for development, real estate, indexed, energy and infrastructure investment, or of investment proyect, or any other security issued by collective investment mechanisms that have strategies and objectives of private investment will not be considered as asset-backed securities.

Furthermore, the terms affiliate, associate, holding company and subsidiary shall have the meanings established in the financial information rules referred to in article 78, 78 Bis, 78 Bis 1 and 79 of these provisions.

Title Two Registration of securities in the Registry and their public offering

Chapter One Registration and public offering

Article 2

Requests for registration of any type of securities in the Registry

and authorization for a public offer to sell, shall be presented before the Commission, including each security being registered, in accordance with the following requirements:

I. With regard to the registration of securities in the Registry and authorization for a public offering, the request shall be presented in accordance with exhibit A of these provisions, accompanied by the following information and documentation:

a) Repealed

b) Public instrument containing the power of attorney or a copy certified before a commercial notary public of the general or special power of the representative of the Issuer or of the trust institution, with the Public Registry of Commerce registration data, as applicable, and a certificate signed by the secretary of the board of directors or, as applicable, of the trust technical committee, which verifies that the powers of the legal representative have not been revoked, modified or limited as of the date of presentation of the request.

This certificate shall expressly identify the meeting of the shareholders or the board of directors or, if applicable, the technical committee, in which the designation of such representative is recorded.

When the petitioner is represented by a person that has represented it in previous Registration, it will be sufficient to present a simple copy of the public instrument containing the general or special power referred to in the first paragraph of this subsection, accompanied by the verification by the secretary of the board of directors or the trust technical committee, if applicable.

For credit institutions, it will be sufficient for them to meet the requirements set forth in article 90 of the Credit Institutions Law.

c) Public instrument or copy certified before commercial notary public of the charter deed of the issuer, and any amendments to the corporate bylaws, each one with the Public Registry of Commerce registration data or a processing record of such Registry or, as applicable, the notarization of the general shareholders meeting approving the transcript of the amended bylaws of the issuer with the Public Registry of Commerce registration data of such instrument or record of filing in such Registry.

Draft of general shareholders meeting minutes or board of directors' resolution of the Issuer or of the trust technical committee resolving the issuance of the securities and requesting their Registration, as applicable to each type of security.

The public instrument or certified copy of the meeting minutes with the Public Registry of Commerce registration data, when applicable, or a certified copy of the res-

olution of the board of directors or technical committee, must be delivered no later than the day of initiation of the public offering.

In the case of stock market investment promotion corporations, the causes and effects of the cancellation of the registration of the shares in the Registry, pursuant to article 108, section I of the Securities Market Law, must also be included.

d) Draft of general shareholders meeting minutes or board of directors' resolution of the Issuer or the trust technical committee resolving the issuance of the securities and to request their registration, as applicable to each type of security.

The public instrument or certified copy of the shareholders meeting minutes with the Public Registry of Commerce registration data or record of its filing in such Registry, when applicable, or a certified copy of the board of directors or technical committees resolution, must be delivered no later than the day of initiation of the public offering. In the case of stock market investment promotion corporations, the causes and effects of the cancellation of the registration of the shares in the Registry, pursuant to article 108, section I of the Securities Market Law, must also be included.

e) Draft of the certificate of the securities to be Registered.

A copy of the definitive certificate deposited in a securities deposit institution must be delivered before the operation placing the securities to be offered publicly on the Stock Exchange takes place.

f) Financial statements ruled with a favorablyor unmodified by the external auditor of the issuer, as well as of its associates, for the last 3 fiscal years or from the date of incorporation of the company when such is less than 3 years. The financial statements for the most recent fiscal year may not be older than 15 months. For purposes of this subsection, only those associates that contribute more than 10% of the profits or total consolidated assets of the issuer for the immediately prior fiscal year shall be considered, except for investment companies when the issuer is a financial entity. The financial statements of said associates must be prepared in accordance with articles 78 Bis 1 or 79 of these provisions. In the case of stock market investment promotion corporations, those of the last 2 fiscal years or from the date of the incorporation of that company only shall be presented.

For debt instruments with a maturity date equal to or less than 1 year, the Financial Statements referred to in the above paragraph for the last fiscal year of the Issuer may be presented.

When the financial statements of the fiscal year most recent to the date of placement are older than 6 months, limited review financial statements with a cutoff date no greater than such period shall also be presented, in a comparative form with the financial statements of the same period from the prior fiscal year, in accordance with the applicable accounting legislation. The foregoing in the understanding that the auditor's opinion or report shall address each of the comparative periods presented. Furthermore, when the audited financial statements or revised intermediate financial information mentioned above, are older equal to or greater than 3 months before the date of the placement, internal financial statements must be submitted at the end of the last quarter prior to the date of the placement, in a comparative basis with the financial statements of the prior fiscal year according to the applicable accounting legislation, in compliance with the delivery terms of the financial statements mentioned in section II article 33 of these regulations.

With respect to the previous paragraph, in the case of stock market investment promotion corporations or restricted public offerings, only unaudited financial statements will be presented compared with those corresponding to the same period of the prior fiscal year, provided the financial statements of the most recent fiscal year to the date of placement are not older than6 months.

In the case of securities registered as a result of a merger or spin-off, the combined Financial Statements certified by External Auditor will be delivered, or when that is not possible, proforma financial information, for the same period as indicated in this subsection in relation to the company resulting from the spin-off or merger, in accordance with article 81, section IV of these provisions, reviewed by external auditor, corresponding to the last full fiscal year, as well as intermediate financial information corresponding to the periods of 3 and 6 months indicated in the third paragraph of this subsection, which must be presented in a comparative manner with the same period of the previous year.

When corporate restructure are made during the immediate prior fiscal year, or, during the subsequent interim periods to such fiscal year prior to the date of the placement, or a corporate restructure will be concluded with the resources obtained from the issuance, combined financial statements audited by an external auditor shall be delivered and when this is not possible, complete pro forma financial information from the last fiscal year, as well as intermediary financial in-

formation corresponding to the periods of three and six months mentioned in the third paragraph of this subsection, which may be filed comparatively with the same period of the previous fiscal year, in accordance with the accounting applicable regulations related to the corporation, considering the corporate restructure mentioned. The information corresponding to the last fiscal year and to the six-month term shall be revised by an external auditor.

The pro forma financial statements shall be prepared in accordance with the provisions of article 81 Bis of these regulations, containing the impact of the particular transactions over their financial status and results, as if the corporate restructure had come into effect since the beginning of the previous financial year. The report of the external auditor shall address the aspects mentioned in article 35 of these regulations.

In the case of trust stock certificates for development, real estate, investment in energy and infrastructure or investment projects, financial statements will be presented, and combined financial statements when appropriate, audited by an external auditor for the periods indicated in this subsection, or when not possible, pro forma financial information which must include at least the profit and loss statement, in accordance with article 81 Bis of the present provisions, reviewed by an external auditor, corresponding to the last complete fiscal year, as well as intermediate financial information corresponding to the periods of 3 and 6 months indicated in the third paragraph of this subsection, which must be presented in a comparative way with the same period of the previous year in accordance with the applicable accounting regulations. Likewise, they must present the financial statements of the companies or projects in respect of which the trust invests or acquires representative certificate of their capital stock, representing individually 10% or more of the trust's estate, or in the case of those placed under the capital call mechanism, 10% of the maximum amount of the issue, with the excpetion that such information is consolidated in the financial statements presented regarding the trust, for the years mentioned in this subsection, which must be prepared in accordance with the provisions of article 78 Bis 1 or 79 of the present provisions, as appropriate. The financial statements of companies or projects mentioned above may be omitted, in the case of securities placed through restricted public offer.

g) Document referred to in articles 84 and 87 of these provisions, signed by the External Auditor and by the attorney respectively.

h) Legal opinion referred to in article 87, section II of the Securities Market Law, issued by an attorney meeting the requirements of independence referred to in article 87 of these provisions.

i) Repealed.

j) Repealed.

k) Draft of the placement contract to be signed with the Placement Intermediary. A copy of the signed placement contract should be delivered to the Commission no later than the day of initiation of the public offering involved.

In the case of restricted public offerings, the draft of agreement of the placement shall foresee the obligation of the underwriter to verify that the participation in such offer is only by financial or qualified investors to participate in restricted public offerings.

l) Draft of the notice of public offering with the information contained on the title page of the placement prospectus referred to in the following subsection.

m) Placement prospectus or informational supplement in relation to issuances under the preliminary securities placement programs that contain the information detailed in exhibits H, H Bis, H Bis 1, H Bis 2, H Bis 3, H Bis 4, H Bis 5 or I of these provisions, depending on the nature of the securities being offered and the type of issuer. In the case of trust securities referred to in article 7, section II, subsection c), whose resources of the issuance are intended for investment in the assets or rights referred in article 63 Bis 1, section I of the Securities Market Law or the structured securities in terms of article 7, section V, of these regulations, the corresponding request shall be accompanied by the form contained in exhibit W or W Bis, for trust securities as applicable, and, if applicable, exhibit Z of these regulations for structured securities, with the purpose that any investor that intends to acquire the above-mentioned instruments or structured securities acknowledges in writing to know the potential risks that the investment of these types of securities involves.

In case of restricted public offerings, they shall expressly mention that the securities could only be acquired by financial or qualified investors to participate in restricted public offerings, both on the public offering and in the secondary market. Also, it shall specify that the investors to which the offer is made will participate in equal circumstances.

The preliminary prospectus or informational supplement presented to the Commission for its authorization may omit information regarding the definitive price, interest rate and amount, and information that can only be known on the day prior to the initiation of the public

offering and must be initialed on all the pages by the legal representative of the Issuer or the trust institution and signed in the final page by the persons mentioned in numbers 2 to 9 of this section, with the corresponding legends.

The prospectus used for dissemination to the public at large shall be signed on the last page by:

1. At least 2 delegated members of the board of directors of the Issuer in the case of shares or negotiable instruments that represent them, with the favorable resolution of the board itself on the contents of the prospectus, at the end of the following legend:

We, the undersigned, as special delegates of the board of directors, declare under oath that this prospectus was reviewed by the members of the board of directors based on the information that was presented to them by executives of the issuers, and to the best of their knowledge and understanding it reasonably reflects the status of the issuer, they agreeing with its contents. We also declare that the board has no knowledge of relevant information that has been omitted or falsified in this prospectus or that it contains information that could mislead investors.

For stock corporations that have a committee that exercises auditing functions pursuant to the terms of the Securities Market Law, in addition to the above legend, a second paragraph shall be included, stating the following:

Finally, we, the undersigned, ratify the opinion rendered to the general shareholders meeting regarding the report that the general director, pursuant to the Securities Market Law, presented to such meeting, which is included in the prospectus and we declare that such report was submitted to the general shareholders meeting in accordance with such law.

2. The examiner, in the case of stocks or negotiable instruments that represent them, with respect to the opinion referred to in article 166, section IV of the General Law of Business Organizations, with regard to stock corporations that, under the legal regime applicable to them, do not have a committee that exercises the auditing functions through which the equivalent opinion is submitted pursuant to the Securities Market Law, at the end of the following legend:

The undersigned ratifies the opinion that is included in the prospectus and declares under oath that it is the same that he/she submitted to the shareholders meeting in accordance with article 166 of the General Law of Business Organizations.

3. The general director, the director of finance and the legal director, or their equivalents, of the issuer or the trustee or the legal entity responsible for preparing the information that is included in the prospectus, at the end of the following legend:

The undersigned express under oath, that in the scope of our respective roles, we prepared information concerning the issuer contained in this prospectus, which, to our best knowledge, fairly reflects its situation. Furthermore, we state that we are not aware of relevant information that has been omitted or distorted in this prospectus or that it contains information that could mislead investors.

4. The legal representative of the Placement Intermediary who has a general or special power of attorney sufficient to bind the latter, at the end of the following legend:

The undersigned declares under oath that his/her principal as placement broker, has done the research, review and analysis on the business of the issuer, and participated in the definition of the terms of the public offering and that to his/her best knowledge and understanding, such research was done with the breadth and depth necessary to sufficiently understand the business. Furthermore, his/her principal has no knowledge of any relevant information that has been omitted or falsified in this prospectus or that it contains information that could mislead investors.

In addition, his/her principal agrees to concentrate its efforts to reach the best distribution of (the corresponding securities) being offered in the public offering, with a view to achieve an appropriate formation of prices in the market and that it has informed the issuer the meaning and scope of the responsibilities it must assume before the investing public at large, the competent authorities and other participants in the securities market, as a company with securities registered in the National Securities Registry and on the stock exchange.

For stock, the following paragraph shall be added to the legend:

His/her principal has participated with the issuer in the definition of the price range of the stock to be publicly offered, taking into account the characteristics of the company, as well as the comparative indicators with companies of the same or similar line of business, both in Mexico and abroad and addressing the different factors that have been considered relevant for such determination, in the understanding that the definitive placement price may vary from the established range,

according to the levels of supply and demand of the stock and the prevailing conditions in the securities market(s) on the date of placement.

In case of restricted public offerings, the following expression should be included at the bottom of the page: "Also, his/her clients have agreed to focus their efforts on achieving the best distribution of (the corresponding securities) only among institutional and qualified investors to participate in restricted public offerings, in order to achieve an adequate formation of market prices and that it has informed the issuer the meaning and scope of the responsibilities they should undertake before the investors, the competent authorities and other participants of the securities market, as an issuer with securities registered in the National Securities Registry.

5. The representative, agent or attorney in fact of the entity that provides external auditing services and by the external auditor, which may be the same person, exclusively for purposes of the information regarding the financial statements that are certified in accordance with these provisions, as well as any other financial information included in the prospectus whose source is the certified financial statements, at the end of the following legend:

The undersigned declares under penalty of perjury, that the financial statements contained in this prospectus supplement or exercises (including the exercises these financial statements refer to) were audited (may clarify that they were revised) dated as of (insert the date of the opinion or review of each of the financial states included) in accordance with International Standards on Auditing (it may include specific references to the standards used).

It also states that it has read this prospectus or supplement and based on his reading and within the scope of the audit work performed, is not aware of any relevant errors or inconsistencies in the information included and the source of which comes of the audited financial statements (or revised) mentioned in the previous paragraph, or from information that has been omitted or misrepresented in this prospectus or supplement, or that it contains information that could mislead investors.

However, no contract was signed, and no additional procedures were performed in order to express their opinion regarding the other information contained in the prospectus, that does not come of the financial statements audited (or revised)".

The above legend must be signed by the representative,

agent or attorney of the entity that provides external auditing services and the external auditor, that may be the same person, from the settlor, the administrator of the estate corpus, the guarantor, the guarantor or any other third party in respect of which financial statements are included in the prospectus or supplement.

In case of restricted public offerings, the legend mentioned in this numeral shall not be necessary concerning any third party with partial dependency or whose information is incorporated by reference, provided that such third party is an issuer with registered securities in the Registry and is up to date delivering periodic information referred to in chapter Four of these regulations, or, it is a foreign issuer whose securities are registered, authorized or regulated for their sale to the public in general, by the Securities and Exchange Commission or other equivalent of the member States of the International Organization of Securities Commissions or the substitute entity. In these cases, they must assign a risk factor in the placement prospectus, specifying that there is no responsibility regarding the third party whose information is incorporated by reference before the investors of the securities object of the restricted public offering, by misrepresentation or errors in the information provided.

6. The attorney, exclusively for purposes of the legal opinion referred to in section h) above, and the legal information that was reviewed by such attorney and incorporated into the prospectus, at the end of the following legend:

The undersigned declares under oath that to the best of his/her knowledge and understanding, the issuance and placement of the securities complies with the laws and other applicable legal provisions. The undersigned also declares that he/she has no knowledge of relevant legal information that has been omitted or falsified in this prospectus or that it contains information that could mislead investors.

7. The legal representative of the guarantor that has sufficient general or special power of attorney to bind its principal, for issuances that have guarantied, in accordance with the following legend:

The undersigned declares under oath, that its principal as guarantor of the issuance, prepared the information of the guarantor contained in this prospectus, which, to her best knowledge and belief, fairly reflects its financial and economic situation.

8. If applicable, the legal representative of the fiduciary, in accordance with the following legend:

The undersigned declares under oath, that her principal as fiduciary, prepared the information of the trust agreement contained in this prospectus, which, to his/her best knowledge and belief, fairly reflects its financial and economic situation. Likewise, states that, within the scope of the activities for which it was contracted, has no knowledge of relevant information that was omitted or untruthful in this prospectus or that such has information that could mislead the investors.

9. If applicable, the chief executive officer, the chief financial officer or the legal counsel, or their equivalent, of the settlor or whoever contributes the assets to the trust, in accordance with the following legend:

The undersigned declares under oath, within the scope of our offices, that we prepared the information in connection with the assets, rights and securities granted to the trust contained in this prospectus, which, to his/her best knowledge and belief, fairly reflects its current situation. Likewise, I state that, we have no knowledge of relevant information that was omitted or untruthful in this prospectus or that such has information that could mislead the investor

The foregoing legend shall be signed by the persons with the positions mentioned in the first paragraph of this numeral, regarding any other third party with partial dependency and those whose financial statements are included in the prospectus or supplement. In case of restricted public offerings, the legend mentioned in this numeral shall not be necessary regarding any third party with partial dependency and whose information is incorporated by reference, is an issuer with registered securities in the Registry and is up to date delivering periodic information referred to in chapter Four of this regulations, or, its a foreign issuer whose securities are registered, authorized or regulated for their sale to the public in general, by the Securities and Exchange Commission or other equivalent in the member States of the International Organization of Securities Commissions or the substitute entity. In these cases, they must assign a risk factor in the placement prospectus, specifying that there is no responsibility regarding the third party whose information is incorporated by reference before the investors of the securities object of the restricted public offering, by misrepresentation or errors in the information provided.

Last paragraph.- Repealed.

10. If trust securities different than stock, the legal representative of the common representative, the following legend:

The undersigned declares under oath, that its principal as common representative, prepared the financial information in connection with the assets of the trust (if any), as well as in connection with the issued securities, the applicable agreements and the collection of the assets, rights or settled securities (if any), as well as in connection with the guarantee, regarding the incorporation and existence (if applicable) contained in this prospectus, which, to her best knowledge and belief, fairly reflects its current situation.

11. In the case of trust stock certificates for development, real estate, investment in energy and infrastructure or investment projects, financial statements, the representative, attorney in fact, or proxy of the company that provides the external audit services and the external auditor who prepared the report or opinion in connection with the verification or validation regarding the compliance of the trust manager or policy operator, restrictions or requirements in connection with cash income from investors, un-investors or acquisitions, as well as in connection with the reasonability and truthfulness of the evolution of the assets, rights or securities other that those of the trust, included in the prospectus, as well as any other financial information included in the latest, in accordance with the following legend:

The undersigned declares under oath, that the information (mention clearly the information reviewed) contained in the prospectus, was revised in accordance with (mention the applicable rules and regulations under which the review was performed). Likewise, I express that, within the scope of the work performed, I have no knowledge of the information regarding (include the information reviewed) has been omitted or modified in this prospectus or that the same contains information that could induce the investors to a mistake.

12. Where applicable, the legal representative with general powers for administrative actions of the entity that structured the issuance or any other third party involved in the decision of the terms and conditions of the securities, other than the persons mentioned in the previous paragraphs 1 to 11, to fit the following legend:

> The undersigned declares under oath that its client in its duty as structurer has carried out the investigation, review, and analysis of the business of the issuer or the trust's estate, as well as having participated in the agreement of the terms, conditions or structure of the securities. Likewise, its client does not have knowledge of relevant information that has been omitted or

falsified in this prospectus or that it contains information that could mislead investors.

The offering prospectus used for dissemination to the public regarding trust stock certificates for development, real estate, investment in energy and infrastructure or investment projects, shall by signed in the final page by the persons indicated in numbers 4 through 11 of this subsection m). Likewise, in the event that said trust stock certificates do not have a nominal value, the legend indicated in numeral 4, above, must include what is indicated in the last paragraph of said numeral.

The informational supplement used for dissemination to the public at large should be signed on the final page by the persons referred to in numbers 3, 4, and, if applicable, 5 through 10 and 12 above.

With the authorization of the Commission and, in the case of maintaining securities previously placed, the information contained in the annual report or reports that the issuer, guarantees, guarantors, or any other with partial dependency of the securities provided to the stock exchange and the public at large in accordance with sections II to V of article 104 of the Securities Market Law and in these regulations may be integrated by reference in whole or in part in the prospectus placement, as long as the web page where such reports may be consulted is indicated during the term of the issuance.

Regarding the prospectus placement prepared for restricted public offerings, they may incorporate by reference in whole or in part the information of the guarantees, guarantors, or any other that are partially dependent of the foreign securities, provided that the foreign issuer or its securities are registered, authorized or regulated for their sale to the public at large by the Securities and Exchange Commission or other equivalent in the member States of the International Organization of Securities Commissions or the substitute entity. The respective prospectus placing shall assign the web page in which such information may be consulted during the term of the issue. In case such information is not available in Spanish, the prospectus placing shall include a respective factor risk.

The Issuers that intend to issue debt instruments, with a maturity date equal to or less than 1 year, will not be obligated to present the prospectus referred to in this section. However, in the event that they prepare one, it must be approved by the Commission and comply with the legal requirements applicable to its contents.

No later than within 5 business days following the date on which the public offering in question has concluded, the issuers shall deliver to the Commission 2 printed copies of the placement prospectus or informational supplement. The stock market investment promotion corporations may deliver such documents to investors in electromagnetic media, provided they have taken the appropriate measures to ensure that the information contained therein cannot be altered, but also must deliver them in printed form to any investor that requests it.

n) Any other information and documentation that, according to the type of security, is indicated in article 7 of these provisions.

In the case of secondary public offers either of shares, represented negotiable instruments, or trust securities referred to in article 7, section III, subsection c) of these regulations, the authorization request shall be signed by each of the selling shareholders or holders, and be accompanied by the information referred to in sections a), k), 1) and m) above. For such purposes, the issuers will be obligated to provide all the necessary information for making the corresponding public offering. Furthermore, the prospectus referred to in section m) above must be signed by a representative or attorney in fact of the issuer who has powers to bind it, and by the selling shareholders or holders and, as applicable, by the persons referred to in numbers 1 to 5 or 11 and 12 of the same section m) above.

In the case of negotiable instruments representing shares of 2 or more Issuers, the respective request should not include the information and documentation indicated in sections c), f), g), with respect to the attorney.

II. Repealed.

(Third to last paragraph).—Repealed.

The Commission, in duly justified cases and depending on the nature of the Issuer, may authorize that documentation substituting the information required in this article be presented.

The Issuers will determine under their own responsibility the strategic information that will have to be reserved for purposes of this article, provided that it is not Relevant Information or relevant events whose disclosure cannot be deferred. In all cases the Issuers shall adopt the necessary measures to guarantee that the reserved information will only be disclosed to the persons that must have access to it.

In no event shall the Commission authorize the making of subsequent offers through restricted public offers regarding securities of the same type or series that the issuer has previously offered to the investing public at large. The provisions of this paragraph shall not be applicable when taking note in terms of article 14, section III, second paragraph of these provisions.

Article 3

Requests for registration of debt instruments in the Registry and authorization for a public offer to sell, issued by states and municipalities, must be presented before the Commission for each security to be registered, in accordance with exhibit A of these provisions, accompanied by the following information and documentation:

I. Repealed.

II. Copy of the appointment of the person who, in accordance with the applicable local law in the state or municipality involved, is authorized to carry out the Registration or, if applicable, resolution issued by a competent authority, or power of attorney or agency agreement granted by a competent authority or before a notary public, that authorizes the petitioner to carry out the necessary steps for the Registration.

III. Copy of the Income Law corresponding to the fiscal year in which the securities will be issued or, if applicable, the Decree issued by the Local Legislature or City Council containing the financing program or the total estimated and authorized amount of debt for the state or municipal entity involved.

IV. Copy of the Debt Law corresponding to the fiscal year in which the securities will be issued or, if applicable, the Decree issued by the Local Legislature or City Council containing the bases and requirements for the contracting of debts that constitute public debt of the state or municipality involved.

V. Copy of the expenditures budget corresponding to the fiscal year in which it is intended to issue the securities, at least, with respect to the destination of the resources.

VI. If applicable, the authorization of the Local Legislature or resolution of City Council, whichever applies, for the issuance of the securities to be registered in the Registry.

VII. Income and Expenditure Statement of the last 3 fiscal years of the state or municipality involved, prepared in accordance with the financial information standards applicable to them, or in accordance with the applicable law, certified by an external auditor. The income and expenditure statement corresponding to the most recent fiscal year may not be older than 15 months. For debt instruments with a maturity date equal to or less than 1 year, the financial statements for the last fiscal year may be presented.

When the income and expenditure statement of the fiscal year closest to the date of placement is more than 6 months old, an internal income and expenditure statement with a cut-off date no greater than such period will also be presented, in a form comparative to the income and expenditure statement for the same period of the prior fiscal year.

The income and expenditure statements shall be accompanied by a document containing the explanation of the bases or accounting rules used for the recording of the operations and the preparation of such income and expenditure statement and which also indicates the relevant differences between those bases and financial information standards recognized and issued by the Consejo Mexicano para la Investigacion y Desarrollo de Normas de Informacion Financiera, A.C. (Mexican Council for the Investigation and Development of Financial Information Standards).

VIII. Copy of the report presented by the head of the Executive Branch or the Local Legislature or City Council, in accordance with the applicable laws, regarding the situation of the public account for the immediately prior fiscal year.

IX. The documentation referred to in article 2, section I, subsections e), g), h), k) and 1) of these provisions.

X. Preliminary placement prospectus or informational supplement, in the case of securities placement programs, that contain the information detailed in exhibit L of these provisions.

The preliminary prospectus or informational supplement presented to the Commission for its authorization may omit the information regarding definitive price, interest rate and amount, as well as any other information that can only be known on the day prior to the initiation of the public offering and must be signed on all pages by the civil servant authorized to do so in accordance with the applicable laws and by the persons mentioned in subsections a) to e) of this section.

The prospectus used for the dissemination to the public at large shall be signed on the final page by:

a) The public officer who under local law is authorized to contract loans or subscribe negotiable instruments or securities as representative of the state or municipality involved, the person responsible for finances and other officers who within the scope of their duties are responsible for the information included in the prospectus, at the end of the following legend:

> We, the undersigned, declare under oath that within the scope of our respective functions, we prepared the information regarding the state or municipality (as applicable) contained in this prospectus, which, to the best of our knowledge and understanding, reasonably reflects its status. We also declare that we have no knowledge of relevant information that has been omitted or falsified in this prospectus or that it contains information that could mislead investors.

b) The legal representative of the Placement Intermediary having a general or special power sufficient to bind it, at the end of the following legend:

> The undersigned declares under oath that his/her principal as placement broker, has done the research, review and analysis of the state of the financial administration of the state or municipality (as applicable), and participated in the definition of the terms of the public offering and that to his/ her best knowledge and understanding, such research was done with the breadth and depth necessary to sufficiently understand the report of the public account for the immediately prior fiscal year. Furthermore, his/her principal has no knowledge of any relevant information that has been omitted or falsified in this prospectus or that it contains information that could mislead investors.
>
> In addition, his/her principal agrees to concentrate its efforts to reach the best distribution of (the corresponding securities) being offered in the public offering, with a view to achieve an appropriate formation of prices in the

market and that it has informed the issuer the meaning and scope of the responsibilities it must assume before the investing public, the competent authorities and other participants in the securities market, as a person with securities registered in the National Securities Registry and on the stock exchange.

c) The representative, agent or attorney in fact of the entity that provides the external auditing services and the external auditor, which can be the same person, exclusively for purposes of the information regarding the income and expenditure statements that are certified in accordance with these provisions, as well as any other financial information included in the prospectus, the source of which is the certified income and expenditure statements or their certification, at the end of the following legend:

> The undersigned declares under oath that the income and expenditure statements contained in this prospectus were certified in accordance with the generally accepted auditing procedures. The undersigned also declares that within the scope of the work done, he/she has no knowledge of any relevant financial information that has been omitted or falsified in this prospectus or that it contains information that could mislead investors.

d) The attorney, exclusively for purposes of the legal opinion referred to in article 2, section I, subsection h) above, and the legal information that was reviewed by such attorney and incorporated into the prospectus, at the end of the following legend:

> The undersigned declares under oath that to the best of his/her knowledge and understanding, the issuance and placement of the securities comply with the laws and other applicable legal provisions. The undersigned also declares that he/she has no knowledge of relevant legal information that has been omitted or falsified in this prospectus or that it contains information that could mislead investors.

e) The legal representative of the guarantor with sufficient general or special power of attorney to bind it, in connection with issuance having a guarantor or guarantee, in accordance with the following legend:

f) Where applicable, the legal representative with general powers for acts of administration of the legal entity that structured the issuance or any other third party that participates in the agreement of the terms and conditions of the securities, other than the persons mentioned in subsections a) through e) above, to fit the following legend:

> The undersigned declares under oath that its client in its duty as structurer has carried out the investigation, review,

and analysis of the business and the state kept by the financial administration of the state or municipality (as the case may be) or the trust's estate, as well as having participated in the agreement of the terms, conditions or structure of the securities. Likewise, its client does not have knowledge of relevant information that has been omitted or falsified in this prospectus or that it contains information that could mislead investors.

The informational supplement used for dissemination to the public at large should be signed on the final page by the persons referred to in subsections a) and b) and, if applicable, c), d), e), and f) above.

With the authorization of the Commission and, in the case of maintaining securities previously placed, the information contained in the annual report of the immediately prior fiscal year or quarterly reports presented subsequent to such annual report that the state or municipality issuing the securities has provided to the Commission, the stock exchange and the public at large in accordance with sections II, III and IV of article 104 of the Securities Market Law and in these provisions, as long as the web page in which such reports may be consulted is indicated during the term of the issuance.

The states or municipalities that intend to issue debt instruments, with a maturity date equal to or less than 1 year, will not be obligated to present the prospectus referred to in this section. However, in the event that they prepare one, it must be approved by the Commission and comply with the legal requirements applicable to its contents.

No later than within 5 business days following the date on which the public offering in question has concluded, the Issuers shall deliver to the Commission 3 printed copies of the placement prospectus or informational supplement.

XI. The other information and documentation that, by type of security, is indicated in article 7 of these provisions.

When the filing state or municipality, during the same fiscal year has presented the information referred to in sections II, III, IV, V and VIII of this article, for purposes of prior Registrations of other securities in the Registry, it may omit their presentation in subsequent requests made within the same fiscal year. This will be applicable provided such documents have not been amended.

The Commission, in duly justified cases, may authorize the presentation of documentation in substitution of the information required by these provisions, pursuant to the applicable law and the nature of the security to be registered.

Article 4

The requests for registration of securities in the Registry, issued by foreign corporations, and the authorization for a public offer to sell, shall be presented before the Commission in Spanish, with each security to be registered, in accordance with exhibit A of these provisions, accompanied by the following information and documentation:

I. Repealed

II. Document evidencing the legal capacity and powers of the legal

representative of the Issuer, with the corresponding translation by certified translator. When the petitioner is represented by the same person that has represented it in prior Registrations, a simple copy of the document showing his/her legal capacity of representation and powers will be sufficient.

III. Charter deed and, if applicable, the by-laws as amended of the Issuer or their equivalent, with their translation by certified translator.

IV. Any resolution or decision of the competent corporate body of the Issuer that decides to request the Registration of the securities in question, with its translation by certified translator, as applicable by type of security.

V. Financial Statements audited by the External Auditor of the Issuer, as well as of its Associates for the last 3 fiscal years or from the date of incorporation of the company when it is less than 3 years old. The Financial Statement for the most recent fiscal year cannot be more than 15 months old. For purposes of this section, only the Associates that contribute more than 10% of the profits or total consolidated assets of the Issuer for the immediately prior fiscal year will be considered, except for investment companies, when the Issuer is a financial institution.

For debt instruments with a maturity date equal to or less than 1 year, only the Financial Statements referred to in the first paragraph of this section regarding the last fiscal year of the Issuer may be presented.

When the Financial Statements of the most recent fiscal year to the date of placement are older than 6 months, Financial Statements with limited review, with or no favorable opinion, and with a cut-off date not greater than such period will be presented, in a comparative form with the Financial Statements for the same period of the prior fiscal year, in accordance with applicable accounting regulation The foregoing, with the understanding that the auditor's opinion or report should be related to each of the comparative periods presented. Likewise, when the financial statements audited or with review of the aforementioned financial statements with limited review are older than or equal to 3 months from the date of placement, internal financial statements must be submitted to the last quarter prior to the date of placement, in comparative form with the financial statements of the previous fiscal year in accordance with applicable accounting regulations, taking into account for such purposes the delivery periods of financial statements indicated in section II of article 33 of these provisions

In the case of securities that are Registered as the result of a spin-off or merger, the combined Financial Statements certified by the External Auditor will be delivered, or when that is not possible, pro forma financial information for the same period indicated in this section, relative to the company resulting from the spin-off or merger, in accordance with article 81 Bis of these provisions.

When a corporate restructure is made during the immediate prior fiscal year, or, during the subsequent interim periods to such fiscal year and the previous to the date of the placing, or the corporate restructure will conclude with the resources obtained from the issu-

ance, combined financial statements audited by the External Auditor will be delivered and when it is not possible, pro forma financial information from the last fiscal year completed, as well as intermediary financial information corresponding the periods of three and six months mentioned in the third paragraph of this subsection, which may be presented comparatively with the same period of the previous fiscal year, in accordance with the accounting applicable regulations related to the corporation, considering the referred corporate restructure. The information mentioned corresponding to the last fiscal year and to the six-month term, shall be revised by the External Auditor.

The pro forma financial statements shall be prepared in accordance with the provisions of article 81 Bis of these regulations, containing the impact of the particular containing the impact of the particular transactions over their financial status and results, as if the corporate restructure had come into effect since the beginning of the previous financial year. The report of the external auditor shall address the aspects mentioned in article 35 of these regulations.

VI. Legal opinion referred to in article 87, section II of the Securities Market Law, issued by an attorney of the country of origin of the issuer or of principal placement of its securities, who meets the independence requirements referred to in article 87 of these provisions.

VII. The documentation referred to in article 2, section I, subsections e), g), k), 1) and m) of these provisions.

VIII. The other information and documentation that, by type of security, is indicated in article 7 of these provisions.

For secondary public offers to sell, the request for authorization will adhere to the provisions of article 2, section I, second paragraph of these provisions.

The Commission in duly justified cases and based on the nature of the Issuers, may authorize that documentation be presented in substitution of the information required by this article.

The Issuers will determine under their own responsibility, the strategic information that will have to be reserved for purposes of this article, provided that it does not involve Relevant Information or relevant events whose disclosure cannot be deferred. In all cases, the Issuers shall adopt the measures necessary to guarantee that the reserved information is known exclusively by the persons that have a need to know it.

Article 4 Bis

The requests for recognition of public offer of securities issued by companies of foreign nationality, trusts or any other vehicle for the issuance of securities authorized or registered in any recognized foreign securities market with which the stock exchanges have concluded an agreement, must be submitted to the Commission accompanied by the information and documentation that is indicated below with its corresponding translation into Spanish by an expert translator, if applicable:

I. **D**ocument that certifies the personality and powers of the legal representative of the company of foreign nationality, trusts or vehicles for the issue of securities in question. When the companies, trusts or vehicles indicated in the previous paragraph are represented by the same person who has applied for recognition of a public offering with beforehand, it is sufficient to present a simple copy of the document containing their personality and faculties.

II. Simple copy of the documentation and information that has been submitted to the agency or agency with functions equivalent to those of the Commission in its country of origin, for authorization or registration of the public offering in question. At least this information must include the following:
   a. Offering prospectus or equivalent offer document.
   b. Financial statements audited by external auditor for the last three financial years or from the date of incorporation of the company of foreign nationality, trusts or vehicles for the issue of securities in question, when this is less than three years. Or the financial information that has been presented by the company of foreign nationality, trusts or vehicles for the issue of securities in question in their country of origin.

III. Simple copy of the documentation and information they have submitted for its authorization or registration in the foreign exchange on which its securities are traded, and with which the stock exchanges have signed an agreement.

IV. Simple copy of the authorizations or registers for the recording of their values that have been granted in accordance with the legislation applicable to the recognized foreign securities market.

In the event of secondary public offers, the request for recognition must be subscribed for each of the selling shareholders, as well as accompanying the simple copy of the documentation and information they have submitted to the agency or agency with functions equivalent to those of the Commission in its country of origin, for the authorization or registration of the secondary public offering in question. For this purpose, the companies of foreign nationality, trusts or vehicles for the issuance of securities will be obliged to provide all the information necessary for the realization of public offers of secondary sales.

Companies of foreign nationality, trusts or any other vehicle for the issuance of securities authorized or registered in any recognized foreign securities market with which the stock exchanges have entered into an agreement, or the selling shareholders referred to in the preceding paragraph must deliver to the stock exchanges a copy of the recognition document issued by the Commission, in order to give advertising to the recognition of the offer, through the website of the website in the world network (internet) that the bags enable for this purpose.

Article 4 Bis 1

Companies of foreign nationality, trusts or any other vehicle for the issuance of securities authorized or registered in any recognized foreign securities market with which the stock exchanges have entered into an agreement, must incorporate notoriously in their offering prospectus or documents of the offer, the following warnings addressed to investors in national territory:

I. That the Commission does not authorize or supervise such companies, trusts or vehicles for the issuance of securities, or securities that are traded in any foreign securities market recognized with which the stock exchanges have entered into an agreement.

II. That the information contained in the documents used to make the offer is the sole responsibility of the people who make it and has not been subject to review or authorization by the Commission.

III. That the characteristics of the offer have been made known to the Commission only for informative purposes, which in no case implies certification on the goodness of the securities or solvency of the persons, trusts or vehicles for the issuance of securities that make the offer.

IV. That the companies, trusts or vehicles for the issuance of securities, securities and, in general, the characteristics of the offer are subject to the legal regime in force in their country of origin, so that the terms of the negotiation and the provisions in terms of disclosure of information may differ with that applicable to issuers registered in the Registry.

V. The type of investors to whom the offer of securities is directed, and if in the country of origin there is any restriction for the participation of certain types of investors.

Article 5

Repealed.

Article 6

The issuers with securities registered in the Registry, provided they are up to date in the delivery of the periodic information referred to in Title Four of these provisions, may omit when processing the requests referred to in articles 2, 3 and 4 above, the following information and documentation:

I. The information indicated in the articles of these regulations as follows:

a) articles 2, section I, subsections c) and f),in this last case, as long as the information referred to in the second to last paragraph of said subsection f) in in compliance with article 35; otherwise, the intended omission in the first paragraph of this article shall not apply.

b) 3, section VII and 4 sections III and V, in this last case, as long as the information referred to in the second to last paragraph of such section V, is in compliance with article 35; otherwise, the intended omission in the first paragraph of this article, shall not apply.

II. Repealed.

III. The information referred to in article 84 of these provisions, in connection with the obligations established in article 2, section I, subsection g) and 7, sections II, subsection b), number 6 and III, subsection a), number 3 of these provisions, in relation to debt instruments with a maturity date equal to or less than 1 year, or when it has been presented by the issuer, the settlor, the administrator of the property held in trust, the surety, the guarantor or any third party to obtain the registration of other securities in the Registry, during the same fiscal year, as well as the information mentioned in subsection j) of such article 2, in the event that it has been presented during the year immediately prior to the year in which the registration is to be obtained. The above applies unless there are changes not known to the public.

Article 7

The issuers, in addition to the information and documentation required pursuant to articles 2, 3 and 4 above, in order to obtain the registration in the Registry, shall present to the Commission, according to the type of security, the following documentation:

I. For shares of stock:

a) Record signed by the secretary of the board of directors or by the representative of the competent corporate body, in accordance with exhibit D of these provisions, regarding the structure of the capital stock, which:

1. Indicates that the amount of capital and the division of the shareholdings is the result of each of the increases and decreases registered in the minutes book of the general shareholders meetings or in the capital variations book, in accordance with articles 194 and 219 of the General Law of Business Organizations.
2. Indicates that the corporate by-laws meet the applicable requirements, in particular those referred to in the Securities Market Law and these provisions, and that the minutes books of the general and special shareholders meetings, the board of directors meetings, the registry of capital increases and decreases and the stock registry book, are updated to the date of the request.
3. Declares that the certified financial statements presented to this Commission are duly approved by the general ordinary shareholders meeting.
4. Verifies the share holdings of each of the shareholders, in the case of stock market investment promotion corporations.

b) List of its subsidiaries, associates and, if applicable, its holding company, and the percentage of holdings of each of them, in accordance with exhibit E of these provisions, unless the issuer has shares registered in the Registry and is up to date in the delivery of periodic information.

The provisions of numbers 2 and 3 of subsection a) above are not applicable to the Issuers referred to in article 4 of these provisions.

II. In the case of fiduciary instruments and other securities issued under trusts:

a) On stock:

1. The documentation indicated in section I above, with respect to the settlor, except for certificates of participation representing shares (*certificados de particiacion ordinarios sobre acciones)* of 2 or more Issuers.
2. The documentation referred to in article 2, section I, subsections c), d), f), and g) of these provisions, shall be with respect to thesettlor, except in the case of certificates of participation representing shares (*certificados de particiacion ordinarios sobre acciones)* of 2 or more Issuers.
3. Draft trust agreement on which the issuance is based and, as applicable, indenture complying with article 228 M of the General Law of Negotiable Instruments and Credit Operations.

The definitive contract shall be delivered to the Commission no later than the day prior to the date on which the public offering in question will be initiated.

4. If applicable, certificate referred to in article 68, last paragraph of the Securities Market Law.

b) On property other than shares:

1. The balance of the property in trust. When compliance with the obligations in relation to the securities issued under the trust depends solely or partially on the settlor, the administrator of the property in trust or any other third party, the information referred to in articles 2, section I, subsections c) and f) or 3, section VII above, as applicable, shall be presented with respect to the latter.

The settlor, the administrator of the assets or the third party referred to in this number, that are already Issuers, will not be obligated to present the mentioned information, provided that they are up to date in the delivery of the periodic information referred to in Title Four of these provisions.

2. The legal opinion referred to in article 2, section I, subsection h) of these provisions, in which the validity of the trust agreement, the existence of the trust property and the powers of the settlor to convey such property in trust are referred to.

3. In the case of trusts whose trust property is real estate, the updated certificate of freedom from liens, with respect to the real estate conveyed in trust.
4. Draft of the contract and certificate referred to in subsection a), numbers 3 and 4 of this same section II, respectively.

In the event that the trust has a technical committee, the trust agreement shall provide that at least one representative of the trust shall assist the meeting of such committee, with voice but without voting rights.

The definitive contract shall be delivered to the Commission no later than the business day prior to the date on which the public offering in question is initiated.

5. Certificate on the rating of the issuance issued by a securities rating institution, with a date of issuance no greater than 90 business days from the placement date.

The certificate shall contain a brief explanation for such rating using the context of the rating used by the corresponding securities rating institution, and any condition or consideration thereto. Additionally, it shall be expressly mentioned that the rating granted does not constitutes an investment recommendation and that it may be subject to modifications at any time, pursuant to the methods of the corresponding securities rating institution. Likewise, in the event of securities backed by assets, the certificate shall include the reasons that motivated such rating, as well as the conditions and considerations that, in if applicable, have been established for the rating and to evidence the legal review performed.

Additionally, the issuer shall submit to the Commission a letter stating that the securities rating institution was notified upon executing of the respective contract or agreement, as well as every time the rating institution grants an assessment on the creditworthiness of the issuance, if during the two months prior to the cited dates, if applicable, the issuer receives a rating on the securities subject of the issuance by another rating institution, and, in its case, indicate the name of the other rating institution that determined the corresponding rating provided. The foregoing, for purposes of the securities rating institutions to be in position to comply with the provisions of the second paragraph of the Fifth of the general regulations applicable to the securities rating institutions published in the Federal Gazette on February 17 2012 and its respective modifications.

6. The document referred to in article 84 of these provisions signed by the external auditor of the settlor, or

the administrator or of any other third party on which compliance with the obligations of the trust depend in whole or in part, in which case their certified financial statements shall be included in the placement prospectus or informational supplement.

7. The title draft referred to in article 2, section I, subsection e), containing the payment obligation of the principal and interests. A copy of the definitive title deposited with any securities deposit institution shall be delivered prior to the executionof the placement in the stock market of the securities object of the corresponding public offer.

The issuers of asset backed securities that constitute a standardized portfolio may follow the procedure of authorization of the informative supplements and notes formats established in article 13 Bis of these regulations. In this presumption, the provisions in article 13 Bis 1 of these regulations shall also be applicable.

c) Repealed

III. In the case of debt instruments, certificate on the credit rating of the issuance issued by a securities rating institution, with date of issuance no greater than 90 business days from the date of placement. The certificate shall contain a brief explanation of such rating using the context of the rating used by the corresponding security rating institution, and any condition or consideration thereto. Additionally, the mention that the rating granted does not constitutes an investment recommendation and that it may be subject to modifications at any time, pursuant to the methods of the corresponding securities rating institution. Likewise, in the event of securities supported by assets, the certificate shall include the reasons that motivated such rating, as well as the conditions and considerations that, in its case, have been established for the rating and evidence the legal review performed.

Additionally, the issuer must deliver a letter to the Commission stating that it informed the securities rating institution at the time of the execution of the respective agreement, as well as whenever the rating institution issues an opinion on the creditworthiness of the issuance, if in the two previous months before the dates mentioned, if applicable, the issuer received a rating on the securities of the issuance by a different rating institution, and if applicable, it shall indicate the name of the other rating institution that determined the corresponding rating, as well as the rating granted. The foregoing, for the securities rating institutions to be in a position to comply with the provisions of the second paragraph of the Fifth of the general regulations applicable to the securities rating institutions published in the Federal Gazette on February 17, 2012 and its respective amendments.

The same day on which the rating of the instruments or their outlook is changed, the rating institution shall send to the Stock Exchange through the SEDI the corresponding certificate. In any case, the issuance must continue to be rated for its entire duration.

In the case of issuances with a maturity date equal to or less than 1 year under a placement program, the certificate referred to in this subsection may refer only to the placement program.

In addition, with regard to:

a) Issuances with guarantees or sureties:
   1. Legal opinion referred to in article 2, section I, subsection h) of these provisions, in which the legal constitution and enforceability of the guarantees and the powers of the person granting them, as well as the procedure established for their execution in the case of secured or guaranteed instruments, shall also be alluded to.
   2. Financial information on the guarantor or surety referred to in articles 2, section I, subsection f) or 3, section VII of these provisions, in this latter case, with regard to states or municipalities. This will not be applicable in the case of Subsidiaries of the Issuer, nor when the guarantor or surety is an Issuer that is up to date in the delivery of the periodic information referred to in Title Four of these provisions.
   3. Document referred to in article 84 of these provisions signed by the external auditor of the guarantor or surety.
   4. As applicable, record of the registration in the Registry of debts and government loans of states and municipalities, owed to the Ministry of Treasury and Public Credit, in the event that the apportionment of federal income is affected, or record of the registration in the state public debt Registry when applicable under local law.

b) Repealed.

c) Instruments issued under an indenture, draft of such indenture with the applicable contents. The notarial transcript of the indenture duly registered in the Public Registry of Commerce shall be delivered to the Commission no later than the day on which the public offering in question is initiated.

In the case of subordinated debentures and bonds issued by financial entities, draft indenture and, if applicable, copy of the ruling of authorization of Banco de Mexico. The indenture shall be recorded with the Commission no later than the business day prior to the date on which the public offering in question is initiated.

IV. With regard to warrants, the indenture containing the data and information referred to in exhibit F of these provisions.

V. With regards to structured securities:

a) Issued by a trust, the documents mentioned in numbers 1, 2, 4 and 6 of subsection b) of section II above.

b) Issued by financial institutions that in accordance with the applicable laws may issue them, copy of the authori-

zation to execute financial operations from the Bank of Mexico.

When the performance of the obligations, in connection with structured securities issued by trusts, depends totally or partially on the counterpart or supplier of the financial instrument linked to the outcome or that serves as source of payment of the issuance or any other third party, additionally the information mentioned in article 2, section I, subsection c) and F) or 3, section VII of these provisions shall be filed as applicable. The information referred to in article 2, section I, subsection f) shall be prepared in accordance with the provisions of article 78 Bis 1 or 79 of these regulations, if applicable.

The structured securities issuers, may follow the procedure of authorization of the informative supplements and notes formats established in article 13 Bis of these regulations. In this presumption, the provisions in article 13 Bis 1 of these regulations shall also be applicable.

VI. In the case of development trust stock certificates:

a) The issuance documents must provide for, in addition to the provisions of article 64 Bis 1 of the Securities Market Law, the following:

1. That the general holders' meeting shall meet, to approve:

1.1. Pretended investments or acquisitions that represent 10% or more of the assets of the trust, based on the corresponding closing numbers of the immediate previous quarter, independently of if such investments or acquisitions are performed simultaneously or successively in a period of 12 months from the first transaction, but that may be considered as one, and such transactions are intended to be performed with people that fall in at least one of the two following presumptions: (i) those related to the corporations in which the trust makes investments of the settlor, as well as of the manager of the trust property, or to whom such duties are entrusted, or, (ii) that represent a conflict of interests;

1.2. The extensions to intended issuances, either in the amount or the certificate number

1.3. Any increase to the compensation schemes or administration commissions or any other concept in favor of the manager of the trust property, or to whom such duties are entrusted, or members of the technical committee.

1.4. Any modification in the purposes of the trust or the early termination of it.

In the matters referred to in sections 1.1., and 1.3., above, the holders that are located in any of the cases indicated in subsections (i) or (ii)

must abstain from voting in the general holder's meeting of said numeral 1.1., or that act as manager of trust's assets or to whom such duties are entrusted, without affecting the quorum required for the installation of the aforementioned meeting.

2. That the technical committee or equivalent body shall be integrated by a maximum of 21 members of which 25% shall be independent.

The members of the technical committee that have a conflict of interest in any matter, must abstain from participating and being present at the deliberation and voting of said matter, without affecting the quorum required for the installation of said committee.

The technical committee or equivalent body may have the following non-substitutable authority:

2.1. Establish the policies in accordance to which the trusted assets may be invested.

2.2. Approve the acquisition or sale of the assets or rights with a value equal to 5% of the trust's estate, based on the corresponding closing numbers of the immediate previous quarter, whether simultaneously or successively, in a term of 12 months, from the date the first transaction is performed and that according to its characteristics may be considered as one.

2.3. Approve transactions with related persons in connection with the companies in which the trust makes investments, with the settlor, as well as with the asset manager of the trust or whoever is entrusted with such position, or, that represent a conflict of interest.

2.4. Establish the terms and conditions to which the asset manager of the trust or whoever is entrusted with such position will adhere to while exercising the ownership authority or, if applicable, administration authority.

In the event that the opinion of the majority of independent members is not in accordance to the decision of the technical committee, such situation will be revealed to the investing public at large, through the corresponding stock exchange in which the development trust stock certificates are listed.

3. The agreements to exercise the vote in general holders' meetings, which contain the options of purchase or sale among holders of the development trust stock certificates or any other agreements related to the vote or economic rights with respect to the certificates, as well as those made by the members of the technical committee and their respective characteristics, which shall be disseminated in the annual report referred to in articles 33, section I, subsection b), numeral 1., without prejudice of the obligation to notify them to the trustee, within 5 business days following

the date of their agreement, which will be disclosed to the investing public through the stock exchanges where the certificates are listed.

In the agreements to exercise the right to vote for the members of the technical committee, it may be stipulated, among other things, to exercise the vote of the non-independent members in the same sense of the vote issued by the trustee of the trust's estate or to whom these duties are entrusted, in case they belong to the technical committee.

When the agreements stipulate the waiver by the holders to exercise their right to appoint a member of the technical committee in terms of the provisions of article 64 Bis 1, fraction II, subsection c) of the Securities Market Law, it must be in accordance with the foreseen in the documents of the issuance, in any case, the notification to the fiduciary or common representative will be sufficient by any means established in said documents.

4. In the event that the resources of the issuance are intended to be used predominantly to grant loans or financing to Mexican companies or the acquisition of debt securities issued by them, charged to the trust's estate, and additionally seek to contract credits or loans, it should be noted:

4.1. That the amount of the total assets, as defined in Annex AA of these provisions, may at no time be greater than 5 times the book value of the development trust stock certificates issued. In any case, the level of leverage must be calculated in accordance with the provisions of said annex and disclosed in terms of article 35 Bis 1 of these provisions.

Additionally, it shall be established that in the event that the issuer exceeds the maximum limit indicated in the previous paragraph, no additional liabilities may be undertaken against the trust's estate until the issuer complies with the aforementioned limit, except in the case of refinancing operations to extend the issuer's debt validity and the technical committee's documentation of the evidences for such situation. In any case, the result of said refinancing may not imply an increase in the level of leverage registered before the said refinancing operation.

In the event that the issuer exceeds the limit referred to in this numeral, the trustee of the trust's estate or to whom such duties are entrusted, must submit to the general holder's meeting a report of such situation, as well as a corrective plan in the one that establishes the manner, terms and, in its case, period to comply with the limit. Prior to its submition to the holder's meeting, the plan must be approved by the majority of the indepen-

dent members of the technical committee within a period of no more than 20 business days from the date on which the excess is established to said limit. In any case, the corrective plan must contemplate what is indicated in the previous paragraph

4.2. The provision to comply with a debt-service coverage ratio, at the moment of undertaking any credit, loan or financing charged to the trust's assets. This ratio must be calculated in accordance with the provisions of Annex AA of these provisions, with the reported figures at the close of the last quarter, and may not be less than 1.0. Likewise, the ratio should be revealed in terms of article 35 Bis 1 of these provisions.

In addition, it shall be established that in case the debt-service coverage ratio is less than 1.0, no additional liabilities with charge to the trust property may be assumed, unless they consist of refinancing operations to extend the expiration of the indebtedness of the issuer and the technical committee or equivalent entity documents the evidence of such situation. In any case, the result of said refinancing will not imply an increase in the indebtedness level registered before the refinancing operation mentioned.

In the event that the debt-service coverage ratio, referred to in this numeral, is less than 1.0, the provisions of the aboce numeral 4.1., last paragraph will apply.

The technical committee will monitor the establishment of mechanisms and controls to verify that the contracting or undertaking of loans or financing comply with the applicable regulations and these provisions.

For the purposes of the provisions in this numeral, preponderance shall mean at least 70% of the resources of the issunace. In the case of development trust stock certificates that are issued under the capital call mechanism, 70% of the resources will be with respect of the maximum amount of the issuance.

It shall be foreseen that in no case may the issuer allocate more than 20% of the trust's assets to the acquisition of debt securities registered in the Registry. In these cases, the provisions of paragraph 11 of this subsection shall not apply.

In the event that the issuer exceeds the limit referred to in the previous paragraph, the provisions of section 4.1., last paragraph of this subsection, shall apply.

5. In case of issuing under the capital call mechanism:

5.1. The express mention of such circumstance.

5.2. The deed of issuance of which the corresponding certificate will be part, shall at least stipulate the following:

5.2.1. The designation of the person in charge of keeping a record that contains the amount of resources obtained correspondant to the minimum initial contribution and to each capital call for each holder of the trust stock certificates.

5.2.2. The policies, procedures or mechanisms to carry out the offer of the trust stock certificates, the subscription and payment mechanism of the minimum initial contribution, as well as the manner and period in which the issuer could exercise the option to make the capital calls.

5.2.3. The number of days in advance with which the issuer must give notice to the holders before a capital call that, in no case, may be less than 5 business days from the date on which the resources should be provided.

5.2.4. The conditions for the transfer of the trust stock certificates, in case they are established, which may not absolutely restrict the transfer of the securities.

The certificate of issuance must be recorded before the Commission no later than the business day prior to the date on which the public offering in question begins.

5.3. The description of the cash management systems for the handling of the resources coming from capital calls that counts.

5.4. That the general holder's meeting must meet to approve the ends of the resources obtained with each capital call, when they are at least equal to or greater than 20% of the total amount that the issuance may reach.

5.5. That the Commission may request authorization to make various public offers until reaching the minimum initial contribution to the trust's assets referred to in the Securities Market Law, provided that the securities are offered in restricted public offers and the manner in which the price at which the certificates will be placed will be determined in the documents of the issuance. In any case, the maximum period in which public offers may be carried out referred to in this numeral will be 1 year, once the initial public offering has been made. When the issuer does not place the amount of the minimum original contribution referred to in Article 64 Bis 2, fraction II of the Securities Market Law, within the period established in this subsection, the provisions of article 14 of the present provisions will apply.

In the event that the Commission has authorized the making of various public offers referred to in the preceding paragraph, in order to make the subsequent offers to the initial one, the issuer must certify before the Commission that it is up to date in the delivery of the periodic information to referred to in Title Four of these

provisions. In these cases, it will not be necessary for the general holder's meeting to approve the subsequent offers.

The issuer, prior to carrying out the placement of each offer, must inform the Commission, with 2 business days in advance of the closing of the book, its characteristics, as well as presenting the offer notice referred to in article 2., fraction I, subsection 1), of these provisions.

5.6. The prospectus must expressly mention that it is possible that one or more holders of the trust stock certificates do not cover in time and manner with the cpital calls, which could impede compliance with the business plan and investment calendar. Likewise, it should be clearly established that this risk is additional to those derived from the investment in activities or projects of several companies, or from the acquisition of securities representing the capital of companies.

6. In the event that the resources of the issuance are intended to be used predominantly to invest in collective investment mechanisms not listed on any stock exchange, the indication in the terms of the prospectus in accordance with Annex H Bis 2 of these provisions, that the financial information referred to in section II of article 33 of these provisions, may be disclosed no later than 20 working days after the end of the quarter following the one corresponding to the information. Likewise, it must be specified that the annual financial statements or their equivalents referred to in numeral 3, subsection a), fraction I, article 33, as well as the annual report referred to in numeral 1., of subsection b), fraction I of the aforementioned article 33 of these provisions, will be presented no later than June 30th of each year.

For purposes of the provisions in this section, preponderance shall mean at least 70% of the resources of the issuance. In the case of development trust stock certificates that are issued under the capital call mechanism, 70% of the funds will be in respect of the maximum amount of the issuance.

7. When you intend to acquire shares or negotiable instruments that represent them, which are registered in the Registry or issued by Mexican companies that have been subject to a public offering abroad, the investments or acquisitions made by the trust fund must represent at least 20% of the capital stock of the company in question.

They may acquire shares or negotiable instrument that represent them, recorded in the Registry for a lower percentage than that provided for in the preceding paragraph, provided that there are co-investment agreements with other investors that allow them to jointly acquire at least 20% of the capital stock of the company in question, as well as that the issuer of

trust stock certificates is part of the management of the corresponding company.

In the event that the issuer does not comply with the conditions referred to in this numeral for purposes of making the acquisitions, the provisions of section 4.1., ast paragraph of this subsection, shall apply.

8. In the case of certificates that have been offered in restricted public offers, the holders have the right to ask the common representative or the fiduciary to have access to information free of charge that the issuer is not obligated to disclose to the investing public in terms of the Fourth Title of these provisions, provided that they join the request with proof of ownership of the respective securities, issued by an institution for the deposit of securities. Said information must be related to the investments that the issuer intends to make, without prejudice to the provisions in terms of confidentiality and conflicts of interest established in the base documents of the issuance.

9. The provision to hire a common representative, specifying their rights and obligations, as well as the terms and conditions under which they may proceed towards their removal and the designation of a new one.

10. Regarding the manager of the trust's assets or to whom these duties are entrusted:

10.1. The terms and conditions to which it will adjust in the exercise of its powers for acts ownership and management.

10.2. That the compensation scheme, commissions and incentives are established in such a way as to take care of the interests of the holders at all times.

10.3. Its liability system, including the payment of damages, unless contractual penalties have been agreed.

10.4. The provision to deliver to the technical committee, the common representative, and the holders of the development trust stock certificates that request it, a quarterly report on the performance of their duties, as well as the information and documentation requested in the fulfillment of their duties.

10.5. The provision to perform their duties diligently, acting in good faith and in the best interest of the trust and the holders.

11. The possibility of investing in short-term securities recorded in the Registry, provided they are temporary investments performed as long as the investments to which the issuance resources are allocated are made, in accordance with what is established in the prospectus.

12. The periodicity with which the assesment of the certificates should be carried out. In any case, it must be

provided that the assesment will be carried out at least once a year.

13. The rules for the contracting of any loan with charge to the trust's estate, by the settlor, manager of the trust's property, or to whom they entrust said duties, or by the fiduciary.

14. The characteristics and eligibility criteria of the companies, which the trust will invest in, acquire share certificates of its capital stock, or will grant loans or financing.

b) Repealed.

c) The certificate draft referred to in article 2, section I, paragraph e), of these provisions, in addition to the provisions of article 64 of the Securities Market Law, must state that there is no duty by the issuer to pay a sum of money for principal and, if applicable, interests. Additionally, it must be provided that the distribution of profits or losses will be proportional to the amount of contributions and that one or more holders cannot be excluded in the individual share corresponding to the gains or losses associated with the investments charged to the trust's assets, as long as, for the case in which they have been issued under the mechanism of capital calls, for the distribution of the profits, the holder in question has likewise attended in time and manner to these. These certificates may express nominal value and it must be foreseen that a minimum number of investors will not be necessary for listing or maintaining such listing on the stock exchanges. Likewise, in the case of development trust stock certificates issued under the capital call mechanism, they must expressly state that what is not provided for in the title, will be subject to the provisions of the ussnace deed referred to in the previous subparagraph a), numeral 5.2.

In the event that the resources of the issuance are intended to be used predominantly to grant loans or financing to Mexican companies charged to the trust's estate, and additionally intend to undertake loans, the certificate draft must also foresee for the provisions in the above numeral 4., of subsection a).

Likewise, they must submit the documentation that is contained in the numerals 2, 3., 4., and, in its case, 1., and 6., of the fraction II, clause b) of this article. In any case, they must submit the balance of the estate subject to trust.

VII. In the case of real estate trust stock certificates:

a) The issuance documents must provide for, in addition to the provisions of article 64 Bis 1 of the Securities Market Law, the following:

1. That the general holders' meeting shall meet, to approve:

1.1. Pretended investments or acquisitions that represent 10% or more of the assets of the trust, based on the corresponding closing numbers of the immediate previous quarter, independently of if such investments or acquisitions are performed simultaneously or successively in a period of 12 months from the first transaction, but that may be considered as one, and such transactions are intended to be performed with people that fall in at least one of the two following presumptions: (i) those related to the corporations in which the trust makes investments of the settlor, as well as of the manager of the trust property, or to whom such duties are entrusted, or, (ii) that represent a conflict of interests;

1.2. The extensions to intended issuances, either in the amount or the certificate number

1.3. Any increase to the compensation schemes or administration commissions or any other concept in favor of the manager of the trust property, or to whom such duties are entrusted, or members of the technical committee.

1.4. Any modification in the purposes of the trust or the early termination of it.

1.5. The policies of entering into or undertaking loans, financings, as well as any modification to these.

In the matters referred to in sections 1.1., and 1.3., above, the holders that are located in any of the cases indicated in subsections (i) or (ii) must abstain from voting in the general holder's meeting of said numeral 1.1., or that act as manager of trust's assets or to whom such duties are entrusted, without affecting the quorum required for the installation of the aforementioned meeting.

It shall be irrevocably stipulated, that the general holders' meeting may remove and substitute the manager of the trust's assets or he who is entrusted with such duties by the holders' agreement. For this purpose, the percentage of ownership of the trust's estate, under which the aforementioned agreement is made, may be determined freely, without in any case exceeding 66% of the trust certificates in circulation.

2. That the technical committee or equivalent body shall be integrated by a maximum of 21 members of which 25% shall be independent.

The members of the technical committee that have a conflict of interest in any matter, must abstain from participating and being present at the deliberation and voting of said matter, without affecting the quorum required for the installation of said committee.

The technical committee or equivalent body may have the following non-substitutable authority:

2.1. Establish the policies in accordance to which the trusted assets may be invested.

2.2. Approve the acquisition or sale of the assets or rights with a value equal to 5% of the trust's estate, based on the corresponding closing numbers of the immediate previous quarter, whether simultaneously or successively, in a term of 12 months, from the date the first transaction is performed and that according to its characteristics may be considered as one.

2.3. Approve transactions with related persons in connection with the companies in which the trust makes investments, with the settlor, as well as with the asset manager of the trust or whoever is entrusted with such position, or, that represent a conflict of interest.

2.4. Establish the terms and conditions to which the asset manager of the trust or whoever is entrusted with such position will adhere to while exercising the ownership authority or, if applicable, administration authority.

In the event that the opinion of the majority of independent members is not in accordance to the decision of the technical committee, such situation will be revealed to the investing public at large, through the corresponding stock exchange in which the real estate trust stock certificates are listed.

In the event that the technical committee establishes committees to assist it in its duties, it should be established that said committees will be exclusively composed of members of the technical committee and will be chaired by a member who has the status of independent.

3. The agreements to exercise the vote in general holders' meetings, which contain the options of purchase or sale among holders of the real estate trust stock certificates or any other agreements related to the vote or economic rights with respect to the certificates, as well as those made by the members of the technical committee and their respective characteristics, which shall be disseminated in the annual report referred to in articles 33, section I, subsection b), numeral 1., without prejudice of the obligation to notify them to the trustee, within 5 business days following the date of their agreement, which will be disclosed to the investing public through the stock exchanges where the certificates are listed.

In the agreements to exercise the right to vote for the members of the technical committee, it may be stipulated, among other things, to exercise the vote of the non-independent members in the same sense of the vote issued by the trustee of the trust's estate or to whom these duties are entrusted, in case they belong to the technical committee.

When the agreements stipulate the waiver by the holders to exercise their right to appoint a member of the technical com-

mittee in terms of the provisions of article 64 Bis 1, fraction II, subsection c) of the Securities Market Law, it must be in accordance with the foreseen in the documents of the issuance, in any case, the notification to the fiduciary or common representative will be sufficient by any means established in said documents.

4. In the event that the resources of the issuance are intended to be used predominantly to grant loans or financing to Mexican companies or the acquisition of debt securities issued by them, charged to the trust's estate, and additionally seek to contract credits or loans, it should be noted:

4.1. That the amount of the total assets, as defined in Annex AA of these provisions, may at no time be greater than 5 times the book value of the real estate trust stock certificates issued. In any case, the level of leverage must be calculated in accordance with the provisions of said annex and disclosed in terms of article 35 Bis 1 of these provisions.

Additionally, it shall be established that in the event that the issuer exceeds the maximum limit indicated in the previous paragraph, no additional liabilities may be undertaken against the trust's estate until the issuer complies with the aforementioned limit, except in the case of refinancing operations to extend the issuer's debt validity and the technical committee's documentation of the evidences for such situation. In any case, the result of said refinancing may not imply an increase in the level of leverage registered before the said refinancing operation.

In the event that the issuer exceeds the limit referred to in this numeral, the trustee of the trust's estate or to whom such duties are entrusted, must submit to the general holder's meeting a report of such situation, as well as a corrective plan in the one that establishes the manner, terms and, in its case, period to comply with the limit. Prior to its submission to the holder's meeting, the plan must be approved by the majority of the independent members of the technical committee within a period of no more than 20 business days from the date on which the excess is established to said limit. In any case, the corrective plan must contemplate what is indicated in the previous paragraph.

4.2. The provision to comply with a debt-service coverage ratio, at the moment of undertaking any credit, loan or financing charged to the trust's assets. This ratio must be calculated in accordance with the provisions of Annex AA of these provisions, with the reported figures at the close of the last quarter, and may not be less than 1.0.

Likewise, the ratio should be revealed in terms of article 35 Bis 1 of these provisions.

In addition, it shall be established that in case the coverage ratio of indebtedness service index is less than 1.0, no additional liabilities with charge to the trust property may be assumed, unless they consist of refinancing operations to extend the expiration of the indebtedness of the issuer and the technical committee or equivalent entity documents the evidence of such situation. In any case, the result of said refinancing will not imply an increase in the indebtedness level registered before the refinancing operation mentioned.

In the event that the debt-service coverage ratio, referred to in this numeral, is less than 1.0, the provisions of the above numeral 4.1., last paragraph will apply.

The technical committee will monitor the establishment of mechanisms and controls to verify that the contracting or undertaking of loans or financing complies with the applicable regulations and these provisions.

For the purposes of the provisions in this numeral, preponderance shall mean at least 70% of the resources of the issuance. In the case of real estate trust stock certificates that are issued under the capital call mechanism, 70% of the resources will be with respect of the maximum amount of the issuance.

It shall be foreseen that in no case may the issuer allocate more than 20% of the trust's assets to the acquisition of debt securities registered in the Registry. In these cases, the issuer may invest in short-term securities recorded in the Registry, provided they are temporary investments performed as long as the investments to which the issuance resources are allocated are made, in accordance with what is established in the prospectus.

In the event that the issuer exceeds the limit referred to in the previous paragraph, the provisions of section 4.1., last paragraph of this subsection, shall apply.

5. In the event that the trust's propoerty is at all times composed by assets or fully identified rights, regardless of the investment vehicle through which they were incorporated into the trust, the technical committee must establish internal methods and controls to ensure the supply of updated information regarding the situation, location, and status of the assets subject to the trust, as well as allowing the direct and immediate exercise of the rights over said assets.

In the case of real estate trust stock certificates that are within the referred case in the previous paragraph, instead of adjusting to the provision in the above numeral 4.1, the maximum limit of the liabilities that they intend to assume in relation to the total assets of the trust must be indicated, which at no time may be greater than 50% of the book value of their

total assets, measured at the end of the last reported quarter; likewise, they must comply with a debt-service coverage ratio, in accordance with the provisions of section 4.2., above. In any case, the debt level and the debt-service coverage ratio must be calculated in accordance with the provisions of Annex AA of these provisions and disclosed in terms of Article 35 Bis 1 of these provisions.

Additionally, it will be established that in case the issuer exceeds the maximum limit indicated in the previous paragraph or, the debt-service coverage ratio is less than 1.0, no additional liabilities with charge to the trust's estate can be undertaken until the issuer meets the indicated limit, except in the case of refinancing operations to extend the the indebtedness expiration of the issuer and the technical committee documents the evidence of such situation. In any case, the result of said refinancing may not imply an increase in the level of indebtedness or a decrease in the calculation of the debt-service coverage ratio registered before said refinancing operation.

In the event that the issuer exceeds the limit referred to in this numeral, or the debt-service coverage ratio is less than 1.0, the trustee of the trust's estate or to whom such duties are entrusted, must submit to the general holder's meeting a report of such situation, as well as a corrective plan in the one that establishes the manner, terms and, in its case, period to comply with the limit. Prior to its submission to the holders' meeting, the plan must be approved by the majority of the independent members of the technical committee within a period of no more than 20 business days from the date on which the excess is established to said limit. In any case, the corrective plan must contemplate what is indicated in the previous paragraph.

6. In case of issuing under the capital call mechanism, include the following:

6.1. The express mention of such circumstance.

6.2. The deed of issuance of which the corresponding certificates will be part, shall at least stipulate the following:

6.2.1. The designation of the person in charge of keeping a record that contains the amount of resources obtained correspondant to the minimum initial contribution and to each capital call for each holder of the trust stock certificates.

6.2.2. The policies, procedures, or mechanisms to carry out the offer of the trust stock certificates, the subscription and payment mechanism of the initial minimum contribution, as well as the manner and period in which the issuer could exercise the option to make the capital calls. The initial minimum contribution cannot be inferior to 20% of the total amount that the issuance can reach.

6.2.3. The number of days in advance with which the is-

suer must give notice to the holders before a capital call that, in no case, may be less than 5 business days from the date on which the resources should be provided.

6.2.4. The conditions for the transfer of the trust stock certificates, in case they are established, which may not absolutely restrict the transfer of the securities.

6.2.5. The contractual penalties that the issuer will apply in the event that one or several holders of real estate trust stock certificates do not comply with the capital calls in time and manner, the consequences that will be generated on the other holders, as well as the legal actions that the issuer could exercise in relation to the capital call in question. Likewise, the procedure for modifying the aforementioned contractual penalties must be specified.

6.3. The description of the cash management systems for the handling of the resources coming from the capital calls posessed.

6.4. That the general holders' meeting must meet to approve the ends of the resources obtained with each capital call, when they are at least equal to or greater than 20% of the total amount that the issuance may reach.

6.5. That the Commission may request authorization to make various public offers until reaching the minimum initial contribution to the trusts' assets referred to in the Securities Market Law, provided that the manner in which the price at which the certificates will be placed will be determined in the documents of the issuance. In any case, the maximum period in which public offers may be carried out referred to in this numeral will be 1 year, once the initial public offering has been made. When the issuer does not place the amount of the minimum original contribution referred to in Article 64 Bis 2, fraction II of the Securities Market Law, within the period established in this subsection, the provisions of article 14 of the present provisions will apply.

In the event that the Commission has authorized the making of various public offers referred to in the preceding paragraph, in order to make the subsequent offers to the initial one, the issuer must certify before the Commission that it is up to date in the delivery of the periodic information to referred to in Title Four of these provisions. In these cases, it will not be necessary for the general holder's meeting to approve the subsequent offers.

The issuer, prior to carrying out the placement of each offer, must inform the Commission, with 2 business days in advance of the closing of the book, its characteristics, as well as presenting the offer notice referred to in article 2., fraction I, subsection I), of these provisions.

6.6. The prospectus must expressly mention that it is possible that one or more holders of the trust stock certificates do not cover in time and manner with the cpital calls, which could impede compliance with the business plan and investment calendar. Likewise, it should be clearly established that this risk is additional to those derived from the investment in real estate or, the acquisition of securities or rights of any kind on real estate or securities representing the capital stock of companies that invest in real estate.

The duly protocolized issuance deed must be delivered to the Commission, no later than on the issuance date.

When the issuer has chosen to register the securities under the capital call mechanism and intends to increase the amount by which they could be made, in the event that it has additionally made a capital call, it must submit a copy of the minute from the general holders' in which said extension has been approved with the consent of at least 75% of the holders of real estate trust stock certificates.

7. In the case of certificates that have been offered in restricted public offers, the holders have the right to ask the common representative or the fiduciary to have access to information free of charge that the issuer is not obligated to disclose to the investing public in terms of the Fourth Title of these provisions, provided that they join the request with proof of ownership of the respective securities, issued by an institution for the deposit of securities. Said information must be related to the investments that the issuer intends to make, without prejudice to the provisions in terms of confidentiality and conflicts of interest established in the base documents of the issuance.

8. The provision to hire a common representative, specifying their rights and obligations, as well as the terms and conditions under which they may proceed towards their removal and the designation of a new one.

9. Regarding the manager of the trust's assets or to whom these duties are entrusted:

9.1. The terms and conditions to which it will adjust in the exercise of its powers for acts ownership and management.

9.2. That the compensation scheme, commissions and incentives are established in such a way as to take care of the interests of the holders at all times.

9.3. Its liability system, including the payment of damages, unless contractual penalties have been agreed.

9.4. The provision to deliver to the technical committee, the common representative, and the holders of the develop-

ment trust stock certificates that request it, a quarterly report on the performance of its duties, as well as the information and documentation requested in fulfillment of its duties.

9.5. The provision to perform their duties diligently, acting in good faith and in the best interest of the trust and the holders.

The certificate draft referred to in article 2, section I, paragraph e), of these provisions, in addition to the provisions of article 64 of the Securities Market Law, must state that there is no duty by the issuer to pay a sum of money for principal and, if applicable, interests. Additionally, it must be provided that the distribution of profits or losses will be proportional to the amount of contributions and that one or more holders cannot be excluded in the individual share corresponding to the gains or losses associated with the investments charged to the trust's assets, as long as, for the case in which they have been issued under the mechanism of capital calls, for the distribution of the profits, the holder in question has likewise attended in time and manner to these. These certificates may express nominal value and it must be foreseen that a minimum number of investors will not be necessary for listing or maintaining such listing on the stock exchanges. Likewise, in the case of development trust stock certificates issued under the capital call mechanism, they must expressly state that what is not provided for in the title, will be subject to the provisions of the ussnace deed referred to in the previous subparagraph a), numeral 6.2.

In the event that the issuer intends to undertake loans or financing charged against the trust's estate, by the settlor, manager of the trust's assets, or whomever is entrusted with these duties, or by the fiduciary, the certificate project must also provide for the provisions of numerals 4., or 5., of subsection a) of this section, as appropriate. In these cases, it must contemplate the provisions of section 4.2., Subsection a) of this section.

Likewise, they must present all the documentation contained in numerals 2., 3., 4., and, in its case, 1., and 6., of the fraction II, clause b) of this article. In any case, they must submit the balance of the estate subject to trust.

VIII. In the case of energy and infrastructure investment trust stock certificates:

a) The issuance documents must provide for the following:

1. That the general holders' meeting shall meet, prior invitation made by the fiduciary or common repre-

sentative with at least 10 days in advance, through the stock exchanges where the certificates are listed. Regardless of whether series with limited voting rights are issued, the general holder's meeting will have the following faculties at minimum:

1.1. Changes in the system of investment of the estate subject to trust.

1.2. The rules for the contracting of any loan with charge to the trust's estate, by the settlor, manager of the trust's property, or to whom they entrust said duties, or by the fiduciary.

Said rules shall establish the maximum indebtedness limit and debt-service coverage ratio they intend to assume, which shall be calculated in accordance with the foreseen in Annex AA of these provisions.

1.3. The removal and replacement of the manager of the trust's estate or to whom such duties are entrusted, in accordance with the causes established for such a purpose in the trust agreement or in the administration contract, with the favorable vote of, at least, 66% of the trust stock certificates in circulation. In any case, at least the following causes of removal must be incorporated:

1.3.1. The omission in the accountability of its management.

1.3.2. Due to malice, negligence or serious fault in its performance.

1.3.3. The omission in the performance of the agreed-upon distributions

1.3.4. For serious breaches of its contractual or legal obligations.

1.4. Any increase to the compensation schemes or administration commissions or any other concept in favor of the manager of the trust property, or to whom such duties are entrusted, or members of the technical committee.

1.5. Any modification in the purposes of the trust or the early termination of it.

1.6. The extensions to intended issuances, either in the amount or the certificate number

The agreements to exercise the vote in general holders' meetings, which contain the options of purchase or sale among holders of the energy or infrastructure investment trust stock certificates or any other agreements related to the vote or economic rights with respect to the certificates, as well as those made by the members of the technical committee and their respective characteristics, which shall be disseminated in the annual report referred to in articles 33, section I, subsection b), numeral 1., without prejudice of the obligation to notify them to the trustee, within 5 business days following the date of their

agreement, which will be disclosed to the investing public through the stock exchanges where the certificates are listed.

2. The holders' rights are as follows:

2.1. Legally oppose the resolutions of the general holders' meetings, when individually or as a whole they represent 20% or more of the number of certificates in circulation, and provided that the claimants have not attended the meeting or have given their vote in against the resolution in question.

2.2. Exercise liability actions against the manager of the trust's assets or to whom such duties are entrusted, due to non-compliance with their obligations, when individually or as a whole they represent 15% or more of the number of certificates in circulation.

2.3. Appoint a member of the technical committee, for the possession, individually or jointly, of each 10% percent of the total number of certificates in circulation, except when schemes are agreed that grant to the manager of the trust's estate, or to whom such duties are entrusted, the settlor or persons related to it, the right to appoint the totality of members in the technical committee. Such appointment may only be revoked by the other holders when in turn, the appointment of all the members of the technical committee is revoked; in this case, the replaced people may not be appointed during the 12 months following the revocation.

When the agreements stipulate the waiver by the holders to exercise their right to appoint a member of the technical committee in terms of the provisions of the previous paragraph, what for these situations is contemplated in the documents of the issuance will be applied, in any case, the notification to the fiduciary or common representative will be sufficient by any means established in said documents.

2.4. Request for the common representative to convene a general holder's assembly, as well as a one-time deferral, for 3 calendar days and without the need for a new invitation, to vote on any matter for which they are not sufficiently informed, when individually or as a whole they represent 10% or more of the number of certificates in circulation.

2.5. Have at its disposal for free and with at least 10 calendar days in advance of the general holders' meeting, information and documents related to the items on the agenda, at the address indicated in the invitation.

The documents of the issuance may provide for the possibility that the holders of a certain series expressly manifest their willingness in writing, to subordinate the payment of any distribution to which they are entitled, to

the payment of the corresponding distribution to the other holders of the same series

3. That the technical committee or equivalent body shall be integrated by a maximum of 21 members, of which at least most of them must be independent. An independent member means a person who complies with the provisions of articles 24, second paragraph and 26 of the Law. Independence will be qualified with respect to the settlor, as well as the manager of the trust's estate or to whom those duties are entrusted.

The members of the technical committee that have a conflict of interest in any matter, must abstain from participating and being present at the deliberation and voting of said matter, without affecting the quorum required for the installation of said committee.

The technical committee or equivalent body has the following non-substitutable authority:

3.1. Verify the performance of the manager of the trust's estate or of who is entrusted with such duties.

3.2. Review the quarterly report that, to that effect, is filed by the manager of the trust's estate or to whom those duties are entrusted.

3.3. Request the manager of the trust's assets or to whom such duties are entrusted, within the period and in the manner that the technical committee establishes, all the information and documentation necessary for the fulfillment of its functions.

3.4. Request the trustee or common representative to convene a general holders' and request that they include in the agenda of said meeting the points they deem pertinent when they detect serious breaches of the provisions for the manager of the trust's estate or who is entrusted with said duties.

4. The technical committee may establish committees to help it in its duties, such committees shall be composed exclusively of independent members of the technical committee itself.

Any member of the technical committee may request that a matter be approved by one of the committees referred to in the preceding paragraph, as well as request the opinion of independent experts in cases deemed necessary for the fulfillment of their duties.

The committee in charge of resolving conflicts of interest must approve the investments or acquisitions that are intended to be made when they represent 10% or more of the trust's assets, based on figures corresponding to the close of the immediately preceding quarter, regardless of whether or not said investments or acquisitions are executed simultaneously or successively in a period

of 12 months from the date of the first transaction, but which could be considered as one, and these operations are intended to be carried out with persons who are located at least one of the two following assumptions: (i) those related to the companies, trusts or equivalent vehicles over which the trust makes investments, the settlor, as well as the trustee of the trust's estate or to whom those functions are entrusted, or, (ii) that represent a conflict of interest.

In the event that said committee approves transactions that are made with persons related to the manager of the trust's assets or whoever is entrusted with said duties or the settlor, the trustee must request the publication of a relevant event describing said situation. Likewise, it may request in writing the trustee to convene a general holders' meeting to discuss the issues that said committee considers relevant, in which case, the fiduciary must publish the call within 2 business days after receiving the respective request.

When the energy and infrastructure investment trust stock certificates are issued in series that grant limited voting rights or, when agreements are reached that grant to the manager of the trust's estate or to whom such duties are entrusted, to the settlor or to the related persons of this, the right to appoint all the members of the technical committee, the latter must have at least the committee responsible for the resolution of conflicts of interest referred to in this numeral. Otherwise, the operations referred to in the third paragraph of this section must be approved by the technical committee.

5. That the trust's assets must be composed at all times by assets or fully identified rights, regardless of the investment vehicle through which they were incorporated into the trust. To this end, the technical committee must establish internal methods and controls to ensure the provision of up-to-date information regarding the situation, location and status of the assets subject to the trust, as well as allowing the direct and immediate exercise of the rights over said assets.

6. In the event that series granting limited voting rights are issued, they must consign the provision to pay distributions in a preferential manner to the holders of said series.

7. The maximum level of indebtedness that has been approved by the general holders' metings in terms of the provisions of numeral 1.2., Of this subsection shall be disclosed in terms of article 35 Bis 1 of these provisions.

Additionally, it shall be established that in the event that the issuer exceeds the maximum limit indicated by

the general holders' meetings, no additional liabilities may be undertaken against the trust's estate until the issuer complies with the aforementioned limit, except in the case of refinancing operations to extend the issuer's debt validity and the technical committee's documentation of the evidences for such situation. In any case, the result of said refinancing may not imply an increase in the level of leverage registered before the said refinancing operation.

In the event that the issuer exceeds the limit referred to in this numeral, the manager of the trust estate or who is entrusted with such duties, must submit to the general holders' meetings a report of such situation, as well as a corrective plan in the one that establishes the manner, terms and, in its case, period to comply with the limit. Prior to its presentation to the assembly, the plan must be approved by the technical committee within a period of no more than 20 business days from the date on which the excess is given to said limit. In any case, the corrective plan must contemplate what is indicated in the previous paragraph

The provision to comply with the debt-service coverage ratio determined by the general holders' meetings, at the time of taking on any loan or financing charged to the trust's assets. This ratio should be calculated in accordance with the provisions of Annex AA of these provisions, with figures at the close of the last quarter reported. Likewise, the ratio should be revealed in terms of article 35 Bis 1 of these provisions.

Additionally, it shall be established that in the event that the issuer exceeds the maximum limit indicated by the general holders' meetings, no additional liabilities may be undertaken against the trust's estate until the issuer complies with the aforementioned limit, except in the case of refinancing operations to extend the issuer's debt validity and the technical committee's documentation of the evidences for such situation. In any case, the result of said refinancing may not imply a decrease in the calculations for the debt-service coverage research, registered before the said refinancing operation.

In the event that the debt-service coverage ratio exceeds that determined by the general holders' meeting, the manager of the trust estate or he who is entrusted with such duties, must submit to the general meeting of holders a report of such situation, as well as a corrective plan in which the form, terms and, where appropriate, term to comply with the limit is established. Prior to its presentation to the assembly, the plan must be approved by the majority of the independent members of the

technical committee within a period of no more than 20 business days from the date on which the excess is given to said limit. In any case, the corrective plan must contemplate what is indicated in the previous paragraph.

8. The provision to hire a common representative, specifying their rights and obligations, as well as the terms and conditions under which they may be removed and the designation of a new one.

9. Regarding the manager of the trust's estate or to whom those duties are entrusted:

9.1. The terms and conditions to which it will adjust in the exercise of its duties of acts of administration and ownership.

9.2. That the compensation scheme, commissions and incentives be established in such a way that it takes care of the interests of the holders at all times.

9.3. Its liability system, including the payment of damages, unless contractual penalties have been agreed.

9.4. The provision to deliver to the technical committee, the common representative, and the holders of the development trust stock certificates that request it, a quarterly report on the performance of its duties, as well as the information and documentation requested in fulfillment of its duties.

9.5. The provision to perform their duties diligently, acting in good faith and in the best interest of the trust and the holders.

The certificate draft referred to in article 2, section I, paragraph e), of these provisions, in addition to the provisions of article 64 of the Securities Market Law, must state that there is no duty by the issuer to pay a sum of money for principal and, if applicable, interests. Additionally, it must be provided that the distribution of profits or losses will be proportional to the amount of contributions and that one or more holders cannot be excluded in the individual share corresponding to the gains or losses associated with the investments charged to the trust's assets, as long as, for the case in which they have been issued under the mechanism of capital calls, for the distribution of the profits, the holder in question has likewise attended in time and manner to these. These certificates may express nominal value and it must be foreseen that a minimum number of investors will not be necessary for listing or maintaining such listing on the stock exchanges.

Likewise, they must present all the documentation contained in numerals 2., 3., 4., and, in its case, 1., and 6., of the fraction II, clause b) of this article. In any case, they must submit the balance of the estate subject to

trust.

With regards to issuers which purpose is to finance the activities of another entity or company that also has the obligation to pay with the resources obtained, additionally, the information and documents mentioned in this article 2 of this provisions shall be provided, depending of the type of security in question, regarding the entity or company that obtains the resources of the placement. The abovementioned will not apply when the issuance is guaranteed by an entity or company that controls the issuer, as long as such guarantee is irrevocable and for the total amount of the issuance and the certificate issued by the securities rating institution with basis exclusively in the credit quality of the guarantor, in which case, any information that is considered relevant in connection with the abovementioned entity or company that obtains the placement resources shall be included in the prospectus of placement.

In the events foreseen in sections II to IV of this section, when the payment obligation that evidences the corresponding securities depends totally or partially on an entity or company different to the issuer, additionally, regarding the latest, the financial information mentioned in article 2, section I, subsection f) or 3, section VII of this provisions, presented in accordance with articles 78 Bis 1 or 79 of the same regulations, if applicable. With regards to trust securities mentioned in article 7, section II, subsection c), the financial information mentioned in article 2, section I, subsection f) of these provisions shall be filed in terms of article 78 of these provisions.

IX. In the case of fiduciary stock certificates of investment projects:

a) The issuance documents must provide the following:

1. That they must be offered in restricted public offers in terms of these provisions.
2. That the general meeting of the holders must meet, after a call made by the fiduciary or common representative at least 10 days in advance, through the stock exchanges where the certificates are listed. Regardless of whether they are issued in series with limited voting rights, the general meeting of holders will have the following minimum faculties:

2.1. Approve the extensions to the emissions that intend to be made, either in the amount or in the number of certificates.

2.2. Remove and replace the trustee of the trust estate or who is entrusted with these functions.

2.3. Approve any increase in the compensation schemes or commissions of the trustee of the trust estate or to whom such functions or members of the technical committee are entrusted.

2.4. Approve modifications for the purpose of the trust or, the anticipated extinction of this.

3. The rights of the following holders:

3.1. The holders who, individually or jointly, represent at least 25% or more of the number of certificates in circulation, will have the following rights:

3.1.1. Appoint a member of the technical committee. Such designation may only be revoked by the other holders when in turn the appointment of all the members of the technical committee is revoked; in this case, the replaced persons may not be appointed during the 12 months following the revocation.

3.1.2. Request the common representative to convene a general meeting of holders, as well as a one-time deferral, for 3 calendar days and without the need for a new call, to vote on any matter for which they are not considered sufficiently informed.

3.1.3. Oppose judicially the resolutions of the general assemblies of holders, provided that the claimants have not attended the assembly or have given their vote against the resolution.

3.1.4. Exercise liability actions against the trustee of the trust assets or to whom such functions are entrusted due to the breach of their obligations.

3.2. Have at their disposal for free and at least 10 calendar days in advance of the general meeting of holders, at the address indicated in the call, information and documents related to the items on the agenda.

4. That the technical committee should be integrated with a maximum of 21 members, of which at least the majority must be independent. An independent member shall be understood as the person who complies with the provisions of articles 24, second paragraph and 26 of the Law. Independence shall be qualified with respect to the trustor as well as the trustee of the trust estate or to whom such functions are entrusted. The members of the technical committee, who have a conflict of interest in any matter, should refrain from participating and be present in the deliberation and voting of said matter, without affecting the quorum required for the installation of said committee. Likewise, it must be foreseen that the technical committee will have the following non-delegable powers:

4.1. Monitor compliance with the provisions of the issuance documents.

4.2. Propose modifications to the documents of the issue to the general assembly of holders.

4.3. Verify the performance of the trustee of the trust estate or who is entrusted with such functions.

4.4. Review the quarterly report that, to that effect, is filed by the trustee of the trust estate or to whom those functions are entrusted.

4.5. Request the administrator of the assets of the trust or to whom those functions are entrusted, within the deadlines and in the manner that the technical committee establishes, all the information and documentation necessary for the fulfillment of its functions.

4.6. The majority of the independent members of the technical committee may request:

4.6.1. To the trustee or the common representative, who convokes a general assembly of holders and request that the points they deem pertinent be inserted in the agenda of said assemblies.

4.6.2. To the trustee, the publication of relevant events and other information that, in his / her judgment, must be known to the public.

5. The agreements for the exercise of voting in general meetings of holders, which contain the options of purchase or sale between holders of fiduciary stock certificates of investment projects or any other agreements related to voting or economic rights with respect to certificates, as well as those made by the members of the technical committee and their respective characteristics, which shall be disseminated in the annual report referred to in articles 33, section I, subsection b), numeral 1., without prejudice of the obligation to notify them to the fiduciary, within 5 business days following the date of their agreement, so that they may be disclosed to the investing public through the stock exchanges where the certificates are listed. In the agreements to exercise the right to vote of the members of the technical committee, it may be stipulated, among others, to exercise the vote of the non-independent members in the same sense of the vote issued by the trustee of the trust estate or to whom it is entrusted such functions, in case they belong to

the technical committee. When the agreements stipulate the waiver by the holders to exercise their right to appoint a member of the technical committee, should be to what for these assumptions is contemplated in the documents of the issue and, in any case, will suffice Notification to the fiduciary or common representative by any means established in such documents.

6. In the event that the resources of the issuance are intended to be used predominantly to grant loans, loans or financing to Mexican companies or the acquisition of debt securities issued by them, charged to the trust's equity, and additionally intend to contract credits or loans, it should be noted:

   6.1. That the amount of the total assets, as defined in annex AA of these provisions, may at no time be greater than 5 times the book value of the fiduciary stock certificates of investment projects issued. In any case, the level of leverage must be calculated in accordance with the provisions of said annex and disclosed in terms of article 35 Bis 1 of these provisions. Additionally, it will be established that in the event that the issuer exceeds the maximum limit indicated in the previous paragraph, no additional liabilities may be assumed against the trust equity until the issuer complies with the aforementioned limit, except in the case of operations of refinancing to extend the debt maturity of the issuer and the technical committee document the evidences of such situation. In any case, the result of said refinancing may not imply an increase in the level of leverage registered before the said refinancing operation.

   In the event that the issuer exceeds the limit referred to in this numeral, the trustee of the trust estate or who is entrusted with such functions, must submit to the general meeting of holders a report of such situation, as well as a corrective plan in the one that establishes the form, terms and, in its case, term to comply with the limit. Prior to its presentation to the assembly, the plan must be approved by the majority of the indepen-

dent members of the technical committee within a period of no more than 20 business days from the date on which the excess is given to said limit. In any case, the corrective plan must contemplate what is indicated in the previous paragraph.

6.2. The obligation to comply with an index of service coverage of the debt, at the time of taking on any credit, loan or financing charged to the trust's assets. This index must be calculated in accordance with the provisions of annex AA of these provisions, with figures at the close of the last quarter reported and may not be less than 1.0. Likewise, the index should be revealed in terms of article 35 Bis 1 of these provisions.

Additionally, it should be established that in the event that the service coverage ratio of the debt is less than 1.0, no additional liabilities may be assumed against the trust estate, except in the case of refinancing operations to extend the maturity of the indebtedness of the issuer and the technical committee document the evidences of such situation. In any case, the result of said refinancing may not imply a decrease in the calculation of the service coverage index of the debt registered before the said refinancing operation.

In the event that the service coverage index of the debt referred to in this numeral is less than 1.0, the provisions of the previous paragraph 6.1., last paragraph shall apply.

The technical committee should monitor the establishment of mechanisms and controls to verify that the contracting or assumption of loans, loans or financing comply with the provisions of the applicable regulations and these provisions.

For purposes of the provisions of this section, at least 70% of the resources of the issue shall be considered a preponderance.

In the case of fiduciary stock certificates of investment projects that are issued under the capital call mechanism, 70% of

the resources will be in respect of the maximum amount of the issue.

It must be foreseen that in no case may the issuer allocate more than 20% of the trust's assets to the acquisition of debt securities registered in the Registry. In these cases, the provisions of numeral 13 of this subsection shall not apply.

In case the issuer exceeds the limit referred to in the previous paragraph, the provisions of section 6.1., Last paragraph of this subsection, shall apply.

7. In case of issuing under the capital call structure:

7.1. The express mention of such circumstance.

7.2. The certificate of emission of which the corresponding title will be part, in which, at least, the following is stipulated:

7.2.1. The designation of the person in charge of keeping a record that contains the amount of the resources obtained corresponding to the minimum initial contribution and to each call of capital for each holder of the fiduciary stock certificates.

7.2.2. The policies, procedures or mechanisms to carry out the offer of the fiduciary stock certificates, the amount to which the capital calls could be made, the mechanism of subscription and payment of the minimum initial contribution, as well as the form and term in which the issuer could exercise the option to make capital calls. The minimum initial contribution can not be less than twenty percent of the total that the issue can reach.

7.2.3. The number of days in advance with which the issuer must give notice to the holders before a capital call, which in no case may be less than 15 business days from the date on which the resources should be contributed.

7.2.4. The conditions for the transfer of the fiduciary stock certificates, if

they are established, which may not absolutely restrict the transfer of the securities.

7.2.5. The conventional penalties that the issuer will apply in the event that one or several holders of fiduciary securities of investment projects do not comply in a timely manner with the capital calls, the consequences that will be generated on the other holders, as well as the actions that the issuer could exercise in relation to the capital call in question. Likewise, the procedure for modifying the aforementioned conventional penalties must be specified. The duly protocolized issue certificate must be delivered to the Commission, no later than the date of the issue date.

7.3. The description of the cash management systems for the management of the resources coming from the calls of capital that counts.

7.4. That the Commission may request authorization to make various public offers until reaching the minimum initial contribution amount, provided that it is determined in the documents of the issuance the way in which the price at which the certificates will be placed will be calculated. In any case, the maximum period in which public offers may be carried out referred to in this numeral will be 1 year, once the initial public offering has been made. When the issuer does not place the amount of the original minimum contribution, within the term established in this subsection, it will be subject to the provisions of article 14 of these provisions. In the event that the Commission has authorized the making of various public offers referred to in the preceding paragraph, in order to make the subsequent offers to the initial one, the issuer must accredit before the Commission that it is up to date in the delivery of the periodic information to referred to in Title Four of these provisions. In these cases, it will

not be necessary for the general meeting of holders to approve the subsequent offers.

The issuer prior to carrying out the placement of each offer, must inform the Commission, 2 business days in advance of the closing of the book, the characteristics of this, as well as submit the offer notice referred to in article 2., fraction I, paragraph l), of these provisions.

7.5. The placement prospectus shall expressly mention that it is possible that one or more holders of the tust stock certificates do not cover in time and form with the capital calls, which could impede compliance with the business plan and investment calendar. Likewise, it should be clearly established that this risk is additional to those derived from the investment in activities or projects of several companies, or from the acquisition of securities representing the capital of companies.

When the issuer has chosen to register the securities under the capital call mechanism and intends to increase the amount by which they could be made, in the event that it has additionally made a capital call, it must submit a copy before the Comission, of the minutes of the general meeting of holders in which said extension has been approved with at least the consent of 75% of the holders of investment proyects trust stock certificates.

8. In the event that the resources of the issuance are intended predominantly to invest in collective investment mechanisms not listed on any stock exchange, the mention in the terms of the provisions of the placement prospectus in accordance with Annex H Bis 5 of these provisions, that the financial information referred to in section II of article 33 of these provisions may be disclosed no later than 20 business days after the end of the quarter following that corresponding to information. Likewise, it must be specified that the annual financial statements or their equivalents referred to in numeral 3., of subsection a), of fraction I, of article 33, as well as the annual report referred to in numeral 1., of the

subsection b) of fraction I of said article 33 of these provisions shall be presented no later than June 30 of each year. For purposes of the provisions in this section, at least 70% of the resources of the issue shall be considered a preponderance. In case they are issued under the capital call mechanism, 70% of the resources will be in respect of the maximum amount of the issue.

9. When there is intention to acquire shares or negotiable intrusments that represent them registered in the Registry or issued by Mexican companies that have been publicly offered abroad, the investments or acquisitions made by the trust must represent at least 20% of the capital stock of the company in question. They may acquire shares or negotiable instruments that represent them, registered in the Registry, for a lower percentage than that provided for in the preceding paragraph, provided that there are co-investment agreements with other investors that allow them to jointly acquire at least 20% of the capital stock of the company in question, as well as that the issuer of investment projects trust stock securities be part of the administration for the corresponding company. In the event that the issuer does not comply with the conditions referred to in this numeral for purposes of making the acquisitions, the provisions of section 6.1., Last paragraph of this subsection, shall apply.
10. The right of the holders to request the common representative or the fiduciary to have access to information free of charge that the issuer is not obliged to disclose to the investing public in terms of Title Four of these provisions, provided that they accompany the request with a proof of ownership for the respective securities, issued by an institution for the deposit of securities. Said information must be related to the investments that the issuer intends to make, without disregard for the provisions in terms of confidentiality and conflicts of interest established in the base documents of the issuance.
11. The obligation to hire a common representative, specifying their rights and obligations, as well as the terms and conditions under which they may be removed and the designation of a new one.
12. Regarding the trustee of the trust estate or to whom such duties are entrusted:

12.1. The terms and conditions under which it will act regarding his powers for acts of administration and control.

12.2. That the compensation scheme, commissions and incentives be established in such a way as to take care of the interests of the holders at all times.

12.3. Its liability regime, including the payment of damages, unless contractual penalties have been agreed.

12.4. The obligation to deliver to the technical committee, the common representative and the holders of the trust stock certificates of investment projects that request it, a quarterly report on the performance of their duties, as well as the information and documentation that is requested in the fulfillment of its duties.

12.5. The obligation to perform is duties diligently, acting in good faith and in the best interest of the trust and the holders.

13. The possibility of investing in short-term securities registered in the Registry, provided they are temporary investments made while the investments to which the resources of the issuance are destined are carried out, in accordance with what is established in the placement prospectus.

14. The periodicity with which the valuation of the certificates should be carried out. In any case, it must be foreseen that the valuation will be carried out at least once a year.

15. The policies according to which the trust assets will be invested.

16. The policies of acquisition or disposal of assets or rights.

17. The operation policies with persons related to the projects and companies over which the trust makes investments, of the trustor, of the administrator of the trust estate or to whom those duties are entrusted, as well as of the investor with which there are co-investment agreements or, that could represent a conflict of interest. Said policies must include, at least, the following:

17.1. The types of projects or companies referred to in subsection b) of this section, in which transactions with related persons or with potential conflicts of interest may be carried out.

17.2. If it will have an analysis or valuation of an independent third party regarding the price or terms of the respective operation. In the event of not having this, the corresponding risk factors must be included in the placement prospectus.

17.3. The rights and obligations of the parties participating in the respective project or company, as well as the priority that, where appropriate, it exists for the exercise of said rights.

Additionally, it should be foreseen that in the event that the transactions with related parties intend to be made without complying with the policies mentioned in this section, prior approval of the general holders meeting will be required.

18. The rules for entering into any credit or loan with cost to the trust's estate, by the trustor, administrator of tust's estate or to whom saud duties are entrusted, or by the fiduciary.

19. In the event that series granting limited voting rights are issued, they must consign the obligation to pay distributions in a preferential manner to the holders of said series.

20. In the event that the trust agreement provides for the existence of similar vehicles or that co-investment agreements with other investors have been entered into, in order to invest jointly with the issuer, it must be established that it will have, at least, the same economic and voting rights of those planned for the similar vehicles or co-investment agreements mentioned above in relation to the investments made jointly.

21. The characteristics and eligibility criteria of the companies or projects in which the trust will invest. These documents must contemplate criteria of diversification and degrees of concentration by type of industry and assets subject to investment.

b) The draft title referred to in Article 2, section I, paragraph e), of these provisions, in addition to the provisions of Article 64 of the Securities Market Law, must state that there is no obligation for the issuer to pay a sum of money with regards to principal and, if applicable, interests. Additionally, it must foresee that the distribution of profits or losses will be proportional to the amount of the contributions and that one or more holders can not be excluded in the individual share corresponding to the gains or losses

associated with the investments charged to the trust's estate, as long as, for the case in which they have been issued under the mechanism of capital calls, for the distribution of the profits also the holder in question, has attended these in time and form. These securities may express nominal value and it must be foreseen that a minimum number of investors will not be necessary for listing or maintaining the listing on the stock exchanges. Likewise, in the case of trust stock certificates of investment projects issued under the capital call mechanism, they must expressly state that in matters not foreseen in the title, the provisions of the deed of issuance referred to in the previous subparagraph a), numeral 7.2., shall apply.

In the event that the resources of the issuance are intended to be used predominantly to grant credits, loans or financing to Mexican companies charged to the trust's estate, and additionally intend to contract credits or loans, the draft title must also provide for the provisions in number 6., of subsection a) above.

Likewise, they must present the documentation contained in numerals 2., 3., 4., and, if applicable, 1., and 6., of the fraction II, clause b) of this article. In any case, they must present the balance of the trust's estate.

Article 7 Bis

The issuers, in addition to the information and the documentation required in accordance with articles 2, 3, and 4 of these regulations, must file before the Commission, a document with key information for the investment, which contains the information detailed in exhibit H Ter of these regulations in order to obtain registration in the Registry.

The preliminary documents with the key information for the investment filed before the Commission for their authorization, may omit information related to the price, rate and definitive amounts, as well as information that can only be known until a day before the beginning of the public offer.

The issuers whose purpose is to issue debt instruments, with a term equal to or less than 1 year or that request the registration of their securities in the Registry without a previous public offer; will not be required to file the documents with key information for the investment.

Except as provided by this article, the key information document for the investment will be subject to the same provisions governing the prospectus placing.

Article 8

In the case of stock corporations (*sociedades anónimas de capital variable*), the issuers shall establish in their corporate by-laws:

I. A fixed minimum capital.

II. The stipulation that the increases and decreases of the variable portion of the capital stock must be approved by the ordinary or extraordinary shareholders meeting, at their convenience, and the minutes resolving such shall be notarized, unless they are the increases or decreases referred to in article 56 of the Securities Market Law.

Second paragraph.—Repealed

The provisions of this article will not be applicable to the issuers referred to in article 4 of these provisions.

Chapter Two Registration without a public offering

Article 9

The issuers that wish to obtain the registration of their securities in the Registry without making a public offering must request this from the Commission providing the documentation and information referred to in articles 2, section I, except for paragraphs k), 1) and m), 3, except for section X, 4 and, in relevant part, 7 of these provisions. The issuer shall deliver the informational brochure in accordance with exhibits H, H Bis, H Bis 1, H Bis 2, H Bis 3, H Bis 4, H Bis 5, I or L, as applicable, of these provisions, signed by the persons referred to in articles 2, section I, subsection m), numbers 1 to 3, 5 and 6 and 3, section X, subsections a), c) and d), of these provisions, as applicable.

Likewise, in the case of registration of securities of debt instruments, structured securities and asset-backed securities, as long they all have a term greater than 1 year with no public offer; the issuers may adjust to the procedure of authorization of the forma of the informative supplements and notices established in article 13 Bis of these regulations. The provisions of article 13 Bis 1 shall also apply to this section.

In the case of stock, the Issuer shall amend its by-laws in accordance with article 8 above prior to obtaining its Registration.

Chapter Three Preventive Registration

Section I Generic registration

Article 10

The preventive registration of securities in the Registry in a generic form will be granted by the Commission in conformance with article 93 of the Securities Market Law, the advance written communication of the issuer indicating the characteristics of the securities to be registered being sufficient.

Under cover of a preventive registration, in generic form, the issuers may make one or more issuances of securities thereunder and will provide the Commission, electronically, no later than the third busi-

ness day following the day on which an issuance has occurred, with the information indicated in exhibit G of these provisions, and will have deposited the securities in an institution for the deposit of securities when so required. Once this information is presented, the Commission will proceed to make the registration of the securities in the Registry.

In the case of a preventive Registration, in generic form, of shares representing the capital stock of investment companies of any kind, the request for Registration accompanied by a simple copy of the public instrument recording their corporate by-laws will be sufficient, and one or more issuances of shares may be carried out under such Registration.

The issuers that register their securities as a preventive measure and in generic form will not be obligated to present the periodic information referred to in Title Four of these provisions.

Section II Preventive registration of shares

Article 11

Issuers may request from the Commission authorization for the preventive registration of their shares in the Registry as a prior listing (*listado previo*), including with their request the documentation referred to in article 2, section I, except as established in subsections e), k), 1) and number 4 of subsection m), as well as article 7, section I, of these provisions. In all cases, the issuer shall deliver the informational brochure in accordance with exhibits H or H Bis, as applicable, of these provisions, signed by the persons referred to in article 2, section I, subsection m), numbers 1, 3, 5 and 6 above and, when applicable, number 2 of the mentioned subsection m).

The preventive Registration in the form of a prior listing will allow the Issuer to make the public offering of the shares being registered within a non-extendible term of 2 years. Such public offering may be carried out provided that:

I. As of the time when the authorization for the preventive registration in the form of a prior listing is obtained, the provisions applicable to the issuers with securities registered in the Registry referred to in articles 104 to 106 of the Securities Market Law, with the adjustments set forth for such in Title Four of these provisions, have been complied with.

II. The issuer requests the authorization of the documentation referred to in article 2, section I, subsections 1) and m) of these provisions, accompanied by the documentation referred to in section I, subsections e) and k) of such article 2. In addition, its by-laws must be amended in conformance with article 8 of these provisions.

Once the information referred to in section II above is presented, the Commission will register the shares in the Registry.

In the event that the Issuer that has obtained the Registration referred to in this article does not provide pursuant to the terms and

conditions indicated in Title Four of these provisions, the annual or quarterly information referred to, the Commission, after giving the interested party an opportunity to be heard, will cancel such Registration.

In addition, the Issuer may request from the Commission the cancellation of the preventive Registration involved.

Article 12

The Stock Exchange shall provide the measures necessary for the establishment of the corresponding Issuers list, with the same effects as the preventive Registration referred to in the prior article.

Section III Preventive registration of securities to be issued under placement programs

Article 13

The issuers may request from the Commission the preventive registration of debt instruments in the Registry, under a placement program, with purpose of having the possibility of issuing and placing one or more series of securities, successively during a specific term and for a specific amount, whether or not revolving, provided the following requirements are met:

I. That they include with their request the documentation referred to in articles 2, 3, 4 and 7 of these provisions, as applicable. In the case of debt instruments with a maturity date greater than 1 year, in which there is no initial placement, they will not be obligated to present the information indicated in articles 2, section I, subsections e), k) and 1), nor that indicated in article 7, section III.

The placement prospectus, the independent legal opinion and the Stock Exchange opinion shall refer to the placement program.

In the event that the terms under which the legal opinion of the program are changed or if 1 year has passed since its issuance, the Issuer shall present a new independent legal opinion, before making additional placements under the program.

II. That they request the authorization of the notice and of the informational supplement referred to in articles 2 section I, subsections 1) and m) or 3, section X, as applicable, of these provisions and include the certificate and the contract indicated in paragraphs e) and k) of such article 2 section I, as well as the certification referred to in article 7, section III, subsection a) above, before making the placement of each issuance, in the case of issuances of debt instruments with a maturity date greater than 1 year.

The term of the program may be determined freely by the Issuer. In all cases the Issuers in the issuance and placement of their securities shall comply with the legal and administrative provisions applicable on the date of the issuance. In the event that the issuer does not make the first placement of the securities under the corresponding program, in a non-extendible term of 1 year, counting from the date

on which the preventive registration of the securities is granted, such registration will be invalid. Once the corresponding placement is made, the Commission will make the registration of the securities in the Registry.

The issuers shall comply with the delivery of the information referred to in articles 104 to 106 of the Securities Market law, complying for such purposes with Titles Four and Five of these provisions, from the time at which they obtain the authorization of the preventive registration of the respective placement program, otherwise the registration will be cancelled.

Article 13 Bis

The issuers that request the preventive registration of securities to the Commission referred to in article 13 of these regulations, may request at the same time the authorization of the forms used as informative supplements and notes referred to in articles 2, section I, subsections l) and m) or 3, section X of these regulations, as well as the form to be used as a key information document for investment, as provided in the instructive for the development of prospectus placing that applies according to the placing of the class of security, contained in these regulations. The foregoing shall be equally applicable to the authorization of the placement of securities in series referred to in article 9, second paragraph of these regulations.

The informative supplement and authorized notes formats under this article may be used in each of the placements of each issuance made under the program or authorization of registration for placing the securities in series, without requiring another authorization of the Commission. Notwithstanding the above, the issuers must provide to the Commission the documentation referred to in the sixth paragraph of article 13 above and must keep it public and available to investors, for at least two business days prior to the setting of the price or closing of the book, as an exception to the provisions of article 23 of these provisions.

For purposes of obtaining the authorization referred to in this article, the issuers and, where appropriate, the settlor, administrator, or assignor of the assets in trust, as well as endorsements, guarantors, or any third party of whom there is partial dependence, whenever they are issuers, must express that they comply with the provisions of the following sections, when requesting preventive registration of securities, or registration of securities issued in series:

I. Having the securities registered for more than a year in the Registry.

II. Having complied with the maintenance requirements of their securities set forth in the internal regulations of the Stock Exchange.

III. Having complied in a timely manner with the payment obligations arising from the securities registered in the Registry;

IV. Not having received by the Stock Exchange the imposition of any disciplinary or corrective measure, and

V. Not having been sanctioned by the issuer, the members of the board of directors or executive officers for serious violations of the Securities Market Law and general provisions that arise from such Law, or been considered as a reincident in terms of the provisions of this legal system.

The provisions indicated in the previous sections must be accredited in the two years immediately preceding the date of filing of the request for authorization. Without limiting the foregoing, in each issuance made under the placing program or in each issuance in series of authorized securities, issuers must demonstrate that they have complied with the sections contained in this article, and shall include in the cover of the informational supplement or authorized notices, the statement set out below, signed by the persons listed in article 2, section I, subsection m) of these provisions, as applicable:

> Likewise, we declare that as of the date of filing of this informative supplement or corresponding notes and based in the information we have at our disposition, in good faith and to the best of our knowledge, the issuer falls within the the presumptions in article 13 Bis of the "General regulations applicable to the issuers of securities and other participants of the Stock Market" published in the Official Gazette of the Federation on March 19, 2003 and its respective amendments.

In the placements made under the provisions of this article, partial dependence regarding any third party different from such parties for which information of the prospectus placing filed in the application for authorization was disclosed, shall not exist.

The issuers that have made a corporate restructure, during the immediately prior fiscal year or during the subsequent intermediate periods to said fiscal year and prior to the date of the placement, or intend to conclude a corporate restructure with the resources obtained from the issuance, must suspend the usage of the informative supplements form and notes referred in this article, until they disclose to the general public the information referred to in article 35 or, were applicable, the second to last paragraph of subsection f), section I, article 2 or second to last paragraph of section V, article 4 of these regulations.

The issuers that have a placement program authorized in terms of article 13 of these regulations, during the program term or the term of the issuance authorization to place securities series, may require the authorization referred to in this article; likewise, in such circumstances it may also request authorization to change the forms of the informative supplements and notes. Under this last presumption, it will be sufficient that the issuer declares to the Commission that it complies with the conditions mentioned in this article.

Article 13 Bis 1

The Commission may cancel the preventive registration granted under Article 13 of these regulations or the authorization to place securities in series, when the issuers who have obtained authorization

from the previous Article 13 Bis, stop updating any of the requirements of sections I to V of such article at any time, or, fall within the presumptions referred to in the second to last paragraph of this article and have not disclosed the information referred.

In these cases, issuers shall not re-apply authorization from the Commission of the informative supplement forms and notes in terms of the provisions of article 13 Bis of these regulations, until two years have elapsed from the corresponding cancellation, regardless of the sanctions that may proceed, if applicable.

Chapter Four Updating, Annotation and cancellation of the Registration

Section I Updating of the Registration and of the Annotation

Article 14

The issuers shall request the updating of the registration in the Registry and the annotation in accordance with the following:

I. With regard to the Updating of the Registration of shares or negotiable instruments, in the case of increases, decreases or any type of transformation of the capital stock, in the number, class or series of the shares, the corresponding request shall be presented to the Commission together with the following information and documentation:

a) Those indicated in articles 2, section I, subsections b) and d), 4, sections II and IV, and 7, section I, subsection a), number 1. of these provisions.

b) A copy of the provisional certificate to be deposited in substitution of the above in a securities deposit institution.

c) The legal opinion referred to in articles 2, section I, subsection h), or 4, section VI of these provisions, as applicable, as well as the document provided by the third paragraph of article 87 of these provisions, signed by an attorney as mentioned in such article, in the case of capital increases, an increase in the number of shares and a change of the shareholding series.

In the event that it is intended to make a public offering of the shares whose Registration is to be Updated, the information indicated in article 2, section I, subsections a), k), 1) and m) of these provisions shall also be presented.

II. With regard to the Updating of the Registration of debt instruments, structured securities, optional instruments and trust instruments representing property other than shares, the corresponding request shall be presented to the Commission together with the documentation indicated in article 2, section I, subsection b) of these provisions, as well as the draft of the minutes of the meeting of the securities holders. The minutes of the holders meeting need not be

presented in the event that the corresponding security or indenture establishes that the increase of the debt instruments will not require the holding of such holders meeting.

In addition, the legal opinion referred to in articles 2, section I, subsection h) or 4, section VI of these provisions, as applicable, as well as the document provided by the third paragraph of article 87 of these provisions, signed by an attorney as mentioned in such article, shall be presented in the event that the instrument involved should be substituted, as well as a copy of the provisional certificate to be deposited in a securities deposit institution.

To update the registry of development, real estate, energy and infrastructure investment trust securities, the corresponding request shall be filed before the Commission together with the documents mentioned in article 2, section I, subsection b) of these provisions.

Likewise, the notice must be submitted for informative purposes, including the general characteristics of the securities and corresponding updates, in which, where applicable, the credit rating provided by at least one rating institution is confirmed. The documents referred in the previous paragraphs must be annexed to the notice.

III. With regard to the Annotation, the corresponding request shall be presented to the Commission, specifying the change that shall be made in the corresponding registry entry and, if applicable, a copy of the shareholders meeting minutes, resolution of the board of directors of the Issuer, of the technical committee of the trust or of the holders meeting, in which the change has been resolved.

The issuers that request the annotation to establish that their securities can only be acquired by institutional or qualified investors to participate in restricted public offers, must demonstrate to the Commission that, at the time of the submitting the request, such investors are the only holders of said values. Once the annotation is made, these provisions for restricted public offers will be applicable.

The Commission will proceed to update the registration without request, when the issuers of development or real estate trust1 stock certificates do not reach the amount of the minimum initial contribution within the period established in article 7, fractions VI, subsection a), numeral 5.5., VII, subsection a), numeral 6.5., and IX, subsection a), numeral 7.4., of these provisions.

Article 14 Bis

The issuers that have placed their securities through a restricted public offer may request the Commission to update the registration of such securities so they can be acquired by any type of investor, as long as, if at the moment of the request it proves that the disclosure of information to which articles 33, section I, subsection b), and section II, with the frequency indicated in such provision, was performed as if it were a public offering that was not restricted. Additionally, it must comply with the other requirements set forth in article 14 section I of these regulations.

Section II
Cancellation of the Registration and Cancellation of the Stock Exchange Listing

Article 15

The Issuers that request the cancellation of the Registration of their securities in the Registry shall comply with the following:

I. File a request for cancellation of Registration that contains information regarding the security, as well as the reason for the cancellation.

II. In the case of stock, in addition:

a) Comply with article 108 section II of the Securities Market Law and, as applicable, the provisions of the following Chapter Five.

b) File a copy of the minutes of the extraordinary shareholders meeting indicating the Public Registry of Commerce registration data or a record of the processing of the registration before such Registry, containing the decision to cancel the Registration of shares representing the capital stock of the Issuer.

c) In the case of the Issuers referred to in article 4 of these provisions, the resolution or decision of the competent corporate body that decides to cancel the Registration, with its translation into Spanish by an authorized translator.

III. In the case of debt instruments, in addition to the information indicated in section I of this article:

a) Record certifying no debt or partial or total amortization, issued by a securities deposit institution or liquidating agent or a copy of the cancelled certificate.

In the case of programs with issuances with a maturity date equal to or less than 1 year, the certifying record shall be presented with respect to the issuance to which the last maturity date corresponds.

b) In the case of matured and unpaid instruments, a copy of the resolution of the holders meeting determining the registry cancellation.

IV. With respect to development, real estate, energy and infrastructure investment, or investment projects, they shall additionally be subject to the provisions of article 108 of the Securities Market Law and the provisions of Chapter Five of these provisions.

Article 15 Bis

The stock corporations that request the cancelation of the titles that represent the capital stock in the Registry, shall be exempted from performing the public offer of acquisition in accordance to section II of article 108 of the Securities Market Law, if any of the following apply:

I. Evidence to the Commission to have the consent of the shareholders that represent at least 95% of the capital stock of the company, granted through resolution in a meeting and that the amount to offer for the shares placed in the investing public is less than 3000,000 investment units.

Likewise, such companies shall incorporate the trust mentioned in the last paragraph of section II of article 108 of the Securities Market Law, as well to notify the cancelation and execution of said trust through the SEDI. The abovementioned will apply to the ordinary certificates of participation of stock, as well as the titles that represent two or more shares in one or more series of shares of the company.

II. Merge with another stock market company, as long as the merging stock market company evidences before the Commission to comply with any of the following requirements:

a) Having performed a mandatory public offer of acquisition of 100% of the stock that represent the capital stock of the publicly traded company merged, pursuant to article 98 of the Securities Market Law.

b) Having obtained the authorization provided by article 102, section VI of such Law, through which the exception to perform the mandatory public offer of acquisition is granted.

The trust referenced in article 108, section I, subsection c) of the Securities Market Law, shall be executed in the event that an investor of the publicly traded company merged did not received the corresponding stock as a consequence of the execution of the merger agreements. At all times, the affected resource or stock shall be sufficient to answer at the same amount of the exchange provided in the merger.

The abovementioned will not be applicable to publicly traded companies mentioned in article 4 of these provisions.

Article 15 Bis 1

Issers that intend to cancel the listing of some or all of their securities in a stock exchange for the purpose of listing them in another, must be up to date in the delivery of the periodic information referred to in Title Four of these provisions, complying with the requirements that the exchanges determine in their internal regulations, as well as adjusting to the following:

I. Have the prior approval of its board of directors, the technical committee of the trust in question, the local legislature or municipal council, as appropriate.

II. Submit on the same date both the request for cancellation of the listing in the stock market in which their securities are listed, and the listing request of these in some other stock exchange, with at least ten business days in advance of the scheduled submission date for the cancellation and the new list of values to go into force.

III. Request the Commission to take note of the cancellation and the new list of securities, in accordance with article 14, section III of

these provisions, on the same date in which the requests referred to in section II above are submitted.

IV. Publish the relevant event referred to in article 50, section III, subsection j) of these provisions, on the day on which the board of directors, the technical committee of the trust, the local legislature or municipal council, as appropriate, decide to cancel the listing of the securities in the stock market in which they are listed. Likewise, publish the relevant event referred to in the aforementioned article, the day they receive the favorable opinion of the stock exchange in which they will list some or all of their securities in accordance with the provisions of article 89, second paragraph of the Securities Market Law.

V. Make available to the public, through the SEDI of the exchange in which the new list of securities is made, no later than the same day on which they receive the favorable opinion, such information presented during the last three years pursuant to Title Four of the present provisions.

In the case of issuers that have less than three years of periodical information in terms of Title Four of these provisions or whose securities has less than three years being listed, they must make available to the public, through the SEDI of the corresponding stock exchange, the information and definitive documentation they have submitted for obtaining the original list of said securities, as well as the one that they have been required to reveal to the public as of that date pursuant to Title Four of these provisions.

The exchange that receives the request to cancel the listing of any or all of the securities of an issuer referred to in section II, must notify the issuer of the respective cancellation, stating that this will go into force at the end of the trading session of the business day prior to the date indicated by the other stock exchange to start the validity of the new list of securities in it. For purposes of the foregoing, the exchange to which the new list is requested, must communicate its resolution to both the issuer and the other exchange.

Chapter Five Public offer to buy

Article 16

The requests to obtain the authorization for a public offer to buy securities, voluntary or mandatory, in addition to the provisions of article 96 of the Securities Market Law, shall be presented to the Commission including all elements indicated in exhibit A-1 of these provisions, and accompanied by the following information and documentation:

I. Repealed

II. If applicable, the public instrument or certified copy containing the general or special power of the representative of the offeror, with the Public Registry of Commerce registration data, as applicable. In the case of entities, in addition, a certificate signed by the secretary of the board of directors verifying that the powers of the legal represen-

tative have not been revoked, modified or limited as of the date of presentation of the request.

III. If applicable, a copy certified by the secretary of the board of directors of the minutes of the shareholders meeting or of the resolution of the board of directors of the offeror that decides to make the public offer to buy.

IV. Preliminary informational brochure containing the information detailed in exhibit K of these provisions, considering for its preparation, as applicable, what articles 97, 98 and 108 of the Securities Market Law provide. Such informational brochure shall provide any right in favor of persons that have accepted the offer, decline its acceptance without penalty, in the event of modifications to the offer that are relevant at the Commission criteria in terms of section III of article 97 of the abovementioned law, or when other competitive offers are presented under better conditions. In any case, such right may not be waived or prohibited.

The mentioned informative brochure may provide that the offered consideration is totally or partially payable in cash or securities. In this later event, the consideration shall be precise with regards to the type of securities offered in exchange, as well as the procedure to calculate the exchange value.

The preliminary informational brochure presented to the Commission for its authorization may omit the information regarding the definitive price and amount, as well as any information that can only be known on the day prior to the initiation of the public offer to buy, having to be initialized in all of its pages by the offeror or its legal representative and signed in the final page by the offeror or its legal representative or by the legal representative of the intermediary that has a sufficient general or special power of attorney to bind the later, at the bottom of the legend provided by the last paragraph of this section

The informational brochure that is used for dissemination to the public at large shall be signed on the final page by the offeror or its legal representative or by the legal representative of the intermediary with a sufficient general or special power of attorney to bind the later, at the end of the following legend:

The undersigned declares under oath that he/she has no knowledge or any relevant information that has been omitted or falsified in this informational brochure for purposes of the public offer to buy or that it contains information that could mislead the public.

Two printed copies of the informational brochure shall be delivered to the Commission no later than the day of the initiation of the public offering in question.

V. If applicable, a copy of the prior contracts, acts or resolutions with other buyers, shareholders and board members of the Issuer, related to the latter, its shares or the offer to buy, and the indication of the existence of verbal acts or agreements and their results in this respect.

VI. Draft brokerage contract to be signed by the offeror and the broker, through which the offer to buy will be made.

The copy of the brokerage contract must be delivered to the Commission no later than the day on which the public offering in question is initiated.

VII. Draft notice of public offering with the information contained on the title page of the informational brochure referred to in section IV of this article.

The notice of public offering presented to the Commission for its authorization may omit the information regarding definitive price and amount, and any other information that can only be known on the day prior to the initiation of the public offering.

VIII. If applicable, opinion issued by an Independent Expert on whether the price of the offer is fair.

In the case of public offers to buy whose purpose is the cancellation of the Registration of the shares in the Securities Section, in the informational brochure referred to in section IV of this article, the terms and conditions of the trust referred to in article 8, section III, subsection b) of these provisions shall be disclosed.

In the case of public offers to buy whose purpose is the cancellation of the registration of the shares in the Registry, in the informational brochure referred to in section IV of this article, the terms and conditions of the trust referred to in article 108 section I subsection c) of the Securities Market Law shall be disclosed.

Article 16 Bis

The offering person or group of persons that intend to obtain control of an issuer through the performance of a public offer to purchase a percentage smaller than that provided by subsection II, section b) of article 98 of the Securities Market Law, shall integrate their request to obtain the corresponding authorization, pursuant to article 99 of the abovementioned law. In the event that the Commission grants such authorization, the issuer shall disclose to the offering public the approval by the board of directors provided by article 99 as a relevant event.

Article 16 Bis 1

The person or group of persons that through the execution of a public offer of purchase of less than 100% of the capital stock, voluntary or mandatory, causes that at least 12% of the paid capital stock of the issuer is among the investing public, pursuant to the information that the issuer provides to the offeror or group of offerors, will be obligated to extend the offer or perform in a term of 30 calendar days a second public offer of purchase, in both events, up to 100% of the capital stock of the issuer in the same conditions in which the original public offer was executed.

In the event that the offeror does not extend its public offer or does not carry out a second offer in terms of these provisions, article 103 of the Securities Market Law shall apply.

Article 17

Repealed.

Article 17 Bis

The applications to obtain authorization for a securities public offering of voluntary acquisition of development, real estate, energy and infrastructure investment, or investment projects, in addition to the provisions in article 96 of the Securities Market Law, must be filed before the Commission duly integrated according to exhibit A-1 of these regulations, accompanied by the following information:

I. Repealed

II. Where applicable, public instrument or certified copy containing general or special power of the representative of the bidder, with the registration data in the Public Registry of Commerce, where applicable. In the case of legal entities, additionally, a certificate by the secretary of the Board of Directors to authenticate that the powers of the legal representatives has not been revoked, modified or limited as of the date of the submission of the application.

III. If applicable, a copy certified by the secretary of the Board of Directors of the minutes of shareholders meetings or the agreement of the Board of Directors of the bidder, that determined to make the public offer purchase.

IV. Preliminary prospectus containing information set forth in exhibit K of these regulations, considering for its preparation, where applicable, the provisions in article 97 of the Securities Market Law. Such informative prospectus must provide the right in favor of the persons who have accepted the offer, to decline their acceptance without any sanctions, in case modifications are made to the offer that are considered relevant in the Commission's judgment in terms of section III article 97 of the same legislation, or when other competitive offers are presented under better conditions. In no event shall this right be waived or prohibited.

The referred informative prospectus may establish the consideration offered either totally or partially payable in cash or securities. In this last case, the consideration must be precise as to the type of securities offered in exchange as well as the procedure to calculate the value of the exchange.

Likewise, the preliminary informative prospectus that is filed before the Commission for its authorization, may omit the information regarding the price and definite amounts, as well as such information that can only be known until the date prior to the beginning of the public offer of acquisition.

The informative supplement used for the dissemination to the open public, shall be subscribed in the final page by the bidder or by its legal representative of the intermediary that has general or special power sufficient to bind the latter, in terms of the following legend:

"The undersigned, declares under oath that, that he/she is not aware of any relevant information that has been omitted

from or falsified in this informative supplement in connection with the public offer for purchase that may mislead public investors."

Two printed copies of the informative supplement must be filed before the Commission no later than the first day of the public offer in question.

V. If applicable, a copy of the contracts, acts or previous agreements with other buyers and holders of securities of the issuer or the purchase offer, additionally declaring the existance of facts or verbal agreements and the related result.

VI. Draft of the brokerage contract to be signed between the bidder and the intermediary through which it will conduct the purchase offer.

A copy of the brokerage contract must be filed before the Commission no later than the day of the public offer in question.

VII. Draft of the notice of the public offer with the information contained in the cover page of the supplement referred in section IV of this article.

The notice of the public offer filed with the Commission for its authorization, may omit the information concerning the price and definite amount, as well as to that information that can only be known until the date prior to the beginning of the public offer.

Chapter Six Other provisions applicable to the Registration and public offering of securities

Article 18

The issuers or, if applicable, the offeror, shall publish the notice of public offering referred to in articles 2, section I, subsection 1) and 16, section VII of these regulations in the SEDI prior to the beginning of the stock exchange session in Mexico, on the date of determination of the exchange rate or the closing of the books on a daily basis, during the term of effectiveness of the offer and on the payment date.

Brokerage firms shall inform their clients of the initiation of a public offering in the event they are shareholders of the Issuer and shareholders of indexed, development, real estate, energy and infrastructure investment, or investment projects trust securities, when such shares or securities are subject to an initial public offering.

Article 19

The Issuers, the securities market brokers, the shareholders or any other person, in the dissemination of information through any mass media that, for purposes of promotion and publicity about securities, they engage in for public offerings, shall comply with the following:

I. Obtain the prior authorization of the Commission.

II. Disseminate the information involved after the prospectus or informational supplement has been disclosed pursuant to article 23 of these provisions.

III. That the information includes, at least, the name of the issuer, type of securities and name of the placement broker from whom additional information can be requested, as well as the mention referred to in article 86, penultimate paragraph of the Securities Market Law.

IV. That only the information contained in the placement prospectus, brochure or informational supplement is provided. In all cases the information shall be clear, objective and true.

V. That the information contains the authorization number of the Commission, and a legend indicating that all the Relevant Information of the Issuer, especially information regarding factors of risk, is detailed in the placement prospectus or informational supplement, which may be accessed through the Internet web page of the Stock Market in which the securities will be quoted.

VI. In the case of restricted public offers the information and documentation for the purpose of promotion, commercialization or advertising of securities subject to the restricted public offer, must evidence that the investors to whom the offer is addressed are institutional investors and qualified to participate in restricted public offerings.

The information that is disclosed through telephone conference calls, stock market meetings or presentations, including those transmitted by Internet, do not need to be authorized by the Commission, but in all cases shall comply with sections II and IV above and where applicable, section IV of this article, and any material that is presented or distributed shall be sent to the Commission.

Article 19 Bis

In the case of companies of foreign nationality, trusts or any other vehicle for the issuance of securities authorized or registered in any foreign securities market recognized with which the stock exchanges have concluded an agreement whose public offers have been recognized by the Commission, on the occasion of the public offer they have made, they must inform the public investor, with the same opportunity and periodicity through the website of the web page (internet) that the exchanges enable for this purpose, the financial, economic, accounting and that they submit to the agency or agency with functions equivalent to those of the Commission in their country of origin or to the foreign exchange where their securities are traded. In any case, they must transmit to the stock exchanges and on the same date to the Commission through STIV-2, at least, the following information:

I. The suspension or cancellation of the quotation of its securities that the stock exchange in its country of origin has decreed, as well as when said suspension of values has been lifted.

II. The cancellation of the registration of their securities by the agency or body with functions equivalent to those of the Commission of their country of origin.

III. The imposition of sanctions by the dependency or body with equivalent functions to those of the Commission or the stock exchange of your country of origin.

Article 20

The brokerage firm that operates as a Placement Intermediary of the securities to be publicly offered, except for debt instruments with a maturity date equal to or less than 1 year, shall inform the Commission, the Stock Market and the corresponding Issuer, no later than 5 business days immediately following the liquidation of the placement transaction, the number of purchasers and the degree of diversification of the holding of the securities that have been quoted on the Stock Market, using for such purposes the model form attached to these provisions as exhibit M.

In the case of placement operations in which more than one brokerage firm participates, the obligation set forth in this article shall be understood as referring to the brokerage firm that acts as Placement Intermediary, and therefore the other brokerage firms shall deliver the respective information to this latter, no later than the third business day immediately following the liquidation of the placement transaction.

For its part, the Issuer shall send to the Stock Exchange through the SEDI the information it obtains from the brokerage firm that has acted as Placement Intermediary on the number of purchasers and the degree of diversification of holding of the instruments that have been placed on the Stock Exchange, no later than the business day immediately following its receipt.

In case of shares, negotiable instruments representing shares, indexed, development, real estate, energy and infrastructure investment, or investment projects trust securities the placement intermediary must inform the Commission and the Stock Exchange, prior to the execution of the placing transaction, the number of investors who accepted the offer and may be considered as general public investors.

Article 21

Requests for registration and preventive registration under any of their 3 forms, updating of registration, annotation, cancellation and, if applicable, approval of public offering to buy or sell securities referred to in this Title, as well as the documentation and information that accompany them, shall be sent to the General Issuers Office of this Commission and be presented electronically, through the STIV, in the form and terms established in exhibit R of these provisions. In case of shares, negotiable instruments representing shares, indexed, development, real estate, energy and infrastructure investment, or investment projects trust securities; optional certificates and debt instruments that must be issued based on a bond indenture, a copy of the request and of the documentation and information referred to in the first paragraph of this article shall also be sent to the corresponding legal office of the Commission.

The Issuers or offerors shall file the requests containing the required information and documentation at least 20 business days prior to the projected date for making the public offering or the listing of the securities involved. In the case of debt instruments with a maturity date equal to or less than 1 year, at least 10 business days prior to the projected date for making the public offering or listing of the securities involved.

The requests and attached documentation will be published on the web page of the Commission at the following site http://www.cnbv.gob.mx/, at the latest the business day following its filing.

The issuers or bidders, provided they expressly declare their intention to maintain their process treated as confidential, may require the Commission and the stock exchange to postpone the availability to the public of the requests and other documents referenced in this article, as well as in order for the stock exchange not to disclose to the public the name of the company and the type of securities for registry, being necessary to fulfill with the terms mentioned in article 23 of this law. When there is information in the media regarding such process, that has been issued or disclosed by the issuer itself or by a third party, through the referred media in which such employers, shareholders, are mentioned or evidenced, the confidential treatment as to the existence of the process requested in accordance with this article will not apply being possible to withhold the documentation that integrates it.

The above, without affecting the prohibition provided in the third paragraph of article 85 of the Securities Market Law.

Article 22

Issuers that request the registration or preventive registration of securities in the Registry and, when applicable, authorization for the public offer to buy or sell, as well as the persons who request the authorization referred to in article 16 of these provisions, shall deliver to the stock exchange where they intend to list their securities or on which they quote the securities to be offered, a copy of the request with the documentation and requirements referred to in these provisions, on the same date on which they are delivered to the Commission, as well as present the preliminary placement prospectus, informational brochure or informational supplement through the electronic means that the stock exchange determines in its internal regulations.

Article 23

The relevant information and documentation referred to, to the extent relevant, in articles 2 to 4 Bis 1 and 16 of these regulations, indexed, development, real estate, or energy and infrastructure investment trust securities, shall be available at least 10 business days prior to the date of determination of the exchange rate or closure of the book. In the case of frequent offers, such information shall be available at least 5 business days prior to the date of the determina-

tion of the exchange rate or closure of the book. In the case of debt instruments or structured securities and trust securities on assets different from the shares, as long as all of them have a maturity date greater than 1 year, as well as securities of foreign national companies, trusts or any other vehicle for the issuance of authorized or registered securities In any recognized foreign securities market with which the stock exchanges have entered into an agreement, they shall be available to the public at least 5 business days prior to the determination of the exchange rate or closure of the book. For debt instruments, or structured securities and trust securities on assets different from the shares, with a maturity date equal or less than 1 year, as well as the public offer of shares of stock market investment promotion corporations, the information shall be available to the public at least 2 business days prior to the determination of the exchange rate or closure of the book. In the case of public offers to purchase, the information shall be available the day of initiation of the corresponding offer.

The issuers or offerors that do not observe the above indicated terms may not place the securities or, as the case may be, the public offer, whichever is applicable.

This is without prejudice of the prohibition established in the third paragraph of article 85 of the Securities Market Law.

The stock exchanges shall disclose through the mechanisms set forth in article 77, second paragraph of these provisions, the point at which the documentation referred to in the first paragraph of this article will be available to the public, indicating the name of the entity and the type of securities to be registered and listed, as well as the modifications referred to in the following article. Simultaneously, the stock exchanges will make available to the public, in their facilities, such documentation, as well as the preliminary placement prospectus, informational brochure or supplement, as of that same date, having to disclose these latter through their web page.

Article 24

Issuers and offerors, in the event they make changes to the preliminary placement prospectus, informational brochure or supplement or document with key information for the investment, shall inform the Stock Exchange of such, which will simultaneously substitute the cited documents for the modified ones, provided they are duly initialed by the legal representative of the Issuer.

In the event that relevant changes have been made in the information provided to the public pursuant to the third paragraph of the above article, the terms referred to in such paragraph will begin to run as of the moment such information is substituted in accordance with this article. The Issuers or offerors that do not observe the above indicated terms may not make the placement of the securities or, if applicable, the corresponding public offering.

On the date of initiation of the public offer, the stock exchange will

substitute the preliminary placement prospectus, informational brochure or supplement or document with key information for the investment for the definitive one. For such purposes the issuers will send to the stock exchange through the SEDI such documents, no later than 12 p.m. of the cited initiation date.

In the case of securities of companies of foreign nationality, trusts or vehicles for investment in securities authorized or registered in any recognized foreign securities market with which the stock exchanges have concluded an agreement, the definitive version of the information and documentation presented to the Commission in accordance with Article 4 bis of these provisions, must be sent through the STIV no later than the date of issuance of the respective securities.

Chapter Seven Notices of public offerings abroad

Article 24 Bis

The offerings abroad of securities issued in the United Mexican States or by Mexican legal entities, directly or through trusts or similar or equivalent figures, shall be notified to the Commission describing the principal characteristics of the offer including at least the following, as applicable:

I. Type of securities.

II. Name of the legal entity issuing the securities: In the case of entities that do not have securities registered in the Registry, their principal activities and domicile shall also be indicated.

III. Placement Intermediary.

IV. Total amount of the issuance and currency of issuance of the securities.

V. Dates and places of issuance and placement of the securities.

VI. If applicable:

a) Date of maturity of the issued securities.
b) Types of guarantees.
c) Interest rate.
d) Payment or installment intervals.

VII. Trading systems where the securities are listed.

VIII. Destination of the funds obtained from the placement of the securities.

IX. General description of the source of wealth of the payment, in the case of issuances of debt through trusts or similar figures.

X. Regulations applicable to the issued securities.

If the issuance is made through trusts or similar figures, the source of wealth, the name of the person who contributed it and the name of the entity making the issuance shall be described, as well as the purposes for which such trusts or figures were created.

In addition and in the case of issuances made under a placement program, the principal characteristics of such program shall be indicated, such as: name, amount, maturity date, and minimum and maximum term during which the issuances may be made.

Article 24 Bis 1

The notices referred to in article 24 Bis above shall be presented no later than the business day following the date of placement of the securities, be signed by a representative or attorney in fact and accompanied by the following documentation as applicable:

I. The documents through which the offer abroad is made and the propaganda and information sent to the investors, shall expressly specify what is indicated in the last paragraph of article 7 of the Securities Market Law, as well as the following information:

a) That the information contained in the documents used to make the offer is the exclusive responsibility of the issuer and has not been reviewed or authorized by the Commission.

b) The characteristics of the offer have been notified to the Commission for informational purposes only, which does not involve certification of the profitability of the securities or solvency of the issuer.

I. The information set forth in this section shall be contained on the cover page of the documents that are used to make the offer, in red ink or otherwise underlined in bold, using a letter size at least two points larger than the other text of the cover page.

II. No later than 5 business days after the placement of the securities, a copy of the definitive placement prospectus or informational document, as well as the contracts signed with the placement agents and liquidators, shall be presented to the Commission.

III. Within 3 business days following the maturity of the securities, the Commission shall be notified of the total payment for the instruments or, if applicable, any failure to pay.

In the case of programs that authorize securities offers with maturity dates of less than 1 year, as an exception to the mentioned in the first paragraph of this article, notification must be made within the first 5 business days the securities offerings made under the referred programs with maturity date less than 1 year that, if applicable, were conducted during the immediate preceding month, including the information mentioned in this article by each offer. The foregoing without prejudice of the notification that in terms of the first paragraph and section I of this article must be filed at the moment of the first offe under the program and other information according to previous sections II and III.

Title Three Listing and maintenance of securities on the Stock Exchange and the trading systems

Chapter One Listing of securities on the Stock Exchange

Article 25

The stock market will establish in its internal regulations the

requirements that, depending on the nature of the issuer involved, must be satisfied in order to obtain the registration of its shares or negotiable instruments that represent them, in the securities listing authorized for quotation. Such requirements shall contemplate at least the following aspects:

I. Transactional history.

II. Financial situation of the Issuer. In the case of stock market investment promotion corporations, they shall have an accounting capital equivalent to 12 million investment units.

III. Minimum number of shares or certificates of participation to offer publicly to the investing public at large.

IV. Minimum price to offer for each security.

V. Percentage of capital stock that shall be placed before the investing public at large which in no case may be less than 15% of the capital stock of the Issuer, or at least the equivalent in national currency to 950 million units of investment.

In the event that the amount intended to be placed in accordance to the previous paragraph is equal to or greater than the equivalent in national currency to 950 million investment units and less than 12% of the issuers's capital stock, according to the information presented by the latter, stock exchanges must establish the provision for the issuer itself to set up a repurchase fund in terms of article 56 of the Law and the Title Six of these provisions and hire the services of a market maker to meet the maintenance requirement referred to in section V of article 27 of these provisions.

VI. Minimum number of shareholders or holders of the negotiable instruments that represent them, considered as the investing public at large, once the placement transaction is carried out, which in no case may be less than 100.

The financial institutions that provide securities custodial services to third parties that do not specify the number of investors they represent, as well as the investment corporations and other legal entities, funds and trusts, will be considered as 1 investor. In addition, the issuers that have acquired shares representing their capital shall not be considered the investing public at large, in accordance with article 56 of the Securities Market Law.

VII. Criteria for the distribution of securities applicable to the offer executed in Mexico that no person may acquire moer than 40% of the total amount of the offer:

a) At least 50% of the total amount of the offer shall be placed among persons that acquire less than 5% of the total amount of the offer.

b) No person may acquire more than 40% of the total amount of the offer.

VIII. Corporate governance requirements.

IX. Report of the issuer to the stock exchange and the investing public through the SEDI, of its degree of adherence to the Best Corporate Practices Code, except for stock market investment promotion companies

Sections III, IV and VI above will be applied to each shareholding

series or issuance of certificates of participation representing a shareholding series. They shall also apply to the instruments representing 2 or more shares of 1 or more shareholding series of the same Issuer, in the understanding that the requirement regarding the number of holders and price of the referenced instruments shall be applied per instrument and not the shares it represents.

For purposes of sections III, V and VI above, the securities placed on foreign markets will be taken into account.

Likewise, provisions of subsection IX above shall be obligatory for issuance of debt instruments with a maturity date greater than one year.

Fifth paragraph.—Repealed

Sixth paragraph.—Repealed

The provisions in sections III, V, VI, VII and IX shall not apply to stock market investment promotion corporations.

Article 26

The Placement Intermediary shall abstain from registering a placement on the Stock Exchange when the regulations of the corresponding Stock Exchange are not complied with in respect to the provisions of the above article.

The brokerage firms that participate in the public offer shall provide to the Placement Intermediary the necessary information for the adequate compliance with the above paragraph. In the event any of the brokerage firms referred to in such paragraph do not specify the number of investors that participate in the placement transaction, they will be considered to be 1 investor.

Chapter Two Maintenance of the listing on the Stock Exchange

Article 27

The Stock Exchange will include in its internal regulations the requirements that the Issuers must satisfy to maintain the registration of their shares or certificates of participation representing shares in the listing of securities authorized to quote. Such requirements shall contemplate at least the following aspects:

I.to IV. Repealed.

V. Percentage of the capital stock that must be maintained among the Investing Public at large, which in no case may be less than 12% of the capital stock of the Issuer, with the exception of the foreseen in the following paragraph.

The stock exchanges should provide as an additional maintenance requirement, the provision for the issuer to have a repurchase fund in terms of article 56 of the Law and the Sixth Title of these provisions, when once the public offering is concluded, the amount effectively placed is at least the equivalent in national currency to 950 million

investment units, in terms of fraction V, first paragraph, of article 25 of these provisions, but represents less than 12% of its capital stock. Said repurchase fund shall be constituted within 10 business days following the date on which the ordinary general shareholders or holders meeting is held, as applicable, immediately following the date on which the offer is made. Likewise, in these cases, the percentage of 12% of capital stock referred to in the first paragraph of this section shall be payable up to five years after the first placement.

VI. Repealed.

VII. Repealed.

VIII. Report of the issuer to the stock exchange and the investing public, through the SEDI, of its degree of adherence to the Best Corporate Practices Code, in the terms that the stock exchange may consider.

Likewise, provisions of section VIII above shall be obligatory for issuance of debt instruments with a maturity date greater than one year.

For purposes of this article, securities placed on foreign markets will be taken into account.

The provision in sections V and VIII shall not apply to stock market investment promotion corporations.

Article 28

The stock exchange shall verify annually that the issuers comply with the requirements established in their internal regulations to maintain the listing of their securities authorized for quoting.

The stock exchange shall inform the Commission in the month of June of each year of the results of the annual review carried out. In addition, such information shall be disclosed to the public in general through its web page.

Article 29

The stock exchange, in the event an Issuer does not comply with one or more of the requirements to stay listed established in its internal regulations, shall require such Issuer, within 10 business days from the date on which the Commission is informed of the failure to comply, to present a program intended to remedy such non-compliance.

The program referred to in the above paragraph shall be provided within 40 business days from the date on which it has been requested by the Stock Exchange, through the SEDI, the Stock Exchange being required to periodically evaluate the advances in the correction of the non-compliance.

The Stock Exchange, in accordance with the procedure established for such purpose and after giving Issuer the opportunity to be heard, shall suspend the quotation of the shareholding series in non-compliance until the non-compliance is remedied, in the following circumstances:

I. When the Issuer does not present the corresponding program.

II. When the program is not satisfactory in the judgment of the Stock Exchange.

III. When the Issuer does not present a significant degree of advancement in the correction of the non-compliance.

In all cases the Stock Exchange shall communicate immediately to the Commission the requirements that it formulates and the resolutions adopted in relation to the programs referred to in this article, as well as the degrees of advancement in the correction of the non-compliance involved. The Commission may order modifications and may object to the validity of the correction programs approved by the Stock Exchange.

The Commission, following the exercise of the opportunity to be heard, may decree the suspension of the quotation of the shares or certificates of participation representing shares registered on the Stock Exchange.

The Stock Exchange shall establish in its internal regulations special trading methods for those Issuers that have not complied with the requirements to remain listed referred to in article 27 of these provisions. Such methods shall provide, among other things, strict parameters that avoid disordered market conditions or manipulation of prices.

Article 30

The stock exchange may establish different requirements for listing and staying listed applicable to the securities issued by capital investment companies (*sociedades de inversión de capital*), limited mutual fund companies (*sociedades de inversión de objeto limitado*) and trustees of trusts whose trust property consists of shares of two or more issuers.

Chapter Three The trading systems

Section I Securities registered in the Registry

Article 31

The offer and trade of securities registered in the Registry may be carried out in accordance with the following:

I. The shares, negotiable instruments that represent them, and indexed, development, real estate, energy and infrastructure investment, or investment projects trust securitiesshall be traded exclusively with the intermediation of brokerage firms, through the systems set forth in the internal regulations of the stock exchange. In the case of shares, this is without prejudice to the right of private parties to the free disposition of the ownership of their securities off the stock exchange, provided that the applicable provisions of articles 98 to 103 and 109 to 112 of the Securities Market Law are adhered to.

II. The debt instruments issued by issuers that obtain the registration of their securities in the Registry under article 85 of the Securities Market Law, may be traded on or off the stock exchange with the intermediation of brokerage firms and credit institutions. In all cases, the cited brokerage firms shall register the operations on the stock exchange pursuant to the terms of article 71 of these provisions.

III. The debt instruments and the shares representing the capital stock of investment companies, whose issuers obtain the registration of their securities under article 93 of the Securities Market Law, may be traded off the stock exchange, independently of the intermediation services that the different financial entities can offer with respect to such securities, in the terms of the special laws that govern them.

Section II Shares and certificates of participation representing unregistered shares

Article 32

Repealed.

Title Four The information to be provided to the Commission, the Stock Exchanges and the public investor

First Chapter

Periodic information

Article 33

The issuers with securities registered in the Registry shall provide to the Commission, the stock exchange and the public in general, the financial, economic, accounting and administrative information indicated below, in the form and within the following time periods:

I. Annual information:

a) The third business day immediately following the date of holding of the general ordinary shareholders meeting resolving on the results of the fiscal year, which shall be held within the 4 months following the close of such fiscal year:

1. Reports and opinion mentioned in article 28, section IV of the Securities Market Law, in the case of stock market corporations (*sociedades anonimas bursatiles*) and stock market investment promotion corporations (*sociedades anonimas promotoras de inversion bursatil*) that have adopted the regime established in article 15 of such Law or that according to their program of progressive adoption of the stock market corporation regime no longer have the figure of the examiner.

The information referenced in the paragraph above shall be filed with the Commission duly executed, original and copy, by the person who issued it or whomever represents the collegiate body who prepared it.

In the case of stock corporations (*sociedades anonimas*) that do not fall under any of the above categories, report of the board of directors presented to the general ordinary shareholders meeting that resolves on the results of the fiscal year, certified by the secretary of such board, as well as the report of the examiner and, in the case of stock market investment promotion corporations (*sociedades anonimas promotoras de inversion bursatil*), report of the committee that exercises functions in the area of corporate practices in terms of article 43, section I of the Securities Market Law.

2. Repealed.
3. The annual financial statements or their equivalent, in function of the nature of the issuer, accompanied by the external audit report, as well as that of its associates that contribute more than 10 percent of its profits or total consolidated assets, except for investment companies when the issuer is a financial entity. The financial statements of the associates shall be prepared according to the provisins in article 78 BIS 1 or 79 of these regulations, where applicable.

The annual financial statements referred to in this numeral, shall be attached to a record signed by the chief executive officer and the holders of financial and legal areas, or their equivalent, by the issuer in its respective competence, where the period corresponding to the financial information is identified at the bottom of the following legend:

> We, the undersigned, declare under oath that, within the scope of our respective duties, we prepared the information regarding the issuer contained in this annual report which, to the best of our knowledge and understanding, reasonably reflects its situation. We also state that we have no knowledge of any relevant information that has been omitted from or falsified in this annual report or that it contains information that could mislead investors

The annual financial statements or their equivalent, corresponding to the issuers of the development or investment projects trust securities that in terms of article 7., section VI, subsection a), numeral 6., or section IX, subsection a), numeral 8, of this provisions, destine at least 70% of the resources of the issuance to the acquisition of securities issued by mechanisms of collective investment not listed in any stock exchange, shall be presented no later than at June 30th of each

year.
When the referred issuers maintain invested more than 30% of the resources of the issuance of securities different from the ones mentioned in article 7., section VI, subsection a), numeral 6, or section IX, subsection a), numeral 8,, the provisions in the previous paragraph shall not apply and the annual financial statements or their equivalent must be filed within the period specified in the preceding subsection a) of this section.

4. Written communication by the secretary of the board of directors stating the current status of the books containing the shareholders meeting minutes, the board of directors meeting minutes, the registry of stock and in the case of variable capital stock corporations (*sociedades anónimas de capital variable)*, the book registering capital increases and decreases. The provisions of this number will not be applicable to debt instruments.
5. Document referred to by article 84 of these provisions signed by the External Auditor.

The provisions of number 3 regarding the certification of the associates, as well as number 4 of this subsection, will not be applicable to stock market investment promotion corporations (*sociedades anónimas promotoras de inversión Bursátil*).

b) No later than April 30 of each year:
   1. Annual report corresponding to the immediately prior fiscal year, prepared according to the instructions attached hereto as exhibit N, N Bis, N Bis 1, N Bis 2, N Bis 3, N Bis 4 or N Bis 5, depending on the type of issuer, signed on the final page by:
      1.1. The general director and the heads of the finance and legal areas, or their equivalents, of the issuer, at the end of the following legend:
      We, the undersigned, declare under oath that, within the scope of our respective functions, we prepared the information regarding the issuer contained in this annual report which, to the best of our knowledge and understanding, reasonably reflects its situation. We also state that we have no knowledge of any relevant information that has been omitted from or falsified in this annual report or that it contains information that could mislead investors
      1.2. The representative, agent or attorney in fact of the entity that provides the external auditing services and by the external auditor, which may be the same person, exclusively for purposes of the information regarding the financial state-

ments that he/she certifies in accordance with number 3 of subsection a) of this section, as well as any other financial information that is included in the annual report, whose source is the financial statements certified by him/her, at the end of the following legend:

The undersigned declares under oath that the financial statements contained in this annual report for the fiscal years (include the years to which financial statements refer to) were audited with the date (include the date of the opinion of each of the financial statements included) in accordance with the International Auditing Standards (specific mention of the standards used may be used).

Likewise, the undersigned declares that he/she has read the annual report and based on his/her reading and within the scope of the audit work performed, is not aware of significant errors or inconsistencies in the information that is included and whose source comes from the audited financial statements indicated in the previous paragraph, nor of information that has been omitted or falsified in this annual report or that it contains information that could mislead investors.

Notwithstanding the above, the undersigned was not hired, and did not perform additional procedures in order to express an opinion regarding the other information contained in the annual report that does not come from the financial statements audited by the undersigned."

The previous legend must be signed by the representative, mandatory or attorney-in-fact of the legal entity that provides external auditing services and by the external auditor, which may be the same person, of the trustee, manager of the trust property, guarantor, guarantee or any other third party, regarding which financial statements are included within the annual report.

Issuers shall determine under their responsibility, strategic information to be reserved, provided that it is not Relevant Information or relevant events whose disclosure may not be deferred. In any event, the Issuers must adopt the necessary measures to guarantee that the reserved information is known only by the people whose access to it is essential.

In the case of shares that have been offered through restricted public offerings the signature of the legend mentioned in this numeral will not be necessary, regarding any other third party of which exists partial dependency and whose information is incorporated by reference, as long as if such third party is an issuer with registered securities in the Registry and is up to date delivering periodic information referred to in the chapter Four of these regulations, or, is a foreign issuer whose securities are registered, authorized or regulated for their sale to the public in general, by the Securities and Exchange Commission or other equivalent of the States members designated by the International Organization board of the Securities and Exchange Commission or the substitute entity. In these cases, they must assign a risk factor in the prospectus placing, specifying that there is no responsibility held by the third party whose information is incorporated by reference, before the securities investors subject to the restricted public offering, for misleading or errors in the information given. Furthermore, in case the information to be incorporated by reference is not available in Spanish, the annual report shall include a risk factor.

1.3. With regards to trust securities over assets other than stock, in substitution of the persons mentioned in number 1.1 above, executed by:

1.3.1. The legal representative of the fiduciary, at the end of the following legend:
The undersigned, declare under oath that, the principal as fiduciary, prepared the financial information regarding the assets of the trust, as well as the information regarding the issued securities and the applicable agreements, contained in this annual report, which, to its knowledge and understanding, reasonably reflect its situation and confirmed that on the reported period no relevant differences existed among the income of the trust attributable to the trusted assets, rights or securities and the information received by the manager or operation in connection with collections of such assets, rights or securities. Likewise, expresses that, within the

scope of the activities for which it was contracted, she has no knowledge of any relevant information that has been omitted from or falsified in this annual report or that it contains information that could mislead investors

1.3.2. The chief executive officer and the people in charge of the finance and legal areas, or their equivalent, of the trusted assets, rights or securities manager or operator, at the end of the following legend:

The undersigned, declare under oath that, in accordance with our position, we prepared the financial information regarding the collection the trusted assets, rights or securities contained in this annual report, which, to our knowledge and understanding, reasonably reflect its situation. Likewise, state that, within the scope of the activities for which we were contracted, we have no knowledge of any relevant information that has been omitted from or falsified in this annual report or that it contains information that could mislead investors

The previous legend shall be signed by the persons with the positions mentioned in the first paragraph of this numeral, regarding any other third party of which exists partial dependency and those financial statements included in the prospectus or supplement. In case of securities offered through restricted public offering, the legend mentioned in this numeral will not be necessary regarding any third party of which exists partial dependency and whose financial information is incorporated by reference as long as if the third party is an issuer with registered securities in the Registry and is up to date delivering periodic information referred to in the chapter Four of these regulations, or, is a foreign issuer whose securities are registered, authorized or regulated for their sale to the public in general, by the Securities and Exchange Com-

mission or other equivalent of the States members designated by the International Organization board of the Securities and Exchange Commission or the substitute entity. Furthermore, in case the information to be incorporated by reference is not available in Spanish, the annual report shall include a risk factor.

1.3.3. The legal representative of the common representative, at the end of the following legend:
The undersigned, declare under oath that, its principal as common representative, prepared the information regarding the assets of the trust, as well as the financial information regarding the trust property, as to the ones regarding issued securities, the applicable agreements and collection of the assets, rights or trust securities, contained in this annual report, which, to our knowledge and understanding, reasonably reflect its situation.

1.4. With regards to development, real estate, energy and infrastructure investment trust securities, in substitution of the persons mentioned in number 1.1 above, executed by:

1.4.1. The legal representative of the fiduciary, at the end of the following legend:
The undersigned, declare under oath that, its principal as fiduciary, prepared the financial information regarding the assets of the trust, as well as the information regarding the issued securities and the applicable agreements, contained in this annual report, which, to its knowledge and understanding, reasonably reflect its situation and confirmed that on the reported period no relevant differences existed among the income of the trust attributable to the trusted assets, rights or securities and the information received by the manager or operation in connection with collections of such assets, rights or securities. Likewise, states that, it has no knowledge of any relevant information that has been omitted from or falsified in this

annual report or that it contains information that could mislead investors

1.4.2. The chief executive officer and the people in charge of the finance and legal areas, or their equivalent, of the trusted assets, rights or securities manager or operator, at the end of the following legend:

The undersigned, declare under oath that, that in accordance with our position, we prepared the financial information regarding the income, revenues or any other amounts from the trusted assets, rights or securities contained in this annual report, which, to our knowledge and understanding, reasonably reflect its situation. Likewise, states that, it has no knowledge of any relevant information that has been omitted from or falsified in this annual report or that it contains information that could mislead investors

1.4.3. The legal representative of the common representative, at the end of the following legend:

The undersigned, declare under oath that, its principal as common representative, reviewed the financial information in connection with the assets of the trust, as well as in connection with the issued securities applicable agreements and the income, revenues and any other amounts from the assets, rights or trusted securities, contained in the annual report, which, toour knowledge and understanding, reasonably reflect its situation.

The annual financial statement or its equivalent, corresponding to the issuers of the development, real estate, energy and infrastructure investment trust securities that in terms of article 7., section VI, subsection a), numeral 6, destine at least 70% of the resources of the issuance to the acquisition of securities issued by mechanisms of collective investment not listed in any stock exchange, shall be presented no later than June 30th of each year.

When the referred issuers maintain invested more than 30% of the resources of the issuance of securities different from the ones mentioned in article 7., section VI, subsection a), numeral 6,the provisions in the previous paragraph will not apply and the annual financial statements or its equivalent within the period specified in the preceding subsection b) of this section must presented.

2. Repealed.
3. In the case of stock market investment promotion corporations (*sociedades anónimas promotoras de inversion Bursátil*), report on the degree of advancement and compliance of its programs with the progressive adoption of the regime applicable to stock market corporations (*sociedades anónimas Bursátiles*). The stock market investment promotion corporations (*sociedades anónimas promotoras de inversión Bursátil*) that have obtained the registration of their shares or negotiable instruments that represent them within the 90 calendar days prior to the date on which such report must be presented, may present it in the following fiscal year.

II. Quarterly Information:

Within 20 business days from the termination of each of the first quarters of the fiscal year and within 40 business days from the conclusion of the fourth quarter, the financial statements, as well as the economic, accounting and administrative information specified in the corresponding electronic forms, comparing at least the figures of the quarter in question with those of the same period of the prior year. Such electronic forms shall contain an updating of the annual report regarding the comments and analysis of the administration on the operational results and financial situation of the issuer.

The information corresponding to the fourth quarter will be preliminary, in the understanding that once the certified Financial Statements are available, the information of this period will be sent with certified figures in the corresponding Electronic Forms. The delivery of information regarding the fourth quarter does not release the issuer from the obligation to present the certified Financial Statements referred to in section I, subsection a), number 3 above. The delivery of information concerning the fourth quarter, does not exempt the obligation to submit the audited financial statements referred to above, section I, subsection a), numeral 3.

The periods of 20 and 40 business days referred to in the second paragraph of this section will not apply for those issuers of development trust securities that, in terms of article 7., section VI, subsection a), numeral 6, destine at least 70% of the resources of the issuance to mechanisms of collective investment not listed in any stock exchange. The issuers of such trust securities shall present the information alluded in this section, at the least within 20 days following the end of the subsequent quarter that corresponds to such information.

When the issuers mentioned in the previous paragraph maintain invested more than 30% of the resources of the issuance of securities different from the ones mentioned in article 7., section VI, subsection a), numeral 6, the provisions in the previous paragraph will not apply and must present the information within the period specified in the second paragraph of this section.

The periods of 20 and 40 business days referred to in the second paragraph of this section will not apply to stock market investment Promotion Corporation. Such issuers must present the information alluded in this section within the 20 business days following the end of the month of June and within 40 business days following the end of the month of December. This information must include the economic, accountable and administrative information required in the electronic formats, comparing at least the figures of the semester in question with the financial statements of the previous year in accordance with the applicable accountable provisions.

In addition, they shall file to the Commission and the stock exchange, in terms of the second paragraph of this article, a certificate signed by the chief executive officer and the holders of the of financial and legal areas, or the equivalent of the issuer, within their scope, that indicates the term of the corresponding monthly information, signed by:

We, the undersigned declare under oath that, within the scope of our respective functions, we prepared the information regarding the issuer contained in this quarterly report which, to the best of our knowledge and belief, reasonably reflects its situation. We also declare that we have no knowledge of relevant information that has been omitted or falsified in this quarterly report or that it contains information that could mislead the investors.

Sixth paragraph.—Repealed.

a) With regards to trust securities other than shares, the certificate mentioned in this section, shall be executed by:

1. The legal representative of the fiduciary, at the end of the following legend:
   The undersigned, declare under oath that, its principal as fiduciary, prepared the financial information regarding the assets of the trust, as well as the information regarding the issued securities and the applicable agreements, contained in this quarterly report, which, to his knowledge and understanding, reasonably reflect its situation and confirmed that on the reported period no relevant differences existed among the income of the trust attributable to the trusted assets, rights or securities and the information received by the manager or operation in connection with collections of such assets, rights or securities. Likewise, states that, it has no knowledge of any relevant information that has been omitted from or falsified in this annual report or that it contains information that could mislead investors.
2. The chief executive officer and the people in charge of the finance and legal areas, or their equivalent, of the trusted assets, rights or securities manager or operator, at the end of the following legend:
   The undersigned, declare under oath that, that in accordance with our position, we prepared the financial information regarding the collection the assets, rights or trust securities contained in this quarterly report, which, to our knowledge and understanding, reasonably reflect its situation. Likewise, state that, within the scope of the activities for which we were contracted, I have no knowledge of any relevant information that has been omitted from or falsified in this annual report or that it contains information that could mislead investors.

b) With regards to development, real estate, energy and infrastructure investment, the certificate mentioned in this section, shall be executed by:

1. The legal representative of the fiduciary, at the end of the following legend:
   The undersigned, declare under oath that, the principal as fiduciary, prepared the financial information regarding the assets of the trust, as well as the information regarding the issued securities and the applicable agreements, contained in this quarterly report, which, to its knowledge and understanding, reasonably reflect its situation and confirmed that on the reported period no relevant

differences existed among the income of the trust attributable to the trusted assets, rights or securities and the information received by the manager or operation in connection with collections of such assets, rights or securities. Likewise, expresses that, we have no knowledge of any relevant information that has been omitted from or falsified in this annual report or that it contains information that could mislead investors.

2. The chief executive officer and the people in charge of the finance and legal areas, or their equivalent, of the trusted assets, rights or securities manager or operator, at the end of the following legend:

The undersigned, declare under oath that, that within the scope of our position, we prepared the financial information regarding the income, revenues or any other amounts from the trusted assets, rights or securities contained in this quarterly report, which, at our knowledge and understanding, reasonably reflect its situation. Likewise, expresses that, within the scope of the activities for which it was contracted, I have no knowledge of any relevant information that has been omitted from or falsified in this annual report or that it contains information that could mislead investors.

III. Monthly Information:

Within 15 business days from the termination of each month to which the information corresponds, with regards to trust securities over mass credits, such as individual credits to housing or consume, among others, and from its homogeneous characteristics information is prepared about its collection, debts and prepayments, in substitution of the information referred to in section II of this article, the applicable information shall be filed in accordance with the guide included as exhibit T of this provisions.

Additionally, a certificate indicating the term to which such monthly information corresponds shall be filed to the Commission and the stock exchange, in terms of the second paragraph of this article, executed by:

a) The legal representative of the fiduciary, at the end of the following legend:

The undersigned, declare under oath that, the principal as fiduciary, prepared the financial information regarding the assets of the trust, as well as the information regarding the issued securities and the applicable agreements, contained in this monthly report, which, to his knowledge and understanding, reasonably reflect its situation and confirmed that in the reported period no

relevant differences exists among the income of the trust attributable to the trusted assets, rights or securities and the information received by the manager or operator in connection with collections of such assets, rights or securities. Likewise, expresses that, within the scope of the activities for which it was contracted, I have no knowledge of any relevant information that has been omitted from or falsified in this annual report or that it contains information that could mislead investors

b) The legal representative of the trusted assets, rights or securities manager or operator, at the end of the following legend:

The undersigned, declare under oath that, that in within the scope of our position, we prepared the financial information regarding the collection of the assets, rights or trust securities contained in this monthly report, which, at our knowledge and understanding, reasonably reflect its situation. Likewise, expresses that, we have no knowledge of any relevant information that has been omitted from or falsified in this annual report or that it contains information that could mislead investors.

The information referred to in section I to III of this provision shall be delivered by the Issuers to the Stock Exchange through the SEDI and afterwards to the Commission through the STIV-2. Such information shall, if applicable, be duly executed by the corresponding persons in accordance with this article. Likewise, in the case of issuers participating in one or various agreements or assignments on exploration and extraction of hydrocarbons, must submit to the Mexican Fund Executive (*Coordinación Ejecutiva del Fondo Mexicano*) as well as to the General Directorate Adjunct to Income oOeration Supervisor in Hydrocarbons (*Dirección General Adjunta de Supervisión de Operaciones de Ingresos sobre Hidrocarburos*) belonging to the Hydrocarbons Income Unit (*Unidad de Ingresos sobre Hidrocarburos*), subscribed to the Income Secretary (*Subsecretaría de Ingresos*) of the Ministry of Finance and Public Credit, in Exhibit N Ter on the same date they issue to the Commission the information alluded in subsection b), section I of this article. The information relative to hydrocarbon reserves, based on what is prepared in Exhibit N Ter, must consider the provisions of the Guidelines that regulate the procedure of quantification and certification of the Nation's reservations and the report of the related contingent resources, issued by the National Hydrocarbon Commission(*Comisión Nacional de Hidrocarburos*), having the required certifications required by the cited guidelines

The electronic formats used to send the information mentioned in section II of this article to the stock exchange shall be used to send such information to the Commission through the STIV-2.

In the case of certificates of participation representing shares (*certificados de participación ordinaria sobre acciones*), the information

referred to in this article shall be with respect to the settlor except in the case of certificates of participation representing shares of 2 or more Issuers.

In the case of certificates of participation representing shares of 2 or more Issuers, trust securities over assets other than stock and development, real estate, energy and infrastructure investment trust securities, the fiduciary or, if applicable, the common representative, shall file only the information mentioned in section I, subsection a), number 3) and II of this article, in connection with the trusted assets. Additionally, with regards to trust securities over assets other than stock and development, real estate, energy and infrastructure investment trust securities, shall file the information provided in section I, subsection b), number 1 of this article.

With regards to development, real estate, energy and infrastructure investment trust securities, if the information in connection with the companies in which the trust invests or acquires titles that represent capital stock that individually represent 10% or more of the assets of the trust or, in the case of those placed under the capital call mechanism, 10% of the maximum amount of the issue, unless such information is reflected in a consolidated manner in the financial information filed regarding the trust, also, it shall file the information mentioned in section I, subsection a) number 3 of this article, regarding each of the companies. The financial information of the aforementioned companies must be prepared in accordance with the provisions of article 78 Bis 1 or 79 of these provisions, as the case may be. The information of the aforementioned companies or projects may be omitted in the case of securities placed through restricted public offer. Likewise, the report mentioned in section I, subsection b) number 1 of this article, shall contain the characteristics of each of the companies in which the trust invests or acquires titles that represent capital stock, including the degree of fulfillment of the business plan and investment schedule and, if applicable, un-investments mentioned in exhibit H Bis 2, H Bis 3 or H Bis 4 of this provisions. In any case, the principal differences between the business plan and the investment schedule and the progress shall be disclosed, as well as the consequences generated by the breach of the latest in connection with each of the companies in which the trust invests or acquires titles that represent capital stock.

The information mentioned in section II of this article, filed in connection with the trust securities over assets other than stock and the development, real estate, energy and infrastructure investment trust securities, shall additionally include the information detailed in section II, subsection c), number 2 of exhibit N Bis 1 and in section II, subsection c), number 2 of exhibit N Bis 2, in section II, subsection C), numeral 2 of exhibit N Bis 3 and in section II, subsection C), numeral 2., of exhibit N Bis 4, of this provisions, accordingly.

When compliance with the obligations in relation to the securities that are issued under the trust totally or partially depends on the settlor, the administrator of the property in trust, the guarantor or surety

of the assets or any other third party, the information referred to in sections I, subsection a), number 3 and II of this article or article 36, sections I, subsection b) and II of these provisions with respect thereto as applicable. The information referred to previously in section I, subsection a), numeral 3that is presented in respect of any third party that is not an issuer, trustee, administrator of the trust property, guarantor or guarantee of the assets, shall be elaborated according to the provisions of article 78 Bis 1 or 79 of these regulations, where applicable.

In the case of issuers whose purpose is to finance the activities of another entity or legal person that in turn has assumed a payment obligation with the issuers themselves derived from the funds obtained, the information and documentation referred to in this article, depending on the type of securities involved, in relation to the entity or legal person that obtains the funds of the placement, shall also be provided. The abovementioned will not apply when the issuance of debt is guaranteed by a legal person or an entity that has control of the issuer if such guarantee is irrevocable and for the total amount of the issuance and the certificate issued by a securities rating institutions with basis exclusively on the credit capacity of the guarantor, in such case, in the report mentioned in section I, subsection b), number 1 of such article must include the information considered relevant in connection with such entity or legal person that obtains resources from the placement.

In the event of issuances of debt instruments with guarantees or security shall be presented through the issuer in question and through the resources set by the stock exchange in their internal regulation, the financial information referred to in sections I, subsection a), number 3, 5 and II of this article with respect to the guarantee or security, except for subsidiaries of the issuer. The information mentioned in this paragraph will be filed within the terms and form provided by sections I, subsection a), number 2) and II of article 37 of these provisions when the guarantor or guarantee are foreign. In the case of debt securities that have been subject of restricted public offer, they may incorporate by reference the information establishes in this paragraph provided that the guarantee o guarantor is an issuer with registered securities in the Registry and is up to date delivering periodic information referred to in the chapter Four of these regulations, or, is a foreign issuer whose securities are registered, authorized or regulated for their sale to the public in general, by the Securities and Exchange Commission or other equivalent of the States members designated by the International Organization board of the Securities and Exchange Commission or the substitute entity

The settlor, the administrator of the assets, the third party, the surety or guarantor referred to in the above paragraphs that are already Issuers will not be required to present the information provided that they are up to date in the delivery of the periodic information referred to in this Fourth Title.

In the event of optional titles only the information provided by sec-

tion I, subsection a), number 3 and II regarding the issuer. The information detailed in section III, subsection c), number 4 of exhibit l of this provision, as well as an explanation of the situation that the coverage of risk exposure holds of the optional titles.

When the information referred to in section II of this article is presented in foreign currency, it may be accompanied by its corresponding conversion into national currency, at the exchange rate published in the Official Gazette of the Federation on the date of the financial statements or to which it corresponds according to the applicable accountable provisions.

Article 34

The issuers with securities registered in the Registry shall provide to the Commission, to the stock exchange and to the public in general, in addition to the information indicated in article 33 above, the legal information indicated below, in the following form and time periods:

I. The day of its publication, the notice of shareholders meetings, as well as the meetings of bondholders and holders of other securities. The respective agenda shall specify clearly each of the points that will be addressed in the meeting.

II. The business day immediately following the holding of the meeting:

a) Summary of the resolutions adopted in the shareholders meeting that is held in compliance with article 181 of the General Corporation and Partnership Law, which expressly includes the application of profits and, if applicable, the dividend declared, coupon(s) number against which it will be paid, and the place and date of payment.

b) Summary of the resolutions adopted in shareholders meetings other than those mentioned in the above subsection, as well as the meetings of bondholders and holders of other securities.

III. Within the 5 business days following the holding of the meeting of shareholders, bondholders or holders of other securities, as applicable:

a) Copy certified by the secretary of the board of directors of the Issuer or by a person authorized for such, of the shareholders meeting minutes, accompanied by the attendance list signed by the tellers designated for such purpose, indicating the number of shares corresponding to each shareholder and, if applicable, by whom the latter is represented, as well as the total shares represented.

Copies of the records and, if applicable, the list of holders referred to in article 290 of the Securities Market Law, shall be attached to the attendance list, which shall be sent by the depositors to the issuer.

b) Copy certified by the chairman of the meeting of the minutes of the general meetings of bondholders and hold-

ers of other securities, accompanied by the attendance list signed by the bondholders and securities holders or their representatives and by the tellers designated for such purpose, indicating the number of securities corresponding to each bondholder or securities holder, as well as the total securities represented.

IV. At least 6 business days prior to when the act referred to in each of the following notices takes place:

a) Notice to shareholders for the exercise of the preferential right they are entitled to, for purpose of increases in the capital stock and the consequent issuance of shares which shall be paid for in cash.
b) Notice of delivery or exchange of shares, bonds and other securities.
c) Notice of the payment of dividends, as applicable, in which the amount and proportions thereof or, if applicable, the payment of interest shall be specified.
d) Any other notice sent to the shareholders, bondholders, holders of other securities or the public investor at large.

V. No later than June 30 every 3 years, the notorization of the general shareholders meeting in which the latest amended version of the corporate by-laws of the Issuer has been approved with the registration information of the Issuer in the Public Registry of Commerce of such instrument.

In the event that within term of 3 years provided by this section, no amendment to the bylaws of the issuer are made with regards to the last amendment filed, it shall only provide a certified copy by the secretary of the board of directors of the bylaws of the issuer on which certification is made that no modification was made in such term.

VI. With at least 3 business days prior to the initiation of the period in which the update of the authorization takes place, the notification of the exchange of the certificates from the development and real estate trust securities must be done, issued under the capital call mechanism.

The information mentioned in section I to VI of this provision, shall be filed by the issuers to the stock exchange through the SEDI and afterwards in the same day to the Commission through the STIV-2. Such information shall, if applicable, be duly executed by the corresponding persons in accordance with this article.

Third paragraph.—Repealed.

The obligation to provide the information referred to in this provision shall be understood as complied with when it is delivered by the common representative of the holders of the securities involved.

In the case of certificates of participation representing shares (*certificados de participación ordinarios sobre acciones*) of a single Issuer, the information referred to in this article with respect to the settlor shall be presented.

Article 35

The issuers with securities registered in the Registry, in the event

they carry out corporate restructurings or the updating of the registration of their securities, shall provide to the Commission, the stock exchange and the public in general, the information indicated below, in the following form and time periods:

I. In the case of corporate restructurings of issuers of shares or negotiable instruments that represent them, of a single issuer or of convertible subordinated debentures convertibles in capital stock, or real estate, and energy and infrastructure investment trust securities:

The business day immediately following the day on which the notice of the meeting of shareholders or securities holders for purposes of the corporate restructuring is published or the day immediately following the holding of the board of directors or technical committee meeting that approves the corporate restructuring, they shall present a brochure on such restructuring that contains the information necessary for the shareholders to make a decision, in accordance with the instructions that are attached hereto as exhibit P, signed by the Chief Executive Officer, the finance officer and the legal director, or their equivalents, in their respective competencies, at the end of the following legend:

We, the undersigned, declare under oath that within the scope of our respective functions, we prepared the information regarding the issuer contained in this brochure which, to the best of our knowledge and understanding, reasonably reflects its situation. We also declare that we have no knowledge of relevant information that has been omitted or falsified in this brochure or that it contains information that could mislead investors.

The brochure elaborated with adherence to the instructive presented in accordance with Exhibit P of these regulations, shall include a report from the external auditor about the preparation of each of the periods corresponding to the pro forma financial information included in the quantification of the corporate restructuring in question.

The issuers may defer the presentation of the aforementioned brochure when the corporate restructuring has the character of confidential as agreed or when there exissits conditions inherent to the operation that prevents the issuer from having the necessary information to prepare such brochure.

The issuers must present the brochure no later than the business day following the corporate restructuring ceases to be confidential or that the issuer has the necessary information to prepare it. When the issuer differs the presentation of the informative brochure because it does not have the necessary information for its preparation, it must publish a relevant event on the date on which the brochure was to be presented in accordance with the provisions of the second paragraph of this section, describing the restructuring company, the information with which it is not counted and the date on which it is estimated to have said information.

In addition, in the quarterly information the issuer presents corresponding to the quarter in which the corporate restructuring becomes effective and during the 3 following quarters, it shall include in its notes, for comparative purposes, a financial statement with pro forma

figures in which the financial situation of the issuer is presented as if the respective restructuring had taken effect during the prior fiscal year. The pro forma financial information shall be elaborated in accordance with article 81 Bis of these regulations.

II. In the case of Updating of the Registration:

The business day immediately following the date on which the notice of the shareholders or securities holders meeting is published, a report will be presented that contains the description of the act that motivated the Updating of the Registration and its purposes, the effects on the shareholders or securities holders, as the case may be, and a comparative note with respect to the most relevant differences there could be in the securities as a result of the Updating of the Registration.

The information referred to in this provision shall be transmitted by the issuers to the stock exchange through the SEDI and afterwards on that same day to the Commission through the STIV-2. The corresponding persons in accordance with this article shall if applicable, duly execute such information.

The stock market investment promotion corporations (*sociedades anónimas promotoras de inversión*) will not be obligated to present the brochure referred to in section I of this article. Nevertheless, in the event that the cited companies carry out a corporate restructuring or a registration updating, they shall indicate such in the annual report of the fiscal year in which such acts take place, as set forth in exhibit P, section II, number 2 of these provisions. The above is without prejudice of the obligation of these companies to inform the investing public of the relevant events or the relevant information, which has that character in accordance with the Securities Market Law or these provisions.

Article 35 Bis

In the event the issuers with securities registered in the Registry, issue development or real estate trust securities, issued under the capital call mechanism, on the next following day to the day the attend the Registry, shall provide the Commission, the stock exchange and the general public, the following information:

I. The description of the characteristics of the capital call.

II. If applicable, the corresponding amount of the capital call that was not covered, as well as the percentage that it represents in connection with the total of the capital call performed. Likewise, the amount effectively covered by the holders of trust securities to such capital call.

III. The affectation to the business plan consequence of the breach to the capital calls.

IV. The measures needed to adopt in the event of breach to the capital calls, as well as the term for its implementation.

In any case, the issuer shall provide in the terms provided in the first paragraph of this article, the result of the application of the measures once the maturity date of the term to adopt it.

The issuers shall transfer the information referenced in this provision, to the stock exchange through the SEDI and afterwards on that same day to the Commission through the STIV-2. The corresponding persons in accordance with this article shall if applicable, duly execute such information.

Article 35 Bis 1

Issuers with securities registered in the Registry, if they issue real estate as well as energy and infrastructure investment trust securities that foresee in the general conditions of the issuance, credit assumptions, loans or financings from the trust property, by the trustee, administrator of the conveyed patrimony or to whoever is in charge of those functions, or by the trust, shall provide:

I. To the Commission, stock exchange and the public in general, quarterly, within 20 business days following the closing of each one of the first quarters of the fiscal year and within 40 business days following the end of the fourth quarter, their level of indebtedness and debt-services coverage, referred to in article 7, section VI, subsection a), numeral 4., section VII, subsection a), numerals 4., or 5., and section VIII, subsection a), numeral 7, of these regulations, calculated according to the provisions of exhibit AA of these regulations and break down, at least, the components that according to such exhibit used for the calculation.

Furthermore, they must inform the characteristics of each of the credits, loans or relevant assumed finances, including the amortizations, interests and the existence, if applicable, of guaranties or relevant characteristics. For the purpose of the foregoing, it shall be understood as credits, loans or relevant financing, those who represent 10% or more of the total liability of the consolidated financial statements of the issuer to the fiscal year. When such operation represents less of the percentage mentioned or it is not measurable on a percentage basis, the issuer must evaluate if the operation in question is relevant for the holders and the market in general.

II. To the Commission, within 40 business days following the closing of fourth quarter, pro forma financial statements of the issuer for following fiscal year, based on the figures corresponding to such fourth quarter, in terms of article 81 Bis of these regulations, that reflect the capacity of the issuer to comply with the maximum of liability assumptions, foreseen in article 7, section VI, subsection a), numeral 4., section VII, subsection a) numerals 4., or 5., and section VIII, subsection a), numeral 7 of these regulations.

The Commission may order the modifications considered convenient to the pro forma financial statements within 20 business days following the presentation of these.

The information contained in section I of this article, shall be

transferred by the issuers to the stock exchange through the SEDI and afterwards on that same day to the Commission through the STIV-2. For the information referenced in section II of this article, the issuers must transmit through the STIV-2

What is foreseen in this article will also be applicable to issuers of development and investment projects trust securities, in the event that the resources of the issuance are intended to be used predominantly to grant credits, loans or financing to companies or acquisition of debt securities issued by these, charged to the trust assets, and additionally intend to enter into credits or loans, so for purposes of complying with the provisions of fraction I, in the terms established therein, they must disclose the maintained level of leverage and the debt-service coverage ratio referred to in article 7, sections VI, section a), number 4., and IX, section a), number 6. Additionally, in order to comply with provisions in section II, in the terms determined there, they shall disclose the pro forma financial statements that reflect the issuer's ability to comply with the maximum liabilities limit that they maintain in terms of the provisions of article 7, sections VI, subsection a), number 4., or IX, subsection a), number 6., of these provisions.

Article 36

The states and municipalities with securities registered in the Registry, shall provide to the Commission, the stock exchange and the public in general, the financial, economic, accounting, administrative and legal information indicated below in the following form and time periods:

I. Annual information:

The third business day immediately following the presentation or publication of the report provided in subsection a) of this section:

a) Report presented to the Local Legislature or city council, pursuant to the applicable laws, regarding the situation of the public accounts, together with a document that indicates the date of filing of such report to the Local Legislature or city council.

b) Financial report or general balance certified by an external auditor.

c) Annual report for the immediately prior fiscal year prepared in accordance with the instructions attached hereto as exhibit O and initialed on all pages by:

1. The person responsible for finances in the state or municipality, at the end of the following legend:

The undersigned declares under oath that, within the scope of his/ her competency, he/she prepared the information regarding the state or municipality (whichever is applicable) contained in this annual report which, to the best of his/her knowledge and understanding reasonably reflects its situation. He/she also declares that he/she has no knowledge of relevant information that

has been omitted or falsified in this annual report or that it contains information that could mislead investors.

2. The External Auditor, exclusively for purposes of the information regarding the financial report or general balance and revenue and expenditure statements that are certified in accordance with subsection b) above, as well as any other financial information that is included in the annual report whose source is the financial report or general balance and revenue and expenditure statements certified by him/her, at the end of the following legend:

The undersigned declares under oath that the financial statements contained in this annual report were certified in accordance with the generally accepted auditing procedures. He/she also declares that, within the scope of the work done, he/she has no knowledge of relevant financial information that has been omitted or falsified in this annual report or that it contains information that could mislead the investors.

The undersigned also declares that he has read the annual report and based on his reading and within the scope of the audit work performed, is not aware of significant errors or inconsistencies in the information that is included and whose source comes from the audited financial statements indicated in the previous paragraph, nor of information that has been omitted or falsified in this annual report or that it contains information that could mislead investors.

Notwithstanding the above, the undersigned was not hired, and didn't perform additional procedures in order to express their opinion regarding the other information contained in the annual report that does not come from the financial statements audited by the undersigned".

The previous legend must be signed by the representative, legal representative or attorney-in-fact of the legal entity that provides external auditing services and by the external auditor, that may be the same person, of the trustee, administrator of the trust property, guarantor, guarantee or any other third party, of whom their financial statements are included within the annual report.

d) Documents referred in articles 84 and 84 Bis of these regulations certified by the external auditor. The document referred to in article 84 shall mention regarding section VI of such article, that the external auditor has no official offer to the federal entity or municipality concerned.

II. Quarterly Information:

Within the 20 business days following the termination of each of the first quarters of the fiscal year and within the 40 business days

following the conclusion of the fourth quarter, the financial report or general balance and revenue and expenditure statement, as well as the economic, accounting and administrative information that is established in the corresponding Electronic Forms, which must contain an update of the annual report relative to the comments and analysis of the state or municipality with respect to its revenues and expenditures and its financial position, comparing at least the figures of the quarter involved with those of the same period of the prior fiscal year.

In addition, they shall present to the Commission and the stock exchange, in terms of the second paragraph, a certificate signed by the person responsible for finances of the state, federal district or municipality, in their respective competencies, at the end of the following legend:

The undersigned declares under oath that, within the scope of his/her competence, he/she prepared the information regarding the state or municipality (whichever is applicable) contained in this quarterly report which, to the best of his/her knowledge and understanding, reasonably reflects its situation. He/she also declares that he/she has no knowledge of relevant information that has been omitted or falsified in this quarterly report or that it contains information that could mislead investors.

The information corresponding to the fourth quarter will be preliminary, in the understanding that once the certified financial report or general balance and revenue and expenditure statements are available, the information of this period will be sent with certified figures on the corresponding Electronic Forms. The presentation of the information regarding the fourth quarter does not eliminate the obligation to present the certified revenue and expenditure statements referred to in subsection b) of section I above.

III. The third business day following the date on which, according to the corresponding law, the following shall be published or presented:

a) Sample of the periodic publication in the official gazette or newspaper containing the amount of the public debt that the state registry of the public debt reflects, or of the debts and loans of the state and municipal government or their equivalent, in accordance with the applicable law.

b) In the event that the local law so contemplates, the periodic report rendered to the local Legislature by the head of the Executive of the particular state, on the accounts of origin and application of the public revenues, the exercise of the programs set forth in the corresponding Revenue Law and the balances of the public debt.

c) If applicable, the information referred to in article 8 of the Regulation of article 9 of the Tax Coordination Law in the area of recording of debts and loans of states and municipalities.

IV. Legal information:

a) On the day of its publication, the notice of the securities holders meetings. The respective agenda shall clearly

specify each of the matters that will be addressed at the meeting.

b) Within the 5 business days following the holding of the securities holders meeting, a copy of the minutes of the general meetings of the securities holders certified by the chairman of the meeting, accompanied by the attendance list signed by the holders of the securities or their representatives, indicating the number of securities corresponding to each holder of securities and, if applicable, by anyone represented, as well as the total of such securities.

c) At least 6 business days prior to the date the act referred to in any of the following notices takes place:
   1. Repealed.
   2. Notice of delivery or exchange of securities.
   3. Any other notice sent to the securities holders or the investing public at large.

d) Information in case of Updating of the Registration.

e) On the business day immediately following the day the securities holders meeting was held, a summary of the resolutions.

On the business day immediately following the date on which the notice of the securities holders meeting is published, a report will be presented containing the description of the Updating of the Registration and the reasons for it, the effects on the securities holders, as well as a comparative note with respect to the most relevant differences there could be in the securities as a result of the updating of the Registration.

The information referred to in sections I to IV, shall be transmitted by the states and municipalities to the stock exchange through SEDI and afterwards on the same day to the Commission through the STIV-2. Such information, if applicable, shall be duly executed by the corresponding persons in accordance with this article.

The electronic format used to send the information provided by section II of this article to the stock exchange, shall be used to send the information to the Commission through the STIV-2.

The obligation to provide the information referred to in section IV of this article is understood as complied with when it is delivered by the common representative of the securities holders involved.

The Commission, in duly justified cases and according to the nature of the Issuer, may authorize that documentation may be presented in substitution of the information required by this article.

Article 37

Foreign issuers with securities registered in the Registry shall provide to the Commission, the stock exchange and the public in general, the financial, economic, accounting and administrative informa-

tion, in Spanish, indicated below, in the following form and time periods:

I. Annual information:

a) The day of its publication, the notice of the securities holders meetings. The respective agenda shall clearly specify each of the matters to be addressed in the meeting.

1. Summary of the report presented by the board of directors or competent corporate body, to the shareholders meeting or the competent corporate body.
2. Annual financial statements or their equivalent, in function of the nature of the issuer, accompanied by the certification of the external auditor, as well as those of its associates that contribute more than 10 percent of their profits or total consolidated assets, except for investment companies, when the issuer is a financial entity.
3. Document referred to in article 84 and 84 Bis of these provisions signed by the External Auditor.

b) No later than April 30 of each year, annual report corresponding to the immediately prior fiscal year, prepared according to the instructions attached hereto as exhibit N signed on the final page by:

1. The general director and the heads of the financial and legal areas, or their equivalent, of the issuer, at the end of the following legend:

We, the undersigned, declare under oath, within the scope of our respective functions, that we prepared the information regarding the issuer contained in this annual report which, to the best of our knowledge and understanding, reasonably reflects its situation. We also declare that we have no knowledge of relevant information that has been omitted or falsified in this annual report or that it contains information that could mislead investors.

2. The representative, agent or attorney in fact of the entity that provides the external auditing services and by the external auditor, which may be the same person, exclusively for purposes of the information regarding the financial statements he/she audits in accordance with subsection a), number two of this section, as well as any other financial information that is included in the annual report, the source of which is the financial statements audited by him/her, at the end of the following legend:

The undersigned declares under oath that the financial statements contained in this annual report were audited in accordance with the generally accepted auditing procedures. He/she also declares that within the scope of the work done, he/she has no knowledge of relevant

financial information that has been omitted or falsified in this annual report or that it contains information that could mislead investors.

Also, the undersigned declares that he has read the annual report and based on his reading and within the scope of the audit work performed, is not aware of significant errors or inconsistencies in the information that is included and whose source comes from the audited financial statements indicated in the previous paragraph, nor of information that has been omitted or falsified in this annual report or that it contains information that could mislead investors.

Notwithstanding the above, the undersigned was not hired, and didn't perform additional procedures in order to express their opinion regarding the other information contained in the annual report that does not come from the financial statements audited by the undersigned.

The previous legend must be signed by the representative, legal representative or attorney-in-fact of the legal entity that provides external auditing services and by the external auditor, that may be the same person, of the trustee, administrator of the trust property, guarantor, guarantee or any other third party, of whom their financial statements are included within the annual report.

The Issuers will determine under their own responsibility, the strategic information that should be reserved, provided that it is not Relevant Information or about relevant events whose disclosure cannot be deferred. In all cases, the Issuers shall adopt the necessary measures to guarantee that the reserved information is known exclusively by the persons who have a need to know.

Foreign Issuers, for purposes of compliance with this subsection, may present the annual report whose contents include all the information referred to in exhibit N of these provisions which they may have distributed in the securities market of the country of origin or in the foreign markets where their securities are listed or were applicable, in the foreign markets were their securities are listed. The above, as long as the table indicating the chapters stating the requirements mentioned in Exhibit N, is included.

II. Simultaneously when the following information is presented in the securities market of the country of origin of the Issuer or in any foreign markets where their securities may be listed:

a) The financial statements as of the intermediate dates they are prepared during the fiscal year
b) Update of the annual report on the comments and analysis of the administration with regard to the operational results and financial situation of the Issuer.

Issuers referred to in this article with unlisted securities in other markets shall provide the information set forth in article 33 of these regulations.

Third paragraph: Repealed

The information referred to in section I to II of these provisions shall be delivered by the Issuers to the Stock Exchange through the SEDI and afterwards on the same date to the Commission through the STIV-2. The information shall be, if applicable, duly signed by the corresponding persons pursuant to this article.

Fifth paragraph: Repealed

The Commission, in duly justified cases and depending on the nature of the Issuer, may authorize that documentation be presented in substitution of the information required by this provision or exceptions to the form and terms in which the information is presented.

The information referred in this article may be presented in the language used by the issuers in the stock market of the country of origin or, if applicable, in the foreign stock markets were their securities are listed, in the dates specified in this article, provided that, if applicable, they additionally present a Spanish version translated by an expert, within 20 business days after the date on which this has been presented for the first time, which must be delivered to the stock market through the SEDI and afterwards on the same date to the Commission through the STIV-2, regarding the information referred in section I of this article and within 15 business days after the date it has been presented for the first time, regarding the information in section II of this article.

The issuers referred in this article, when they choose to present their financial information in accordance with article 79, section III of these regulations, may omit to present the conciliation of the relevant accounts referred in such section, when they comply with what is established on section II, subsection a) of this article or in its case, by article 33, section II of these regulations.

Article 38

The issuers of foreign nationality with securities registered in the Registry shall provide to the Commission, the stock exchange and the public in general, in Spanish, in addition to the information referred to in article 37 above, the legal information indicated below, in the following form and time period:

I. On the day of its publication or disclosure in the country of origin of the Issuer, the notice of the shareholders or securities holders meetings. The respective agenda shall clearly specify each of the matters that the meeting will address.

II. The business day immediately following the holding of the meeting in question:

a) Summary of the resolutions adopted in the shareholders meeting or of the competent corporate body that resolved on the results of the fiscal year, which expressly includes the application of profits and the dividend declared, if any, coupon number or document against which it will be paid, and the place and date of payment, translated by official translator.

b) Summary of the resolutions adopted in meetings of shareholders or holders of securities other than those mentioned in the above subsection, translated into Spanish by official translator.

III. Within 5 business days following the holding of the meeting of shareholders or holders of other securities, a copy certified by the secretary of the competent administrative body of the Issuer or by a person authorized for such, of the minutes of meetings of shareholders or other securities holders.

IV. At least 6 business days prior to the date on which the act referred to in each of the following notices occurs:

a) Notice to shareholders for the exercise of their preferential right, in the case of capital increases and the consequent issuance of shares, the amount of which shall be paid in cash.
b) Notice of delivery or exchange of shares.
c) Notice for the payment of dividends, in which the amount and proportions thereof shall be specified or, if applicable, the payment of interest.
d) Any other notice sent to the shareholders, holders of other securities or the public investor at large.

The information referred to in sections I to IV of this provision shall be transmitted by the Issuers to the stock exchange through the SEDI and afterwards to the Commission through the STIV-2. Such information shall, if applicable, be duly signed by the corresponding persons pursuant to this article. The information indicated in section III above shall be delivered by the Issuers to the Commission and the Stock Exchange in print duly signed.

The Commission, in duly justified cases and depending on the nature of the Issuer, may authorize the presentation of documentation in substitution of the information required by this article or exceptions to the form and terms in which the information is presented.

Article 39

Repealed.

Article 40

The issuers that have obtained the registration of debt instruments with a maturity date equal to or less than 1 year in the Registry, including programs whose issuances cannot exceed 1 year, for purposes of this Title only, shall provide in the form and terms established for such purposes to the Commission, the stock exchange and the public in general, the annual and quarterly information indicated in articles 33, section I, subsection a), number 3 and 11, 36, sections I, subsection b) and II and 37, sections I, subsection a), number 2 and II, of these provisions, as applicable.

Article 41

The issuers shall disclose in their quarterly and annual informa-

tion, any modifications they have made to the internal control and internal audit guidelines of the company and of the entities it controls, as well as the accounting policies and procedures of the company according to which they prepare their financial statements. If there are any relevant changes in the application of such policies and procedures, they shall disclose them to the stock exchange through the SEDI and afterwards on the same date to the Commission through the STIV-2, the reasons for the changes and their impact, as well as the report of their external auditor containing its opinion with respect to the mentioned relevant changes and include in the notes of the quarterly information a comparison with proforma figures presenting the financial situation of the issuer as if the modifications had taken effect in the prior fiscal year.

The relevant changes referred to in the above paragraph shall be approved in advance by the board of directors of the issuers and have the favorable opinion of the committee that performs the audit functions.

Article 42

The Issuers shall disclose to the stock exchange through the SEDI and afterwards in the same date to the Commission through the STIV-2, any change of External Auditor responsible for auditing their Financial Statements, indicating the reasons for the change. In this situation, the Commission will hear any considerations that the removed auditor may formulate with respect to the causes of the change. In such event, the Commission will hear the considerations that, if applicable, the removed auditor makes with regards to the reasons of change and may order the Stock Exchange, if it considers such to be pertinent, to inform the public investor of them.

Article 43

The issuers who present in foreign markets the information referred to in articles 104 to 106 of the Securities Market Law and these provisions, prior to the time periods established by such provisions, will be obligated to deliver or disclose such information simultaneously to the Commission through the STIV-2, the stock exchange and the public in general through the SEDI, in Spanish.

Furthermore, the Issuers shall disclose to the Stock Exchange and the investing public through the SEDI in Spanish and on the same date to the Commission through the STIV-2, the Relevant Information that they present in foreign markets, which is requested from them by the authorities of such markets, as well as the information they are required to provide to the respective securities exchanges or, that the latter make public of the Issuer in question and that it is different from that which, according to these provisions, should also be presented to the Commission, to the Stock Exchange or made known to the public. The information referenced in this paragraph shall be disclosed and sent on the same date in which such events happen.

Article 44

When the Issuers present confusing or incomplete information or information that does not comply with this Title, the Stock Exchange may suspend the quotation of the securities in function of the evaluation it makes with respect to the available information and the prevailing conditions in the market. Apart from the above, the Stock Exchange shall immediately request the Issuers to clarify or correct such information.

The Stock Exchange may allow the securities to continue to be quoted while the deficiency or non-compliance exists for a term of no more than 20 business days from the date on which the corresponding situation occurs, provided chaotic conditions do not exist in the market.

Article 45

The Issuers that cannot provide the information referred to in this Title shall disclose to the stock exchange through the SEDI and afterwards on the same date to the Commission through the STIV-2, no later than the day immediately after the date indicated for its delivery, the reasons it cannot do so and the date on which they will present the corresponding information.

The Stock Exchange, when evaluating the causes of the non-compliance disclosed by the Issuer, the history of such Issuer with regard to the delivery of information, and the information available and provided chaotic conditions do not exist in the market, may permit that the securities continue to be quoted while the non-compliance continues, for a term no greater than 20 business days, counting from the date on which the delivery of the corresponding information should have been made.

In the event that the Issuer does not proceed through the SEDI according to the first paragraph of this article, the Stock Exchange shall suspend the quotation of the securities on the business day immediately following the date established by these provisions for its delivery, communicating such circumstance to the Issuer.

Article 46

In the event that the certification of the financial statements of an issuer, settlor, administrator or of any other third party on whom compliance with the obligations of the trust totally or partially depends, presents reservations, comments, clarifications or highlighted paragraphs, the information contained in the certification shall be disclosed, to the stock exchange through the SEDI, on the following business day to the date established by these provisions for the delivery of the corresponding certification. Afterwards to the abovementioned disclosure, but on the same date it shall be sent to the Commission through the STIV-2. In the event that it is not disclosed through the SEDI in accordance with the above, the stock exchange shall suspend the quotation of the securities.

In addition, the Stock Exchange, when evaluating the importance of the reservations, comments, clarifications or highlighted paragraphs, in function of the adequate and sufficient information provided to the public investor at large, may suspend the quotation of the corresponding securities.

In the event that the certification of the Financial Statements referred to is negative or constitutes an abstention of opinion by the External Auditor, in accordance with the generally accepted auditing procedures, the Stock Exchange shall suspend the quotation of the securities, informing the Issuer, until the situation is rectified.

Similarly, in the event that the opinion of the audit committee referred to in article 42, section II, subsection e) of the Securities Market Law, or when applicable, of the examiner, pursuant to article 166, section IV of the General Commercial Companies Law, determines that the information presented is not in compliance with the accounting and information policies and procedures followed by this issuer, as well as that such policies and procedures have not been applied consistently, the stock exchange may suspend the quotation of the securities, considering the importance of such events, in function of how adequate and sufficient the information provided to the public in general is.

Article 47

The board of directors of the Issuer shall approve guidelines for its board members, executives and other persons that participate in the preparation, analysis, approval and presentation of the information referred to in this Title, which help to determine when they shall abstain from ordering operations with securities of the Issuer. Such guidelines shall include the persons responsible in the area of acquisition of its own shares and ordering the purchase and quotation of its own shares referred to in Title Six of these provisions.

Article 48

The persons referred to in article 365 of the Securities Market Law, who wish to obtain the authorization referred to in section V of the mentioned article, shall present the corresponding written request to the Commission, which shall contain the following:

I. The type of operation that they intend to carry out, with specification of the class of securities to acquire or alienate, as well as the volume or amount of the operation. In the case of shares or development, real estate, energy and infrastructure investment trust securities, the series shall be specified.

II. The intermediary through which the operation will be carried out.

III. The type of operations, the class of security, the date, volume, price, Stock Exchange or market and intermediary, through which the operation that requires the authorization referred to in this article will be carried out.

IV. The reasons the request is considered justified.

In the request document, the person shall state under oath that he/she does not have privileged information, pursuant to the terms of article 362 of the Securities Market Law that leads him/her to carry out the operation being requested.

In the event that such authorization is granted, the person involved shall inform the Commission no later than the business day following the date on which the last of the authorized operations was carried out, its results, including the date it was carried out, volume operated, price and intermediary through which it was carried out. In the case of shares or development, real estate, energy and infrastructure investment trust securities, the operation shall be carried out on the Stock Exchange and at the current price on the corresponding market on the date it will be carried out.

Article 49

For purposes of section IV of the above article, the Commission may consider the request justified when the persons involved intend to:

I. Participate in corporate restructurings.

II. Recompose the shareholdings of the Issuer in the case of volumes greater than 1% of its capital stock within the same group of persons.

III. Participate in public offerings.

IV. Exercise the preferential right in the case of a subscription of shares.

V. Alienate shares or development, real estate, energy and infrastructure investment trust securities, of a series and with the resources obtained acquire shares of another series of the same Issuer.

V. Alienate shares or development, real estate, energy and infrastructure investment trust securities to obtain cash in order to confront emergency situations.

Second Chapter Acquisition of securities subject to disclosure

Article 49 Bis

The person or group of persons that directly or indirectly hold 10% or more of the titles that represent capital stock of a company, registered in the Registry, as well as the members of the board of directors and relevant officers of such companies, for purposes of article 111 of the Securities Market Law, shall give notice to the Commission of the purchases or sales performed of such securities during one calendar quarter, within the next 5 following business days to each period, as long as the total transactional amount within such period is equal or greater to the equivalent in national currency to 1,000,000 investment units, considering the unit value of the investment on the last business day of the quarter in which the transaction was performed.

Likewise, the persons mentioned in the paragraph above, will

inform the Commission of the sales and purchases of the shares of the abovementioned companies to which they are linked, that perform within a 5 business day term, when the transactional amount is equal or greater than the equivalent in national currency to 1,000,000 investment units, on the following business day on which such amount is reached, considering as investment unit value the last day of the last transaction.

Security loans, stock exchange guaranties unless enforced, and repurchase for the payment of international arbitration will not be considered to be part of these restrictions.

The above, without affecting the prohibition provided by article 365 of the Securities Market Law.

For the purposes of this chapter, article 112 of the Securities Market Law shall be fulfilled.

Article 49 Bis 1

The information provided by article 49 Bis above will be filed with the administrative unit in charge of surveillance of the Commission, in the form attached as exhibit U to these provisions, printed and duly executed by the holder of the shares or its representative or attorney in fact.

Likewise, the persons provided in article 109 and 110 of the Securities Market Law, shall file with the stock exchange the information mentioned by such article, and additionally to the Commission in witting. In both cases, at the latest the following business day in which the event provided by such articles occurs.

The abovementioned information that shall be filed by a group of persons to the Commission and/or the stock market, pursuant to articles 109 and 112 of the Securities Market Law and these provisions, shall be delivered by a representative, containing specifically the information on the amount they hold, as well as, if applicable, the percentage of the increase or decrease, of each person that integrates the group.

Article 49 Bis 2

The issuers of shares or trust securities that represent shares, shall send to the Commission through the STIV-2, within 20 business days following the day of the initial subscription in the Registry of such securities and no later than June 30 of each year, from the year previous to the initial subscription, a report with names, corporate name, number, series and class of the shares they own, as to the amount and percentage they represent regarding their capital stock of the following persons:

I. Directors and executive officers of the issuer that maintain directly or indirectly an individual share tenancy greater than 1% of the capital stock of the issuer.

II. Individuals or legal entities, trusts or other investment

vehicles, that are directly or indirectly, owners or beneficiaries of 5% or more than the capital stock of the issuer.

III. The 10 shareholders, individuals or legal entities with more direct equity participation, even when such participation does not represent 5% of the capital stock if the issuer in the individual.

Furthermore, the issuers referred in this article, are obliged to send to the Commission through the STIV-2, the information referred to in the last paragraph of article 49 Bis 3 of these regulations.

The report referred to in this article shall have updated information, at least up to the date of the General holders meeting that resolves on the results of the immediate previous fiscal year, as well as be subscribed by the Chief Executive Officer and the one in charge of the legal area, or their equivalents, of the issuer in question.

The issuers of shares or trust securities that represent them, when sending the information foreseen in this article, may assign the documents that contain confidential information in terms of the Federal Law of Transparency and Access to Public Government Information, so that they are retained with such character.

Article 49 Bis 3

The issuers of shares or trust securities that represent shares shall send no later than on April 30 of each year, a letter to each one of the members of the Board of Directors, as to their respective officers, soliciting the number, series and class of the shares they own or are beneficiaries, directly or indirectly, as to the amount and percentage they represent regarding the capital stock of the issuer, adjusting to the format contained in exhibit V of these regulations.

Likewise, the issuers of shares or trust securities that represent shares shall send no later than on April 30 of each year a letter to the brokerage firms soliciting to deliver no later than the date of the General shareholders meeting in compliance to the provisions in article 181 of the General Law of Business Organizations, the list of the shares they represent.

The individuals or legal persons or vehicles to which sections I and II of article 49 Bis 2 above apply, on the date that their shareholders' general ordinary meeting resolves about the results of the previous tax year, shall provide at the latest on May 15 of each year to the issuer, its name, number, series and class of shares that hold or of which is a, direct or indirect, beneficiary, as well as the amount and percentage it represents with regards to the capital stock of the issuer, adjusting to the form attached as exhibit V of these provisions.

Likewise, any individual that holds or is a beneficiary of 1% or more of the capital stock of the issuer, directly or indirectly, through one or more legal persons, trusts or other investment vehicles, shall inform such situation to the issuer through Exhibit V, on the date mentioned in the paragraph above, disclosing the form in which he/she holds such shares.

Title Five Disclosure of relevant events

Article 50

The Issuers of securities registered in the Registry shall transmit to the Stock Exchange, through the SEDI, their relevant events, in the form and terms established in this Title and afterwards to the Commission through the STIV-2 on the same date.

The following without limitation are considered relevant events provided they influence or could influence the prices of the securities registered in the Registry:

I. With respect to the corporate structure of the issuer:
   a) The changes in the organizational structure of the issuer.
   b) The changes of the members of the corporate bodies of the issuer or of its relevant executives, as well as the reasons for such changes.
   c) The amendments to the corporate by-laws.

II. With respect to the business of the issuer:
   a) The execution, breach, rescission or termination of business collaboration contracts or agreements or strategic alliances by the issuer or the entities that it controls or over which it has significant influence.
   b) The execution, breach, rescission or termination of contracts or agreements with suppliers, clients or with governments at any level that are critical for carrying out the corporate purpose of the issuer or of the entities it controls or over which it has significant influence.
   c) The participation in competitive bidding or tender offers by the issuer or the entities that it controls or over which it has significant influence, as well as the respective result.
   d) The substitution of the important suppliers and clients of the issuer or of the entities that it controls or over which it has significant influence.
   e) The development, creation or cancellation of lines of business, products or services by the issuer or the entities it controls or over which it has a significant influence, as well as the changes in their form of distribution.
   f) The acquisition, alienation, contracting, granting, modification, expiration, revocation or cancellation of patents, trademarks, licenses or franchises of the issuer or of the entities it controls or over which it has significant influence.
   g) The granting, modification or revocation of concessions of the issuer or the entities it controls or over which it has significant influence.
   h) The events constituting acts of God or causes of *force majeure* that prevent the issuer from engaging in its activi-

ties or the entities it controls or over which it has significant influence.

i) The penetration of or departure from markets in which the issuer or the entities it controls or over which it has significant influence is involved.

j) The projects of expansion and their modifications or cancellations, as well as the costs of financing and estimated execution time.

k) The variations or substitutions in the supply of inputs used for the preparation of products or provision of services.

l) The individualized governmental rulings that refer to, by way of example, concessions, permits, authorizations, exemptions and subsidies.

m) The judicial declaration of pre-bankruptcy negotiation or bankruptcy proceedings of the issuer or of the entities it controls or over which it has significant influence, as well as the termination of such proceedings.

n) The reasons for which the issuer has retransmitted information that according to the applicable provisions or the internal regulations of the stock exchange, shall be made known to the general public. In the case of financial information, the issuer shall also identify any observations of the external auditor.

o) The discovery of resources or the development, acquisition or application of new technologies that impact the operation of the business of the issuer or the entities it controls or over which it has significant influence.

p) The incorporation, separation, withdrawal or exclusion of partners or shareholders who maintain contracts or collaborate in the operation related to financial, legal, technological or administrative aspects of the issuer or the entities it controls or over which it has significant influence.

q) The contracting of services with third parties for carrying out the activities of the issuer's business.

r) The changes in the techniques related to coverage for the risks associated with the activities of the issuer's business or the entities it controls or over which it has significant influence.

III. In relation to the securities of the issuer:

a) The negotiation or consummation of investment, merger or spin-off projects, or projects that involve the acquisition of shares of the issuer that modify its capital structure and, if applicable, that of the entities it controls or over which it has a significant influence. The above will also apply when the provisions of this section is regarding development, real estate, energy and infrastructure investment trust securities.

b) The changes in the program for the acquisition of its own shares set forth in the Securities Market Law.
c) The causes originating the acquisition of its own shares in atypical or unusual volumes.
d) The changes in the shareholding composition of the issuer that affect its control or the control of the entities in whose capital the issuer participates, as well as those operations that constitute at least 5% of the shares representing its capital stock, carried out by its board members, controlling shareholders, relevant executives and other persons that in terms of the Securities Market Law are presumed to have knowledge of relevant events considered privileged information.
e) The acquisition or alienation of shares or financial instruments that have as underlying securities, securities that represent a significant percentage of the capital stock of other legal entities.
f) The suspension or cancellation abroad of the quotation of the securities of the issuer.
g) Any changes to the qualification given by a securities rating institution.
h) Other qualifications regarding the quality they have obtained for any circumstance, rating institutions of shares different from the ones certifying their quality, as well as to the name of said rating institutions, once said qualifications have been acknowledged and depleted form the clarification procedures. The disclosure should include the main considerations done by the rating institution to determine the qualification.
i) The acts, facts or events related to public offerings of securities.
j) The obtaining of the listing of securities of the issuer on national or foreign stock exchanges, as well as the decision to de-list securities on such stock exchanges.
k) The hiring of market formers in connection with the securities of the issuer, as well as the extension, termination, rescission or renewal of the corresponding agreements.

IV. With respect to the financial situation of the issuer:
a) The deviations in the performance of the issuer or the entities it controls or over which it has significant influence, with respect to the forecasts or projections that have previously been made known to the public.
b) The granting and obtaining of credit, loans or financing that represents a significant amount of the consolidated capital of the issuer. Likewise, the total amount of credits, loans or financing that have been contracted by the issuer, since the publication of the last quarterly report

that shall be filed in accordance with these provisions, when such amount represents 5% or more of the total consolidated assets, debts or capital of the issuer.

c) The relevant modifications in strategic assets of the issuer.

d) The granting, modification or substitution of guarantees that represent a significant percentage of the consolidated capital of the issuer.

e) The changes or diversions in the application of resources coming from the issuer of securities or of financing in general.

f) The restructurings or amortizations of the most important debts of the issuer or the entities it controls or over which it has significant influence.

g) The failures to pay interest or capital installments of the debt instruments and other debts of the issuer or the entities it controls or over which it has a significant influence.

h) Any situation having repercussions on the financial structure or on the results or on the liquidity, solvency, profitability and utilization of assets indexes, as well as any change of accounting, financial or economic policy in relation to the fiscal year immediately prior to that in which such change is presented.

i) The changes in the dividend payment policy and the policies for loans or credit to the issuer that imply restrictions or affirmative or negative covenants, such as the payment of dividends or that involve changes in its capital structure.

j) The loss of at least one fourth of the capital stock.

k) Repealed.

l) The change of the stock purchase option plans for relevant executives and employees, as well as the trusts constituted for such purpose. The changes of the share purchase for employees of the issuers or administrators of the development, real estate, energy and infrastructure investment trust securities will be included to that subsection.

m) The creation and extinction of unconsolidated entities in the financial statements of the issuer that could affect its financial situation.

n) The changed or non-favorable opinion presented in the certification of the financial statements of the issuer.

V. In relation to lawsuits and regulatory changes:

a) The collective labor conflicts of the issuer or the entities it controls or over which it has a significant influence.

b) The significant judicial, administrative or arbitral proceedings for the issuer or the entities it controls or

over which it has significant influence, as well as the resolutions issued in such proceedings or issued against the shareholders having at least a significant influence, board members and relevant executives.

c) The changes in laws or governmental provisions that impact the operation of the issuer's business or the entities it controls or over which it has significant influence.

VI. With regards to trust securities, in connection with the fiduciary or asset, right or conveyed securities manager:

a) Any instruction received by the technical committee of the trust regarding aspects that are not provided in the corresponding trust agreement.

b) The amendments to the fiduciary or assets, rights or security manager rating, that, if applicable, grants any rating institution as trust service provider or as asset administrator, accordingly.

c) In the event any of the causes provided in the trust agreements originate the substitution of the fiduciary or the trusted asset, right, or securities manager.

d) The substitution of the fiduciary, as well as the relevant information and identification of the substitute fiduciary.

e) The substitution of the trusted assets, rights or securities manager, as well as the name and information of the substitute manager.

f) Any relevant modifications to the administration and collection policies of the assets, rights or securities manager.

VII. With regards to trust securities, in connection with trusted assets, rights or securities:

a) That a percentage greater than 10% of the total assets, rights or conveyed securities has 4 or more overdue monthly payments not paid in one period.

b) That a percentage greater than 10% of the total unpaid amount of the principal of the trusted credit rights are prepaid in one period.

c) That in terms of the corresponding assignment agreement, the grantor of the trusted assets, rights or securities, reacquires or substitutes 10% or more of such assets, rights or securities. Likewise, if the derivative of such reacquisition or substitution is a percentage greater than 25% of the total of the assets that integrate the assets of the trust is concentrated in one geographical area.

d) If a percentage greater than 5% of the total trusted assets, rights or securities is in judicial, arbitration or administrative procedures.

e) When the resources of the trust are not sufficient to cover the enforceable amounts in a specific date in terms of the issued securities and therefore a guarantee is needed to be enforced.

VIII. For development, real estate, energy and infrastructure investment trust securities:

a) issued under the capital call mechanism, the corresponding amount of the capital call that has not been covered, as well as the percentage that it represents of the total call, describing the effects to the business plan.

Likewise the amounts paid covered by the holders of the trust securities of such capital call.

b) Whose prospectus placing had included the provisions of article 7., section VI, subsection a), numeral 6, when they maintain invested more than 30% of the funds of the issuance of securities different from the ones mentioned in numeral 1.11 above, case in which, additionally, it shall be disclosed that since that moment the annual and quarterly financial information, as to the annual report will be disclosed in terms of article 33, section I, subsection a), numeral 3, b), first paragraph and II second paragraph of these regulations, as appropriate to the type of information.

c) In the event they obtain the authorization of the Commission to publish an informative notice, complementary to the prospectus placing, through which they inform the adoption to adjust to the regime foreseen in article 7., section VI, subsection a), numeral 6, they must disclose such fact, as to since that moment the financial information referred in section II of article 33 will be disclosed no later than the following 20 calendar days until the quarter end concludes after the one that corresponds to the information, and that the annual financial statements or its equivalent alluded in article 33, section I, subsection a), numeral 3, as to the annual report referred to in article 33, section I, subsection b) numeral I all of these provisions, will be presented no later than June 30 of each year.

d) In case of the calling for the General Holders Meeting includes in the minutes any of the topics referred article 7, section VI, subsection a), numeral 1., section VII, section), numeral 1., section VIII, subsection a), numeral 1., and section IX, subsection a), numeral 1., of the present provisions or, article 64 Bis 1, section I, subsection c) of the Securities Market Law, as applicable,, the detailed information that will be presented for the approval of the meeting regarding such topics. Such disclosure shall be on the same day of the publication of the corresponding calling.

e) That they have foreseen in the general conditions of the issuance the credit assumptions, loans or financing from the trust property, by the trustee, administrator of the trust property or whoever is in charge of those functions or by the trustee, in accordance with the following:

i) When for any reason exceeds the maximum limit of leverage or indebtedness established in article 7, section VI, subsection a), numeral 4.1., section VII, subsection a), numerals 4.1., or 5., second paragraph, section VIII, subsection a), numeral 1.2., second paragraph or, section IX, subsection a), numeral 6.1., and 6.2., second paragraph of these regulations.

ii) When for any reason the coverage ratio of the indebtedness service, established according to the provisions of article 7, section VI, subsection a), numeral 4.2, section VII, subsection a), numeral 4.2., and 5., second paraph and section IX, subsection a), numeral 6., is less than 1.0 or, in the case of energy and infrastructure investment trust securities such ratio is less to the one determined by the General Holders Meeting, in accordance to article 7, section VIII, subsection a), numeral 7.

iii) When it exceeds, for any reason, the maximum limit established in article 7 section IV), subsection a), numeral 4., fourth paragraph, related to development trust securities; section VII, subsection a), numeral 4., fifrth paragraph and numeral 5., second paragraph related to real estate trust securities; section VIII, subsection a), numeral 7., related to energy and infrastructure investment trust securities, and section IX, subsection a), numeral 6., fourth paragraph, related to investment proyects trust securities;

iv) When the technical committee has approved the corrective plan alluded in article 7, section VI, subsection a), numerals 4.1., last paragraph and 4.2., last paragraph, section VII, subsection a), numerals 4.1., last paragraph and 4.2., last paragraph or 5., fourth paragraph, section VIII, subsection a), numeral 7., last paragraph or, section IX, subsection a), numeral 6.1., last paragraph, of this provisions., presenting at least the principal characteristics and shares it has; or

v) The compliance to the corrective plans alluded in article 7, section VI, subsection a), numerals 4.1., last paragraph and 4.2., second-to-last paragraph, section VII, subsection a), numerals 4.1., last paragraph and 4.2., last pargraph or 5., fourth pargraph, section VIII, subsection a), numeral 7., sicth pargraph and section IX, subsection a), numeral 6.1., last pargraph and 6.2., last pargraph, of these regulations.

IX. The disclosed information by the issuer to investors or annalists, national or foreign, through conference calls, emails, reports or any other non-mass media of communication.

X. The other acts, facts or events that have the capacity to influence the price of the securities of the issuers.

In the case of trust securities (*títulos fiduciarios*) or securities whose payment depends totally or partially on the settlor, administrator of the trust property, the guarantor or surety or any other third party, the information referred to in this article shall be disclosed by the corresponding party in relation to such subjects. Likewise, in the case of the development, real estate, or energy and infrastructure investment trust securities, the information of this article shall be disclosed and sent also, in connection with the companies in which the trust invests or acquires titles that represent capital stock, considering each of the investments or un-investments, if applicable, performed.

The issuers, to determine if an event is in the nature of relevant, should consider whether the act, fact or event in question represents, if applicable, at least 5% of the assets, liabilities or total consolidated capital, or 3% of the total consolidated sales of the previous fiscal year of the issuer. When such operation represents less than the percentages mentioned or is not measurable on a percentage basis, the issuer must evaluate if the act, fact, or event in question constitutes or may constitute relevant information in terms of the Securities Market Law.

With regards to the representation that, when applicable, the issuers must make regarding not knowing the causes that originated the unsuspected movements in the market in connection to the price and volume of transactions of its securities or changes in the offer and demand of its securities or price, that are inconsistent with its historic behavior and that cannot be explained with the information available to the public, in terms of article 106 of the Securities Market Law, the issuers shall clarify if the members of the board of directors, officers or the repurchase fund, performed transactions with the securities of the issuer, if negative it shall be mentioned.

In the case of issuers participating in agreements or assignments on exploration and extraction of hydrocarbons, they additionally must inform the Executive Coordination of the Mexican Petroleum Fund (*Coordinación Ejecutiva del Fondo Mexicano*) as well as to the General Directorate Adjunct to Income Operation Supervisor in Hydrocarbons(*Dirección General Adjunta de Supervisión de Operaciones de Ingresos sobre Hidrocarburos*) belonging to the Hydrocarbons Income Unit (*Unidad de Ingresos sobre Hidrocarburos*), subscribed to the Income Subsecretary (*Subsecretaría de Ingresos*) of the Ministry of Finance and Public Credit, the relevant events in accordance with the Securities Market Law.

Article 51

The issuers that choose to defer the revelation of any relevant event, in terms of article 105 of the Securities Market Law, shall keep a record with the names of the persons who have had access to the information, which includes the date and time they had knowledge thereof,

obtaining from them a confidentiality commitment, preserving such information as privileged for all applicable legal purposes.

Article 52

The members of the board of directors, the general director and other relevant executives that know or that as a result of their duties should know of relevant events, will be responsible for instructing the disclosure of the information in accordance with this Title.

Article 53

The issuers shall instrument the mechanisms necessary to guarantee that the operations to purchase or sell the shares representing their capital stock or negotiable instruments that represent them, or, the issuers of development, real estate, or energy and infrastructure investment trust securities, carried out by their shareholders, board members, relevant executives, holders, members of the technical committee or equivalent entities, will be notified no later than on the same date that such operations take place, in order to comply with the requirements formulated by the Commission or the stock exchanges in terms of article 106 of the Securities Market Law.

Article 54

The stock exchange shall immediately request from the issuers more information about disclosed relevant events when in its judgment the information contained in these is insufficient, imprecise or confusing, and order that such information be clarified or corrected if it is confusing.

The stock exchange may request the issuers to correct, ratify, deny or amplify any relevant event when it has been disclosed by third parties to the public and, in its judgment, it may affect or influence the quotation of the securities.

The Stock exchange shall immediately inform the Commission of the requests made. The above is without prejudice to the Commission making the cited requests from the Issuers involved.

Article 55

Repealed.

Title Six Purchase of shares by their own Issuers

Article 56

The issuers that purchase shares representing their own capital stock, in accordance with article 56 of the Securities Market Law, will do so through the stock exchange, meeting the following conditions in addition to the provisions of such article:

I. Be up to date in the payment of any cumulative dividends that have been established in favor of preferred stock.

II. Be up to date in the payment of the obligations derived from the issuance of debt instruments that are registered in the Registry.

III. Carry out the purchase:

a) Of non-assessable stock, without any distinction with respect to the holders of the stock, making the operation general.

b) Through a market order. In the event there were no bids, the Issuer shall instruct that its order be limited, for which it will determine as price that of the last purchase and sale operation registered on the Stock Exchange, unless based on the internal regulations of the Stock Exchange or, at the justified request of the Issuer, it is appropriate to carry out the operation by bidding, in which case the prices of the other series of the Issuer shall be taken into consideration.

c) If the intention of the Issuer is to buy more than 1% of the outstanding shares in the market in the same stock market session, this shall be disclosed through the SEDI at least 10 minutes prior to the presentation of the corresponding bids corresponding to its order. Such communication shall contain at least the information regarding the class of shares to purchase, the percentage of capital stock of the Issuer and the price.

d) By public offer to buy when the number of shares to be purchased in one or more operations within a period of 20 business days is equal to or greater than 3% of the outstanding shares of the Issuer.

In the event that the purpose of the offer referred to in this subsection is the cancellation of the registration of the shares in the Registry, the price of the offer shall be determined in accordance with article 108 of the Securities Market Law.

e) Ordering it through the person appointed by the general director of the issuer as responsible for the handling of the resources for the purchase of its own shares, in accordance with article 60 of these provisions.

f) Through a single brokerage firm, when it is carried out on the same date.

IV. Abstain from making purchase orders during the first and last 30 minutes of operation corresponding to a stock market session, as well as outside of the schedule of such session. Additionally, the necessary measures for the financial intermediaries that correspond to the instructions to not realize the operations in the referred periods shall be taken. V. Make purchase orders with daily effect only.

V. Give notice to the Stock Exchange no later than the business day immediately following the carrying out of the purchase operation, through the SEDI on the corresponding Electronic Forms. Such Form shall specify at least the following information:

a) The date and consecutive number of the corresponding purchase operation.
b) Type of operation.
c) Series and number of shares purchased.
d) Unit price and amount of the operation.
e) Intermediaries through which the purchases are made.
f) If the purchase is made from net worth or capital stock and the corresponding amount, as well as the number of its own or treasury shares, as applicable, that result from the purchase.
g) The remainder of the resources that, by resolution in a shareholders meeting, have been assigned to the purchase of its own shares.

VII. Abstain from giving instructions to carry out operations for the purchase or sale of its shares from the time it has knowledge of any public offering of its shares and until such offering period has terminated.

The Commission, if requested by the Issuer and provided the prevailing market conditions or the conditions in the economic activity the Issuer engages in so justify it, may authorize exceptions to the provisions set forth in sections III, subsection c) and IV of this article.

Article 57

The Issuers when placing on the Stock Exchange their own shares that they have previously acquired will comply with the provisions of article 56, sections III to VII above.

Article 58

The persons referred to in the first paragraph of article 366 of the Securities Market Law shall give the notices indicated in article 367 of such law through the issuer and the latter through the SEDI. In the event that the notices cannot be made through the issuer, such persons may request that the stock exchange permit them to carry out the dissemination directly.

Article 59

The Issuers shall abstain from carrying out operations with their own shares when there are relevant events that have not been disclosed to the investing public at large in accordance with these provisions.

The members of the board of directors, the Chief Executive Officer and other relevant executives that know or that as a result of their position should know of relevant events, shall be responsible for the due observance of this article.

Article 60

The Issuers shall maintain at the disposal of the Commission the

documentation regarding the policies for purchase and placement of their own shares approved by their board of directors, as well as the resolutions of the board based on which instructions are given for the purchase and placement of such shares. These policies shall contemplate at least the following:

I. The functions and responsibilities in relation to purchase of their own shares, among the persons authorized to decide to purchase or place such shares, in function of the amount or percentage of capital stock to purchase or place, as well as those responsible for carrying out the operation and giving the notice referred to in article 56, section VI above.

II. The procedure for assigning its own shares to trust institutions in trusts constituted in order to establish stock option programs for employees.

III. The form and terms in which the board of directors shall inform, at least annually, the ordinary general shareholders meeting of the Issuer about the procedures and resolutions indicated in this article.

Article 61

The Issuers may give instructions for the purchase and placement of their own shares, provided they have executed a non-discretional stock market brokerage agreement with a brokerage firm, same that shall send to the stock exchange through the SEDI and afterwards on the same day to the Commission through the STIV-2, within the following 10 business days to its execution or any amendment.

Article 62

The Commission may order the Issuers to suspend the purchase and placement of their shares when chaotic conditions exist or operations are being carried out that are contrary to healthy market usages or practices.

Article 63

The issuers shall disclose the operations they carry out in derivative financial instruments whose underlying securities are their own shares or negotiable instruments representing them, providing information on the conditions and reasons for such in the commentaries and analysis of the administration of the operational results and financial situation of the issuer of the corresponding quarterly report. The above is without prejudice to the provisions of article 56 of the Securities Market Law in relation to the purchase of their own shares.

Article 64

Repealed.

Title Seven The common representatives

Article 65

The issuers of trust securities, debt instruments, and of warrants

(*títulos opcionales*) that have obtained the registration of their securities on the Registry, when they place them shall appoint brokerage firms or banking institutions as common representatives of holders of such securities, who will be obligated to exercise the acts necessary to safeguard the investors' rights.

The Issuers shall specify, in the indenture or, as applicable, in the corresponding warrant the functions to be performed by the common representative, as well as the form and terms under which the position will be substituted, in the understanding that the holders of the securities referred to in the first paragraph may only appoint brokerage firms or banking institutions as a substitute common representative.

Article 66

Under no circumstances may the brokerage firm that acts as Placement Intermediary or member of the placement syndicate (*sindicato de colocación*), or those credit institutions that participate in the issuance and operation of the public offering of the securities in question, be designated as common representative.

Nor may the brokerage firm or credit institution that forms part of the same financial or business group as the Issuer or the Placement Intermediary or, if applicable, the Holding company of the financial group to which it belongs, act as common representative. For purposes of this paragraph, business group will be understood as the group of entities organized under direct or indirect capital stock investment schemes controlled by the same company, including the latter.

Article 67

The instruments representing the securities referred to in article 65, first paragraph of these provisions shall contain the signature of the appointed common representative, with the mention that he/she has such capacity.

Article 68

The appointment and acceptance of the position of common representative will convey to the latter the obligation to exercise the actions and rights corresponding to the group of holders of the securities, for the payment of matured and unpaid capital and interest to them by the Issuer, without prejudice of the other powers the laws confer to them.

In the base documents of the issuance, it must be expressly included:

I. That the common representative must verify, through the information provided to him for such purposes, the timely and appropriate compliance with the provisions established in the issuer trust agreement, certificate, deed of issuance, service agreement or others similar with the manager, master administrator or whomever performs equivalent ser-

vices, as well as any guarantee or loan support contract, and, where appropriate, the state that holds the trust's estate.

II. The supply for the issuer, the trustee, and the other parties in said documents, to deliver to the common representative the information and documentation that is necessary to verify compliance with the obligations referred to in section I above.

III. The right of the common representative to request to the issuer, the trustee, and the other parties in said documents, or those who provide related services, whether with the securities or with the trust's estate, the information and documentation necessary to verify the compliance with the obligations referred to in section I above.

IV. The periodicity with which the common representative may make visits or reviews to the persons referred to in the previous section.

V. The obligation of the common representative to immediately request of the issuer, through a relevant event, to make the public aware of any breach by the issuer, the tustee, and the other parties in those documents, of the provisions established in the base documents of the issuance.

In the event that the issuer fails to disclose the relevant event in question, within two business days following the notification made by the common representative, it will be required to publish said relevant event immediately.

VI. The obligation of the common representative to be accountable for the performance of his duties, when requested by the general holders meeting or when concluding his assignment.

VIII. That the common representative may request it the general holders' meeting or it alone may order the subcontracting of specialized third parties to assist it in complying with its reviewing obligations established in this article or in the applicable legislation, subject to the responsibilities established by the holders' meeting itself. In the event that the general holders' meeting does not approve the subcontracting, the common representative will only be liable for the activities that are directly attributable to him in terms of these provisions or of the applicable legal provisions.

Article 69

The Issuers shall be obligated to inform the securities deposit institution in which they are deposited, about the payment of their instruments or the calculation of the corresponding interest rate, directly or through the common representative, at least 2 business days prior to their maturation.

The Issuers will provide the Stock Exchange with the information

referred to in the above paragraph through the SEDI and afterwards on the same day to the Commission through the STIV-2.

The failure to present a report on the payment of the instruments or the indication that the securities will not be paid upon their maturity, will result in the depositary institution, in exercise of the power conferred by the Issuer and before the date of maturity, issuing as many instruments as there are depositors registered, such that an action for collection of a negotiable instrument can be exercised and the effect of an ordinary assignment set forth in article 27 of the General Law of Negotiable Instruments and Credit Operations is not produced.

Title Eight General provisions

Article 70

The issuers will give notice to the Commission through STIV-2, using the forma attached as Exhibit Y to these provisions, and to the stock exchange through the SEDI, the persons responsible for providing the information set forth in articles 61, 69, 73, 84, 84 Bis and in titles Four and Five of these provisions, as well as the name of the persons responsible for ordering the purchase and placement of the shares representing their capital stock and any substitutions that may be made, within 10 business days following the appointment or designation.

The issuers that make the notification through the STIV-2 referenced in this article shall attach the digital document of the power of attorney in which the general authority for acts of administration are granted to the appointed persons as responsible to send the information, as well as an official identification.

Likewise, once the notification provided by this article is made, the issuers, through the persons appointed as responsible of sending the information through the STIV-2, shall request the user electronic codes and passwords with the purpose of being able to make the deliveries, which shall be performed in accordance with the Users Manual referenced in Exhibit X of this provision, such manual is part of the system.

Article 71

The issuers, in addition to the provisions of article 28, section III of the Securities Market Law, that themselves or through the entities they control, intend to execute operations with related persons that, whether simultaneous or successive, due to their characteristics could be considered as a single operation, in the lapse of one fiscal year, whose amount represents, based on figures corresponding to the close of the immediately prior quarter, the purchase or sale of assets with a value equal to or greater than 10% of the consolidated assets of the company or the granting of guarantees or the assumption of debts that represent the same percentage, prior to obtaining the approval

from the board of directors referred to in section III mentioned above, shall obtain the opinion of an independent expert appointed by the committee that exercises corporate practices functions, on the reasonableness of the price and market conditions of the operation. Such opinion shall be considered by the board of directors and the above mentioned committee in their deliberations and in order to determine the advisability of submitting the corresponding operation, given its importance, to the approval of the shareholders meeting.

This article will not be applicable to the operations carried out by the issuers in terms of article 28, section III, subsection b), and number 2 of the Securities Market Law.

Article 72

The Stock Exchange shall immediately inform the Commission and the public in general, through the media that it establishes in its internal regulations for such purposes, of the suspension of the quotation of the securities in the cases referred to in articles 29, 44, 45, 46 and 55 of these provisions.

Once the Stock Exchange discloses the information alluded to in the above paragraph, the intermediaries of the securities market and the companies that administer mechanisms intended to facilitate the operations with securities registered in the Registry, shall abstain from channeling requests or orders intended to carry out operations with securities that have been suspended.

Article 73

The issuers may request the stock exchange or, if applicable, the Commission to lift the suspension of the quotation of their securities, provided they evidence that the causes that gave rise to the suspension have been overcome and that they are up to date in the delivery of the reports and other information they are obligated to provide, in accordance with articles 104 to 106 of the Securities Market Law and in these provisions. The Commission or the stock exchange may determine the lifting of the suspension of the quotation of the securities of the issuer in the event there is sufficient relevant information from such issuer for the public in general to be able to make informed decisions. If the lifting of the suspension is appropriate, the reinitiating of the quotation shall be carried out through the operational scheme the stock exchange determines in its internal regulations.

In the event that an Issuer is suspended for more than 20 business days and obtains authorization to reinitiate the quotation of its securities without a public offering, it shall sent through the SEDI and afterwards on the same day to the Commission through the STIV-2, prior to the lifting of such suspension, a description of the reasons for the suspension, as well as the justification for its lifting.

Article 74

The Electronic Forms prepared by the Stock Exchange for the send-

ing of the information through SEDI referred to in these provisions, including changes thereto, shall first be authorized by the Commission.

The stock exchanges may exempt stock market investment promotion corporations (*sociedades anónimas promotoras de inversión Bursátil*) from the presentation of electronic forms, as well as prepare different electronic forms for such companies; without prejudice of the above, such companies shall disclose to the public the relevant information necessary to make investment decisions.

In the event that the Stock Exchange intends to make modifications to the interconnections and linkages in the sending and receiving of information through the SEDI, it shall first give notice to the Commission.

The Stock Exchange shall provide in its internal regulations for the mechanisms, form and terms in which it will inform the issuers of the Electronic Forms to which the first paragraph of this provision refers.

Article 75

The issuers shall disclose on their web page the placement prospectuses or informational supplements referred to in the Second Title of these provisions, the amended by-laws, the annual report, the quarterly report, the monthly report, and the corporate restructurings referred to in Title Four, and the information on relevant events referred to in Title Five of these provisions, as well as the names of the persons mentioned in article 70 of these provisions, the same day such information is presented to the Commission, the stock exchange and the public in general. In this information it will be included that the broadcasters disclose to investors or analysts, national or foreign, through telephone conferences, emails, reports or any other means of communication.

The information that the issuers disclose in terms of the above paragraph shall include at least the two prior fiscal years, together with the information corresponding to the current fiscal year.

The above paragraphs will not be applicable to stock market investment promotion corporations (*sociedades anónimas promotoras de Inversión Bursátil*).

Compliance with this provision does not exempt the issuers from presenting the information referred to in articles 104 to 106 of the Securities Market Law.

Article 76

The Issuers, in the dissemination of the information through any means of mass communication for purposes of promotion and publicity of their securities, different from what is referred to in article 19 of these provisions, shall obtain the prior authorization of the Commission and only disclose the information that they have previously released in accordance with these provisions and which, in all cases, shall be clear, objective and true.

The information that is disclosed through conference calls, stock market meetings or presentations, including those transmitted on line, do not require authorization by the Commission, but in all cases shall comply with the above paragraph.

Article 77

The Stock Exchange shall immediately send to the Commission and put at the disposal of the investing public at large on its web page, the information that it receives through the SEDI in terms of these provisions.

Likewise, the Stock Exchange shall immediately send to the Commission through the STIV-2, at the time any notice is disclosed through the SEDI as Stock exchange. For purposes of the above, the Stock Exchange in the pertinent provisions of article 70 of these regulations will be applicable.

Furthermore, the stock exchange shall establish additional mechanisms, such as e-mail, to procure the broad and timely dissemination of the information referred to in articles 7, sections II, subsection b), number 5, second paragraph and III, second paragraph; 18; 20, third paragraph; 23, last paragraph; 24, last paragraph; 29, second paragraph; 34, sections I, II and IV; 36, section IV, subsections a), c) and e); 38, sections I, II and IV; 41, first paragraph; 42; 43, second paragraph; 45, first paragraph; 46, first paragraph; 50; 56, section III, subsection c); 58; 73, last paragraph, and 84, last paragraph, of these provisions.

The Stock Exchange shall immediately put at the disposal of the investing public at large for their consultation, in its offices and through the media established in its internal regulations, the information it receives in print.

The information that the issuers present to the stock exchange and that the latter puts at the disposal of the public, constitutes information disseminated directly by the issuer.

The Stock Exchange shall establish in its internal regulations alternate mechanisms for the reception of the information that the Issuers must send through the SEDI, when for causes not attributable to the Issuers they cannot send such information. The Stock Exchange shall also have contingency plans to guarantee the dissemination of the information it receives.

Article 78

The financial statements shall be prepared in accordance with the International Financial Reporting Standard issued by the International Accounting Standards Board, as well as certified by external auditor when applicable, with exception of the provisions in article 78, 78 Bis I and 79 of these regulations.

The audit and certification of the External Auditor, as well as reports or opinions to be submitted in terms of these provisions, shall

be done based on the International Quality Control, Auditing, Review, Other assurances, and Related Services Pronouncements International Federation of Accountants.

The financial statements that the financial entities may present shall be prepared and audited according to the accounting and auditing principles issued by the competent Mexican authorities, accordingly. The above, will also apply to the financial statements of issuers that through their subsidiaries make main financial activities subject to the supervision of such authorities. In the case of financial statements that the Multiple Purpose Financial Institutions not regulated that issue securities different from debt instruments, shall be elaborated and audited in accordance with the accounting and auditing standards that are applicable to the Multiple Purpose Financial Institutions referred in article 87-D, section V, of the General Law of Auxiliary Credit Organizations and Activities.

Fourth paragraph. – Repealed.

Likewise, the financial statements of the issuers whose main activity is granting credits, leasing or factoring, shall be prepared and certified according to the accounting and audit principles that apply to the Multiple Purpose Financial Institutions in terms of article 87-D, section V of the General Law of Credit Auxiliary Activities and Organizations.

Sixth paragraph.—Repealed.

For purposes of this article, main activity shall mean more than 70% of the total consolidated assets or income at the time of closing of the tax year of the issuer, being necessary for three tax years in which the activity represents less than 50% of the total consolidated assets, debts or income of an issuer, or, that in the previous tax year such activity represents less than 20% for paragraph fourth and fifth not to apply.

Article 78 Bis

The financial statements of the federal entities and municipalities shall be elaborated according to the accounting standards and guidelines for generating financial information issued by the National Board of Accounting Depreciation in terms of the General Government Accounting Law, as to auditing by the external auditor when appropriate. In the case of entities that in terms of this Law are considered public entities may present its financial statements in accordance with the regulations and guidelines mentioned above, or in accordance with the provisions of article 78 of these regulations, in the understanding that having chosen one of these regimes, must present the information subsequent financial years in this terms.

The financial statements referred in the previous paragraph shall be in a document mentioning the relevant differences between the accounting regulations issued by the National Board of Accounting Depreciation and the International Financial Reporting Standards issued by the International Accounting Standards Board.

The auditing and revisions of the external auditor, as to the opinions and reports must be based in the International Quality Control, Auditing, Review, Other Assurances and Related Services Pronouncements issued by the International Auditing and Assurance Standards Board of the International Federation of Accountants.

Article 78 Bis 1

The financial statements of the associates; counterparts or suppliers of financial instruments related to structured securities; third parties related with the issuance of trust securities referred in article 7, section II, subsection b) and c), development, real estate, energy and infrastructure investment, or investment projects trust securities, as well as to entities or legal entities different from the issuer, the settlor, administrator of the trust patrimony, guarantor or guarantee of the assets, when the payment obligation of said securities depend totally or partially of these, are obliged to present financial information in accordance with these regulations, shall be elaborated according to any of the following options:

I. International Financial Reporting Standards issued by the International Accounting Standards Board.

II. Financial Reporting Standards recognized and issued by the Mexican Financial Reporting Standards Board, A.C.

III. The provisions in this article will not apply to the issuers that are financial entities.

Article 79

The Financial Statements of foreign Issuers, settlors or guarantors shall be prepared in accordance with one of the following alternatives:

I. International Financial Reporting Standards issued by the International Accounting Standards Board.

II. International generally accepted accounting principles in the United States of America known commonly as US GAAP, incorporating into the complementary notes a document explaining the relevant differences between the accounting principles and methods used to prepare the financial statements and the principles referred to in section I above.

III. Accounting principles applicable in the country of origin of the issuer, incorporating into the complementary notes a document explaining the relevant differences between the accounting principles and methods used to prepare the financial statements and the principles referred to in section I above, as well as a reconciliation of the most relevant accounts that allows the quantification of the differences between one and the other, if any.

The foreign guarantor, when duly justified at the Commissions criteria, does not need to file the reconciliation mentioned in this section.

With regards to financial statements of foreign issuers, settlors or guarantors that are financial entities, same shall be prepared in ac-

cordance with any of the options provided in section I to II above or in accordance with the accounting principles issued by the competent Mexican authorities, depending on the type of financial institution, as long as, if one of the options provided is section II or III is adopted, the document explaining to what sections they refer, as well, as the reconciliation provided in section III, are elaborated in accordance with the applicable accounting principles issued by competent Mexican authorities.

Likewise, in the event that issuers, settlors or guarantors are foreign financial entities which opted by the option provided in section I of this article to prepare its financial statements, they shall incorporate an explanatory document with the main differences between the principles of such section and the principles issued by the competent Mexican authorities, depending of the type of financial entity.

The financial statements prepared in foreign currency may be accompanied by their conversion into Mexican pesos, only for the most recent period, at the exchange rate published in the Official Federal Gazette on the date of their preparation or the corresponding to accounting regulation.

Any change in the currency used for the preparation of such financial statements in relation to previously reported fiscal years shall be reported, stating the reasons for such change.

For purpose of the explanatory documents and the reconciliation of the relevant accounts referred in sections II and III of this article, which must be incorporated for each of the comparative periods for which financial statements are presented in compliance with these regulations.

The financial statements of the associates; counterparts or suppliers of financial instruments related to structured securities; third parties related with the issuance of trust securities referred in article 7, section II, subsection b) and real estate, energy and infrastructure investment, or investment projects trust securities, as well as to entities or legal entities different from the issuer, the settlor, administrator of the patrimony, guarantor or guarantee of the assets, when the payment obligation of said securities depend totally or partially on these that are of foreign nationality, will be able to be submitted in accordance with the applicable accounting provisions in this article.

Article 80

The Financial Statements referred to in the above article shall be certified by External Auditors, based on the following options:

I. Repealed.

II. International Quality Control, Auditing, Review, Other Assurance, and Related Services Pronouncements issued by the International Auditing and Assurance Standards Boars of the International Federation of Accountants; or

III. Auditing principles of the country of origin of the Issuer, settlor or guarantor, as applicable.

The foreign Issuers, settlor or guarantors may contract external auditors of the country of origin of the company, but in all cases, for purposes of verifying their independence, they shall comply with article 83, sections I to VIII of these provisions.

Article 81

The Financial Statements shall be presented in consolidated form.

The Issuers that as settlor convey to the trust property rights, goods or assets that represent more than 5% of their total consolidated assets, in the explanatory notes of their Financial Statements shall specify which of these trusts are consolidated and which are not. Furthermore, the Issuers in the corresponding notes shall give a brief description of the general terms of the trust agreement, regardless of whether they are consolidated, and report the principal figures of the balance sheet and results statement accounts of the trust property.

The provisions of this section will be applicable to entities with a specific purpose, contracts, vehicles or other figures similar to the trust used internationally.

Article 81 Bis

The proforma financial statements shall present the impact of specific operations on the financial situation or results of the issuer or of changes in the application of policies, principles or accounting practices, as if such operations or changes had or had not, as applicable, taken effect on the date referred to by such proforma financial statements. In all cases the proforma financial statements shall be prepared, to the extent possible, following the same financial information principles as those used to prepare their financial statements.

The financial information shall include, in comparative columns, base figures, proforma adjusted figures and proforma resulting figures, as well as include complementary notes clearly explaining the bases of its preparation.

Article 82

The Issuers, in the financial information they disseminate through documents, including those disclosed in compliance with these provisions, shall comply with the following:

I. When disclosing information prepared with bases different from standards provided by these provisions used to prepare the financial statements of the issuer they shall, in the respective document, explain what the deviations from such standards are, and their quantification.

II. Any figures presented in foreign currency shall be accompanied by a conversion to Mexican pesos, at the exchange rate published in the Official Federal Gazette on the date of its preparation or to the appropriate date under the applicable accounting standards.

III. In the comparisons made they shall include the figures corresponding to the same period of the immediately previous fiscal year.

Article 83

The external auditor that certifies the financial statements will be independent for purposes of the requirements of article 343 of the Securities Market Law, when as of the date of execution of the services agreement with the issuer and during the development of the audit, such auditor does not fall under any of the following circumstances:

I. The income that the firm of which the External Auditor is a partner receives from the Issuer, its Holding company, Subsidiaries, Associates or Affiliates, derived from the provision of its services, represents 10% or more of the total income of the firm during the immediately prior year to which the service will be rendered.

II. The External Auditor, the firm in which he/she works or a partner or employee of the firm has been an important client or supplier of the Issuer, its Holding company, Subsidiaries, Affiliates or Associates, during the year immediately prior to the one in which the service will be provided.

It is considered that a client or supplier is important when its sales to or purchases from the Issuer, its Holding company, Subsidiaries, Affiliates or Association represent 20% or more of its total sales or total purchases.

III. The External Auditor is or has been during the year immediately prior to his/her designation as auditor, board member, general director or employee occupying a position within the two levels immediately below the latter in the Issuer, its Holding company, Subsidiaries, Affiliates or Associates.

IV. The External Auditor, the firm in which he/she works, a partner or employee thereof, or the spouse, common-law spouse or economic dependent, have investments in stock, debt instruments, derivative financial instruments representing shares of the Issuer, its Holding company, Subsidiaries, Affiliates or Associates. The above is not applicable to the holding of shares representing the capital stock of investment companies.

V. The credit or debt that the External Auditor, the firm in which he/she works, any partner thereof or any employee of the firm that participates as a professional in the audit of the Issuer, as well as the spouse, common-law spouse or economic dependent of any of them, maintains with the mentioned companies, either equivalent to or greater than 10% of his/her wealth, with the exception of credit card debt, debt from financing the purchase of durable goods and debt from mortgages for the purchase of real estate, provided they are granted under market conditions.

VI. The Issuer, its Holding company, Subsidiaries, Affiliates or Associates have investments in the firm carrying out the audit.

VII. The External Auditor, the firm in which he/she works, any partner or employee of the firm provides to the Issuer, in addition to the Audit, any of the following services:

a) Preparation of the accounting records, of the Financial Statements of the Issuer, its Holding company, Subsidiaries, Affiliates or Associates, as well as the information used as supporting material for preparing the mentioned Financial Statements or any part thereof.

b) Direct or indirect operation of the financial information systems of the Issuer or administration of its local network.

c) Operation, supervision, design or implementation of the informatics systems (hardware and software) of the Issuer that concentrate information that supports the Financial Statements or generate significant information for their preparation.

d) Valuations, appraisals or estimates that individually or jointly are relevant for the Financial Statements certified by the External Auditor, except those related to transfer pricing for tax purposes.

It is considered that valuations, appraisals or estimates are relevant for the Financial Statements of the Issuer when their amount, individually or jointly, represents 10% of more of its assets or total consolidated sales, at the close of the fiscal year immediately previous to the year in which such service will be provided.

e) Administration, temporary or permanent, participating in the decision making of the Issuer.

f) Internal audit regarding the Financial Statements and accounting controls.

g) Recruitment and selection of personnel of the Issuer to occupy positions of general director or of two levels immediately below such position.

h) Litigation before courts or when the Auditor, the firm in which he/she works, or a partner or employee thereof, has a general power of attorney with powers of ownership, administration or litigation and collections, granted by the Issuer.

i) Preparation of opinions that, according to the laws regulating the Mexican financial system, must be issued by lawyers.

VII. The stock market investment promotion corporations (*sociedades anónimas promotoras de inversión Bursátil*) that at the time of requesting the registration in the Registry were receiving the services referred to in subsections b), c) and f) above, by the external auditor that certifies their financial statements or the firm in which he/she works, or a partner or employee thereof, may continue receiving them during the fiscal year in which they obtain the registration of their shares or negotiable instruments representing them in the Registry; this term may be extended by the Commission on a single occasion and up to one additional year. Furthermore, the litigation services before courts mentioned in subsection h) above, may be received until the final resolution of the dispute, provided the proceeding has been initiated before the competent court before the registration as a stock market investment promotion corporation (*sociedad anónima promotora de inversión Bursátil*) takes effect.

VIII. The income that the External Auditor receives or will receive

for auditing the Financial Statements of the Issuer depends on the results of the audit or the success of any operation carried out by the Issuer whose basis is the certification of the financial statements of the External Auditor.

IX. The External Auditor, the firm in which he/she works, a partner or employee thereof, falls under one of the circumstances established in the Professional Ethics Code issued by the Mexican Institute of Public Accountants (*Instituto Mexicano de Contradores Públicos, A.C.)* as causes of partiality in the proceeding for expressing his/her opinion and that are not contemplated in these provisions.

X. The External Auditor is responsible for the certification of the Financial Statements of the Issuer for more than 5 consecutive years, without a minimum interruption of 2 years.

In the case of stock market investment promotion corporations (*sociedades anónimas promotoras de inversión Bursátil*) the term of 5 years referred to in this section will commence running as of the date of registration in the Registry of the shares representing its capital stock or negotiable instruments that represent them. Notwithstanding the above, such companies shall disclose such situation in their information prospectus to the public and once the shares are placed, through the corresponding stock exchange.

Article 84

The External Auditor, as of the date on which the corresponding services agreement is signed, shall deliver prior to the initiation of the audit and for each fiscal year subject to review, to the Issuer, and through the latter to the Stock Exchange for its dissemination to the public investor at large, a document declaring, under oath, the following:

I. That from the day he/she files their service as an external auditor to the issuer in their capacity as such, during the auditing and until the date of the issue of the corresponding opinion he/she does not fall under any of the circumstances referred to in the above articles.

II. His/her consent to provide to the Commission any information it requests in order to verify his/her independence.

III. That he/she is obligated to preserve physically or through electromagnetic means and for a period not less than 5 years, in his/her offices, all the documentation, information and other decision-making elements used to prepare the corresponding certification and to provide it to the Commission.

IV. Repealed.

V. That he/she has up to date documentation that evidences his/her technical training.

VI. That he/she has not been offered the position of board member or executive of the Issuer.

(Second paragraph)—Repealed.

The issuers who have a committee that performs the auditing functions shall disclose through the SEDI and afterwards on the same

date to the Commission through the STIV-2, the report in which such committee describes the additional or complementary class of services that they will have to contract with the entity that provides the external auditing services and the explanation as to why the contracting of such services will not affect its independence or that of the external auditor, in function of the potential relevance that the result of the service rendered could have on the financial statements of the issuer, as well as the remuneration for these services with respect to the amount that is paid for the auditing services. Such disclosure and delivery shall be made within 5 business days from the date of preparation of the corresponding opinion.

The issuers that are financial institutions subject to supervision by the Commission and that in terms of the applicable regulations are required to submit a document signed by the external auditor in order to verify their independence, may submit the document to comply with the provisions of this article, provided that, where appropriate, they accompany the information set out in the numerals above, to the extent such information is not included in the referred document to establish the auditor's independence.

Article 84 Bis

The external auditor the date he/she presents the prospectus or supplement referred to in articles 2, section 1, subsection m) and 3, section X and, is applicable, the annual information referred to in articles 33, section I, subsection b), number 1. and 36, section I, subsection c) of these provisions, shall deliver to the issuer and, through such, to the Stock Exchange for its dissemination to the general investment public, a document in which he/she manifests his/her consent to include the issuer itself in the annual report and prospectus or supplement the report (or if applicable, opinion) regarding the Financial Statements that he/she issued. The above is in the understanding that previously should ensure that the information in the financial statements included in the prospectus and supplements or annual report in question, as to any other financial information included in such documents whose source comes from the mentioned financial statements or report that to the effect they present, matches with the audited, in order that such information be made known to the public.

The external auditor may deliver to the Commission only one document containing the information mentioned in this article and the one indicated in article 84 of these regulations as long as it complies with all the requirements and is subscribed on the date they issue the report of the financial statements and for every fiscal year subject to revision.

Article 85

The firm in which the External Auditor works shall have a policies and procedures manual which allow it to maintain adequate quality

control in the provision of auditing services and shall supervise the compliance with the requirements of independence referred to in article 83 of these provisions, which at least provide for the following:

I. Procedures that clearly determine the functions and responsibility of the partners and employees responsible for carrying out the audit, among which include the obtaining of confidentiality commitments by such persons.

II. Permanent internal training programs for employees and partners of the firm.

III. Systems that permit the partners and employees to have periodic information from the Issuers with respect to which they must maintain independence.

IV. Permanent communication mechanisms with the partners or employees in order to request information from them that allows them to identify the degree of conformance with the criteria of independence established in these provisions.

V. Disciplinary measures that ensure compliance with the policies indicated in this article.

Article 86

The firm in which the External Auditor works shall participate in a quality evaluation program that contemplates at least the following:

I. The degree of conformance with the auditing procedures referred to in articles 78 78 Bis, 78 Bis 1 or 79 of these provisions.

II. The contents and degree of conformance with the manual referred to in the above article.

The quality evaluation program referred to in this article shall comply with the policies, standards and procedures established to that effect by the Commission through general rules.

Article 87

The licensed attorney who renders the legal opinion in terms of article 87, section II of the Securities Market Law will not be independent with respect to the issuer for purposes of such legal rule, when at the date of execution of the services agreement and during the development of the studies and analyses necessary to issue the corresponding opinion, he/she, the firm in which he/she may work, or any partner or employee of such firm, as applicable, falls under any of the circumstances referred to in article 83, sections I to VI and VIII of these provisions or, if applicable, provides additional services that imply or could imply the existence of conflicts of interest.

Furthermore, it is understood that the attorney referred to in this article is not independent when he/she or the firm in which he/she may work, a partner or employee of such firm, has agreements or a reciprocity relationship with the External Auditor of the Issuer for the provision of services.

The attorney referred to in this article, as of the date on which the corresponding services agreement is signed shall deliver to the Issuer

and through the Issuer to the Stock Exchange for its dissemination to the public investor at large, a document manifesting under oath the following:

I. His/her consent to provide to the Commission any information the latter requests in order to verify his/her independence.

II. That he/she agrees to preserve physically or through electromagnetic means for a period no less than 5 years, in his/her offices, all the documentation, information and other legally relevant elements used to prepare the corresponding opinion and to provide it to the Commission.

III. His/her consent for the Issuer to include in the prospectus or supplement referred to in articles 2, section I, subsection m) and 3, section X of these provisions, the legal opinion he/she issued, as well as any other legal information whose source is the mentioned legal opinion.

The above is in the understanding that prior to the inclusion of the information, the attorney verifies it.

Article 88

The issuers are required to provide any additional information or documentation mentioned in these regulations, as required in the exercising of their authority of inspection and surveillance that attributes it to the Commission in article 4, section XXX of the National Banking and Securities Commission Law.

Likewise, the issuers must submit all information and documentation that they consider Relevant Information, even when this is not specified in these provisions, must in any cases deliver it to the corresponding stock exchange for its public disclosure.

Article 89

The infringements to the provisions of these regulations will lead the Commission, prior hearing of the interested party, to apply the corresponding sanctions in accordance with the Securities Market Law.

APPENDIX MX-3

Foreign Investment Law*

TABLE OF CONTENTS

TITLE ONE GENERAL PROVISIONS
CHAPTER I On the purpose of the Law
CHAPTER II On reserved activities
CHAPTER III On activities and acquisitions under specific regulations 3
TITLE TWO ACQUISITION OF REAL ESTATE, EXPLOITATION OF MINES AND NATIONAL TERRITORIAL WATERS, AND TRUSTS
CHAPTER I Acquisition of real estate, exploitation of mines and national territorial waters
CHAPTER II Restricted zone real estate trust
TITLE THREE COMPANIES
Incorporation of and modification to companies
TITLE FOUR INVESTMENTS BY FOREIGN LEGAL ENTITIES
TITLE FIVE NEUTRAL INVESTMENT
CHAPTER I The concept of neutral investment
CHAPTER II Neutral investment represented by instruments issued by trustee institutions
CHAPTER III Neutral investment represented by special series of stocks
CHAPTER IV Neutral investment in holding companies of financial groups, multiple banking institutions and brokerage offices
CHAPTER V Neutral investment made by International Financial Development Institutions
TITLE SIX NATIONAL FOREIGN INVESTMENT COMMISSION
CHAPTER I Structure of the Commission
CHAPTER II Duties of the Commission
CHAPTER III Operation of the Commission
TITLE SEVEN NATIONAL FOREIGN INVESTMENT REGISTRY
TITLE EIGHT PENALTIES
INTERIM ARTICLES

*The Foreign Investment Law was published in the Official Gazette of the Federation on December 27, 1993, and has been amended by Orders published therein on May 12, 1995; June 7, 1995; December 24, 1996; January 23, 1998; January 19, 1999, June 4, 2001, July 18, 2006, August 20, 2008 And May 25, 2011.

TITLE ONE GENERAL PROVISIONS

CHAPTER I On the purpose of the Law

Article 1

This law is of public policy and for general adherence throughout the Republic. Its purpose is to establish rules to attract foreign investment to the country and promote its contribution to national development.

Article 2

For the purposes hereof, the following terms shall have the following meanings:

I. Commission: the National Foreign Investment Commission;

II. Foreign investment:

a) Participation by foreign investors, in any percentage, in the capital stock of Mexican companies;

b) Investments by Mexican companies in which foreign capital has majority interest; and

c) Participation by foreign investors in activities and acts contemplated herein.

III. Foreign investor: an individual or entity of any nationality other than Mexican, and foreign entities with no legal standing;

IV. Registry: the National Foreign Investment Registry;

V. Ministry: the Ministry of Economy;

VI. Restricted Zone: a strip of the national territory one hundred kilometers wide along the borders and fifty kilometers wide along the coast, as referred to in Section I of Article 27 of the Political Constitution of the United Mexican States; and

VII. Foreigners Exclusion Clause: an express agreement or covenant forming an integral part of the corporate by-laws and setting forth that such corporations shall not admit, directly or indirectly, foreign investors or corporations with foreigners' admission clause, as partners or stockholders.

Article 3

For the purposes hereof, investments made in this country by foreigners with the status of permanent residents shall be considered Mexican investment, except those made in activities contemplated in Titles One and Two hereof.

Article 4

Foreign investment may participate in any proportion in the capital of Mexican companies, acquire fixed assets, enter new fields of economic activity or manufacture new product lines, open and operate establishments, and expand or relocate existing establishments, except as otherwise provided herein.

The rules for the participation of foreign investment in the activities of the financial sector provided for in this Law shall be applied without prejudice to those established by the specific laws for those activities.

For the purpose of determining the foreign investment percentage in economic activities subject to certain maximum limits of foreign participation, foreign investment indirectly conducted in such activities through the stock of Mexican companies with a majority Mexican investment shall not be taken into account as long as such Mexican companies are not controlled by the foreign investment.

CHAPTER II On reserved activities

Article 5

The activities determined by the relevant laws in the following strategic areas are reserved exclusively for the State:

I. Exploration and extraction of Petroleum and other hydrocarbons, in terms of the provisions in articles 27, seventh paragraph and 28, fourth paragraph of the Political Constitution of the United Mexican States;

II. Repealed

III. Planning and controlling the national electrical system, and the public service of transmission and distribution of energy, in terms of the provisions in article 27, sixth paragraph, and 28 fourth paragraph of the Political Constitution of the United Mexican States;

IV. Generation of nuclear energy;

V. Radioactive minerals;

VI. Repealed.

VII. Telegraph;

VIII. Radiotelegraphy;

IX. Postal service;

X. Repealed.

XI. Bank note issuing;

XII. Minting of coins;

XIII. Control, supervision and surveillance of ports, airports and heliports; and

XIV. Others as expressly provided by applicable legal provisions.

Article 6

The economic activities and companies mentioned hereunder are reserved exclusively to Mexicans or to Mexican companies with foreigner's exclusion clause:

I. Domestic land transportation for passengers, tourism and freight, not including messenger or courier services;

II. Repealed;

III. Repealed;

IV. Repealed;

V. Development banking institutions, under the terms of the law governing the matter; and

VI. Rendering of professional and technical services set forth expressly by applicable legal provisions.

Except as set forth in Title Five hereof, foreign investment may not participate directly in the activities and companies mentioned in this article nor through trusts, contracts, partnerships or by-law agreements, pyramiding schemes, or other mechanisms granting any control or participation.

CHAPTER III On activities and acquisitions under specific regulations

Article 7

In the economic activities and corporations mentioned hereafter, foreign investment may participate in the following percentages:

I. Up to 10% in:

Cooperative companies for production;

II. Repealed

III. Up to 49% in:

a) Repealed;
b) Repealed;
c) Repealed;
d) Repealed;
e) Repealed;
f) Repealed;
g) Repealed;
h) Repealed;
i) Repealed;
j) Repealed;
k) Repealed;
l) Repealed;
m) Repealed;
n) Repealed;
o) Repealed;
p.) Manufacture and commercialization of explosives, firearms, cartridges, ammunitions and fireworks, not including acquisition and use of explosives for industrial and extraction activities nor the preparation of explosive compounds for use in said activities;
q) Printing and publication of newspapers for circulation solely throughout Mexico;
r) Series "T" shares in companies owning agricultural, ranching, and forestry lands;
s) Fresh water, coastal, and exclusive economic zone fishing not including fisheries;

t) Integral port administration;
u) Port pilot services for inland navigation under the terms of the law governing the matter;
v) Shipping companies engaged in commercial exploitation of ships for inland and coastal navigation, excluding tourism cruises and exploitation of marine dredges and devices for port construction, conservation and operation;
w) Supply of fuel and lubricants for ships, airplanes, and railway equipment; and
x) Broadcasting. Within the maximum of foreign investment shall be subject to the reciprocity that exists in the country in which the investor or economic agent who ultimately controls it, directly or indirectly.
y) Regular and non-regular national air transport service; non-regular international air transport service in the air taxi mode; and, specialized air transport service.

IV. Repealed.

Except as set forth in Title Five hereof, foreign investment participation limits in the activities and companies mentioned in this article may not be surpassed directly nor through trusts, contracts, partnerships or by-law agreements, pyramiding schemes or other mechanisms granting any control or a higher participation than the one established.

Article 8

A favorable resolution by the Commission is required for foreign investment to participate in a percentage higher than 49% in the economic activities and companies referred to hereafter:

I. Port services in order to allow ships to conduct inland navigation operation, such as towing, mooring and barging.

II. Shipping companies engaged in the exploitation of ships solely for high-seas traffic;

III. Concessionaire or permissionaire companies of air fields for public service;

IV. Private education services of pre-school, elementary, middle school, high school, college or any combination;

V. Repealed;

VI. Repealed;

VII. Repealed;

VIII. Repealed;

IX. Repealed;

X. Repealed;

XI. Repealed;

XII. Construction, operation and exploitation of general railways, and public services of railway transportation.

Article 9

A favorable resolution from the Commission is required for foreign

investment to participate, directly or indirectly, in a percentage higher than 49% of the capital stock of Mexican companies when the aggregate value of the assets of such companies at the date of acquisition exceeds the amount determined annually by such Commission.

TITLE TWO ACQUISITION OF REAL ESTATE, EXPLOITATION OF MINES AND NATIONAL TERRITORIAL WATERS, AND TRUSTS

CHAPTER I Acquisition of real estate, exploitation of mines and national territorial waters

Article 10

Pursuant to Section I of Article 27 of the Political Constitution of the United Mexican States, Mexican companies with foreigners exclusion clause or which have executed the agreement to which said provision refers, may acquire title to real estate in Mexico.

For companies whose by-laws include the agreement provided by Section I of Article 27, the following shall apply:

I. They may acquire title to real estate located in the restricted zone, intended for non-residential purposes, and must give notice of such acquisition to the Ministry of Foreign Affairs, within sixty business days following the acquisition date; and

II. They may acquire rights to real estate inside the restricted zone intended for residential purposes in accordance with the provisions of the following chapter.

Article 10 A

The foreign individuals and entities intending to acquire real estate outside of the restricted zone or to obtain concessions for the exploration and development of mines and waters anywhere within Mexico, shall previously submit before the Ministry of Foreign Affairs, a statement agreeing to the terms of Section I of Article 27 of the Political Constitution of the United Mexican States and obtain the corresponding permit from that Ministry.

When the real estate that the foreigners intend to acquire is in a municipality totally located outside the restricted zone or when they intend to obtain a concession for the exploration and development of mines or waters anywhere within Mexico, the permit will be deemed to have been granted if not expressly denied by the Ministry of Foreign Affairs by notice published in the Official Gazette of the Federation, within five business days following the date of the application.

When the real estate that foreigners intend to acquire is in a municipality partially located inside the restricted zone, the Ministry of Foreign Affairs will answer the relevant application within thirty business days following the submitting date of such an application.

The National Institute of Statistic, Geography and Computer Systems (INEGI) shall publish in the Official Gazette of the Federation a list of the above mentioned municipalities, as well as of those entirely located within the restricted zone. These lists will be kept updated by such Institute.

The Ministry of Foreign Affairs might determine, through General Agreements that shall be published in the Official Gazette of the Federation, circumstances in which the foreigners, in order to be entitled to the right established in this Article, may simply present before said Ministry, a statement in which they agree to the terms of Section I of Article 27 of the Political Constitution of the United Mexican States without need for a permit from the Ministry.

CHAPTER II Restricted zone real estate trust

Article 11

A permit from the Ministry of Foreign Affairs is required for credit institutions to acquire, as trustees, rights to real estate located within the restricted zone, when the purpose of the trust is to allow the use and development of such property without constituting ownership rights in respect thereof, and the trust beneficiaries are:

I. Mexican companies without foreigners exclusion clause in the case provided from in Section II of Article 10 hereof; and

II. Foreign individuals or foreign entities.

Article 12

Use and development of real estate located in the restricted zone shall be understood as the rights for the use or enjoyment thereof, including as the case may be, the obtainment of fruits and products and, in general, any revenues resulting from profit operation and exploitation through third parties or through the trustee.

Article 13

The duration of the trusts to which this chapter refers to shall be a maximum of fifty years, which may be renewed on request by the interested party.

The Ministry of Foreign Affairs can verify at any time compliance with the conditions under which the permits set forth in this Title are granted, as well as the filing and veracity of the contents in the announcements referred in the same.

Article 14

The Ministry of Foreign Affairs shall decide on the permits to which this chapter refers, considering the economic and social benefit that such operations imply for the Nation.

Any application to obtain a permit must be resolved upon by the

Ministry of Foreign Affairs within five business days following the date of the application with the competent central administrative unit or within thirty business days if submitted before the state offices of said Ministry; otherwise, approval shall be deemed to have been granted.

TITLE THREE COMPANIES

Incorporation of and modification to companies

Article 15

The Ministry of Economy will authorize the usage of denominations and corporate names that companies will intend to incorporate with. The foreigner's exclusion clause or the agreement provided for in Section I of Article 27 of the Constitution shall be inserted in the by-laws of the companies incorporated.

Article 16

The procedure referred in the previous article shall apply to incorporated companies that change their corporate name or denomintation

The companies that replace their foreigners' exclusion clause with the foreigners' admission clause shall notify such event to the Ministry of Foreign Affairs within thirty business days following the above mentioned change.

If these companies own real estate located in the restricted zone intended for non-residential purposes, they shall give the notice provided by Section I of Article 10 within the period set forth in the preceding paragraph.

Article 16 A

Any application of the permits provided in Articles 15 and 16 shall be resolved upon by the Ministry of Economy within two immediate business days following the date of the application.

TITLE FOUR INVESTMENTS BY FOREIGN LEGAL ENTITIES

Article 17

Notwithstanding the provisions in any international treaty and convention to which Mexico is party, the following individuals shall obtain authorization from the Ministry:

I. Foreign legal persons intending to engage in business acts on a regular basis in the Mexican Republic, and

II. Foreign legal persons to which Article 2736 of the Civil Code for the Federal District regarding local jurisdiction and, for the Mexican Republic regarding federal jurisdiction refers, who intend to establish

themselves in the Republic, if they are not regulated by different laws.

Article 17 A

The authorizations to which the preceding article refers shall be granted when the following requirements are met:

a) That said persons prove that they are duly organized in accordance with the laws of their own country;
b) That the corporate charter and other organizational documents are not contrary to Mexican public policy established in law; and
c) In the case of the persons to which the preceding article, Section I refers, they shall establish themselves in the Republic or maintain an office or branch therein, or in the case of the persons to which the preceding article, Section II refers, they shall maintain a representative in the place in Mexico in which they will operate, in charge of their obligations.

Any application which meets the requirements set forth above shall be granted within fifteen business days following the date of the application. Concluded the aforesaid period without any resolution forthcoming, the application shall be deemed to have been granted.

The Ministry shall remit to the Ministry of Foreign Affairs a copy of the applications and the authorizations granted hereunder.

TITLE FIVE NEUTRAL INVESTMENT

CHAPTER I The concept of neutral investment

Article 18

Neutral investment is the investment made in Mexican companies or in trusts authorized under this Title and shall not be taken into account for determining the percentage of foreign investment in the capital stock of Mexican companies.

CHAPTER II Neutral investment represented by instruments issued by trustee institutions

Article 19

The Ministry may authorize trustee institutions to issue neutral investment instruments which shall solely grant pecuniary rights to their holders and, if applicable, limited corporate rights, but without granting their holders voting rights in Regular Shareholders' Meetings.

The Ministry will have a maximum period of thirty-five business days from the day immediately following application to grant or deny the authorization. Upon the lapsing of the aforesaid period without

any resolution forthcoming, the application shall be deemed to have been granted.

CHAPTER III Neutral investment represented by special series of stocks

Article 20

The investment in stocks without voting rights or with limited corporate rights shall be considered neutral, provided that the authorization from the Ministry is granted, and when applicable, from the National Banking and Securities Commission.

The Ministry will have a maximum period of thirty-five business days from the day immediately following application to grant or deny the authorization. Upon the lapsing of the aforesaid period without any resolution forthcoming, the application shall be deemed to have been granted.

CHAPTER IV Neutral investment in holding companies of financial groups, multiple banking institutions and brokerage offices

Article 21

Repealed.

CHAPTER V Neutral investment made by International Financial Development Institutions

Article 22

The Commission shall resolve upon the neutral investment that International Financial Development Institutions intend to perform in the capital stock of companies, in accordance with the terms and conditions set forth for such purpose in the regulations hereof.

TITLE SIX NATIONAL FOREIGN INVESTMENT COMMISSION

CHAPTER I Structure of the Commission

Article 23

The Commission shall be composed of the Ministers of the Interior; Foreign Affairs; Finance and Public Credit; Social Development; Environment, Natural Resources and Fishery; Energy; Commerce and Industrial Development; Communications and Transportation; Labor and Social Welfare; and Tourism, who may appoint an Under-Secretary as alternative. Likewise, those authorities and private and social representatives who may have relation to the issues to be ad-

dressed may be invited to participate in the Commission sessions. These may participate with the right to speak but not to vote.

The Commission shall meet at least twice a year and will decide upon the issues within its purview by a majority vote. In the case of a draw, the chairman of such Commission will have a casting vote.

Article 24

The Commission shall be chaired by the Minister of Commerce and Industrial Development and shall have an Executive Secretary and a Committee of Representatives for its operation.

Article 25

The Committee of Representatives shall be composed of the civil servants appointed by each of the Ministers who sit on the Commission, shall meet at least once every four months and shall have the authority delegated to it by such Commission.

CHAPTER II Duties of the Commission

Article 26

The Commission shall have the following authority and powers:

I. To issue political guidelines on foreign investment matters and to design mechanisms to promote foreign investment in Mexico;

II. To resolve, through the Ministry, on the viability and, as the case may be, on the terms and conditions for the participation of foreign investment in activities or acquisitions with specific regulation, pursuant to Articles 8 and 9 hereof;

III. To be the mandatory consulting entity on foreign investment matters for governmental agencies and entities of the Federal Public Administration;

IV. To establish the criteria for the application of legal and regulatory provisions on foreign investment, through the issuance of general resolutions; and

V. All others entrusted to it pursuant to this Law.

Article 27

The Executive Secretary of the Commission shall have the following authority:

I. To represent the Commission;

II. To give notice of the resolutions of the Commission, through the Ministry;

III. To carry out studies as instructed by the Commission;

IV. To file every four months, a statistical report on the foreign investment activity in the country to the Congress of the Union, covering the economic sectors and regions in which such investment is located; and

V. Such others as applicable hereunder.

CHAPTER III Operation of the Commission

Article 28

The Commission must resolve upon the requests submitted to its consideration within a period which shall not exceed forty five business days from the date of the respective request, as set forth in the regulations hereof.

If the Commission fails to resolve within the period indicated hereinabove, the request shall be considered approved as submitted. Upon express request from the interested party, the Ministry shall issue the corresponding authorization.

Article 29

In order to evaluate the requests submitted to its approval, the Commission shall observe the following criteria:

I. Impact upon employment and training of workers;

II. Technological contribution;

III. Compliance with environmental provisions included in the ecological regulations governing the matter; and

IV. In general, its contribution to increase the competitiveness of the country's productive system.

On resolving upon the legal feasibility of a request, the Commission may only impose requirements which do not distort international trade.

Article 30

For reasons of national security, the Commission may prevent acquisitions by foreign investment.

TITLE SEVEN NATIONAL FOREIGN INVESTMENT REGISTRY

Article 31

The Registry shall not be public and shall be divided into the sections set forth by its regulations, which will also determine its organization, and the information which must be provided to such Registry.

Article 32

The following must register with the Registry:

I. Mexican companies in which there is participation, including through trusts, of:

a) Foreign investment;

b) Mexicans who have or acquire another nationality and who have their domicile outside Mexican territory; or

c) Neutral investment.

II. Those who regularly engage in business acts in Mexico, in case they are:

a) Foreign individuals or companies;
b) Mexicans who have or acquire another nationality and who have their domicile outside Mexican territory; and

III. Trusts on shares or corporate equity interest, on real estate, and on neutral investment whereby rights in favor of the foreign investment or of Mexicans who have or acquire another nationality and who have their domicile outside Mexican territory shall be derived.

The obligation to register shall be incumbent upon the individuals and companies to which Sections I and II refer, and in the case of Section III, by the trustee institution. The registration must be done within 40 business days from the date of the creation of the company or the equity participation by foreign investment; of formalization or official recording by Public Notary of the documents relating to the foreign company; or of the creation of the relevant trust or granting of beneficial rights in favor of the foreign investment.

Article 33

The Registry shall issue registration certificates when the request contains the following data:

I. In the case of Sections I and II:
a) Name, trade or corporate name, domicile, date of incorporation, if applicable, and main economic activity to be performed;
b) Name and domicile of legal representative;
c) Name and domicile of persons authorized to hear and receive notices;
d) Name, trade or corporate name, nationality and immigrant status, if applicable, domicile of the foreign investors abroad or in the country and the percentage of their interest;
e) Amount of the capital stock subscribed and paid-in or subscribed and payable; and
f) Estimated date for startup of operations and estimated amount of total investment with a forecast schedule;

II. In the case of Section III:
a) Name of the trustee bank;
b) Name, trade or corporate name, domicile and nationality of the foreign investment or of the trust settler or foreign investors;
c) Name, trade or corporate name, domicile and nationality of foreign investment or of foreign investors appointed trust beneficiaries;
d) Date of incorporation, purposes and duration of the trust; and
e) Description, value, purposes and, if applicable, location of the property in trust.

Once the Registry has issued the registration and renewals thereof,

the Registry shall have the authority to request declarations with respect to the information submitted.

Notice should be given to the Registry on any modification to the information submitted as set forth in this article, pursuant to what is provided for in its Regulations.

Article 34

In the incorporation, modification, transformation, merger, spin-off, dissolution and liquidation of business corporations, civil corporations and associations and, in general, in all legal acts and instruments in which the subjects obligated to register in the Registry, under Article 32 hereof intervene on their own behalf or through representatives, the persons vested with notarial authority shall require from such persons or their representatives to provide evidence of their registration in the Registry, or in case registration is pending, evidence that they filed the request. If such evidence is not provided, said persons vested with notarial authority may authorize the public instrument, and shall inform the Registry of such failure within ten business days following the date of authorization of said instrument.

Article 35

The subjects required to register in the Registry shall annually renew their registration record, for which purpose the filing of an economic-financial questionnaire as set forth by the respective regulations shall be sufficient.

Article 36

The federal, state and municipal authorities are obligated hereby to provide the Ministry with the reports and certifications required to perform its duties under this Law and its regulatory provisions.

TITLE EIGHT PENALTIES

Article 37

The Ministry will be able to revoke the authorizations granted in the case of acts performed in violation of the provisions of this Law.

The acts, covenants or partnerships and bylaw agreements declared null and void by the Ministry due to their noncompliance hereunder, shall have no legal effect between the parties and shall not be enforced before third parties.

Article 38

Infringements to the provisions under this Law and its regulatory provisions shall be subject to the following penalties:

I. If the foreign investment engages in activities, acquisitions or any other acts which require a favorable resolution from the Commis-

sion, without having obtained such resolution previously, a fine ranging from one thousand to five thousand wages shall be imposed;

II. If foreign companies regularly engage in business acts in the Mexican Republic, without having obtained prior authorization from the Ministry, a fine ranging from five hundred to one thousand wages shall be imposed;

III. If acts in violation to what is set forth in this Law or its regulatory provisions on the matter of neutral investment are performed, a fine ranging from one hundred to three hundred wages shall be imposed;

IV. In case of nonperformance, untimely performance, submission of incomplete or incorrect information with respect to the registration, reporting or notice obligations with the Registry on the part of the obligated individuals, a fine ranging from thirty to one hundred wages shall be imposed;

V. If fraud is incurred in order to allow the enjoyment or disposal of real estate in the restricted zone by foreign individuals or entities or to Mexican companies which do not have foreigners exclusion clause, in violation to what is set forth by Titles Two and Three hereof, the violator shall be sanctioned with a fine of up to the amount of the transaction; and

VI. Any other violations to this Law or to its regulatory provisions shall bear a fine ranging from one hundred to one thousand wages.

For the purposes of this article, "wage" shall be understood as the daily general minimum wage in force in the Federal District at the time in which the violation is determined.

For the determination and imposition of any penalty, the interested party shall be previously heard and, in case of pecuniary penalties, the nature and seriousness of the violation, the earning power of the violator, the time elapsed from the date the obligations should have been performed and their compliance or regularization, and the total value of the operation shall be taken into consideration.

The Ministry shall have the authority to impose penalties, except for the violation referred to in Section V of this article and others related to Titles Two and Three, which shall be applied by the Ministry of Foreign Affairs.

The imposition of penalties referred to in this Title shall be without prejudice to the appropriate civil or criminal liabilities.

Article 39

Persons vested with notarial authority shall list, insert or add to the official file or appendix of the instruments in which they take part, the legal communications which certify the authorizations which should be issued as set forth herein. When authorizing instruments that do not relate to such authorizations they shall be imposed the penalties determined by the corresponding notarial statutes and the Commercial Public Notaries Federal Law.

Executive and Legislative Changes (2024 Updates)

As of 2024, following the recent presidential elections, the political

and legislative landscape in Mexico has undergone significant transitions. New leadership has placed an increased focus on transparency, economic growth, and post-pandemic recovery efforts. The government's strategies aim to stabilize inflation and encourage foreign investment, especially in the technology and Fintech sectors.

Securities Market Law Amendments

Recent amendments to the Securities Market Law (Ley del Mercado de Valores—LMV) were introduced to address the evolving landscape of digital assets, with new provisions focused on tokenized securities and blockchain-based assets. The law now provides clearer definitions and guidelines for the regulation of digital currencies and tokenized assets, aiming to reduce fraud and protect investors.

Updated CNBV Regulations (2023-2024)

The Comisión Nacional Bancaria y de Valores (CNBV) has issued new guidelines as part of its ongoing efforts to strengthen regulatory oversight of financial institutions, particularly in the areas of Fintech and electronic payment platforms. The regulations emphasize improved compliance mechanisms, market transparency, and stricter anti-money laundering protocols.

Recent Trends in the Stock Exchange (BMV (Bolsa Mexicana de Valores) and BIVA (Bolsa Institucional de Valores))

As of 2023, the Bolsa Mexicana de Valores (BMV (Bolsa Mexicana de Valores)) and the Bolsa Institucional de Valores (BIVA (Bolsa Institucional de Valores)) have experienced a steady increase in trading volumes. BIVA (Bolsa Institucional de Valores), in particular, continues to expand its market share since its establishment in 2018, attracting a growing number of IPOs from technology startups and mid-sized companies. Additionally, both exchanges are increasingly focusing on ESG-compliant listings.

Corporate Governance and ESG Compliance

With the growing emphasis on Environmental, Social, and Governance (ESG) factors, the Mexican government has introduced several regulatory updates requiring companies listed on the stock exchange to include ESG reports as part of their annual disclosures. The latest provisions demand that companies address gender diversity in board compositions and provide transparency on environmental impacts.

Fintech Developments and Digital Securities

The rise of Fintech in Mexico has seen a significant boost with the latest amendments to the Fintech Law. These include enhanced provisions for crowdfunding platforms, cryptocurrency trading, and digital wallets. The CNBV has also issued a framework for the issuance and trading of digital securities on blockchain platforms.

Final Update: Securities Market Law Amendments (2024)

The latest amendments to the Securities Market Law (LMV), effective as of 2023, further clarify the regulations around digital securi-

ties, blockchain-based assets, and tokenized securities. These amendments aim to promote transparency and investor protection, while providing issuers more clarity on disclosure obligations.

CNBV Regulatory Changes 2023

In 2023, the CNBV reinforced its regulations on Fintech operations, ensuring stronger supervision of cryptocurrency exchanges, digital wallets, and crowdfunding platforms. The new rules aim to enhance anti-money laundering measures and improve compliance for these emerging financial sectors.

New ESG Corporate Governance Regulations (2023-2024)

Mexico continues to advance its ESG regulatory framework, with stricter requirements for listed companies to disclose environmental and social impact reports. As of 2024, publicly listed companies are now obligated to adopt gender-diverse boards and report progress on sustainability metrics in line with international standards.

Securities Market Law: Digital and Tokenized Assets

As of 2024, the Securities Market Law (LMV) has been updated to provide regulatory clarity for the issuance and trading of digital securities, including tokenized assets and blockchain-based financial instruments. These amendments are critical in promoting investor protection while facilitating the adoption of blockchain technologies in financial markets. Issuers of tokenized securities are now required to adhere to stringent reporting standards and risk disclosures.

Updated CNBV Regulations: Cryptocurrency and Fintech Platforms

The CNBV has implemented new regulations for the Fintech industry in 2023, focusing particularly on cryptocurrency exchanges and electronic payment platforms. These updates include enhanced compliance measures for anti-money laundering (AML) protocols and know-your-customer (KYC) procedures. The regulations now mandate cryptocurrency exchanges to comply with stringent transparency guidelines to prevent market manipulation and fraud.

Corporate Governance: New ESG Compliance Regulations

In 2023, the ESG reporting requirements for publicly listed companies in Mexico have expanded significantly. Companies are now obligated to disclose their environmental and social impacts in annual reports, including data on carbon emissions, resource usage, and social initiatives. Additionally, new gender diversity requirements mandate that boards of directors must include at least 30% female representation, reflecting a broader push toward gender equality in corporate governance.

Recent Market Trends: BMV (Bolsa Mexicana de Valores) and BIVA (Bolsa Institucional de Valores)

The Bolsa Mexicana de Valores (BMV (Bolsa Mexicana de Valores)) and Bolsa Institucional de Valores (BIVA (Bolsa Institucional de Valores)) continue to experience growth in 2024, with BIVA (Bolsa

Institucional de Valores) gaining market share due to its focus on mid-sized and tech-related companies. Both exchanges have reported increased IPOs, particularly in the technology and renewable energy sectors. In line with global trends, ESG-compliant listings are becoming more prevalent, attracting both institutional and individual investors focused on sustainability.

2024 Mexican Presidential Election

The 2024 Mexican presidential election marked a significant political shift, with a new administration coming into power on October 1, 2024. The ruling party, Movimiento Regeneración Nacional (MORENA), won a decisive victory, ensuring continuity in policy direction, particularly around economic reform, anti-corruption measures, and digital infrastructure expansion. The newly elected president's administration has pledged to prioritize economic stabilization, bolstering foreign investment, and modernizing Mexico's legal frameworks for technology and financial regulation.

Legislative Updates: Senate and House Elections

In the 2024 legislative elections, MORENA retained control of the Senate and the House of Representatives, consolidating its political influence. The elections reaffirmed the push toward legislative reforms targeting corruption, judicial reforms, and stricter environmental policies. This electoral result has provided the ruling party with the necessary majority to pass key legislative measures aimed at economic recovery and expanding Mexico's participation in international financial markets.

2024 Regulatory and Legal Framework Updates

The financial sector in Mexico has experienced several regulatory updates in 2024, with new laws implemented by the Comisión Nacional Bancaria y de Valores (CNBV) focused on improving digital securities regulation and increasing oversight for cryptocurrency platforms. These updates are aimed at fostering market confidence while enhancing anti-money laundering (AML) protocols and Know Your Customer (KYC) compliance measures. Additionally, the Fintech Law has been expanded to accommodate new technological advances in blockchain and cryptocurrency, positioning Mexico as a hub for digital financial services in Latin America.

International Securities Regulation
Pacific Rim

Dr. Gordon R. Walker—General Editor, Pacific Rim
Robert C. Rosen—General Editor
Sharan S. Ramchandani—Associate Editor
Annabelle Walker—Associate Editor

Volume 3
2026-1 Edition
Issued in August 2026

Summary of Contents
Volume 3 Table of Contents
Chapter NZ. New Zealand
Chapter PH. Philippines

Thomson Reuters™

For Customer Assistance Call 1-800-328-4880

Mat #43533770

© 2026 Thomson Reuters

This publication was created to provide you with accurate and authoritative information concerning the subject matter covered; however, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

ISBN: 979-8-260-70252-9

THOMSON REUTERS

WESTLAW™

MOST PREFERRED ONLINE LEGAL RESEARCH SERVICE

Thomson Reuters Westlaw has been voted the #1 Best Online Legal Research vendor year-after-year by industry professionals. That's because we continually invest more than any other online legal research provider in our people and technology where it matters most. As a result, you find exactly what you need quickly and confidently.

- Build the strongest argument with the most comprehensive collection of legal content
- Deliver better results confidently with WestSearch®, the only search engine designed specifically for the law
- Rely on the most current version of the law with proprietary editorial enhancements
- Access your legal research anytime, anywhere with the free Westlaw apps

LEARN MORE: legal.thomsonreuters.com
SIGN ON: westlaw.com
24/7 REFERENCE ATTORNEYS: 1-800-REF-ATTY (733-2889)

Summary of Contents

Chapter NZ. Securities Regulation in New Zealand

Appendix NZ-1. Financial Markets Conduct Act 2013

Appendix NZ-2. Listing Rules 2024

Chapter PH. Securities Regulation in Philippines

Appendix PH-1. The Securities Regulation Code

Appendix PH-2. The Securitization Act of 2004

Appendix PH-3. 2015 Implementing Rules and Regulations of the Securities Regulation Code

Appendix PH-4. Securities and Exchange Commission SRC Rule 68, as amended [Part I – General Financial Reporting Requirements; Part II—Additional Requirements for Issuers of Securities to the Public]

Table of Contents

CHAPTER NZ. SECURITIES REGULATION IN NEW ZEALAND

I. OVERVIEW

§ NZ:1 Introduction
§ NZ:2 Legal System

II. SECURITIES REGULATORY SCHEME

§ NZ:3 History and principal legislation
§ NZ:4 —Overview of the Co-regulatory Regime
§ NZ:5 —Repealed Legislation and Regulations
§ NZ:6 New Financial Markets Law: Financial Markets Authority Act 2011 and Financial Markets Conduct Act 2013
§ NZ:7 History and principal legislation—Companies legislation
§ NZ:8 Introduction of the investment statement
§ NZ:9 Organizations involved in securities regulation—Financial Markets Authority (FMA)
§ NZ:10 —New Zealand Exchange Limited (NZX)
§ NZ:11 —The Companies Office and the Registrar of Companies
§ NZ:12 —Overseas Investment Act 2005
§ NZ:13 Co-regulation
§ NZ:14 —Other self-regulatory bodies

III. PUBLIC SECURITIES MARKETS

A. HISTORY

§ NZ:15 History

B. FUNCTIONS AND OBJECTIVES OF THE NZX

§ NZ:16 Overview
§ NZ:17 Primary market
§ NZ:18 Secondary market
§ NZ:19 Mutual recognition of securities offerings between Australia and New Zealand
§ NZ:20 Efficiency of the market

IV. DISCUSSION OF REGULATIONS REGARDING SUBSTANTIVE SECURITIES MATTERS

§ NZ:21 Establishment, regulation, and organization of Securities Regulating Organizations—The Financial Markets Authority

§ NZ:22 Statutory interpretation in New Zealand
§ NZ:23 —Case Law prior to the Interpretation Act 1999
§ NZ:24 Definition of a security—Introduction
§ NZ:25 Continuing disclosure requirements of public companies
§ NZ:26 Companies Act 1993
§ NZ:27 Companies (Registration of Charges) Act 1993 and the Personal Property Securities Act 1999
§ NZ:28 Register of Securities under the FMC Act
§ NZ:29 FMC Act—Continuous disclosure by listed issuers
§ NZ:30 —Disclosure of relevant interests in quoted financial products by directors and senior managers of listed issuers
§ NZ:31 —Disclosure of interests of substantial product holders in listed issuers
§ NZ:32 Disclosure requirements under the Financial Reporting Act 2013 (FRA)
§ NZ:33 NZX disclosure requirements
§ NZ:34 Fraud, manipulation, and insider trading—NZX Listing Rules
§ NZ:35 —Common law remedies
§ NZ:36 —Statutory offences
§ NZ:37 Companies Act 1993
§ NZ:38 Fraud, manipulation, and insider trading—Insider conduct
§ NZ:39 Tender offers, takeovers, and other corporate combinations—In general
§ NZ:40 The Takeovers Code
§ NZ:41 Tender offers, takeovers, and other corporate combinations—Overview of the Takeovers Code
§ NZ:42 Companies Act 1993
§ NZ:43 NZX Listing Rules
§ NZ:44 Fair Trading Act 1986
§ NZ:45 Commerce Act 1986
§ NZ:46 Overseas Investment Act 2005
§ NZ:47 Financial Markets Authority
§ NZ:48 Tender offers, takeovers, and other corporate combinations
§ NZ:49 Accounting and Auditing—Companies Act 1993
§ NZ:50 Audit
§ NZ:51 International securities transactions
§ NZ:52 —NZX Listing Rules
§ NZ:53 —International Organization of Securities Commissions (IOSCO)
§ NZ:54 Investment companies
§ NZ:55 Investment advisers and brokers
§ NZ:56 Broker-dealers or entities authorized to trade in securities
§ NZ:57 Civil and criminal liability—Criminal liability—Liability for misstatements
§ NZ:58 —Indemnities or insurance

§ NZ:59 —Civil liability for insider conduct
§ NZ:60 —Civil liability for breach of continuous disclosure provisions
§ NZ:61 —Civil liability of substantial product holder for failure to notify relevant interest
§ NZ:62 The cognate Australian provisions
§ NZ:63 Civil and criminal liability—History of the New Zealand provisions on substantial product holder disclosure
§ NZ:64 —Meaning of "relevant interest"
§ NZ:65 —The *Ithaca* litigation
§ NZ:66 —Meaning of "power" and "power to control" pre-February 2008
§ NZ:67 Criminal liability—Criminal liability for misstatements—Position under the Securities Act 1978
§ NZ:68 Criminal liability under the FMC Act
§ NZ:69 Crimes Act 1961

V. NEW DEVELOPMENTS

§ NZ:70 Fintech developments in New Zealand
§ NZ:71 FMA guidance on cryptocurrency and cryptoasset services (March 2020)
§ NZ:72 Crowd-Sourced Funding
§ NZ:73 Initial Coin Offerings (ICOs) of Digital Tokens
§ NZ:74 Managed Investment Scheme (MIS) in New Zealand
§ NZ:75 New Financial Advice Regime
§ NZ:76 Climate-related Disclosures
§ NZ:77 Corporate governance reform package scheduled for 2025

Appendix NZ-1. Financial Markets Conduct Act 2013

Appendix NZ-2. Listing Rules 2024

CHAPTER PH. SECURITIES REGULATION IN PHILIPPINES

I. LEGAL SYSTEM

§ PH:1 Generally

II. SECURITIES REGULATORY SCHEME

§ PH:2 General
§ PH:3 The Securities Regulation Code
§ PH:4 Administrative agencies in securities regulation
§ PH:5 Self-regulatory organizations

III. PUBLIC SECURITIES MARKET

§ PH:6 Generally

IV. REGULATIONS REGARDING SUBSTANTIVE SECURITIES MATTERS

§ PH:7 Establishment, regulation, and organization of securities

regulatory organization—Securities and Exchange Commission
§ PH:8 Definition of securities
§ PH:9 Public offerings and exempt offerings—General
§ PH:10 —Registration statement
§ PH:11 —Restrictions on advertising and other publicity
§ PH:12 Ongoing disclosure requirements of public companies
§ PH:13 —Disclosure of interest in shares
§ PH:14 —Proxy solicitation
§ PH:15 —Penalties for non-compliance with disclosure requirements
§ PH:16 Fraud, manipulation and insider trading—Insider trading
§ PH:17 — —Penalties for insider trading
§ PH:18 —Manipulation of security prices
§ PH:19 —Short-selling
§ PH:20 Tender offers, mergers and acquisitions—Tender offers
§ PH:21 —Mergers and consolidations
§ PH:22 Examination of accounts
§ PH:23 International securities transactions—In general
§ PH:24 —Stock exchange listing of foreign securities
§ PH:25 —Naturalization of companies
§ PH:26 —Foreign investment regulation
§ PH:27 Investment companies
§ PH:28 Broker, dealers and others authorized to trade in securities
§ PH:29 —Licensing
§ PH:30 —Restrictions on Brokers and Dealers
§ PH:31 —Disciplinary proceedings
§ PH:32 Civil and criminal liability—Civil liability
§ PH:33 —Criminal liability

V. RECENT TRENDS

§ PH:34 Generally

Appendix PH-1. The Securities Regulation Code

Appendix PH-2. The Securitization Act of 2004

Appendix PH-3. 2015 Implementing Rules and Regulations of the Securities Regulation Code

Appendix PH-4. Securities and Exchange Commission SRC Rule 68, as amended [Part I – General Financial Reporting Requirements; Part II—Additional Requirements for Issuers of Securities to the Public]

Chapter NZ

Securities Regulation in New Zealand

by Dr. Gordon R. Walker

I. OVERVIEW

§ NZ:1 Introduction
§ NZ:2 Legal System

II. SECURITIES REGULATORY SCHEME

§ NZ:3 History and principal legislation
§ NZ:4 —Overview of the Co-regulatory Regime
§ NZ:5 —Repealed Legislation and Regulations
§ NZ:6 New Financial Markets Law: Financial Markets Authority Act 2011 and Financial Markets Conduct Act 2013
§ NZ:7 History and principal legislation—Companies legislation
§ NZ:8 Introduction of the investment statement
§ NZ:9 Organizations involved in securities regulation—Financial Markets Authority (FMA)
§ NZ:10 —New Zealand Exchange Limited (NZX)
§ NZ:11 —The Companies Office and the Registrar of Companies
§ NZ:12 —Overseas Investment Act 2005
§ NZ:13 Co-regulation
§ NZ:14 —Other self-regulatory bodies

III. PUBLIC SECURITIES MARKETS

A. HISTORY

§ NZ:15 History

B. FUNCTIONS AND OBJECTIVES OF THE NZX

§ NZ:16 Overview
§ NZ:17 Primary market
§ NZ:18 Secondary market
§ NZ:19 Mutual recognition of securities offerings between Australia and New Zealand
§ NZ:20 Efficiency of the market

IV. DISCUSSION OF REGULATIONS REGARDING SUBSTANTIVE SECURITIES MATTERS

§ NZ:21 Establishment, regulation, and organization of Securities

Regulating Organizations—The Financial Markets Authority
§ NZ:22 Statutory interpretation in New Zealand
§ NZ:23 —Case Law prior to the Interpretation Act 1999
§ NZ:24 Definition of a security—Introduction
§ NZ:25 Continuing disclosure requirements of public companies
§ NZ:26 Companies Act 1993
§ NZ:27 Companies (Registration of Charges) Act 1993 and the Personal Property Securities Act 1999
§ NZ:28 Register of Securities under the FMC Act
§ NZ:29 FMC Act—Continuous disclosure by listed issuers
§ NZ:30 —Disclosure of relevant interests in quoted financial products by directors and senior managers of listed issuers
§ NZ:31 —Disclosure of interests of substantial product holders in listed issuers
§ NZ:32 Disclosure requirements under the Financial Reporting Act 2013 (FRA)
§ NZ:33 NZX disclosure requirements
§ NZ:34 Fraud, manipulation, and insider trading—NZX Listing Rules
§ NZ:35 —Common law remedies
§ NZ:36 —Statutory offences
§ NZ:37 Companies Act 1993
§ NZ:38 Fraud, manipulation, and insider trading—Insider conduct
§ NZ:39 Tender offers, takeovers, and other corporate combinations—In general
§ NZ:40 The Takeovers Code
§ NZ:41 Tender offers, takeovers, and other corporate combinations—Overview of the Takeovers Code
§ NZ:42 Companies Act 1993
§ NZ:43 NZX Listing Rules
§ NZ:44 Fair Trading Act 1986
§ NZ:45 Commerce Act 1986
§ NZ:46 Overseas Investment Act 2005
§ NZ:47 Financial Markets Authority
§ NZ:48 Tender offers, takeovers, and other corporate combinations
§ NZ:49 Accounting and Auditing—Companies Act 1993
§ NZ:50 Audit
§ NZ:51 International securities transactions
§ NZ:52 —NZX Listing Rules
§ NZ:53 —International Organization of Securities Commissions (IOSCO)
§ NZ:54 Investment companies
§ NZ:55 Investment advisers and brokers
§ NZ:56 Broker-dealers or entities authorized to trade in securities
§ NZ:57 Civil and criminal liability—Criminal liability—Liability for misstatements

§ NZ:58 —Indemnities or insurance
§ NZ:59 —Civil liability for insider conduct
§ NZ:60 —Civil liability for breach of continuous disclosure provisions
§ NZ:61 —Civil liability of substantial product holder for failure to notify relevant interest
§ NZ:62 The cognate Australian provisions
§ NZ:63 Civil and criminal liability—History of the New Zealand provisions on substantial product holder disclosure
§ NZ:64 —Meaning of "relevant interest"
§ NZ:65 —The *Ithaca* litigation
§ NZ:66 —Meaning of "power" and "power to control" pre-February 2008
§ NZ:67 Criminal liability—Criminal liability for misstatements—Position under the Securities Act 1978
§ NZ:68 Criminal liability under the FMC Act
§ NZ:69 Crimes Act 1961

V. NEW DEVELOPMENTS

§ NZ:70 Fintech developments in New Zealand
§ NZ:71 FMA guidance on cryptocurrency and cryptoasset services (March 2020)
§ NZ:72 Crowd-Sourced Funding
§ NZ:73 Initial Coin Offerings (ICOs) of Digital Tokens
§ NZ:74 Managed Investment Scheme (MIS) in New Zealand
§ NZ:75 New Financial Advice Regime
§ NZ:76 Climate-related Disclosures
§ NZ:77 Corporate governance reform package scheduled for 2025

Appendix NZ-1. Financial Markets Conduct Act 2013

Appendix NZ-2. Listing Rules 2024

I. OVERVIEW

§ NZ:1 Introduction

In the second decade of the 21st century, securities regulation in New Zealand underwent its most radical change since 1978. Indeed, even the term "securities regulation" is no longer apt to describe this area of law and "financial markets regulation" or "financial markets law" is now the better terminology although the terms are used interchangeably for convenience in this country commentary. This result flows from the shock of the global financial crisis (GFC) in 2007-08 and the collapse of debt issuing finance companies in New Zealand which lead to the establishment of a new market regulator in 2011—the Financial Markets Authority (FMA)—and new legislation covering the primary and secondary market enacted in September 2013—the Financial Markets Conduct Act 2013 (FMC Act). The FMC Act is in full force and, as a result, much of the case law on the former legislation is now redundant because of design and definitional changes ap-

pearing in the FMC Act—the case law on "offer to the public" and void irregular allotments provide examples. Some of the case law remains relevant—insider trading and substantial product holder disclosure are examples. However, most of the case law on the Securities Act 1978 (78 Act) has been removed. A similar point applies to the discussion of statutory interpretation in New Zealand which appeared in earlier versions of this commentary; definitional changes in the FMC Act have diminished the need for an in-depth understanding of that law and the relevant section has been heavily truncated.

§ NZ:2 Legal System

New Zealand is a sovereign independent unitary State with a constitutional monarchy, responsible government and a unicameral legislature. As with the United Kingdom, there is no one document which embodies a national constitution. The sources of the constitution include Imperial legislation (principally the Imperial Laws Application Act 1988); New Zealand legislation (principally the Constitution Act 1986); the common law (customary common law, judicial precedent and statutory interpretation); customary international law; Letters Patent; the law and custom of Parliament and convention. The Constitution Act 1986 specifies the principal entities of the New Zealand Constitution, namely: the Sovereign (represented by the Governor-General); the Executive; the Legislature and the Judiciary. In recent decades, The Treaty of Waitangi 1840 made between indigenous Maori and the Crown has assumed increased constitutional importance.[1] In November 1993, New Zealand adopted a proportional representation voting system based on the German model.[2] From November 2008 to 2017, the Centre-right National Party led by Prime Minister John Keys governed New Zealand with support from minor parties.[3] A General Election occurred in 2017 and the Centre-Left Labour Party led by Prime Minister Jacinda Ardern governed with support from the New Zealand First Party and the Greens. Subsequently, in the General Election of 18 October 2020, the Labour Party,

---

[Section NZ:2]

[1]See generally, P. Joseph, *Constitutional and Administrative Law in New Zealand,* 5th ed. (2021); P. McHugh, *The Maori Magna Carta* (1991). A member of the current coalition government, the ACT Party, is advocating for a legislative statement of The Treaty of Waitangi principles to clarify doubts as to its application.

[2]K. Jackson and A. McRobie, *New Zealand Adopts Proportional Representation* (1998); J. Boston, S. Levine, E. McLeay and N. Roberts, *Electoral and Constitutional Change in New Zealand: An MMP Sourcebook* (1999).

[3]Key data is as follows: New Zealand is a member nation of the OECD; the population in 2024 was approximately 5.3 million. Expected GDP for 2023 was approximately US $253.58 billion. The welfare budget at close to $55 billion for 2023 is about 36% of the NZ government total income. The biggest industries are agriculture and tourism. As of June 2024, there were 731, 314 companies registered in New Zealand. There were 182 companies listed on the NZX as of August 2024. Capitalization of the NZX was approximately NZD175 billion as of August 2024. About 20 percent of New Zealanders own shares in the NZ share market.

again led by Jacinda Ardern, won an outright majority of 64 seats in Parliament. In January 2023, Jacinda Ardern resigned as Prime Minister and was replaced by Chris Hipkins. There was a General Election in late 2023. The Labour Party was ousted and a new center-right coalition government comprising the National Party, the ACT Party, and the New Zealand First Party was formed.

New Zealand is a common law country. The legal system derives from United Kingdom origins (like Australia, Hong Kong, Singapore and Malaysia). The court hierarchy comprises the District Court, the High Court, the Court of Appeal, and the Supreme Court. The Supreme Court Act 2003 (NZ) established the Supreme Court of New Zealand. This Act established within New Zealand a new court of final appeal comprising New Zealand judges to recognize that New Zealand is an independent nation with its own history and traditions; to enable important legal matters—including legal matters relating to the Treaty of Waitangi—to be resolved with an understanding of New Zealand conditions, history and traditions, and, to improve access to justice. The Supreme Court of New Zealand replaces the Judicial Committee of the Privy Council located in London. It came into being on 1 January 2004 and hearings commenced on 1 July 2004: *see* M. Russell and M. Barber, eds., *The Supreme Court of New Zealand 2004-2013* (Thomson Reuters, 2015).

Securities litigation usually commences in the High Court—*see* s 538 of the Financial Markets Conduct Act 2013. The principal sources of New Zealand securities regulation law are statutes. Previously, the leading statutes were the Securities Act 1978 ('78 Act) and the Securities Markets Act 1988 (the SMA). These Acts were repealed by the Financial Markets (Repeals and Amendments) Act 2013 on 1 December 2014 at which time the Financial Markets Conduct Act 2013 was in force subject to transitional provisions. Regulations under the FMC Act were brought in via the Financial Markets Conduct Regulations 2014.

New Zealand Acts, regulations, and other secondary legislation can be accessed on the New Zealand government website, available at: https://www.legislation.govt.nz. Acts are updated regularly, and the date of the latest update appears on the online version.

Case law (decisions of the courts interpreting the provisions of the Act) is another source of law. Rules of precedent apply—New Zealand courts are bound by decisions of higher courts in the appellate hierarchy. Decisions of courts in other common law jurisdictions are of persuasive authority. Here, Australian case law is especially persuasive because New Zealand financial markets law is, in part, based on the cognate Australian law. United States decisions are sometimes cited. For example, the decision in SEC v. Ralston Purina Co, 346 U.S. 119 (1935) was referred to by New Zealand courts when considering the meaning of s. 3 of the '78 Act (guide to construction of the term, "offer to the public"). However, the "offer to the public" concept was abolished by the FMC Act.

II. SECURITIES REGULATORY SCHEME

§ NZ:3 History and principal legislation

There was no separate securities legislation in New Zealand until the Securities Act 1978 ('78 Act). Before that time, the subject was embedded in company legislation such as the Companies Act 1955 and the common law. The collapse of the merchant banker, Securitibank, provided the impetus for the '78 Act.[1] Securitibank attracted funds in a manner that avoided the prospectus provisions of the Companies Act 1955. The legislative response embodied in the Securities Act 1978 was designed to regulate the *activity* of fund raising generally thereby defeating technical avoidance of the pre-existing legislation.[2]

In the early years of the 21st century, the New Zealand government instituted a major "four-step programme" of reform of New Zealand's securities regulation regime. As of early 2008, the third step of that program was complete. The planned fourth step did not eventuate; it was overtaken by the global financial crisis (GFC) which resulted in more wide-ranging reform.

Reform of the substantive legislation occurred in 2006 pursuant to the Securities Legislation Bill 2004.

The Bill followed (in part) the Australian legislative model pursuant to the earlier *Memorandum of Understanding between the Government of New Zealand and the Government of Australia on Coordination of Business Law* signed in August 2000.[3] In summary, the main aspects of the 2008 reforms to securities regulation in New Zealand were:

- The introduction of a new insider trading regime following the Australian model;
- New market manipulation laws;
- Fine-tuning of the substantial shareholder disclosure requirements;
- New rules for the regulation of investment advisers and brokers;
- Changes to the takeovers regime, and
- A carve out of the application of the Fair Trading Act 1986 to conduct covered by securities and takeovers legislation.

[Section NZ:3]

[1]See generally, Frank Partnoy, "Why Markets Crash and What Law Can Do About It", 61 *U. Pitt. L. Rev.* 741 (2000).

[2]For a review of the history of securities regulation in New Zealand until the late 20th century, see G. Walker, "Chaos and Evolution in New Zealand Securities Regulation" (1997) 9 (1) *Otago LR* 14-50 revised and reprinted as G. Walker, "Reinterpreting New Zealand Securities Regulation" in G. Walker, Gen. Ed., *Securities Regulation in Australia and New Zealand*, 2nd ed. (Sydney: LBC Information Services, 1998), 88-126.

[3]The 2000 MOU was eventually replaced by a revised Memorandum of Understanding on Coordination of Business Law between Australia and New Zealand signed on 22 February 2006. The MOU has been updated periodically since that time.

As stated, these changes came into effect in February 2008.

In June 2008, the Securities (Mutual Recognition of Securities Offerings-Australia) Regulations 2008 came into effect. These regulations were "mirrored" by Part 8.3 of the Australian Corporations Act 2001. Both the Australian and the New Zealand arrangements flow from the treaty known as *The Agreement between the Government of Australia and the Government of New Zealand in Relation to Mutual Recognition of Securities Offerings 2006.* In the result, a mutual recognition regime for securities offerings operates between Australia and New Zealand such that registration of a prospectus in one jurisdiction is (subject to certain conditions) registration in the other jurisdiction.

Further change occurred in late 2008 with the passing of the Financial Advisers Act 2008 (repealed as of March 2021). It came into force in 2011 and removed regulation of investment advisers from the Securities Markets Act 1988 and established a new regime for the regulation of such persons: see Gordon Walker and Alma Pekmezovic, *Financial Adviser and Broker Regulation in New Zealand* (Auckland: CCH New Zealand, 2010). This regime was repealed by the Financial Services Legislation Amendment Act 2019 (FSLA) and now appears in new subparts of the FMC Act. The FSLA also made made extensive amendments to the Financial Services Providers (Registration and dispute Resolution) Act 2008.

In April 2011, the Securities Trustees and Statutory Supervisors Act 2011 (STSS Act) was enacted. The genesis of this legislation lies in the collapse of several finance companies in New Zealand before and during the GFC. Many of these companies were debt issuers who issued debt securities pursuant to trust deeds. Concerns were raised as to the performance of trustees and the STSS Act was passed to remedy these concerns. The regulator of this legislation is the FMA.

In May 2011, the former regulator—the Securities Commission—was replaced by the Financial Markets Authority (FMA) pursuant to the Financial Markets Authority Act 2011. The FMA was established on 1 May 2011 after the enactment of the Financial Markets Authority Act 2011. This Act replaced the former Securities Commission and Government Actuary with the FMA and consolidated into the FMA some regulatory functions previously carried out by the Companies Office, the Ministry of Economic Development and the NZX. The FMA is an independent Crown entity responsible for administering a range of financial markets legislation. It also regulates securities exchanges, financial advisers and brokers, and trustees and issuers. The FMA website, www.fma.govt.nz provides information on the role and functions of the FMA.

The *Financial Markets Conduct Act* 2013 (FMC Act) was assented to in September 2013. The objectives of the Act are to ensure confidence in New Zealand's capital markets and improve companies' ability to raise capital. The accompanying Financial Markets (Repeal and Amendments) Act 2013 repealed and replaced several Acts, including:

- the Securities Act 1978*;*
- the Securities Markets Act 1988*;*
- the Securities Transfer Act 1991*;*
- the Unit Trusts Act 1960*;*
- the Superannuation Schemes Act 1989*;* and
- parts of the KiwiSaver Act 2006.

§ NZ:4 History and principal legislation—Overview of the Co-regulatory Regime

The Ministry of Business, Innovation and Employment (MBIE) in New Zealand (the responsible Minister is the Minister of Commerce) has general oversight of financial markets legislation and the FMA performs regulatory, co-regulatory and day-to-day operational functions. The MBIE launched a review of aspects of the Companies Act 1993 in 2024; see new developments below.

New Zealand operates a co-regulatory financial markets regulation regime. The New Zealand Exchange Limited (NZX) is the front-line regulator. The NZX operates New Zealand's main securities markets such as the New Zealand Stock Exchange (NZSX). The FMA and the NZX co-operate with each other to regulate New Zealand's securities markets. The co-regulatory regime was formally established by legislation such as Part 2 of the SMA and the Memorandum of Understanding between the former Securities Commission and the former NZSE Limited (now the NZX) on Regulatory Co-operation signed on 27 February 2003. In overview, this MOU addressed operational issues relating to:

- Compulsory referrals from the NZX to the FMA;
- Discretionary referrals to the FMA arising from NZX's oversight of trading activity via NZX's SMARTS electronic surveillance system;
- Referral of matters from the FMA to NZX relating to the NZX's Conduct Rules and procedures for those referrals;
- Consultation on waivers from continuous disclosure;
- Procedures relating to the FMA's powers to give directions to the NZX; and
- Procedures to consult on new Conduct Rules and amendments to those rules.

However, the present position is that the FMC Act is the key source of the co-regulatory regime between the FMA and any licensed market operator: see further below.

§ NZ:5 History and principal legislation—Repealed Legislation and Regulations

The Securities Act 1978 comprised five parts (the mixture of roman and Arabic numbering follows the legislation).

Part I of the Act established the Securities Commission (for conve-

nience, usually called the "NZSC" in this Booklet) and described its functions. The FMA is now the regulator. The FMA took over all the powers possessed by the former Securities Commission.

Part II entitled "Restrictions on Offer and Allotment of Securities to the Public", created the general restriction on offering securities to the public in New Zealand whether from within or from without New Zealand in the absence of a disclosure document such as a prospectus or an exemption under section 5 of the '78 Act. This law changed when the FMC Act came into full force. The new law follows the Australian model.

Part III gave the NZSC powers of investigation and enforcement. The FMA Act now contains enhanced powers of investigation and enforcement.

Part IV dealt with Regulations.

Part V, Subparts 1-4 was entitled "Recognition and Application Regimes". The purpose of Part 5 was fully stated in s 71 of the Act. For example, one purpose was to introduce recognition and application regimes that provide for exemptions from Part II of the Act and Regulations so that foreign issuers could offer securities in New Zealand in accordance with the laws of their home country. In this way, the '78 Act made provision for mutual recognition regimes.[1] Hence, on 22 February 2006, New Zealand and Australia entered into an agreement to facilitate a regime for mutual recognition of securities offerings between the two countries.[2] As stated, by mid-2008, a new Mutual Recognition of Securities Offerings (MRSO) regime was in place between Australia and New Zealand.[3]

The Securities Markets Act 1988 is the name of the former Securities Amendment Act 1988. The earlier Securities Amendment Act 1988 (SAA) came into effect because of inquiries held after the share market crash of 1987. In its original form, the SAA dealt with insider trading, substantial shareholder disclosure and authorization of dealers in futures contracts. The SAA was extensively amended by the Securities Markets Amendment Act 2002 and given the new title of the Securities Markets Act 1988 (the SMA). The SMA Act was repealed in late 2014.

What were the problems with the Securities Act 1978?

One measure of the internal coherence of legislation is the degree of

---

[Section NZ:5]

[1]See G. Walker and M. Fox, "Trans-Tasman Mutual Recognition of Securities Offerings", 24 C&SLJ 264 (2006). The U.S. literature on securities regulation is particularly rich on this subject. See Hal Scott, "Internationalisation of Primary Public Securities Markets" (2000) 63 (3) *Law and Contemporary Problems 71* at 81ff for a discussion of various types of mutual recognition regimes.

[2]*See* V. Goldwasser and G. Walker, "Corporations Amendment (NZ Closer Economic Relations) Bill 2006" 25 (1) *C&SLJ* 69-76 (2007).

[3]See Securities Commission, *Offering Securities in New Zealand and Australia Under Mutual Recognition* (2008). Available at http://www.seccom.govt.nz/publications/documents/nz-aus/.

"fit" between purpose (legislative or strategic intent) and practice (judicial interpretation or strategic implementation). The purpose or strategic intent of the former legislation can be discerned in the body of discourse surrounding the introduction of the 1978 Act, namely, investor protection by way of timely disclosure of information to enable investors to make informed, but not riskless, choices. The tactical means of achieving this strategy was to focus on the *activity* of fund raising generally—regardless of the type of entity used as a vehicle for such activity. Further, it was intended that key definitions, such as the definition of a security, were to be widely defined and so interpreted by the judiciary.

The 1978 Act was the legal expression of an ascertainable policy (strategy) and purpose (strategic goal).[4] When encountering the Act in practice, the judiciary possessed a set of legal tools by which they might unlock meaning to achieve the desired fit between purpose and practice (making the Act work as intended). These tools comprised doctrines of statutory interpretation expressed in common law, the 1978 Act itself, and the Acts Interpretation Act. An application of these tools to the definition of a security in the Act could provide clear guidance as to the interpretation of the term. It is striking to note that the old "problem" cases under the '78 Act (*Smith* and *Marac*) were both cases where *the Court made no reference* to the purpose of the legislation. However, a strict application of the doctrine of precedent eventually meant that courts in New Zealand had to consider the purpose of the legislation following the decision of the full Court of Appeal in *Kiwi Dairies* and an advice of the Privy Council in *Culverden* to that effect. Viewed this way, *Smith* and *Marac* were cases of under reach cured by decisions of courts higher in the appellate chain. In the result, there existed a coherent fit between the purpose of the legislation and the practice of the courts on the interpretation of a security. This was achieved by reading the definition widely, as parliament intended, and by a ruling (specifically in *Kiwi Dairies*) that the purposes of the legislation must be considered by a court. The definition of a security problem thus became an example of the evolving application of judicial discretion and the doctrine of precedent culminating in a definitive ruling by a court high in the appellate chain. Here, application of traditional doctrines enabled the discovery of the correct interpretation largely because the statutory definition itself was highly transitive. By contrast, the wording of former s 3 was, in part at least, intransitive. This implies (but does not prove) that the exercise of judicial discretion was less likely to produce a coherent reading of the section. But the real problem with section 3 consisted of a built-in design flaw, the nebulous concept of "the public".

Section 3 of the Securities Act 1978 was an evolutionary maladaptation. The evidence shows that the courts had great difficulty with the concept of "the public" prior to the 1978 Act. The next

[4]See generally, G Walker, "Law as Strategy: Introductory Concepts", 17 *C&SLJ* 467 (1999).

logical step was to dispense with the concept and replace it with a general prohibition and clearly defined exemptions (precisely the solution adopted by the Australian legislation). Instead, the 1978 Act attempted to define the term in section 3. The attempt was doomed to fail as the early case law on section 3 illustrates. Further, while the decision in *Kiwi Dairies* clarified some of the problems in section 3, it also serves to confirm its design flaws. One reiterated example will suffice: an offer was caught by section 3 (1) unless all the persons to whom the offer was made came within section 3 (2). Thus, one misjudgment in the offering process would avoid the entire issue. This was objectionable on several counts. First, a law concerned with capital formation should be easy to understand, efficient and certain. Such a proposition applies, *a fortiori*, to a small capital importing country such as New Zealand given well-known domestic constraints on capital formation and intense international competition for capital. Second, uncertainty causes inefficiency. Generally, if legislation lacks clarity then costs will result. Ian Ramsay[5] has listed some of these costs as follows: increased legal research costs;[6] litigation costs;[7] judicial system costs;[8] increased unlawful activity;[9] decreased lawful activity,[10] and discrimination.[11]

In terms of securities legislation, the uncertainty surrounding the concept of offer to "the public" created difficulties for practitioners advising on compliance with securities law. In the result, those seeking to raise capital were faced with the costly option of erring on the side of caution and registering a prospectus when it might not be necessary,[12] or carrying out extensive investigations into potential of-

---

[5]I. Ramsay, "Corporate Law in the Age of Statutes", 14 *Syd. LR* 474, 482 (1992) following G. Maggs, "Reducing the Costs of Statutory Ambiguity: Alternative Approaches and the Federal Courts Study Committee", 29 *Harv J Leg* 123, 126-30 (1992).

[6]Much legislation, particularly in corporate law, requires expenditure on legal research costs, such as legal opinions for lawyers, in order to obtain clarification.

[7]Legislative ambiguity promotes litigation to obtain clarification.

[8]By promoting litigation, legislative uncertainty requires expenditure on judicial resources.

[9]Legislative ambiguity may result in persons or companies unwittingly breaching the law because the ambit of the law is not clearly marked.

[10]Legislative ambiguity may chill lawful and productive activity by reason of the fact that persons or companies may not enter transactions because the precise ambit of the law cannot be determined.

[11]A lack of clarity may mean that legislative implementation by a regulator is undertaken on an arbitrary or discriminatory basis.

[12]G. Walker and M. Fox, "Costs Associated with Initial Public Offerings on the New Zealand Stock Exchange", 3 *ICCLR* 106 [1995]. The authors concluded (after a study of 20 companies making IPOs) that average fund-raising compliance costs were 4.29 percent of total funds raised. Interestingly, costs did not vary much between large issues and smaller issues. Hence, the proportion of compliance costs to funds raised was higher for smaller issuers. See also Morel and Co., *Securities Act Study – A Report prepared for the Ministry of Commerce* (1994). This inquiry into fund-raising

ferees to ensure they came within the exemptions.[13] Although it was possible to rely on a narrow band of people under the section 3(2)(a)(i) and (ii) exemptions, this was unlikely to provide a sufficiently large pool of potential investors.[14] Further, in the case of small companies, large institutions and habitual investors might decline to infuse equity unless they gained control. This has chilling effect business start-ups.[15]

Rather than risk incurring prospectus costs or penalties for non-compliance, many companies (especially small ones who are less able to sustain such costs), would opt to raise debt capital through finance companies (even if this was inappropriate to the stage of growth of the company and lead to cash flow difficulties).[16] This limited not only those firms but also the economy as a whole as it sought capital to grow and compete with overseas competitors.[17] This highlights an even more troubling problem. The "offer to the public" concept simply did not fit with the realities of the New Zealand economy. It was well documented that approximately 99.5 percent of all businesses in New Zealand are SMEs, which employ 76.8 percent of the total labor force and have difficulty raising equity capital.[18] Section 3 of the Securities Act seemed to operate in ignorance of these facts. The offer to the public concept might have been appropriate to the 0.5 percent of large businesses in New Zealand but it was totally inappropriate for SMEs which cannot afford the time or expense associated with a formal public offering.[19] There was hence a need for better fit between securities regulation and the economic characteristics of the New Zealand economy.

The solution to the evolutionary maladaptation of section 3 was extinction—the replacement of section 3 with a general prohibition on offering securities without a prospectus, subject to certain statutory exceptions. The model, which New Zealand legislators later decided to

---

by unlisted companies found that key reasons for not issuing a prospectus were cost and complexity. There was a consensus amongst companies surveyed that raising $1 million by a public issue with a prospectus cost about $120,000 (ie., approximately 12 percent of funds raised). Id, 2.

[13]P. Fitzsimons, "Capital Raisings and Offers to the Public", 1 *C&SLB* 4, 10 (1995).

[14]The venture capital industry in New Zealand is small.

[15]Morel and Co., *Securities Act Study—A Report prepared for the Ministry of Commerce* (1994), 11-12.

[16]Morel and Co., *Securities Act Study—A Report prepared for the Ministry of Commerce* (1994), 11-12.

[17]P. Fitzsimons, "*Capital Raising and Offer to the Public*", 1 *C&SLB* 4, 10 (1995).

[18]See also A Cameron and C Massey, *Small and Medium-sized Enterprises: A New Zealand Perspective* (Auckland: Longman, 1999).

[19]See G. Walker and M. Fox, "Closing the Loop: SMEs and Securities Regulation", *NZLJ* 275 [1999].

work from, was the Australian Corporations Law.[20] Under the Corporations Law, the concept of offer to the public, which appeared in the earlier Australian Companies Code, was removed and replaced by an overall prohibition on inviting or offering securities for subscription or purchase without a prospectus. The basic prohibition is contained in section 706. The most significant exemptions are the small-scale offerings exemption contained in section 708(1) which allows for 20 issues or sales in 12 months, to a ceiling of $2 million, and the 'sophisticated investor' or 'gold card' exemption which applies to an offer where the minimum subscription is A$500,000 by each person to whom the offer or invitation is made: section 708(8). Both exemptions avoid any inquiry as to the meaning of the public.

Replacing section 3(2) (a) (iii) with the Australian small-scale offerings' exemption was an immediate solution to the present problems surrounding the New Zealand section. If we view section 3 as a maladaptation, however, the only logical solution was extinction followed by a leap to the next evolutionary stage as manifested in the Australian legislation. More generally, the "offer to the public" concept highlighted the need for strategic thinking about securities regulation in New Zealand. The type of thinking required is well illustrated by the first major strategic review of New Zealand, the *New Zealand Porter Report*.[21] The major finding of that report was "a misalignment between the structure of the New Zealand economy and . . . today's global economy."[22] The same could have been said about the '78 Act. It remains to add that section 39 of the FMC Act is explicitly based on s 706 of the Australian Corporations Act. This section was in force on 1 December 2014. The exclusions to s 39 are contained in Schedule 1, Part 1 of the FMC Act. Broadly speaking, these follow the Australian model.

§ NZ:6 New Financial Markets Law: Financial Markets Authority Act 2011 and Financial Markets Conduct Act 2013

As stated, following the global financial crisis, capital market regulation in New Zealand underwent its greatest change in decades. After the Capital Markets Development Taskforce published its final report in December 2009, Government acted quickly introducing the *Financial Markets (Regulators and KiwiSaver) Bill 2011* (NZ) into Parliament in September 2010. In April 2011, the Financial Markets Authority Act 2011 (NZ) ('FMA Act') was passed and came into effect on 1 May 2011. The new statute created the Financial Markets Authority ('FMA'), a new market conduct regulator to replace the Se-

[20]See generally, M. Taylor, "Capital Raising in Australia" in G. Walker, Gen. Ed., *Securities Regulation in Australia and New Zealand* (2nd ed., 1998) 289.

[21]G. Crocombe, M. Enright and M. Porter, *Upgrading New Zealand's Competitive Advantage* (1991).

[22]Ibid., 147.

curities Commission, the Commissioner for Financial Advisers and the Government Actuary.[1] The FMA has been operating since May 2011. Significantly, the FMA Act not only created a new conduct regulator but also ushered in a new area of law for New Zealand—financial markets law. So, for example, it is no longer accurate to speak of securities regulation in New Zealand. Securities regulation is now subsumed under the rubric of financial markets law. The same point applies to investment adviser and broker regulation.

The new financial markets law rests upon three core definitions which appear in s 4 of the FMA Act. The first definition is "financial markets" which means the financial markets in New Zealand and includes markets in New Zealand for the provision of financial services and the capital markets of New Zealand. The term "financial service" is given the same meaning as in s 5 of the Financial Service Provider Act 2008 (NZ).

The meaning of the term "financial markets legislation" is set out in Schedule 1 of the FMA Act. Schedule 1 was divided into two parts:

- Part 1—Auditor Regulation Act 2011, Financial Advisers Act 2008 (NZ), Financial Service Providers Act 2008 (NZ), Securities Act 1978 (NZ), Securities Markets Act 1988 (NZ), Securities Transfer Act 1991 (NZ), Superannuation Schemes Act 1989 (NZ), Unit Trusts Act 1960 (NZ), Parts 4 and 5 and Schedules 1 and 2 of the KiwiSaver Act 2006 (NZ), Sections 45U and 45V of the Public Finance Act 1989 and the Securities Trustees and Statutory Supervisors Act 2011.
- Part 2 (*inter alia*)—Companies Act 1993 (NZ), Corporations (Investigation and Management) Act 1989 (NZ), Financial Reporting Act 1993 (NZ), Limited Partnerships Act 2008 (NZ), Trustee Companies Act 1967 (NZ) and Part 5C of the Reserve Bank of New Zealand Act 1989 (NZ).

The significance of the division between Part 1 and Part 2 of Schedule 1 of the FMA Act appears in s 9 (1) (c), which sets out the FMA's functions and powers:

> (c) to monitor compliance with, investigate conduct that constitutes or may constitute a contravention of, and enforce—
>
> (i) the Acts referred to in Part 1 of Schedule 1 (and the enactments made under those Acts); and
>
> (ii) the Acts referred to in Part 2 of Schedule 1 (and the enactments made under those Acts) to the extent that those Acts or other enactments apply, or otherwise relate, to financial markets participants.

Thus, while the statutes listed in Part 1 of Schedule 1 fall under the FMA's jurisdiction without restraint, the statutes listed in Part 2 of

---

[Section NZ:6]

[1]*See* P. Maume and G. Walker, "Goodbye to All That: A New Financial Markets Authority for New Zealand" in "Overseas Notes—New Zealand", 29 *C&SLJ* 239 (2011).

Schedule 1 are only indirectly covered. Hence, Part 1 sets out the core legislation for financial markets law while Part 2 delineates areas of law that constitute financial markets law in a broader sense (we might call this the penumbra of financial markets law). In this way, there are direct and indirect targets of financial markets law.

The definition of "financial markets participant" provides the "personal" scope of financial markets law. The legislation governing New Zealand's capital markets laws had been incoherent and fragmented across various statutes. For example, the Securities Act 1978 applied to offers of securities to the public. The Securities Markets Act 1988 dealt with persons trading (or involved in trading) in securities and with issuers listed on the NZX. The Financial Reporting Act 1993 referred to "issuers" in s 4 of that Act and that definition extended to unlisted issuers. The Financial Advisers Act 2008 addresses persons who offer financial adviser services. Finally, the Financial Service Providers Act 2008 applies to people who offer any kind of financial service. These two Acts have been replaced by the Financial Services Legislation Amendment Act 2019 which moved amended regimes into the FMC Act.

Definitional incoherence caused practical problems. An example was where a majority controlled unlisted company in New Zealand was an "issuer." The issuer was an unlisted company which had allotted securities pursuant to an offer requiring the issue of some type of disclosure document as specified in the Securities Act 1978 or the Securities Regulations 2009. As it turns out, majority controlled unlisted issuers of debt securities were—at least in recent times—the key corporate governance problem in New Zealand. Evidence for this proposition is provided by the raft of finance company failures in New Zealand during the so-called global financial crisis.[2] Unlisted finance companies raised money from the public by way of debt securities, but these companies were not subject to the discipline of the New Zealand Exchange Listing Rules. In particular, such issuers were not subject to the continuous disclosure regime which applies to listed companies.[3] The inapplicability of the Listing Rules combined with significant weaknesses in the Companies Act 1993 (for example, weak related

[2]See generally, Fox, Walker and Pekmezovic, "Corporate Governance Research on New Zealand Listed Companies" (2012) 29 (1) *Ariz. J of Int. & Comp. Law* 1-48. See also Stace V, *Securities Law in New Zealand* (2010), Chapter 30; Report of the Commerce Committee, *2007/08 Financial Review of the Ministry of Economic Development* (2009); Report of the Commerce Committee *Briefing on finance company failures* (2009); Gladwell S and Leach D, "Corporate Governance in the Credit Crisis" *NZ Lawyer*, 10 July 2009, p 22; Bennington D, "Honest Bridgecorp directors prohibition upheld by High Court" *NZ Lawyer*, 17 September 2010, 1; Collet-Beavan M, "A brand new regime" *NZ Lawyer*, 15 October 2010, p 13; Weir J, "We stood back and did nothing" *Southland Times* (26 November 2010), p 18; New Zealand Securities Commission "Commission releases information on finance company investigations" (press release, 3 December 2010).

[3]The problem was partially addressed in the Securities Amendment Regulations 2007 and subsequently in the Securities Trustees and Statutory Supervisors Act 2011 (NZ).

party transaction rules) and the securities regulation regime (as far as unlisted issuers of debt securities were concerned) are among the reasons for the finance company failures of recent years.

The FMA Act does not pursue definitional diversity. Instead, it addresses one person in s 4, the "financial markets participant", meaning a person (*inter alia*)

> . . . who is, or is required to be, registered, licensed, appointed, or authorized under, or for the purposes of, any of the Acts listed in Part 1 of Schedule 1 or any of the enactments made under those Acts.

This definition includes all of the aforementioned persons. It covers related bodies and, very significantly, directors and senior managers. The comprehensive definition of "financial markets participant" opens the door for the personal liability of directors and managers throughout all the financial markets law.

The first consequence of the new financial markets law is that the law governing New Zealand's capital markets and financial services needs to be approached differently. The legislative past was characterized by a proliferation of regulatory bodies as well as a multitude of statutes with differing scope and objectives. For example, the now repealed Financial Advisers Act 2008 (NZ) was a consumer protection statute. On the other hand, the Securities Act 1978 (NZ) and the Securities Markets Act 1988 (NZ) aimed for investor protection and/or the influx of capital.[4] Deviating objectives influence the regulators' work and may lead to an incoherent application of the relevant statutes. The FMA Act now sets out uniform objectives for the FMA: "to promote and facilitate the development of fair, efficient, and transparent financial markets": s 9. Hence, the new law creates a sole conduct regulator in charge of financial markets law bound to one single objective in the application of all the statutes listed in Schedule 1. This objective sets the baseline for financial markets law in general.

The FMA Act assigns the FMA new powers the former Securities Commission did not possess. The FMA is able to require persons to supply information or give evidence (ss 25 to 28), to enter and search premises, vehicles and things (s 29), to exercise a person's right of action (ss 34 to 38), to represent third parties in representative actions (ss 39 to 40), to make confidentiality orders (ss 44 to 45), to accept enforceable undertakings (ss 46 to 47), to state a case of law to the High Court (s 48), to issue warnings, comments, guidelines and comments (s 9) and to require its warnings to be posted on a relevant person's website (ss 49 to 51). Several of these powers are backed by criminal liability in case of circumvention (s 61). In principle, these tools are now available for application to all the statutes listed in Schedule 1. In this way, the FMA has a wider range of enforcement tools at hand than did, for example, the disestablished Government Actuary in respect of the KiwiSaver Act 2006 (NZ).

---

[4]See Walker G and Pekmezovic A, "Consumer Protection and Financial Products" in Kate Tokeley, ed., *Consumer Law in New Zealand,* 2nd ed (Lexis Nexis, 2014), Chapter 8.

It is remarkable that the Takeovers Act 1993 (NZ) is not mentioned in Schedule 1. Takeovers are still regulated by the Takeovers Panel and not by the FMA; they are not part of financial markets law. The Takeovers Panel and the FMA are empowered to assist each other and "may" provide all available information to each other under s 15A of the Takeovers Act (NZ) and under s 30 of the FMA Act. The new law thereby continues the separation between market conduct and takeover regulation that already existed between the Securities Commission and the Takeovers Panel. Notwithstanding that the law relating to takeovers is closely related to financial markets and investor protection, the FMA has no control over its regulation.

On the other hand, the FMA has powers under the Companies Act 1993 (NZ), which directly confer rights to the FMA, allowing it to apply to court to appoint or remove a liquidator (ss 239L, 239R), to apply to court to disqualify directors (s 383) and to prohibit persons from managing companies under certain circumstances such as liquidation (s 385). Like the Takeovers Panel, the Registrar of Companies "may" provide the FMA any information or document that may assist the FMA in the exercise of its functions and duties (s 371A).

In addition, Schedule 1 of the *FMA Act* empowers the FMA to enforce the Companies Act 1993 (NZ) if the Act relates or applies to financial markets participants. The meaning of the referral seems unclear. It could be interpreted in a wide manner: according to s 4 of the FMA Act, a company that has offered shares to the public is a financial markets participant and accordingly all breaches of the Companies Act 1993 (NZ) by such companies fall under the FMA's enforcement powers. It is unlikely that the FMA has the intention (or the resources) to act as a watchdog for company law in general. It would make sense if the FMA limited its actions to breaches of the company law statute that directly relate to financial markets (for example, breaches of directors' duties that occurred in relation to initial public offerings). Any overlap with the Registrar's functions should be avoided. For a discussion of the FMA, see Phillip Maume, "The Financial Markets Authority: A Model Example of Regulatory Consolidation?" (2013) 25 (3) NZULR 616.

FMA Levy

Financial markets participants are subject to a levy to contribute to the FMA's funding (s 68): see Financial Markets Authority (Levies) Regulations 2012.

The FMC Act 2013

The FMC Act is now in full force.

As stated, the FMC Act replaced the two former principal Acts governing securities regulation in New Zealand: the '78 Act (primary market) and the Securities Markets Act 1988 (secondary market). In this way, a large part of the new financial markets legislation (and hence the new financial markets law in New Zealand that replaces the previous securities regulation regime) is found in the FMC Act: see Schedule 1 of the FMA Act.

We now turn to look at some key parts of the FMC Act in broad overview.

The FMC Act is divided into 9 Parts:

- **Part 1** specifies the purposes and objectives of the Act.
- **Part 2** provides for fair dealing matters including prohibiting misleading and deceptive conduct in connection with financial products and financial services. This Part of the FMC Act came into force on 1 April 2014 other than ss 23-27 (unsubstantiated representations) and ss 34-37. Sections 23-27 (offers in the course of unsolicited meetings) came into force on 17 June 2014.
- **Part 3** deals with the disclosure of offers of financial products. Part 3 provides for the disclosure to investors in relation to certain offers of financial products. Schedule 1 of the Act contains the relevant disclosure requirements. Part 3 also deals with the advertisements for those offers and ongoing disclosure to investors.
- **Part 4** provides for the governance of regulated products including debt securities, managed investment products and powers of intervention to enable the supervision of debt securities. This part also specifies the duties of issuers of all regulated products as well as the duties of persons associated with regulated products to make protected disclosures.
- **Part 5** provides for matters relating to dealing in financial products including prohibiting insider trading and market manipulation. It also deals with continuous disclosure by listed issuers. New Subparts 5A and 5B contain the amended financial advisers regime.
- **Part 6** regulates certain financial markets services, including the licensing of certain financial market service providers.
- **Part 7** provides for financial reporting obligations. A new subpart, in effect as of October 2022, deals with climate related disclosures.
- **Part 8** provides for enforcement and liability matters. Subpart 1 details the FMA's enforcement powers. Subpart 2 details the High Court's enforcement powers. Subpart 3 contains civil liability provisions. Civil liability orders are available for a contravention or involvement in a contravention of a civil liability provision. Orders that may be made comprise: a declaration of contravention, a pecuniary penalty order, a compensatory order and "other civil liability orders under section 497". A wide range of civil liability provisions are listed in s 485. For example, a Part 5 market provision is a civil liability provision. The purpose of a declaration of contravention is to enable an applicant for a compensatory order or other civil liability order under s 497 to rely on the declaration of contravention. Compensatory orders are provided for in s 494. Subpart 4 of Part 8 is entitled, "Offences relating to defective disclosure and false statements". Criminal liability attaches to the making of defective disclosure in a PDS or register entry or in any other provisions relating to defective disclosure. There is also a general offence for false and misleading statements: s 512.

- **Part 9** provides for regulations and exemptions, including powers to prescribe matters relating to the form and content of product disclosure statements, and powers of the FMA to designate financial products and offers, and to grant exemptions, where this is necessary or desirable.

The FMC Act is complemented by the Financial Market Conduct Regulations 2014.

Alignment with the Australian Law

While the Act in some respects largely restates and consolidates New Zealand's current primary and secondary markets laws, it represents a significant shift towards the Australian legislative model. The FMC Act is modeled closely on Australian equivalent legislation and contains direct references to cognate Australian legislation. For example, s 39 of the FMC Act states as follows: "an offer of financial products for issue requires disclosure to an investor under this Part unless exclusion under *Part 1 of Schedule 1* applies". This section is drawn from s 706 of the Australian Corporations Act which deals with offers of securities for issue that require disclosure to investors and, like s 39, defines these by reference to other provisions in the Act. Similar references to the Australian Corporations Act can be found throughout the FMC Act. The alignment with or borrowing from Australian law evident in the FMC Act flows from the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) and the downstream Memorandum of Understanding on Business Law Co-ordination between Australia and New Zealand: See G. Walker, "The CER Agreement and Trans-Tasman Business Law Coordination: From Soft Law Approach to Hard Law Outcome" in Jianfu Chen and Gordon Walker (eds) *Balancing Act* (Federation Press, 2004), 75. The broad policy aim is a single economic market as between New Zealand and Australia.

Key Aspects of the FMC Act

We now turn to outline at some key parts of the FMC Act in broad overview. Here, it is important to note that some changes have been made via regulation: see Financial Markets Conduct Regulations 2014.

Part 1, FMC Act—Preliminary Provisions

Part 1 of the FMC Act comprises ss 1-16. These sections state the main and additional purposes of the legislation, provide an overview of the Act, and contain the interpretation provisions.

Purpose: Sections 3-4 state the main and additional purposes of the Act. The main purposes provision (s 3) largely repeats the purposes of the FMA Act as contained in ss 8 and 9 (1) (a) of the FMA Act. Section 4 (a)-(d) of the FMC Act states additional purposes: for example, s 4 (c) states that an additional purpose is to "avoid unnecessary compliance costs". The new exclusions from Part 3 of the FMC Act (Disclosure of offers of financial products) are designed to facilitate capital raising and cut compliance costs. These exclusions from the ambit of Part 3 of the FMC Act are discussed below.

Overall, s 4 comprises a set of overarching guidelines that are of relevance to the FMA when exercising its discretion and the judiciary when considering the legislation.

Definition of Financial Product: The gateway to the '78 Act was the definition of a security. The gateway to the FMC Act is the definition of a "financial product", a term borrowed for the cognate Australian legislation. The term "financial service" has the same meaning as in the FSP Act and includes a "market service": s 6 FMC Act. Section 7 of the FMC Act provides the meaning of "financial product", namely: debt security; equity security, managed investment product or a derivative. These terms are further defined in ss 8-10. The term "managed investment product" means an interest in a "managed investment scheme" as defined in s 9 of the FMC Act. It replaces the category of "participatory security" in the '78 Act. Examples of a managed investment scheme are superannuation schemes or unit trusts. The three core elements of a managed investment scheme are stated in s 9 (1) (a)-(c) of the FMC Act. In summary, they are:

- The purpose or effect of the scheme is to enable persons taking part in the scheme to contribute money to acquire interests in the scheme;
- The interests acquired are rights to financial benefits produced principally by the efforts of another person under the scheme; and
- Interest holders do not have day-to-day control over the operation of the scheme.

There are carve-outs for schemes where investors have a direct interest in property, discretionary investment management schemes and certain types of insurance contracts: see s 9.

Act binds the Crown: Section 15 states that the FMC Act binds the Crown.

Application of Act: Section 16 states that the provisions of the Act have effect despite anything to the contrary in any other enactment. These words merely restate a well-known principle of statutory interpretation but presumably are included for the avoidance of doubt. There is no contracting out.

Part 2, FMC Act—Fair dealing

Background:

Most sections of Part 2 of the Act became effective on 1 April 2014.

A short discussion of the background to Part 2 of the FMC Act is required. Part 1 of the Fair Trading Act 1986 (NZ) (FT Act) contains provisions on misleading and deceptive conduct, false representations, and unfair practices. Sections 9-14 of this Act were explicitly based on cognate provisions contained in Part V of the Australian Trade Practices Act 1974. Thus, s 9 of the FT Act was based on s 52 of the Australian Trade Practices Act 1974 (TPA) and reads as follows: "No person shall, in trade, engage in conduct that is misleading or deceptive or is likely to mislead or deceive."

Section 9 of the FT Act was held to apply to dealings in shares. *Jagwar Holdings Limited & Anor v. Julian & Ors* (1992) 6 NZCLC 68, 040 (HC) involved the sale and purchase of shares. Jagwar alleged breach of s 9 of the FT Act. It was held that the relevant directors' statements were made in the course of trade and the representations made were false and misleading: see also *De Alwis v. Luvit Foods International Ltd* (2007) 10 NZCLC 264, 304. In the course of his judgment in *Jagwar*, Thorp J (at p 57) cited the decision of the New Zealand Court of Appeal in *Taylor Bros Ltd v. Taylors Group Ltd* [1988] 2 NZLR 1 where it was said that, "[t]he whole New Zealand Act [the FT Act] is largely derived from Part V of the Australian Act . . . and our courts are thus fortunate in being able to profit from Australian judicial authority and experience in applying the New Zealand Act. Consistency in the application of the legislation in the CER countries [a reference to the Closer Economic Relations Treaty between Australia and New Zealand] should clearly be aimed at so far as reasonably practicable." Thorp J relied on Australian case law in reaching his decision.

In summary, the FT Act was based on Australian legislation and the New Zealand courts will refer to Australian judicial consideration as highly persuasive precedent when interpreting the New Zealand FT Act. Further, the statement from *Taylor's case* cited above indicates the New Zealand courts will aim for consistency with Australian judicial consideration of this legislation because of the CER treaty (in passing, note this dictum anticipates the single economic market policy by over 20 years).

In Australia, the TPA applies to transactions made before December 31, 2010. The Australian Consumer Law (ACL) which replaced the TPA is contained in Schedule 2 of the Competition and Consumer Law Act 2010 (Cth.). Since 1998, s 52 of the TPA has not applied to conduct in relation to financial services and its successor, s 18 of the Australian Consumer Law specifically excludes conduct in relation to financial services by virtue of s 131A (1) of the ACL. Where conduct concerns financial services or a financial product, the relevant provisions are as follows:

- Section 12DA of the Australian Securities and Investment Commission Act 2011 (Cth.) provides that, "[a] person must not, in trade or commerce, engage in conduct, in relation to financial services that is misleading or deceptive or is likely to mislead or deceive."
- Section 1041H of the Corporations Act 2001 (Cth.) states that, "[a] person must not, in this jurisdiction, engage in conduct, in relation to a financial product or a financial service, that is misleading or deceptive or is likely to mislead or deceive."

There is significant overlap between these two Australian provisions.

In New Zealand, s 5A of the FT Act 1984 was inserted in 2008. The section says that there is no liability under the FT Act if a person would not be liable under the '78 Act or the SMA. However, the FMRA Act repealed the s 5A carve out and inserted new sections 48P to 48S

into the FT Act. Section 48P of the FT Act states that the FMA's consent must be obtained before the Commerce Commission (the body that administers the FT Act) can commence proceedings under the FT Act in respect of financial products or services. The legislative intent is that misleading and deceptive conduct involving financial products or services should be dealt with under the FMC Act with the FMA as lead regulator.

A guide to the interpretation of Part 2 is contained in s 18. It states that "financial product" has the meaning set out in s 7 and any other class or classes of financial products falling within the meaning of s 5 of the now repealed Financial Advisers Act 2008 as declared by regulations for the purposes of that provision. This provision extends the reach of Part 2. Section 18 (2) defines the term, "trade". It means, "any trade, business, industry, profession, occupation, activity of commerce or undertaking".

Sections 19-22 of the FMC Act are based on ss 9, 10, 11 and 13 of the FT Act. The relevance of noting this point is that ss 19-22 are ultimately based on the cognate Australian TPA sections and hence the Australian case-law is directly relevant: see the discussion in Gill North, *Company Disclosure in Australia* (Lawbook, 2013) at Chapter 19.

Section 19 prohibits misleading or deceptive conduct generally. Section 19 (1) states that a person must not, in trade, engage in conduct that is misleading or deceptive or likely to mislead or deceive in relation to any dealing in financial products or the supply of financial services. As with s 13 of the SMA, the prohibition catches dealing in listed or non-listed securities (in this instance, because of the wide definition of financial product). Section 19 (2) contains a similar prohibition in relation to "quoted" financial products and here the dealing need not be "in trade". The s 19 prohibition is a powerful investor protection mechanism applying to conduct by issuers and other market participants. In this regard, the FMA will be able to use its new arsenal of powers in Part 8 of the FMC Act to enforce compliance. Section 20 prohibits conduct that is liable to mislead the public as to the nature, characteristics, suitability for a purpose or quantity of financial products. Section 21 repeats the same prohibition in relation to financial services.

Section 22 contains a prohibition on false or misleading representations in relation to financial products and financial services.

Section 23 prohibits unsubstantiated representations in respect of financial products or services. Sections 23-27 came into force on 17 June 2014.

Sections 34-37 contain provisions restricting offers of financial products during unsolicited meetings. These provisions are designed to strike at "boiler room" sales and the like.

Liability for breach of the fair dealing provisions is contained in s 38 which provides for civil liability including pecuniary penalties. A Part 2 Fair Dealing provision is a civil liability provision under Part

8, Subpart 3 of the FMC Act and compensatory orders are available: see s 484.

Part 3: Disclosure of offers of financial products

Part 3 of the FMC Act introduces new mechanisms for raising funds in the primary market. The former "offer to the public" concept appearing in the '78 Act has been abandoned. In its place is a regime that draws heavily on the cognate provisions in Chapter 6D (Fundraising) of the Australian Corporations Act 2001. The Australian provisions contain "bright line" rules that say disclosure to investors is required (s 706) unless ss 708 or 708A say otherwise. The key carve outs appear in s 708 and include small scale offerings, sophisticated investors and so on.

Part 3, Subpart 1—Application

Section 39 of the FMC Act says that an offer of financial products for issue requires disclosure to an investor under this Part unless a specified exclusion under Part 1 of Schedule 1 applies. The term "financial product" is defined in s 7. The exclusions in Schedule 1 include the following:

- Offers to wholesale investors as defined in Cl 36: This category is an aggregation of former exclusions under the 78 Act and covers investment businesses, person engaged in investment activities, "large" persons, government agencies, "eligible" investors and persons making an investment of $750,000 or more.
- Offers for persons in close relationships: This category comprises close business associates and relatives. There is an exhaustive definition of close business associates which will (presumably) render the earlier case-law nugatory.
- Offers through licensed intermediaries and DIMS licensees.
- Offers under employee share purchase schemes.
- Offers to person under control: This exclusion applies to entities controlled in any of the above categories.
- Small offers: This exclusion follows the cognate Australian exclusion known as the "20/12" rule. It enables issuers of debt and equity securities to raise funds up to $2 million in any 12-month period from 20 investors.

Schedule 1 of the FMC Act is entitled, "Provisions relating to when disclosure is required and exclusions for offers and services" and deals with definitions and the requisite certificates to attract the exclusions for offers and services. Limited disclosure requirements attach to use of the exclusionary provisions: see Cl 26, Schedule 1, FMC Act. Many of these exclusions came into effect on 1 April 2014. These include:

- Offers of financial products through licensed intermediaries: FMC Act, Sch. 1, Cl 6. This exclusion enabled the mechanism of crowd funding.
- Offers under employee share purchase schemes: FMC Act, Sch. 1, Cl 8.
- Offers of financial products under dividend reinvestment plans: FMZ Act, Sch. 1, Cl. 10.

- Small offers: issuers are able to raise up to $2 million within any 12-month period from up to 20 investors: FMC Act, Sch. 1, Cl. 1214.
- Exclusion for quoted financial products: This exclusion enables listed issuers to issue equity or debt securities in the same class as already listed securities with minimal documentation thereby greatly reducing compliance costs. For example, by utilizing this exclusion, a rights issue will no longer require a prospectus.

Part 3, Subpart 2—Procedures for making regulated offers

This subpart of the FMC Act sets out the new procedures for fundraising. A regulated offer is defined in s 41 as an offer of financial products where the offer requires disclosure. Section 48 says that a regulated offer must not be made unless a product disclosure statement (PDS) has been prepared and lodged with the RoC. In addition, the offeror must supply the RoC with any required information for the online Register of Offers of Financial Products (Offers Register). The latter requirement is further elaborated in Schedule 2 of the FMC Act. In brief, the Offers Register is a new register to be maintained by the RoC. Two registers are contemplated: the register of offers of financial products and the register of managed investment schemes: see FMA Act, Sch. 2. These registers are open to the public and amount to an investor protection mechanism.

According to s 49, the purpose of the PDS is "to provide certain information that is likely to assist a prudent but non-expert person to decide whether or not to acquire the financial products." Section 49 repeats the language of s 38D of the 78 Act which describes the purpose of an investment statement.

The detailed contents of the PDS appear in Part 3 of the Financial Market Conduct Regulations 2014. Section 57 of the FMC Act provides for the content and presentation of the PDS and register entry. It says that the PDS must contain all the information required by the regulations. Section 61 states that the PDS must be presented in "a clear, concise, and effective manner". Section 57 (1) (b) (ii) states that the register entry must contain "all material information relating to the regulated offer that is not contained in the PDS."

The procedure for making an offer under the FMC is as follows: issuer must prepare and lodge a PDS with the RoC and supply the requisite information for the register entry. The PDS need not have a mandatory expiry date: ss 57 and 84. Once the PDS is lodged, the RoC must notify the FMA in order that the FMA can consider the PDS. At this point, a departure from the previous law appears. Under the 78 Act, a prospectus was registered by the RoC pursuant to s 42 and a certificate of registration was issued by the RoC. Immediately thereafter, the RoC notified the FMA of the registration to enable a further review. Under the FMC Act, however, the PDS is "lodged" with the RoC. Issuer is then given a certificate of lodgment by the RoC: s 75. Immediately thereafter, the RoC must notify the FMA pursuant to s

64 in order that the FMA may consider whether the offer is in compliance with the Act. A waiting period of five days from the lodgment of the offer applies before an offeror can accept applications although the FMA can extend this period. At first glance, there appear to be uncertainties with this procedure that require clarification. Note, however, that all subscription monies are required to be held in trust: s 87. Where there has been a breach of the s 50 prohibition (disclosure must be given if offer requires disclosure), then the offeree has a right of withdrawal and to have the money repaid: s. 54. Once a notice of withdrawal is given to the offeror, the offeror must ensure that the money is repaid as soon as practicable: s 55. This new regime replaces the void irregular allotment regime that appeared in ss 37 onwards in the 78 Act.

Section 82 contains a prohibition on false or misleading statements, omissions, and new matters requiring disclosure. The prohibition goes to offending statements in a PDS, any application form that accompanies the PDS or a register entry that is false or misleading or is likely to mislead. Breach of s 82 gives rise to a criminal sanction—see Part 8, Subpart 4.

Part 3, Subpart 3—Advertising

Sections 89-94 constitute the new advertising regime that applies to issuers. A PDS that has been lodged and a copy of the register entry may be distributed. Section 91 deals with advertising before a PDS is lodged. Certain, "reasonably prominent" statements as required by s 94 must appear in any such advertisement.

Part 3, Subpart 4—Ongoing disclosure and updating of registers

Sections 95-98 enable the updating of the offers register with new information. The register of offers of financial products means the register provided for in the FMC Act, Sch. 2.

Part 3, Subpart 5—Civil liability for contraventions of Part 3

This part begins by setting up a contraction for all the provisions in this part giving rise to civil liability. They are collectively known as "Part 3 offer provisions": s 101 (1). Breaches of these provisions may give rise to civil penalties. These are provided for in Part 8, Subpart 3 of the FMC Act.

§ NZ:7 History and principal legislation—Companies legislation

Historically, New Zealand company law followed United Kingdom models. So, for example, the Companies Act 1955 (NZ) followed the UK Act of 1948. However, New Zealand company law legislation was

comprehensively overhauled in 1993.[1] The new legislation drew on Canadian and U.S. models.[2] The package of legislation introduced in 1993 included: the Companies Act 1993; the now repealed Financial Reporting Act 1993; the Takeovers Act 1993; the Receiverships Act 1993 and the Companies Reregistration Act 1993. Except for the Takeovers Act 1993 (which came into full effect in 2001), all of these Acts came into force on 1 July, 1994 and all companies fell under this regime as of 30 June 1997. Further, the registration distinction between private companies, public companies and public listed companies deriving from the Companies Act 1955 was finally abolished by the Companies Act 1993 on 30 June 1997. This change greatly simplifies the establishment and maintenance of the electronic registry. To generalize, the only meaningful distinction between companies for our purposes goes to reporting and here the principal distinction is between companies that issue securities (for example, companies listed on NZX markets such as the NZSX) and those that do not. The leading topical text on New Zealand company is Susan Watson and Lynne Taylor, *Corporate Law in New Zealand* (Wellington: Thomson Reuters, 2018). In passing, note that the MBIE commenced a major review of the Companies Act in 2024—*see* further new developments.

§ NZ:8 Introduction of the investment statement

In 1996, changes to the law relating to the offering of securities were made in New Zealand. These changes came into effect on 1 October 1997. An important change to the Securities Act 1978 was the optional requirement for an investment statement to accompany an offer of securities. The investment statement was replaced in the FMC Act by the product disclosure statement (PDS) in effect as of December 2014. The PDS has a similar purpose to the investment statement: see s 49 FMC Act.

§ NZ:9 Organizations involved in securities regulation—Financial Markets Authority (FMA)

The FMA is a creation of the FMA Act and is the chief governmental agency with responsibility for securities regulation. The FMA's powers are discussed in more detail below.

§ NZ:10 Organizations involved in securities regulation—New Zealand Exchange Limited (NZX)

In late 2002, members of the New Zealand Stock Exchange (NZSE)

[Section NZ:7]

[1]Gordon Walker, Alma Pekmezovic, Pamela Hanrahan, Ian Ramsay and Geoff Stapledon, *Commercial Applications of Company Law in New Zealand*, 5th ed. (Auckland: CCH New Zealand Ltd, 2015), 28-9. Hereafter, "CACL".

[2]D. Oesterle, "Why have a Companies Act?" in G. Walker and B. Fisse, eds., *Securities Regulation in Australia and New Zealand*, 1st ed. (1994), 313.

voted in favor of the demutualization of the former New Zealand Stock Exchange. Enabled by the New Zealand Stock Exchange Restructuring Act 2002, the NZSE became a limited liability company—NZSE Limited—with its own constitution on 1 January 2003. On 30 May 2003, NZSE Limited announced a further change of name to New Zealand Exchange Limited, trading as NZX, as part of a rebranding exercise. (Thus, the new website of the NZX is www.nzx.com and that website has a new format.) The NZX listed on its own stock market—the NZSX—on June 4, 2003. This resulted in a series of name changes—for example, the former NZSE Listing Rules are now known as the NZX Listing Rules. The NZX provides the principal markets for securities trading in New Zealand. The NZX is largely a self-regulatory organization although the FMA has a role in regulating its activities. The relationship between listed companies and the NZX is primarily contractual and is governed by the NZX Listing Rules, which are incorporated into the Listing Agreement made between the NZX and listed companies. However, the FMA has statutory power to enforce compliance by a listed company where the NZX's continuous disclosure listing rules apply to that listed company. The relevant listing rule is Listing Rule 3.1. (once listed issuer becomes aware of material information concerning itself, it must immediately release that information to the NZX) and this rule is given statutory force by s 270 of the FMC Act.

§ NZ:11 Organizations involved in securities regulation—The Companies Office and the Registrar of Companies

In New Zealand, the Ministry of Business, Innovation and Employment (MBIE) has overall responsibility for companies. This responsibility is discharged by its Business Services Branch. The Business Services Branch of the MBIE is headed by a Deputy Secretary with responsibility for the Companies Office.

The Registrar of Companies (RoC) heads the Companies Office. The Registrar of Companies is a position created by statute. The Registrar is the principal regulator of all companies in New Zealand. The role and powers of the Registrar are contained in Part XX of the Companies Act 1993.

Structure of the Companies Office

As stated, the Registrar of Companies heads the Companies Office. Immediately beneath the Registrar is the Group Manager of Business Registries. There are five main operational units beneath the National Manager of Business Registries:

- **The National Enforcement Unit**: The manager of the National Enforcement Unit has responsibility for prosecutions and the director prohibitions. This unit is based in Auckland.
- **Central Region**: The manager of this unit has responsibility for client services and the insurance and superannuation unit.
- **Internet Support**: The manager of this unit has responsibility for internet support and online promotions.

- **Contact Centre and Southern Region**: The manager of this unit has responsibility for the contact Centre, client services and quality control.
- **Northern Region**: The manager of this unit has responsibility for legal services, client services, compliance, other registers, document processing and document imaging.

Main functions of the Companies Office

Details of the organizational structure, functions and legislation administered by the Companies Office can be found at the website of the Companies Office: www.companies.govt.nz.

One of the principal functions of the Companies Office is to maintain registers containing information about companies that can be accessed by members of the public.

Some of the following information about the function of the Companies Office is extracted from the Companies Office, *Online with NZ Business: Strategic Business Plan 2005-06*. This booklet has not been updated.

The Companies Office is responsible for the provision of services relating to the registration of companies and other corporate entities and public access to corporate and securities information. The Companies Office has compliance and enforcement functions under the Companies Act, the FMC Act, the Corporations (Investigation and Management) Act 1989, the Financial Reporting Act 1993 and the Friendly Societies and Credit Unions Act 1982.

Corporate body registers maintained by the Companies Office: The Companies Office maintains and manages several registers including the following:

- New Zealand and overseas companies
- financial service providers
- cooperative companies
- incorporated societies
- industrial and provident societies
- limited partnerships and overseas limited partnerships
- charitable trusts
- unit trusts
- friendly societies and credit unions
- superannuation schemes
- contributory mortgage brokers
- building societies
- retirement villages
- motor vehicle traders
- personal property securities
- auditors register

Administration of the registries falls into four areas:

- new registrations

- maintenance of registered information
- removal of defunct entities, and
- ensuring compliance with statutory disclosure obligations.

The Companies Office monitors compliance and timeframes for filing changes to registered information, as prescribed by the associated legislation.

The information held on the registers is available for public search. Searches can be conducted online via the Companies Office website or at the regional office where the company is registered.

Since May 2002, the Companies Office has maintained the Personal Property Securities Register. This register is a centralized, fully electronic register that creates a single procedure for the creation and registration of security interests in personal property. This register was provided for in the Personal Property Securities Act 1999.

In August 2010, the Companies Office introduced the Financial Services Providers Register. The register was established in accordance with the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP Act). The FSP Act came into effect on 1 July 2011 and established a *compulsory registration* system for financial service providers. It was amended by the Financial Services Legislation Amendment Act 2019. Thus, all financial service providers must be formally registered under the FSP Act and are also expected to comply with the care, diligence, and skill provisions now contained in Part 5A of the FMC Act.

To qualify for registration, financial service providers are generally required to be members of an industry-run dispute resolution scheme or an alternative reserve scheme established by the Ministry of Consumer Affairs.

The register includes information about financial service providers, the type or types of financial service for which the financial service provider is registered and the name and business address of the approved dispute resolution scheme or the reserve scheme of which the financial service provider is a member.

Securities and corporate compliance: Several statutory responsibilities in relation to the supervision of corporate bodies and issuers of securities have been transferred from the Companies Office to the FMA. The Securities and Corporate Compliance Unit of the Companies Office ceased to exist on 1 May 2011 when the FMA came into being. Previous functions carried out by the unit included: market supervision; investigation of non-compliance with various statutory regimes and enforcement of legislation.

The RoC now simply registers prospectuses, but any substantive vetting is carried out by the FMA: see s 45 of the FMC Act.

The Register of Offers of Financial Products (Offers Register) was established by Schedule 2 of the FMC Act and is maintained by the RoC. Two registers have been established with public access to both; the first is the register of offers of financial products and the second is the register of managed investment schemes.

§ NZ:12 Organizations involved in securities regulation—Overseas Investment Act 2005

This legislation is designed to consider proposals concerning investment in New Zealand from overseas. The legislation is relevant to proposals to acquire, for example, more than 25 percent of a company where the value of that company exceeds NZD100 million. Note that the monetary limits are amended from time to time and Regulations and Notices under this Act must be regularly checked.

§ NZ:13 Co-regulation

There are two main co-regulatory organizations in New Zealand with statutory recognition for the purposes of securities regulation: the FMA and the NZX.

Some companies elect to have their securities listed for quotation on the main securities market (NZSX) conducted by the New Zealand Exchange Limited (the NZX). When they do so, they contract with the NZX that they will comply with the NZX Listing Rules. The NZX acts as co-regulator with the FMA in the sense that it has a primary policing function for listed companies' compliance with those rules. However, it is important to remember that the NZX is not a governmental or regulatory agency like the FMA.

Historically, it was the Sharebrokers Amendment Act 1981 that enabled the Stock Exchange Association of New Zealand and each of the then four trading exchanges to form together as a statutory membership-based entity.

In late 2002, members of the New Zealand Stock Exchange (the NZSE) voted in favor of the demutualization of the NZSE. Technological change and competitive pressures drove the change.

Enabled by the New Zealand Stock Exchange Restructuring Act 2002, the NZSE became a limited liability company—NZSE Limited—with its own constitution on 1 January 2003.

On 30 May 2003, NZSE Limited announced a further change of name to New Zealand Exchange Limited, trading as NZX, as part of a re-branding exercise. (Thus, the new website of the NZX is www.nzx.com and that website has a new format.) The NZX listed on its own stock market—the NZSX—on 4 June 2003.

The key rules of the NZX are as follows:

- NZSX /NZDX Listing Rules
- NZAX Listing Rules
- NZX Participants Rules

The Listing Rules were last amended and made effective in July 2024. They can be viewed on the NZX website, available at: https://www.nzx.com/regulation/nzx-rules-guidance.

The main markets now operated by the NZX are as follows:

- **The NZSX**: The New Zealand Stock Market (the NZSX) is NZX's premier equities market. It features the securities of most

of New Zealand's listed companies and several overseas companies. Companies on the NZSX have one of three listing types. The first type is primary listing where NZX is the home exchange and the company abides by NZX Listing Rules. The second type is dual primary listing where the company abides by all NZX Listing Rules as well as its home exchange listing rules. The third type is overseas dual listing where the company abides by a limited number of NZX Listing Rules as well as those of its home exchange. Companies generally quote ordinary shares on the NZSX. They can also quote options, partly paid shares, warrants units, and notes and preference shares with equity-like characteristics. For a company to list on the NZSX, the securities being quoted must have a minimum anticipated market value on initial listing and a specific spread of shareholders.

- **The NZDX**: The New Zealand Debt Market (the NZDX) offers a range of investment securities, including corporate and government bonds and fixed-income securities.

The NZX Listing Rules

The NZX Listing Rules form part of the listing agreement between the NZX and the listed company. The listing agreement is a private contract. In effect, it provides that the NZX may vary its Listing Rules as it sees fit (subject always to the approval process contained in the FMC Act) and may act unilaterally in relation to exercising its powers to suspend or delist a company. As stated, the latest version of the Listing Rules came into effect in July 2024 and are available at: https://www.nzx.com/regulation/nzx-rules-guidance.

The NZX or a security holder—via the Contracts (Privity) Act 1982—can enforce the Listing Rules. The FMA plays an important role in enforcing the Listing Rules relating to continuous disclosure: see Part 5, Sub-Part 4 of the FMC Act.

Also of relevance here is Part 5, Sub-Part 7 of the FMC Act. This subpart most clearly establishes the new co-regulatory regime for securities regulation in New Zealand. The subpart gives the FMA the power to license markets for trading financial products in New Zealand.

In Australia, the Listing Rules of the Australian Stock Exchange (the ASX) primarily operate as private law that is binding only as a matter of contract between the ASX and the listed company: see CCH Australia, *Annotated Listing Rules*. However, they do have general statutory force. This is because s 793C of the Corporations Act 2001 gives the courts the power, on the application of ASIC, the ASX or a "person aggrieved", to order any person obliged to comply with the Listing Rules to do so.

The securities market operated by the NZX is a market where buyers and sellers exchange listed securities, and where a company requiring additional capital may issue newly listed securities to prospective buyers. The NZX states that its purpose is to provide and operate an efficient market for the raising of capital for listed

companies and the trading of securities, including shares and fixed-interest securities such as bonds and Government stock. These functions and objectives are aspects of the economic role of financial markets. Most micro-economists define an efficient market as one in which the costs of transactions are minimized. The function of the market is also to transfer financial resources from those with surplus funds to those who can use those assets more productively. This function also enhances the risk-bearing capacity of the economy.

§ NZ:14 Co-regulation—Other self-regulatory bodies

Some self-regulatory bodies had a relationship with the former NZSC. They were the Advertising Standards Authority, the Life Offices Association of New Zealand, the New Zealand Thoroughbred Breeders' Association Inc., and Harness Racing New Zealand, and Local Authority and Other Venture Capital Schemes. The former NZSC exempted these organizations and business entities registered with them from compliance with Part II of the 78 Act in respect of share offers to the public overseen by them subject to compliance with an approved Code of Practice.

III. PUBLIC SECURITIES MARKETS

A. HISTORY

§ NZ:15 History*

New Zealand's first stock exchanges were established during the gold boom of the late 1860s in Auckland, Thames, Dunedin and Reefton to trade shares in gold mining ventures. As gold mining declined, trading on the Reefton and Thames exchanges diminished but the Auckland, Dunedin, Wellington, and Christchurch exchanges grew along with commercial development in those centers.

Information announcements to shareholders and interested parties were not a feature of these early exchanges. The situation changed in 1872 when twelve brokers formed the Auckland Sharebrokers' Association, which implemented a system facilitating the transfer of shares and announcements to clients throughout New Zealand.

In 1897, the Auckland Sharebrokers' Association was re-named the Auckland Stock Exchange. In 1910, the local exchanges established common rules and, in 1915, the Stock Exchange Association of New Zealand was formed. This Association comprised the four main centers (Auckland, Wellington, Christchurch, and Dunedin) and Thames and eventually developed into the NZSE, which operated under the authority of the Sharebrokers Act 1908-1981 (NZ). The NZSE operated regional exchanges in the four main centers until 1989—each regional

---

[Section NZ:15]

*For a detailed history, see D. Grant, *Bulls, Bears and Elephants: A History of the New Zealand Stock Exchange* (1997).

exchange had a trading floor and was responsible for its own operations. In 1989 significant changes took place: the NZSE made a comprehensive review of its management structure, members voted to dispense with separate regional exchanges, and the management of the trading floors became the responsibility of the Board of the Exchange. As stated earlier, the NZSE demutualized and was renamed as the NZX in 2003. After that event, the framework for regulating and monitoring the conduct of NZX market participants was changed.

Floor trading ceased on the Dunedin Exchange in 1990 and on the Wellington, Auckland, and Christchurch Exchanges in 1991. Subsequently, electronic trading commenced via computer screens located in the offices of each member. Today, the NZX operates a continuous auction market during designated trading hours of 9:30 am to 3:30 pm (with an hour of pre-opening starting at 8:30 pm and half an hour of adjustment until 4 pm). The pre-opening session is used to establish opening prices for the day. Automatic trading was performed by the SEATS system. On September 10, 1999, the SEATS system was replaced by a modern alternative system called FASTER Trading. By July 2000, an open interface feature (Application Programming Interface or API) on the new system allowed buy and sell orders received from investors over the Web to be automatically routed through broker computer systems to the NZSE as it then was (Straight through Processing or STP). The present position regarding operations is described below.

The Role of NZX Clearing

Once a trade is executed on an NZX market, the Clearing House (NZC) becomes the central counterparty to both the buy and sell side of the trade through the process of novation. This structure makes the settlement system more efficient by allowing clearing Participants to net the entirety of their buy and sell trades across each day, regardless of the various counterparties involved. It also improves the integrity of the settlement system because as a central counterparty clearer, NZC, guarantees delivery of cash and securities, even if the underlying counterparty were to fail to deliver.

The Clearing House (NZC):

- Captures, validates and novates trades to act as a counterparty to every trade on NZX's markets
- Performs risk management functions in line with global standards
- Nets Clearing Participants' settlement obligations (BIS Model 3)
- Acts as a central counterparty for all securities lending transactions initiated through the Securities Depository
- Provides detailed reporting to Clearing Participants relating to their transactions in the NZX Clearing System.

The Securities Depository (NZD):

- Provides a settlement facility for all trades cleared via the Clearing House
- Holds securities in the legal name of New Zealand Depository Nominee Limited (Nominee)
- Facilitates Real-Time Gross Settlement (RTGS) functionality (BIS Model 1) of OTC trades
- Provides Legal Title Transfer via direct registry connectivity with share registries LINK Market Services and Computershare, facilitating real time securities lodge and uplift
- Provides a real time securities lodge and uplift process with NZClear
- Facilitates online shunting via Computershare
- Allows for cash transfers between Participants
- Offers an optional Securities Lending facility
- Corporate actions notification and processing
- Provides report facilities detailing account balances, corporate actions and settlement transactions to its Participants.

Technology/Systems

NZX Clearing operates the BaNCS Market Infrastructure platform ("BaNCS") provided by Tata Consultancy Services. BaNCS interfaces with several NZX systems and Participant connectivity is available through 15022 messaging over TCP/IP or the SWIFT network or via a web-based user interface.

The system also operates a direct connection to NZClear via the SWIFT network to ensure participants can seamlessly transfer securities between the NZX Clearing Depository and the NZClear system operated by RBNZ.

B. FUNCTIONS AND OBJECTIVES OF THE NZX

§ NZ:16 Overview

The NZSE (the predecessor to the NZX) was established by the Sharebrokers' Amendment Act 1981 (NZ) as the successor to the Stock Exchange Association of New Zealand. The Act empowered the NZSE to make rules regarding listing and trading on the NZSE and governing the conduct of its members and their businesses. The general functions and powers of the NZSE were contained in s. 4 of that Act:

- to operate a national stock exchange
- to promote and specify the conditions and terms for the listing and trading of securities on its exchange
- to regulate and promote uniformity in the conduct of its members and of business by its members
- to promote the interests of its members and members of the public in relation to the listing, underwriting, and marketing of securities.

This law was repealed with the introduction of the Securities

Markets Act 1988 (effective 2002). The position under this repealed Act was that Part 2 (entitled "Disclosure") and Part 2 B of the SMA (entitled "Registered Markets") provided the principal legislative basis for the external regulation of the NZX by the FMA within the co-regulatory scheme for New Zealand's securities markets. Under the FMC Act, the legislative basis appears in Part 5, Sub-Part 7 entitled, "Licensing of markets for trading financial products".

The FMC Act contains provisions regulating the establishment and operation of licensed markets. Under the FMC Act, a corporate body cannot hold itself out as a licensed market operator unless it holds a financial product market license. Further, the FMC Act imposes restrictions on persons operating a licensed market. An organization must, among other things, have its market rules approved by the FMA.

The Act also includes provisions relating to the imposition of a control limit (which is the highest percentage of voting rights in the company that may be held or controlled by any person) on a registered exchange: see s 344 of the FMC Act. NZX has a 10 percent control limit included in its constitution.

Once an exchange is licensed it must operate its securities markets in accordance with its rules. Any changes to those rules go through a statutory approval or disallowance process, depending on the nature of the proposed rule changes.

As a licensed market operator, NZX also assumes several reporting obligations to the FMA under Part 5, Sub-Part 8 of the FMC Act. The FMA also has monitoring powers over NZX. The first oversight review of the NZX was undertaken in 2005 under the repealed SMA.

Under the FMC Act, NZX must:

- notify the FMA when it takes any disciplinary action for breach of its rules;
- notify the FMA when it knows or suspects that a person has committed, is committing or is likely to commit a significant contravention of NZX's conduct rules or certain laws;
- give any material information disclosed to it under its listing rules to the FMA; and
- provide information, assistance, and access to its facilities to the FMA or Takeovers Panel where such information, assistance and access is required to assist those bodies to discharge their functions.

In recognition of the special importance afforded to the continuous disclosure provisions in NZX's Listing Rules, NZX must consider any submissions that the FMA may make in considering applications for determination of the Continuous Disclosure Listing Rules found in section 3.1 of the NZX Listing Rules: see s 359 of the FMC Act.

Disclosure Provisions of the FMC Act

Part 5, Subpart 4 of the FMC Act contains provisions for continuous disclosure by listed issuers. Section 270 says that listed issuers must

disclose in accordance with listing rules if continuous disclosure listing rules apply. Continuous disclosure provisions are described in section 271 of the FMC Act as provisions that require a listed issuer that is a party to a listing agreement with a licensed market operator (i.e., NZX) to notify information about events and matters as they arise for the purpose of that information being made available to participants in the licensed market. Under this subpart, the Listing Rules of the NZX in respect of continuous disclosure (as contained in NZX Listing Rule 3.1) are given statutory force and the FMA is given consequential enforcement powers.[1]

Part 5 Subpart 5 of the FMC Act deals with the disclosure of interests of substantial security holders in listed issuers.[2]

Licensing of Market Operators under the FMC Act

Part 5, Subpart 7 of the FMC Act regulates the licensing, conduct and control of market operators. Section 301 of the FMC Act makes provision for a body corporate to apply to become a registered exchange. The NZX is a licensed market operator. Section 327 of the FMC Act states that a licensed market operator must operate its markets with "market rules" that contain required matters and have been approved under section 331 of the FMC Act.

Monitoring Provisions of the FMC Act

Sections 337-343 of the FMC Act are entitled "Monitoring of market operator obligations". These sections require the market operator to provide a compliance report to the FMA and empower the FMA to undertake obligations reviews.

Comparison with former law

Former section 7 of the repealed Sharebrokers Amendment Act 1981 stated that the NZSE should make rules for the conduct of its members and for the conduct of business on its exchange. These rules were not subject to oversight by the NZSE. However, the position now is that the FMA must approve market rules and proposed changes to market rules.

The powers of the NZSE were examined by the Court of Appeal in New Zealand Stock Exchange v. Listed Companies Association Inc. [1984] 1 NZLR 699 (CA), where the Court of Appeal held that the NZSE was neither empowered or required to make statutory rules for listing companies. Hence, the relationship between the NZSE and listed companies was purely contractual. This meant that the NZSE had the ability to vary its Listing Rules as it saw fit and might act arbitrarily in relation to exercising its powers to suspend or delist a

---

[Section NZ:16]

[1]The Australian equivalent is Chapter 6CA (Continuous Disclosure) of the Corporations Act 2001.

[2]For Australia, see Chapter 6C of the Corporations Act 2001.

company. In the Court's view, the NZSE was not subject to administrative law remedies under the Judicature Amendment Act 1972 (NZ) since the relationship between the NZSE and the listed company lay in contract. In the result, the NZSE had contractual relationships with listed companies and statutory relationships with members under s. 7 of this Act. Because New Zealand made no provision for statutory control over the Listing Rules, the NZSC had no power to enforce them. The NZSE or a security holder—via the Contracts (Privity) Act 1982 (NZ)—had the ability to enforce the Listing Rules.[3]

The changes introduced by the FMC Act necessarily imply that the *New Zealand Stock Exchange Case* is no longer good law. This is because: (a) the NZX is now required to seek approval for its Listing Rules and any proposed changes to them; (b) the relationship between the NZX and listed issuers is now regulated by contract (the Listing Agreement) and legislation (the FMC Act) and; (c) the FMA now has the power to enforce listing rules relating to continuous disclosure. For guidance as to how New Zealand courts might interpret the new regime, see *Australian Corporations Law: Principles and Practice,* Vol. 3 (Sydney: Butterworths) at paragraph 10.1.0940 under the heading "Enforcement of ASX Listing Rules".

Economic function of securities market

The NZX operates a market where buyers and sellers exchange listed securities, and where a company requiring additional capital may issue newly listed securities to prospective buyers. The NZX provides and operates an efficient market for the raising of capital for listed companies and the trading of securities, including shares and fixed interest securities such as bonds and Government stock. These functions are aspects of the economic role of financial markets. Most micro-economists define an efficient market as one in which the costs of transactions are minimized. The function of the market is also to transfer financial resources from those with surplus funds to those who can use those assets more productively. This function also enhances the risk bearing capacity of the economy. In such wealth transfer (an aspect of allocative efficiency), two classifications of the share market need to be considered—the primary and the secondary market.

§ NZ:17 Primary market

The primary or capital market is the market where companies sell new issues of securities to acquire new capital. Corporate issues include both fixed income (for example, debentures) and equity issues (common stock). This is the only market in which the issuer is directly involved in the transaction. By lowering information and transaction costs, the existence of such markets reduces the cost of raising funds

[3]See P. Fitzsimons, "The New Zealand Stock Exchange: Rights and Powers" in G. Walker and B. Fisse, eds., *Securities Regulation in Australia and New Zealand*, 1st ed. (Auckland: OUP, 1994), 534.

for investment projects. Activity in the common stock primary market is usually considered in two main categories. The first and typically largest category is that of *seasoned* new issues offered by companies that already trade on the NZX. Here, a company has further need for capital, which it has decided to acquire by increasing the number of shares on issue. The typical mechanism here is a rights issue.

The second major category in the new issues market is generally referred to as the *initial public offerings (IPOs) market*. An IPO occurs when a company sells common stock to the public for the first time.[1] In most instances the company will previously have been privately held or, in more recent New Zealand history, may have been a state-owned organization. The primary market is principally governed by the FMC Act and the NZX Listing Rules.

Both seasoned and IPO issues are typically underwritten by investment bankers. Underwriters also offer advice to the company on the general characteristics of the issue, pricing, and timing of the offer. Underwriters may also accept responsibility for the sale of the issue, and hence, any shares that the underwriter cannot sell to the public will be acquired by the underwriter at the subscription price.

§ NZ:18 Secondary market

Secondary markets permit trading in existing issues. A secondary market exists where a stock has already been sold to the public and is traded between current and new owners. The proceeds from the sale of stock in the secondary market do not go to the issuing company but to the owner of the security. In New Zealand, the secondary market is principally regulated by the FMC Act.

In combination, the primary and secondary markets form the markets of the NZX—markets where new funds can be raised as well as a market that provides facilities for trading existing shares. The secondary market provides *liquidity* for stock sold on the primary market. Individuals who have acquired stock in the primary market will at some stage wish to sell. Companies would have great difficulties in selling stock on the primary market if investors were not able to resell in the secondary market.

The secondary equity markets in New Zealand may be broken down into two categories—the licensed markets of the NZX and *over the counter* (OTC) markets. The OTC markets in New Zealand are negligible and are not discussed in this Booklet. Securities traded on the NZX are sold on an auction basis with investors placing buy and sell orders through brokers and the NZX matching up these orders.

[Section NZ:17]

[1]For a commercial and legal analysis of an IPO in New Zealand under the previous law, see G. Walker, "Case Study of an IPO in New Zealand" in G. Walker, Gen. Ed., *Securities Regulation in Australia and New Zealand*, 2nd ed. (1998), 421-446.

§ NZ:19 Mutual recognition of securities offerings between Australia and New Zealand

As noted earlier, a mutual recognition regime now operates between Australia and New Zealand whereby issuers can register a prospectus in one jurisdiction and offer in the other jurisdiction subject to the specified requirements.

§ NZ:20 Efficiency of the market

It is generally accepted that financial markets exhibit both operational and allocative efficiency. *Operational efficiency* refers principally to the cost-effectiveness of various intermediaries (including brokers) in channeling funds between buyers and sellers. The FASTER system (now replaced by Global Vision) increased operational efficiency in New Zealand because trading, settlements and registry functions have been integrated. Transaction costs incurred by investors range from 0.5 to 1.5 percent, depending on the amount of the investment.

Allocative efficiency requires that new information should be available to all investors so that informed and rational decisions can be made. An allocatively efficient market will ensure the immediate and widespread dissemination of accurate information. Furthermore, in an allocatively efficient market all ascertainable information is reflected in securities prices. Maurice Kendall proposed this concept of efficient markets in 1953 when he was unable to find regular price cycles in stock prices. Each series appeared random, whence the introduction of the term "random walk" which merely implies that price changes in a stock are as independent of each other as tosses of a coin.[1]

Subsequent to Kendall's discovery there have been refinements to the concepts of efficient markets, with three different levels of efficiency being proposed by Harry Roberts—weak-form, semi-strong form and strong-form efficiency.[2] *Weak-form efficiency* assumes that the price of a security will reflect all information contained in the record of past prices. This concept implies no relationship between past and future price changes.

The second level of efficiency, *semi-strong form*, is where prices reflect not only past prices, but also all other published information. Thus, as new public information, including stock earnings, mergers news and economic news becomes available, stock prices rapidly adjust. The opportunity to take advantage of any such adjustment is

---

[Section NZ:20]

[1]See, B. Malkiel, *A Random Walk Down Wall Street* (6th ed., 1996).

[2]See H. Roberts, "Statistical versus Clinical Prediction of the Stock Market" (unpub. paper presented to the Seminar on the Analysis of Security Prices, University of Chicago, 1967). For further formalisation of the concepts see E. Fama, "Efficient Capital Markets: A Review of Theory and Empirical Work", 25 (2) *Journal of Finance* 383 (1970).

minimal—Patell and Wolfson found that most price adjustment occurs within 5 to 10 minutes of the announcement.[3]

Finally, *strong-form efficiency* holds that prices reflect not just public information but all information including private information. Hence, no group of investors could have monopolistic access to information relevant to the formation of share prices. Any painstaking analysis of companies and the economy would not render a fund manager or investor any additional information. Under strong-form efficiency no group would be able to consistently obtain above-average returns. The NZX is generally accepted by investment analysts to be semi-strong form efficient. This view, however, is challenged by the proponents of behavioral finance.[4]

IV. DISCUSSION OF REGULATIONS REGARDING SUBSTANTIVE SECURITIES MATTERS

§ NZ:21 Establishment, regulation, and organization of Securities Regulating Organizations—The Financial Markets Authority

The Financial Markets Authority (FMA) is the chief governmental agency with responsibility for regulating the financial sector: see generally, Philipp Maume, "The Financial Markets Authority: A Model Example of Regulatory Consolidation?" (2013) (3) NZULR 616-640. As stated, it took over the functions and powers of the former Securities Commission (NZSC) and the office of the Government Actuary in 2011. The FMA derives its functions and powers from the Financial Markets Authority Act 2011. This Act came into force on 1 May 2011 and had the effect of establishing the FMA as of this date. As a result, any powers of the Securities Commission as of 1 May 2011 have been transferred to the FMA. The FMA also has new and enhanced powers: see Philipp Maume and Gordon Walker, "Enforcing Financial Markets Law in New Zealand" [2013] *NZ Law Rev* 263-300.

The ***Financial Markets Authority Act 2011*** sets out the main objectives and functions of the FMA. The Act comprises four parts.

- **Part 1—Preliminary.** This Part specifies the purposes of the Act and deals with matters of interpretation.
- **Part 2—Financial Markets Authority.** This Part establishes the FMA and describes its functions and objectives. It also contains provisions dealing with the membership of the board of the FMA, divisions of the FMA and FMA meetings.
- **Part 3—General Information-gathering and Enforcement Powers.** This Part is divided into five Subparts. Subpart 1 defines

[3]See J. Patell and M. Wolfson, "Intraday Speed of Adjustment of Stock Prices to Earnings and Dividend Announcements", 13 *Journal of Financial Economics* 223 (1984).

[4]See generally, G. Walker, "Securities Regulation, Efficient Markets and Behavioral Finance: Reclaiming the Legal Genealogy", 36 (3) *HKLJ* 481-517 (2006); L. Zingales, "The Future of Securities Regulation" (2009) *SSRN Working Paper*.

the information-gathering powers of the FMA. It provides that the FMA has power to obtain information, documents, and evidence. Subpart 2 deals with the sharing of information and documents between the FMA and other law enforcement or regulatory agencies and overseas regulators. Subpart 3 is concerned with representative actions and empowers the FMA to exercise a person's right to bring a civil action against a financial market participant where it considers this to be in the public interest. Subpart 4 is entitled "Other Powers". The FMA may in accordance with this Subpart 4 make confidentiality orders, accept undertakings and state a case for opinion before the High Court. Subpart 5 contains miscellaneous provisions relating to FMA's powers. The enforcement powers of the FMA are discussed in Philipp Maume and Gordon Walker, "Enforcing Financial Markets Law in New Zealand" [2013] NZ Law Rev 263-300.

- **Part 4—Miscellaneous Provisions.** This Part deals with regulations relating to fees, charges, and costs. It also provided for the disestablishment of the NZSC and the Government Actuary and covers the consequences of such disestablishment. For example, s 72 states that the functions, duties, and powers of the NZSC vest in the FMA to the extent that those functions, duties and powers are consistent with those of the FMA under the Financial Markets Authority Act and other legislation.

The original Schedules 1-3 to the FMA read as follows:

- **Schedule 1** to the Act refers to "financial markets legislation" including the:
  - Auditor Regulation Act 2011
  - Financial Advisers Act 2008
  - Financial Service Providers (Registration and Dispute Resolution) Act 2008
  - Parts 4 and 5 and Schedules 1 and 2 of the KiwiSaver Act 2006
  - Securities Act 1978
  - Securities Markets Act 1988
  - Securities Transfer Act 1991
  - Securities Trustees and Statutory Supervisors Act 2011
  - Superannuation Schemes Act 1989
  - Unit Trusts Act 1960
- **Schedule 2** covered the FMA's search powers. It has now been repealed. The provisions of Part 4 of the Search and Surveillance Act 2012 apply except for ss 118-9.
- **Schedule 3** deals with amendments to other enactments and **Schedule 4** sets out the amendments required to replace references to the Securities Commission or Government Actuary with the FMA.

Subsequent to revision, Schedule 1 now reads (in abridged form):

Schedule 1 Financial markets legislation
Part 1

Auditor Regulation Act 2011
Financial Market Infrastructures Act 2021
Financial Markets Authority Act 2011
Financial Markets Conduct Act 2013
Financial Markets Supervisors Act 2011
Financial Service Providers (Registration and Dispute Resolution) Act 2008

Part 2
Anti-Money Laundering and Countering Financing of Terrorism Act 2009
Building Societies Act 1965
Companies Act 1993
Co-operative Companies Act 1996
Corporations (Investigation and Management) Act 1989
Sections 220, 228, 229, 240, 242, and 256 to 260 of the Crimes Act 1961
Financial Reporting Act 2013
Friendly Societies and Credit Unions Act 1982
Industrial and Provident Societies Act 1908
Limited Partnerships Act 2008
Part 5C of the Reserve Bank of New Zealand Act 1989
Secret Commissions Act 1910
Trustee Companies Act 1967
Trustee Companies Management Act 1975
Trusts Act 2019

The FMA's structure

The FMA is an independent Crown entity for the purposes of s 7 of the Crown Entities Act 2004. Its main objective is to promote and facilitate the development of fair, efficient, and transparent financial markets. Like the former Securities Commission, the FMA comprises between five and nine members. It can act in divisions of three members. In addition, the Minister of Commerce will be able to appoint up to five associate members for specified matters. This enables the FMA to deal with special requirements arising from its functions or build up expertise in particular areas.

The FMA's functions

While the FMA assumes any powers possessed by its predecessor (the Securities Commission), it also has new and expanded powers by virtue of the FMA itself. Among these powers are the general information-gathering (search and seizure) and enforcement powers contained in Pt 3 and the levy raising power contained in Pt 4 of the FMA Act.

Section 9 of the Act sets out the functions of the FMA. These include:

- to promote the participation of businesses, investors, and consumers in the financial markets;

- to perform and exercise the functions, powers, and duties conferred or imposed on it by or under the financial market's legislation and any other enactments;

- to monitor compliance with, investigate conduct that constitutes or may constitute a contravention of, and enforce specified legislation including the Auditor Regulation Act 2011, the Financial Advisers Act 2008, the Financial Service Providers (Registration and Dispute Resolution) Act 2008, the Securities Act 1978 and the Securities Markets Act 1988;

- to monitor compliance with, investigate conduct that constitutes or may constitute a contravention of, and enforce specified legislation including the Companies Act 1993, the Corporations (Investigation and Management) Act 1989, the Co-operative Companies Act 1996, the Financial Reporting Act 1993, Limited Partnerships Act 2008, Pt 5C of the Reserve Bank of New Zealand Act 1989 and the Trustee Companies Act 1967*, to the extent that these Acts apply to "financial markets participants"*. Emphasis added. The latter term is defined in s 4 and encompasses financial advisers and brokers. For implications, see P. Maume and G. Walker, "A New Financial Markets Law for New Zealand" (2011) 29 C&SLJ 455; and

- to monitor and conduct inquiries and investigations into any matter relating to, financial markets or the activities of financial markets participants or of other persons engaged in conduct relating to those markets.

Section 9 (3) of the FMA Act says that the fact that some other person has functions, powers, or duties in relation to financial markets legislation, does not limit or restrict the FMA functions, powers and duties. This sub-section is explicitly designed to deal with regulatory overlap or fragmentation.

The FMA's statutory powers

The FMA takes over all powers of the Securities Commission except where the FMA Act otherwise provides: s 72(1) (a) of the FMA Act.

- **General grant of power**: The FMA can do anything that a natural person of full age and capacity can do, provided it is for the purpose of performing its functions and subject to any Act or rule of law.
- **FMA's consideration of Product Disclosure Statements**: Under the FMC, a PDS must be prepared and lodged with the Registrar of Companies (RoC): s 48. Under s 64, the RoC must notify the FMA of the lodgment of the PDS so that the FMA may consider the document at its discretion.

- **General information-gathering and enforcement powers**: appear in Pt 3 of the FMA Act. Part 3, subpart 1 of the FMA Act makes provision for the FMA's power to require a person to supply evidence or produce documents (s 25); the FMA's power to receive evidence (s 26); how evidence may be given (s 27) and witnesses expenses: s 28.

The following make up the most important of the FMA's specific statutory powers under the FMA Act.

- **General information-gathering powers**

— **Information-gathering**: Like the Securities Commission, the FMA can require a person to supply information, produce documents or give evidence if the FMA considers this to be desirable for the purposes of performing its functions. Section 25 of the FMA Act confers a broad range of powers on the FMA to obtain information: s 25.

— **Protection against liability**: The FMA is protected from liability in exercising its powers unless acting in bad faith: s 55.

— **Power to enter and search place, vehicle, or other thing**: The FMA may authorize a specified person to enter and search premises, subject to a search warrant. The new power extends to "vehicles" and "other things", meaning intangible things like email addresses and Internet data storage facilities. This provision was made because financial information is usually stored in computer files and aligns the FMA's power to the changes in the Search and Surveillance Act 2012. The term "vehicle" is defined as "any conveyance that is capable of being moved under a person's control, whether or not the conveyance is used for the carriage of persons or goods, and includes a motor vehicle, aircraft, train, ship or bicycle." s 29.

Schedule 2 of the FMA Act has been repealed. The FMA must apply for a search warrant to an "issuing officer" as defined in the Search and Surveillance Act 2012. The issuing officer can grant a search warrant where he/she is satisfied that there are reasonable grounds to suspect that a person has engaged or is engaging in conduct that constitutes or may constitute a contravention of the financial markets legislation; and the proposed search is likely to yield evidential material: s 29(3).

Carrying out search and inspection powers: These powers are now governed by the Search and Surveillance Act 2012. Previous Schedule 2 of the FMA Act was repealed on 1 October 2012 by s 245 (8) of the Search and Surveillance Act 2012.

— **Powers for receiving evidence**: The FMA has the power to hear evidence which would not otherwise be admissible in a court of law. It may receive evidence through specified persons if the evidence is likely to assist the FMA in dealing effectively with any matter before it. The FMA may receive evidence whether or not given on oath: Sections 26, 27.

— **Exercise of inspection and evidence powers for over-**

seas regulators: An overseas regulator may request the FMA to inquire into any matter related to its functions and the FMA has the power to comply with such request. Sections 31 to 33 deal with the power of the FMA to act on requests of overseas regulators, the FMA's consideration of such requests and the conditions that may be imposed on providing such information.

— **Sharing of information**: The FMA may provide to law enforcement or regulatory agency or an overseas regulator any information that the FMA holds if it is satisfied that protections are in place to maintain the confidentiality of the information provided: s30.

— **Power to accept undertakings**: The FMA has the power to accept enforceable undertakings: ss 46, 47.

— **FMA may exercise persons' right of action**: The FMA has the discretionary right to commence or take over civil proceedings on behalf of investors against financial markets participants when it considers it is in the public interest to do so. This right is circumscribed. If an individual is involved, the High Court cannot grant leave to the FMA to commence or take over proceedings. It extends to representative actions in appropriate circumstances. The FMA may commence proceedings without the leave of the High Court only if:

- a person has not yet commenced proceedings in respect of the matter
- the FMA serves a written notice on the person of its intention to bring the action in court, and
- the person does not commence proceedings or object to the FMA commencing proceeding within 30 working days of the FMA giving notice to the person.

— See ss 34, 35, 36 and 39.

— **Power to make confidentiality orders**: The FMA has wide power to make an order prohibiting the publication of any information provided in connection with any inquiry: s44.

— **Power to state case for opinion of High Court**: This power is provided for in s 48 of the FMA Act.

— **Power to require warning to be disclosed**: Where the FMA has issued a warning, it may order the relevant person to disclose such warning on its Internet site or offer document: s49.

— **FMA may authorize person to obtain information or documents**: The relevant powers are contained in ss 52 to 55 of the FMA Act.

— **Privileges**: **witnesses and counsel**: Section 56 of the FMA Act confirms that witnesses and counsel have the same privileges as witnesses have in proceedings before a court.

— **Witness costs**: The FMA may where it deems it appropriate reimburse a witness for his or her expenses: s28.

General enforcement powers of the FMA

The FMA has taken over all the enforcement powers of the Securities Commission except as specifically provided otherwise in the FMA Act. While the FMA Act itself "provided otherwise" for the general investigation and enforcement powers contained in the Securities Act 1978 in a new Pt 3 of the FMA Act, only one minor change was made to the Securities Markets Act 1988 in the FMA Act: see Schedule 3 of the FMA Act. The FMA took over the enforcement role of the Securities Commission in relation to the Securities Markets Act.

The FMC Act now sets out the enforcement powers of the FMA in relation to matters covered by that Act (e.g. insider conduct, market manipulation, general dealing misconduct, continuous disclosure, substantial holding disclosure and directors' and officers' disclosure obligations).

The FMA's enforcement role in relation to regulation of the offer of securities to the public is contained in the FMC Act. The FMA has the power to make some enforcement orders itself and can also apply to the court for other enforcement orders. It can also make pecuniary penalty orders and declarations of contravention and can apply to the court for compensatory orders and other civil remedy orders on behalf of those who have suffered loss.

In addition to enforcing the FMC Act, the FMA now has an enforcement role in respect of "financial markets legislation" as defined in the FMA Act. This includes the new regime for financial advisers and brokers which was in full force as of 1 July 2011.

Enforcement powers under the FMC Act

The FMC Act sets out the enforcement powers of the FMA in relation to matters covered by that Act (e.g. insider conduct, market manipulation, general dealing misconduct, continuous disclosure, substantial holding disclosure and directors' and officers' disclosure obligations). The former Securities Commission had the power to make a variety of orders under the Act, including prohibition and corrective orders, disclosure orders and temporary banning orders for investment adviser and broker activities where a provision in the Securities Markets Act had been contravened. These powers now reside with the FMA pursuant to the FMC Act. The main powers of the FMA under the FMC Act can be summarized as follows:

- **Power of the FMA to seek injunctions**: Under Pt 8, Subpart 1, the FMA has the power to apply for an injunction restraining a person from engaging in conduct that constitutes or would constitute a contravention of a provision: see s 480.
- **Power of the FMA in relation to Insider Conduct**: Under Pt 5, subpart 2, insider conduct is subject to criminal liability: see s 244.

• **Power of the FMA in relation to Market Manipulation**: Under Pt 5, subpart 3, various forms of market manipulation (such as false or misleading statements or information and false or misleading appearance of trading) are subject to criminal liability. There are carve-outs for takeovers, short selling, and the crossing of trades.

• **Power of the FMA in relation to the General Dealing Misconduct prohibition**: Under Part 2 a new general dealing misconduct prohibition is introduced in s 19. The section follows s 1041H of the Australian Corporations Act 2001 and the case law on the cognate Australian section is directly relevant. Section 38 says that a contravention of ss 19-23, 34 and 36 may give rise to civil liability: see Part 8, Subpart 3.

• **Power of the FMA to enforce Continuous Disclosure Regime**: Part 5, Subpart 4 deals with continuous disclosure by listed issuers. Under the NZX Listing Rule 10.1.1, a listed company is required to notify the NZX as soon as it becomes aware of any "material information" concerning itself. The Listing Rules are part of the Listing Agreement between the listed company and the NZX and are a private contract. However, NZX LR 10.1.1 now has an added statutory force because s 270 states that listed issuers must disclose in accordance with listing rules if continuous disclosure listing rules apply. As to compliance, see section 352 et seq.

• **Power of FMA to make disclosure order regarding relevant interests by directors and officers of public issuers**: Part 5, Subpart 6, requires directors and officers of listed issuers to disclose a relevant interest within a period of five trading days: s 297 Disclosure must be made to the licensed market operator with which the issuer is listed and in the interests' register of the listed issuer. Failure to comply is an offence: see s 307.

• **Power of the FMA to apply for order where substantial security holder disclosure provisions have been breached**: Part 5, subpart 5, requires that (subject to certain carve-outs), substantial security holders (persons who have a relevant interest in 5%% or more of the voting securities of a public issuer) must make disclosure to the issuer and the registered exchange. Under s 289, the FMA has the power to require disclosure of all relevant interests (by way of "tracing notices"). Failure to comply may attract civil and criminal liability: see Part 8.

• **Powers of the FMA in relation to the co-regulatory securities regulation regime**: Part 5 Subpart 7 (Licensing of markets for trading financial products) ad Subpart 8 (Operation of licensed markets) contain the operative provisions. As a result of Subpart 8, the FMA has a role in the administration of the NZX. Subpart 8 gives the FMA significant supervisory functions over licensed markets such as the NZSX.

The way in which the regime operates is described below:

— **Part 5, Subpart 7**: Financial product markets (a securities exchange) can only be operated by a licensed market operator: s

310. Exemptions are listed in s 312. A financial product market is defined in s 309 and this definition excludes a service that is covered by a market services license (as to which see Part 6). The general obligations of a licensed market operator appear is s 314. Section 315 et seq deal with the issuance of licenses. The FMA is required to keep a list of licensed markets on its internet site. Section 327 states that licensed markets must be operated under market rules complying with Subpart 7. Required matters for market rules are listed in s 328. They include listing rules and business rules. The FMA must approve market rules: s 331. Subpart 7 also makes provision for the monitoring of market operator obligations via market operator reviews: ss 338-339. Control limits may apply to licensed market operators: s 344.

— **Part 5, Subpart 8**: This subpart is entitled "Operation of licensed markets." The FMA is given a general oversight power of a licensed market. It also has the power to access real-time surveillance information: s 355. The Subpart imposes a set of requirements on licensed market operators (LMOs). First, an LMO must notify the FMA of disciplinary actions and suspected contravention of its market rules: s 352. Second, a registered exchange must give the FMA or the Takeovers Panel information or assistance on request: s 357. Third, an LMO must give the FMA notice on continuous disclosure determinations: s 359. Fourth, the FMA may give directions to the LMO: s 361. The direction may require the LMO to suspend trading in a particular security. Fifth, the FMA may give a continuous disclosure direction to an LMO: s 362. These powers of the FMA are backed by the criminal sanction contained in s 370.

Enforcement powers under the FMC Act:

The FMA's enforcement powers largely appear in Part 8 of the FMC Act. They include stop orders, direction orders, orders to prohibit the use of simplified disclosure PDS's and unsolicited offer orders. These are complemented by High Court enforcement powers which include injunctions and various civil liability orders.

Enforcement powers in respect of "financial markets legislation"

In addition to enforcing the FMC Act, the FMA has an enforcement role in respect of "financial markets legislation" as defined in the FMA Act. This includes the regime for financial advisers and brokers which was in full force as of 1 July 2011.

§ NZ:22 Statutory interpretation in New Zealand

Many of the problems of the 78 Act can be attributed to problems of statutory interpretation. It can be assumed that any such problems are greatly diminished under the new regime. In this section, the key rules of statutory interpretation in New Zealand are outlined.

The traditional mode of statutory interpretation in New Zealand,

and other common law countries generally, was the literal approach. Thus, judicial interpretation of legislation was, "to give . . . a strict and narrow interpretation, holding it down rightly to those cases which it covered expressly."[1] The literal approach has obvious limitations. An over-literal approach might mean that, where parliament has not clearly expressed its intention in statutory language, courts might refuse to give effect to the obvious purpose of the legislation.[2] Nonetheless, New Zealand courts were prepared to look at the mischief that an Act was intended to remedy if the statutory words were unclear as they stood (but not if the words had clear meaning).[3] What if clear meaning was at variance with intended purpose? In such cases, as Professor John Burrows points out, "the approach could lead to decisions which were out of line with the overall scheme and purpose of the legislation and which were stricter and more literal than any ordinary reader would arrive at."[4]

The modern New Zealand judicial mode of statutory interpretation is the purposive approach—the court looks for the purpose of the legislation with the intention of giving effect to that purpose. Here, the New Zealand practice accords with that in the United Kingdom. In 1975, Lord Diplock said "If one looks back to the actual decisions of this House on questions of statutory construction over the past 10 years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provisions."[5] This reflects the judiciary's desire that legislation should apply as parliament intended.[6] In New Zealand, there has been legislative direction for over a century in favor of the purposive approach.[7] Prior to 1 November 1999, such legislative guidance was contained in s. 5 (j) of the Acts Interpretation Act 1924 (NZ). That section stated:

[Section NZ:22]

[1]R. Pound, "Common Law and Legislation", 21 *Harvard LR* 383, 385 (1907). See also H. Stone, "The Common Law in the United States", 50 *Harvard LR* 4 (1936); M. Amos, "The Interpretation of Statutes", 5 *Cambridge LJ* 163 (1934).

[2]Ex parte Hill (1827) 3 C and P 225 (KB); Whiteley v. Chappell (1868) LR 4 QB 147.

[3]For an expression of this view, see Johnstone v. Police [1962] NZLR 673, 674 (SC), per Turner J.

[4]J. Burrows, *Statute Law in New Zealand*, 3rd ed. (Wellington: LexisNexis, 2003), 129. Hereafter, Burrows 3rd ed.

[5]Carter v. Bradbeer [1975] WLR 1204, 1206 (HL).

[6]See Burrows, 3rd ed., 129-30. Here, Professor Burrows sets out several reasons why the judiciary traditionally favored the literal approach to statutory interpretation rather than an approach which gave effect to the intent of the legislature.

[7]For analysis, see J. Burrows, "The Cardinal Rule of Statutory Interpretation in New Zealand", 3 *NZULR* 253 (1969); R. Glover, "The Acts Interpretation Act, Section 5(j)", 1 (2) *Canta LR* 300 (1981); J. Burrows, "Statutory Interpretation in New Zealand", 11 *NZULR* 1 (1984), and, R. Glover, *Acts Interpretation* (1991) where the recent case law is exhaustively reviewed. Legislative direction requiring a purposive approach to interpretation first appeared in s. 5 (7) of the Interpretation Act 1888 (NZ). The words of that provision were identical to the legislative direction embodied in s. 5 (j) of the Acts Interpretation Act 1924 (NZ). The 1888 provision was preceded

> Every Act, and every provision or enactment thereof, shall be deemed remedial, whether its immediate purport is to direct the doing of anything parliament deems to be for the public good, or to prevent or punish the doing of anything it deems contrary to the public good, and shall accordingly receive such fair, large, and liberal construction and interpretation as will best ensure the attainment of the object of the Act and of such provision or enactment according to its true intent, meaning and spirit.

The provision requires that *every* Act should be interpreted liberally to give effect to its object or purpose. In *CIR v. Challenge Corporation*,[8] *Richardson J.* emphasized the point:

> . . . the twin pillars on which the approach to statutes mandated by section 5(j) rests are the scheme of the legislation and the relevant objects of the legislation. Consideration of the scheme of the legislation requires a careful reading in its historical context of the whole statute, analyzing its structure and examining the relationships between the various provisions and recognizing any discernible themes and patterns and underlying policy considerations.[9]

On 1 November 1999, the Acts Interpretation Act 1924 was repealed and replaced by The Interpretation Act 1999. Section 5(j) of the 1924 was replaced by a new section 5, which reads as follows:

> 5. **Ascertaining the meaning of legislation**—(1) The meaning of an enactment must be ascertained from its text and in light of its purpose.
>
> (2) The matters that may be considered in ascertaining the meaning of an enactment include the indications provided in the enactment.
>
> (3) Examples of those indications are preambles, the analysis, a table of contents, headings to Parts and sections, marginal notes, diagrams, graphics, examples and explanatory material, and the organisation and format of the enactment.

Commenting on new section 5(1) in 2003, Professor Burrows thought there was "no indication in the judgments of the Courts that the judges are treating s 5 (1) any differently from its predecessor."[10] An early decision on the new section 5 (1) confirmed this view. In *Jack v. Manakau CC* (an unreported decision of Randerson J, High Court, Auckland: M1698/99), Randerson J said that he was satisfied that the approach taken in the *Challenge Corporation Case* (above) remained applicable under the new Act. A decision of Thomas J is to a similar effect: see *R v. Rongonui* [2000] 2 NZLR 385 at 431. This implies that much of the judicial commentary on the former section 5 (j) remains

---

by Provision 3 of the Interpretation Ordinance 1851 (NZ) which stated that the language of every ordinance was to be, "construed according to its plain import, and where it is doubtful, according to the purpose thereof". Thus, the approach under the 1851 Ordinance was to interpret legislation literally, an approach discarded in the 1888 Act.

[8]CIR v. Challenge Corporation [1986] 8 NZTC 5,001 (CA).

[9]CIR v. Challenge Corporation [1986] 8 NZTC 5,001, 5020 (CA). The Privy Council affirmed the Court of Appeal's application of the purpose rule in The New Zealand Stock Exchange v. The Commissioner of Inland Revenue [1990] 2 NZLR 120 (HC); [1990] 3 NZLR 333 (CA); [1991] 2 AC 464 at 472 (PC).

[10]Burrows, 3rd ed., 137.

the guide for the courts in relation to the new section.[11] In subsequent paragraphs, we consider the case law on section 5 (j) of the former Acts Interpretation Act 1924.

§ NZ:23 Statutory interpretation in New Zealand—Case Law prior to the Interpretation Act 1999

Judgments of the New Zealand courts make frequent reference to the "object" or "purpose" of the legislation in question.[1] *In Northland Milk Vendors Association Inc. v. Northern Milk Limited*,[2] Cooke P. stated:

> The responsibility falling on the Courts . . . is to work out a practical interpretation appearing to accord best with the general intention of Parliament as embodied in the Act—that is to say, the spirit of the Act . . . the Courts must try to make the Act work while taking care not themselves to usurp the policy-making function which rightly belongs to Parliament. The Courts can in a sense fill in gaps but only to make the Act work as Parliament must have intended.[3]

In *Marac Life Assurance Limited v. CIR*,[4] the Court of Appeal had to determine whether Marac life bonds were taxable under the Income Tax Act 1976. In deciding that the life bonds were not taxable, Cooke P. stated:

> I recognise that, taken literally, the wording of the . . . legislation may perhaps be wide enough to cover the Marac life bonds . . . But . . . on considering the relevant history and scheme of New Zealand statute law and the mischief at which the 1983 income tax amendments were aimed, I am sure that Parliament cannot have meant them to change the law and traditional practice regarding life insurance taxation.[5]

There are numerous references in New Zealand cases to "making an Act work as Parliament intended",[6] to "purposive" construction,[7] the

---

[11]See further, P. McNamara, "Interpretation Act 1999", *NZLJ* 48 [2000]; S. McAnally, "Extrinsic Guides to Statutory Interpretation", *NZLJ* 51 [2000].

[Section NZ:23]

[1]See, for example, Pacific Industrial Corporation v. Bank of New Zealand [1991] 1 NZLR 368, 374 (HC), per Thomas J; *New Zealand Society of Physiotherapists v. Accident Compensation Corporation* [1988] 1 NZLR 346, 353 (HC), per Quilliam J.

[2]Northland Milk Vendors Association Inc. v. Northern Milk Limited [1988] 1 NZLR 530 (CA).

[3]Northland Milk Vendors Association Inc. v. Northern Milk Limited [1988] 1 NZLR 530, 537 (CA).

[4]Marac Life Assurance Limited v. CIR (1986) 9 TRNZ 331 (CA).

[5]Marac Life Assurance Limited v. CIR (1986) 9 TRNZ 331, 337 (CA), per Cooke P.

[6]Auckland City Council v. Minister of Transport [1990] 1 NZLR 264, 289 (CA), per Cooke P.

[7]For example, Police v. B [1990] 2 NZLR 504, 507 (HC), per Tompkins J (affirmed [1991] 2 NZLR 527); Wahrlich v. Bate [1990] 3 NZLR 97, 111 (HC), per McGechan J.

"broad statutory goal"[8] and to the "spirit of the legislation".[9] A similar trend toward the purposive approach to statutory interpretation is evident in Australia. In *Kingston v. Keprose Pty Ltd*,[10] McHugh JA said that:

> In most cases the grammatical meaning of a provision will give effect to the purpose of the legislation . . . But if the grammatical meaning of a provision does not give effect to the purpose of the legislation the grammatical meaning cannot prevail. It must give way to the construction which will promote the purpose or object of the Act.[11]

In short, the New Zealand Court of Appeal has endorsed a purposive approach to statutory interpretation.

Discovering the purpose of an Act is not free from difficulty.[12] Sometimes the most natural grammatical meaning of the provision in question gives effect to the purpose of the legislation.

Where grammatical meaning and purpose are congruent there is no problem. But if a purely grammatical construction does not give effect to the purpose of a provision then the Court should look for an interpretation that gives effect to the purpose.[13] Logically, this means that even where the meaning of a provision appears to be clear, interpretation must involve an examination of the underlying purpose of the legislation to ensure that meaning and purpose are congruent. Where a purposive approach to interpretation is used it will never suffice to simply look at the words of a provision in order to determine legislative intent or purpose.

A purposive approach to statutory interpretation involves consideration of the particular provision in its context. In turn, this requires examination of a number of factors. First, the purpose of the Act may refer to the overall "theme" of the Act. It may be possible to discern a theme running through the main provisions of an Act. New Zealand courts, particularly the Court of Appeal, continually emphasise the

---

[8]Re AIC Merchant Finance Ltd [1990] 2 NZLR 385, 391 (CA), per Richardson J.

[9]R v. Lewis [1991] 1 NZLR 409, 411 (CA), per Cooke P; Northland Milk Vendors Association Inc v. Northern Milk Ltd [1988] 1 NZLR 530, 537 (CA), per Cooke P.

[10]Kingston v. Keprose Pty Ltd (1987) 11 NSWLR 404 (CA).

[11]Kingston v. Keprose Pty Ltd (1987) 11 NSWLR 404, 423 (CA).

[12]"The significations of the words 'object' and 'purposive' are so various in different collocations and in relation to different aspects, that the utmost care is necessary to avoid slipping into egregious error. For instance, the 'object' of a statute for one purpose may be properly defined as the end to which its provisions or their true construction appear to be directed. For another purpose it may properly be regarded simply as the legal effect produced by its operative provisions. . ." James v. Cowan (1930) 43 CLR 386, 408 (HC) per Isaacs J.

[13]Kingston v. Keprose Pty Ltd (1987) 11 NSWLR 404, 423 (CA), per McHugh JA. Note the injunction that grammatical meaning is still the starting point, and that the task remains one of construction. See also comments of Lord Diplock, "The Courts as Legislators", in B. Harvey, ed., *The Lawyer and Justice: A Collection of Addresses by Judges and Jurists to the Holdsworth Club of the University of Birmingham* (1978), 274: "If . . . the Courts can identify the target of parliamentary legislation their proper function is to see that it is hit; not merely to record that it has been missed."

"scheme of the Act".[14] An examination of the main provisions of the Securities Act 1978 shows that the predominant theme running through that Act was investor protection. The judiciary agrees. *In Re AIC Merchant Finance*,[15] Richardson J. said:

> The pattern of the Securities Act and the sanctions it imposes make it plain that the broad statutory goal is to facilitate the raising of capital by securing the timely disclosure of relevant information to prospective subscribers for securities. In that way the Act is aimed at the protection of investors.[16]

The consumer protection rationale does not appear in the FMA Act. In the FMC Act, s 3 says that one of the main purposes of the Act is to "promote the confident and informed participation of businesses, investors, and consumers in the financial markets." To this extent, the consumer protection rationale reappears explicitly in the FMC Act: see further, G. Walker and A Pekmezovic, "Consumer Protection and Financial Products" in Kate Tokeley, ed., *Consumer Law in New Zealand,* 2nd ed. (2014), Chapter 8.

The Interpretation Act 1999 is now bolstered by the Legislation Act 2019 which states as follows:

> General principles of interpretation
> Section 10 How to ascertain meaning of legislation
> (1) The meaning of legislation must be ascertained from its text and in the light of its purpose and its context.
> (2) Subsection (1) applies whether or not the legislation's purpose is stated in the legislation.
> (3) The text of legislation includes the indications provided in the legislation.
> (4) Examples of those indications are preambles, a table of contents, headings, diagrams, graphics, examples and explanatory material, and the organisation and format of the legislation.
> (5) Legislation applies to circumstances as they arise.
> (6) Legislation does not have retrospective effect.
> As of 2021, the Legislation Act 2019 must be read alongside the Secondary Legislation Act 2021.

§ NZ:24 Definition of a security—Introduction

Part 3 of the FMC Act is entitled, "Disclosure of offers of financial products". Section 39 says that an offer of financial products for issue requires disclosure to an investor under this Part unless exclusion under Part 1 of Schedule 1 applies. This formulation follows s 706 of the Australian Corporations Act 2001, i.e., a bright line rule with carve outs.

---

[14]See, for example, Callender v. Wellington City Council [1980] 2 NZLR 55 at 63-64 (CA), per Richardson J; Brown v. Minister of Education [1985] 2 NZLR 356 at 361-364 (CA), per Richardson J; Commissioner of Inland Revenue v. Grover [1987] 2 NZLR 736 at 737-739 (CA), per Cooke P.

[15]*Re AIC Merchant Finance* [1990] 2 NZLR 385 (CA).

[16]*Re AIC Merchant Finance* [1990] 2 NZLR 385, 391 (CA).

The term "financial product" is defined in s 7. It means:

- A debt security
- An equity security
- A managed investment product
- A derivative.

These four terms are then further defined in s 8.

Section 8(3) says that a managed investment product means an interest in a managed investment scheme and the latter term is further defined in s 9 but excludes arrangements whereby persons hold an interest in property, discretionary investment management schemes and certain insurance policies.

Overall, these new definitions follow the Australian model and remove the layers of complexity surrounding the previous definitions of a security. To date, there is no case law on the definition of a financial product in the FMC Act. There has been commentary on the cognate Australian provisions.

As stated, s 39 of the FMC Act says that an offer of financial products for issue requires disclosure to an investor under this Part unless a specified exclusion under Part 1 of Schedule 1 applies. The compliance costs involved with meeting the s 39 obligation means that persons seeking to raise funds will first turn to the key exclusions.

The exclusions in Schedule 1 include the following:

- Offers to wholesale investors as defined in Cl. 3: This category is an aggregation of former exclusions under the 78 Act and covers investment businesses (Cl. 37), person engaged in investment activities (Cl. 38), "large" persons (Cl. 39), government agencies (Cl. 40), "eligible" investors (Cl. 41) and offers requiring a minimum investment of $750, 000 or more.
- Offers for persons in close relationships: This category comprises close business associates and relatives. There is an exhaustive definition of close business associates which will (presumably) render the case-law under the '78 Act nugatory: see Cl. 4 and Cl. 5.
- Offers through licensed intermediaries (Cl. 6) and DIMS licensees (Cl. 7).
- Offers under employee share purchase schemes (Cl. 8).
- Offers to person under control: This exclusion applies to entities controlled in any of the above categories (Cl. 9).
- Small offers: This exclusion follows the cognate Australian exclusion known as the "20/12" rule. It enables issuers of debt and equity securities to raise funds up to $2 million in any 12-month period from 20 investors: (Cl. 12).

Crowdfunding and Peer-to-Peer Lending Exclusions

In 2013, New Zealand introduced two fundraising innovations in the FMC Act: (1) equity crowd funding (ECF), and (2) peer-to-peer lending (P2PL). The FMC Act establishes a licensing regime for ECF

and P2PL providers, with additional and more detailed requirements contained in the FMC Regulations.

As a result of these legislative changes, companies can make offers through licensed ECF and P2PL intermediaries' facilities without having to comply with the full regulatory disclosure requirements under securities or financial markets legislation. In turn, this reduces compliance costs and enables investors to invest in early start-up financing which provides funds for fledgling companies with significant potential for growth.

Prior to the enactment of the FMC Act, providers of crowd funding and peer-to-peer services ran the risk of contravening the Securities Act. Under s 33 of the Securities Act, no securities could be offered to the public for subscription by or on behalf of an issuer unless the offer was made in an investment statement, or as part of an authorized advertisement, or made in or accompanied by a registered prospectus. There was no specific exclusion for crowd funding, which was technically possible under the 1978 regime, but only to the limited extent provided by the exclusions to the prospectus requirements contained in s 3 of the Securities Act.

The FMC Act improves the framework for ECF and removes the risk for issuers of non-compliance with securities legislation by creating a licensing regime that enables providers of ECF and P2PL services to provide licensed services under the supervision of the regulator, the Financial Markets Authority (FMA).

The effect is that the protection of investors in an ECF offering is derived from the licensing regime contained in Pt 6 of the FMC Act rather than the prospectus regime, as was previously the case under the Securities Act.

The policy rationale for these innovations derives from the Business Growth Agenda (BGA) of the New Zealand government and is intended to make it easier for small and medium sized enterprises (SMEs) to raise capital. In implementing an ECF regulatory framework, the New Zealand Government has stated as follows:

> The Government's updated securities legislation provides explicit mechanisms for regulating new forms of intermediated capital raising, such as "peer-to-peer lending" and "crowd funding". These enable funds for small businesses and individuals to be raised in internet-based marketplaces, potentially more efficiently than through traditional public or private offerings.[1]

The main purpose of the FMC Act is to avoid unnecessary compliance costs and promote innovation and flexibility in the financial markets.

The FMC Act provides that all offers of regulated financial products must comply with the disclosure requirements in Pt 3 of the Act unless specifically covered by exclusion: s 39.

[Section NZ:24]

[1]New Zealand Government, "Building Capital Markets Report", *The Business Growth Agenda* (February 2013).

An exclusion has been made available in respect of offers of financial products made by or through a "licensed intermediary" in the course of supplying "prescribed intermediary services."

- "Licensed intermediaries" for this purpose are persons licensed to provide ECF or P2PL services under Pt 6 of the FMC Act.
- ECF and P2PL services are designated as "prescribed intermediary services."

Thus, one benefit of obtaining a market service license for crowd funding or P2PL under Pt 6 of the FMC Act is that the disclosure obligations under Pt 3 are inapplicable.

This is a direct result of the exclusion contained in cl 6 of Sch 1, Pt 1 of the FMC Act which states that a person providing a "prescribed intermediary service" is excluded from the disclosure obligations under Pt 3.

The FMC Act provides that limited disclosure and other requirements can be prescribed by regulation in respect of offers exempted from the Pt 3 disclosure requirements where necessary or desirable to promote the purposes of the Act: FMC Act, s 543(1)(c).

The detailed requirements are set out in the FMC Regulations to the FMC Act and are discussed below. Broadly, licensed providers must make disclosure to clients about the nature of the services provided. They are also subject to FMA supervision.

Regulation 185 of the FMC Regulations defines the terms "crowd funding service" and "peer-to-peer lending services". A person provides a "crowd funding service" if the following two elements are met:

- the person provides a facility by means of which offers of shares in a company are made; and
- the principal purpose in doing so is to facilitate the matching of companies who wish to raise funds with many investors who are seeking to invest relatively small amounts.

A person provides a "peer-to peer-lending service" if:

- the person provides a facility by means of which offers of debt securities are made; and
- the principal purpose in doing so is to facilitate the matching of lenders with borrowers who are seeking loans for personal, charitable, or small business purposes.

Both definitions require the principal purpose of the relevant facility to be the matching of companies with potential investors—that is, equity or debt investors. This requirement is intended to:

> [D]ecrease the risk that these licenses can be misused for wider offer scenarios. This approach would prevent, for example, banks, pay day lenders, and others from setting up services to refinance their loans (because the principal purpose here would be re-financing rather than matching lenders with borrowers) . . . For the same reasons, the definitions require that the services are not generally for use by the [intermediary] or associated persons of the [intermediary]. FMA can also specifi-

> cally restrict or prohibit use of the service by the [intermediary] and its associated persons through conditions.[2]

The definitions do not cover donation and rewards-based crowd funding. Under rewards-based crowd funding, investors receive a reward—such as tickets, or goods, or a mention on a website—in return for providing funds to an enterprise, while donation-based crowd funding facilitates public funding of charitable causes. Both reward crowd funding and donation crowd funding can be thought of as crowd sponsoring since there is no financial return involved for the backers, and these activities remain unregulated under the FMC Act.

Part 6 of the FMC Regulations contains provisions which:

- allow crowd funding services and peer-to-peer lending services providers to be licensed;
- provide additional eligibility criteria, such as adequate systems and procedures to ensure that issuers do not raise more than NZ$2 million in any 12-month period, and
- set out adequate disclosure arrangements applicable to crowd funding providers, this includes disclosure statements for retail investors, conditions (including warning statements for investors), and client agreements.

These requirements are discussed below.

ECF facilities and P2PL service facilities must apply to be licensed by the FMA. The FMA issued the first ECF licenses on 31 July 2014 to PledgeMe and Snowball Effect.

The criteria for obtaining a license to provide a crowd funding service are set out in s 396 of the FMC Act and additional eligibility criteria apply under reg 186 of the FMC Regulations. The eligibility criteria for an ECF service under s 396(a) of the FMC Act are as follows:

- the provider has fair, orderly, and transparent systems and procedures for providing the service;
- the service is designed primarily for offers by persons other than the provider and its associated persons;
- the provider has an adequate policy for identifying and managing the risk of fraud by issuers using the service (that is, an anti-fraud policy);
- the provider has adequate disclosure arrangements to give investors, or to enable investors to readily obtain, timely and understandable information to assist investors to decide whether to acquire the shares (for example, through initial disclosure, or question and answer forums, or other information that is made available); and
- the provider has an adequate policy (that is, a fair dealing policy) for excluding an issuer from using the service if the

[2]New Zealand Ministry of Business, Innovation & Employment, *Financial Markets Conduct Regulations: First Exposure Draft* (October 2013) at [52]-[53].

provider has information (for example, from checks or assessments it carries out (if any)) that gives it reason to believe that the issuer, in relation to any dealing in shares using the service, has engaged in conduct that is misleading or deceptive or is likely to mislead or deceive, or has made an unsubstantiated representation.

Upon registration, licensed ECF service providers must meet and maintain certain minimum standards, as set out by the FMC Act and any applicable regulations. The general fair dealing provisions contained in Pt 2 of the FMC Act are also applicable, including the prohibition on false and misleading representations.

Regulation 215 provides that a disclosure statement for an ECF service or P2PL service must contain a description of the following matters:

- the nature of the service provided;
- how investors apply for, and obtain, access to the facility and the eligibility criteria that apply;
- how issuers apply for, and obtain, access to the facility and the eligibility criteria that apply;
- how investments are made and financial products are issued under the service; and
- how investor money is received and dealt with.

In addition, the provider must disclose information about the nature and extent of the checks and assessments made by the provider of each issuer that offers financial products under the service; the directors and senior managers of those issuers; the risks involved in those financial products; the nature and extent of disclosure arrangements that apply in relation to the financial products offered under the service; the charges that may be payable to the provider by an investor or by an issuers; the rights of the provider; the nature of any restrictions or prohibitions; and the nature and extent of any interest held by or in the provider that may materially adversely impact on the providers' ability to have fair, orderly, and transparent systems and procedures for providing the service. Further, investors must receive information about the contact details of the provider, and how they may complain about the service to the provider and to any dispute resolution scheme that is available.

Regulation 196 imposes an obligation to make a warning statement available. The required boilerplate appears in reg 196(2):

> Equity crowd funding is risky. Issuers using this facility include new or rapidly growing ventures. Investment in these types of businesses is very speculative and carries high risks. You may lose your entire investment and must be in a position to bear this risk without undue hardship. New Zealand law normally requires people who offer financial products to give information to investors before they invest. This requires those offering financial products to have disclosed information that is important for investors to make an informed decision. The usual rules do not apply to offers by issuers using this facility. As a result, you may not

> be given all the information usually required. You will also have fewer other legal protections for this investment. Ask questions, read all information given carefully, and seek independent financial advice before committing yourself.

Regulation 197(1) requires crowd funding service providers to obtain confirmation from an investor to the effect that the investor has seen the warning statement about crowd funding and understands the risks involved.

This confirmation must be obtained in writing in a separate document.

There are no other restrictions, however, on who may invest via ECF. This approach may be contrasted with that of other jurisdictions where ECF is available in a limited form only and open to a restricted audience of investors, such as accredited or high net worth investors.

The Regulations limit companies using ECF, peer-to-peer lending services, and/or the small offers exclusion under Sch 1 of the FMC Act to a NZ$2 million "aggregate limit". This means that issuers may not raise more than $2 million from the public in any 12-month period.

The New Zealand provisions have no limit on the number of investors. In addition, investors are not subject to any investment caps. There are no limits on the maximum amount of capital investors can invest using ECF platform.

Crowd funding service providers must have adequate procedures in place to implement anti-fraud and fair-dealing policies. The relevant requirements are set out in reg 186:

- The anti-fraud policy adopted by a provider must, at a minimum, ensure that the provider checks information about the identity of the issuer, and its directors and senior managers. This occurs in light of publicly available and readily accessible information about the issuer.
- The provider must act to exclude an issuer from using its service if the provider is not satisfied as to the identity of the issuer or its directors and senior managers; or has reason to believe that any of the issuer's directors or senior managers are not of good character.
- The obligation to exclude an issuer also applies if there is reason to believe that the issuer is not likely to comply with the obligations imposed on it under the service or if the issuer has engaged or is likely to engage in misleading and deceptive conduct.

The requirements applicable to P2PL providers are set out in reg 187.

A failure to comply with the requirements prescribed in the FMC Regulations 2014 does not prevent the exemption from continuing to apply but may give rise to civil liability consequences under Pt 8 of the FMC Act: cl 26(6) of sch 1.

Finally, a provider must have adequate systems and procedures for handling conflicts between the commercial interests of the provider

(or of its associated persons) and the need for the provider to have fair, orderly, and transparent systems and procedures for providing the service. This requirement applies to both ECF and P2PL providers.

Regulation 223 provides that client agreement requirements apply to prescribed intermediary services, including ECF and P2PL. A client agreement must be entered into before an investor applies for or acquires any financial products under the ECF or P2PL service.

Regulation 225 sets out a list of terms which are implied by default into such client agreements. Thus, one of these terms is that a licensee must exercise the care, diligence and skill that a prudent licensee providing the service would exercise in the same circumstances.

Regulation 227 deals specifically with client agreements for crowd funding services. It states that such an agreement must provide for various matters, including how investors and issuers apply and obtain access to the facility and the relevant eligibility criteria in each case. Secondly, the agreement must provide adequately for how investor money is received and dealt with. The provider must also comment on the frequency and extent to which the provider engages in the monitoring of issuers, to the extent that this is part of the service. Finally, an investor must be made aware of the charges that may be payable to the provider, and if those charges are not fixed, the types and basis on which the charges will be imposed and when the investor must pay the charges.

Regulation 228 provides similar requirements for P2PL services. The client agreement must adequately set out, amongst other things, how investor money is received and dealt with, and how the P2PL provider will monitor compliance by the issuer with obligations to make.

§ NZ:25 Continuing disclosure requirements of public companies

Disclosure requirements are imposed on issuers by statute (via the Companies Act 1993, the Financial Reporting Act 2013 and the FMC Act), and by contract (via the Listing Agreement between the NZX and the listed company which incorporates the NZX Listing Rules).

§ NZ:26 Companies Act 1993

Under Part XII of the Companies Act 1993, companies are required to disclose certain limited information. Some of this information is kept by the Registrar of Companies and the company and is available to the public ("public information"). Certain other information is kept by the company alone and must be made available to shareholders on request. An annual report must be sent to shareholders: see s 209 Companies Act 1993.

Public Information

Section 215 of the Companies Act 1993 states that every company

must keep the following documents available for inspection by the public on request: certificate of incorporation or registration; constitution (if any); share register; full names and residential addresses of directors; registered office and address for service: s 215. This information is also held by the Registrar of Companies and may be inspected by any person. In the case of listed companies, full details of shareholders are not kept by the Registrar. An annual return must be delivered to the Registrar of Companies: s 214. Pursuant to the FMA Act, a register of securities offers is established at the Companies Office.

Shareholder Information

Companies must keep certain records available for inspection by any shareholder on request: s 216. These include: minutes of shareholder meetings and resolutions; written communications to shareholders over the last 10 years; certificates given by directors under the Act and the interests register.

§ NZ:27 Companies (Registration of Charges) Act 1993 and the Personal Property Securities Act 1999

The Companies (Registration of Charges) Act 1993 required the Registrar of Companies to keep a register of company charges and provided for each company to keep a separate register of charges. It was abolished by the Personal Property Securities Act 1999 (PPSA). The position now is that charges over land are registered via the applicable real estate legislation and charges over personal property are registered under the PPSA.

§ NZ:28 Register of Securities under the FMC Act

In addition to the requirement under the Companies Act 1993 to keep a share register, issuers are required under the FMC Act to keep a register of all securities issued by the company: ss 215 et seq. The register must contain particulars of the security and the security holder and be audited annually. The register may be inspected: s 221 et seq.

§ NZ:29 FMC Act—Continuous disclosure by listed issuers

Part 5, Subpart 4 of the FMC Act contains the provisions governing continuous disclosure by listed issuers. Section 270 states that listed issuers must disclose in accordance with listing rules if continuous disclosure listing rules apply. All entities listed on the NZSX are subject to continuous disclosure obligations and s 270 of the FMC Act provides statutory backing to that obligation: see further (2018) 36 (4) C&SLJ 292.

§ NZ:30 FMC Act—Disclosure of relevant interests in quoted financial products by directors and senior managers of listed issuers

Part 5, Subpart 65 of the FMC Act contains a regime for the

disclosure of relevant interests by directors and senior managers of a listed issuer or related body corporate: see s 297. The term "director" is given an extended definition in section 6 of the FMC Act to catch "any person occupying the position of director by whatever name called". The term "senior manager" is also defined in s 6. It means, "a person who is not a director but occupies a position that allows that person to exercise significant influence over the management or administration . . ." The term "relevant interest" is defined in ss 235-238. The definition is expansive and does not turn on the holding of a given percentage (unlike the substantial shareholder disclosure regime where a 5 percent shareholding is the trigger for disclosure). The term "related body corporate" is defined in s 12 (2) of the FMC Act.

The obligation imposed by this Subpart is to disclose to the licensed market operator and the listed issuer via the interests register maintained by the listed issuer under section 304 of the FMC Act. Failure to comply is an offence: see s 307. The FMA is empowered to make disclosure orders under section 42B and there is an offence of failing to comply with such orders: section 42J.

§ NZ:31 FMC Act—Disclosure of interests of substantial product holders in listed issuers

Pursuant to the FMC Act, the requirements regarding substantial security holders only apply to substantial holdings in a listed issuer. The substantive provisions are contained in Part 5, Subpart 5 of the FMC Act. These provisions are intended, inter alia, to ensure disclosure by persons with substantial interests in the company or their nominees: see s 273. A substantial security holder is a person who has an interest in 5 percent or more of the voting securities of the company: s 274. Persons who are substantial shareholders must give notice of such interest (as well as any change in such interest), to the issuer and the licensed market operator. Such notice must be given in the prescribed form and contain the prescribed information. Various carve outs are created in ss 284-288. The most useful is the exemption for nominee companies: see s 285.

Both the FMA and listed issuers have the power to require disclosure of relevant interests: see ss 289-29. Under s 293, listed issuers must make available information on substantial holdings.

§ NZ:32 Disclosure requirements under the Financial Reporting Act 2013 (FRA)

The Financial Reporting Act 2013 repealed and replaced the Financial Reporting Act 1993 as of April 1, 2014. The purpose of the FR Act 2013 as stated in s 3 is to:

- provide for the External Reporting Board (XRB)
- provide for the issue of financial reporting standards and auditing and assurance standards, and

- provide for auditor qualifications and other standard provisions relating to financial reporting duties under other enactments.

The External Reporting Board

The XRB is an independent Crown Entity that consists of the XRB Board, the New Zealand Accounting Standards Board (NZASB), the New Zealand Auditing and Assurance Standards Board (NZAASB) and the XRB Staff Team. Key functions include establishing a Financial Reporting Strategy, an Accounting Standards Framework and an Auditing and Assurance Standards Framework. These various standards can be viewed on the XRB website at https://www.xrb.govt.nz/.

Financial Reporting Act 2013: Overview

The FR Act 2013 is best viewed as providing for standard setting legislation. Standard setting is carried out by the XRB. As indicated, the Act defines key concepts such as generally accepted accounting standards and provides for the XRB to prepare and issue financial reporting standards. By contrast, the Companies Act and the FMC Act 2013 specify various and specific financial reporting duties that apply to different kinds of entities.

Section 9 of the FR Act 2013 states that, where an Act that applies to an "entity" provides that the financial statements be prepared in accordance with generally accepted accounting practice, such financial statements must be prepared accordingly.

In the FR Act 2013, the term "entity" is defined in s 5 to include "a company, an overseas company, or any other body corporate". In this way, all companies must comply with the FR Act 2013.

An "FMC reporting entity" is also defined in s 5 of the FR Act 2013. The definition states that a FMC reporting entity has the same meaning as in s 451 of the FMC Act 2013. Section 451 of the FMC Act 2013 appears in Pt 7 of the FMC Act 2013. This part of the FMC Act 2013 became effective on 1 April 2014 via the Financial Reporting (Amendments to Other Enactments) Act 2013: see Financial Markets Legislation (Phase 1) Commencement Order 2014. Section 451 states, inter alia, that an FMC reporting entity includes companies that have more than 50 shareholders and are issuers or listed issuers.

The reporting and disclosure obligations imposed on companies vary depending on their size and nature. Generally, issuers are subject to the most onerous disclosure and reporting requirements. If a company is an "issuer" as defined in s 11 of the FMC Act 2013, the reporting obligations contained in Pt 7 of that Act apply: see further below.

The net result is that:

- For FMC reporting entities, one must consider the provisions contained in Pts 11 and 12 of the Companies Act, the FR Act 2013, the provisions of Part 7 of the FMC Act 2013 and (where relevant) the applicable Main Board/Debt Market Listing Rules.

- For non-FMC reporting entities, one must consider the provisions contained in Pts 11 and 12 of the Companies Act and the FR Act 2013.

§ NZ:33 NZX disclosure requirements

The NZX Listing Rules can be viewed at the NZX website. Updated NZX Listing Rules were published in July 2024 and can be viewed on the NZX website; New Guidance Notes and Practice Notes have been issued as well. Section 3 of the NZX Listing Rules contains various requirements for disclosure by listed issuers.

The term 'material information' is defined in section 1 of the NZX Listing Rules as information in relation the issuer that "a reasonable person would expect, if it were generally available to the market, to have a material effect on the price of Quoted Securities of the issuer and relates to particular securities, a particular issuer, or particular issuers, rather than to securities generally or issuers generally." There is also a further definition of information "generally available to the market". Listing Rule 3.1 then contains an obligation to release material information to the NZX subject to a set of "carve outs". Note that this obligation is backed by legislation: see section 270 of the FMC Act. The best guidance on the interpretation of this listing rule is the Australian equivalent upon which it is based, the Australian Stock Exchange LR 3.1: see CCH Australia Limited, *Annotated Listing Rules* (Sydney: CCH Australia Ltd). The current version of the NZX LRs is reproduced in the documents section of this release.

§ NZ:34 Fraud, manipulation, and insider trading—NZX Listing Rules

The relationship between the NZX and the listed issuer is contractual. Pursuant to such contract, the NZX has the discretionary power to cancel or suspend a listing: LR 9.9.3. Further, pursuant to LR 3 (Disclosure), issuers are obliged to release relevant information to the NZX to the extent necessary to prevent the development or subsistence of a market for their securities which is materially influenced by false or misleading statements emanating from the issuer or other persons in circumstances in each case which would give such information credibility: LR 3.

§ NZ:35 Fraud, manipulation, and insider trading—Common law remedies

New Zealand is a common law country. Section 542 of the FMC Act provides that nothing in the Act shall limit or diminish, *inter alia*, any liability that any person may incur under any rule of law or the Crimes Act 1961 or any other enactment other than this Act. Hence, common law remedies remain unaffected by the Act. The most important common law remedies are actions for rescission of contract, deceit, negligent misrepresentation and breach of contract.

§ NZ:36 Fraud, manipulation, and insider trading—Statutory offences

The FMC Act contains provisions dealing with insider trading, market manipulation and misleading or deceptive conduct generally. Insider trading is covered in Part 5, Subpart 2 of the FMC Act. Market manipulation is covered in Part 5, Subpart 3 of the FMC Act. Misleading and deceptive conduct is covered in Part 2 of the Act: see especially s 19.

§ NZ:37 Companies Act 1993

Various provisions of the Companies Act 1993 could be regarded as providing relief for forms of fraud or manipulative conduct. An example is the statutory remedy for oppression: see generally, G. Walker and others, *Commercial Applications of Company Law in New Zealand,* 5th ed. (2015).

§ NZ:38 Fraud, manipulation, and insider trading—Insider conduct

A major overhaul of insider conduct legislation in the SMA came into force in February 2008. The reforms were based on the Australian model.[1] The New Zealand and Australian insider trading regimes are discussed in Stephen Bainbridge, ed., *Research Handbook on Insider Trading* (Edward Elgar, 2013).

In New Zealand, there are three main means of dealing with insider conduct. At common law, a shareholder could recover from a director of a company where the director purchased shares off the shareholder.[2] However, to succeed with such an action the courts held that it is necessary to establish a fiduciary relationship between the parties,[3] which would normally be only available in private companies.[4]

The Companies Act 1993 has provisions dealing with insider

[Section NZ:38]

[1]See Keith Kendall and Gordon Walker, "Insider Trading in Australia and New Zealand: Information that is generally available", 24 C&SLJ 343 (2006); J. Butler, "Are we there yet? The Journey of the Insider Trading Provisions", 26 C&SLJ 460 (2008). For an overview of the Australian law, *see* Black and Hanrahan, *Securities and Financial Services Law*, 10th ed. (2021).

[2]Coleman v. Myers [1977] 2 NZLR 225.

[3]Woodhouse J stated that some of these factors included a "dependence upon information and advice, the existence of a relationship of confidence, the significance of some particular transaction for the parties, and of course the extent of any positive action taken by or on behalf of the directors to promote it." Id., 325.

[4]In Cottom v. GUS Properties Ltd (1995) 7 NZCLC 260,821 the Court of Appeal confirmed the applicability of the Coleman v. Myers decision and discussed that decision in context of a non-listed company which had 200 shareholders. The Court was prepared to find that directors "intending to participate as purchasers in the share exchange, owed a duty to shareholders to ensure they were fully informed of relevant matters known to the directors before making a decision to sell". Id., 260,827. McKay J felt that the company was, apart from having 200 shareholders, like a private

conduct. Section 145 prohibits a director from disclosing company information to any person or using the information without the consent of the board. Similarly, section 148 requires a director to disclose share dealings in the company shares to the board. Section 149 goes further and restricts a director who possesses company information "which is information material to an assessment of the value of shares" from acquiring or disposing of these shares unless the consideration given or received "is not less than the fair value of these shares or security".[5] Under section 149 (4), the director is liable to the person from whom the shares were purchased or to whom they were sold for the difference between the sale price and the fair value of the shares. However, section 149 does not apply in relation to shares quoted on a licensed market.[6]

The third and principal means of dealing with insider conduct in listed companies since 1998 was the provisions of the SMA. In broad overview, the insider conduct regime in effect between December 1998 and 29 February 2008 was ineffective. And while it may be that case law under the 1998-2008 will be of assistance in interpreting the new post-February 2008 regime, the better view is that scrutiny of the Australian law—upon which the New Zealand post-February 2008 insider trading regime is modeled—is of more utility. Until December 2014, the insider trading prohibitions contained in the SMA were in force. As of 1 December 2014, the insider trading provisions contained in Pt 5, Subpart 2 of the FMC Act took effect. The only major differences between the two regimes (SMA and FMC Act) are terminological. The next section describes the insider trading regime applying since 1 December 2014.

Statutory prohibitions on insider conduct in the FMC Act

Part 5, Subpart 2 of the FMC Act creates three criminal offences for insider conduct in relation to securities: These are:

- the trading offence appearing in s 241
- the disclosing ("tipping") offence contained in s 242, and
- the advising or encouraging offence contained in s 243.

The three offences also apply to insider conduct in relation to futures contract(s).

Section 244 imposes criminal liability for insider conduct.

Ingredients of the insider trading offences

(1) ***Territorial connection***: Section 239 of the FMC Act states that the insider conduct prohibitions apply to conduct in relation to quoted financial products or listed issuers regardless of whether the conduct is in or outside New Zealand.

---

company. Ibid.

[5]Section 149 (1). Section 149 (2) provides that "the fair value of shares or securities is to be determined on the basis of all information known to the director or publicly available at the time".

[6]Section 149 (6).

(2) ***Quoted financial products of a listed issuer***: The relevant insider conduct must be in relation to quoted financial products. Section 7 defines the term, "financial product" to include a debt security, an equity security, a managed investment product or a derivative. Section 6 defines the term "quoted" to mean financial products of a listed issuer that are approved for trading on a licensed market. The term "listed issuer" is defined in s 6 to mean a party to a listing agreement with a licensed market operator.

(3) ***Information insider***: There must be an "information insider". This term is defined in s 234. A person is an information insider of a listed issuer if that person:

(a) has material information relating to the listed issuer that is not generally available to the market, and

(b) knows or ought reasonably to know that the information is material information, and

(c) knows or ought reasonably to know that the information is not generally available to the market.

A listed issuer may be an information insider of itself: see s 234(2). Further, the relevant "inside information" means the information in respect of which a person is an information insider of the listed issuer in question: s 234(4).

(4) ***Material information relating to a listed issuer***: An information insider must have material information. Section 231 defines material information in relation to a listed issuer as information that:

(a) a reasonable person would expect, if it were generally available to the market, to have a material effect on the price of quoted financial products of the listed issuer, and

(b) relates to particular financial products, a particular listed issuer, or particular listed issuers, rather than to financial products generally or listed issuers generally.

(5) ***Information not generally available***: Pursuant to s 232, information is generally available to the market:

(a) if it is information that:

(i) has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in relevant financial products, and

(ii) since it was made known, a reasonable period for it to be disseminated among those persons has expired, or

(b) if it is likely that persons who commonly invest in relevant financial products can readily obtain the information—whether by observation, use of expertise, purchase from other persons, or any other means—or

(c) if it is information that consists of deductions, conclusions, or inferences made or drawn from either or both of the kinds of information referred to in paragraphs (a) and (b).

(6) ***Materiality***: The prohibition against insider conduct applies only where a reasonable person would expect that the material information, if it were generally available to the market, would have a material effect on the price of quoted financial products of the listed issuer. This is an objective test.

(7) ***Knowledge***: Pursuant to s 234, it must be proved that the information insider knows, or ought reasonably to know, that the information is material information, and knows or ought reasonably to know that the information is not generally available to the market.

The Three Offences

(1) ***The Trading Offence***: Where the ingredients described above are present, an information insider of a listed issuer must not trade quoted financial products of the listed issuer: s 241.

(2) ***The Disclosing or Tipping Offence***: Where the ingredients described above are present, an information insider (A) of a public issuer must not directly or indirectly disclose inside information to another person (B) if A knows, or ought reasonably to know or believe, that B will, or is likely to trade quoted financial products of the listed issuer or if B is already a holder of those quoted financial products, continue to hold them or advise or encourage another person (C) to trade or hold them: s 242.

(3) ***The Advising or Encouraging Offence***: Where the ingredients described above are present, an information insider (A) of a listed issuer must not (a) advise or encourage another person (B) to trade or hold quoted financial products of the listed issuer, or (b) advise or encourage (B) to advise or encourage another person (C) to trade or hold those securities.

Contravention of ss 241-243 is a criminal offence: see s 244.

Exceptions to the prohibition

There are exceptions to the prohibition on insider conduct. These are described in ss 245–256.

The affirmative defenses

There are five affirmative defenses. They are:

- absence of knowledge of trading: s 257
- inside information obtained by independent research and analysis: s 258
- equal information: s 259
- options and trading plans: s 260, and
- Chinese wall defense: s 261.

Criminal penalties

Section 244(2) provides for criminal penalties. For an individual,

the maximum penalty is imprisonment for a term not exceeding five years or a fine not exceeding $500,000 or both. For a company, the maximum penalty is a fine not exceeding $2.5m.

Civil remedies

Civil remedies are also available for breach of the insider conduct prohibition: see Pt 8, Subpart 3 of the FMC Act.

§ NZ:39 Tender offers, takeovers, and other corporate combinations—In general

A takeover involves someone acquiring enough shares in a company to give them "control" of the company. Often a takeover is a full takeover, where 100 percent of the shares are acquired. A full takeover is sometimes called a "merger". But a partial takeover is also possible. Here, the takeover bidder acquires a shareholding of less than 100 percent but large enough to give control. The principal legislation is the Takeovers Act 1993.

§ NZ:40 The Takeovers Code

The Takeovers Code made pursuant to the Takeovers Act 1993 came into force on 1 July 2001. The Takeovers Code effectively deems a shareholding of 20 percent or larger to be a controlling shareholding. This reflects the fact that, in many companies, that are listed on the NZX:

- There is a very large number of shareholders, many of whom hold only a small parcel of shares (that is, many companies are "widely held"); and
- Many shareholders do not exercise their voting rights.

In a "widely held" company, a 20 percent or larger shareholding will commonly provide "effective" or "practical" control of the general meeting. That is, motions put to the shareholders in general meeting—in relation to matters like election of directors—will normally be passed or rejected according to how the 20 percent plus shareholder votes.

Data on takeover activity in New Zealand up until 1993 may be found in John Farrar, ed., *Takeovers* (Auckland: OUP, 1993). Today, data on takeover activity may be found in *Code Word*, the newsletter of the Takeovers Panel or on the website of the Takeovers Panel www.takeovers.govt.nz. A useful report is entitled, "20 Years of the Takeover Panel" available at https://www.takeovers.govt.nz/guidance/codeword/issue-52/20-years-of-the-takeovers-code.

The purposes of the takeover provisions appearing in the Takeovers Code are set out in the Takeovers Act 1993. The Takeovers Act 1993 created a Takeovers Panel. The Takeovers Panel has two main functions. The first was to prepare a takeovers code that complied with the objectives set out in the Act. The second function was to enforce the resultant code. Thus, the principal purposes of the

Takeovers Code appear in sections 20, 21 and 24 of the Takeovers Act 1993. These sections were not amended by the Takeovers Amendment Act 2006. For all practical purposes, however, readers are directed to the Takeovers Regulations 2000 and the Schedule to those regulations which contains the Takeovers Code.

Section 20 of the Takeovers Act states that, in formulating a takeovers code, the Panel shall consider the following objectives:

- Encouraging the efficient allocation of resources;
- Encouraging competition for the control of specified companies;
- Assisting in ensuring that holders of securities in a takeover are treated fairly;
- Promoting the international competitiveness of New Zealand's capital markets;
- Recognizing that the holders of securities must ultimately decide for themselves the merits of a takeover offer;
- Maintaining a proper relation between the costs of compliance with the code and the benefits resulting from it.

Section 21 specifies certain matters to be considered by the Panel in formulating a code such as whether advance notice and publicity should be given.

Section 24 states that when formulating a code, the Panel should have regard, to any principles applying to the co-ordination of business law between Australia and New Zealand set out in any agreement or memorandum of understanding between the Governments of Australia and New Zealand. The agreement is contained in the *Memorandum of Understanding between the Governments of Australia and New Zealand on the Harmonisation of Business Law*.

§ NZ:41 Tender offers, takeovers, and other corporate combinations—Overview of the Takeovers Code

There is a general prohibition (the "fundamental rule") contained in Rule 6 of the Takeovers Code on acquiring control of more than 20 percent of the voting rights in a code company except as set out in the code.

Exceptions to the "fundamental rule" contained in Rule 6 are contained in Rule 7. Rule 7 states that a person may increase a holding of voting rights beyond the 20 percent threshold in one of the following ways:

- Acquisition under a full offer;
- Acquisition under a partial offer;
- Acquisition approved by resolution of shareholders of the target company;
- Acquisitions of less than 5 percent per year by a holder of between 50 and 90 percent of the voting rights; or
- Acquisitions by a person holding at least 90 percent of voting rights in a code company.

Section 45 of the Takeovers Act 1993 also permits the Takeovers Panel to grant exemptions from the requirements of the code.

The general prohibition or "fundamental rule" is contained in Rule 6 of the Takeovers Code. This rule prohibits a person holding or controlling more than 20 percent of the voting rights in a code company except as prescribed in the code.

The general prohibition contained in Rule 6 applies to companies that are:

- Party to a listing agreement with a registered exchange and have securities that confer voting rights quoted on the registered exchange's market;
- Were a party to a listing agreement with a registered exchange in the 12 months before or after the event referred to in the code; or
- Have 50 or more shareholders.

These companies are code companies and cannot contract out of the code.

The term "control" is defined in Rule 3 (1) of the Takeovers Code to mean, in relation to a voting right, as "having, directly or indirectly, effective control of the voting right" and the term "controller" has a corresponding meaning. Rule 6 (2) provides that a person will have control if that person acted jointly or in concert with other persons or if a person joins another person or group of persons controlling voting rights as an "associate", or if a person controls voting rights together with "associates".

The term "associate" is defined in Rule 4. A person is an associate of another person if:

- The persons are acting jointly or in concert; or
- The first person acts, or is accustomed to act, in accordance with the wishes of the other person; or
- The persons are related companies; or
- The persons have a business relationship, personal relationship, or an ownership relationship such that they should, under the circumstances, be regarded as associates; or
- The first person is an associate of an associate.

However, directors are not associates of companies merely by reason of their status as director.

The provisions of the Takeovers Code could be easily avoided if they did not include the concepts of associate and control. Consider the following example:

Five people each own 10 percent of the shares of company A. They each agree to vote the same way to make sure they control who will be directors of Company A. The five shareholders therefore have control of Company A. They are each associates of each other. This means that each of the five shareholders has "voting rights" of 50 percent. Assume that they agree that one of them can buy the shares of the other four. The agreement means there is a breach of the general prohibition or fundamental rule in Rule 6.

The Takeovers Code does not contain any provisions regarding breach of Rule 6. However, Part III of the Takeovers Act 1993 empow-

ers the Panel to act in relation to compliance with the code. Under sections 32 and 33 of the Takeovers Act 1933, the Panel may issue a "temporary restraining order" to prevent a takeover from proceeding.

The High Court also has powers under Part III, Subpart 2 of the Takeovers Act 1993. For example, it can order disposal or forfeiture of shares and payment of compensation.

As mentioned, the main exemptions to the fundamental rule contained in Rule 6 are acquisitions resulting from an offer to shareholders under a formal "takeover bid". Offers may be full or partial and may be made on-market or off-market.

A full offer is an offer for all the voting and non-voting securities of the target company. If the target company has different classes of securities, the full offer must be fair and reasonable as between different classes.

A partial offer (for less than 100 percent) is permitted but must be extended to all holders of voting securities. The partial offer must be for a specified percentage of each holder's voting securities. If there is more than one class of voting security, the partial offer must extend to each class. If the offeror's existing holding is 50 percent or less, the offer must be for securities which will result in the offeror holding or controlling more than 50 percent of the voting rights. A partial offer can be made for a lesser percentage if approval is obtained from the target company.

An off-market bid may be made for shares in listed and unlisted companies. A market bid can only be made for shares in listed companies because the offers under a market bid are made through the NZX's trading system.

An off-market bid will normally be successful only if the bidder offers to buy the shares for a price significantly above the market price of the shares just before the bid is announced. That is, the target company's shareholders must normally be offered a "premium".

There are detailed requirements for a takeover bid, including:

Offer procedure. Part 6 of the Takeovers Code (Rules 41 to 49) sets out a procedure for full and partial takeover offers. A takeover notice must be sent to the target together with the information specified in Schedule 1. If listed, the target company has to notify the NZX. If unlisted, the target company must inform offeree shareholders. The target company is then required to provide the offeror a copy of its securities register (a document on which the names of its shareholders appear). A written offer is then sent to all offerees. The offer must be open for between 30 and 90 days although a full offer can be extended by up to 60 days.

Equal treatment of shareholders. With both full and partial offers, the same terms (including price) must be offered to all security holders within a class of securities. Where there are different classes of securities, an independent adviser must certify that the price is fair and reasonable as between classes.

Price. There is no restriction on the price that can be offered except that the price must be fair and reasonable between different classes of securities.

Minimum acceptance condition. Where the bidder does not hold or control more than 50 percent, the offer must be conditional on receiving acceptances which will bring the offeror's total holding above the 50 percent threshold, unless it is a partial offer and shareholder approval for a lesser percentage is obtained.

The Takeovers Code restricts defensive tactics by the target company's directors that might "frustrate an offer" except in limited circumstances.

A shareholder who receives an offer under a takeover bid has the choice of accepting the offer (and selling their shares to the bidder) or rejecting the offer (and keeping their shares). In limited circumstances, a shareholder who has rejected the offer can later be forced to sell their shares to the bidder.

Under Part 7 of the Takeovers Code, a takeover bidder has the power to compulsorily acquire shares where some time up to the end of the offer period the bidder controls 90 percent or more of the voting rights in the target company. Such a person is called a "dominant owner" and has the right to acquire all the remaining securities of the company.

Part 8 of the Takeovers Code was introduced by the Takeovers Amendment Act 2006. It includes a new Rule 64 which contains a prohibition on misleading or deceptive conduct.

§ NZ:42 Companies Act 1993

This Act is not directed at takeovers but some provisions may be relevant in a takeover context. These include:

- directors' duties to act in good faith and in the best interests of the company.
- directors' duty to disclose personal interests in transactions.
- directors' duty not to disclose confidential information.
- directors' duty to disclose dealings in company's securities and to ensure that the other party to the dealing receives fair value.
- safeguards in the Act to protect shareholders against misuse of the power to have a company acquire its own shares or financially assist in the purchase of its own shares.
- requirement that disposal or acquisition of assets worth more than 50 percent of the company's value demands approval by special resolution of shareholders.
- minority shareholder buy-out rights.
- general protection against oppression, unfair prejudice and unfair discrimination.

There is a discussion of these duties in J. Farrar, *Corporate Governance in Australia and New Zealand,* 3rd ed. (2008).

§ NZ:43 NZX Listing Rules

The latest version of the NZX Listing Rules is dated July 2024 and is accessible on the NZX website. Section 4 of the NZX Listing Rules governs takeovers. Where a company is a code company as defined, then LR 4.3.1 states that the issuer's constitution must contain Notice and Pause provisions, Enforcement provisions and Compulsory Acquisition provisions.

Notice and Pause Provisions

The fundamental rule contained in LR 4 is that "notice and pause" provisions will apply to all "restricted transfers". These are changes of ownership or control of securities of a class carrying more than 20 percent of the votes in that class, or more than 5 percent per annum once that 20 percent threshold has been reached. Every issuer must have notice and pause provisions in its constitution: LR 4.3.1. These provisions may be modified so that they apply only where the bidder or purchaser is an insider: LR 4.4.2. This will provide a more liberal takeover regime than the standard Notice and Pause provisions. The provisions require offerors to give periods of public notice before the transfer can take place. The notice periods are:

- one business day where the transfer is effected solely through the NZX
- three business days for off-market transactions
- fifteen business days where any offeree is an insider.

Minority Veto Provisions

These provisions are optional and are an alternative to the standard notice and pause provisions. A listed company may amend its constitution by adopting the restrictive "minority veto" provisions pursuant to LR 4.4.1 through LR 4.6. These require that restricted transfers be made only by offers to all holders of securities of the class in question or only by on-market transactions except where approved by a resolution passed by a simple majority of each "relevant group". These provisions also require directors to obtain an independent report on the proposal. Very few companies listed on the NZX have chosen the restrictive minority veto provision.

Enforcement Provisions

NZX LR 4.7 makes provision for enforcement procedures where a default has occurred as defined in LR 4.1.1.

Compulsory Acquisition Provisions

LR 4.8 contains provisions dealing with compulsory acquisitions in takeover situations. These are intended to take the place of s. 208 of the Companies Act 1955 (which section was not re-enacted in the Companies Act, 1993). The provisions come into effect when a majority holder acquires 90 percent or more of a class of securities of the issuer. In that event, within 20 business days, the majority holder

must notify the remaining security holders of the acquisition and either express an intention to acquire all remaining securities in the affected class or inform the remaining holders that they may require the majority holder to purchase their securities.

Restrictions and Defensive Measures

LR 4.2 prohibits certain provisions which might be used as takeover defenses.

§ NZ:44 Fair Trading Act 1986

Section 44E of Takeovers Act 1993 states that the Fair Trading Act 1986 does not apply to conduct in relation to any transaction or event regulated by the Takeovers Code. This section of the Takeovers Act 1993 came into effect on 29 February 2008.

§ NZ:45 Commerce Act 1986

Section 47 of the Commerce Act 1986 prohibits the assets of the business or shares if the acquisition would have, or would be likely to have, the effect of substantially lessening competition in the market.

§ NZ:46 Overseas Investment Act 2005

Where a takeover offer is made by an overseas person involving "significant business assets" with a consideration in excess of NZD100 million, the Overseas Investment Act 2005 requires that the offeror obtain the consent of the Treasurer: section 13 (1) (c). The criteria for consent are contained in section 14 and 18 of the Overseas Investment Act 2005.

§ NZ:47 Financial Markets Authority

The review function of the former NZSC under s. 10 of the Act was very wide. In City Realties Ltd v. The NZSC [1982] 1 NZLR 74 (CA), it was said that the NZSC had the power to investigate in depth a particular company takeover or attempted takeover and that such power may be exercised while the attempt is in progress. However, the new FMA has no direct power over takeovers.

§ NZ:48 Tender offers, takeovers, and other corporate combinations

—Amalgamations

The procedure for amalgamations is contained in Part XIII of the Companies Act 1993. The procedure allows two or more companies to amalgamate without having to seek Court approval. An amalgamation is now made effective by the issue of a certificate of amalgamation by the Registrar of Companies. The amalgamation procedure under the Companies Act 1993 was reviewed by the Court of Appeal in Carter Holt Harvey v. McKernan [1998] 3 NZLR 403. See also

Elders New Zealand Limited v. PGG Wrightson [2007] 1 NZLR 710 (High Court).

§ NZ:49 Accounting and Auditing—Companies Act 1993

The statutory obligation to keep accounting records is found in s. 194 of the Companies Act 1993. Section 194 requires that the board of a company must cause accounting records to be kept that:

- correctly record and explain the transactions of the company
- enable the financial position of the company to be determined at any time with reasonable accuracy
- enable the directors to ensure that the financial statements of the company comply with the Financial Reporting Act 2013
- are capable of being readily and properly audited.

The responsibility for ensuring that proper accounting records are kept rests with the board of directors and failure to comply with this provision renders the directors personally liable to a pecuniary penalty.

The financial reporting and audit requirements that apply to companies are contained in the Companies Act 1993 and the FR Act 2013. As of 1 April 2014, the provisions of Pt 7 of the FMC Act 2013 must also be considered for FMC Act reporting entities.

Those obligations vary depending on the nature and size of the company in question. The discussion below begins by explaining some of the definitions used in these statutes, and then looks at the reports themselves.

This set of provisions provides an investor protection mechanism. By requiring managers to disclose certain information about the financial position, management and operation of the company, the disclosure requirements can reduce the extent to which shareholders are vulnerable to fraud, negligence or overreaching by the company's management. The intention underlying compulsory disclosure is to enable shareholders of a company to use their control rights (such as voting rights) in an informed manner, by allowing them to assess the performance of the company's management on a periodic basis. As such, compulsory disclosure is an important corporate governance measure.

The provision of standardized information about companies and their performance also plays an important role in maintaining an informed and transparent market for company securities.

Summary of periodic disclosure requirements

Section 4(2) of the FR Act 2013 states that Acts such as the Companies Act and the FMC Act 2013 specify various financial reporting duties that apply to different types of entities. This means that one must look to such legislation rather than the FR Act 2013 to ascertain the requisite reporting obligations. For example, s 211 of the Companies Act (Contents of annual report) requires that the an-

nual report contain any financial statements required to be prepared under Pt 11 of the Companies Act, Pt 7 of the FMC Act 2013 or any other enactment, plus other specified disclosures be included in the annual report which is then made available to all shareholders.

The NZX also requires that companies listed on the NZX Main Board provide half-yearly reports: Main Board/Debt Market Listing Rule 10.4.2.

Definitions used in the Financial Reporting Act 2013 and in Part 11 of the Companies Act

Under s 45(1) of the FR Act 2013, an entity (other than an overseas company or a subsidiary of an overseas entity) is "large" in respect of an accounting period if at least one of the following applies: (a) as at the balance date of each of the two preceding accounting periods, the total assets and subsidiaries (if any) exceed $60 million, and (b) in each of the two preceding accounting periods, the total revenue of the entity and its subsidiaries (if any) exceeds $30 million. In s 45(2), an overseas company or a subsidiary of an overseas company is "large" in respect of an accounting period if at least one of the following applies: (a) as at the balance date of each of the two preceding accounting periods, the total assets of the entity and its subsidiaries (if any) exceed $20 million, and (b) over the same periods, the total revenue of the entity and its subsidiaries (if any) exceeds $10 million. A carve-out for entities that are inactive applies: s 45(3).

Section 196 in Pt 11, subpart 2 (Financial reporting) of the Companies Act imposes financial reporting requirements on: every large company; every large overseas company that carries on business in New Zealand; every company with ten or more shareholders (unless the shareholders of the company opt out of compliance) and every other company with fewer than ten shareholders if the shareholders of the company holding at least 5 percent of the shares require the company to comply.

Section 197 states that Part 11, subpart 2 does not apply to a company whose financial statements are required to be prepared under Pt 7, subpart 3 of the FMA Act 2013 or s 55 of the FR Act 2013.

Section 198 of the Companies Act provides a set of definitions. Some of the key definitions are as follows:

A "group" means a group comprising a company or an overseas company and its subsidiaries.

A "large company" means a company that is large under s 45 of the FR Act 2013.

A "large overseas company" means a body corporate incorporated outside New Zealand that (a) carries on business in New Zealand within the meaning of s 332, and (b) is "large" under s 45 of the FR Act 2013. Section 332 states that an overseas company is a company incorporated outside New Zealand but carrying on business in New Zealand, *either* through establishing a share transfer or share registration office in New Zealand *or* by administering, managing or dealing with property in New Zealand.

Financial statements

The financial reporting requirements relating to companies are found in Pt 11, subpart 2 of the Companies Act and, in the case of FMC reporting entities, in Pt 7 of the FMC Act 2013.

Preparation of financial statements under the Companies Act

The obligation upon every company or overseas company to prepare financial statements appears in s 201. Section 202 states that group financial statements must be prepared. These obligations are qualified by s 200, which states that ss 201 and 202 apply to: every large company; every company that is a public entity and every large overseas company. Companies with ten or more shareholders can opt out of compliance and companies with fewer than ten shareholders can opt into compliance.

If a s 201 obligation applies, the company must ensure that within five months of the balance date, financial statements that comply with generally accepted accounting practice (GAAP) are completed and dated and signed by directors. The same requirement as regards group financial statements appears in s 202.

Section 207 requires that financial statements must be audited by a qualified auditor. Section 206 states the companies to which this obligation applies. The audit must be carried out in accordance with auditing and assurance standards (s 207A) and the auditor must report to shareholders: s 207B. If the auditor's report indicates that the Companies Act requirements have not been met, the auditor must send a copy of the report and the financial statements to the Registrar and the External Reporting Board: s 207C.

The financial statements of some overseas companies must be registered with the Registrar.

Shareholders may request a copy of the financial statements: s 207F.

Section 207G lists financial reporting offences. If financial statements are not completed and signed within the time specified, the company and every director of the company is liable to a fine not exceeding $50, 000.

Preparation of financial statements under the FMC Act 2013

As of 1 April 2014, Pt 7 (Financial reporting) of the FMC Act 2013 applies to FMC reporting entities. Amendments to s 6(1) and ss 46-61 were made pursuant to the Financial Reporting (Amendments to other Enactments) Act 2013 by the Financial Markets Legislation (Phase 1) Commencement Order 2014. This new regime is now described in general terms.

The amendments to s 6(1), the interpretation section of the FMC Act 2013, were largely made to incorporate the new definitions of terms such as "accounting period", "applicable auditing and assurance standard", "applicable financial reporting standard", "financial statements", "generally accepted accounting practice", "group financial statements" and "balance date" appearing in the FR Act 2013.

Section 450(1)(a) and (b) of the FMC Act 2013 gives an overview of new Pt 7. It states that Pt 7 provides for FMC reporting entities to keep proper accounting records, prepare financial statements and have those statements audited and to lodge those financial statements.

The meaning of the term, "FMC reporting entity" appears in s 451. It includes every person who is an issuer of a regulated product (subject to s 452) and every listed issuer (subject to s 351).

Part 7, subpart 2 deals with accounting records. FMC entities must:

- keep proper accounting records: s 455
- keep accounting records at the registered office of the FMC reporting entity: s 456
- keep accounting records in English: s 457
- keep the accounting records for seven years: s 458
- keep the accounting records available for inspection to directors, supervisors, the FMA and authorised persons: s 459.

Part 7, subpart 3 relates to the preparation, audit and lodgement of financial statements. Financial statements must be prepared (s 460) as must group financial statements (s 461). All financial statements of an FMC reporting entity must be audited by a qualified auditor: s 461D. A qualified auditor is a licensed auditor or a registered audit firm: s 461E. The audit must be carried out in accordance with all applicable auditing and assurance standards: s 461F. The same requirement applies to the auditor's report: s 461G. Every FMC reporting entity must lodge copies of financial statements together with the auditor's report with the Registrar of Companies within four months after the balance date of the entity: s 461H.

An FMC reporting entity and every director of the entity may be liable to a fine or imprisonment for knowingly failing to comply with financial reporting standards: s 461I. Further, Pt 7, subpart 4 makes provision for civil liability for certain contraventions of the Pt 7 financial reporting provisions.

§ NZ:50 Audit

A company's financial statements must be audited, unless s 206(1)(d) or (e) applies (opting out or in). The auditor performs two core functions. The first is to report to shareholders of the company on various matters relating to the preparation of the company's financial statements. This is intended to give shareholders some independent assurance that the information received from management about the company's financial position is reliable. The second function is to report to the Registrar of Companies on any breaches of the Companies Act discovered as part of the audit.

Audit has been described in the following terms:

> "The primary purpose of an audit of a financial report is to express an opinion on whether the financial report is prepared, in all material respects, in accordance with an identified financial reporting framework.

> An audit cannot *guarantee* that the financial report is free from material misstatement. It does, however, provide a high level of assurance about an accountability matter, which is expressed as 'reasonable assurance' ".
> C. Martinz, "What Do Auditors Do About Fraud and Other Illegal Acts?" (1995) 13 Company and Securities Law Journal 537.

The requirement for an audit is imposed by s 206 of the Companies Act. It applies to any company required to prepare financial statements.

The audit must be conducted in accordance with s 207A of the Companies Act and the applicable provisions of the FR Act 2013. Section 20 of the FR Act 2013 refers to auditing and assurance standards. These are issued by the XRB.

In addition to reporting to shareholders, the auditor also performs a watchdog function. If the auditor's report indicates that a contravention of the Companies Act has occurred, the auditor must notify the Registrar of Companies within seven working days.

Auditors are required to be licensed and audit firms are required to be registered under the Auditor Regulation Act 2011. This legislation states the relevant requirement for licensing and registration.

Under s 207P of the Companies Act, an auditor must be appointed if financial statements are required to be audited under the Companies Act or the FMC Act 2013.

The first auditor of a company may be appointed by the directors before the first annual meeting: s 207P(4). Thereafter, the company must appoint an auditor at the annual meeting: s 207P(2). Provision for automatic reappointment appears in s 207T.

An auditor may resign at any time by giving written notice to the company and the company must notify shareholders of the auditor's resignation: s 207R.

A company must not appoint a new auditor in the place of a qualified auditor, unless the auditor has been given a reasonable opportunity to make representations to the shareholders: s 207U.

Where an auditor does not wish to be reappointed or resigns, the board of directors must (if so requested by the auditor) distribute to shareholders a written statement of the auditor's reasons or permit the auditor to address a shareholders' meeting to explain those reasons: s 207V.

The auditor may attend a shareholders' meeting and may be heard at such meeting on matters concerning the auditor: s 207W.

Special requirements apply to auditors of issuers: see the Auditor Regulation Act 2011 and the Auditor Regulations 2012. The Auditor Regulation Act 2011 sets up a regime whereby auditors of issuers must be licensed and such licence is entered in a register: s 8. Provision for a register of licensed auditors and registered audit firms is provided for in Pt 2, subpart 4 of the Auditor Regulation Act 2011. The register is maintained by the Registrar of Companies. The FMA has various powers in relation to licensed auditors.

If the auditor fails to comply with his or her obligations, the company may have a claim against the auditor for breach of statutory and contractual duties.

For example, if an auditor fails to report to shareholders on the company's failure to keep sufficient financial records, or fails to notify the Registrar of Companies of a breach of the Companies Act where the auditor is required to do so, this may form the basis of a claim. As Thomas J put it in *Dairy Containers Ltd* at 54: "They must perform the audit with such care and skill as is necessary to reach the opinion . . . that the financial statements give a true and fair view of the state of the company's affairs . . . If the audit fails to meet this standard, the auditors . . . have failed to fulfil their basic function".

Auditors are in a contractual relationship with the company and, on the basis of ordinary principles of contract law, can be liable to the company if they fail to honour the terms of the contract. A contract for the provision of audit services carries with it the following implied duties:

- to do an audit of the company's affairs sufficient to enable the auditor to form the opinion required under statute
- to audit the financial affairs of the company generally throughout the relevant period having regard to the records throughout the period
- to report in accordance with the Companies Act and the FR Act 2013, and
- to use reasonable care and skill in the conduct of the audit and the making of the report.

Auditors also owe a duty of care and skill at common law. What amounts to the exercise of reasonable care and skill depends on the prevailing standards in the profession.

However, this in turn depends on many factors, including the nature of the service to be provided:

> "The duties owed by an auditor to its client are high in the sense that the auditor holds itself out as practising a highly skilled and exacting profession. Even so the court must beware of imposing upon the auditor duties which go beyond the scope of what it is requested and undertakes to do . . . While the duty to exercise reasonable care and skill is a single comprehensive duty the factors according to which a court determines whether there has been a breach of the requisite standard of care will vary according to the particular service which is being provided". *Daniels (formerly practising as Deloitte Haskins & Sells)* v *Anderson* (1995) 13 ACLC 614 at 646; 16 ACSR 607 at 645.

On ordinary principles of tort law, the auditor's common law duty of care and skill may be owed to persons other than the company itself. This is because the existence of the duty does not depend on the existence of a contract between the parties. It is therefore possible that an auditor may be liable to a person other than the company (such as a person who invested in the company, or lent money to it after having seen audited accounts) if the person suffers loss as a result of a

negligent audit. However, in light of recent decisions in the Commonwealth courts, it remains very difficult to establish a duty of care owed by an auditor to a third party.

§ NZ:51 International securities transactions

Recognition of foreign issuers is a matter which the former NZSC generally dealt with on a case-by-case basis. The FMA may give an exemption from the requirements of the New Zealand legislation where prospectuses have been issued overseas which generally conform to the requirements of New Zealand law and are made available to investors in New Zealand.

On 22 February 2006, a Treaty between the Government of Australia and the Government of New Zealand in Relation to Mutual Recognition of Securities Offerings was signed. In June 2008, implementing regulations were made: see Securities (Mutual Recognition of Securities Offerings—Australia) Regulations 2008 and NZSC, *Offering securities in New Zealand and Australia under mutual recognition* (2008).

§ NZ:52 International securities transactions—NZX Listing Rules

LR 5.1.1(b) states that any person may apply to the NZX for listing with a "Recognised Stock Exchange" as the "Home Exchange" if that person is domiciled or incorporated outside New Zealand and listed on a "Recognised Stock Exchange" (an "Overseas Listed Issuer"). LR 5.1.1 (c) makes provision for application for listing as a "Dual Listed Issuer". The terms "Dual Listed Issuer", "Home Exchange" and "Recognised Stock Exchange" are defined in Section 1 of the Listing Rules. A "Dual Listed Issuer" means an issuer listed on the ASX and the NZX. The key term is "Recognised Stock Exchange" which is defined as a stock exchange approved by the NZX from time to time as enforcing rules sufficiently similar to those of the NZX as to justify classification as a Recognised Stock Exchange for the purposes of the Listing Rules. Full members of the World Federation of Exchanges (WFE) are recognised for this purpose. LR 5.1.2 specifies the information required to be submitted for listing generally. An "Overseas Listed Issuer" is deemed to have complied with the LR 5.1.2 so long as it remains listed on its "Home Exchange": LR 5.1.6. The intention of Rules 5.1.6 and 5.1.7 (Rules applicable to Overseas Listed Issuers), is that a company or other entity which is listed on a recognised overseas stock exchange (and accepted by the NZX for listing on the NZX as well), is not required to comply with the Listing Rules so long as that company or other entity complies with the rules of the overseas stock exchange. The NZX may however in its discretion at any time require compliance with any provision of the Listing Rules. As a rule, the NZX will cancel the listing of an Overseas Listed Issuer if the listing of that issuer is cancelled on its Home Exchange. Overseas Listed Issuers must appoint a natural person resident in New Zealand with

whom the NZX may communicate and such person must be authorised on behalf of the issuer to accept service of notices or legal proceedings from the NZX.

§ NZ:53 International securities transactions—International Organization of Securities Commissions (IOSCO)

The NZSC was a member of IOSCO and one of the subscribers to the Rio Declaration of 1986 which calls on signatories to provide assistance on a reciprocal basis in the gathering of information related to market oversight and protection of investors against fraudulent securities transactions. In 2004, the NZSC was accepted as a signatory to the IOSCO multilateral MOU which enables cooperation between signatories to combat international fraud and to effectively enforce securities law. In May 2004, NZSC Chairman, Jane Diplock, was elected to chair the Executive Committee of IOSCO.

The NZSC signed bilateral MOUs with the China Securities Regulatory Commission, the Indonesian Capital Markets Supervisory Agency, and, the Malaysian Securities Commission. It also has MOUs with ASIC, the USA CFTC, the Hong Kong SFC, the PNG Securities Commission and the SEC of Sri Lanka. The NZSC had an exchange of letters with the USA SEC.

The FMA has assumed all these relationships.

§ NZ:54 Investment companies

Company legislation in New Zealand does not recognise a distinct category of "investment company". The provisions of the Unit Trusts Act 1960 cover any scheme or arrangement that has the effect of providing facilities for the participation, as beneficiaries under a trust, by members of the public in income and gains arising from money, investments and other property subject to the trust.

§ NZ:55 Investment advisers and brokers

On September 29, 2008, the New Zealand Government introduced a new regulatory regime for financial advisers and brokers in the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP Act) and the Financial Advisers Act 2008 (FA Act). This legislation was dramatically re-designed from 2008 to mid-2010 and did not come fully into effect until July 2011: see Gordon Walker and Alma Pekmezovic, *Financial Adviser and Broker Regulation in New Zealand* (Auckland: CCH New Zealand Limited, 2010), and V Stace, *Securities Law in New Zealand* (LexisNexis New Zealand Ltd, 2010), Ch 25.

The regime is avowedly consumer protection legislation that brings with it a set of extensive compliance burdens for participants. For example, part of the compliance burden involves the acquisition of the minimum standards of competence, knowledge and skills required to provide financial adviser services.

A major overhaul of this law took effect in 2021. The Financial Services Legislation Amendment Act Commencement Order 2019 provided for a revised financial advice regime being introduced under the Financial Services Legislation Amendment Act 2019 to commence in March 2021. From that date, the remaining provisions of the Financial Services Legislation Amendment Act 2019 (FSLA Act) come into force. The FSLA Act also amended the FSP Act.

As of 2024, the position is as follows: the Financial Advisers Act 2008 is repealed but an amended FSP Act remains in force. The regulation of financial advice now appears in Part 6 of the FMC Act in new Subpart 5A and Subpart 5B. In addition, Subpart 6 contains a new s 432A providing the meaning of a discretionary investment management service.

New Part 6, Subpart 5A commences with s 431A which gives an overview of financial advice and financial advice services. Subsequent sections flesh out the overview. Thus, s 431C gives the meaning of the term "financial advice" and the term "regulated financial advice." Duties are imposed on persons who give regulated financial advice and breach of those duties may incur civil penalties: *see* s 431H. The key duties are as follows:

- Section 431I: Duty to meet standards of competence, knowledge and skill;
- Section 431J: Duty to ensure client understands nature and scope of advice;
- Section 431K: Duty to give priority to client's interests;
- Section 431L: Duty to exercise care, diligence and skill;
- Sectuin431M: Duty to comply with code of conduct;
- Section 431N: Duty relating to offer that contravenes Act or regulation; and
- Section 431O: Duty to make prescribed information available.

In Armitage v. Church, HC Wellington 27 May 2011, CIV-2009-485-1952, the plaintiff, Mr Armitage, brought an action on his own behalf and that of his family trust, against Mrs Church, a financial planner, and the company via which she provided relevant financial planning services, Moneyworks Limited (Moneyworks), in respect of losses from unsuccessful investments recommended by Mrs Church. Mr Armitage alleged that Mrs Church had recommended an inappropriately risky investment strategy and had failed to discharge her duty of care by recommending a narrow range of investment options.

The High Court found that financial advisers owe a duty of care in the provision of financial advice. The nature and extent of that duty of care will depend on the factual circumstances in any particular case. Mrs. Church owed to Mr. Armitage and the trust a duty to adequately assess their needs and ensure that her recommendations matched those needs. The recommended investments involved a lack of spread, an imprudent concentration of investments in finance companies and exacerbated the risks to which Mr. Armitage and the trust were

exposed. Mrs. Church breached the duty to provide competent advice by failing to offer any alternatives that would have created options for less risky investments.

While the investment advice was given with a standard disclaimer, the terms of the disclaimer did not afford any grounds for Mrs. Church to avoid liability. The court noted the existence of pre-existing power imbalances between the parties, and highlighted that it may be inappropriate for a "fiduciary who enjoys the benefit of an imbalance of power to exert that power over the beneficiary in order to avoid fundamental duties."

Although the financial advisory services provided to Mr Armitage were provided in the name of Moneyworks, the court imposed personal liability on Mrs Church, stating that she "was the principal point of contact, and it was the essence of a personal relationship between adviser and client. It must have been her, rather than any other personal manifestation of the second defendant, who ought to have appreciated the reliance Mr Armitage placed on the expertise being applied for his benefit, and that expertise was essentially personal to her."

Publicly accessible registers and investor protection

The Financial Services Providers (Registration and Dispute Resolution) Act 2008 (FSP Act) established a registration system for financial service providers. The register is operated by the Companies Office. During the first reading of the FSP Bill, the Minister of Commerce, the Hon Lianne Dalziel stated:

> The new registration system will identify for the first time all entities providing financial services in the New Zealand market . . . This will assist all relevant regulatory authorities to both monitor and enforce the law and enable sectoral data to be collected. It will allow more effective monitoring and evaluation of financial service providers . . . The establishment of such a register will provide easy access to information about financial service providers. Having a register will enable New Zealand to meet specific anti-money laundering obligations under The Financial Action Task Force . . . and it will ensure that the controlling owners, directors, and senior managers of financial service providers do not have certain criminal convictions, are not bankrupt, and are not the subject of a management ban under companies, securities, or consumer legislation.

This statement indicates that the registration system is not a consumer protection mechanism per se; rather it is an information gathering tool. Nonetheless, there is a persistent view that the registration system promotes investor protection. During the first reading of the FSP Bill on 11 December 2007, one Member of Parliament appeared to consider that the public register would be utilised to good effect by investors. Martin Gallagher MP stated:

> The register will provide easy access to information about financial service providers to investors and institutions who seek to utilise them . . . At present it can be very costly for investors who seek information on

> the products provided by the various financial service providers. This bill will allow investors to be well informed in their investment decisions. It does not matter whether one is a large investor or a small investor; that is obviously a very, very important thing.

This is debatable. The registration system itself will not enable well-informed investment decisions. To be sure, a search of the register will enable viewers to distinguish between registered providers and authorized or licensed providers: see s 27 FSP Act. In the case of registered banks, there is no doubt that public access to the register of banks serves a useful function for some users. Equally, however, it is unlikely that average members of the New Zealand public check on the status of entities describing themselves as "banks" by using the register. The same point could be made in relation to the register of financial service providers under the FSP Act.

Class Exemption for Australian financial service providers

The FMA has granted a class exemption from key provisions of the FA Act and the FSP Act for Australian regulated firms to enable them to continue providing financial adviser services for New Zealand based clients: see *Financial Advisers (Australian Licensees) Exemption Amendment Notice 2018*.

Australian financial service providers can take advantage of the exemption provided they meet the following criteria:

- they must hold a current Australian financial services license from the Australian Securities and Investments Commission (ASIC) enabling them to provide services to retail clients in Australia;
- they provide personalized services to "retail clients" in New Zealand;
- they must not have a place of business in New Zealand;
- they must provide the services from a place of business in Australia; and
- they notify the FMA of their intention to rely on the exemption, providing the FMA with a list of New Zealand based clients and details of specified representatives who will be providing the services in New Zealand on their behalf.

The New Zealand retail client list should include the retail clients who are existing clients of the Australian licensee and who will be treated as clients within the definition of Australian personalized services for a retail client.

Clause 6 of the *Financial Advisers (Australian Licensees) Exemption Amendment Notice 2018* sets out other conditions. It requires the Australian firm to be a registered financial services provider on the FSPR, and be a member of an approved dispute resolution scheme in New Zealand. Specified representatives in Australia must be adequately trained and competent to provide personalized services to retail clients. Further, New Zealand clients must be informed that the Australian firm and its representatives are regulated by ASIC under Australian laws and exempt from some key requirements under the FSP

Act and FA Acts. The firms must ensure that their New Zealand clients receive the same disclosure as Australian clients. There is also an obligation to notify the FMA of any material enforcement action or disciplinary action taken by ASIC or any other overseas regulatory authority against the firm or its representatives.

Compulsory registration system for financial service providers

The FSP Act established a *compulsory registration system* for *financial service providers*. The term, "financial service providers" is defined in s 4 of the FSP Act. It is an "umbrella" term for various types of industry participants of which financial advisers are perhaps the most important sub-category. Certain persons are excluded from the operation of the FSP Act. Generally speaking, lawyers, accountants and real estate agents are excluded as persons who are not in the business of providing financial advice; *see* s 7.

Purpose of the registration system

The purpose of the registration system is stated in s 9 of the FSP Act. In summary, s 9 states that the purpose of the FSP Act is to:

- establish a compulsory public register to enable the public to access information about financial service providers and to enable the Registrar and other regulators to regulate them
- prohibit certain people (i.e. those with criminal convictions) from being involved in management or direction of registered financial service providers, and
- conform to New Zealand's obligations under the Financial Action Task Force Recommendations on Money Laundering.

The Register of Financial Services Providers

All financial service providers must be formally registered under the FSP Act. The register is maintained by the Registrar of Financial Service Providers who is the Registrar of Companies.

The relevant regulations are the Financial Service Providers (Registration) Regulations 2010 amended. The Register of Financial Service Providers (FSPR) went live on 16 August 2010.

Exemptions

Some entities are exempt from the application of the FSP Act pursuant to the Financial Service Providers (Exemptions) Regulations 2010 (in effect on 22 November 2010).

Normally, registration under the FSP Act will be the first step taken by individuals and entities seeking to comply with the new regulatory scheme.

Qualifications required for registration as a financial service provider

The FSP Act sets out the *qualifications required for registration*: ss 13 to 14. To qualify for registration a person must not be disqualified

under s 14 (for example, disqualified for having a criminal conviction), be a member of a dispute resolution scheme and, where required, be a "licensed provider": s 13. Disqualified persons include undischarged bankrupts, persons subject to management banning orders and persons convicted of certain offences under the Crimes Act 1961: s 14.

The qualifications for registration under the FSP Act are minimal. No formal training requirements whatsoever are required of the applicant. Essentially then, all the fact of registration tells us is that the registered person is not an undischarged bankrupt and has not been convicted of an offence within the last five years. The register will also disclose whether or not a registered person is a licensed provider: s 27 FSP Act.

Applications for registration

Applications for registration are made to the Registrar of Financial Service Providers who is the Registrar of Companies: s 15. As stated, the information required is minimal. Significantly, s 16 says that if the Registrar accepts that an applicant is qualified to be registered, he must enter the applicant's name on the register. Having regard to the terms of s 13 (qualifications for registration), it is plain that an applicant will be registered so long as the s 13 criteria are met.

Public access to the register

The register is available for access and searching by members of the public: s 25. Section 26 of the FSP Act states that the purposes of the register include enabling the public to identify registered financial service providers and access information about them. Data sharing from the register (e.g., with the New Zealand Police) is permitted; *see* s 34.

Dispute resolution scheme

A key requirement of the FSP Act is that financial service providers are members of an *approved dispute resolution scheme* or the *reserve* or *default dispute resolution scheme* (as described in s 48 of the FSP Act). Membership of an approved dispute resolution scheme is one qualifying criterion for registration: s 13(b).

Enforcement

The FSP Act imposes obligations on industry participants such as the obligation to register under the FSP Act. Those obligations are backed up by criminal sanctions enforced by the Registrar. As stated, a key obligation is that the financial service provider be a member of an approved dispute resolution scheme or the reserve scheme. The intention of the legislation is that all disputes involving "retail clients" will be resolved exclusively by reference to the dispute resolution scheme: s 63(g) FSP Act.

The Registrar is granted inspection powers under s 37 and it is an offence to obstruct or hinder the exercise of the Registrar's inspection powers. Failure to comply with these inspection powers is also a crim-

inal offence. Where an entity that is a financial service provider commits an offence, every director who knowingly authorizes or knowingly fails to prevent the offence commits an offence: s 40. False or misleading representations by a person in any documents or information required by the Act are subject to criminal sanction: s 41. In this regard, note also that the FMA has enhanced powers under the FMA Act.

§ NZ:56 Broker-dealers or entities authorized to trade in securities

Sharebrokers are now regulated by the legislation discussed above.

§ NZ:57 Civil and criminal liability—Criminal liability—Liability for misstatements

Section 82 of the FMC Act contains a prohibition on misleading statements, omissions and new matters requiring disclosure in a regulated offer. Contravention of the section is a criminal offence: see s 510 of the FMC Act. A general offence for false and misleading statements appears in s 512.

§ NZ:58 Civil and criminal liability—Indemnities or insurance

Part 8, Subpart 8 of the FMC Act has provisions dealing with indemnities and insurance. Sections 526-530 are the operative provisions. Section 526 contains a general prohibition against indemnification in respect of liability in connection with conduct regulated by the financial markets legislation. There are certain permitted exceptions.

§ NZ:59 Civil and criminal liability—Civil liability for insider conduct

Civil liability for insider trading is discussed above.

§ NZ:60 Civil and criminal liability—Civil liability for breach of continuous disclosure provisions

Part 8, Subpart 3 of the FMC Act provides a civil remedy for breach of the continuous disclosure provisions: see s 485 (d).

§ NZ:61 Civil and criminal liability—Civil liability of substantial product holder for failure to notify relevant interest

This area of law is covered by Part 5, Subpart 5 of the FMC Act. Apart from a change in some of the terminology, the legislation is identical to that under the SMA. This means that the earlier case-law remains relevant: see below.

The purpose of this subpart is stated in section 273. It states that

the purpose of the subpart is, "to promote an informed market, and to deter insider conduct, market manipulation, and secret dealings in potential takeover bids, by ensuring that participants in financial product markets have access to information concerning the identity and trading activities of persons who are or may at any time be, entitled to control or influence the exercise of significant voting rights in a listed issuer".

Under s 274 of the FMC Act, a person who is a "substantial product holder" (generally speaking a five percent or greater shareholding) in a listed New Zealand issuer must disclose certain information to the company and to the NZX. The main features of the New Zealand regime are:

- A "substantial security holder" is defined in s 274 in relation to a listed issuer as a person who has a "substantial holding" in a listed issuer. A person has a substantial holding in a public issuer for the purposes of the Act if the person has a relevant interest in quoted voting products that comprise five percent or more of a class of quoted voting securities of the listed issuer. The term "relevant interest" is very widely defined in ss 235-238 so as to catch any type of legal or beneficial ownership as well as, for example, the power to control the exercise of any voting right. A person who has power over voting rights attached to shares, or over disposal of the shares, has a relevant interest in the shares regardless of whether or not the person is the registered owner of the shares. Once a person has a substantial holding in a listed issuer, disclosure must be made to the listed issuer and the licensed market operator: see ss 280-282.
- Once a person is above the 5 percent threshold, the person must disclose again if their holding goes up or down by a whole percentage point or more: s 277.
- The information that must be disclosed to the listed issuer and the licensed market operator is described in section 281 and includes details of the nature of the relevant interest.
- Disclosure must be made as soon as the person knows or ought to know that the person has a substantial holding in the listed issuer: s 276 (2).

Sections 289 and 290-291 of the FMC Act give the FMA and listed issuers the power to send out notices (called "tracing notices") requiring a member of a listed company to provide details about their own relevant interest in the company's shares and the relevant interest of other persons in those shares. This enables a listed issuer to discover who controls the voting rights attached to shares registered in the name of nominees. It also assists in the proper functioning of the takeover provisions. For example, somebody may be secretly assembling a stake of just below 5 percent in a listed company, through several nominees, before making a takeover bid. As their stake is below 5 percent, the substantial security holder provisions do not apply.

Civil liability orders under Part 8, Subpart 3 may be made in rela-

tion to breaches of the substantial product holder regime: see s 485 (d). The types of orders that may be made are listed in s 484.

The dominant purpose of the law on substantial security holder disclosure is to further a key goal of securities regulation; timely and fair information disclosure to all investors in order to ensure market integrity and address the problem of "information asymmetry": see s 274 for a statement of the purpose of the subpart. Information asymmetry in securities markets refers to the situation where select market participants—usually by virtue of their relationship to a company—possess significant information that is not available to the market at large. The presence of information asymmetries has significant implications for market efficiency. A central tenet of the Efficient Capital Market Hypothesis (ECMH) is that an efficient market will accurately reflect all publicly available information about securities in the price of those securities. Where information asymmetries exist, a privileged few may exploit significant information (not yet available to the market as a whole) for personal gain. Ideally, however, all participants in a public securities market should have equal access to information relevant to market decisions: the so-called "fairness" rationale. In order to achieve fair disclosure of significant information such information must be in the public domain. The former NZSC stated:

> A marketplace is full of rumours, and nothing will change it. It is the testing of judgment against events that provides much of the interest in share market operations. Yet the market must operate upon the basis of information, and there is no doubt that there is a core of information about any security that ought to be public knowledge.[1]

The identity of substantial security holders may be a significant factor in the price and value of listed securities. Substantial security holders are in a position to exercise voting or other control rights and their presence or absence on a share register will affect the investment decisions of investors. The activities of controlling shareholders can precipitate major market activity. If substantial security holder transactions take place without the disclosure of that information to the market, market efficiency is impaired. Disclosure enables the market to respond rapidly to new information thereby ameliorating the price effect of significant information.

Substantial security holder disclosure is regarded as an important element of a liquid securities market and is a requirement in most major international markets. The disclosure threshold varies from country to country—for example, it is 3 percent in the United Kingdom and 5 percent in the United States and Australia. The Australian provisions are very similar to the New Zealand regime. Since New

---

[Section NZ:61]

[1]New Zealand Securities Commission, *Nominee Shareholdings in Public Companies: A Review of the Law and Practice with a Proposal for Reform* (1981), 16. 2.3.

Zealand and Australia seek business law co-ordination and because New Zealand is actively following Australian law in the area of securities regulation it is useful to outline the cognate Australian provisions.

§ NZ:62 The cognate Australian provisions

In Australia, substantial security holder disclosure is regulated by Chapter 6C of Corporations Act 2001 entitled "Information about Ownership of Listed Companies and Managed Investment Schemes" which incorporates amendments from the latest round of CLERP reforms.[1] The recently revised Australian Securities and Investment Commission (ASIC) policy statement on substantial holdings, Policy Statement 159: *Takeovers, Compulsory Acquisitions and Substantial Holding Notices*,[2] discusses these changes and provides additional explanation of the key prohibition contained in section 671B using recent case law.[3] The general purpose of substantial security holder disclosure in Australia is stated as being "to maintain an informed market in quoted securities".[4] Australian courts have affirmed this rationale as the primary purpose of the law: Re North Broken Hill Holdings Ltd (1986) 10 ACLR 270 at 282, 283; Australian Securities Commission v. Bank Leumi Le-Israel (Switzerland) (1996) 69 FCR 531; New Ashwick Pty Ltd v. Westfarmers Ltd (2000) 35 ACSR 263. The following passage from the judgment in Brunswick NL v. Blossomtree Pty Ltd states the rationale for substantial security holder disclosure in Australian law:

> It is in the interests of shareholders, current as well as past, to have information as to the real owners of shares which may influence the future of the company and their future as shareholders and which indeed might impact upon the management and control of the company. It is also in the market interest to know those matters and whether or not any such shares were acquired illegally.[5]

More specifically, the disclosure requirements aim to facilitate access to information regarding:

[Section NZ:62]

[1]Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004 (CLERP 9). The CLERP 9 changes bolstered tracing procedures under Part 6C.2 of the Corporations Act, 2001 by introducing a register of information about relevant interest in a listed company or listed management scheme to be kept by that entity: s 672DA. The details to be included in the register, its location, availability and duplication procedures are dealt with in s 672A.

[2]Policy Statement 159 is available at the ASIC website: http://www.asic.gov.au/asic/asic.nsf/lkuppdf/ASIC+PDFW?opendocument&key===ps159_pdf.

[3]The revised policy was released on 18 November 2004, and now incorporates the substantial holdings policy. The policy replaces Policy Statement 110: *Substantial Shareholding Notices;* Interim Policy Statement 109: *Substantial Shareholder Notices* and Practice Note 26: *Takeovers: Offerors and Substantial* Shareholders.

[4]Policy Statement 159.271.

[5](1992) 10 ACLC 658 at 667.

(a) who the controllers of substantial blocks are;
(b) who the associates of substantial holders are;
(c) details of any consideration or special benefits a person received for disposing of their relevant interest; and
(d) details of any agreements or special condition or restrictions that may affect the disposal of shares or the way in which they are voted.[6]

Pursuant to section 671B(1) of the Corporations Act, a person must provide a substantial holding notice if they:
(a) begin to have or cease to have a substantial holding in the body; or
(b) have a substantial holding in the body and there is a movement of at least 1 percent in their holding; or
(c) make a takeover bid for securities of the company or scheme.

A person is deemed to have a "substantial holding" if they or their associates have a relevant interest in five percent or more of the voting shares of the body; *see* s 9. A person has a relevant interest in securities if they:
(a) are the holder of the securities; or
(b) have power to exercise, or control the exercise of, a right to vote attached to the securities; or
(c) have power to dispose of or control the exercise of a power to dispose of, the securities: s 608.

The substantial shareholder must disclose details of their relevant interest and any relevant agreement and the nature of any association and the associate's interest: s 671B (3). This requirement is predicated on full disclosure rather than minimum or technical disclosure. For example, a party must disclose movements in each direction and not merely net movements in substantial holdings.[7] The relevant transaction should be described in clear commercial and legal terms[8] such that the nature of the substantial holding or the change in the holding is apparent to other investors.[9]

Disclosure must be made within two business days (or by 9.30 a.m. next trading day during a takeover bid) after the party has become aware of the information; s 671B (6). This deadline is designed "to compel, in fast-moving markets, the immediate disclosure of the identity of the persons who become substantial security holders".[10] Disclosure must be made "whether or not they have completed a larger investment move or unwound their investment position within that

[6]Policy Statement 159.269.

[7]Policy Statement 159.263.

[8]Policy Statement 159.262.

[9]Policy Statement 159.274.

[10]Meridian Global Funds Management Asia Ltd v. Securities Commission [1995] 2 AC 500,511. See also Policy Statement 159.272.

time", notwithstanding that the situation may have changed by the time disclosure is due.[11]

The substantial security holder disclosure requirements have not been extensively litigated in Australia. This is noteworthy given the number of cases which the cognate New Zealand provisions have spawned. A possible explanation is the Australian Investment and Securities Commission's (ASIC) propensity for pursuing actions under s 606 appearing in Chapter 6 (entitled "Takeovers") of the Corporations Act, 2001 (acquisitions contravening the 20 percent threshold), thus prioritizing contraventions that result in a change of control in a company. (As with the substantial shareholding disclosure provisions, s 606 is concerned with the acquisition of relevant interests, but only if share acquisition leads to an accumulation of voting power beyond permitted levels.) One of few relevant cases to go before an Australian court, ASIC v. Terra Industries Inc, involved a failure on the part of the defendant to lodge substantial shareholder notices within two business days of acquiring a relevant interest in more than 5 percent of the company's shares.[12] Merkel J held that Terra Industries' contraventions were "willful, contumelious and . . . led to a seriously uninformed and misinformed market".[13] Terra Industries was deprived of its disposal rights and its shares vested in ASIC for the purpose of sale.

§ NZ:63 Civil and criminal liability—History of the New Zealand provisions on substantial product holder disclosure

Prior to the introduction of the Securities Amendment Act 1988 in New Zealand, there was no means of ascertaining the identity and interests of substantial security holders (or their nominees) in public companies. As early as 1981, the New Zealand Securities Commission highlighted the need for reform in a report entitled *Nominee Shareholdings in Public Companies: A Review of the Law and Practice with a Proposal for Reform* (hereafter NZSC report). The NZSC report focused on takeover activity in New Zealand and overseas. Such activity had been referred to as "takeover by stealth", "takeover by inches" and "acquisition by ambush".[1] The NZSC report foreshadowed the development of an "informal and off the record market in substantial shareholdings" as well as practices designed to "conceal transactions and interests which the principals do not wish to expose."[2] As a remedy, the NZSC report proposed that a substantial security holder disclosure regime be introduced. Though ultimately providing the

---

[11]Policy Statement 159.264 & 159.279.

[12]ASIC v. Terra Industries Inc (1999) 31 ACSR 186.

[13]ASIC v. Terra Industries Inc (1999) 31 ACSR 186, 208.

[Section NZ:63]

[1]New Zealand Securities Commission Report, above at para. 3.7.

[2]New Zealand Securities Commission Report, above at para. 10.12 & 3.2.

policy basis for the substantial security holder disclosure regime, these recommendations languished for many years before being incorporated into the Securities Amendment Act 1988 (SAA).

The impetus for the introduction of a substantial security holder disclosure regime next arose out of "concern at so-called nefarious activities through nominees in the share market prior to the crash in October 1987".[3] However, substantial security holder disclosure quickly assumed a secondary importance. When the SAA was first introduced into Parliament in July 1988, nearly all attention was focused upon the insider trading provisions under Part I. There was little comment on the provisions in Part II which dealt with the disclosure of interests of substantial security holders.[4] In 2000, the New Zealand Government embarked on a broad programme of reforms aimed at strengthening the regulatory framework of the securities market. Despite anecdotal evidence of concerns about the effectiveness of the disclosure regime, the law directly relating to substantial security disclosure remained unchanged.

The issue of substantial shareholder disclosure assumed greater prominence in 2003 when two significant cases reached the Court of Appeal. These cases arose in the context of takeovers and highlighted a number of difficulties in the legislation. The first case, Ithaca (Custodians) Ltd v. Perry Corporation (hereafter, Ithaca), examined the meaning of 'arrangement or understanding' and the standard of proof for determining whether relevant interests exist.[5] The second case, Richmond Ltd v. PPCS Ltd (hereafter, Richmond), concerned the nature and purpose of orders that can be made against a party in default.[6] These cases are reviewed later in this section.

The key question in determining whether or not a person is a substantial product holder is whether that person holds a "relevant interest" in a threshold stake. The substantial product holder regime will apply to any person whose interest exceeds this threshold.

§ NZ:64 Civil and criminal liability—Meaning of "relevant interest"

The term "relevant interest" is broadly defined and may arise in a variety of situations. The new definitions are contained in ss 235-238 of the FMC Act.

Describing the former section 5 of the SMA, Fisher J noted in Mercury Energy Ltd v. Utilicorp N.Z. Ltd & Power New Zealand Ltd. (Mercury Energy), that s. 5 broadly encompassed three categories of

---

[3]*Brook Investment Ltd (in vol liq) v. Paladin Ltd* (21 October 1989) High Court Auckland M1581/89, per Sinclair J.

[4]NZPD Vol 490, 1988, 5280-5284. See also http://www.clerk.parliament.gov.nz/hansard/Hansard.aspx.

[5]Ithaca (Custodians) Ltd v. Perry Corporation [2004] 1 NZLR 731.

[6]Richmond Ltd v. PPCS Ltd [2004] 1 NZLR 256.

relevant interest: beneficial ownership, presently existing powers, and arrangements which may give rise to powers in the future".[1]

The need for such an extensive provision results from the nature of voting securities and the ingenuity of the legal mind. Shares confer a bundle of rights including the right to vote, the right to dividends, and the right to share in any available surplus upon the winding up of a company. These rights can be dealt with individually and assigned outright to other persons as can other property right. Alternatively, the benefit of the exercise of these rights (particularly the right to vote) can be transferred (for example, for a particular occasion such as a general meeting or for a period of time) while the legal title and other rights are retained. In the context of voting rights, this can be achieved by granting a proxy to a person which is open-ended and allows that person to vote as they think fit at a general meeting. Alternatively, it can be achieved by a shareholder entering into an agreement with another party to attend and vote at a meeting as directed to by that party. The ability to obtain control of shares and particularly the right to vote (without the need to obtain a beneficial interest in the shares) requires that the provisions be widely drafted.

In most cases, whether a person has acquired a "relevant interest" is easily established. For example, in Securities Commission v. Re Jones,[2] Sir Robert Jones sold shares in Robert Jones Investments Ltd (RJI) but failed to give the appropriate notice. It was clear that Sir Robert was beneficial owner of the shares. Brook Investments Ltd v. Paladin Ltd[3] and Securities Commission v. Honor Friend Investment Ltd[4] involved overseas parties acquiring shares in New Zealand listed companies. In each case, it was clear that beneficial ownership had been transferred. The relevant issue was the failure of the new owners to disclose their acquisition.

The expansive reach of the former Part II was confirmed by the inclusion in section 5(1) (f) of the terms "arrangement" or "understanding". These terms appeared in s 5A of the SMA. These terms were not defined in the SMA, however, they will be familiar to those involved in competition law, and arise in a number of sections of the Commerce Act 1986, particularly s 27. As a result of their inclusion, it was possible that dealings between parties which result in a meeting of minds, but which are not a contract, could create a relevant interest if they confer on one party "power" or "power to control" voting securities.

[Section NZ:64]

[1]Mercury Energy Ltd v. Utilicorp N.Z. Ltd & Power New Zealand Ltd. (Mercury Energy) [1997] 1 NZLR 492, 501.

[2]Securities Commission v. Re Jones (1993) 6 NZCLC 68,547.

[3]High Court, Auckland, 21 October 1989, M 1581/89, Sinclair J.

[4]Securities Commission v. Honor Friend Investment Ltd (1991) 5 NZCLC 67,512.

§ NZ:65 Civil and criminal liability—The *Ithaca* litigation

As noted earlier, the meaning of the terms "arrangement" and "understanding" in the context of former section 5(1) (f) of the SMA was discussed in *Ithaca (Custodians) Ltd v. Perry Corporation (Ithaca)*.[1] Ithaca involved allegations of a failure to give notice of a relevant interest by Perry Corporation, a United States-based fund-manager. In April 2001, Perry Corporation held shares (amounting to 10.81 percent) in the listed company Rubicon Ltd. In May 2001, Perry Corporation sold 14 million of these shares to Deutsche Bank and 17 million shares to UBS Warburg. These sales were matched by sophisticated equity swap transactions (governed by master agreements) with the two institutions.[2] While the terms of the agreement provided for a termination date, the nature of the situation was such that the shares would be available for repurchase on demand. Perry Corporation subsequently made further purchases of Rubicon shares which were on-sold to Deutsche Bank on similar terms to those above. In September 2001, the equity swaps transactions were partially unwound. This enabled Perry Corporation to participate in a Rubicon buy-back, after which time it set about re-establishing its shareholding.

In June 2002, Guinness Peat Group plc (GPG) began purchasing shares in Rubicon with a view to assembling a holding of just under 20 percent (to avoid the takeover threshold). GPG acquired a 19.87 percent stake in the company and filed notice accordingly. It soon became apparent that GPG and Perry Corporation were strategically (if not philosophically) incompatible. In particular, the two were at odds over the future of Rubicon Forest Holdings Ltd, a Rubicon subsidiary. In July 2002, all the equity swaps were unwound and cash settled. Perry Corporation was consequently entitled to vote on those securities at Rubicon's first annual meeting. In all, Perry Corporation filed substantial shareholder notices on three occasions. Disclosure was not made in respect of the shares held by Deutsche Bank and UBS Warburg as a hedge for the equity swaps. On this basis GPG instituted proceedings against Perry Corporation.[3]

The High Court held that entry into the equity swaps did not give

---

[Section NZ:65]

[1]Ithaca (Custodians) Ltd v. Perry Corporation (Ithaca) [2004] 1 NZLR 731.

[2]For an expert description of the type of transaction involved, see Gooch and Klein, *Documentation for Derivatives*, 4th ed., Vol. 1 (Euromoney Books). Use of equity swaps in this context is not confined to New Zealand. There have been recent instances in the UK and Australia. For the UK, see The Panel on Takeovers and Mergers, Consultation Papers on Dealings in Derivatives and Options (January 2005 and May 2005). For Australia, see Guidance Note 1: *Unacceptable Circumstances* and In the Matter of Austral Coal 02 [2005] ATP 13; In the Matter of Austral Coal 02(R) [2005] ATP 16.

[3]GPG was in fact the second respondent in this case. Ithaca (Custodians) Ltd (the first respondent) is a GPG subsidiary holding GPG's share investments in New Zealand. Rubicon Ltd was the third respondent.

rise to a disclosure obligation per se. Under the circumstances, however, Potter J found that there was an arrangement or understanding pursuant to which Perry Corporation could repurchase the shares which gave rise to an ongoing interest in the shares. On this basis, Potter J concluded that Perry Corporation had breached its disclosure obligations by not disclosing the equity swaps. The following factors were determinative in this regard:

(a) Perry Corporation was confident that the shares would be available for repurchase as required, as were Rubicon and the Deutsche bank.

(b) at all relevant times, Rubicon treated Perry Corporation as being a substantial shareholder.

(c) Both Rubicon and Perry Corporation were concerned about GPG's intentions and wished Perry Corporation to be able to exercise its voting rights as a major shareholder at the annual general meeting.

(d) On both occasions when Perry Corporation needed large parcels of shares, the equity swaps were promptly terminated and the shares repurchased.[4]

Considering the deliberate nature of the non-disclosure (perpetrated by a sophisticated investor); that it lasted over 12 months; related to 36 million shares and the need for deterrence, Potter J ordered the forfeiture of 12 million Rubicon shares and the on-market sale of the remaining 24 million shares.[5]

The New Zealand Court of Appeal set aside the orders made by the High Court. The Court of Appeal ruled that the terms "arrangement" and "understanding" describe something less than a formal contract but more than mutual expectations based on commercial reality. In this case, market reality (in a practical business sense) diminished the necessity for an arrangement or understanding in relation to the reacquisition of the hedge shares. Hence, it was regarded as inherently unlikely that one was entered into. Moreover, the power to control securities must arise by virtue of the arrangement or understanding and not merely as a result of its performance. The Court was satisfied that the pattern of dealings and transactions by Perry Corporation merely reflected market reality and did not give rise to an arrangement or understanding. With respect to section 5(2), the Court ruled there was insufficient evidence to draw the inference that Perry Corporation's equity swap partners were accustomed to act in accordance with its wishes.

---

[4][2004] 1 NZLR 731.

[5]The orders targeted the 36 million voting securities that the equity swaps related to. Perry Corporation was prohibited from exercising voting rights or receiving any payments in relation to the shares pending their sale.

Ithaca demonstrates that sophisticated financial instruments can be used to avoid the substantial shareholder regime.[6] It is submitted that the decision of the Court of Appeal was wrong and that the decision of Potter J in the High Court is to be preferred.[7] The proposed amendments contained in the first version Securities Legislation Bill 2004 were aimed at negating the effect of the Court of Appeal decision. However, in the version of the Bill reported back from the Commerce Committee these amendments were removed.[8]

§ NZ:66 Civil and criminal liability—Meaning of "power" and "power to control" pre-February 2008

The former section 5(1) was considered in relation to claims involving "relevant interests" (other than beneficial ownership) by both the High Court and in a report by the NZSC into the voting securities of Air New Zealand Ltd in 1991. Although the NZSC report has no precedent value, it is one of few times that section 5 has been considered in New Zealand.

Gulf Resources

In NZSC v. Gulf Resources and Chemical Corporation,[1] the NZSC alleged that Gulf Resources (Gulf) had acquired a relevant interest in the voting securities of City Realties Ltd (CRL) yet had failed to disclose this interest as required. In this case, certain persons made representations to Tower Corporation for the purpose of acquiring its shares in CRL allegedly on behalf of other persons. The NZSC alleged that the shares were acquired by a company, Zelas Enterprises Ltd (Zelas), as trustee for Gulf. As a result, Gulf was the beneficial owner of the shares and therefore had a relevant interest in the shares (under section 5(1) (a)). McGechan J determined that the initial moneys advanced to Zelas for the purchase came from one of the persons who had made the original representations to Tower Corpora-

---

[6]For a review of Perry Corp's activities in other jurisdictions, see Henry Hu and Bernard Black, "Hedge Funds, Insiders, and Decoupling of Economic and Voting Ownership in Public Companies" (January 2006). University of Texas School of Law Working Paper No. 53).

[7]The difficulty that disclosure laws have with complex transactions (such as the equity swaps in *Ithaca)* was examined by Professor Steven Schwarcz in "Rethinking the Disclosure Paradigm in a World of Complexity", 1 *U of Illinois LR* 1-37 (2004). The conduct described in the *Ithaca Case* might give rise to "unacceptable circumstances" in a takeover context in Australia. See In the Matter of Austral Coal [2005] ATP 16.

[8]In the Commentary to the Bill as reported back, it was stated that (at page 8): "Extension of the relevant interest definition to include a power or control exercised through a practice was intended to cover a potential gap in the law exposed by recent litigation. However, we consider that the deficiency is fact-specific to that case, and that the proposed solution would create undue uncertainty as to when the substantial security holder disclosure obligation arises."

[Section NZ:66]

[1]NZSC v. Gulf Resources and Chemical Corporation (1990) 5 NZCLC 66,324.

tion, not from Gulf.[2] He also found that a subsequent advance by Gulf to Zelas of $16.7m was in fact a loan. Accordingly, he was satisfied "that no beneficial ownership by Gulf of either Zelas or of Zelas' CRL holding was thereby created".[3]

This was not the end of the matter, however, since four documents were signed in relation to the loan and shares in Zelas and were later issued to Gulf. The four documents comprised a loan agreement between Zelas and Gulf; a debenture over Zelas to Gulf; a mortgage over the Zelas' shares by the shareholders to Gulf; and, "a Deed of Covenant between Mr McGoldrick and Mr Whitaker and Gulf under which to speak very roughly the latter gentlemen *were not to act prejudicially to Gulf*".[4] Gulf only disclosed the loan agreement. The NZSC attacked the omission of the Deed of Covenant as a breach of the Act. McGechan J then found:

> I think the omission of the Deed of Covenant from the notice was technically a failure to notify a relevant interest under sec 5(1) (f) and so under sec 5(2). The Deed's restraint upon prejudicial action carried with it a restraint and *hence control on voting* from at least the time of the Gulf loan to Zelas and contract as represented by the Deed.[5]

While McGechan J did not specify which subparagraph of section 5(1) (f) he was relying upon, it would appear to be subparagraph (ii) which deals with the "*power to control* the exercise of any right to vote attached to the voting security". Ordinarily this would cover a situation where the substantial security holder indicates that a shareholder has to vote for or against a particular resolution. The terms of the Deed of Covenant are not set out in the judgment but it seems that there was no requirement for the covenantees to consult with Gulf prior to voting. McGechan J's view extended the concept of "power to control" to a situation where a shareholder can vote as they wish provided they do not prejudice the other party's interests—in a sense a negative constraint or "control" on the power to vote. This raises the question of whether or not a positive obligation that a shareholder take into account the interests of another when considering how to exercise one's power to vote, without the other party specifying how to vote or actually influencing how a vote is cast, would also constitute a "control" or a "power to control".

In any event, the concept of "power to control" under section 5 (on McGechan J's interpretation) appears to have a very wide ambit. It could be found to arise from something less than an agreement ("an arrangement or understanding"), which may be express or implied

---

[2]NZSC v. Gulf Resources and Chemical Corporation (1990) 5 NZCLC 66,324, 66,333.

[3]NZSC v. Gulf Resources and Chemical Corporation (1990) 5 NZCLC 66,324, 66,334.

[4]NZSC v. Gulf Resources and Chemical Corporation (1990) 5 NZCLC 66,324, 66,334. Emphasis added.

[5]NZSC v. Gulf Resources and Chemical Corporation (1990) 5 NZCLC 66,324, 66,335. Emphasis added.

(section 5(4)(a)), whether or not it is legally enforceable (section 5(4)(c)).

The Air New Zealand Report

The NZSC report pertains to the privatisation of Air New Zealand Ltd (Air NZ) in 1989 and 1990.[6] Qantas and Brierley Investments Ltd (BIL) formed part of a consortium that made a bid for a stake in Air NZ. Part of the arrangements for the consortium included an agreement between Qantas and BIL.

Qantas and BIL's agreement provided for consultation when either party decided to sell its shares.[7] Essentially, notice was given in order that the other party might find a possible purchaser. If the other party found a purchaser at a better price that party was to share in the price obtained that exceeded the original price notified by the offering shareholder. Clause 4(b) provided for the payment of 25 percent of the sale price of any shares sold in the event that either party sold their shares without first advising the other. Clause 4(c) provided for a 5 percent penalty in the event that the shares were sold to a purchaser, who had not been located by the other party, at the same price or on better terms for the purchaser. The agreement did not require that the shares be offered to the other party first, although the other party could obviously have bid for the shares, so that it did not constitute a pre-emptive requirement. In fact, clause 4(d) expressly provided that neither party had "any power to control the disposition of any of the seller's shares" in Air NZ, and that the sole remedy was in damages as measured by the amounts specified in clauses 4(c) or 4(d).

One of the issues that concerned the NZSC was whether some of the provisions of these agreements constituted a constraint "on either party's freedom to dispose of the securities of such as to give rise to a relevant interest in the voting securities of Air New Zealand".[8] The NZSC considered what was meant by "power to control". It accepted the submission of one counsel that "control" should be taken as having its ordinary (dictionary) meaning:

> . . . the fact of controlling, or of checking and directing action; domination, command, sway.[9]

Considering this definition, the NZSC stated:

> Having regard to this ordinary meaning given to the word "control", the statutory expression would cover the circumstances where a person is in

---

[6]NZSC, *Report on Inquiry into the Voting Securities of Air New Zealand Ltd*, October 1991.

[7]NZSC, *Report on Inquiry into the Voting Securities of Air New Zealand Ltd*, October 1991, Appendix D.

[8]NZSC, *Report on Inquiry into the Voting Securities of Air New Zealand Ltd*, October 1991, 22.

[9]NZSC, *Report on Inquiry into the Voting Securities of Air New Zealand Ltd*, October 1991, 23.

> a position *to direct or to exercise a dominating influence* over the acquisition or disposition of a share by another person.[10]

The NZSC then considered decisions pertaining to parallel Australian provisions. In particular, it noted a decision of Beach J in Re Kornblums Furnishings Ltd[11] "that where the practical effect of an agreement to dispose of shares is that any shareholder who was a party to the agreement could restrain any other shareholder from selling his shares on the open market, a relevant interest had been created".[12] In the light of this decision, and taking into account section 5(6) (which provides that a "power" can include a power that arises from breaching a trust, agreement or understanding, whether or not it is legally enforceable) the NZSC formed the view that:

> When proper weight is given to s.5 (6), it follows that a *negative constraint*, although not capable of enforcement by way of injunction, may still constitute the exercise of a power of control. *The existence of an economic power which would effectively constrain a shareholder's freedom of action in the disposition of his shares may constitute a relevant interest for the purposes of the Act*.[13]

The NZSC later appeared to qualify this statement, stating that counsel for the parties had accepted that "where a shareholder was in a position to place a *significant* economic constraint on the freedom which another shareholder would otherwise have to dispose of its shares, this could amount to the exercise of a power to control the disposition of the shares, and so create a relevant interest".[14] Having determined that a (significant) economic power is sufficient, the issue then became whether or not on the facts of this case such a power existed.

Counsel for BIL and Qantas both argued that clauses 4(b) and (c) of the agreement were designed to encourage compliance and that "the requirement to consult and the financial mechanisms in the agreements [did] not create or permit the exercise the of a degree of control sufficient to oblige or coerce a party to act in a certain manner", rather they were incentives or inducements.[15] Counsel relied upon Australian High Court dicta that "a power on a person to provide shareholders with an incentive or inducement to exercise their voting power as that person may wish is not aptly described as making the company

---

[10]NZSC, *Report on Inquiry into the Voting Securities of Air New Zealand Ltd*, October 1991, 23. Emphasis added.

[11]Re Kornblums Furnishings Ltd [1982] VR 123.

[12]NZSC, *Report on Inquiry into the Voting Securities of Air New Zealand Ltd,* October 1991, 24.

[13]NZSC, *Report on Inquiry into the Voting Securities of Air New Zealand Ltd,* October 1991, 24. Emphasis added.

[14]NZSC, *Report on Inquiry into the Voting Securities of Air New Zealand Ltd,* October 1991, 25. Emphasis added.

[15]NZSC, *Report on Inquiry into the Voting Securities of Air New Zealand Ltd,* October 1991, 26.

capable of being controlled by that person".[16] The NZSC was unwilling to accept these dicta outright, saying that "it is a matter of degree, and it may be necessary to determine at what point a mere inducement or incentive becomes sufficiently powerful to constitute an effective constraint which directs a party towards a desired course of action".[17] After analysing the clauses the NZSC held that they were not an effective economic constraint on either party. The NZSC also stated that it gave little weight to clause 4(d) as it took the view that it was necessary to look at the agreement as a whole, and that such a declaration would not have any effect if there were provisions that did confer control over the disposition of shares.

The NZSC clearly viewed the expression "power to control" as having a wide ambit. Economic incentives have the potential to come within this term and hence create a relevant interest. If clauses 4(b) or 4(c) had provided for a 100 percent penalty for the failure to comply or had provided that the seller had to give six to twelve months' notice then it is possible that the NZSC would have viewed these provisions as conferring a "significant economic constraint". However, it should be remembered that "economic power" does not need to refer directly to the disposition of shares as happened in this case. It is possible to imagine two parties which have a commercial relationship (such as supplier and purchaser of manufactured goods or financial services) where the supplier is able to use its economic power, arising from the commercial relationship, to "oblige or coerce" the purchaser into dealing with the shares in a way that is desired by the supplier. The provision of goods or services at a favorable rate or the threat to remove supply or only to supply at unfavorable rates may be sufficient. As only an "arrangement or understanding" is needed and the arrangement can be indirect or even unenforceable it is possible that a "relevant interest" could arise in such a situation.

Mercury Energy Case

This case arose out of a long running takeover battle for the control of Power NZ Ltd between Mercury Energy Ltd (Mercury) and Power NZ Ltd (Power NZ) and Utilicorp NZ Ltd (Utilicorp). The takeover battle spawned a significant amount of litigation as each side attempted to use various actions to slow down or gain an advantage over the other side. Previous actions included an unsuccessful claim by Power NZ alleging the takeover offer by Mercury was in breach of the Fair Trading Act 1986 and the Companies Amendment Act 1963,[18] and a further unsuccessful claim that the proposed merger would breach the Commerce Act 1986.[19] Mercury too pursued its share of unsuccessful claims, including an injunction to restrain Power NZ

[16]WP Keighery Pty Ltd v. FCT (1956) 100 CLR 66, 86.

[17]NZSC, *Report on Inquiry into the Voting Securities of Air New Zealand Ltd*, October 1991, 26.

[18]Power NZ Ltd v. Mercury Energy Ltd (1995) 7 NZCLC 260,631.

[19]Power New Zealand Ltd v. Mercury Energy Ltd [1996] 1 NZLR 686, which

acquiring shares in Waikato Energy Ltd.[20] Subsequent litigation between the parties, Mercury Energy Ltd v. Utilicorp N.Z. Ltd & Power New Zealand Ltd,[21] involved an allegation that Utilicorp failed to give the appropriate notice under Part II of the SMA. Like the *Air NZ* case referred to above, this case involved analysis of a written agreement. The critical issue was whether or not a put option or pre-emptive agreement came within the terms of section 5, so as to confer a relevant interest on Utilicorp.

In December 1995, in the midst of the takeover battle between Mercury and Utilicorp, Utilicorp entered into an oral agreement with three local councils who held shares in Power NZ. The local councils granted a put option to Utilicorp and a right of first refusal in the event that the councils wished to sell their shares. At the time Utilicorp failed to notify this agreement under Part II of the SMA. In early July 1996 Mercury became aware of the agreement (when a fax was sent to the home of one of Mercury's officers containing some of the local councils' confidential documents). In late July, under threat of litigation by Mercury, Utilicorp gave notice of its interests pursuant to the agreement. The notice made it clear that the effect of the agreement was to raise Utilicorp's relevant interests (taking into account its interest in WEL Energy Group Ltd which was a shareholder of Power NZ) from 35 to 42.76 percent.

Mercury then commenced an action claiming that Utilicorp had breached Part II. Though conceding it was engaging in the proceedings to "assist in its take-over battle", Mercury argued that the orders it was seeking (including suspension of Utilicorp's voting rights; forfeiture or disposal of its shares; forfeiture of its dividends and/or restraints upon share transactions to which it might be a party the forfeiture of Utilicorp's shares) were in the "wider public interest".[22]

Fisher J considered whether the put option or the right of first refusal conferred a relevant interest on Utilicorp. He noted that the option did not impose an obligation on the local councils to sell, nor to sell at a particular price, or even to sell to Utilicorp. Utilicorp did gain a potential right to insist upon a sale but this was subject to the fundamental condition that the local council's wished to sell their shares. Fisher J found that neither provision conferred beneficial ownership nor did it give Utilicorp any existing powers. The issue then became whether it created a power which arose in the future.

Fisher J held that the relevant provision to examine was section 5(1) (f) (iii) (which deals with a person who may have the power to dispose or acquire shares at any time). He thought that section 5(1)

---

went on appeal to the Court of Appeal—see Power New Zealand Ltd v. Mercury Energy Ltd (1996) 7 TCLR 47.

[20]Mercury Energy Ltd v. Power New Zealand Ltd (1995) 7 NZCLC 260,818.

[21]Mercury Energy Ltd v. Utilicorp N.Z. Ltd & Power New Zealand Ltd [1997] 1 NZLR 492.

[22]Mercury Energy Ltd v. Utilicorp N.Z. Ltd & Power New Zealand Ltd [1997] 1 NZLR 492.

(d) (which deals with a person having the power to acquire or dispose of the voting security) could be of potential relevance when combined with section 5(4). The latter provides, among other things, that the power can exercisable presently or in the future (s 5(4) (f)) and only on fulfillment of a condition (s 5(4) (g)). Fisher J was inclined to think that the reference to condition in section 5(4) (g) "was intended to refer to an event beyond the control of the contracting parties, thereby excluding put options and rights of first refusal". Why Fisher J came to this conclusion is not clear as there is nothing in the subparagraph that would appear to support this view.

The elements of section 5(1)(f)(iii) that Fisher J considered in greater depth were the meaning of the term "power", and the significance of the phrase "may at any time". In considering the term "power" Fisher J found:

> I agree with Mr Craddock that in this context "power" is concerned with the ability to do something, that the ability to bring about the effect required must lie within one's own hands and not those of another, and that a notion of domination or command is involved. None of those facilities necessarily exists at the time that a right of first refusal is conferred but of course s 5(1) (f) (iii) does not demand the existence of the power from the beginning. Nor is it necessary to postulate that the power will necessarily ever arise in the future. It is sufficient if at the time of the agreement one can say that the grantee "may at any time" have such power. And of course the possibility that the power may only arise in the future, and be exercisable only on fulfillment of conditions, is expressly provided in s 5(4) (f) and (g).[23]

Fisher J's view that "power" involves the notion of domination or command is similar to that of the NZSC in the *Air NZ* report. This position places a relatively high threshold on what constitutes "power", although this is tempered by the requirement that it "may arise any time" in the future.

Fisher J went on to consider the phrase "may at any time". He rejected an argument put forward by counsel for Utilicorp that attempted to equate this term with the term "will". In his view:

> The phrase "may at any time" is not to be equated with the word "will". Section 5(1) (d) ("has the power to acquire") in combination with section 5(4) (f) ("is exercisable. . .in the future") already caters for the case in which it is known that the power to acquire will arise in the future. The significant element introduced by s5(1)(f)(iii) is that in place of certainty it becomes sufficient if by virtue of the agreement the power "may at any time" accrue. The role of the word in s5 (1) (f) (iii) is thus to indicate uncertainty: there is a possibility that the grantee will "have the power to acquire" the shares but equally there is the possibility that that power will never accrue. That is precisely the situation with a right of first refusal.[24]

Fisher J considered the "absurd consequences" that could flow from

---

[23]Mercury Energy Ltd v. Utilicorp N.Z. Ltd & Power New Zealand Ltd [1997] 1 NZLR 492, 501.

[24]Mercury Energy Ltd v. Utilicorp N.Z. Ltd & Power New Zealand Ltd [1997] 1

holding that the mere possibility that an interest may be acquired was sufficient to constitute a relevant interest. He accepted that there were "many situations in which a trust, agreement, arrangement or understanding creates the mere possibility that a person may acquire shares or may control their acquisition or disposition". After considering the policy behind the legislation (particularly that of promoting the prompt provision of adequate information to the market), the Act's legislative history, and the approach to this issue in Australia, Fisher J was of the view that the result was not so absurd "that one would be justified in departing from the literal language of s 5".[25] He preferred to deal with "anomalous situations" by exercising the discretion under section 32 for the imposition of any penalty.[26] As a result, Fisher J determined that Utilicorp should have disclosed the December agreement and the put option and right of first refusal.

§ NZ:67 Criminal liability—Criminal liability for misstatements—Position under the Securities Act 1978

A discussion of the previous law has been retained since the case law remains of precedent value. This includes case law on the meaning of materiality; please see below.

Advertisements: Section 58(1) of the '78 Act stated that where an advertisement which contains an untrue statement is distributed then the issuer of the securities referred to in it, if an individual, commits an offence. If the issuer is a body, an offence is committed by every director of it at the time of distribution.

Registered Prospectus: Section 58(3) of the '78 Act stated that, where a registered prospectus that includes an untrue statement is distributed, every person who signed the prospectus commits an offence. Section 55 defined untrue statements by way of a deeming provision. A statement in a registered prospectus was deemed to be untrue if it is misleading in the form and context in which it is included[1] or it is misleading by reason of the omission of a material particular.[2] Decisions on s. 58 were R v. Reid (1990) 5 NZCLC 66, 483 (HC); R. v. Rada Corporation Ltd (No. 2) [1990] 3 NZLR 453 (HC); R

NZLR 492, 501.

[25]Mercury Energy Ltd v. Utilicorp N.Z. Ltd & Power New Zealand Ltd [1997] 1 NZLR 492, 505.

[26]Mercury Energy Ltd v. Utilicorp N.Z. Ltd & Power New Zealand Ltd [1997] 1 NZLR 492, 505.

[Section NZ:67]

[1]See Arnison v. Smith (1889) 1 Dr. & Sm 363; R. v. Kylsant [1932] 1 KB 442; Flavel v. Giorgio (1990) 8 ACLC 608; R v. Rada Corporation (No 2) [1990] 3 NZLR 453.

[2]Derry v. Peak (1889) 14 AC 337; Fraser v. NRMA Holdings Limited (1995) 13 ACLC 132; Pancontinental Mining Limited v. Goldfields Limited (1995) 16 ACSR 463; Coleman v. Myers [1977] 2 NZLR 225; Maslen v. Shaw (1995) 79 A Crim R 199.

v. Smith (1991) 5 NZCLC 67, 120; [1991] 3 NZLR 740 (HC); Department of Justice v. Witehira (1996) 7 NZCLC 261, 184; District Registrar of Companies v. Heenan (1996) 1 BCSLR 264, 279 (DC); R v. Baxter [1998] 3 NZLR 144 (CA); Assistant Registrar of Companies v. Lombard Financial Services (2006) 9 NZCLC 264, 146 (HC); R v. Moses & Ors 8 July 2011, HC Auckland, CRI 2009-004-1388; R v. Steigrad [2011] NZCA 304; R v. Petricevic [2012] NZHC 665; R v. Graham [2012] NZHC 575; R v. Roest [2012] NZHC 1086 and R v. Unwin [2012] NZHC 715. Section 58 (3) of the '78 Act—which concerned an untrue statement in a registered prospectus—was a strict liability offence subject to a statutory defense of immateriality or reasonable grounds to believe that the statement was true. The term, "distribute" was defined in the 78 Act in section 2 (1). The onus is on the defendant to avoid a conviction, assuming a prima facie case is made out by the prosecution. The prosecution did not need to show that an investor suffered loss as a result of the untrue statement. The defendant had to prove one of the two statutory defenses on the balance of probabilities. Whether a statement was immaterial was to be looked at not only from an actual investor's standpoint but also from the reasonable investor's standpoint.

Materiality: The leading case in New Zealand on the meaning of "material" is Coleman v. Myers.[3] Directors of a family company offered to purchase shares from shareholders without disclosing that the accounts, which were based on the book value of the company's assets, significantly understated the market value of those assets. Cooke J (as he then was) discussed the obligations of directors to disclose material information to shareholders when they are advising them on an offer and they are also the vendors. Cooke J stated:

With regard to ascertaining the precise scope of the obligation here, it is important to remember that directors are free to profit from their position, in the sense that there is no reason why they should not make a profit from dealings with shareholders. The obligation has to be worked out in terms of representations and disclosures. Particularised in those respects . . . there must be an obligation not to make to shareholders statements on matters material to the proposed dealing which are either deliberately or carelessly misleading. And in my opinion there must be at least an obligation to disclose material matters as to which the director knows or has reason to believe that the shareholder whom he is trying to persuade to sell is or may be inadequately informed. As to what matters are material, there was some debate in argument before us. In his judgment Mahon J uses sometimes the expression *might* influence the shareholder, sometimes *would*. Mr Williams prefers *would*. I think it is often easier to assess whether a statement is in the circumstances truly significant than to

[3]Coleman v. Myers [1977] 2 NZLR 225.

propound a watertight test. If forced to a formula I would select one somewhere between the alternatives just mentioned.[4]

Cooke J then set out his broad test of materiality as "those considerations which can reasonably be said, in the particular case, to be likely materially to affect the mind of a vendor or of a purchaser."[5] Cooke J relied on the *United States Supreme Court decision TSC Industries Inc v. Northway Inc*[6] where Marshall J considered proxy solicitation and commented that:

> An omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote. This standard is fully consistent with Mills' general description of materiality as a requirement that 'the defect have a significant *propensity* to affect the voting process'. It does not require proof of a substantial likelihood that disclosure of the omitted fact would have caused the reasonable investor to change his vote. What the standard does contemplate is a showing of a substantial likelihood that under all the circumstances the omitted fact would have assumed actual significance in the deliberations of the reasonable shareholder. Put another way, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor having significantly altered the 'total mix' of information made available.[7]

While the *TSC Industries* case involved proxy solicitation, a more recent Supreme Court decision based on Rule 10b-5 (which covers insider trading and fraudulent disclosure suits) is *Basic, Inc v. Levinson*.[8] The United States Supreme Court also adopted the reasonable investor standard for materiality: an omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important.

Cooke J's consideration of the meaning of "materiality" shows a close parallel with the philosophy of disclosure under the '78 Act. While Cooke J was dealing with an issue arising out of common law rather than statute, his reasoning would still appear to be very relevant given that he found that directors had a duty not to make misleading statements and had an obligation to disclose material matters. Both of these duties parallel the definitions of "untrue statement" in section 55 of the '78 Act. Also, the common law position for promoters or directors of a securities offering was one requiring "utmost candour and honesty" which is similar to the obligations that Cooke J found for directors who purchase shares in a Coleman v. Myers situation. As such Cooke J's comments should be considered to form the basis for determining "materiality" in prospectus (and now PDS) statements even though he was dealing with directors' common

---

[4]Coleman v. Myers [1977] 2 NZLR 225, 333 (emphasis in the original).

[5]Coleman v. Myers [1977] 2 NZLR 225, 334.

[6]TSC Industries Inc v. Northway Inc, 426 US 438 (1976).

[7]Coleman v. Myers [1977] 2 NZLR 225, 334.

[8]Basic, Inc v. Levinson, 485 US 224 at 231 (1988).

law obligations. For Cooke J., the information had to be "likely to materially affect the mind" of an investor of average prudence."[9]

On the basis of *Coleman v. Myers,* "material information" does not have to be such as to determine the outcome of the investor's decision. However, it appears Cooke J was inclined to the view that the information had to be such that the investor would take into account in making his or her decision. Initially Cooke J commented that he thought that the test as to whether or not information was material lay between whether it "might" or "would" influence an investor,[10] but he subsequently adopted Marshall J's approach which clearly considers that information is material if it would influence a shareholder.[11] From the viewpoint of certainty it would be preferable if the test was the higher test of "would" influence a reasonable investor. This is consistent with the United States position, although in Australia the lower test of "may" has been used.[12] Hazen commented that in the United States, "the test of materiality is whether a reasonable investor would have considered the matter significant; it is not necessary to show that the investor *would* have acted differently".[13] As he pointed out once materiality is established the investor still has to show cause or connection between the violation, the transaction and the loss suffered.

Coleman v. Myers also indicated that the perspective from which "materiality" was to be determined was that of the reasonable shareholder, not an actual shareholder. Hazen pointed out that in the U.S. in the context of Rule 10b-5 the test of materiality "depends not upon the literal truth of statements but upon the ability of *reasonable investors* to become accurately informed."[14]

The use of the "reasonable" investor is consistent with *Maslen v. Shaw*,[15] and with earlier common law authority on share offerings.[16] For example, Lord Halsbury LC commented in *Arnison v. Smith*:

> It is an old expedient, and seldom successful, to cross-examine a person who has read a prospectus, and ask him as to each particular statement what influence it had on his mind, and how far it determined him to enter into the prospectus and determined him to take shares on the faith of it as appropriate among the different parts of it and the effect produced by the whole. This can rarely be done even at the time, and for a shareholder thus to analyse his mental impressions after an interval of several years, so as to say which representation in particular induced

---

[9]Basic, Inc v. Levinson, 485 US 224 at 231 (1988).

[10]Basic, Inc v. Levinson, 485 US 224, 333 (1988).

[11]Basic, Inc v. Levinson, 485 US 224, 334 (1988).

[12]Maslen v. Shaw (1995) 79 A Crim R 199, 202-203.

[13]TL Hazen, *The Law of Securities Regulation* (St Paul Minnesota, West Publishing Co. 3rd Ed. 1996), 794.

[14]TL Hazen, op. cit., 793 (emphasis added).

[15]Maslen v. Shaw (1995) 79 A Crim R 199, 202-203.

[16]See Broome v. Speak [1903] 1 Ch. D 586, 629.

> him to take shares, is a thing all but impossible. A person reading the prospectus looks at it as a whole, he thinks the undertaking is a fine commercial speculation, he sees good names attached to it, he observes other points which he thinks favourable, and on the whole he forms his conclusion. You cannot weigh the elements by ounces. It was said, and I think justly, by Sir G Jessel in *Smith v. Chadwick* that if the Court sees on the face of the statement that it is of such a nature as would induce a person to enter into the contract, or would tend to induce him to do so, or that it would be a part of the inducement to enter into the contract, the inference is, if he entered into the contract, that he acted on the inducement so held out, unless it is shown that he knew the facts, or that he avowedly did not rely on the statement whether he knew the facts or not.[17]

New Zealand Case Law on section 58 of the 78 Act

As stated, the former case law is of precedent value to the cognate provisions in the FMC Act discussed in this Booklet. Section 55(a)(ii) provided that a statement is untrue if it omits a particular which is material in the form and context in which it is included. Section 58 imposed criminal liability for untrue statements in any advertisement, investment statement or registered prospectus.

The first decision to consider section 58 and section 55(a)(ii) involved an offer of shares by Prorada Properties Limited, a subsidiary of Rada Corporation Limited.[18] A prospectus issued by Prorada Properties Limited in 1987 stated that Rada Investments Limited, another subsidiary of Rada Corporation Limited, would take up $50 million in share capital in the offeror company in effect on behalf of Rada Corporation. Rada Investments borrowed $50 million from a bank and subscribed for $50 million in shares. Prorada Properties in turn lent the $50 million to Rada Nominees Limited which in turn deposited the $50 million on term deposit with the lending bank and acted as guarantor for Rada Investments Limited's loan obligations. This meant that the issuer could not use for its own purposes the $50 million it had received from Rada Investments. Neither were funds placed on either the official short term money market or any unofficial money market as promised in the prospectus. In addition, the prospectus stated that investments would begin as soon as possible after the date of registration of the prospectus but in fact Prorada could not use the $50 million from Rada Investments and there was evidence that it had been decided before the prospectus was issued that no investments would be made by the company until a chief executive had been found. However, the prosecution only alleged that the statement in the prospectus that the $50 million payable by Rada Investments was misleading since it omitted a material particular, that is, that it did not have the cash or a firm arrangement to obtain the $50 million.[19]

---

[17]Arnison v. Smith (1889) 41 Ch D 348,369.

[18]R v. Rada Corporation Limited (No 2) [1990] 3 NZLR 453.

[19]R v. Rada Corporation Limited (No 2) [1990] 3 NZLR 453, 455.

Barker J hinted strongly that these other statements could have been the subject of an action.[20]

Barker J found that at the relevant time Rada Corporation had shares in other investments in excess of $50 million which could readily have been converted into cash within a matter of days. Effectively he treated Rada Corporation and Rada Investments as one party and treated the term "cash" as including that held in the Bank but also the cash that could be gained through Rada Corporation.[21] He took the view that looking at the position from "commercial reality" there was cash available if needed. Barker J was relatively liberal in terms of finding that "cash" included liquid assets held by a parent company, in effect removing the corporate veil to do away with the distinction between the subsidiary and the parent company, although the prospectus did indicate that Rada Corporation was investing through Rada Investments.[22]

On the issue of "materiality" Barker J held that:

> The omission was immaterial because, on 14 October 1986, Rada Corporation both had the $50 million in readily available assets or could have borrowed $50 million from a variety of sources. Investors reading the prospectus would have assumed that Rada Corporation would be funding the Prorada Properties share money either from its own sources or else from borrowings. They would have known of NZFP's interest in Rada Corporation and assumed that NZFP would never let Rada Corporation default in its obligations.[23]

Given the nature of the disclosure in the prospectus of Rada Corporation's involvement Barker J's decision would appear to be correct as materiality of an omission has to be determined on the basis of the statement "in the form and context in which it is included". His comments on the matters that he hinted may have been more appropriate for a prosecution provide greater insight into his views on materiality. On the issue that the money "invested" by Rada Investments was loaned to a related company rather than placed on the short-term money market he commented:

> I should have thought that the average investor, seeing a statement about investment in the short-term money market, would take it to mean just that. Possibly the expression could be stretched to include reputable unofficial short-term money market dealers as well as official dealers.
>
> The average investor would not have envisaged a loan to an in-house company which was really not a loan at all. I am not clear about Mr Gunn's reference when he said the directors could invest in anything. In

---

[20]R v. Rada Corporation Limited (No 2) [1990] 3 NZLR 453, 462-463 and 465-466.

[21]R v. Rada Corporation Limited (No 2) [1990] 3 NZLR 453, 471-472.

[22]For criticism of this decision, see Walker, "Lifting the Corporate Veil to Avoid Criminal Liability for Misstatements in Registered Prospectus", 11 Company and Securities Law Journal 58 (1993).

[23][1990] 3 NZLR 453, 477.

> fairness, I note that the interest earned by Prorada Properties was probably the equivalent of what it would have received in the short-term money market. The more weighty objection is that the money was unavailable for Prorada Properties' use.[24]

Barker J's approach is consistent with Cooke J, in that the focus is on the "average" or "reasonable" investor. In addition, he would have expected disclosure of the in-house loan even though the interest actually received was equivalent to that on the short-term money market. In other words, investors may have received the same return as on the short-term money market but they should have been advised of this intention in the prospectus. In addition, it is clear that he thought the issue was a matter for the court as he did not accept the views of witnesses who stated that the statement relied upon by the Crown was material.[25]

The second decision to consider the second limb of section 55 was *Department of Justice v. Witehira*.[26] Witehira was managing director of Powerbeat International Limited which issued a short form prospectus. The prospectus included a forecast of income and a substantial component of the forecast income was a series of payments from a licensee of Powerbeat's technology. The prospectus stated that the forecasts were based on a number of assumptions including that the Powerbeat "expected" to receive the forecast income. At the same time the directors did not accept liability for any forecast for the level of expenditure and had included a statement that "the projections made in this forecast statement may be varied at the Director's discretion in response to changing commercial consideration".[27] The Department of Justice claimed that the prospectus contained an untrue statement by way of a material omission by its failure to refer to a deteriorating relationship with the licensee and in particular that a cheque for US$500,000 had not been honoured at the time the prospectus was signed. A second attempt to lodge the cheque was not known by the directors to be unsuccessful at the time the prospectus was distributed.

Spear J noted that the particular statement in the prospectus was:

> . . . a forecast couched in very cautionary terms as expected income. It is expressly stated to be conditional upon payment being made.[28]

He was of the view that the omission to refer to the cheque not having been met was not material because the directors did not fully appreciate that the cheque was worthless. They believed that there was some administrative or banking difficulty had led to the cheque not

---

[24][1990] 3 NZLR 453, 465.

[25][1990] 3 NZLR 453, 475-476. This is consistent with Pancontinental Mining Ltd v. Goldfields Ltd (1995) 16 ACSR 463, 466.

[26]Department of Justice v. Witehira (1996) 7 NZCLC 261,184.

[27]Department of Justice v. Witehira (1996) 7 NZCLC 261,184, 261,191.

[28]Department of Justice v. Witehira (1996) 7 NZCLC 261,184, 261,191.

being met.[29] He also held that, on an objective basis, the dishonouring of the cheque the first time was not material "to that particular financial forecast statement in the form and context in which that statement is included in the prospectus". Accordingly, he held that the Crown had not proved that the particular statement as to expected income was untrue, even though the income from the licensee represented $500,000 out of the forecast $2,700,000.

Spear J made no attempt to define materiality, nor did he refer to earlier authorities on this point. His approach would appear to be inconsistent with Coleman v. Myers in that he concentrated on the directors' belief in determining materiality. In effect he substituted the "reasonable grounds for belief" defence under section 58(4) with the preliminary issue under section 55 as to whether or not the omission was material.[30] Given that an earlier payment by the licensee had been late and the first cheque had been dishonoured the use of the forecast without reference to these facts would arguably be material to a reasonable investor.[31] The directors' belief would only then become relevant to the defence under section 58(4). Spear J's focus on the directors' views rather than a reasonable investor's view is at odds with both *Coleman v. Myers and Rada*.

A third decision involving section 58 was District Registrar of Companies v. Heenan.[32] In this case the Registrar laid seven charges against Heenan, a director of a company which had issued two prospectuses. The second prospectus stated that $3,000 in fees had been paid to Heenan when in fact by the time the second prospectus was registered he had received $10,000. Callaghan J found there was an untrue statement and the issue was whether the defendant could successfully argue that the statement was "immaterial" under section 58(4).[33] Heenan led witnesses who stated that they had not taken the statement into account and argued that, as a result, it could not be material. Callaghan J referred to the "materiality" test in *Coleman v. Myers* and *TSL Industries Inc v. Northway Inc* and noted that these cases showed:

> . . . that there is an objective element in the ascertaining of whether an omitted fact is material or not. Thus it is the reasonable shareholder the Court is to consider, i.e. an objective approach.[34]

Callaghan J was of the view that Coleman v. Myers was not

---

[29]Department of Justice v. Witehira (1996) 7 NZCLC 261,184, 261,191.

[30]Spear J held that in any event even if he had found that the statement was untrue he would have had no difficulty in finding that the statutory defense was met in that Witehira honestly held a belief that the company would receive that income. He also found the defendant was an impressive witness and that his position was supported by other members of the company including directors.

[31]Department of Justice v. Witehira (1996) 7 NZCLC 261,184, 261,189.

[32]District Registrar of Companies v. Heenan (1996) 1 BCSLR 264.

[33]District Registrar of Companies v. Heenan (1996) 1 BCSLR 264, 281.

[34]District Registrar of Companies v. Heenan (1996) 1 BCSLR 264, 282.

concerned with the relevant statutory provision when he came to consider "materiality" or "immateriality". As discussed earlier, it is true that Cooke J was dealing with an issue arising out of common law rather than statute but his reasoning would still appear to be very relevant given that he found that directors had a duty not to make misleading statements and had an obligation to disclose material matters and the common law position for promoters or directors of securities offering was similar to the obligations that Cooke J found for directors who purchase shares in a *Coleman v. Myers* situation.

Callaghan J turned to the dictionary definition of "immaterial" instead and stated:

> "Immaterial" in s. 58(4) is not related or compared to any particular circumstance or circumstances. I accept that it can be considered in relation to potential investors who are the people s58 is designed to protect.
>
> Whether the misstatement is "immaterial" is to be looked at not only from an actual investor standpoint but also from the reasonable investor's standpoint. "Immaterial" is defined in the *Oxford Dictionary* as meaning 'of no essential consequence, unimportant'.[35]

Callaghan J then went on to say:

> It was quite clear that none of the witnesses called for the informant had in fact turned their mind to this [statement]. While it is correct that the investors who gave evidence may not have altered their decision I cannot say viewed from the standpoint of a reasonable investor that the misstatement was immaterial. In my view it cannot be said that the difference between the $3,000 which was referred to in the second prospectus, and the $10,000 which was in fact the sum paid is unimportant or of no essential consequence. Here the difference between the two amounts is quite significant being $7,000. In considering this, the misstatement cannot be characterised as immaterial.[36]

Callaghan J's view that materiality is to be determined from a reasonable investor's view and that the views of actual investors are not decisive is consistent with earlier authority. Despite Callaghan J's views, the dictionary definition he relied upon would not appear to be inconsistent with the approach in *Coleman v. Myers* since reasonable investors would be unlikely to take into account information that was inconsequential or unimportant. It would merely appear to be another way of expressing the same approach.

A fourth decision on section 58 is R v. Baxter. Mr Baxter mounted an expedition to search for the wreck of the *General Grant*, a ship which founded on the west coast of the Auckland Islands in 1866.[37] The wreck was alleged to contain gold thought to be valued between $5 million and $50 million. Persons associated with Mr Baxter issued a prospectus but raised less than the amount required. The subscription monies were returned at the same time as investors were sent a

---

[35]District Registrar of Companies v. Heenan (1996) 1 BCSLR 264, 282.

[36]District Registrar of Companies v. Heenan (1996) 1 BCSLR 264, 282.

[37]R v. Baxter [1998] 3 NZLR 144.

letter inviting them to indicate their interest in investing in a further expedition on a smaller scale ($425,000 rather than $600,000). Baxter received around $80,000 which was initially put into a trust account and was later paid into his own account from which he paid for work to be done on the salvage ship which he now owned. On advice from his solicitor he registered a prospectus but did not advise his solicitor that he had already received funds. With those funds the refit went ahead and two unsuccessful attempts were made to recover the gold. The ship was finally seized for unpaid debts.

The Crown charged Baxter with having signed a registered prospectus which included an untrue statement and which was distributed. The untrue statement Baxter was said to have made was the statement required by clause 40 of the First Schedule of the Securities Regulations ("the clause 40 statement"). This clause requires a director to state that there are no "material matters" not already disclosed in the prospectus, when in fact in the Baxter case there were three undisclosed material matters. These matters were that the prospectus omitted to refer to the fact that prior to the distribution of the prospectus over $234,500.00 which had been raised from those investors had already been spent by Baxter on refitting his boat, purchasing equipment, personal expenditure and wages, that the prospectus implied that "almost all the funds raised from the shares issued would be applied to the actual conduct of the salvage expedition", and the prospectus omitted to refer to the fact that as 27 June 1995 the ship did not meet deep sea survey requirements and did not have the required certification for the expedition. The jury found that all three were untrue statements.

Blanchard J giving the judgment for the Court in upholding the convictions, stated that:

> The failure to mention that the *Seafarer* was still undergoing a refit and had not, only a few days before the commencement of the critical weather period of July/August obtained a deep sea certificate, was so obviously a material omission. The conviction almost seems to have been inevitable. That piece of information was one which the recipients of the prospectus certainly needed in order properly to be able to assess the risk of the investment. It was also going to be a highly speculative and hazardous investment. The investors understood that. But they also knew that the exploration licence would be expiring at the end of September and that there was a critical weather period. The risks relating to weather, expiry of exploration licence, the location of the wreck, the gold and the ownership of the gold were set out in the document. But there was a striking absence of any mention that on 27 June the vessel was not ready and, indeed, still at Westport. Mr Atkinson would attribute the unreadiness of the *Seafearer* until well into August to problems with electrical systems which emerged after 27 June. We are prepared to assume that it is debatable whether Mr Baxter was aware of them when he signed and registered the prospectus. However, he certainly knew that there was no marine certificate and still work to be done to obtain it. It was not necessary for the Crown to show that he acted dishonestly, merely that putting his signature to a statement that there were no other material matters, he was making an untrue statement. It was for him to

> prove that the statement was immaterial or that he had reasonable grounds to believe that it was true (s58 (4)) and the jury was fully entitled to find that he had not done so. In our view it was open to them to make such findings also in relation to the other statement specified in particulars. The inaccuracies and omissions in them were important and glaring.[38]

Blanchard J's assessment of the materiality of the information was that it was information that "recipients of the prospectus certainly needed in order properly to be able to assess the risk of the investment". This statement supports the view that the information needed to be such that it "would" be taken into account, which is consistent with Cooke J's view in *Coleman v. Myers*, but that it is not necessary that the information is decisive or determinative in that process. It perhaps also indicates that information needed to assess the *risks* of an investment is by its nature material. At the end of the passage quoted above Blanchard J pointed out that the "accuracies and omissions were important and glaring" which is also consistent with Callaghan J's view of materiality as a matter which of important or consequence. Accordingly, the test, however expressed, requires the court to take the standpoint of the reasonable investor and assess the value of the information to the investor's decision-making process.

The global financial crisis on 2007-8 prompted a string of finance company collapses in New Zealand. The New Zealand regulator launched several prosecutions under s 58. Two decisions on section 58 were R v. Moses & Ors 8 July 2011, HC Auckland, CRI 2009-004-1388 and R v. Steigrad [2011] NZCA 304. Both of these cases concerned the collapse of finance companies following the global financial crisis. In *Moses*, three directors of Nathans Finance were held to be criminally liable for contravening s 58 of the 78 Act in relation to the distribution of prospectuses and advertisements containing untrue statements. In Steigrad, the Court of Appeal held that criminal liability under s 58 can arise where a statement becomes untrue due to a change in circumstance after the advertisement or registered prospectus is distributed. In R v Petricevic [2012] NZHC 665, three directors of Bridgecorp Limited and Bridgecorp Investments Limited were charged under s 58. Two directors (Petricevic and Roest) were found guilty on all charges and one (Steigrad) was acquitted on four charges but found guilty on six of the charges.

In Petricevic, Venning J considered the elements of the s 58 offence. His Honour began by stating that the accused were presumed innocent and the onus was on the Crown to prove beyond reasonable doubt the accused were guilty. Venning J remarked that proof beyond reasonable doubt is a very high standard of proof and that a reasonable doubt would be "an honest and reasonable uncertainty left in my mind about the guilt of the accused after I have given careful and impartial consideration to all of the evidence". As the charges under s 58 were strict liability offences, Venning J noted that the Crown must

[38]R v. Baxter [1998] 3 NZLR 144, 157.

prove the statements were untrue "but it is not required to prove criminal intent on the part of the directors in relation to those offences." If the Crown successfully establishes that the statement is untrue then there is a defence available if the accused can "demonstrate, on the balance of probabilities, either that the statement was immaterial or that he had reasonable grounds to believe, and did believe, that the statement was true."

All directors were charged under s 58 for signing a registered prospectus, which was distributed and included an untrue statement. The court found the offer documents distributed contained the following untrue statements:

- The offer documents stated that a $76 million loan was made to an unrelated party, when that party was in fact ultimately owned and controlled by Bridgecorp and one of its directors.
- The offer documents stated that there had been no change in Bridgecorp's financial circumstances since June 2006, when in fact new investments had declined significantly, impaired loans had more than doubled and actual collections were 20% of forecast.
- The offer documents stated that Bridgecorp managed liquidity by maintaining a minimum cash reserve with a bank, when in fact no cash reserve was held.
- The offer documents failed to state that Bridgecorp's liquidity position had deteriorated since June 2006.
- The offer documents stated that Bridgecorp never missed an interest or principal payment to investors, but from February 2007 Bridgecorp regularly missed such payments. Although the offer documents were correct in this particular when first distributed in December 2006, they became untrue in February 2007, and should have been withdrawn.

Venning J noted that the word "statement" includes statements explicitly set out within the advertisement or prospectus. When considering the definition of what constitutes an untrue statement under s 55 of the Securities Act, the term "untrue" should be given a wider meaning than its popular use. As regards omissions, Venning J stated that while s 55 extends liability to cases of omission, the omission must be linked back to the statement as required by s 55(a)(ii). It is not an offence to omit something from the prospectus unless that omission makes a statement in the prospectus untrue. For example, the Bridgecorp prospectus contained under the heading "Liquidity Risk" a statement that Bridgecorp mitigated liquidity risks by having a policy of maintaining a minimum cash reserve held on bank deposit. Roest gave evidence that he believed there was such a policy but could not recall if it was documented and no evidence was provided at any stage to prove that a cash reserve was in place. Venning J held that even if the general evidence about Bridgecorp's intention "could be elevated to the status of a policy to maintain a cash reserve, the statement was untrue in that it was misleading in the form and

context in which it was included in the prospectus."[39] Further his Honour held that:

> [A] notional investor would take from reading that statement that Bridgecorp had a structured policy of holding funds on bank deposit to manage the risk of difficulty in raising funds at short notice to meet its financial commitments as they fell due. The notional investor would take comfort from that. That was not, however, the true position. The true position, if outlined, would have been that Bridgecorp had stopped new lending, that it intended to set aside a fund to manage liquidity issues and build the fund to approximately $50 million before recommencing lending, but that figure had not been achieved.[40]

Venning J found Steigrad not guilty as he could establish on the balance of probabilities that he had reasonable grounds for believing the statements found to be untrue were true.

Materiality and Financial Statements

The New Zealand Society of Accountants ("NZSA") has also considered the issue of "materiality" in the context of financial statements. The Statement of Standard Accounting Practice No. 6 (SSAP6), "Materiality in Financial Statement" establishes the criteria for applying the materiality test to information for inclusion in the external financial statements of any reporting entity.[41] It provides that:

> A statement, fact, or item is material if, given full consideration of the surrounding circumstances at the time of completion of the financial statements, it is of such a nature that its disclosure, or the method of treating it, would be likely to influence the making of decisions by the users of the financial statements.[42]

This definition would appear to go beyond that established in the cases. It requires the item to "influence the making of decisions" whereas the New Zealand cases only require the item to be relevant to the investment decision or such that it would be taken into account by a reasonable investor.

SSAP6 also sets out factors which may assist in determining materiality. These include the surrounding circumstances, the likely users of the particular financial statements, and the information needs of those users, its nature and its amount.[43] It suggests as guidelines that a variation in amount by more than 10 percent is material (unless there is contrary evidence), a variation less than 5 percent is immaterial, and that a variation between 5 percent and 10 percent "is a matter of judgment and depends upon the particular circumstances of

---

[39]R v Petricevic [2012] NZHC 665, [348].

[40]R v Petricevic [2012] NZHC 665, [348].

[41]SSAP6, para 1.1.

[42]SSAP6, para 3.1.

[43]SSAP6, paragraphs 31, 43 and 44.

the case."[44] This is helpful for items that can be quantified (although SSAP6 points out that these percentages are not "magic numbers"), but obviously do not help for non-quantifiable matters such as whether or not the past business record of a director should be disclosed (for example, a bankruptcy twenty years ago).

Summary of the former law

In summary, the courts in determining whether information that has not been disclosed is material have, except for *Witehira*, focused on whether a *reasonable* investor would take into account that information in making an investment decision, although the information does not have to be decisive in making that decision. The failure to make any mention of an otherwise material matter will not save a director from making an untrue statement because of the requirement for the directors to make a clause 40 statement in the prospectus.

In New Zealand, matters which have been considered material include: the market value of assets as compared to book values (*Coleman v. Myers*), the fate of companies (liquidations, receiverships) for which a director of an issuer had been a director (*Power NZ*), the placement and timing of investments (*Rada*), the level of fees paid to a director/promoter (*Heenan*), the use of funds by a promoter, the state of preparations for a venture and the risks involved in a venture (Baxter), the valuation of assets (*Agricola* and *Sovereign Mines*), the existence of contrary valuations (*Agricola*), and the prior relationship of an issuer with a valuer (*Agricola*). As already noted, however, at the end of the day the application of the materiality test is highly case specific (and perhaps even court specific).

In the United States, matters such as the failure to disclose advanced negotiations for a merger, but not preliminary negotiations, the failure to disclose a substantial dividend reduction, the significant understatement of assets value, a substantial overstatement of revenue, and a mineral find by an exploration company have been considered material in the context of takeovers. For public offerings inadequate disclosure of potential tax and environmental liability have been held to be material, as was the failure to disclose that underwriters could purchase out of an offering.

§ NZ:68 Criminal liability under the FMC Act

Generally speaking, the FMC Act demonstrates a shift away from criminal liability in favor of civil liability orders. Criminal liability attaches to, inter alia:

- Making a regulated offer without preparing and lodging a PDS: s 48 (3);
- Giving a PDS if offer requires disclosure: s. 53;
- Supply of prescribed information in PDS: s 63 (3);
- Accepting an application in waiting period: s 65 (2);

[44]SSAP6, Appendix.

- False or misleading statements, omissions, and new matters requiring disclosure: s 82 and s 510;
- Offering financial products of entity that does not exist: s 88 (4);
- Failure to update register of offers: s 95 (3);
- Request disclosure: s 96 (3);
- Failure to provide information to Registrar: s 98 (3);
- Defective ongoing disclosure: s 99 and s 511;
- Failure to provide confirmation: s 100 (5);
- Failure to lodge notice of change of supervisor of debt security: s 123 (2);
- Failure to lodge changes to governing document of registered scheme: s 141 (2);
- Failure to provide copy of actuarial report to supervisor or FMA in case of registered scheme: s 169 (4);
- Failure to lodge notice of change of supervisor of registered scheme: s 194 (2);
- Failure to comply with FMA direction: s 206 (3);
- Failure to provide winding up report: s 213 (4);
- Failure to keep contents of registers: s 217 (4);
- Failure to audit or review registers: s 218 (2);
- Failure to notify Registrar of registers: s 220 (4);
- Failure to provide for public inspection of registers: s 221 (4);
- Failure to provide copies of documents from registers: s 223 (4)
- Failure to retain copies of documents for 7 years: s 227 (3);
- the insider conduct prohibitions: section 244;
- false or misleading statement or information: section 262;
- false or misleading appearance of trading: section 269;
- failure to comply with directors' and officers' disclosure obligations: section 19ZD;
- failure to keep interests register: section 179;
- Failure to comply with a direction by the FMA to a licensed market operator: s 370;
- Knowingly or recklessly contravening prohibition on offers where defective disclosure in PDS or register entry: s 510;
- Knowingly or recklessly contravening other provisions relating to defective disclosure: s 511; and
- General offence for false or misleading statements: s 512.

§ NZ:69 Crimes Act 1961

Section 542 of the FMC Act states that nothing in the FMC Act shall limit or diminish any liability that any person may incur under any rule of law or other enactment. Some provisions of the Crimes Act 1961 may hence be relevant. The Crimes Act can be accessed online from the New Zealand legislation website.

As to jurisdiction: the relevant provisions are ss 5 and 7. Section 7 has the effect of extending the territorial reach of the Crimes Act by

catching any act or omission that occurs in New Zealand. Thus, so long as part of the actus reus occurs in New Zealand, the Act applies.

As for substantive offences: the relevant provisions are s 240 and s 242. Section 240 catches an obtaining by deception or causing loss by deception. Section 242 catches false statements. As to punishment: s 241 provides for up to 7 years imprisonment for a violation of s 240.

V. NEW DEVELOPMENTS

§ NZ:70 Fintech developments in New Zealand

There is no 'one stop" regulator for Fintech related matters. Regulation is dispersed across relevant subject areas and is technology neutral. Most Fintech businesses fall under the purview of the Financial Markets Authority (FMA) as involving a "financial product" or the offering of a "financial service" as defined in the Financial Markets Conduct Act, 2013 (FMC Act).

Equity Crowdfunding and Peer-to- Peer Lending: In 2013, New Zealand introduced two Fintech enabled fundraising innovations in the FMC Act: (1) equity crowd funding (ECF), and (2) peer-to-peer lending (P2PL). The FMC Act established a licensing regime for ECF and P2PL providers, with additional and more detailed requirements contained in the FMC Regulations, 2014. As a result of these legislative changes, companies can make offers through licensed ECF and P2PL intermediaries' facilities without having to comply with the full regulatory disclosure requirements under financial markets legislation. In turn, this reduces compliance costs and enables investors to invest in early start-up financing which provides funds for fledgling companies with significant potential to growth. However, the ECF regime cannot be used for initial coin offerings.

Cryptocurrency: Early research on cryptocurrencies in New Zealand appears in Sims, Kariyawasam and Mayes, *Regulating Cryptocurrencies in New Zealand.*[1] The use of cryptocurrencies is permitted in New Zealand, but the adoption of digital assets by persons in New Zealand is relatively low. In 2019, the New Zealand Tax Authority, the Inland Revenue Department (IRD), approved the use of crypto payments as part of employee remuneration agreements, subject to a strict framework.[2] The IRD treats cryptocurrency as property for tax purposes and ordinary rules apply.

Initial Coin Offerings: There do not appear to have been any successful initial coin offerings (ICOs) or other offerings of digital assets via the regulated offer procedure in the Financial Markets Conduct Act, 2013. Why is this the case? The compliance cost of a regulated primary market offer under the FMC Act is one deterrent. A second

---

[Section NZ:70]

[1]A. Sims, K. Kariyawasam and D. Mayes, *Regulating Cryptocurrencies in New Zealand* (September 2018).

[2]See IRD rulings BR Pub 19/01-04 at www.ird.gov.nz.

deterrent is the fair dealing provisions in the FMC Act (where a "financial product" is concerned) which catch misleading statements and representations. A third deterrent is the provisions of FairTrading Act 1986 which would apply to a Whitepaper where no financial product is involved. It is possible that some capital raising for Fintech businesses has occurred via the exemptions to the regulated offer regime in the FMC Act. The key commercial reason for little or no digital asset offerings appears to be the wide scope of the law regulating fundraising in the primary market in New Zealand and the vigilance of the regulator. As stated, the New Zealand equity crowdfunding regime in the FMC Act does not extend to digital assets. For these and other good reasons (such as the ease of international regulatory arbitrage), primary market activity for digital assets is minimal.

Abusive Market Practices: Of the scam complaints seen by the FMA from 2018–2020, the three most common subjects were cryptocurrencies, equity offers and foreign exchange.[3] If made aware of the scam, the FMA will issue a warning on its website.

Fintech Business: According to the industry group FinTech NZ, there are several FinTech businesses in New Zealand.[4] Most involve "financial services" and include digital asset exchanges such as the Digital Asset Exchange Limited (Dasset) and other businesses in payments (Thankyou Payroll), investing, crypto micro-saving, robo-advice, equity crowdfunding (ECF) and peer-to peer lending (P2PL) among others.[5] The bank-owned entity, Payments NZ, has been working towards a national switch since 2018. The government has initiated a Digital ID project known as the Digital Identity Transition Program led by the Department of Internal Affairs in collaboration with the private sector and released its *Strategy for a Digital Public Service* (March 2020), which would likely rely on blockchain technology.[6]

Financial Markets Regulator: The FMA supervises the offer of "financial products", the provision of "financial services", the licensing of financial advisers and enforces fair dealing rules. Whether a cryptoasset is a "financial product" will depend on the specific characteristics and economic substance of that cryptoasset; please see further below.

Reserve Bank of New Zealand, Department of Internal Affairs and Consumer Commission: The Reserve Bank is responsible for:

---

[3] https://www.fma.govt.nz/news-and-resources/speeches-and-presentations/gillian-on-unregulated-investments/.

[4] See fintechnz.org.nz. *Crowdfundinsider*, contains topical news and discussions of Fintech businesses in New Zealand: see www.crowdfundinsider.com.

[5] Equity Crowdfunding and Peer-to-Peer Lending were enabled by the FMC Act and are well established: see FMA, *Peer-to-peer Lending and Crowdfunding Sector Snapshot* (December 2019) available at the FMA website.

[6] https://www.digital.govt.nz/digital-government/strategy/strategy-summary/strategy-for-a-digital-public-service/#:~:text=The%20Strategy%20for%20a%20Digital%20Public%20Service%20reflects%20the%20unique,in%20trust%2C%20integrity%20and%20transparency.

- the supervision and prudential regulation of banks
- the supervision and regulation of non-bank deposit takers
- the supervision of insurers and
- the integrity of the financial system.

The Department of Internal Affairs (DIA) is responsible for anti-money laundering and counter terrorism financing legislation (AML/CTF) pursuant to the Anti-Money Laundering and Countering the Financing of Terrorism Act 2009. As such, the DIA is the lead AML contact for virtual asset service providers (VASPs). Financial services provided by VASPs fall within the existing definition of a 'financial institution' in the AML/CFT Act 2009. The definition includes: transferring money or value for, or on behalf of, a customer; issuing or managing the means of payment (for example, credit or debit cards, cheques, travelers' cheques, money orders, bankers' drafts, or electronic money) and money or currency changing.

The Commerce Commission is responsible for competition law under the Commerce Act 1986 and administers the Fair-Trading Act 1986. The latter Act contains prohibitions on misleading and deceptive conduct that extend to misrepresentations. In the result, the Fair-Trading Act could catch, for example, the Whitepaper of digital asset offerings or services that are not covered by the FMC Act.[7]

What is a "financial service": The term *"financial service"* is given the same meaning as in s 5 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (NZ). An operator of a "financial service" must be registered. Section 5 defines the term expansively and includes:

> 5. Meaning of financial service
>
> (1) In this Act, financial service means any of the following financial services:
>
> (f) operating a money or value transfer service:
>
> (g) issuing and managing means of payment (for example, credit and debit cards, cheques, travellers' cheques, money orders, bankers' drafts, and electronic money):
>
> Section 5 (1)(f), "operating a money or value transfer service" has a wide ambit. The words "value transfer service" catch a digital asset exchange (fiat to crypto, crypto to crypto and crypto to fiat) and this term survives in Part 2A of the amending legislation, the Financial Services Legislation Amendment Act, 2019 (NZ) which comes into force in March 2021. Similarly, the words "issuing and managing means of payment" in s 5 (1) (g) catch an ICO and the operation of a digital exchange.

Meaning of "Financial Product": Section 7 of the FMC Act states that a "financial product" means a debt security, an equity security, a managed investment product or a derivative. These terms are further defined in sections 8-9. FMA commentary on these terms appears below.

---

[7]See D. Wilson, "Consumer Information" in K. Tokeley, ed., op.cit., 125-206.

Offering a Financial Product: An offering of a financial product under the FMC Act must comply with Part 2 (Fair Dealing) and Part 3 (Disclosure of offers of financial products). Part 2 contains a set of provisions aimed at misleading and deceptive conduct and the making of unsubstantiated representations. Part 3 imposes disclosure obligations. Issuers of digital assets may seek to avoid the application of Parts 2 and 3 of the FMC Act for two reasons: the risks of non-compliance under Part 2 and the cost of compliance under Part 3.

Regulatory Approach: The FMA sees its role in facilitating innovation as central to its objective of promoting fair, efficient, and transparent markets. However, it states that new ideas and technologies often give rise to new risks, and investor interests still need safeguarding. The FMA considers it adopts a balanced approach when considering innovation. It recommends engaging early to determine if a product or service will be regulated and will consider scaling and modifying regulatory obligations to suit the proposal. This appears to be a less formalized take on the Regulatory Sandbox approach seen in other jurisdictions. The first formal Regulatory Sandbox is considered to have been created by the UK Financial Conduct Authority (FCA), which defines the sandbox as a 'safe space' in which businesses can test innovative products, services, business models and delivery mechanisms without immediately incurring all the normal regulatory consequences of engaging in the activity in question.[8] The concept was formally introduced in Australia by the equivalent regulator[9] and supported by an Innovation Hub.[10]

§ NZ:71 FMA guidance on cryptocurrency and cryptoasset services (March 2020)

Guidance from the FMA on primary and secondary market activity involving cryptoassets was issued in March 2020 and is available on the FMA website fma.govt.nz. To better understand the FMA's views, we reproduce portions of this guidance in a restructured and abridged form for clarity of exposition. The FMA uses the term, "cryptoasset" throughout its guidance. This term should be regarded as a portmanteau term covering the full spectrum of cryptocurrency and digital assets. Further, the guidance must be treated with caution in the absence of judicial consideration.

FMA Guidance on ICOs: The FMA has stated:

Cryptoassets, also known as virtual assets, cryptocurrencies, digital coins, or tokens, are available online, for example via exchanges, initial coin offers (ICOs) and token events.

Initial coin offers (ICOs) are a form of fundraising where you receive cryptoassets (also known as virtual assets, cryptocurrencies, digital coins or tokens) that carry certain rights, such as providing access to

[8] https://www.fca.org.uk/publication/research/regulatory-sandbox.pdf.

[9] https://asic.gov.au/for-business/innovation-hub/enhanced-regulatory-sandbox/.

[10] https://asic.gov.au/for-business/innovation-hub/.

a new product or service, or an interest in an underlying asset or project.

- If your ICO is offering a cryptoasset that is a 'financial product' under the FMC Act, additional obligations will apply.
- ICOs may involve the financial service of 'operating a value transfer service.'
- ICOs may also involve the financial service of 'issuing and managing a means of payment.'

If you provide a 'financial service' related to cryptoassets, you must comply with the fair dealing provisions in Part 2 of the FMC Act. These are broad principles that prohibit you from engaging in misleading conduct or making false, deceptive, or unsubstantiated statements. If the overall impression on your website, social media sites and promotional material is misleading, it will be in breach of the fair dealing requirements.

How an ICO is regulated in New Zealand depends on whether:

- the cryptoasset you are offering is a 'financial product' under the Financial Markets Conduct Act 2013 (FMC Act). Cryptoassets that are financial products are also known as "security tokens". Whether a cryptoasset is a financial product will depend on the specific characteristics and economic substance of that cryptoasset. If your ICO is offering cryptoassets that are financial products, further obligations will apply
- you are in the business of providing a 'financial service' (this will depend on the specific structure and features of the ICO)
- the person buying the cryptoasset is a member of the public (known as a 'retail investor') or a very experienced investor (known as a 'wholesale investor')
- the investor is based in New Zealand or overseas.

Types of financial products

The Financial Markets Conduct Act 2013 (FMC Act) sets out four types of financial products—debt securities; equity securities; managed investment products and derivatives.

Debt securities

A cryptoasset is a debt security if investors have a right to be repaid money or paid interest on money lent to, deposited with, or owed by a person, company, or unincorporated entity making a cryptoasset offer. For example, a cryptoasset linked to the value of a dollar or commodity could be a debt security if:

- investors can purchase a cryptoasset with money
- investors holding the cryptoasset have the right to redeem that cryptoasset for money; and
- an investor holding the cryptoasset is not the beneficial owner of funds from which redemption proceeds are paid.

To make a regulated offer of debt securities, you must:

- register a product disclosure statement (PDS)
- appoint a licensed supervisor
- meet fair dealing requirements
- meet financial reporting obligations.

Equity securities

A cryptoasset is an equity security if investors buy, or have the option to buy, for example, a share in a New Zealand incorporated company or a body corporate incorporated outside New Zealand. A cryptoasset that provides an option to buy a share is an offer of both the cryptoasset and the equity share.

If you make a regulated offer of equity securities, you must:

- register a product disclosure statement (PDS)
- meet fair dealing requirements
- meet financial reporting obligations.

Investor interests and rights will be set out in the company's constitution. This means a trust deed is not required.

Managed investment products

For these products, an investor will:

- contribute money or cryptoassets to receive interests (cryptoassets) in a scheme (a structure or project that allows investors to pool their money).
- have a 'right to receive a financial benefit' (as defined in the FMC Act) from the scheme—such as money, rights to a share in profits, cryptoassets, additional cryptoassets, or changes in the cryptoassets' value and these benefits are principally produced by someone else, and
- not have day-to-day control over the project or business (even if they have the right to be consulted or to give directions).

The manager of a managed investment scheme must be licensed by us to make a regulated offer to retail investors in New Zealand. The manager is the person, company, or unincorporated entity issuing the cryptoassets.

What are utility tokens?

Utility tokens (sometimes called "application tokens") typically give investors the right to access and/or use a company's platform, product, or service. They often grant holders rights similar to pre-payment vouchers.

Are utility tokens financial products?

While each ICO must be looked at on an individual basis, utility tokens are not considered managed investment products simply because they can be traded on a cryptoasset exchange or other secondary market. *This is because any profits an investor receives by trading*

those utility tokens on a cryptoasset exchange are not 'rights to receive a financial benefit' under a managed investment scheme.[1]

ICOs and wholesale or offshore offers

ICOs that offer cryptoassets that are financial products to wholesale investors, or to investors based outside New Zealand, will not be subject to full licensing, governance, and disclosure requirements under the FMC Act. However, fair dealing requirements under Part 2 of the FMC Act still apply.

ICOs and financial services

While each ICO must be looked at on an individual basis, most ICOs involve the financial service of 'operating a value transfer service'. ICOs may also involve the financial service of 'issuing and managing a means of payment'. If your ICO provides financial services, you must:

- Comply with the fair dealing requirements in Part 2 of the FMC Act. These requirements prohibit you from engaging in misleading conduct or making false, deceptive, or unsubstantiated statements in your white paper, website, or other promotional material.
- Register as a financial service provider if you are based in New Zealand. You must also pay the applicable fees and levies, for each category of financial service you are in the business of providing. If you offer financial services to retail clients, you must belong to a dispute resolution scheme.
- Comply with anti-money laundering obligations.

If you provide cryptoasset-related financial services in New Zealand in the ordinary course of your business, you will likely be captured as a 'financial institution' under the AML/CFT Act.

ICOs that do not involve financial products or financial services

Even if you are not providing a financial service or financial prod-

---

[Section NZ:71]

[1]Emphasis added. This statement by the FMA must be treated with caution. The relevant section—section 9 (1) (b) states "those interests are rights to participate in, or receive, financial benefits *produced principally by the efforts of another person under the scheme . . .*" Italics supplied. Suppose that utility tokens are issued, and the issuer subsequently arranges for the tokens to be quoted on a crypto exchange. The arrangement involves the efforts of another person (the issuer). Suppose further, the token appreciates in value on the exchange. The token holder now has the ability (right) to sell tokens. Is this ability to sell utility tokens at a profit, a right to "participate in, or receive, financial benefits produced principally by the efforts of another person under the scheme"? For an elaboration of this argument, see G. Walker, "Crowd-Sourced Funding, Cryptocurrency and Initial Coin Offerings in Australia and New Zealand" (2018) 36 (1) C&SLJ 111-119. ASIC Information Sheet 225, *Initial Coin Offerings and Cryptoassets* (May 2019) available at the website of the Australian Securities and Investment Commission (ASIC) provides support for this view.

uct, 'fair dealing' requirements still apply to white papers and other communications about your ICO under the Fair-Trading Act 1986.

We can designate cryptoassets to be a financial product if, based on their economic substance, this is necessary to promote fair and efficient financial markets in New Zealand or any of the other purposes of the FMC Act. For example, a cryptoasset giving investors voting rights and an interest in the company and its profits could be designated an equity security. A designation could be accompanied by an exemption to modify FMC Act disclosure and governance requirements.

Can cryptoassets be offered through crowdfunding platforms?

No, crowdfunding in the form of an ICO is not the same as crowdfunding covered by the FMC Act. We license crowdfunding platforms to provide an intermediary service via a facility, such as a website, where companies make offers of equity securities to retail investors. Equity crowdfunding under the FMC Act enables companies to raise up to $2 million in any 12-month period, without registering a PDS.

FMA guidance on financial services: The FMA has stated:

Exchanges

Exchanges issuing their own cryptoassets to facilitate trading fall within the financial service category of 'issuing and managing means of payment'. Exchanges allowing cryptoasset trading fall within the financial service category of 'operating a value transfer service'. If you allow trading of cryptoassets that are financial products under the FMC Act you need to consider whether you are operating a financial product market. If so, you may need to be licensed.

Wallets

If you are a wallet provider storing cryptoassets or money on behalf of others, and you facilitate exchanges between cryptoassets or between money and cryptoassets, your services fall within the category of 'operating a value transfer service'. If you hold money for depositors, you may be offering debt securities. However, if depositor funds are held in trust, your wallets may not be debt securities. Debt securities are financial products. They have additional regulatory requirements under the FMC Act.

Broking

If you arrange cryptoasset transactions, you are providing the financial service of 'operating a value transfer service'. If you are providing safe-keeping or administration services in relation to cryptoassets, you are providing the financial service of 'keeping, investing, administering, or managing money, securities, or investment portfolios on behalf of other persons. If you provide transaction services in relation to cryptoassets that are financial products you may have obligations as a broker under the Financial Advisers Act 2008.

Providing investment opportunities in cryptoassets

If you are providing investment opportunities in cryptoassets (e.g. via a derivatives issuer providing cryptoasset options or via a managed investment scheme investing in cryptoassets), you will be regulated in the same way as if you were providing investment opportunities in traditional assets or financial products.

AML/CFT obligations and cryptoasset related financial services

Cryptoassets are vulnerable to misuse by criminals to launder money and fund terrorism as they allow greater levels of anonymity and have global reach, making it easier for cross-border payments to be made, and they can be traded easily.

If you provide cryptoasset-related financial services in New Zealand in the ordinary course of your business, you will likely be captured as a 'financial institution' under the AML/CFT Act.

Judicial Interpretation

Various government and regulatory communications have outlined the New Zealand approach to cryptocurrency. In a common law jurisdiction, the application of these laws and regulations is rendered significantly stronger and clearer once judicially considered. As mentioned above, significant persuasive weight is given to judicial decisions in other common law jurisdictions such as Australia and the United Kingdom for these previously untested questions.

Cryptocurrency is property

The decision of the High Court of New Zealand in *Ruscoe & Moore v. Cryptopia Limited 2020 (in liquidation)* [2020] NZHC 728 considered the legal nature of cryptocurrencies for the first time in New Zealand. Cryptopia operated as a cryptocurrency trading exchange. All cryptocurrencies on the exchange were held in Cryptopia's hot wallets or cold wallets. Cryptopia's servers were hacked and about $30 million of cryptocurrencies were stolen. The company was put into liquidation in May 2019, at which point Cryptopia held cryptocurrencies worth around $170 million for itself and for its customers. The liquidators sought instructions from the Court as to the categorisation and distribution of Cryptopia's cryptocurrency assets.

The two issues were:

1. Is cryptocurrency "property" as defined in section 2 of the Companies Act 1993 and, as a related issue, can cryptocurrencies form the subject matter of a trust?
2. Was Cryptopia holding cryptocurrency on trust for account holders through the provision of its storage and exchange services?

The High Court relied on United Kingdom Jurisdiction Taskforce, *Legal Statement on Cryptoassets and Smart Contracts* (2019) and

caselaw from other common law jurisdictions.[2] The Court endorsed the "classic statement" of the definition of "property" in the 1965 House of Lords case National Provincial Bank Limited v Ainsworth [1965] AC 1175 at 1247–1248 per Lord Wilberforce. The Court was satisfied that cryptocurrencies meet all four of the requirements for "property" established by that case, viz.: identifiable subject matter, identifiable by third parties, capable of assumption by third parties, and some degree of permanence or stability.

The Court dispensed with the "simplistic" argument that cryptocurrencies are mere information, primarily because "the whole purpose behind cryptocurrencies is to create an item of tradeable value not simply to record or to impart in confidence information or knowledge".

Cryptopia was found to be holding each type of cryptocurrency stored by it on a separate express trust for the relevant account holders. The Court reached this conclusion based on the inherent nature of the relationship between Cryptopia and each account holder. Account records, customer information, and marketing all strongly implied that Cryptopia was acting as a "custodian" for account holders. The subject matter of each trust was easily identifiable by reference to Cryptopia's structured query language (SQL) database, which recorded each account holder's details, including their account balance. The combined effect of the Court's decision on these two issues is that the cryptocurrencies stored by Cryptopia are held for the sole benefit of the relevant account holders and, so, are excluded from the pool of assets available to general creditors.

§ NZ:72 Crowd-Sourced Funding

As stated, New Zealand introduced a Crowd-Sourced Funding (CSF) regime in the Financial Markets Conduct Act 2013 (FMC Act) allowing the raising of up to NZD2 million in a 12-month period. The reported take-up of ECF and P2PL in New Zealand has been positive.[1] At first glance, however, an ICO is unlikely via CSF in either Australia or New Zealand since both regimes contemplate the issue of shares and ICO issuers typically eschew fund raising via share issuance.

---

[2]The Court considered the Singaporean case of B2C2 Ltd v Quoine Pte Ltd [2019] SGHC 3; [2019] 4 SLR 17; the English decision of Vorotyntseva v Money-4 Ltd [2018] EWHC 2596 (Ch.); the Canadian decision Shair.Com Global Digital Services Ltd v Arnold (2018) BCSC 1512 and the English case of AA v Persons Unknown [2019] EWHC 3556; [2020] 4 WLR 35.

[Section NZ:72]

[1]A. Pekmezovic and G. Walker, "Equity Crowd Funding in New Zealand" (2015) 31 (1) C&SLJ 62-69. As of 30 June 2017, NZ$74.2 million was raised from investors via crowdfunding in New Zealand: see FMA Media Release MR No. 2017-52, "FMA published first peer-to-peer/crowdfunding statistical returns" (27 November 2017). "Of the eight licensed crowdfunding providers, 5 facilitated offers during the reporting period. There was a total of 50 offers, with 34 successfully meeting their funding target. 263 potential issuers were declined." Ibid.

§ NZ:73 Initial Coin Offerings (ICOs) of Digital Tokens

A research report published by Autonomous Next in 2017 and entitled #*Token Mania* describes ICOs as a ". . . new funding mechanism using distributed ledger technology that displaces both public markets (IPOs) and private investment (Venture Capital) with a billion of USD equivalent cryptocurrency".[1] The economics of ICOs are discussed in a useful paper by Sehra, Smith and Gomes[2] who also address ICO market dynamics including "ICO Lemons".[3] As far as issuers are concerned, an ICO offers several commercial advantages; there is no dilution of equity as might occur in a funding round with a venture capital firm or initial public offering and the compliance costs involved are lower than an IPO.[4] As stated, however, a key legal issue arising from the ICO phenomenon in New Zealand is whether the digital tokens issued in an ICO should be characterised as a Managed Investment Scheme (MIS) for the purposes of securities regulation.

To simplify the characterisation question, a digital or cryptocurrency represented by a digital token is not a security. At the other end of the spectrum, a digital utility token with purely functional use does not appear—at least initially—to be a security. For example, a digital utility token that simply enables the user to access a platform is not, prima facie, a security but is analogous to the purchase of subscription rights. If, however, the digital utility token is subsequently traded on an exchange then the status of the token is less clear.[5] On one view, a subsequent sale is analogous to the position of the seller of a car. The other view is that the initial purchase of the token and its subsequent sale on an exchange may be characterised together as

---

[Section NZ:73]

[1]Autonomous Next, #*Token Mania* (July 2017). Accessible at https://next.autonomus.com/download-token.mania. See also Richard Kastelein, "What Initial Coin Offerings Are, and Why VC Firms Care" Harvard Business Review, March 24 2017.

[2]Avtar Sehra, Philip Smith and Phil Gomes, "Economics of Initial Coin Offerings" (22 August 2017) available at www.allenovery.com. Note the illuminating discussion of the Japanese game, Pachinko, and the analogy with utility tokens. The ball "token" in Pachinko is analogous to a laundry token but in Pachinko the token is part of a "work around" of Japanese gaming law. Similarly, digital tokens can be used to "work-around" securities regulation.

[3]The reference is to George Akerlof, "The Market for Lemons: Quality Uncertainty and the Market Mechanism" (1970) 84 QJ Econ 488. Recall that the thrust of Akerlof's analysis is concerned with the issue of national corruption. Query whether national blanket bans on digital currency (such as China, Indonesia and Vietnam) are largely driven by a concern to address corruption-related issues by denying a means of money laundering—a case of corruption concerns trumping technological innovation. As far as China is concerned, the prevention of capital outflows is another reason.

[4]See Deloitte Blockchain Institute, *ICOs—The New IPOs?* (December 2017). For an empirical study, see Saman Adhami, Giancarlo Giudici and Stefano Martinazzi, "Why do Businesses go Crypto? An Empirical Analysis of Initial Coin Offerings" (October 2017). Available at SSRN: https://ssrn.com/abstract=3046209.

[5]Digital tokens traded on an exchange are fungible.

part of a MIS.[6] Between these extremes lie digital tokens that may be susceptible to characterisation as a security from the outset.

Generally speaking, digital tokens are neither shares nor debentures; however, they may be caught under the rubric of a MIS. Under the cognate U.S. law, an "investment contract' is a security and there are obvious parallels between the concept of an investment contract under U.S. law and a MIS in New Zealand. In both countries, the concept is given a wide interpretation.[7] For example, in the U.S. in *Tcherepin v Knight,* the court stated obiter that in analysing whether something is a security, "form should be disregard for substance";[8] in *Forman* it was said that "the emphasis should be on the economic realities underlying a transaction and not on the name appended thereto".[9] In 2017, the SEC opined that the digital tokens issued by "The DAO" were securities under the Securities Act 1933 and the Securities Exchange Act of 1934.[10] The SEC applied the tests enunciated in *Howey*[11] to find that the tokens issued by the DAO amounted to an investment in an investment contract and were hence securities. In brief, the *Howey* test involves four factors: (1) the investment of money (glossed by the SEC as a "contribution of value"); (2) a common enterprise; (3) a reasonable expectation of profit and (4) profit derived from the managerial efforts of others.[12] Further SEC guidance as regards ICOs as investment contracts under U.S. law is contained in the *Munchee* cease-and-desist proceedings.[13]

---

[6]This proposition assumes that the subsequent sale occurs on a third-party exchange and the listing of the token is undertaken by the token issuer; that is, the listing was managed and arranged by the issuer. If the issuer promised such a listing, the issue is even clearer. Conversely, a listing arranged by the holder is not a matter managed by the issuer.

[7]The Australian cases are discussed in Baxt, Black and Hanrahan, *Securities and Financial Services Law*, 9th ed. (2017), Chapter 3.

[8]Tcherepnin v. Knight, 389 U.S. 332, 336, 88 S. Ct. 548, 19 L. Ed. 2d 564 (1967).

[9]United Housing Foundation, Inc. v. Forman, 421 U.S. 837, 849, 95 S. Ct. 2051, 44 L. Ed. 2d 621, Fed. Sec. L. Rep. (CCH) P 95206 (1975).

[10]SEC, Report of Investigation Pursuant to Section 21 (a) of the Securities Exchange Act of 1934: The DAO, Exchange Act Release No. 81207 (July 25, 2017). For commentary, see K&L Gates, "Initial Coin Offerings: Key Considerations You Absolutely, Positively Need to Know About Before Launching an ICO" October 26, 2017. Available at www lexology.com/library.

[11]SEC v WJ Howey Co., 328 U.S. 293 at 301 (1946).

[12]See also SEC Chairman Jay Clayton, "Public Statement on Cryptocurrencies and Initial Coin Offerings" (December 11 2017). "It is especially troubling when the promoters of these offerings emphasize the secondary market trading potential of these tokens. Prospective purchasers are being sold on the potential for tokens to increase in value – with the ability to lock in those increases by reselling the tokens on a secondary market – or to otherwise profit from the tokens based on the efforts of others. These are the key hallmarks of a security and a securities offering." Ibid. Available at https://www.sec.gov/news/public-statement-clayton-2017-12-11.

[13]In the Matter of Munchee, Inc. (Securities Act of 1933, Release No. 10445/ December 11, 2017; Administrative Proceeding File No. 3-18304). For useful commen-

§ NZ:74 Managed Investment Scheme (MIS) in New Zealand

An MIS or Managed Investment Scheme is defined in § 9 of the FMC Act which is similar to the Australian definition. Under § 7 of the FMC Act, a "managed investment product" (defined in s 8 (3) by reference to § 9 as an interest in a MIS) is a financial product and hence the prohibition in § 39 applies (offer of financial products for issue requires disclosure to an investor unless an exclusion applies). In the result, an ICO offering in New Zealand that can be characterised as a MIS requires a product disclosure statement unless an exclusion under Part 1 of Schedule 1 of the FMC Act applies.

The FMA has stated:

> A token is a managed investment product . . . if:
>
> - investors contribute money or cryptocurrency to receive interests (tokens) in a scheme (a structure or project that allows investors to pool their money)
> - returns, income and rewards to investors from the scheme – such as money, cryptocurrency, additional tokens, or changes in the tokens' value – are principally produced by someone else, and
> - investors do not have any day-to-day control over the project or business.
>
> The manager of a managed investment scheme must be licensed by us in order to make offers to retail investors in New Zealand. The manager is the person, company, or unincorporated entity issuing the tokens. When you make a regulated offer on managed investment scheme products, you must also:
>
> - register a PDS
> - appoint a licensed supervisor
> - have a trust deed that sets out investor rights and the supervisor's role
> - meet financial reporting and fair dealing obligations.[1]

Further guidance was issued by the FMA in two Press Releases in 2019: FMA, "Cryptocurrencies" (14 March 2019) and "Cryptocurrency Services" (5 February 2019).

It should come as no surprise that persons seeking to raise money from the public in New Zealand should be required to make formal disclosures.[2] In New Zealand, the billions lost in the failure of listed

---

tary, see K. Cooper, "SEC Munchee Order a Recipe for Securities Violations" (December 22, 2017). Available at www.coindesk.com.

[Section NZ:74]

[1]FMA, Initial Coin Offers (25 October 2017).

[2]For recent evidence from New Zealand, see Matt Nippert, "Teen's Cryptocurrency Bid Triggers Official Warnings" New Zealand Herald, 25 November 2017. See also Nathaniel Popper, "Initial Coin Offerings Horrify a Former SEC Regulator" The New York Times, November 26 2017 (former SEC Commissioner, Joseph Grundfest quoted as saying, "ICOs represent the most pervasive, open and notorious violation of federal securities law since the Code of Hammurabi"); Dirk Zetzsche, Ross Buckley, Douglas Arner and Linus Föhr, "The ICO Gold Rush: It's a Scam, It's a Bubble, It's a

finance companies just before and after the global financial crisis provides sufficient recent evidence of this desideratum.[3] Subjecting ICOs to conventional securities regulation is a key means of achieving the salient purposes of securities regulation—investor protection and the prevention of fraud.[4]

§ NZ:75 New Financial Advice Regime

The Financial Services Legislation Amendment Act 2019 is in effect. This Act introduced new Subparts 5A and 5B into the FMC Act together with a new Part 2 that amended the Financial Service Providers (Registration and Dispute Resolution) Act 2008. Part 3 repealed the Financial Advisers Act 2008 and moved key provisions into the FMC Act.

§ NZ:76 Climate-related Disclosures

The Financial Sector (Climate-related Disclosures and Other Matters) Act 2021 amended the Financial Markets Conduct Act 2013 by introducing Part 7A titled, "Climate-related disclosures for certain FMC reporting entities with higher level of public accountability." The effect of the Act is to introduce obligations on "climate reporting entities" ("financial entities"), singled out by the Act for their large size, to keep proper records relating to their obligations to make climate-related disclosures, prepare climate statements, and lodge these statements. In general, climate statements must be prepared, signed off by directors of the financial entity and lodged within a deadline of four months from the balance date (ss.461W-461Z). A failure to prepare such a statement, lodge it, or include it in the financial entity's annual statement attracts fines. The Bill also applies to the New Zealand businesses of overseas companies that fall within the same definition (s.461Y). The Act is in full effect as of October 2022.

§ NZ:77 Corporate governance reform package scheduled for 2025

In August 2024, the MBIE announced a decision to progress reforms to modernize the Companies Act 1993 and related corporate governance legislation. This will be carried out in two phases:

Super Challenge for Regulators" (November 16, 2017). University of Luxembourg Law Working Paper No. 11/2017. Available at SSRN: https://ssrn.com/abstract=3072298. The "bubble" aspects of the crypto market are discussed in Paul Krugman, "Bubble, Bubble, Fraud and Trouble" New York Times, 29 January 2018; Anon, "The Case for a Cryptocurrency Market Bubble" The FinReg Blog, Duke Law Global Financial Markets Center, 22 November 2017 and Anon, "Why a Bitcoin Bubble is a Good Thing" ibid., 5 December 2017. Available at https://siters.duke.edu/thefinregblog
.

[3]See the discussion in M. Fox, G. Walker and A. Pekmezovic, "Corporate Governance Research on New Zealand Listed Companies" (2012) 29 (1) Arizona J Int'l & Comp Law 1-48.

[4]G. Walker, "Securities Regulation, Efficient Markets and Behavioural Finance: Reclaiming the Legal Genealogy" (2006) 36 (3) HKLJ 481-517.

- **Phase 1** focuses on changes to the Companies Act to better reflect the modern New Zealand business environment, simplify compliance, deter and detect poor business practices and increase uptake of the New Zealand Business Number. Phase 1 will be legislated for as part of the Corporate Governance Amendment Bill 2025.
- **Phase 2** will follow an NZ Law Commission review of directors' duties and related issues of liability, penalties and offences, and enforcement. This review is expected to commence in 2025.

The key aspects of the Phase 1 corporate governance reforms are summarised in the table below which is extracted from the "Insights" series appearing on the website of the New Zealand law firm, Bell Gully; please see "Insights" dated 19 August 2024 on the Bell Gully website: www.bellgully.com.

None of the Phase 1 proposals represent significant shifts in policy of the overall scheme of the Companies Act. The proposals address a number of specific issues encountered in practice and are designed to make things easier for businesses, by saving time and money or clarifying provisions.

Topic	Summary of proposed change
Measures to modernise, simplify and digitise the Companies Act	
Capital reductions	Allow capital to be returned to shareholders in a pro rata manner without having to go to the High Court for approval, subject to shareholder approval.
Major transaction approval – application to capital-related matters	Clarify that the major transaction rules do not capture share issues, buybacks, dividends or redemptions.
Major transaction approval – potential avoidance	Change the major transaction rules so they are not able to be subverted by structuring major transactions through a subsidiary or as a series of smaller transactions.
Unanimous approval	Extend the process to allow all entitled persons to agree to certain actions, by extending section 107 of the Act to issues of options and convertible securities, crediting unpaid share capital, and acquisitions of shares to be held as treasury stock.

Topic	Summary of proposed change
Unclaimed dividends	Allow unclaimed dividends to be retained by the company, after a period of two years and making reasonable efforts to contact the shareholder. The shareholder would retain a claim to the money should they subsequently come forward. Unclaimed dividends would become a contingent, rather than permanent, liability on a company's balance sheet.
Constitutions – change in certain default settings	Make certain provisions of the Companies Act 'opt out' rather than 'opt in'. Currently, certain actions by a company are only allowed if expressly permitted by its constitution. The reforms would allow share buy backs, the reissue of shares held as treasury stock, division of the share register, and director indemnification and insurance 'unless expressly prohibited by a company's constitution'.
Reversing the Directors' Duties Amendment Act	Repeal section 131(5) of the Act, which has only been in force since August 2023. That provision added an avoidance of doubt provision that, when considering the best interests of the company, a director may consider matters other than the maximisation of profit (for example, environmental, social and governance (ESG) matters). The repeal is proposed because the law already allows directors to take into account ESG factors and therefore this new subsection is redundant.
Notice requirements – public notices	With the increasing decline in newspaper distribution and the corresponding increasing reliance on online sources of information, remove the requirement for notification through newspaper. The same information is available online through *The Gazette*.
Notice requirements – by website	Introduce a 'notice of access' regime to permit companies to notify shareholders and creditors of a website where information (e.g., in relation to an annual report or an upcoming AGM) may be obtained, rather than having to send this information to each individual shareholder and/or creditor. Similar regimes have recently been introduced in Australia and the UK.
Share registers – trusts	Allow share registers to reflect that a shareholder is holding shares on behalf of a trust, in order to assist identification of different holdings held by the same person.

Introduction of unique identifier numbers for directors and shareholders

Topic	Summary of proposed change
Director and shareholder unique identifier numbers	Introduce unique identifier numbers for directors and shareholders. This proposal aims to deter and detect poor business practices (such as phoenixing) by making individuals readily identifiable and less likely to be confused with others of the same name or by registering under a variation of their name.
Address for service rather than home address	Currently, the residential addresses of company directors and individual shareholders are readily accessible on the Companies Office website. An existing Bill which is currently before a Select Committee, would allow directors to apply to the Registrar of Companies to have their home address removed from the register if disclosure is "likely to result in physical or mental harm" to the director or a person who lives with the director. The proposed reform would instead allow directors and shareholders to prevent their home addresses from being publicly disclosed by using a unique identification number which is linked to an address for service. The new proposal is therefore more comprehensive than the existing Bill. The member who proposed the existing Bill has said that she will withdraw her Bill if a more comprehensive solution is introduced.
Insolvency law improvements	
Claw back period	Extend the claw back period to four years for transactions undertaken with related parties prior to liquidation.
Levy for the Insolvency and Trustee Service	Expand the levy making powers in the Act to help fund the Insolvency and Trustee Service, a business unit of MBIE responsible for performing the statutory function of the Official Assignee.
Improving the uptake of the New Zealand Business Number (NZBN)	
NZBN as a condition of service	Make it easier for government agencies to require a NZBN as a condition of service (by removing a process that requires agencies to undertake a regulatory analysis, consult with the Office of the Privacy Commissioner and obtain Cabinet's approval for an Order in Council before doing so).
Public information default setting	Make more information public on the NZBN register by default, including unincorporated entities' legal and trading names, and the names of their owners and directors.

Topic	Summary of proposed change
Link to other registers	More closely link the NZBN register with other MBIE registers by enabling the NZBN to be used as a 'permitted business identifier' and for core business information held on the NZBN register to update other registers administered by MBIE (via direct exchange of information). Other MBIE registers include, among others, the Companies Register, the Financial Service Provider Register and the Limited Partnerships Register.

Next steps

The Corporate Governance Amendment Bill is expected to be introduced to Parliament in early 2025. Public submissions on the Bill will be invited as it progresses through the select committee stage.

Further background information (including Cabinet papers and other official Government documents related to the Phase 1 reforms) can be found on the MBIE website.

APPENDIX NZ-1

Financial Markets Conduct Act 2013

Version
as at 16 March 2024



Financial Markets Conduct Act 2013

Public Act	2013 No 69
Date of assent	13 September 2013
Commencement	see section 2

Contents

		Page
1	Title	30
2	Commencement	30
	Part 1	
	Preliminary provisions	
	Purposes	
3	Main purposes	31
4	Additional purposes	31
	Overview	
5	Overview	31
	Interpretation	
6	Interpretation	34
7	Meaning of financial product	57
8	Definitions relating to kinds of financial products	57
9	Definitions of financial benefit and of managed investment scheme	60
10	Miscellaneous matters relating to definition of derivative	61
11	Definitions of issued and issuer	61

Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Ministry of Business, Innovation, and Employment.

12 Meaning of associated person and related body corporate 63
13 Miscellaneous interpretation provisions relating to statements and information 64
14 Status of examples 65

Transitional, savings, and related provisions

14A Transitional, savings, and related provisions 65

Act binds the Crown

15 Act binds the Crown 65

General application provision

16 Application of Act 65

Part 2
Fair dealing

17 Overview 66
18 Interpretation in this Part 66

Misleading or deceptive conduct, false or misleading representations, and unsubstantiated representations

19 Misleading or deceptive conduct generally 66
20 Misleading conduct in relation to financial products 67
21 Misleading conduct in relation to financial services 67
22 False or misleading representations 67
23 Unsubstantiated representations 68
24 Court must have regard to certain matters 68
25 Limitation on commencement of proceedings in relation to unsubstantiated representations 68
26 Section 23 does not apply to representations in PDSs, register entries, or other disclosure documents 69
27 Section 23 subject to other enactments 69
28 Certain conduct does not contravene various provisions 69
29 Limited application of provisions in relation to newspapers, magazines, broadcasting, etc 69
30 Defence for publisher 70
31 Licensed market operator does not contravene by notifying disclosures 71
32 Other exceptions 71
33 Territorial scope of sections 19 to 23 71

Offers in course of unsolicited meetings

34 Prohibition of offers in course of unsolicited meetings with persons acting otherwise than in trade 72
35 Right to withdraw 73
36 Offeror obligations if notice of withdrawal given 73
37 Director not liable if no misconduct or negligence 74

Civil liability

38 Civil liability for certain contraventions of this Part 74

Part 3
Disclosure of offers of financial products

Subpart 1—Application

39 Issue offers that need disclosure 74
40 Sale offers that need disclosure 74
41 Meaning of regulated offer and of regulated product 74
42 Regulated offers that need to meet additional governance requirements 75
43 Options over financial products 75
44 Treatment of offers of convertible financial products 76
45 Treatment of offers of renewals and variations 76
46 Offers of financial products involving customised terms 76
47 Territorial scope of Part 77

Subpart 2—Procedure for making regulated offers

Product disclosure statement must be prepared and lodged

48 PDS must be prepared and lodged 77
49 Purpose of PDS 78

Disclosure to investors

50 PDS must be given if offer requires disclosure 78
51 Certain situations in which section 50 does not need to be complied with 78
52 PDS treated as having been given if application form used was included in, or accompanied by, PDS 78
53 Offence to knowingly or recklessly contravene section 50 79
54 Right to withdraw 79
55 Offeror obligations if notice of withdrawal given 79
56 Director not liable if no misconduct or negligence 80

Content and presentation of product disclosure statements and register entries

57 Disclosure of material information and content of PDS and register entry 80
58 Register entry not required in prescribed circumstances 81
59 Meaning of material information in this Part 81
60 Consent of experts and persons who make endorsements 82
61 PDS must be worded and presented in clear, concise, and effective manner 82
62 PDS must comply with prescribed requirements relating to form and presentation 83

Other provisions relating to lodging of PDS and other documents

63 Supply of prescribed information 83
64 Registrar must notify FMA of lodgement of PDS 83
65 Waiting period after lodgement before processing applications for financial products 83
66 FMA may extend period 84
67 Waiting period restriction does not prevent offeror from acting under another PDS 84
68 FMA may remove restrictions if its consideration complete or consideration or further consideration unnecessary 84
69 Waiting period does not usually apply to continuous issue PDSs 84
70 No guarantee or representation as to compliance 85
71 When supplementary document or replacement PDS may be lodged 85
72 Supplementary document 86
73 Replacement PDS 86
74 Registrar must notify FMA of lodgement of supplementary document or replacement PDS 86
75 Publication of lodgement 87

Amending register entry

76 When register entry may be amended 87

Conditions referred to in PDS

77 Minimum number or amount condition must be fulfilled before issue or transfer 87
78 Issue or transfer void if quotation condition not fulfilled 88

Dealing with applications where condition referred to in PDS not met or disclosure defective

79 Application of section 80 88
80 Choices open to offeror 89
81 Director not liable if no misconduct or negligence 90

Prohibition of offers where defective disclosure in PDS or register entry

82 False or misleading statements, omissions, and new matters requiring disclosure 90
83 Persons who must inform offeror about disclosure deficiencies 91

Expiry

84 Expiry 92
85 How offeror must deal with applications on expiry 92
86 Director not liable if no misconduct or negligence 93

Money for financial products must be held in trust

87 Money for financial products must be held in trust 93

Offering financial products in entity that does not exist

88 Offering financial products of entity that does not exist 94

Subpart 3—Advertising

89 Advertising for regulated offers 94
90 Distribution of PDS or registered documents 94
91 Advertising before PDS lodged 95
92 Advertising after PDS lodged 95
93 Documents to which subpart does not apply 95
94 Defence for publishers 96

Subpart 4—Ongoing disclosure and updating of registers

Duty to update register of offers of financial products and register of managed investment schemes

95 Duty to notify changes to Registrar 96

Disclosure to particular persons

96 Information to be made available to investors, FMA, Registrar, or other prescribed persons 97

Public disclosure

97 Information to be made publicly available 97
98 Issuer must provide information to Registrar 98

Defective ongoing disclosure

99 Defective ongoing disclosure 98

Confirmation

100 Issuer or offeror must provide confirmation 99

Subpart 5—Civil liability for certain contraventions of this Part

101 Part 3 offer provisions 99

Part 4
Governance of financial products

102 Overview 101

Subpart 1—Governance of debt securities

103 Need for governing document and supervisor for regulated offer of debt security 101

Governing document requirements

104 Contents of trust deed for debt securities 102
105 Limits on permitted exemptions and indemnities 103
106 Trust deed must be legally enforceable 103
107 Effect of trust deed 103
108 Changes to trust deed 103
109 Power to make FMA-approved changes to trust deeds 104

110 Lodging of changes to trust deed 104

Application of Trusts Act 2019

110A Application of Trusts Act 2019 105

Role of supervisor

111 Functions of supervisor 105
112 General duties applying in exercise of supervisor's functions 106
113 Duty of supervisor to comply with professional standard of care 107
114 Duty of issuer to provide reports to supervisor 107
115 Duty of issuer to provide requested information and reports to supervisor 107
116 Issuer must report contravention or possible contravention of issuer obligations 107
117 Restriction on use of reports on contraventions 108
118 Duty of issuer to report serious financial problems 108
119 Power of supervisor to engage expert 108

Meetings of product holders

120 Meetings of product holders 108
121 Supervisor's attendance at meetings of product holders and power to appoint chair 109

Change of supervisor

122 Change of supervisor 109
123 Lodging of notice of change of supervisor 110

Subpart 2—Governance of managed investment products

124 Overview 110

Need to register

125 Need to register managed investment scheme for regulated offer of managed investment product 110

Registration

126 Application for registration 111
127 Initial and ongoing registration requirements for all managed investment schemes 111
128 Additional initial and ongoing registration requirements for KiwiSaver schemes 112
129 Additional initial and ongoing registration requirements for superannuation schemes 113
130 Additional initial and ongoing registration requirements for workplace savings schemes 114
131 Additional ongoing registration requirements for restricted schemes 115

132 Additional prescribed registration requirements for other particular prescribed types of schemes 117
133 Manager must ensure that ongoing registration requirements are complied with 117
134 Changes to registration as particular type of registered scheme 117

Governing document requirements

135 Contents of governing document for registered scheme 118
136 Limits on permitted exemptions and indemnities 119
137 Governing document must be legally enforceable 120
138 Effect of governing document 120
139 Changes to governing document 120
140 Power to make FMA and court-approved changes to governing documents 121
141 Lodging of changes to governing document 122

Role of manager

142 Management and administration functions of manager 122
143 General duties applying in exercise of manager's functions 122
144 Duty of manager and investment manager to comply with relevant professional standard of care 123
145 Duties of directors and senior managers of manager 123
146 Contracting out of management functions 124
147 Duty of manager to provide reports to supervisor or FMA 124
148 Duty of manager to provide requested information and reports to supervisor 124
149 Duty of manager to report contravention or possible contravention of issuer obligations 125
150 Restriction on use of reports on contraventions 125
151 Duty of manager to report serious financial problems 125

Role of supervisor

152 Functions of supervisor 126
153 General duties applying in exercise of supervisor's functions 126
154 Duty of supervisor to comply with professional standard of care 127
155 Power of supervisor to engage expert 127

Application of Trusts Act 2019

155A Application of Trusts Act 2019 128

Custodianship of scheme property

156 Requirement to have supervisor or other independent person as custodian 129
157 Custodian holds scheme property on trust 130
158 Custodian must keep records of scheme property 130
159 Custodian must report on scheme property 131
160 Duty of supervisor to refuse to act on wrongful directions 131

Meetings of scheme participants

161 Meetings of scheme participants 131
162 Supervisor's attendance at meetings of scheme participants and power to appoint chair 132
163 Manager and associated persons cannot vote if interested in resolution 132

Management of scheme

164 Requirement for statement of investment policy and objectives 133
165 Changes to statement of investment policy and objectives 133
166 Lodging of statement of investment policy and objectives and changes to statement 133
167 Action that must be taken on limit breaks 134
168 Action that must be taken on pricing errors and failure to comply with pricing methodologies 134
169 Actuarial examination of defined benefit scheme or life benefit scheme 135
170 Power of manager to adjust financial benefits to comply with portfolio investment entity rules 135
171 Limits on reversion of scheme property in certain schemes to non-scheme participant contributor 135

Related party transactions

172 Definition of related party benefit 136
173 General prohibition on transactions giving related party benefits 137
174 Certain related party benefits permitted 138
175 Requirements for certificates as to related party benefits 138
176 Additional restrictions on acquisitions by restricted schemes of in-house assets 138
177 General duties not affected 139

Scheme participant transfer rules for KiwiSaver, superannuation, and workplace savings schemes

178 Application of scheme participant transfer rules 140
179 Methods of transfer of scheme participants to another scheme or another section of scheme 140
180 Transfer of substantial numbers of scheme participants with scheme participant consent 141
181 Transfer with FMA consent 142
182 Transfers from KiwiSaver scheme 142

Provisions as to deferred benefits for superannuation schemes and workplace savings schemes

183 Deferred benefits 143

8

Change of manager

184 Application of sections 185 to 192 143
185 Removal of manager of registered scheme 143
186 Supervisor or FMA may make temporary appointment 144
187 Term, powers, and duties of temporary manager 145
188 FMA's costs must be reimbursed from scheme 145
189 Supervisor or FMA must take reasonable steps to arrange for new appointment 145
190 Former manager must hand over records and give reasonable assistance 146
191 Statutory novation of rights, obligations, and liabilities of former manager 146
192 Lodging of notice of changes to manager 147

Change of supervisor

193 Change of supervisor 147
194 Lodging of notice of change of supervisor 148

Cancellation of registration

195 Cancellation of registration 148
196 Registrar must remove scheme from register on cancellation of registration 149

Subpart 3—Intervention in debt securities offered under regulated offer or registered schemes

Provisions assisting supervisor or FMA to intervene

197 Application 149
198 Duty of auditor to report to supervisor or FMA 149
199 Duty of auditor, investment manager, administration manager, custodian, or actuary to report serious problems 150
200 What person must do if duty to report serious problem applies 151
201 Protections extend to volunteers of supporting information for other protected disclosures 151
202 FMA may require supervisor to attest as to issuer's compliance with issuer obligations 152
203 Duty of supervisor to report contravention or possible contravention of issuer obligations to FMA 152
204 Duty of supervisor to report serious financial problems to FMA 153
205 FMA's powers of direction 153
206 FMA's directions to supervisor (or issuer) 153

Powers to obtain court orders to intervene

207 Power of supervisor or FMA to apply for order to remedy problems 154
208 Court orders to remedy problems 155

209 Power of court to appoint new manager, provide for manager powers, and deal with changes of managers 156
210 Power of court to direct supervisor 157
211 Court power to order winding up of scheme 157
212 Initial steps in winding up of registered scheme 157
213 Winding-up report 158

Miscellaneous

214 Protection for persons in respect of disclosure under this subpart or subpart 4 159

Subpart 4—Registers and keeping copies of documents

Registers

215 Issuers must keep registers of regulated products 159
216 Manner of keeping registers 160
217 Contents of registers 160
218 Audit or review of registers 161
219 Auditor must advise if auditor considers that subpart is not being complied with 161
220 Issuer must notify Registrar of registers 161
221 Public inspection of register 162
222 Manner of inspection 162
223 Copies of documents 163
224 Reasons for request must be given and FMA may authorise non-compliance 163
225 Restriction on use of information in registers 163
226 Certain provisions prevail over Companies Act 1993 164

Copies of documents to be retained

227 Copies of documents must be retained for 7 years 164

Subpart 5—Civil liability for certain contraventions of this Part

228 Part 4 governance provisions 165

Part 5
Dealing in financial products on markets

Subpart 1—Purposes, overview, and interpretation

229 Additional purposes of Part 166
230 Overview 167

Material information and generally available to the market

231 Meaning of material information 167
232 Meaning of generally available to the market 168

Certain derivatives treated as being quoted financial products of listed issuer

233 Certain derivatives treated as being quoted financial products of listed issuer 168

Insider conduct

234 Meaning of information insider, inside information, and adviser 169

Relevant interests

235 Relevant interests in financial products (basic rule) 170
236 Extension of basic rule to powers or controls exercisable through trust, agreement, etc 170
237 Extension of basic rule to interests held by other persons under control or acting jointly 170
238 Situations not giving rise to relevant interests 171

Territorial scope

239 Territorial scope 172

Subpart 2—Insider trading

Insider conduct prohibited

240 Prohibition on insider conduct 172
241 Information insider must not trade 172
242 Information insider must not disclose inside information 173
243 Information insider must not advise or encourage trading 173
244 Criminal liability for insider conduct 173

When prohibition on insider conduct does not apply

245 Exception for trading required by enactment or rule of law 174
246 Exception for disclosure required by enactment or rule of law or by FMA 174
247 Exception for disclosure in connection with preparing PDS or limited disclosure document 174
248 Exceptions in respect of underwriting agreements 174
249 Exceptions in case of knowledge of person's own intentions or activities 174
250 Exceptions in case of knowledge in relation to derivatives 175
251 Exception for agent executing trading instruction only 175
252 Exceptions from section 241 for takeovers 175
253 Exceptions from sections 242 and 243 for takeovers 176
254 Exceptions for schemes of arrangement approved under Companies Act 1993 177
255 Exception for redemption of managed investment products 177
256 Exception for Reserve Bank 177

Defences

257 Absence of knowledge of trading 177
258 Inside information obtained by independent research and analysis 177
259 Equal information 178
260 Options and trading plans 178
261 Chinese wall defence 179

Subpart 3—Market manipulation

262 False or misleading statement or information 179
263 Exception for takeovers 180
264 Criminal liability for false or misleading statement or information 180
265 False or misleading appearance of trading 180
266 Exception for short selling and crossings 180
267 Persons treated as contravening false or misleading appearance of trading prohibition 181
268 Defence 181
269 Criminal liability for false or misleading appearance of trading 182

Subpart 4—Continuous disclosure

270 Listed issuers must disclose in accordance with listing rules if continuous disclosure listing rules apply 182
271 What are continuous disclosure provisions 182
272 No contravention of continuous disclosure provisions by person who takes reasonable steps to ensure listed issuer complies 183

Subpart 5—Disclosure of interests of substantial product holders in listed issuers

Substantial holding disclosure obligations

273 Purposes of subpart 183
274 Meaning of substantial product holder, substantial holding, and percentage 183
275 Person may be treated as holding financial products where person has relevant interest in certain derivatives 184
276 Persons must disclose if begin to have substantial holding 184
277 Substantial product holders must disclose if subsequent movement of 1% or more in holdings 184
278 Substantial product holders must disclose if subsequent changes in nature of relevant interests 185
279 Persons must disclose if cease to have substantial holding 185
280 What disclosure required 185
281 Form and method of disclosure 185
282 Listed issuer must give acknowledgement of disclosure 186
283 How to ascertain total financial products in class for purposes of disclosure 186

Exemptions

284 Exemption for persons with interest in other substantial product holders who comply 186
285 Exemption for corporate trustees and nominee companies 186
286 Conditions of exemption for corporate trustees and nominee companies 187
287 Exemption for persons under control or acting jointly with corporate trustees and nominee companies 187
288 Extended time for disclosure for trustees, executors, and administrators 187

Tracing and disclosure of interests in listed issuers

289 FMA may require persons to disclose to market relevant interests and powers to acquire relevant interests 188
290 Listed issuer may require registered holder or relevant interest holder to disclose relevant interests to it 188
291 Listed issuer may require person who has relevant interest to disclose information to it 189
292 Form and method of notice requiring disclosure 189
293 Listed issuers must make available information on substantial holdings 189
294 No liability for publication of substantial holdings 190
295 Notice under this subpart not to affect incorporation of listed issuer or constitute notice of trust 190

Subpart 6—Disclosure of relevant interests in quoted financial products by directors and senior managers of listed issuers

296 Purposes of subpart 190
297 Directors and senior managers of listed issuers must disclose relevant interests and dealings in relevant interests 190
298 Disclosure of relevant interests and dealings in relevant interests in relation to specified derivatives 191
299 What disclosure required 192
300 Form and method of disclosure 192
301 Disclosure obligation applies for 6 months after ceasing to hold office 192
302 Exemption for directors or senior managers who disclose substantial holdings 192
303 Exemption for overseas listed issuers 193
303A Extended time for disclosure for trustees, executors, and administrators 194
304 Listed issuer must keep interests register 194
305 Public inspection of interests register 195
306 Copies of documents 195
307 Offences relating to interests register 195

Subpart 7—Licensing of markets for trading financial products

308 Principles guiding exercise of powers under this subpart 195

Need for financial product market licence

309 What is a financial product market 196
310 Need for financial product market licence 196
311 Prohibitions on holding out 197
312 Exemptions 197
313 When financial product market taken to be operated in New Zealand 197

General obligations of licensed market operator

314 General obligations in respect of licensed markets 198

Issue of licence

315 Application for licence 199
316 When licence may be issued 199
317 When licence may be issued for overseas-regulated market 199
318 Conditions of licence 200
319 Procedural requirements 201
320 Licence may cover more than 1 financial product market 201
321 FMA must maintain list of licensed markets on Internet site 201

Changes to licences

322 Variation of conditions 202
323 Minister may suspend or cancel licence 203
324 Procedure for varying of conditions or suspension or cancellation of licence 203
325 Effect of suspension 204
326 Variation or revocation of suspension 204

Approval of contractual market rules

327 Licensed markets must be operated under market rules that comply with this subpart 204
328 Required matters for market rules 204
329 When market rules have effect 205
330 Approval process for proposed market rules and rule changes 205
331 Approval of proposed market rules and changes 206
332 Notice of decision on rules 206
333 Power of FMA to request changes to market rules on certain matters 207
334 Overseas-regulated markets must give notice of market rules and rule changes to FMA 208
335 Market rules must be available for public inspection 208
336 Application of Acts relating to regulations to contractual market rules 208

Monitoring of market operator obligations

337 Licensed market operator must give report on compliance with market operator obligations to FMA 208
338 FMA to carry out market operator obligations reviews 209
339 FMA must make written report on market operator obligations review 209
340 FMA may require licensed market operator to submit action plan on failure to meet market operator obligations 210
341 Approval, amendment, or rejection of action plan 210
342 Minister may give market operator obligations direction to licensed market operator 211
343 Minister may vary, suspend, or cancel licence 211

Control limits on licensed market operators

344 Power to impose control limits on licensed market operators 212
345 Control limit not to be exceeded 213
346 Effect of exceeding control limit 213
347 Application for approval to exceed control limit 213
348 Revocation or amendment of approval 214

Other provisions relating to licensing of financial product markets

349 FMA may give advice to Minister 215
350 Delegation of Minister's licensing functions and powers to FMA 215
351 Regulations modifying this Part or Part 7 or 7A for licensed markets 216

Subpart 8—Operation of licensed markets

352 Licensed market operator must notify FMA of disciplinary actions and suspected contraventions 218
353 When notification required 218
354 Details and method of notification 218
355 Licensed market operator must ensure FMA has access to real-time trading and other information 219
356 Waiver of notification and disclosure obligations 219
357 Licensed market operator must give FMA or Takeovers Panel other information and assistance on request 219
358 Power to disclose further information 219
359 Licensed market operator must give notice and have regard to submissions on continuous disclosure determinations 219
360 Limited notice and submissions for urgent determinations 220
361 FMA may give directions to licensed market operators 220
362 Grounds for continuous disclosure direction 221
363 Grounds for other directions 221
364 Notice, opportunity for licensed market operator to act, and submissions before FMA gives directions 222

365 Limited notice and submissions for urgent continuous disclosure directions 222
366 Notice and opportunity to be heard and represented after FMA gives direction 222
367 Effect of directions to licensed market operator 223
368 Provisions as to directions 223
369 Contracting out of or modification of continuous disclosure process requirements 223
370 Offence for failing to comply with direction 224

Subpart 9—Transfer of transferable financial products

371 Financial products to which this subpart applies 224

Transfer of specified financial products using transfers in prescribed form or containing prescribed information

372 Transfer of specified financial products by products transfer 224
373 Transfer of specified financial products by products transfer and brokers transfer 225
374 Products transfer does not need to be witnessed 226
375 Transfers to be instruments of transfer for purposes of other enactments and instruments 226

Transfer of specified financial products by electronic means

376 Approval of electronic transfer system 226
377 Specified financial products may be transferred under approved system 227
378 Minor technical modifications to system 227

Registration may not be refused

379 Registration may not be refused on ground that financial products have been transferred under this subpart 227
380 Effect of this Act on other enactments 227

Subpart 10—Unsolicited offers to purchase financial products off-market

381 Definitions relating to unsolicited offer regulations and related provisions 228
382 Regulations concerning unsolicited offers 228
383 Specific provisions for regulations concerning unsolicited offers 229
384 Protection from liability in connection with unsolicited offer provisions 230

Subpart 11—Civil liability for certain contraventions of this Part

385 Part 5 market provisions 230

Part 6
Licensing and other regulation of market services

386 Overview 232
387 Territorial scope for licensing and other regulation of certain market services 233
387A Other provisions relating to financial advice services and client money or property services 233

Subpart 1—Key provisions

388 When provider of market services needs to be licensed 233
389 Exemptions from need for market services licence 234
390 When providers of other market services may be licensed 235
391 Prohibitions on holding out 235
392 Meaning of discretionary investment management service and related terms *[Repealed]* 235

Subpart 2—Issue of licences, conditions, and duration

393 Principles guiding the exercise of FMA powers 235

Issue of licences

394 FMA may issue licence 236
395 Application for licence 236
396 When licence must be issued 236
397 Procedural requirements 237
398 Notice of decision 238
399 Licence must be issued for particular market services 238
400 Licence may cover authorised bodies 239
401 FMA must send licence details to Registrar 240

Conditions of licence

402 Conditions of licence 240
403 When FMA may impose permitted conditions 241
404 Licensee may apply for variation of conditions 242
405 Procedure for variation of conditions 242
406 Consequences of contravening conditions 243
406A Effect of condition requiring giver of advice or interposed person to be authorised by licence or registered 243

Expiry, suspension, or cancellation of licences

407 Duration of licence 244
408 When FMA may suspend or cancel licence 244
409 Effect of expiry, suspension, or cancellation of licence on appointments 244

Subpart 3—Monitoring and enforcement of licences

410 Meaning of material change of circumstances 244

Reports

411 Licensee must deliver reports to FMA 245
412 Licensee must report certain matters 245
413 Restriction on use of report 245

FMA's powers in case of contravention of market services licensee obligation, material change, etc

414 FMA's powers in case of contravention of market services licensee obligation, material change, etc 246
415 Procedure for exercising powers 246
416 Notice requirements 247

Action plan

417 Action plan 247
418 Approval, amendment, or rejection of action plan 247
419 Consequences of failure to submit action plan, rejection of action plan, or failure to comply with action plan 248

Directions

420 Directions 248
421 Consequences of failure to comply with directions 249

Subpart 4—Disclosure obligations for certain services provided to retail investors

422 Application of subpart 249
423 Disclosure must be made to retail investor 249
424 Timing and method of disclosure 249
425 Purpose of disclosure statement 250
426 Disclosure statement 250
426A Further prescribed information to be made available 250
427 False or misleading statements and omissions 251
428 Miscellaneous provisions relating to false or misleading statements and omissions 252

Subpart 5—Requirement for certain services to be provided under client agreements

429 Application of subpart 252
430 Need for client agreement 252
431 Contents, form, and effect of client agreement 253

Subpart 5A—Additional regulation of financial advice and financial advice services

Preliminary matters

431A Overview of financial advice and financial advice services regime 253
431B Additional purpose of subpart 254

Interpretation

431C Meaning of financial advice and regulated financial advice 254
431D When financial advice service is provided 255
431E Meaning of engaged 255

Limitations on giving regulated financial advice and holding out

431F Limitation on who can give regulated financial advice to retail clients on behalf of financial advice provider 256
431G Prohibitions on holding out in relation to giving financial advice 256

Duties on persons giving regulated financial advice

431H Liability for duties 257
431I Duty to meet standards of competence, knowledge, and skill 259
431J Duty to ensure client understands nature and scope of advice 259
431K Duty to give priority to client's interests 259
431L Duty to exercise care, diligence, and skill 260
431M Duty to comply with code of conduct 260
431N Duty relating to offer that contravenes Act or regulations 260
431O Duty to make prescribed information available 260
431P False or misleading statements and omissions 261

Additional duties on financial advice providers and interposed persons that engage others to give advice

431Q Persons engaging others to give advice must ensure compliance with duties 262
431R Duties of persons who engage nominated representatives 262

Miscellaneous provisions

431S Protection of individual who reports breach 263
431T Nomination of nominated representatives 263
431U Limitation on pecuniary penalty orders against financial advice providers 264

Subpart 5B—Regulation of client money or property services

431V Overview of client money or property services regime 264

Interpretation

431W Meaning of client money or property service and certain other terms 265

Disclosure obligations for services for retail clients

431X Provider must make disclosure before receiving client money or client property from retail client 266
431Y False or misleading statements and omissions 266

Conduct obligations

431Z Application of conduct obligations 267
431ZA Provider must exercise care, diligence, and skill 267

431ZB Provider must not receive client money if offer contravenes Act or regulations 267

Obligations for handling client money and client property

431ZC Provider must pay client money into separate trust account and hold client property on trust 268
431ZD Provider must account for client money and client property 269
431ZE Provider must keep records of client money and client property 269
431ZF Provider must report on client money and client property 269
431ZG Restrictions on use of client money and client property 270
431ZH Protection of client money and client property held on trust 270

Persons acting in course of business of employers or principals

431ZI Who is responsible for obligations 270

Application of Trusts Act 2019

431ZJ Application of Trusts Act 2019 271

Subpart 6—Additional regulation of discretionary investment management services

432 Application of subpart 271
432A Meaning of discretionary investment management service and related terms 271

Duties of DIMS licensee

433 DIMS licensee's duties 272
434 Duties of directors and senior managers of DIMS licensee 273
435 Duty of DIMS licensee to comply with professional standard of care 273
436 Limits on permitted indemnities 273
437 Requirement for agreed investment authority 273
438 Action that must be taken on limit breaks 274

Related party transactions

439 Definition of related party benefits 274
440 General prohibition on transactions giving related party benefits 275
441 Certain related party benefits permitted 275
442 Requirements for certificates as to related party benefits 275
443 General duties still apply 276

Broking and custodial service performed as part of discretionary investment management service

444 Meaning of investor money and investor property 276
445 Requirements for custodian 276
446 Certain client money or property service obligations under subpart 5B apply 277

Subpart 7—Holding and application of investor funds and property by derivatives issuers

447 Application of regulations made under this subpart 277
448 Regulations regulating holding and application of investor funds and property by derivatives issuers 277

Subpart 7A—Additional regulation of licences relating to financial benchmarks

448A Application of subpart 278
448B Additional purposes for licences relating to financial benchmarks 278
448C FMA's powers to direct contributor to provide information or data 279
448D FMA's powers to direct administration of financial benchmark 280
448E Duration of direction 281
448F FMA must follow steps for giving direction 281
448G FMA may give interim direction pending exercise of power 281
448H FMA must give notice after giving interim direction 282
448I General provisions on FMA's directions 282
448J Protection for persons in respect of provision of material, information, or data under this subpart 282

Subpart 8—Miscellaneous provisions

Civil liability

449 Part 6 services provisions 283

Part 7
Financial reporting

Subpart 1—Overview, application, and interpretation

450 Overview 285
451 Meaning of FMC reporting entity 285
452 Company that issues equity securities not FMC reporting entity if fewer than 50 shareholders 286
453 Recipients of money from conduit issuers 286
454 Miscellaneous provisions relating to application 287

Subpart 2—Accounting records

455 FMC reporting entities must keep proper accounting records 287
456 Place where accounting records to be kept 288
457 Accounting records to be in English 288
458 Period for which accounting records to be kept 289
459 Inspection of accounting records 289

Subpart 3—Preparation, audit, and lodgement of financial statements

Preparation of financial statements

460 Financial statements must be prepared 289

461 Group financial statements must be prepared 290
461A Financial statements for registered schemes and funds 290
461B Financial statements for overseas FMC reporting entity to include financial statements for New Zealand business 291
461C Failure to comply with authoritative notice does not give rise to pecuniary penalty 291

Audit of financial statements

461D Financial statements must be audited 292
461E Meaning of qualified auditor 292
461F Audit must be carried out in accordance with auditing and assurance standards 293
461G Auditor's report 293

Lodgement of financial statements

461H Lodgement of financial statements 293

Offences

461I Offence to knowingly fail to comply with financial reporting standards 294

FMC reporting entities with higher level of public accountability

461J External Reporting Board must have regard to indication of level of public accountability 295
461K FMC reporting entities considered to have higher level of public accountability 295
461L FMA may issue notice relating to level of public accountability 296

Subpart 4—Civil liability for certain contraventions of this Part

461M Part 7 financial reporting provisions 296

Part 7A
Climate-related disclosures for certain FMC reporting entities with higher level of public accountability

Subpart 1—Overview, application, and interpretation

461N Overview 297
461O Meaning of climate reporting entity 297
461P Definitions relating to listed issuers 298
461Q Meaning of large (in relation to registered banks, licensed insurers, credit unions, and building societies) 299
461R Meaning of large after amalgamation 300
461S Meaning of large manager 300
461T Application if person's status changes during accounting period 302
461U Miscellaneous provision relating to application 302

Subpart 2—CRD records

461V Climate reporting entities must keep proper CRD records 303

461W Manner in which CRD records to be kept 303
461X Period for which CRD records to be kept 303
461Y Inspection of CRD records 304

Subpart 3—Preparation of climate statements

Climate statements of climate reporting entities

461Z Climate statements must be prepared 304
461ZA Group climate statements must be prepared 305
461ZB Climate statements for overseas climate reporting entities 305

Climate statements relating to registered schemes

461ZC Climate statements for separate funds of registered schemes, etc 306
461ZD Application if manager of registered scheme changes and new manager is not large manager 306

Miscellaneous

461ZE Climate statements may be combined in single document 307
461ZF Failure to comply with authoritative notice does not give rise to pecuniary penalty 307

Offences

461ZG Offence to knowingly fail to comply with climate standards 307

Subpart 4—Assurance engagements

461ZH No requirement for assurance of climate statements on commencement of Part 308

Subpart 5—Lodgement of climate statements

461ZI Lodgement of climate statements 308
461ZJ Information about climate statements of climate reporting entities to be made available in annual report 309

Subpart 6—Civil liability for certain contraventions of this Part

461ZK Part 7A climate-related disclosure provisions 309

Part 8
Enforcement, liability, and appeals

Subpart 1—FMA's enforcement powers

Stop orders

462 When FMA may make stop orders 310
463 Terms of stop order 312
464 Meaning of restricted communication 312
465 FMA may make interim stop order pending exercise of powers 313
466 Persons to whom stop orders and interim stop orders may apply 313
467 Extended application of subpart 314

Direction orders

468 When FMA may make direction orders 314
469 Terms of direction orders 315

Order to prohibit use of simplified disclosure PDS

470 FMA may order that simplified disclosure PDS may not be used 316

Order to prohibit offer under recognition regime

471 FMA may order that offer may not be made under recognition regime 316

Unsolicited offer orders

472 When FMA may make unsolicited offer orders 317
473 Terms of unsolicited offer orders 317

Orders that exclusion does not apply

474 FMA may order that exclusion for offers of products of same class as quoted products does not apply 317

Process for FMA's orders

475 FMA must follow steps before making orders 318
476 FMA may shorten steps for specified orders 318
477 FMA must give notice after making orders 319

General provisions

478 General provisions on FMA's orders 319
479 Consequences of failing to comply with FMA's orders 320

Subpart 2—High Court's enforcement powers

Injunctions

480 Court may grant injunctions 320
481 When court may grant injunctions and interim injunctions 320
482 Undertaking as to damages not required by FMA 320

Court may make FMA orders under this Part

483 Court may make FMA orders under this Part 321

Subpart 3—Civil liability

Overview of civil liability

484 Overview of civil liability 321
485 What are civil liability provisions 321

Declarations of contravention and pecuniary penalty orders

486 When court may make declarations of contravention 322
487 Purpose and effect of declarations of contravention 322
488 What declarations of contravention must state 322
489 When court may make pecuniary penalty orders 322
490 Maximum amount of pecuniary penalty 323

491 Guidance for court on how to determine gains made or losses avoided for purposes of maximum amount 324
492 Considerations for court in determining pecuniary penalty 325
493 Court must order that recovery from pecuniary penalty be applied to FMA's actual costs 325

Compensatory orders

494 When court may make compensatory orders 326
495 Terms of compensatory orders 326
496 Person treated as suffering loss or damage in case of defective disclosure 326

Other civil liability orders

497 When court may make other civil liability orders 327
498 Terms of other civil liability orders 327

Defences for person in contravention of civil liability provisions

499 General defences for person in contravention 328
500 Disclosure defences for person in contravention 329
501 Additional disclosure or financial reporting or climate-related disclosure defence for directors who are treated as contravening 329
501A Additional defence for licensees who are treated as contravening 330
502 Conduct still contravenes even if defence is available 330

Defences for person involved in contravention of civil liability provisions

503 General defences for person involved in contravention 330

Miscellaneous provisions relating to defences

504 Defendant must identify other person 331

Interrelationship of civil liability orders

505 More than 1 civil liability order may be made for same conduct 331
506 Only 1 pecuniary penalty order may be made for same conduct 331
507 No pecuniary penalty and fine for same conduct 332

Limitation defences

508 Limitation defences 332

General

509 Rules of civil procedure and civil standard of proof apply to civil liability 332

Subpart 4—Offences relating to defective disclosure and false statements

510 Offence of knowingly or recklessly contravening prohibition on offers where defective disclosure in PDS or register entry 333

511 Offence of knowingly or recklessly contravening other provisions relating to defective disclosure 333
512 General offence for false or misleading statements 335

Subpart 5—Infringement offences

513 Infringement offences 335
514 Infringement notices 335
515 Procedural requirements for infringement notices 335
516 Payment of infringement fee 336

Subpart 6—Banning orders

517 When court may make banning orders 336
518 Terms of banning orders 338
519 Offence of contravening banning order 338
520 Only 1 banning order may be made for same conduct 338
521 General provisions for banning orders 339

Subpart 7—Orders to protect interests of aggrieved persons in case of financial markets investigations or proceedings

522 When court may make order to protect interests of aggrieved persons 339
523 What orders may be made 340
524 Interim orders 342
525 Relationship with other law 342

Subpart 8—Indemnities or insurance for directors, employees, and auditors of issuers, offerors, and licensees

526 Prohibition on indemnities or insurance for directors or employees of issuers, offerors, or licensees that are not New Zealand companies 342
527 Permitted indemnities for certain liabilities or costs 343
528 Permitted insurance for certain liability or costs 343
529 Prohibition on indemnity or insurance for auditors of issuers, offerors, or licensees 344
530 Interpretation for this subpart 345

Subpart 9—Appeals

531 Appeals against market services licence decisions 345
532 Appeals against other decisions of FMA on questions of law only 345
532A Appeals against decisions of disciplinary committee 346
532B Orders as to publication of names 346
532C Appeal on question of law 346

Subpart 10—Miscellaneous

Accessories and attribution of liability

533 Involvement in contraventions 346

534 Directors treated as having contravened in case of defective disclosure, financial reporting contravention, or climate-related disclosure contravention 347
535 State of mind of directors, employees, or agents attributed to body corporate or other principal 348
536 Conduct of directors, employees, or agents attributed to body corporate or other principal 348

Miscellaneous

537 Time for filing charging document for certain offences 349
538 Jurisdiction of courts in New Zealand 349
539 Orders to secure compliance 349
540 General provisions as to court's orders 349
541 Persons entitled to appear before court 350
542 Saving of liability under Crimes Act 1961 and general law 350

Part 9
Regulations, transitional provisions, and miscellaneous provisions

Subpart 1—Regulations

543 Regulations for purposes of Part 3 (Disclosure of offers of financial products) 350
544 Regulations for purposes of Part 4 (governance of financial products) 354
545 Regulations for purposes of Part 5 (dealing in financial products on markets) 357
546 Regulations for purposes of Part 6 (market services) 360
547 Transitionals, savings, and orderly implementation of Act and related enactments *[Repealed]* 368
548 Other regulations 368
549 Minister must consult FMA about regulations 372
550 Procedural requirements for regulations relating to exemptions, exclusions, and definitions 372
551 Miscellaneous provisions relating to exemptions 374
552 Miscellaneous provisions relating to fees and charges 374
552A Validation of fees used to recover costs of other Companies Office registers, etc 375
553 Miscellaneous provisions relating to implied provisions 377
554 Regulations or exemptions may require compliance with generally accepted accounting practice, standards, frameworks, or FMA methodologies 377
555 Different matters may be prescribed in respect of different circumstances 378

Subpart 2—Exemptions

556 FMA may grant exemptions 378
557 Restriction on FMA's exemption power 379
558 Exemption in force for not more than 5 years 379
559 Breach of exemption conditions 379
560 Exemptions in respect of specified overseas jurisdictions 379
561 Effect of exemptions on regulated offers 379
561A Financial reporting and climate-related disclosure exemptions 380

Subpart 3—FMA's designation power

562 FMA's designation power 380
563 Procedural requirements 383
564 Transitional matters 383
565 FMA may make interim orders pending exercise of powers 384
566 Period in which interim order is in force 384

Subpart 4—Frameworks or methodologies

567 Purpose 385
568 FMA may specify frameworks or methodologies 385
569 Consultation 386

Subpart 5—General provisions relating to certain FMA instruments

570 Application of subpart 386
571 Status and publication of instruments 386
571A Deferral of obligations to publish, notify, and make available non-class exemptions *[Repealed]* 388
572 Variation and revocation 388

Subpart 6—Recognition and application regimes

573 Purpose of this subpart 389
574 Definition of country in this subpart 389

Exemption from Act and regulations for New Zealand offers under recognition regime

575 Exemption from Act and regulations for New Zealand offers under recognition regime 389
576 Power to exempt from Act and regulations under recognition regime 390
577 Matters that must be stated in regulations implementing recognition regime 390
578 FMA may declare failure to meet preconditions of recognition regime to be non-material 391
579 Offence for breach of regulations implementing recognition regime 391

Extension of Act and regulations to overseas offers under application regime

580 Extension of Act and regulations to overseas offers under application regime 392
581 Power to extend Act and regulations under application regime 392
582 Matters that must be stated in regulations implementing application regime 392

Subpart 7—Enforcement of overseas pecuniary penalties under application regime

583 Purpose of this subpart 393
584 Enforcement of overseas pecuniary penalties under application regime 393
585 Power to enforce overseas penalties under application regime 393
586 Interpretation 394
587 Registration of judgment 394
588 Effect of registration 394
589 Enforceability of registered judgment 395
590 Stay may be granted 395
591 Costs 395
592 Interest 396
593 Rules of private international law not to apply 396
594 Other regulations for registration of judgments under application regime 396

Subpart 8—Miscellaneous provisions

595 Registers 397
596 Schedule 3 schemes 397
597 Transitional provisions *[Repealed]* 397

Schedule 1 398
Provisions relating to when disclosure is required and exclusions for offers and services

Schedule 2 430
Registers

Schedule 3 437
Schedule 3 schemes

Schedule 4 440
Transitional, savings, and related provisions

Schedule 5 492
Other provisions relating to financial advice services and client money or property services

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Financial Markets Conduct Act 2013.

2 Commencement

(1) Section 351, subpart 10 of Part 5, subpart 7 of Part 6, and subparts 1 to 7 of Part 9 come into force on the day after the date on which this Act receives the Royal assent.

(2) The rest of this Act comes into force on a date appointed by the Governor-General by Order in Council; and 1 or more orders may be made appointing different dates for different provisions and for different purposes.

(3) To the extent that it is not previously brought into force under subsection (1) or (2), the rest of this Act comes into force on 1 April 2017.

(4) In this section, **provision** includes any item, or any part of an item, in any of the schedules.

(5) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 2(2): Part 1, Part 2 (other than sections 23–27 and 34–37), those provisions of Part 6 not already in force (other than sections 388, 389, 422(a), 429(a) and (b), and subpart 6), Part 7, Part 8 (other than sections 470–473, 510 and 511), section 597 (but only for the purpose of the provisions of Schedule 4 that are coming into force under paragraph (h)), clauses 1, 2, 6, 8, 9, 10, 12–14, 15, 19, 21 (other than paragraph (b)), 25–29, 48 and 49 of Schedule 1, clauses 1–3, 13(2) and (3), 14, 51, 58, and 59 of Schedule 4 brought into force, on 1 April 2014, by clause 2(1) of the Financial Markets Legislation (Phase 1) Commencement Order 2014 (LI 2014/51).

Section 2(2): sections 23 to 27 brought into force, on 17 June 2014, by clause 2(2) of the Financial Markets Legislation (Phase 1) Commencement Order 2014 (LI 2014/51).

Section 2(2): the remaining provisions that have not earlier been brought into force, except section 310, section 597 in so far as it relates to clause 42(7) and (8) of Schedule 4, and clause 42(7) and (8) of Schedule 4, brought into force, on 1 December 2014, by clause 2 of the Financial Markets Legislation (Phase 2) Commencement Order 2014 (LI 2014/325).

Section 2(2): section 310, section 597 in so far as it relates to clause 42(7) and (8) of Schedule 4, and clause 42(7) and (8) of Schedule 4 brought into force, on 1 December 2015, by section 2 of the Financial Markets Legislation (Phase 3) Commencement Order 2015 (LI 2015/252).

Section 2(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Part 1
Preliminary provisions

Purposes

3 Main purposes

The main purposes of this Act are to—

(a) promote the confident and informed participation of businesses, investors, and consumers in the financial markets; and

(b) promote and facilitate the development of fair, efficient, and transparent financial markets.

4 Additional purposes

This Act has the following additional purposes:

(a) to provide for timely, accurate, and understandable information to be provided to persons to assist those persons to make decisions relating to financial products or the provision of financial services:

(b) to ensure that appropriate governance arrangements apply to financial products and certain financial services that allow for effective monitoring and reduce governance risks:

(c) to avoid unnecessary compliance costs:

(d) to promote innovation and flexibility in the financial markets.

Overview

5 Overview

(1) In this Act,—

(a) this Part deals with preliminary matters, including specifying the purposes of this Act and interpretation:

(b) Part 2 provides for fair dealing matters, including—

(i) prohibiting misleading or deceptive conduct, false or misleading representations, and the making of unsubstantiated representations in connection with financial products and financial services:

(ii) prohibiting offers of financial products in the course of unsolicited meetings:

(c) Part 3 provides for—

(i) disclosure to investors in relation to certain offers of financial products (Schedule 1 contains provisions relating to when disclosure is required, including exclusions):

(ii) advertisements for those offers:

(iii) ongoing disclosure to investors:

(d) Part 4 provides for the governance of regulated products, including—

(i) the governance of debt securities (including the need for a trust deed and a supervisor):

(ii) the governance of managed investment products (including the need for registration of the managed investment scheme, a governing document, and a supervisor):

(iii) the duties of persons associated with debt securities or registered schemes to make protected disclosures:

(iv) the powers of intervention to enable the supervision of debt securities and registered schemes by a supervisor or the FMA:

(v) ongoing duties of issuers of all regulated products (for example, to maintain registers of regulated products):

(e) Part 5 provides for matters relating to dealing in financial products on markets, including—

(i) prohibiting insider trading and market manipulation:

(ii) providing for continuous disclosure by listed issuers:

(iii) providing for the disclosure of interests of substantial product holders in listed issuers and the disclosure of relevant interests by directors and senior managers of listed issuers:

(iv) providing for the licensing of markets for trading financial products:

(v) providing for the transfer of financial products:

(vi) the making of regulations setting rules for unsolicited offers to purchase financial products:

(f) Part 6 regulates certain financial market services, including—

(i) the licensing of certain financial market service providers (for example, providers of financial advice services, managers of registered schemes, certain issuers of derivatives, and providers of intermediary services):

(ii) providing for disclosure obligations and the need for client agreements in connection with some of those financial market services:

(iia) imposing other obligations on providers of financial advice services and persons who give financial advice:

(iib) providing for disclosure and conduct obligations for providers of client money or property services:

(iii) imposing other conduct obligations on providers of discretionary investment management services and on their custodians:

(iv) providing for the making of regulations regulating the holding and application of investor funds and property by issuers of derivatives:

(g) Part 7 provides for financial reporting obligations:

(ga) Part 7A provides for climate-related disclosure obligations:

(h) Part 8 provides for enforcement and liability matters and for appeals, including—

(i) providing the FMA and the High Court with certain powers to avoid, remedy, or mitigate any actual or likely adverse effects of contraventions of this Act or the regulations:

(ii) the imposition of civil liability (including pecuniary penalty orders and compensation orders):

(iii) offences:

(iv) providing for appeals against the FMA's decisions or (in the case of financial advisers) the disciplinary committee's decisions:

(i) Part 9 provides for—

(i) regulations and exemptions, including powers to prescribe matters relating to the form and content of product disclosure statements, and powers for the FMA to designate financial products and offers, and to grant exemptions, where this is necessary or desirable in order to promote the main purposes of this Act specified in section 3 or any of the additional purposes of this Act specified in section 4:

(ii) transitional provisions (*see* Schedule 4) and miscellaneous matters.

(2) This section is only a guide to the general scheme and effect of this Act.

(3) In addition, the Financial Markets (Repeals and Amendments) Act 2013 repeals and revokes the legislation replaced by this Act and makes amendments to other enactments.

Section 5(1)(f)(i): amended, on 15 March 2021, by section 4(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 5(1)(f)(iia): inserted, on 15 March 2021, by section 4(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 5(1)(f)(iib): inserted, on 15 March 2021, by section 4(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 5(1)(ga): inserted, on 27 October 2022, by section 4 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 5(1)(h)(iv): amended, on 15 March 2021, by section 4(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Interpretation

6 Interpretation

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

accounting period has the same meaning as in section 5(1) of the Financial Reporting Act 2013

acquire—

(a) includes obtain by buying, subscribing, or taking an assignment or transfer of; and

(b) includes, in Part 5, agreeing to acquire; and

(c) in relation to a derivative, a contract of insurance, a consumer credit contract, or a DIMS facility, includes entering into the legal relationship that constitutes the derivative, contract, or facility; and

(d) in relation to a renewal or variation of the terms or conditions of an existing financial advice product, includes entering into the legal relationship that provides for the renewal or variation

administration manager, in relation to a managed investment scheme, means a person to whom a manager of the scheme has contracted some or all of the administration of the scheme

administrator of a financial benchmark means a person that controls the generation and operation of a financial benchmark, including administering and applying the rules or procedures by which a financial benchmark is generated

advertisement,—

(a) in relation to an offer, or intended offer, of financial products, means any form of communication made to the public or a section of the public for the purpose of promoting the offer or intended offer:

(b) in relation to the supply of financial services, means any form of communication made to the public or a section of the public for the purpose of promoting the supply of the services

agreement includes any contract, arrangement, or understanding

alternative disclosure obligation means any provision of regulations made under section 351 that is stated by those regulations to be an alternative disclosure obligation

applicable auditing and assurance standard has the same meaning as in section 5(1) of the Financial Reporting Act 2013

applicable financial reporting standard has the same meaning as in section 5(1) of the Financial Reporting Act 2013

applicable climate standard has the same meaning as in section 5(1) of the Financial Reporting Act 2013

34

application, in relation to financial products, includes an offer to acquire the financial products whether in writing or otherwise

associated person or **associated** has the meaning set out in section 12(1)

audio or visual service means an audio or visual service provided to users of the service by means of telecommunications

authorised body, in relation to a market services licence, means an entity that is authorised under section 400 to provide a market service under the licence

authoritative notice has the same meaning as in section 5(1) of the Financial Reporting Act 2013

balance date has the same meaning as in section 41 of the Financial Reporting Act 2013

broadcaster has the same meaning as in section 2(1) of the Broadcasting Act 1989

broadcasting has the same meaning as in section 2(1) of the Broadcasting Act 1989

building society has the same meaning as in section 2(1) of the Building Societies Act 1965

business includes any profession, trade, or undertaking, whether or not carried on with the intention of making a pecuniary profit

business rules means the rules for a financial product market that deal with the matters set out in section 328(4)(a) to (d)

civil liability order has the meaning set out in section 484

civil liability provision has the meaning set out in section 485

class, in relation to financial products, has the meaning set out in subsection (3)

client, in relation to a financial advice service or client money or property service, has the meaning set out in clause 2 of Schedule 5

client money or property service has the meaning set out in section 431W(1)

climate-related disclosure framework has the same meaning as in section 9AA of the Financial Reporting Act 2013

climate reporting entity has the meaning set out in section 461O

climate statements has the same meaning as in section 5(1) of the Financial Reporting Act 2013

code of conduct or **code** means the code of professional conduct in force under clause 39 of Schedule 5

company—

(a) means a company, or an overseas company, within the meaning of section 2(1) of the Companies Act 1993; but

(b) does not include an overseas limited partnership (within the meaning of section 4 of the Limited Partnerships Act 2008)

complying superannuation fund means a superannuation scheme or workplace savings scheme that is identified as a complying superannuation fund on the register of managed investment schemes (or, if the scheme is identified as a complying superannuation fund in respect of only a section of the scheme, means the scheme in respect of that section)

conduct in relation to a takeover offer—

(a) means conduct following the public announcement by a person of an intention to make an offer (being an offer that is regulated by the Takeovers Code), whether or not the offer has already begun and whether or not the offer proceeds; and

(b) includes conduct incidental or preliminary to a takeover that is regulated by the Takeovers Code

constitution means,—

(a) in the case of a company within the meaning of section 2(1) of the Companies Act 1993, the constitution of the company; and

(b) in the case of any other entity, the documents or instruments constituting or defining the constitution of the entity

consumer credit contract has the same meaning as in section 11 of the Credit Contracts and Consumer Finance Act 2003

continuous disclosure exemption means an exemption or a waiver of a continuous disclosure provision or provisions of the listing rules of the licensed market

continuous disclosure obligation means an obligation under section 270 and any listing rules with which that section requires compliance

continuous disclosure provisions has the meaning set out in section 271

continuous issue PDS means a PDS that—

(a) relates to financial products that the issuer, in the ordinary course of its business, continuously offers; and

(b) is not the first PDS to be lodged with the Registrar in respect of that class of financial products

continuous issuer means an issuer that in the ordinary course of its business continuously offers financial products

contract of insurance has the same meaning as in section 7 of the Insurance (Prudential Supervision) Act 2010

contributor, in relation to a financial benchmark, has the meaning set out in section 448C(4)

controlling owner, in relation to any person, has the meaning set out in section 4 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (applied to that person as if it were a financial service provider even if it is not)

convertible note has the same meaning as in section YA 1 of the Income Tax Act 2007

co-operative company means a company registered as a co-operative company under the Co-operative Companies Act 1996

court means, in relation to any matter, the court before which the matter is to be determined (*see* section 538, which confers exclusive jurisdiction on the High Court in proceedings other than proceedings for offences)

CRD records means the records that a climate reporting entity is required to keep by subpart 2 of Part 7A

credit union has the same meaning as in section 2 of the Friendly Societies and Credit Unions Act 1982

custodial service has the meaning set out in section 431W(2)

custodian means,—

(a) in relation to a managed investment scheme, each person who is designated or appointed to perform, or to whom is contracted, the function of holding some or all of the scheme property under the scheme:

(b) in relation to a discretionary investment management service, each person holding investor money or investor property under that service (whether or not appointed by that investor)

dealing, in relation to financial products,—

(a) means any of the following:

(i) acquiring or disposing of financial products; or

(ii) offering financial products for issue or sale and issuing and transferring financial products; or

(iii) underwriting financial products; or

(iv) promoting by any means the acquisition or disposal of financial products; or

(v) in relation to a derivative, discharging obligations under the derivative; or

(vi) anything that is preparatory to, or related to, any dealing in financial products (for example, giving financial advice), unless an exception applies to the dealing under this Act; but

(b) does not include a dealing excluded by the regulations

debt security has the meaning set out in section 8(1)

defined benefit scheme means a scheme that operates on the principle of unallocated funding, and includes a scheme under which contributions are not allocated on a defined basis to individual members

derivative has the meaning set out in section 8(4)

derivatives issuer means a person that is in the business of entering into derivatives

DIMS facility means an agreement for the provision of a discretionary investment management service

DIMS licensee has the meaning set out in section 432A(3)

direction order means an order under section 468

director means,—

(a) in relation to a company, any person occupying the position of a director of the company by whatever name called:

(b) in relation to a partnership (other than a limited partnership), any partner:

(c) in relation to a limited partnership, any general partner:

(d) in relation to a body corporate or unincorporate, other than a company, partnership, or limited partnership, any person occupying a position in the body that is comparable with that of a director of a company:

(e) in relation to any other person, that person

disciplinary committee means the disciplinary committee established under clause 49 of Schedule 5

disclosure document means any of the following:

(a) a PDS:

(b) a limited disclosure document under clause 26 of Schedule 1:

(c) information made available under subpart 4 of Part 3:

(d) a disclosure statement or other information made available under subpart 4, 5A, or 5B of Part 6

discretionary investment management service or **DIMS** has the meaning set out in section 432A(1)

dispose of—

(a) includes dispose of by issuing, selling, assigning, or transferring; and

(b) includes withdrawing from, terminating, or closing out the legal relationship that constitutes the financial product or other financial advice product; and

(ba) in relation to a renewal or variation of the terms or conditions of an existing financial advice product, includes withdrawing from or terminating the product or refusing to agree to the renewal or variation; and

(c) includes agreeing to dispose of

distribute includes—

(a) make available, publish, and circulate; and

(b) communicate by letter, newspaper, an Internet site, broadcasting, an audio or visual service, sound recording, television, film, video, or any form of electronic or other means of communication

document has the same meaning as in section 4(1) of the Evidence Act 2006

employee share purchase scheme means a scheme established by an entity under which employees or directors of the entity or of any of its subsidiaries (or other eligible persons referred to in clause 8 of Schedule 1) may acquire specified financial products (as defined in that clause) that are issued by the entity

encourage, in subpart 2 of Part 5, includes incite, counsel, or procure

engaged, in relation to a person who gives financial advice, has the meaning set out in section 431E

engaging in conduct means doing or refusing to do an act, and includes—

(a) omitting to do an act; or

(b) making it known that an act will or will not be done

entity means any of the following:

(a) a company or other body corporate:

(b) a corporation sole:

(c) in the case of a trust that has—

(i) only 1 trustee, the trustee acting in his, her, or its capacity as trustee:

(ii) more than 1 trustee, the trustees acting jointly in their capacity as trustees:

(d) an unincorporated body (including a partnership)

equity security has the meaning set out in section 8(2)

exhibiting films to the public means to exhibit to the public films within the meaning of section 2 of the Films, Videos, and Publications Classification Act 1993

financial advice has the meaning set out in section 431C(1)

financial advice product means—

(a) a financial product (as defined in section 7); or

(b) a DIMS facility; or

(c) a contract of insurance; or

(d) a consumer credit contract; or

(e) any other product declared by the regulations to be a financial advice product; or

(f) a renewal or variation of the terms or conditions of an existing financial advice product

financial advice provider means a person that provides a financial advice service (*see* section 431D)

financial advice service means the service of giving regulated financial advice as referred to in section 431D

financial adviser—

(a) means an individual who is registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 in relation to a financial advice service; but

(b) does not include a financial advice provider

financial benchmark has the meaning set out subsections (6) and (7)

financial markets—

(a) means the financial markets in New Zealand; and

(b) includes—

(i) markets in New Zealand for the provision of financial services; and

(ii) the capital markets in New Zealand

financial markets legislation means the Acts listed in Schedule 1 of the Financial Markets Authority Act 2011 and the enactments made under those Acts

financial markets participant has the same meaning as in section 4 of the Financial Markets Authority Act 2011

financial product has the meaning set out in section 7 (but in Part 2 has the meaning set out in section 18)

financial product market has the meaning set out in section 309

financial product market licence means a licence issued under subpart 7 of Part 5

financial service—

(a) has the same meaning as in section 5 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008; and

(b) includes a market service; but

(c) does not include, for the purposes of any provision of this Act, any class or classes of services declared by the regulations not to be financial services for the purposes of that provision

40

financial statements has the same meaning as in section 6 of the Financial Reporting Act 2013

FMA means the Financial Markets Authority established by Part 2 of the Financial Markets Authority Act 2011

FMC reporting entity has the meaning set out in section 451

generally accepted accounting practice has the same meaning as in section 8 of the Financial Reporting Act 2013

generally available to the market has the meaning set out in section 232

give, in relation to information or any other matter, includes give by electronic or other means that enable the recipient to readily store the matter in a permanent and legible form

governing document—

(a) means (in the case of a debt security) a trust deed:

(b) means (in the case of a managed investment scheme constituted as a trust) the 1 or more trust deeds that constitutes the scheme or (in the case of any other managed investment scheme) the 1 or more deeds, agreements, or instruments that constitute or govern the scheme (for example, a partnership agreement):

(c) includes (in each case) any amendments to a document referred to in paragraph (a) or (b)

group,—

(a) in Part 7 and subpart 1 of Part 7A, means a group comprising an FMC reporting entity and its subsidiaries:

(b) in Part 7A (other than subpart 1), means a group comprising a climate reporting entity and its subsidiaries

group climate statements has the same meaning as in section 5(1) of the Financial Reporting Act 2013

group financial statements has the same meaning as in section 7 of the Financial Reporting Act 2013

in the business of, in relation to any service or other activity, means carrying on a business of that type (whether or not the business is the person's only business or the person's principal business)

indemnify includes relieve, exempt, or excuse from liability, whether before or after the liability arises

independent trustee, in relation to a restricted scheme, means the trustee, or director of a sole corporate trustee, who is the licensed independent trustee for the purposes of the restricted scheme

industrial and provident society means a society registered under the Industrial and Provident Societies Act 1908

information includes documents

information insider has the meaning set out in section 234

infringement fee, in relation to an infringement offence, means the amount prescribed by the regulations as the infringement fee for the offence

infringement notice means a notice issued under section 514

infringement offence means an offence identified in this Act as being an infringement offence

Inland Revenue Acts means the Acts listed in the Schedule of the Tax Administration Act 1994

inside information has the meaning set out in section 234

insolvency event has the meaning set out in subsection (4)

insolvent means that,—

(a) in relation to an issuer of a debt security or a managed investment product,—

(i) the issuer is unable to pay the issuer's debts as they become due in the normal course of business; or

(ii) the value of the issuer's assets is less than the value of the issuer's liabilities, including contingent liabilities (and for this purpose section 4(4) of the Companies Act 1993 applies in respect of the issuer as if it were a company even if it is not):

(b) in relation to a registered scheme that is a defined benefit scheme, the value of the assets in the scheme is less than the value of the vested benefits that may in due course flow from, or are attributable to, membership of the scheme:

(c) in relation to any other registered scheme,—

(i) the funds in the scheme are not sufficient to enable debts in respect of the scheme to be paid as they become due in the normal course of business; or

(ii) the value of the assets in the scheme is less than the value of the liabilities in respect of the scheme, including contingent liabilities (and for this purpose section 4(4) of the Companies Act 1993 applies in respect of the scheme as if it were a company)

inspection period means the period commencing on the third working day after the day on which notice of intention to inspect is served on the issuer by the person concerned and ending with the eighth working day after the day of service

interim stop order has the meaning set out in section 465

investment authority has the meaning set out in section 432A(3)

investment manager means, in relation to a managed investment scheme, a person to whom a manager of the scheme has contracted the investment of some or all of the scheme property

investor includes—

(a) a person to whom an offer of financial products is made; and

(b) a person who acquires, or may acquire, a financial product; and

(c) a person who receives, or may receive, a financial service

investor money has the meaning set out in section 444

investor property has the meaning set out in section 444

involved in a contravention has the meaning set out in section 533

issued and **issuer** have the meanings set out in section 11

issuer obligation means an obligation imposed on the issuer of a financial product by or under any of the following:

(a) a governing document that relates to the financial product:

(b) the terms of any regulated offer of the financial product:

(c) a court order relating to the financial product:

(d) this Act (including, in relation to a managed investment product, all obligations as manager):

(e) the KiwiSaver Act 2006:

(f) the Non-bank Deposit Takers Act 2013

KiwiSaver scheme means a scheme that is registered on the register of managed investment schemes as a KiwiSaver scheme

lawyer has the same meaning as in section 6 of the Lawyers and Conveyancers Act 2006

licence means a licence under this Act or, in relation to a supervisor, the Financial Markets Supervisors Act 2011, and **licensed** means having a licence, or being authorised under a licence, under this Act or, in relation to a supervisor, having a licence under the Financial Markets Supervisors Act 2011

licensed insurer—

(a) has the same meaning as in section 6 of the Insurance (Prudential Supervision) Act 2010; but

(b) in Part 7, does not include a Lloyd's underwriter (within the meaning of that Act) or an insurer that is included in a class of insurers that is the subject of an exemption under section 238(1)(b)(i)(A) or (ii) of that Act; and

(c) in Part 7A, does not include a Lloyd's underwriter (within the meaning of that Act) or an insurer that is included in a class of insurers that is the subject of an exemption under section 238(1)(b) of that Act

licensed market means a financial product market that is licensed under Part 5 (subject to any regulations made under section 351(1)(d))

licensed market operator means a person that is authorised to operate a licensed market under a financial product market licence

licensed market services means those market services—

(a) that are required to be licensed under Part 6; or

(b) for which a person holds a licence under Part 6 (whether or not required to do so)

limited disclosure document or **LDD**, in relation to an offer referred to in clause 26(1) of Schedule 1, means a limited disclosure document for the offer required by regulations made for the purposes of that clause

listed issuer means—

(a) a person that is a party to a listing agreement with a licensed market operator in relation to a licensed market (and includes a licensed market operator that has financial products quoted on its own licensed market):

(b) a person to which paragraph (a) previously applied, in respect of any action or event or circumstance to which this Act applied at that time

listing rules means the rules for a financial product market that deal with the matters set out in section 328(3)(a) to (e)

local authority has the meaning set out in section 5(1) of the Local Government Act 2002 (and *see also* section 8 of the Local Government Borrowing Act 2011)

managed investment product has the meaning set out in section 8(3)

managed investment scheme has the meaning set out in section 9

manager means,—

(a) in relation to a registered scheme (other than a restricted scheme), the person designated or appointed as the manager of the scheme:

(b) in relation to a restricted scheme, the persons designated or appointed as trustees of the scheme or, if only 1 person is designated or appointed as a trustee of the scheme, that person:

(c) in relation to a managed investment scheme if there is no person to whom paragraph (a) or (b) applies or if it is not a registered scheme, a person occupying the position of, and carrying out any of the functions of, the manager set out in section 142

market operator obligation means an obligation imposed on a licensed market operator in respect of a licensed market by or under any of the following:

(a) a condition of the licence:

(b) section 314 (general obligations in respect of licensed markets):

(c) section 333 (power to request changes to market rules):

44

(d) sections 337, 340, 341, and 342 (monitoring obligations)

market rules means—

(a) the rules for a financial product market that deal with the matters required for that market by section 328; or

(b) in the case of a financial product market licensed, or applying to be licensed, under section 317, the rules for the market specified by the FMA under section 334

market service means any of the following:

(a) acting as a manager of a registered scheme:

(b) acting as an independent trustee of a restricted scheme:

(c) acting as a provider of a discretionary investment management service:

(d) acting as a derivatives issuer:

(e) acting as a custodian in respect of a registered scheme or a discretionary investment management service:

(ea) acting as a provider of a financial advice service:

(eb) providing a client money or property service:

(f) acting as a provider of prescribed intermediary services:

(g) acting as an administrator of a financial benchmark

market services licence means a licence issued under Part 6

market services licensee obligation means an obligation imposed on a licensee or an authorised body by or under any of the following:

(a) a condition of the licence:

(b) this Act:

(c) the terms of the offer of a financial product or the provision of a market service:

(d) a court order made in connection with the offer of a financial product or the provision of a market service:

(e) in the case of a manager or an independent trustee of a registered scheme,—

(i) a governing document:

(ii) the KiwiSaver Act 2006

material information,—

(a) in Part 3, has the meaning set out in section 59:

(b) in Part 5, has the meaning set out in section 231

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

money includes money's worth (except in the definitions of debt security, investor money, and investor property)

NBDT has the same meaning as in section 5 of the Non-bank Deposit Takers Act 2013

New Zealand resident for tax purposes means a person that is a New Zealand resident, as determined under sections YD 1 and YD 2 of the Income Tax Act 2007

nominated representative means an individual who is nominated by a financial advice provider under section 431T

non-quoted financial products means financial products that are not quoted

offer includes—

(a) inviting applications for the issue of financial products:

(b) inviting applications to purchase financial products

offeror means,—

(a) in relation to an offer of financial products for issue, the issuer; or

(b) in any other case of an offer of financial products, the person who has the capacity, or who agrees, to transfer the financial products if the offer is accepted

overseas climate reporting entity, in Part 7A, means a body corporate that—

(a) is incorporated outside New Zealand; and

(b) is a climate reporting entity under section 461O(1)(b) to (e) (*see* section 461Q(3) and (4))

Part 2 fair dealing provision means any of the provisions specified in section 38(1)

Part 3 offer provision means any of the provisions specified in section 101(3) or (4)

Part 4 governance provision means any of the provisions specified in section 228(3) or (4)

Part 5 market provision means any of the provisions specified in section 385(3) or (4)

Part 6 services provision means any of the provisions specified in section 449(3) or (4)

Part 7 financial reporting provision means any of the provisions specified in section 461M(3) or (4)

Part 7A climate-related disclosure provision means any of the provisions specified in section 461ZK(3) or (4)

participant means, in relation to a licensed market, a person authorised by the licensed market operator to participate in that market

46

person includes any entity

prescribed intermediary services means services of a kind that are prescribed for the purposes of this definition and involve a person acting as an intermediary in relation to a financial product or financial service

product disclosure statement or **PDS**, in relation to a regulated offer, means a product disclosure statement for the offer

product holder, in relation to a financial product, means,—

(a) in the case of a financial product to which section 215(1) does not apply, the holder of the financial product (subject to paragraph (c)); or

(b) in the case of any other financial product, the person who is registered as the holder of the product in a register kept under subpart 4 of Part 4 (subject to paragraph (c)); or

(c) in the case of a derivative, any party to the derivative that did not make a regulated offer of the derivative

product provider, in relation to a financial advice product, means,—

(a) for a financial product, the issuer:

(b) for a DIMS facility, the person to whom the investment authority is granted:

(c) for a contract of insurance, the insurer:

(d) for a consumer credit contract, the creditor:

(e) for any other financial advice product, the person specified in the regulations

protected disclosure has the meaning set out in section 214(4)

provider of a discretionary investment management service has the meaning set out in section 432A(3)

qualified auditor has the meaning set out in section 461E

qualified statutory accountant has the same meaning as in section 5(1) of the Financial Reporting Act 2013

quoted, in relation to—

(a) financial products of a listed issuer, means financial products of the issuer that are approved for trading on a licensed market (and, to avoid doubt, financial products do not cease to be quoted merely because trading in those products is suspended):

(b) derivatives, means derivatives that are approved for trading on a licensed market (and, to avoid doubt, derivatives do not cease to be quoted merely because trading in those products is suspended)

redeemable has the meaning set out in subsection (5)

register entry,—

(a) in relation to a regulated offer, means the entry for the offer in the register of offers of financial products:

(b) in relation to an offer referred to in clause 26(1) of Schedule 1, means the entry for the offer in the register of offers of financial products that is required by regulations made for the purposes of that clause

register of managed investment schemes means the register of managed investment schemes kept under Schedule 2

register of offers of financial products means the register of offers of financial products kept under Schedule 2

registered bank has the same meaning as in section 2(1) of the Banking (Prudential Supervision) Act 1989

registered scheme means a managed investment scheme that is registered on the register of managed investment schemes

Registrar means the Registrar of Financial Service Providers appointed under section 35 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008

regulated client money or property service has the meaning set out in section 431W(4)

regulated financial advice has the meaning set out in section 431C(3)

regulated offer has the meaning set out in section 41

regulated product has the meaning set out in section 41

regulations means regulations made under this Act

related, in relation to a body corporate, has the meaning set out in section 12(2)

related party,—

(a) in relation to a registered scheme, has the meaning set out in section 172:

(b) in relation to a DIMS licensee, has the meaning set out in section 439

related party benefit,—

(a) in relation to a registered scheme, has the meaning set out in section 172:

(b) in relation to a DIMS licensee, has the meaning set out in section 439

relative has the meaning set out in clause 5(2) of Schedule 1

relevant event means an event that results in a person having to disclose matters under sections 276 to 279

relevant interest has the meaning set out in sections 235 to 238

relevant money, in relation to financial products, means the money paid—

(a) to acquire the financial products or an increased interest in the financial products; or

(b) as a further contribution or investment or a further deposit as referred to in section 11(2)(c)

reporting period has the meaning set out in section 337

representation, in sections 23 to 27, has the meaning set out in section 23(4)

Reserve Bank means the Reserve Bank of New Zealand

restricted communication has the meaning set out in section 464

restricted scheme means a scheme that is registered on the register of managed investment schemes as a KiwiSaver scheme, a superannuation scheme, or a workplace savings scheme and that is identified as a restricted scheme on that register

retail client, in relation to a financial advice service or a client money or property service, has the meaning set out in clause 3 of Schedule 5

retail investor has the meaning set out in clause 35 of Schedule 1

retail service has the meaning set out in clause 35 of Schedule 1

retirement scheme means any of the following schemes for the purposes of any enactment:

(a) a registered scheme that is a KiwiSaver scheme or a superannuation scheme:

(b) a workplace savings scheme (subject to the enactment and the regulations):

(c) a Schedule 3 scheme (subject to the enactment and the regulations)

Schedule 3 scheme means a scheme that, under Schedule 3, is approved as a Schedule 3 scheme

scheme participant, in relation to a managed investment scheme, means a product holder of a managed investment product in the scheme

scheme property or **property of the scheme**, in relation to a managed investment scheme, means the property to which the scheme relates, including—

(a) contributions of money to the scheme; and

(b) money borrowed or raised for the purposes of the scheme; and

(c) financial products or other property acquired, directly or indirectly, with, or with the proceeds of, contributions or money referred to in paragraph (a), (b), or (d); and

(d) income and property derived, directly or indirectly, from contributions, money, or property referred to in paragraphs (a) to (c) or this paragraph

security—

(a) means an arrangement or a facility that has, or is intended to have, the effect of a person making an investment or managing a financial risk; and

(b) includes—

(i) a financial product; and

(ii) any interest or right to participate in any capital, assets, earnings, royalties, or other property of any person; and

(iii) any interest in, or right to be paid, money that is, or is to be, deposited with, lent to, or otherwise owing by, any person (whether or not the interest or right is secured by a charge over any property); and

(iv) any renewal or variation of the terms or conditions of any existing security; but

(c) does not include any interest or right that is declared by regulations not to be a security for the purposes of this Act

senior manager, in relation to a person (**A**), means a person who is not a director but occupies a position that allows that person to exercise significant influence over the management or administration of A (for example, a chief executive or a chief financial officer)

separate fund, in Parts 7 and 7A, has the meaning set out in section 461A(2)

service provider or **provider**, in relation to a financial service, means a person who supplies a financial service

special resolution, in relation to—

(a) holders of a financial product issued by a credit union, means a resolution approved by no less than 75% of the number of members of the credit union who are entitled to vote and who vote on the question:

(b) holders of managed investment products in a superannuation scheme, a KiwiSaver scheme, a workplace savings scheme, or any other prescribed scheme, means a resolution approved by no less than 75% of the number of scheme participants who are entitled to vote and who vote on the question:

(c) holders of debt securities in any other case, means a resolution approved by product holders holding debt securities with a combined nominal value of no less than 75% of the nominal value of the debt securities held by those persons who are entitled to vote and who vote on the question:

(d) holders of managed investment products in any other case, means a resolution approved by product holders holding managed investment products with a combined value of no less than 75% of the value of the managed investment products held by those persons who are entitled to vote and who vote on the question

stop order means an order under section 462

subsidiary—

(a) has the meaning set out in section 5 of the Companies Act 1993; and

(b) in Parts 7 and 7A, includes any entity that is classified as a subsidiary in any applicable financial reporting standard

substantial holding has the meaning set out in section 274

substantial product holder has the meaning set out in section 274(1)

superannuation scheme means a scheme that is registered on the register of managed investment schemes as a superannuation scheme (or, if the scheme is registered as a superannuation scheme in respect of only a section of the scheme, means the scheme in respect of that section)

supervisor means a person designated or appointed as a supervisor in relation to a debt security or managed investment scheme for the purposes of any financial markets legislation

supply, in relation to a service, includes provide, grant, or confer

Takeovers Code means the Takeovers Code in force under the Takeovers Act 1993

trade, in Part 2, has the meaning set out in section 18

trading day means, in relation to a licensed market, a day on which the market is open for the trading of financial products

transacting shareholder, in relation to a co-operative company,—

(a) has the same meaning as in section 4 of the Co-operative Companies Act 1996; and

(b) includes a supplying shareholder within the meaning of section 34 of that Act

underlying, in relation to a derivative, means the underlying asset, rate, index, commodity, or other thing referred to in section 8(4)(a)(iii)

unsolicited offer has the meaning set out in section 381(1)

unsolicited offer order means an order under section 472

unsolicited offer provision means any provision of any regulations made under section 382 that is stated by those regulations to be an unsolicited offer provision

unsubstantiated, in sections 23 to 27, has the meaning set out in section 23(2)

voting product, in relation to an entity,—

(a) means a financial product of the entity that confers a right to vote at meetings of members or shareholders (whether or not there is any restriction or limitation on the number of votes that may be cast by or on behalf of the holder of the product); and

(b) includes a financial product that is convertible into a financial product of the kind referred to in paragraph (a); but

(c) does not include a financial product that confers only a right to vote that, under the conditions attached to the product, is exercisable only in 1 or more of the following circumstances:

(i) during a period in which a dividend (or part of a dividend) in respect of the product is in arrears:

(ii) on a proposal to reduce the capital of the entity:

(iii) on a proposal that affects rights attached to the product:

(iv) on a proposal to put the entity into liquidation:

(v) on a proposal for the disposal of the whole or a material part of the property, business, and undertaking of the entity:

(vi) during the liquidation of the entity

wholesale client, in relation to a financial advice service or a client money or property service, has the meaning set out in clause 4 of Schedule 5

wholesale investor—

(a) has the meaning set out in clause 3(2) and (3) of Schedule 1, in relation to an offer of financial products; and

(b) has the meaning set out in clause 36(b) of Schedule 1, in relation to the supply of a discretionary investment management service or any other relevant transaction (as defined in clause 49 of that schedule)

workplace savings scheme means a scheme that is registered on the register of managed investment schemes as a workplace savings scheme (or, if the scheme is registered as a workplace savings scheme in respect of only a section of the scheme, means the scheme in respect of that section).

(2) Terms defined in other provisions of this Act have the meanings given unless the context otherwise requires.

(3) In this Act, financial products are of the same **class** if those financial products have attached to them identical rights, privileges, limitations, and conditions (but, in the case of debt securities, the securities may, except in the prescribed circumstances, have a different redemption date or interest rate or both).

(4) In this Act, an **insolvency event** is any of the following events, and a person **becomes subject to an insolvency event** on the date on which, and (if specified) the time at which, that event occurs:

(a) a liquidator is appointed in respect of a liquidation under Part 16 of the Companies Act 1993 or under any other Act; or

(b) an administrator is appointed in respect of a voluntary administration under Part 15A of the Companies Act 1993; or

(c) a receiver is appointed in relation to the whole, or substantially the whole, of the assets and undertaking of the person; or

(d) a liquidator is appointed in respect of a liquidation of an overseas company under section 342 of the Companies Act 1993; or

(e) a statutory manager is appointed in respect of a statutory management under Part 3 of the Corporations (Investigation and Management) Act 1989 or any other enactment; or

(f) a person is appointed in respect of, or another event occurs that indicates the start of, a process in New Zealand or in any other country in which the company or other body corporate was incorporated, created, or established that is similar to any of those set out in paragraphs (a) to (e).

(5) In this Act, a share in an entity or a managed investment product in a scheme is **redeemable** if—

(a) the constitution of the entity, the governing documents of the scheme, or the terms of issue of the share or product make provision for the redemption of the share or product by the entity or the manager of the scheme in 1 or more of the following circumstances:

(i) at the option of the entity or manager:

(ii) at the option of the holder of the share or product:

(iii) on a date specified in those documents or in those terms; and

(b) that redemption is for a consideration that is 1 or more of the following:

(i) specified:

(ii) to be calculated by reference to a formula:

(iii) required to be fixed by a suitably qualified person who is not associated with or interested in the entity or manager of the scheme.

(6) In this Act, a **financial benchmark** is a price, estimate, rate, index, or value that is—

(a) referenced or otherwise used for purposes that include 1 or more of the following:

(i) calculating the interest, or other amounts, payable under financial products or other securities:

(ii) calculating the price at which a financial product or other security may be traded, redeemed, or dealt in:

(iii) calculating the value of a financial product or other security:

(iv) measuring the performance of a financial product or other security; and

(b) made available to users (whether or not for a fee); and

(c) generated periodically from 1 or more—

(i) transactions, instruments, currencies, prices, estimates, rates (including an interest rate or exchange rate), indices, values, financial products or other securities; or

(ii) other interests or property (whether tangible or intangible).

(7) A **financial benchmark** does not include any price, estimate, rate, index, or value that is excluded (whether by class or in a particular case) by the regulations.

Section 6(1) **accounting period**: inserted, on 1 April 2014, by section 46(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 6(1) **acquire** paragraph (c): replaced, on 15 March 2021, by section 5(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **acquire** paragraph (d): inserted, on 15 March 2021, by section 5(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **administrator of a financial benchmark**: inserted, on 14 March 2021, by section 33(2) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 6(1) **applicable auditing and assurance standard**: inserted, on 1 April 2014, by section 46(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 6(1) **applicable climate standard**: inserted, on 27 October 2022, by section 5(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 6(1) **applicable financial reporting standard**: inserted, on 1 April 2014, by section 46(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 6(1) **authorised body**: replaced, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **authorised financial adviser**: repealed, on 15 March 2021, by section 5(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **authoritative notice**: inserted, on 27 October 2022, by section 5(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 6(1) **balance date**: replaced, on 1 April 2014, by section 46(2) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 6(1) **category 2 product**: repealed, on 15 March 2021, by section 5(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **chartered accountant**: repealed, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

Section 6(1) **client**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **client money or property service**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **climate-related disclosure framework**: inserted, on 27 October 2022, by section 5(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 6(1) **climate reporting entity**: inserted, on 27 October 2022, by section 5(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 6(1) **climate statements**: inserted, on 27 October 2022, by section 5(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 6(1) **code of conduct** or **code**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **consumer credit contract**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **contract of insurance**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **contributor**: replaced, on 14 March 2021, by section 33(2) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 6(1) **CRD records**: inserted, on 27 October 2022, by section 5(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 6(1) **custodial service**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **DIMS facility**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **DIMS licensee**: amended, on 15 March 2021, by section 5(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **disciplinary committee**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **disclosure document** paragraph (b): amended, on 9 August 2017, by section 47(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 6(1) **disclosure document** paragraph (d): amended, on 15 March 2021, by section 5(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **discretionary investment management service**: repealed, on 15 March 2021, by section 5(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **discretionary investment management service** or **DIMS**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **dispose of** paragraph (b): amended, on 15 March 2021, by section 5(6) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **dispose of** paragraph (ba): inserted, on 15 March 2021, by section 5(7) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **engaged**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **financial advice**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **financial advice product**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **financial advice provider**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **financial advice service**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **financial adviser**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **financial benchmark**: inserted, on 14 March 2021, by section 33(2) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 6(1) **financial statements**: inserted, on 1 April 2014, by section 46(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 6(1) **FMC reporting entity**: inserted, on 1 April 2014, by section 46(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 6(1) **generally accepted accounting practice**: inserted, on 1 April 2014, by section 46(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 6(1) **group**: replaced, on 27 October 2022, by section 5(2) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 6(1) **group climate statements**: inserted, on 27 October 2022, by section 5(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 6(1) **group financial statements**: inserted, on 1 April 2014, by section 46(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 6(1) **investment authority**: amended, on 15 March 2021, by section 5(8) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **issuer obligation** paragraph (f): replaced, on 1 May 2014, by section 102 of the Non-bank Deposit Takers Act 2013 (2013 No 104).

Section 6(1) **licensed insurer**: inserted, on 1 April 2014, by section 46(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 6(1) **licensed insurer** paragraph (b): amended, on 27 October 2022, by section 5(3) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 6(1) **licensed insurer** paragraph (c): inserted, on 27 October 2022, by section 5(4) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 6(1) **limited disclosure document**: inserted, on 9 August 2017, by section 47(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 6(1) **local authority**: amended, on 17 February 2024, by section 12(1) of the Water Services Acts Repeal Act 2024 (2024 No 2).

Section 6(1) **market service** paragraph (ea): inserted, on 15 March 2021, by section 5(9) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **market service** paragraph (eb): inserted, on 15 March 2021, by section 5(9) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **market service** paragraph (g): inserted, on 14 March 2021, by section 33(1) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 6(1) **NBDT**: inserted, on 1 May 2014, by section 102 of the Non-bank Deposit Takers Act 2013 (2013 No 104).

Section 6(1) **nominated representative**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **overseas climate reporting entity**: inserted, on 27 October 2022, by section 5(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 6(1) **Part 7 financial reporting provision**: replaced, on 1 April 2014, by section 46(3) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 6(1) **Part 7A climate-related disclosure provision**: inserted, on 27 October 2022, by section 5(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 6(1) **product provider**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **provider of a discretionary investment management service**: amended, on 15 March 2021, by section 5(10) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **QFE** or **qualifying financial entity**: repealed, on 15 March 2021, by section 5(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **QFE adviser**: repealed, on 15 March 2021, by section 5(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **qualified auditor**: replaced, on 1 April 2014, by section 46(4) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 6(1) **qualified statutory accountant**: inserted, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

Section 6(1) **register entry**: replaced, on 9 August 2017, by section 47(3) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 6(1) **registered bank**: amended, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 6(1) **regulated client money or property service**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **regulated financial advice**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **retail client**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **separate fund**: inserted, on 27 October 2022, by section 5(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 6(1) **subsidiary**: replaced, on 1 April 2014, by section 46(5) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 6(1) **subsidiary**: amended, on 27 October 2022, by section 5(5) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 6(1) **wholesale client**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(6): inserted, on 14 March 2021, by section 33(3) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 6(7): inserted, on 14 March 2021, by section 33(3) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

7 Meaning of financial product

(1) In this Act, **financial product** means—

(a) a debt security; or

(b) an equity security; or

(c) a managed investment product; or

(d) a derivative.

(2) If an interest or a right is declared by regulations not to be a security for the purposes of this Act, the interest or right is not a financial product for the purposes of this Act.

8 Definitions relating to kinds of financial products

(1) In this Act, subject to subsection (5)(a) and (b), **debt security**—

(a) means a right to be repaid money or paid interest on money that is, or is to be, deposited with, lent to, or otherwise owing by, any person; and

(b) includes—

(i) a security commonly referred to in the financial markets as a debenture, bond, or note; and

(ii) a convertible note; and

(iii) a redeemable share in an entity that would otherwise be an equity security (except a share redeemable only at the option of the entity or a redeemable share in an industrial and provident society); but

(c) does not include—

(i) a share in a co-operative company that is issued or transferred to a transacting shareholder and that is, or may become, subject to the right of a transacting shareholder to surrender the share under section 20 of the Co-operative Companies Act 1996; or

(ii) a derivative of the kind referred to in subsection (4)(b); or

(iii) a unit, proportionate interest, or membership interest in a registered scheme.

(2) In this Act, subject to subsection (5)(a) and (b), **equity security**—

(a) means—

(i) a share in a company; and

(ii) a share in an industrial and provident society; and

(iii) a share in a building society; but

(b) does not include a debt security.

(3) In this Act, subject to subsection (5)(a) and (b), **managed investment product**—

(a) means the interest in a managed investment scheme referred to in paragraph (b) of the definition of that term in section 9(1); but

(b) does not include—

(i) an equity security; or

(ii) a debt security.

(4) In this Act, subject to subsection (5)(a) and (b) and section 10, **derivative**—

(a) means an agreement in relation to which the following conditions are satisfied:

(i) under the agreement, a party to the agreement must, or may be required to, provide at some future time consideration of a particular kind or kinds to another person; and

(ii) that future time is not less than the time, prescribed for the purposes of this subparagraph, after the time at which the agreement is entered into; and

(iii) the amount of the consideration, or the value of the agreement, is ultimately determined, is derived from, or varies by reference to

(wholly or in part) the value or amount of something else (of any nature whatsoever and whether or not deliverable), including, for example, 1 or more of the following:

(A) an asset:

(B) a rate (including an interest rate or exchange rate):

(C) an index:

(D) a commodity; and

(b) includes a transaction that is recurrently entered into in the financial markets in New Zealand or overseas and is commonly referred to in those markets as—

(i) a futures contract or forward; or

(ii) an option (other than an option to acquire by way of issue an equity security, a debt security, or a managed investment product); or

(iii) a swap agreement; or

(iv) a contract for difference, margin contract, or rolling spot contract; or

(v) a cap, collar, floor, or spread; but

(c) does not include—

(i) an agreement for the future provision of services; or

(ii) a debt security, an equity security, or a managed investment product; and

(d) does not include an agreement in relation to which all of the following subparagraphs are satisfied:

(i) a party has, or may have, an obligation to buy, and another party has, or may have, an obligation to sell, property (other than financial products or New Zealand or foreign currency) at a price and on a date in the future; and

(ii) the agreement does not permit the seller's obligations to be wholly settled by cash, or by set-off between the parties, rather than by delivery of the property; and

(iii) neither usual market practice nor the rules of a market permit the seller's obligations to be closed out by the matching up of the agreement with another agreement of the same kind under which the seller has offsetting obligations to buy.

(5) A financial product of a particular kind defined in subsection (1), (2), (3), or (4)—

(a) includes—

(i) a security declared to be a financial product of that kind under subpart 3 of Part 9; or

(ii) a right attaching to, or a legal or an equitable interest in, a financial product of that kind; or

(iii) an option to acquire, by way of issue, a financial product of that kind; but

(b) does not include—

(i) a security that is declared under subpart 3 of Part 9 to be a financial product of a different kind:

(ii) a security that is declared under subpart 3 of Part 9 not to be a financial product.

Section 8(1)(b)(iii): amended, on 9 April 2019, by section 6 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

9 Definitions of financial benefit and of managed investment scheme

(1) In this Act,—

financial benefit means capital, earnings, or other financial returns

managed investment scheme means a scheme to which each of the following applies:

(a) the purpose or effect of the scheme is to enable persons taking part in the scheme to contribute money, or to have money contributed on their behalf, to the scheme as consideration to acquire interests in the scheme; and

(b) those interests are rights to participate in, or receive, financial benefits produced principally by the efforts of another person under the scheme (whether those rights are actual, prospective, or contingent, and whether they are enforceable or not); and

(c) the holders of those interests do not have day-to-day control over the operation of the scheme (whether or not they have the right to be consulted or to give directions).

(2) However, a **managed investment scheme** does not include—

Scheme only involves management of separate and direct interests in underlying property

(a) a scheme under which each participant takes part in the scheme only by holding 1 or more interests in property if, in respect of each interest,—

(i) it is an interest in separately identifiable underlying property; and

(ii) either the participant holds both the legal and beneficial interest in the property or the legal interest in the property is held on a bare trust for the participant; and

(iii) the value of the interest is not substantially dependent on contributions being made by other participants or the use of other participants' contributions:

Discretionary investment management services

(b) a discretionary investment management service supplied by a DIMS licensee:

Insurance contracts

(c) a scheme that would be a managed investment scheme only because it involves pure risk contracts of insurance:

(d) a scheme that would be a managed investment scheme only because it involves life insurance policies (within the meaning of section 2(1) of the Securities Act 1978) that were issued before this section comes into force.

(3) In subsection (2), **pure risk contract of insurance** means a contract of insurance that does not, and never will, have a value on its cancellation or surrender that is greater than the sum of premiums paid to the insurer.

(4) A managed investment scheme as defined in subsection (1) also includes a scheme declared to be a managed investment scheme under subpart 3 of Part 9.

Section 9(2)(b): replaced, on 15 March 2021, by section 7 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

10 Miscellaneous matters relating to definition of derivative

(1) Section 8(4)(d) applies only to the extent that the agreement deals with the purchase and sale referred to in that paragraph.

(2) An agreement under which one party has an obligation to buy, and the other has an obligation to sell, property is not a derivative merely because the agreement provides for the consideration to be varied by reference to a general inflation index (for example, the Consumers Price Index (All Groups) published by Statistics New Zealand).

(3) Subsection (2) is subject to section 8(5)(a).

11 Definitions of issued and issuer

(1) In this Act,—

(a) a financial product is **issued** to a person when it is first issued, granted, or otherwise made available to a person (subject to subsection (2)):

(b) **issuer** means, in relation to—

(i) a debt security, the person that is liable to repay money or pay interest or other returns under the security (other than as a guarantor):

(ii) an equity security, the company, industrial and provident society, building society, or other entity to which the security relates:

(iii) a managed investment product, the manager of the managed investment scheme to which the product relates:

(iv) a derivative, the derivatives issuer that entered into the derivative.

(2) Despite subsection (1)(a),—

(a) a managed investment product that is an interest in a superannuation scheme, KiwiSaver scheme, workplace savings scheme, or other prescribed scheme is issued to a person when the person becomes a member of the scheme:

(b) a derivative is issued to a person when the person enters into the legal relationship that constitutes the derivative:

(c) none of the following are taken to give rise to the issue of a financial product to a person (**A**):

(i) A making a further contribution to, or investment in, a superannuation scheme, a KiwiSaver scheme, a workplace savings scheme, or any other prescribed scheme of which A is already a scheme participant:

(ii) an employer of A or any other person making, for the benefit of A, a further contribution to, or investment in, a superannuation scheme, a KiwiSaver scheme, a workplace savings scheme, or any other prescribed scheme of which A is already a scheme participant:

(iii) A making a further deposit into a prescribed deposit product:

(iv) A engaging in conduct specified in regulations made for the purposes of this subparagraph in relation to a financial product already held by A.

(3) Despite subsection (1)(b), if a debt security is offered for the purposes of a managed investment scheme, the manager of the scheme is the issuer for the purposes of this Act.

(4) If each person that enters into a derivative is a derivatives issuer, each of those persons is the issuer.

Example

A and B enter into a futures contract.

Both A and B are derivatives issuers. Accordingly, both A and B are issuers of the futures contract.

Although both parties are issuers, whether any particular party has disclosure or other obligations will depend on the circumstances.

If both A and B hold a market services licence, both A and B will be wholesale investors under clause 37(1)(f) of Schedule 1. Accordingly, neither party will be required to make disclosure under Part 3 to the other party.

(5) In this Act, a reference to an issuer in relation to events, circumstances, or other matters before the financial products are issued is a reference to the person that will be, or is intended to be, the issuer when those products are issued.

(6) In this Act, a person ceases to be an issuer in relation to financial products when those products are cancelled, redeemed, or forfeited, or all of the obligations owing under those products have been discharged.

(7) Subsections (1) to (6) are subject to a declaration under section 562(1)(g).

(8) For the purposes of this Act, the issue of a financial product is not a sale of the financial product.

(9) If the terms of a financial product require or allow the person acquiring the product to pay separate amounts of money at different times, each of those payments must, for the purposes of this Act, be treated as payment for the same financial product as each of those other payments.

12 Meaning of associated person and related body corporate

(1) In this Act, a person (**A**) is **associated** with, or an **associated person** of, another person (**B**) if—

(a) A is a body corporate and B has the power, directly or indirectly, to exercise, or control the exercise of, the rights to vote attaching to 25% or more of the voting products of the body corporate (or vice versa):

(b) A and B are relatives or related bodies corporate:

(c) A and B are partners to whom the Partnership Law Act 2019 applies:

(d) A is a director or senior manager of B (or vice versa):

(e) A and B are acting jointly or in concert:

(f) A acts, or is accustomed to act, in accordance with the wishes of B (or vice versa):

(g) A is able, directly or indirectly, to exert a substantial degree of influence over the activities of B (or vice versa):

(h) A and B are bodies corporate that consist substantially of the same members or shareholders or that are under the control of the same persons:

(i) there is another person with which A and B are both associated.

(2) In this Act, a body corporate (**A**) is **related** to another body corporate (**B**) if—

(a) B is A's holding company or subsidiary within the meaning of section 5 of the Companies Act 1993; or

(b) more than half of A's voting products (other than voting products that carry no right to participate beyond a specified amount in a distribution of either profits or capital) are held by B and bodies corporate that are related to B (whether directly or indirectly, but other than in a fiduciary capacity), or vice versa; or

(c) more than half of the voting products (other than voting products that carry no right to participate beyond a specified amount in a distribution of either profits or capital) of each of A and B are held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or

(d) the businesses of A and B have been so carried on that the separate business of each body corporate, or a substantial part of that business, is not readily identifiable; or

(e) there is another body corporate to which A and B are both related.

Section 12(1)(c): amended, on 21 April 2020, by section 86 of the Partnership Law Act 2019 (2019 No 53).

13 Miscellaneous interpretation provisions relating to statements and information

(1) In this Act and the regulations, a reference to a statement or other information that is false, misleading, deceptive, or confusing includes a reference to a statement or information that is false, misleading, deceptive, or confusing (as the case may be) by reason of—

(a) the form or context in which the statement or information is made, published, or provided; or

(b) the omission of any other information that is material in the form and context in which it is made, published, or provided.

(2) For the purpose of considering whether a PDS, a register entry, or any other document or communication provided under this Act is false, misleading, deceptive, or confusing, a statement or other information must be treated as being included in the PDS, register entry, or other document or communication if it—

(a) is contained in the PDS, register entry, or document or communication (as the case may be); or

(b) appears on the face of the PDS, register entry, or document or communication (as the case may be); or

(c) is contained in any financial statements, report, or other document that accompanies, or is incorporated by reference or referred to in, or distributed with, the PDS, register entry, or document or communication (as the case may be).

(3) For the purposes of this section, if a PDS, a register entry, or any other document or communication specifically identifies a particular page or section of an Internet site or of another document, only that page or section is incorporated by reference or referred to in the PDS, register entry, or other document or communication (except in the prescribed circumstances).

(4) If this Act or the regulations require information or any other matter to be contained or included in a PDS, register entry, or document or communication,

the information or other matter may be incorporated by reference only if this is authorised by the regulations.

Section 13(1): amended, on 9 August 2017, by section 48 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

14 Status of examples

(1) An example used in this Act is only illustrative of the provisions to which it relates. It does not limit those provisions.

(2) If an example and a provision to which it relates are inconsistent, the provision prevails.

Transitional, savings, and related provisions

Heading: inserted, on 9 April 2019, by section 8 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

14A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 4 have effect according to their terms.

Section 14A: inserted, on 9 April 2019, by section 8 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Act binds the Crown

15 Act binds the Crown

This Act binds the Crown.

General application provision

16 Application of Act

(1) The provisions of this Act have effect despite anything to the contrary in any other enactment or in any agreement, deed, application, disclosure document, or advertisement.

(2) A provision of an agreement or a deed is void if it provides that a party to the agreement or deed is—

(a) required or bound to waive compliance with any requirement of this Act or the regulations; or

(b) taken to have notice of any agreement, document, or matter not specifically referred to in the relevant disclosure document (if any).

(3) Nothing in this section or in any other provision of this Act or the regulations limits subpart 5 of Part 2 of the Contract and Commercial Law Act 2017 (which relates to illegal contracts).

Section 16(3): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

Part 2
Fair dealing

17 Overview

(1) This Part provides for fair dealing in relation to financial products and financial services as follows:

(a) sections 19 to 33 prohibit misleading or deceptive conduct, the making of false or misleading representations, and the making of unsubstantiated representations:

(b) sections 34 to 37 prohibit offers of financial products in the course of unsolicited meetings.

(2) Subsection (1) is only a guide to the general scheme and effect of this Part.

18 Interpretation in this Part

In this Part,—

financial product—

(a) has the meaning set out in section 7; and

(b) includes, for the purposes of any provision of this Part or section 464,—

(i) any class or classes of financial advice product declared by the regulations to be a financial product for the purposes of that provision; and

(ii) any security of a kind referred to in section 6(6)(c) (being a security that is used to generate a financial benchmark)

trade means any trade, business, industry, profession, occupation, activity of commerce, or undertaking.

Section 18 **financial product** paragraph (b): replaced, on 14 March 2021, by section 34 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 18 **financial product** paragraph (b)(i): amended, on 15 March 2021, by section 9 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Misleading or deceptive conduct, false or misleading representations, and unsubstantiated representations

19 Misleading or deceptive conduct generally

(1) A person must not, in trade, engage in conduct that is misleading or deceptive or likely to mislead or deceive in relation to—

(a) any dealing in financial products; or

(b) the supply or possible supply of a financial service or the promotion by any means of the supply or use of financial services.

(2) A person must not engage in conduct that is misleading or deceptive or likely to mislead or deceive in relation to any dealing in quoted financial products.

(3) Subsection (2) applies regardless of whether or not the dealing is in trade.

Compare: 1986 No 121 s 9; 1988 No 234 s 13

20 Misleading conduct in relation to financial products

A person must not, in trade, engage in conduct that is liable to mislead the public as to the nature, characteristics, suitability for a purpose, or quantity of financial products.

Compare: 1986 No 121 s 10

21 Misleading conduct in relation to financial services

A person must not, in trade, engage in conduct that is liable to mislead the public as to the nature, characteristics, suitability for a purpose, or quantity of financial services.

Compare: 1986 No 121 s 11

22 False or misleading representations

A person must not, in trade, in connection with any dealing in financial products, the supply or possible supply of financial services, or the promotion by any means of the supply or use of financial services, make a false or misleading representation—

(a) that the products or services are of a particular kind, standard, quality, grade, quantity, composition, or value, or have had a particular history; or

(b) that the products or services are offered, issued, transferred, or supplied by a particular person, by a person of a particular trade, qualification, or skill, or by a person who has other particular characteristics; or

(c) that a particular person has agreed to acquire the products or services; or

(d) that the products or services have any sponsorship, approval, endorsement, performance characteristics, accessories, uses, or benefits; or

(e) that a person has any sponsorship, approval, endorsement, or affiliation; or

(f) with respect to the price of the products or services; or

(g) concerning the need for the products or services; or

(h) concerning the existence, exclusion, or effect of any condition, warranty, guarantee, right, or remedy, including (to avoid doubt) in relation to any guarantee, right, or remedy available under the Consumer Guarantees Act 1993; or

(i) concerning the place of origin of the products or services.

Compare: 1986 No 121 s 13

23 Unsubstantiated representations

(1) A person must not, in trade, make an unsubstantiated representation.

(2) A representation is **unsubstantiated** if the person making the representation does not, when the representation is made, have reasonable grounds for the representation, irrespective of whether the representation is false or misleading.

(3) This section does not apply to a representation that a reasonable person would not expect to be substantiated.

(4) In this section and sections 24 to 27, **representation** means a representation that is made—

(a) in respect of financial products or financial services; and

(b) in connection with—

(i) any dealing in financial products; or

(ii) the supply or possible supply of financial services or the promotion by any means of the supply or use of financial services.

24 Court must have regard to certain matters

(1) In a proceeding concerning a contravention of section 23, and in assessing whether a person had reasonable grounds for a representation, a court must have regard to all of the circumstances, including—

(a) the nature of the financial products or financial services in respect of which the representation was made:

(b) the nature of the representation (for example, whether it was a representation about quality or quantity):

(c) any research or other steps taken by or on behalf of the person before the person made the representation:

(d) the nature and source of any information that the person relied on to make the representation:

(e) the extent to which the person making the representation complied with the requirements of any standards, codes, or practices relating to the grounds on which such a representation may be made, and the nature of those requirements:

(f) the actual or potential effects of the representation on any person.

(2) Subsection (1) does not limit sections 499 to 504.

25 Limitation on commencement of proceedings in relation to unsubstantiated representations

Despite anything to the contrary in Part 8, only the FMA may commence a proceeding or make an application under that Part in relation to a contravention of section 23.

26 Section 23 does not apply to representations in PDSs, register entries, or other disclosure documents

Section 23 does not apply to a representation made in a disclosure document or a register entry.

27 Section 23 subject to other enactments

Section 23 does not apply to a representation made by a person in a particular trade, business, industry, profession, occupation, activity of commerce, or undertaking if, when the representation is made,—

(a) another enactment sets out requirements relating to the grounds on which representations may be made by a person in that trade, business, industry, profession, occupation, activity of commerce, or undertaking (whether more or less onerous than section 23); and

(b) the person complies with those requirements.

28 Certain conduct does not contravene various provisions

(1) Conduct that contravenes section 82, 99, 262, 265, 427, 431P, or 431Y or clause 27 of Schedule 1 does not contravene sections 19 to 23.

(2) For the purpose of this section, conduct must be treated as contravening section 82, 99, 262, 265, 427, 431P, or 431Y or clause 27 of Schedule 1 even if the conduct does not constitute an offence, or does not lead to any liability, because of the availability of a defence.

Compare: Australian Securities and Investments Commission Act 2001 ss 12DA(1A), 12DB(2) (Aust)

Section 28(1): amended, on 15 March 2021, by section 10 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 28(2): amended, on 15 March 2021, by section 10 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

29 Limited application of provisions in relation to newspapers, magazines, broadcasting, etc

(1) Nothing in sections 19 to 23 applies to the publication of any information or matter in a newspaper or magazine, or on a news media or financial market commentary Internet site, by the relevant person, not being—

(a) the publication of an advertisement; or

(b) the publication of any information or matter relating to any dealing in financial products, the supply or possible supply of financial services, or the promotion by any means of the supply or use of financial services by—

(i) the relevant person or, if the relevant person is a body corporate, by a related body corporate; or

(ii) a person who is a party to any agreement with the relevant person relating to the content, nature, or tenor of the information or matter.

(2) Nothing in sections 19 to 23 applies to the broadcasting or exhibiting of any information or matter by the relevant person, not being—

(a) the broadcasting or exhibiting of an advertisement; or

(b) the broadcasting or exhibiting of any information or matter relating to any dealing in financial products, the supply or possible supply of financial services, or the promotion by any means of the supply or use of financial services by—

(i) the relevant person or, if the relevant person is a body corporate, by a related body corporate; or

(ii) a person who is a party to any agreement with the relevant person relating to the content, nature, or tenor of the information or matter.

(3) In this section,—

exhibiting means—

(a) exhibiting by means of an audio or visual service; or

(b) exhibiting films to the public

newspaper has the same meaning as in section 2 of the Films, Videos, and Publications Classification Act 1993

relevant person means, in relation to—

(a) a newspaper or magazine, the proprietor of the newspaper or magazine:

(b) a news media or financial market commentary Internet site, the person that controls the content of the Internet site:

(c) broadcasting, the broadcaster:

(d) an audio or visual service, the person that controls the content of the audio or visual service:

(e) exhibiting films to the public, the person that exhibits the films.

Compare: 1986 No 121 s 15

30 Defence for publisher

In any proceeding against a person (**A**) for contravention of any of sections 19 to 23 committed by the publication of an advertisement, it is a defence if A proves that—

(a) A's business is publishing or arranging for the publication of advertisements; and

(b) A received the advertisement, or the information contained in the advertisement, as the case may be, in the ordinary course of that business

and did not know and had no reason to suspect that the publication of the advertisement or the publication of the advertisement containing that information, as the case may be, would constitute a contravention of the provision.

Compare: 1986 No 121 s 44(4)

31 Licensed market operator does not contravene by notifying disclosures

A licensed market operator does not contravene any of sections 19 to 23 by the notification of any disclosure made to it under subpart 4, 5, or 6 of Part 5 or under an alternative disclosure obligation.

32 Other exceptions

(1) Sections 19 to 23 do not apply to conduct in relation to a takeover offer for financial products under the Takeovers Code or to conduct under that offer to the extent that the conduct is regulated by the Takeovers Code, the Takeovers Act 1993, or an exemption granted under that Act.

(2) Sections 19 to 23 do not apply to conduct in relation to the acquisition or redemption by a company of its shares under the Companies Act 1993 to the extent that the conduct is regulated by that Act.

Compare: 1988 No 234 ss 14, 15

33 Territorial scope of sections 19 to 23

(1) Sections 19 to 23 apply to—

(a) conduct in New Zealand; and

(b) conduct outside New Zealand by any person resident, incorporated, registered, or carrying on business in New Zealand to the extent that that conduct relates to dealing in financial products, or the supply of a financial service, that occurs (in part or otherwise) within New Zealand.

(2) Sections 19 to 23 also apply to a restricted communication that is distributed or to be distributed to a person outside New Zealand by any person resident, incorporated, registered, or having a principal place of business in New Zealand.

(3) Despite anything to the contrary in Part 8, only the FMA may commence a proceeding or make an application under that Part in relation to conduct to which this Part applies by virtue of subsection (2).

(4) In this section, **registered** means registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

Compare: 1988 No 234 s 18; 1978 No 103 s 7(3)

Offers in course of unsolicited meetings

34 Prohibition of offers in course of unsolicited meetings with persons acting otherwise than in trade

(1) A person must not offer financial products for issue or sale to a person who is acting otherwise than in trade (**A**) in the course of, or because of, an unsolicited meeting with A.

(2) Subsection (1) does not prohibit an offer of financial products if—

(a) the offer does not require disclosure under Part 3 because of an exclusion under Part 1 of Schedule 1 (other than an exclusion under clause 12 or 16 of that schedule); or

(b) the offer is through a financial advice provider that is acting in the ordinary course of business as a financial advice provider; or

(c) *[Repealed]*

(d) the offer is an offer of the financial products of a co-operative where becoming a holder of those products is—

(i) a necessary incident of doing business with the co-operative; or

(ii) the means by which a person can access the benefits of membership of the co-operative; or

(e) the offer is made in the prescribed circumstances.

(3) This section applies to offers of financial products received by persons in New Zealand, regardless of—

(a) where any resulting issue or transfer occurs:

(b) where the issuer or offeror is resident, incorporated, or carries on business.

(4) In this section,—

meeting includes—

(a) a telephone call; or

(b) a meeting held by means of audio, audio and visual, or electronic communication where the participants can simultaneously communicate with each other throughout the meeting

co-operative means—

(a) a co-operative company; or

(b) an industrial and provident society; or

(c) an entity of a prescribed kind.

Compare: Corporations Act 2001 s 736 (Aust)

Section 34(2)(b): replaced, on 15 March 2021, by section 11 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 34(2)(c): repealed, on 15 March 2021, by section 11 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

35 Right to withdraw

(1) If financial products are issued or transferred to a person (**A**) as a result of an offer that contravenes section 34, A has the right to—

(a) withdraw from holding the financial products and to have the relevant money repaid (in any case other than a derivative); or

(b) in the case of a derivative, withdraw from the derivative.

(2) The right referred to in subsection (1) is exercisable by A giving to the offeror notice of the exercise of the right within 1 month after the date of the issue or transfer.

(3) Notice under this section may be expressed in any way (including oral or written) that shows the intention of A to withdraw from holding the financial product or from the derivative.

(4) This section and sections 36 and 37 do not limit any other liability that a person may have for a contravention of section 34.

Compare: Corporations Act 2001 s 738 (Aust)

36 Offeror obligations if notice of withdrawal given

(1) If a notice is given under section 35 in relation to a financial product other than a derivative,—

(a) the offeror must ensure that the relevant money is repaid as soon as practicable; and

(b) if the relevant money is not repaid within 1 month after the notice is given, the offeror and the directors of the offeror are jointly and severally liable to repay the relevant money together with interest at a prescribed rate from the date on which the notice was given.

(2) If a notice is given under section 35 in relation to a derivative,—

(a) no party to the derivative is obliged or entitled to perform it further; and

(b) each party to the derivative must, as soon as practicable, repay any money, or return any other property, received by the party under the derivative to the party from whom it was received; and

(c) if money owed by the offeror is not repaid within 1 month after the notice is given, the offeror and the directors of the offeror are jointly and severally liable to repay the money together with interest at a prescribed rate from the date on which the notice was given.

(3) For the purposes of subsection (2)(b), an amount of money due from one party must be set off against an amount due from the other party.

37 Director not liable if no misconduct or negligence

A director is not liable under section 36(1)(b) or (2)(c) if he or she proves that the default in the repayment of the money was not due to any misconduct or negligence on his or her part.

Civil liability

38 Civil liability for certain contraventions of this Part

(1) Sections 19 to 23, 34, and 36 are Part 2 fair dealing provisions.

(2) A contravention of any of sections 19 to 23 may give rise to civil liability (*see* subpart 3 of Part 8), including a pecuniary penalty not exceeding the greatest of the consideration for the relevant transaction, 3 times the amount of the gain made or the loss avoided, and $1 million in the case of an individual or $5 million in any other case.

(3) A contravention of section 34 or 36 may give rise to civil liability (*see* subpart 3 of Part 8), including a pecuniary penalty not exceeding $200,000 in the case of an individual or $600,000 in any other case.

Part 3
Disclosure of offers of financial products

Subpart 1—Application

39 Issue offers that need disclosure

An offer of financial products for issue requires disclosure to an investor under this Part unless an exclusion under Part 1 of Schedule 1 applies.

Compare: Corporations Act 2001 s 706 (Aust)

40 Sale offers that need disclosure

An offer of financial products for sale requires disclosure to an investor under this Part only if disclosure is required under Part 2 of Schedule 1.

Compare: Corporations Act 2001 s 707(1) (Aust)

41 Meaning of regulated offer and of regulated product

(1) In this Act, **regulated offer**—

(a) means an offer of financial products to 1 or more investors where the offer to at least 1 of those investors requires disclosure under this Part (regardless of whether or not an exclusion under Schedule 1 applies to an offer to 1 or more other investors); but

(b) does not include an offer of financial products to 1 or more investors if—

(i) the only investors who are able, under the terms of the offer, to acquire the products are investors to whom disclosure under this Part is not required; and

(ii) all of the investors who acquire the products under the offer are investors to whom disclosure under this Part is not required.

Example

ABC Limited makes an offer of its ordinary shares to 100 investors.

Of those investors, 5 are wholesale investors, 15 are relatives of directors of ABC Limited, and 20 are close business associates of ABC Limited. Exclusions under Schedule 1 apply and accordingly the offers to these investors do not require disclosure under this Part.

However, none of the exclusions in Schedule 1 apply to the remaining 60 investors. The offer to each of these investors requires disclosure. This means that a product disclosure statement must be given to each of the 60 investors under section 50 (subject to section 51).

The offer of ABC Limited's ordinary shares, as a whole, is a regulated offer because at least some of the offers to investors require disclosure.

Some obligations under this Act apply to the regulated offer as a whole. These obligations apply to all of the investors even if the offers to some of those investors do not require disclosure. For example, all money paid for the shares must be held in trust under section 87 (even if the money is paid by a wholesale investor, a relative, or a close business associate), ongoing disclosure under subpart 4 may be required to be made to a wholesale investor, a relative, or a close business associate, and registers of financial products kept under subpart 4 of Part 4 relate to products held by all product holders.

(2) In this Act, **regulated product** means—

(a) a financial product offered under a regulated offer; or

(b) a managed investment product in a registered scheme (whether or not there has been a regulated offer).

42 Regulated offers that need to meet additional governance requirements

(1) A regulated offer of debt securities must meet requirements under subpart 1 of Part 4.

(2) A regulated offer of managed investment products must meet requirements under subpart 2 of Part 4.

43 Options over financial products

(1) For the purposes of this Part and Schedule 1,—

(a) an offer of an option to acquire, by way of issue, a financial product is an offer both of the option and of the underlying financial product; and

(b) the grant of an option without an offer of the option is an offer of the option; and

(c) an offer to grant an option is an offer to issue the option.

(2) *See* clause 11 of Schedule 1 for an exclusion in relation to options.

Compare: Corporations Act 2001 s 702 (Aust)

44 Treatment of offers of convertible financial products

For the purposes of this Part and Schedule 1, an offer of a financial product that will be converted, or is or may become convertible, into another financial product is an offer both of the financial product that is issued and of the financial product into which it converts.

45 Treatment of offers of renewals and variations

(1) For the purposes of this Part and Schedule 1, an offer of a renewal or variation of the terms or conditions of a financial product made by the issuer is an offer of the financial product as renewed or varied.

(2) A change to the terms or conditions of a financial product is not a variation for the purposes of this section if the change is made in accordance with the existing terms or conditions of the financial product (for example, if the issuer exercises a power under the terms or conditions to change an interest rate).

(3) *See* clause 24 of Schedule 1 for an exclusion in relation to renewals and variations (but limited disclosure may be required under clause 26 of that schedule).

46 Offers of financial products involving customised terms

(1) Offers of a type of financial product to 2 or more investors are not prevented from being part of the same regulated offer merely because the product involves terms that are customised for each investor.

(2) The PDS and register entry for a regulated offer are not required to include specific information about any customised terms that apply to a particular investor.

(3) Subsection (2) does not prevent the regulations from requiring a PDS or register entry to contain information about the kinds of terms that may be customised for each investor.

Example

A derivatives issuer makes an offer of a particular type of swap agreement to retail investors (where the offer to at least 1 of those investors requires disclosure under this Part).

These derivatives involve some standard or generic terms. They also involve customised terms that are negotiated with each retail investor (for example, terms relating to particular dates or amounts).

The offer of those derivatives to those investors is a regulated offer.

The PDS or register entry relates to the regulated offer as a whole. The PDS and register entry do not include specific information about the customised terms that apply to a particular investor. This does not prevent the regulations requiring the

PDS or register entry to contain a description of the kinds of customised terms that may be negotiated (such as a range of dates or amounts).

47 Territorial scope of Part

(1) This Part applies to offers of financial products in New Zealand, regardless of—

(a) where any resulting issue or transfer occurs:

(b) where the issuer or offeror is resident, incorporated, or carries on business.

(2) For the purposes of subsection (1), financial products are offered in New Zealand if an offer of the financial products is received by a person in New Zealand, unless the offeror demonstrates that it has taken all reasonable steps to ensure that persons in New Zealand (other than persons referred to in subsection (3)) may not accept the offer.

(3) The persons referred to in this subsection are persons to whom disclosure under this Part is not required because of an exclusion under any of clauses 3 to 5 of Schedule 1.

Compare: 1978 No 103 s 7

Subpart 2—Procedure for making regulated offers

Product disclosure statement must be prepared and lodged

48 PDS must be prepared and lodged

(1) A person must not make a regulated offer, or distribute an application form for a regulated offer, unless the issuer of the financial products has—

(a) prepared a product disclosure statement (**PDS**) for the offer; and

(b) lodged the PDS with the Registrar; and

(c) supplied to the Registrar all of the information that the register entry (if any) is required to contain by this Act or the regulations.

(2) A person who contravenes subsection (1) commits an offence if the person knows that, or is reckless as to whether, the offer is a regulated offer.

(3) A person who commits an offence under subsection (2) is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 5 years, a fine not exceeding $500,000, or both; and

(b) in any other case, to a fine not exceeding $2.5 million.

Compare: Corporations Act 2001 ss 709(1), 718, 727(1) (Aust)

49 Purpose of PDS

The purpose of a PDS is to provide certain information that is likely to assist a prudent but non-expert person to decide whether or not to acquire the financial products.

Disclosure to investors

50 PDS must be given if offer requires disclosure

(1) This section applies if an offer of financial products is made to a person (**A**) to whom disclosure under this Part is required.

(2) A person must not accept an application, or issue or transfer the financial products to A, if a PDS for the regulated offer was not given to A before the application was made.

(3) In this section, **application** means an application for the financial products that is made by A.

(4) *See* sections 39 and 40 and Schedule 1, which contain provisions relating to when an offer of financial products to a person requires disclosure under this Part.

51 Certain situations in which section 50 does not need to be complied with

(1) An offeror does not have to comply with section 50 in respect of an offer of financial products to a person (**A**)—

(a) if A has already been given a PDS (for the same or a different offer) that contains all of the information that the PDS referred to in section 50 would be required to contain; or

(b) if the offeror believes on reasonable grounds that paragraph (a) applies; or

(c) in any other prescribed circumstances.

(2) For the purposes of subsection (1)(a), immaterial differences in the information that is contained in the PDS that has been given to A and the PDS referred to in section 50 may be disregarded.

Compare: Corporations Act 2001 s 1012D(1) (Aust)

52 PDS treated as having been given if application form used was included in, or accompanied by, PDS

(1) An offeror must be treated as having complied with section 50 in respect of an offer of financial products to a person (**A**) if—

(a) the offeror issues or transfers the financial products to A in response to an application form; and

(b) the application form identifies the PDS to which it relates; and

(c) A confirms in the application form that A has received the PDS; and

(d) the offeror has reasonable grounds to believe that—

(i) the application form was included in, or accompanied by, the PDS when the form was distributed by or on behalf of the offeror; or

(ii) the form was copied, or directly derived, by the person making the application from a form referred to in subparagraph (i).

(2) The identification of the PDS under subsection (1)(b) must be reasonably prominent.

53 Offence to knowingly or recklessly contravene section 50

(1) A person who contravenes section 50 commits an offence if the person knows that, or is reckless as to whether, the offer of financial products to A requires disclosure under this Part.

(2) A person who commits an offence under subsection (1) is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 5 years, a fine not exceeding $500,000, or both; and

(b) in any other case, to a fine not exceeding $2.5 million.

54 Right to withdraw

(1) If a person contravenes section 50 in respect of an offer of financial products to a person (**A**), A has the right to—

(a) withdraw from holding the financial products and to have the relevant money repaid (in any case other than a derivative); or

(b) in the case of a derivative, withdraw from the derivative.

(2) The right referred to in subsection (1) is exercisable by A giving to the offeror notice of the exercise of the right within the earlier of—

(a) 6 months after A knows, or ought reasonably to know, that section 50 has been contravened; and

(b) 12 months after the financial products are issued or transferred to A.

(3) Notice under this section may be expressed in any way (including oral or written) that shows the intention of A to withdraw from holding the financial product or from the derivative.

(4) This section and sections 55 and 56 do not limit any other liability that a person may have for a contravention of section 50.

55 Offeror obligations if notice of withdrawal given

(1) If a notice is given under section 54 in relation to a financial product other than a derivative,—

(a) the offeror must ensure that the relevant money is repaid as soon as practicable; and

(b) if the relevant money is not repaid within 1 month after the notice is given, the offeror and the directors of the offeror are jointly and severally liable to repay the relevant money together with interest at a prescribed rate from the date on which the notice was given.

(2) If a notice is given under section 54 in relation to a derivative,—

(a) no party to the derivative is obliged or entitled to perform it further; and

(b) each party to the derivative must, as soon as practicable, repay any money, or return any other property, received by the party under the derivative to the party from whom it was received; and

(c) if money owed by the offeror is not repaid within 1 month after the notice is given, the offeror and the directors of the offeror are jointly and severally liable to repay the money together with interest at a prescribed rate from the date on which the notice was given.

(3) For the purposes of subsection (2)(b), an amount of money due from one party must be set off against an amount due from the other party.

56 Director not liable if no misconduct or negligence

A director is not liable under section 55(1)(b) or (2)(c) if he or she proves that the default in the repayment of the money was not due to any misconduct or negligence on his or her part.

Content and presentation of product disclosure statements and register entries

57 Disclosure of material information and content of PDS and register entry

(1) An issuer that prepares, or is required to prepare, a PDS must ensure that, as at the date on which the PDS is lodged with the Registrar,—

(a) the PDS—

(i) contains all of the information that it is required to contain by the regulations; and

(ii) is accompanied by all of the documents that the regulations require it to be accompanied by; and

(iii) complies with all other requirements of the regulations relating to the content of the PDS; and

(iv) is dated not later than the date on which it is lodged with the Registrar; and

(v) if applicable, specifies its expiry date (*see* section 84) and states that no financial products will be issued or sold on the basis of the PDS in relation to applications received after the expiry date; and

(vi) complies with section 60 (consent for expert statements or endorsements); and

(b) the register entry (if any)—

(i) contains all of the information that it is required to contain by the regulations; and

(ii) contains all material information relating to the regulated offer that is not contained in the PDS; and

(iii) complies with all other requirements of the regulations relating to the content of the register entry; and

(iv) complies with section 60 (consent for expert statements or endorsements).

(2) Subsection (1)(b)(ii) does not limit subsection (1)(a).

(3) Subsection (1)(b)(ii) does not apply in the prescribed circumstances (which may include, for example, certain offers to existing product holders or certain situations in which information about an offer is available by means of a continuous disclosure obligation).

58 Register entry not required in prescribed circumstances

A register entry for a regulated offer is not required in the prescribed circumstances.

59 Meaning of material information in this Part

(1) In this Part, **material information**, in relation to a regulated offer, means information that—

(a) a reasonable person would expect to, or to be likely to, influence persons who commonly invest in financial products in deciding whether to acquire the financial products on offer; and

(b) relates to the particular financial products on offer or the particular issuer, rather than to financial products generally or issuers generally.

(2) However, **material information** does not include—

(a) information about the specific terms of a financial product that have been customised for a particular investor; or

(b) information about an identifiable investor.

Example

A derivatives issuer makes an offer of a particular type of swap agreement to retail investors.

These derivatives involve some standard or generic terms. They also involve customised terms that are negotiated with the particular retail investor (for example, terms relating to particular dates or amounts).

The material information for the regulated offer as a whole does not include specific information about the customised terms that apply to a particular investor. This does not prevent the regulations requiring the PDS or register entry to contain a description of the kinds of customised terms that may be negotiated.

Compare: Corporations Act 2001 ss 674, 677, 710, 1013E (Aust)

60 Consent of experts and persons who make endorsements

(1) An issuer that prepares, or is required to prepare, a PDS must ensure that the PDS and the register entry only include an expert statement or endorsement made by a person (**A**), or a statement said in the PDS or register entry to be based on an expert statement or endorsement made by a person (**A**), if—

(a) A has consented in writing to the statement being included in the PDS or register entry in the form and context in which it is included; and

(b) the PDS or register entry states that A has given the consent; and

(c) A has not withdrawn the consent before the PDS is lodged with the Registrar.

(2) Nothing in subsection (1) applies in relation to any statement given by an approved rating agency in connection with a rating given, or to be given, by it.

(3) In this section and section 83(3),—

approved rating agency means a rating agency nominated or approved under section 80 of the Banking (Prudential Supervision) Act 1989, section 86 of the Non-bank Deposit Takers Act 2013, or section 62 of the Insurance (Prudential Supervision) Act 2010

endorsement means a statement that—

(a) may reasonably be regarded as encouraging or persuading persons to acquire the financial products on offer; and

(b) relates to the particular financial products on offer or the particular issuer, rather than to financial products generally or issuers generally

expert—

(a) means a person who holds himself or herself out to be of a profession or calling that gives authority to a statement made by him or her; but

(b) does not include a person acting in his or her capacity as a director or senior manager of an entity

expert statement means a statement purporting to be made by an expert.

Compare: Corporations Act 2001 ss 716, 735(1) (Aust)

Section 60(3) **approved rating agency**: amended, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 60(3) **approved rating agency**: amended, on 1 May 2014, by section 102 of the Non-bank Deposit Takers Act 2013 (2013 No 104).

61 PDS must be worded and presented in clear, concise, and effective manner

(1) An issuer that prepares, or is required to prepare, a PDS must ensure that the information in the PDS is worded and presented in a clear, concise, and effective manner.

(2) This section is not a civil liability provision for the purposes of subpart 3 of Part 8 (but *see* subpart 1 of Part 8, which allows the FMA to make a stop order if a PDS does not comply with this section).

Compare: Corporations Act 2001 s 715A (Aust)

62 PDS must comply with prescribed requirements relating to form and presentation

An issuer that prepares, or is required to prepare, a PDS must ensure that the PDS complies with all requirements of the regulations relating to the form and presentation of the PDS.

Other provisions relating to lodging of PDS and other documents

63 Supply of prescribed information

(1) An issuer that lodges a PDS or other document under this Part must supply the prescribed information to the Registrar when the PDS or document is lodged.

(2) Information referred to in subsection (1) may include, for example, a copy of the consent of a prescribed person to the lodgement.

(3) An issuer that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(4) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

64 Registrar must notify FMA of lodgement of PDS

(1) The Registrar must, immediately after a PDS is lodged, notify the FMA of the lodgement for the purpose of allowing the FMA an opportunity to consider the PDS, any governing document, and whether the offer, or intended offer, of financial products will be made in compliance with this Act.

(2) The nature and extent of the consideration under subsection (1) (if any) is at the FMA's discretion.

(3) Nothing in this section or any other provision of this Act limits the FMA's power to consider or reconsider at any time any of the matters referred to in subsection (1).

Compare: 1978 No 103 s 43C(1), (3), (4)

65 Waiting period after lodgement before processing applications for financial products

(1) An offeror must not accept an application for, or issue or transfer, financial products offered under a regulated offer until—

(a) the period of 5 working days after lodgement of the PDS has ended; or

(b) if the period is extended under section 66, the period as extended has ended.

(2) An offeror that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

(4) This section does not prevent an offeror from receiving applications for financial products or money during the period that applies under this section.

Compare: 1978 No 103 s 43D; Corporations Act 2001 s 727(3) (Aust)

66 FMA may extend period

(1) The FMA may extend the period under section 65(1)(a) by notice in writing to the offeror.

(2) The period, as extended, must end no later than 10 working days after lodgement of the PDS with the Registrar.

(3) The FMA must give a copy of the notice under subsection (1) to the Registrar.

67 Waiting period restriction does not prevent offeror from acting under another PDS

If section 65 applies to a PDS that relates to a particular offer of financial products but another lodged PDS that is not or is no longer subject to section 65 also relates to the offer of those products, that section does not prevent an offeror, in accordance with this Act, from accepting applications for, or issuing or transferring, financial products in reliance upon the other PDS.

68 FMA may remove restrictions if its consideration complete or consideration or further consideration unnecessary

(1) This section applies if the FMA is satisfied that—

(a) its consideration as referred to in section 64 is complete; or

(b) consideration as referred to in section 64 is, in the circumstances, unnecessary.

(2) The FMA may give notice to the offeror that—

(a) the period that applies under section 65 ends at a particular time specified by the FMA (being an earlier time than that provided for under that section); or

(b) section 65 does not apply in respect of the PDS.

(3) Nothing in this section limits subpart 2 of Part 9 (which allows the FMA to grant exemptions in respect of compliance with section 65).

Compare: 1978 No 103 s 43E

69 Waiting period does not usually apply to continuous issue PDSs

(1) Section 65 applies to a continuous issue PDS only if it is of a class that is prescribed by the FMA in a notice issued under this section.

(2) The FMA may issue a notice that prescribes the class or classes of continuous issue PDSs to which section 65 applies.

(3) The FMA must, before issuing a notice in respect of a class of continuous issue PDSs, be satisfied that it is in the public interest for the FMA to have an opportunity to consider those PDSs before any person accepts applications for, or issues or transfers, financial products offered under those PDSs (for example, where in the circumstances, a particular risk relates to a particular class of offerors or financial products).

(4) Subpart 5 of Part 9 (general provisions relating to certain FMA instruments) applies to a notice under this section.

Compare: 1978 No 103 s 43EA

70 No guarantee or representation as to compliance

(1) Nothing done or omitted to be done under this Act or the regulations by the Registrar or the FMA guarantees or represents that—

(a) a PDS, register entry, or governing document—

(i) complies with this Act and the regulations:

(ii) does not contain any material misdescription or material error or any material matter that is not clearly legible:

(iii) is not false or misleading:

(b) the FMA has considered a PDS, register entry, or governing document with a view to determining whether it—

(i) complies with this Act and the regulations:

(ii) contains any material misdescription or material error or any material matter that is not clearly legible:

(iii) is false or misleading.

(2) This section does not limit section 22 of the Financial Markets Authority Act 2011 (which provides protection from liability for the FMA and its members and employees).

Compare: 1978 No 103 s 43M

71 When supplementary document or replacement PDS may be lodged

(1) An issuer that lodges a PDS with the Registrar may lodge a supplementary document or replacement PDS with the Registrar to—

(a) correct a false or misleading statement in the PDS; or

(b) correct an omission from the PDS of information that it is required to contain by this Act or the regulations; or

(c) correct the PDS because it is not worded and presented in a clear, concise, and effective manner; or

(d) update, or add to, the information contained in the PDS.

(2) However, a supplementary document must not be lodged with the Registrar in the prescribed circumstances.

Compare: Corporations Act 2001 s 1014A (Aust)

72 Supplementary document

(1) If a supplementary document is lodged with the Registrar, the PDS together with the supplementary document is taken to be the PDS for the purposes of the application of this Act or the regulations to events that occur after the lodgement.

(2) The issuer must ensure that, at the beginning of a supplementary document, there is—

(a) a statement that it is a supplementary document; and

(b) an identification of the PDS that it supplements; and

(c) an identification of all previous supplementary documents lodged with the Registrar in relation to the regulated offer; and

(d) a statement that it is to be read together with the PDS that it supplements and the previous supplementary documents.

(3) The supplementary document must be dated with the date on which it is lodged with the Registrar.

Compare: Corporations Act 2001 s 719(2), (4) (Aust)

73 Replacement PDS

(1) If a replacement PDS is lodged with the Registrar, the PDS is taken to be the replacement PDS for the purposes of the application of this Act or the regulations to events that occur after the lodgement.

(2) The issuer must ensure that, at the beginning of a replacement PDS, there is—

(a) a statement that it is a replacement PDS; and

(b) an identification of the PDS that it replaces.

(3) The replacement PDS must be dated with the date on which it is lodged with the Registrar.

Compare: Corporations Act 2001 s 719(3), (5) (Aust)

74 Registrar must notify FMA of lodgement of supplementary document or replacement PDS

(1) The Registrar must, immediately after a supplementary document or replacement PDS is lodged, notify the FMA of the lodgement for the purpose of allowing the FMA an opportunity to consider the supplementary document or replacement PDS.

(2) The nature and extent of the consideration (if any) that the FMA gives to a supplementary document or replacement PDS are at the FMA's discretion.

(3) Section 65 does not apply to the lodgement of a supplementary document or replacement PDS.

Compare: 1978 No 103 s 43C(1), (3)

75 Publication of lodgement

(1) If a PDS, supplementary document, or replacement PDS is lodged by an issuer under this Part, the issuer must, as soon as practicable after it receives the certificate of lodgement from the Registrar, ensure that an Internet site maintained by or on behalf of the issuer—

(a) contains a reasonably prominent statement—

(i) to the effect that the PDS, supplementary document, or replacement PDS has been lodged; and

(ii) describing where and how a copy of the PDS, supplementary document, or replacement PDS can be obtained; or

(b) contains a reasonably prominent link to such a statement.

(2) The statement or link referred to in subsection (1) may be removed from the Internet site maintained by or on behalf of the issuer on or after the date that the offeror ceases to offer financial products in reliance upon the PDS.

Amending register entry

76 When register entry may be amended

An issuer of financial products offered under a regulated offer may give notice to the Registrar to amend the register entry in order to—

(a) correct a false or misleading statement in the register entry; or

(b) correct an omission from the register entry of information it is required to contain by this Act or the regulations; or

(c) update, or add to, the information contained in the register entry.

Conditions referred to in PDS

77 Minimum number or amount condition must be fulfilled before issue or transfer

(1) This section applies if a PDS states that the financial products will not be issued or transferred unless—

(a) applications for a minimum number of the financial products are received; or

(b) a minimum amount is raised.

(2) The offeror must not issue or transfer any of the financial products under the regulated offer until the condition referred to in subsection (1) is satisfied.

(3) For the purpose of working out whether a condition referred to in this section or section 79(2)(a) has been satisfied, a person who has agreed to acquire financial products as an underwriter is taken to have applied for those products.

Compare: Corporations Act 2001 s 723(2) (Aust)

78 Issue or transfer void if quotation condition not fulfilled

(1) This section applies if—

(a) a PDS states or implies that the financial products are to be quoted on a financial market (whether in New Zealand or elsewhere); and

(b) the financial products are not admitted to quotation within—

(i) the period specified in, or determined in accordance with, the PDS; or

(ii) if there is no such period, 3 months after the date of the PDS.

(2) An issue or a transfer of financial products under the regulated offer is void.

(3) The offeror must deal under section 80 with the application for financial products that relates to the issue or transfer referred to in subsection (2).

Compare: Corporations Act 2001 s 723(3) (Aust)

Dealing with applications where condition referred to in PDS not met or disclosure defective

79 Application of section 80

(1) An offeror must, if any of subsections (2) to (5) apply, deal under section 80 with any applications for the financial products offered under the regulated offer that have not resulted in an issue or a transfer of the products.

(2) This subsection applies if—

(a) a PDS states that the financial products will not be issued or transferred unless—

(i) applications for a minimum number of the financial products are received; or

(ii) a minimum amount is raised; and

(b) a condition referred to in paragraph (a) is not satisfied within 4 months after the date of the PDS.

(3) This subsection applies if—

(a) a PDS states or implies that the financial products are to be quoted on a financial market (whether in New Zealand or elsewhere); and

(b) the financial products are not admitted to quotation within—

(i) the period specified in, or determined in accordance with, the PDS; or

(ii) if there is no such period, 3 months after the date of the PDS.

88

(4) This subsection applies if—

(a) the offeror becomes aware—

(i) that a statement in the PDS is false or misleading or is likely to mislead; or

(ii) that there is an omission from the PDS of information that is required to be contained in the PDS by this Act or the regulations; or

(iii) of a circumstance that has arisen since the PDS was lodged with the Registrar that would have been required by this Act or the regulations to be disclosed or otherwise contained in the PDS if it had arisen before the PDS was lodged, and the circumstance is not so disclosed or otherwise contained in the PDS; and

(b) the matter referred to in paragraph (a) is materially adverse from the point of view of an investor.

(5) This subsection applies if—

(a) the offeror becomes aware—

(i) that a statement in the register entry is false or misleading or is likely to mislead; or

(ii) that there is an omission from the register entry of information that is required to be contained in the register entry by this Act or the regulations; or

(iii) of a circumstance that has arisen since the PDS was lodged with the Registrar that would have been required by this Act or the regulations to be disclosed or otherwise contained in the register entry if it had arisen before the PDS was lodged, and the circumstance is not so disclosed or otherwise contained in the register entry; and

(b) the matter referred to in paragraph (a) is materially adverse from the point of view of an investor.

Compare: Corporations Act 2001 s 724(1) (Aust)

80 Choices open to offeror

(1) If this section applies, the offeror must do 1 of the following in respect of each applicant:

(a) ensure that the money received from the applicant in respect of the application for financial products is repaid; or

(b) in the case of section 78 or 79(2), (3), or (4), give the applicant—

(i) a supplementary document or replacement PDS that corrects the deficiency or changes the terms of the offer; and

(ii) 1 month to confirm whether or not the applicant still wants to acquire the financial products; or

(c) in the case of section 79(5),—

(i) amend the register entry to correct the deficiency; and

(ii) give notice in the prescribed manner to the applicant that the register entry has been amended; and

(iii) give the applicant 1 month to confirm whether or not the applicant still wants to acquire the financial products; or

(d) if permitted by the regulations, in the case of section 79(4) or (5),—

(i) give the applicant the document or PDS referred to in paragraph (b)(i) or comply with paragraph (c)(i) and (ii) (as the case may be); and

(ii) give the applicant a prescribed period to withdraw their application and be repaid.

(2) If an applicant does not confirm that the applicant still wants to acquire the financial products within 1 month after being given the opportunity to do so under subsection (1)(b)(ii) or (c)(iii) or an applicant withdraws an application under subsection (1)(d), the offeror must ensure that the money received from the applicant in respect of the application for financial products is repaid as soon as practicable.

(3) If the money referred to in subsection (2) is not repaid within 1 month after the offeror is required to ensure that it is repaid under that subsection, the offeror and the directors of the offeror are jointly and severally liable to repay the money together with interest at a prescribed rate from the expiry of the 1-month period referred to in subsection (2) or from the date on which the application is withdrawn (as the case may be).

(4) An offeror must, when acting under this section (including in respect of a withdrawal under subsection (1)(d)), comply with the prescribed requirements (if any).

Compare: Corporations Act 2001 s 724(2) (Aust)

81 Director not liable if no misconduct or negligence

A director is not liable under section 80(3) if he or she proves that the default in the repayment of the money was not due to any misconduct or negligence on his or her part.

Prohibition of offers where defective disclosure in PDS or register entry

82 False or misleading statements, omissions, and new matters requiring disclosure

(1) An offeror must not offer, or continue to offer, financial products under a regulated offer if—

(a) there is—

(i) a statement in the PDS, any application form that accompanies the PDS, or the register entry that is false or misleading or is likely to mislead; or

(ii) an omission from the PDS, or the register entry, of information that is required to be contained in the PDS, or the register entry, by this Act or the regulations; or

(iii) a circumstance that has arisen since the PDS was lodged with the Registrar that would have been required by this Act or the regulations to be disclosed or otherwise contained in the PDS, or the register entry, if it had arisen before the PDS was lodged, and the circumstance is not so disclosed or otherwise contained in the PDS or the register entry; and

(b) the matter referred to in paragraph (a) is materially adverse from the point of view of an investor.

(2) For the purposes of this section, a statement about a future matter (including the doing of, or refusing to do, an act) must be taken to be misleading if the person making the statement does not have reasonable grounds for making it.

(3) Subsection (2) does not limit the meaning of a reference to a misleading statement.

(4) *See* section 510 (offence to knowingly or recklessly contravene this section) and section 496 (which provides that a person may be treated as suffering loss or damage in the case of a contravention of this section).

Compare: Corporations Act 2001 s 728 (Aust)

83 Persons who must inform offeror about disclosure deficiencies

(1) A person referred to in subsection (2) must, in relation to a regulated offer, notify the offeror in writing as soon as practicable if the person becomes aware at any time before the end of the application period that—

(a) a material statement in the PDS, or the register entry, is false or misleading or is likely to mislead; or

(b) there is a material omission from the PDS, or the register entry, of information that is required to be contained in the PDS, or the register entry, by this Act or the regulations; or

(c) there is a material circumstance that has arisen since the PDS was lodged with the Registrar that would have been required by this Act or the regulations to be disclosed or otherwise contained in the PDS, or the register entry, if it had arisen before the PDS was lodged, and the circumstance is not so disclosed or otherwise contained in the PDS or register entry.

(2) The persons are—

(a) each director of the offeror:

(b) each person named in the PDS or register entry with the person's consent as a proposed director of the offeror:

(c) the issuer (if the offeror is not the issuer) and each director of the issuer:

(d) a person referred to in section 60 who has consented as referred to in that section.

(3) A person referred to in subsection (2)(d) is required to notify the offeror of matters under this section only if the matters relate to the expert statement or endorsement to which the person's consent relates.

(4) In subsection (1), **application period** means the period in which applications for financial products under the PDS may be made.

Compare: Corporations Act 2001 s 730(1) (Aust)

Expiry

84 Expiry

(1) A PDS must, if required by the regulations, specify its expiry date.

(2) The expiry date must not be later than the end of the prescribed period (if any).

(3) The expiry date of a replacement PDS must be the same as that of the original PDS it replaces.

Compare: Corporations Act 2001 s 711(6) (Aust)

85 How offeror must deal with applications on expiry

(1) If a PDS expires, the offeror must deal with applications for the financial products offered under the regulated offer in accordance with subsections (2) and (3).

(2) If an application is received on or before the expiry date, the offeror may issue or transfer financial products to the applicant.

(3) If an application is received after the expiry date, the offeror must do 1 of the following:

(a) ensure that the money received from the applicant in respect of the application is repaid; or

(b) give the applicant—

(i) a new PDS (unless the applicant is not a person to whom disclosure under this Part is required or, under section 51, the offeror does not have to comply with section 50 in respect of the offer to the applicant); and

(ii) 1 month to confirm whether or not the applicant still wants to acquire the financial products.

(4) If an applicant does not confirm that the applicant still wants to acquire the financial products within 1 month after being given the opportunity to do so under subsection (3), the offeror must ensure that the money received from the

applicant in respect of the application for financial products is repaid as soon as practicable.

(5) If the money referred to in subsection (4) is not repaid within 1 month after the offeror is required to ensure that it is repaid under that subsection, the offeror and the directors of the offeror are jointly and severally liable to repay the money together with interest at a prescribed rate from the expiry of the 1-month period referred to in subsection (4).

(6) An offeror must, when acting under this section, comply with the prescribed requirements (if any).

Compare: Corporations Act 2001 s 725 (Aust)

86 Director not liable if no misconduct or negligence

A director is not liable under section 85(5) if he or she proves that the default in the repayment of the money was not due to any misconduct or negligence on his or her part.

Money for financial products must be held in trust

87 Money for financial products must be held in trust

(1) This section applies to money paid to an issuer or offeror of regulated products if the money is paid by a person (**A**)—

(a) to acquire the financial products or an increased interest in the financial products; or

(b) as a further contribution or investment or a further deposit as referred to in section 11(2)(c).

(2) The issuer or offeror must hold the money in trust for A until—

(a) the financial products are issued or transferred; or

(b) the money is otherwise applied for the purpose for which it was paid (for example, to increase the extent of A's interest in a scheme or A's deposit or to pay a fee); or

(c) the money is repaid to A; or

(d) the money is applied in accordance with A's express instructions given after the application for financial products was made and the money was paid.

(3) The issuer or offeror must—

(a) deal with the money, while it is held in trust, in the prescribed manner (including ensuring that any prescribed requirements relating to the investment of the money are complied with); and

(b) if the money needs to be repaid, ensure the money is repaid as soon as practicable and, in any event, no later than 1 month after the obligation to repay arises.

(4) This section does not apply to derivatives (but *see* section 448, which provides for regulations relating to the holding and application of investor funds and property by derivatives issuers).

Compare: Corporations Act 2001 ss 722, 1017E (Aust)

Offering financial products in entity that does not exist

88 Offering financial products of entity that does not exist

(1) A person must not offer financial products of an entity that has not been formed or does not exist if the offer would be a regulated offer if the entity did exist.

(2) Subsection (1) applies even if it is proposed to form or incorporate the entity.

(3) A person who contravenes this section commits an offence if the person knows that the offer would be a regulated offer if the entity did exist.

(4) A person who commits an offence under this section is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 3 years, a fine not exceeding $200,000, or both; and

(b) in any other case, to a fine not exceeding $600,000.

Compare: Corporations Act 2001 s 726 (Aust)

Subpart 3—Advertising

89 Advertising for regulated offers

(1) If an offer, or intended offer, of financial products is or will be a regulated offer, a person must not, except in accordance with any of sections 90 to 92, distribute an advertisement of the offer or intended offer.

(2) Subsection (1) applies only if the advertisement is authorised or instigated by, or on behalf of, the issuer, the offeror, or an associated person of the issuer or offeror.

Compare: Corporations Act 2001 s 734(2), (2A) (Aust)

90 Distribution of PDS or registered documents

A person may distribute either of the following without contravening section 89:

(a) a PDS that has been lodged with the Registrar:

(b) a copy of any part of the register entry or of any document that is contained in the register entry.

Compare: Corporations Act 2001 s 734(4) (Aust)

91 Advertising before PDS lodged

(1) Before the PDS is lodged with the Registrar, an advertisement does not contravene section 89 if it includes, in relation to the offer or intended offer, a statement—

(a) that no money is currently being sought; and

(b) that financial products cannot currently be applied for or acquired under the offer or intended offer; and

(c) that, if the offer is made, the offer will be made in accordance with this Act; and

(d) if the offeror wishes, that specifies that the offeror is seeking preliminary indications of interest and, in that case, also specifies—

(i) how indications of interest may be made; and

(ii) that no indication of interest will involve an obligation or a commitment to acquire the financial products.

(2) A statement required under subsection (1)(a) to (c) and (d)(ii) must be reasonably prominent.

Compare: 1978 No 103 s 5(2CA); Corporations Act 2001 s 734(5) (Aust)

92 Advertising after PDS lodged

(1) After the PDS is lodged with the Registrar, an advertisement does not contravene section 89 if it—

(a) includes a statement that identifies,—

(i) if the financial products are offered by way of issue, the issuer of the products; and

(ii) if the financial products are offered pursuant to sale offers to which section 40 applies, the issuer of the products and the offeror of the products; and

(b) includes a statement that indicates that the PDS for the offer is available and where and how it can be obtained; and

(c) does not contain any information, sound, image, or other matter that is materially inconsistent with the PDS, or register entry, for the offer to which it relates.

(2) A statement required under this section must be reasonably prominent.

Compare: Corporations Act 2001 s 734(6) (Aust)

93 Documents to which subpart does not apply

Nothing in this subpart applies to the distribution of any of the following:

(a) a document that relates to the financial products of a listed issuer and consists solely of—

(i) a statement or report relating to the affairs of the issuer made to the relevant licensed market operator, by or on behalf of the issuer, for the purposes of compliance with any market rules; or

(ii) a report of a statement or report referred to in subparagraph (i):

(b) a document that consists solely of—

(i) a statement or report made to or for the purposes of a meeting of the issuer's product holders or any class of those product holders; or

(ii) a report of the proceedings of such a meeting:

(c) information that consists solely of information that is required by law to be provided or made available (for example, an annual report of a company) whether directly or as a condition of carrying out any activity or as a condition of an exemption from any enactment.

94 Defence for publishers

In any proceeding against a person (**A**) for a contravention of section 89 in relation to an advertisement, it is a defence if A proves that—

(a) A's business is publishing or arranging for the publication of advertisements; and

(b) A received the advertisement, or the information contained in the advertisement, as the case may be, in the ordinary course of that business and did not know and had no reason to suspect that the publication of the advertisement or the publication of the advertisement containing that information, as the case may be, would constitute a contravention of section 89.

Compare: 1986 No 121 s 44(4)

Subpart 4—Ongoing disclosure and updating of registers

Duty to update register of offers of financial products and register of managed investment schemes

95 Duty to notify changes to Registrar

(1) An issuer of regulated products must notify the Registrar of a prescribed change within the prescribed period.

(2) In this section,—

prescribed change, in respect of regulated products,—

(a) means a prescribed change that relates to the issuer, any offeror of those products, the regulated products, or any registered scheme to which those products relate; but

(b) does not include a change in respect of which the FMA is required to notify the Registrar (for example, an order made under subpart 1 of Part 8)

prescribed period, in respect of a prescribed change, means—

(a) the period (if any) that is prescribed in respect of the change; or

(b) 5 working days after the issuer becomes aware of the change (if paragraph (a) does not apply).

(3) An issuer that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(4) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1978 No 103 s 43Q

Section 95(1): replaced, on 9 August 2017, by section 49 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 95(2): replaced, on 9 August 2017, by section 49 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Disclosure to particular persons

96 Information to be made available to investors, FMA, Registrar, or other prescribed persons

(1) Every issuer of regulated products must, at the request of a prescribed person or at the prescribed times or on the occurrence of the prescribed events, make available to a prescribed person the information that is required to be made available under this section by the regulations.

(2) The information must be made available in the prescribed manner.

(3) An issuer that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(4) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

(5) To avoid doubt, information may be required to be made available to a person under this section even though Schedule 1 specifies that an offer to the person would not require disclosure under this Part (for example, a wholesale investor who acquires financial products under a regulated offer is not required to be given a PDS for the offer but ongoing disclosure to the investor may be required under the regulations).

Section 96 heading: amended, on 9 August 2017, by section 50 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Public disclosure

97 Information to be made publicly available

(1) Every issuer of regulated products must, at the prescribed times or on the occurrence of the prescribed events and otherwise in the prescribed manner,

make publicly available the information that is required to be made publicly available by the regulations.

(2) An issuer commits an offence and is liable on conviction to a fine not exceeding $50,000 if—

(a) the regulations made for the purposes of this section require the issuer to make information publicly available by lodging that information with the Registrar; and

(b) the issuer contravenes this section by failing to lodge that information with the Registrar in accordance with subsection (1).

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1978 No 103 s 54C

Section 97(2): inserted, on 9 August 2017, by section 51 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 97(3): inserted, on 9 August 2017, by section 51 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

98 Issuer must provide information to Registrar

(1) An issuer of regulated products must lodge with the Registrar a copy of any information made, or to be made, publicly available under section 97 before the date that is 5 working days after that information is made available under that section.

(2) Subsection (1) does not apply—

(a) if the regulations made for the purposes of section 97 require the information to be made publicly available by lodging that information with the Registrar; or

(b) otherwise in the prescribed circumstances.

(3) An issuer that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(4) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Defective ongoing disclosure

99 Defective ongoing disclosure

(1) An issuer must not provide to the Registrar, or make available to any person or the public, any information under any of sections 95 to 98 (the **ongoing disclosure**) if—

(a) there is—

(i) a statement in the ongoing disclosure that is false or misleading or is likely to mislead; or

(ii) an omission from the ongoing disclosure of information that is required to be contained in the ongoing disclosure by this Act or the regulations; and

(b) the matter referred to in paragraph (a) is materially adverse from the point of view of an investor.

(2) For the purposes of this section, a statement about a future matter (including the doing of, or refusing to do, an act) must be taken to be misleading if the person making the statement does not have reasonable grounds for making it.

(3) Subsection (2) does not limit the meaning of a reference to a misleading statement.

(4) This section does not limit sections 95 to 98.

(5) *See* section 511 (offence to knowingly or recklessly contravene this section) and section 496 (which provides that a person may be treated as suffering loss or damage in the case of a contravention of this section).

Confirmation

100 Issuer or offeror must provide confirmation

(1) An issuer or offeror of a regulated product must, in the prescribed circumstances, provide to a product holder either the financial product or confirmation information.

(2) The financial product or confirmation information must be provided in the prescribed manner.

(3) Confirmation information provided to a product holder under this section is, in the prescribed circumstances, prima facie evidence of the matters to which it relates.

(4) In this section, **confirmation information** means the information relating to the financial product or product holder that is prescribed (which may include, for example, information describing the nature, terms, and conditions of the financial product and the name of the product holder).

(5) An issuer or offeror that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(6) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1978 No 103 s 54(1), (4)

Subpart 5—Civil liability for certain contraventions of this Part

101 Part 3 offer provisions

(1) All of the provisions specified in subsections (3) and (4) are Part 3 offer provisions.

(2) A contravention of any of the provisions listed in subsection (3) may give rise to civil liability (*see* subpart 3 of Part 8), including a pecuniary penalty not exceeding the greatest of the consideration for the relevant transaction, 3 times the amount of the gain made or the loss avoided, and $1 million in the case of an individual or $5 million in any other case.

(3) The provisions are the following:

(a) section 48 (PDS must be prepared and lodged):

(b) section 50 (PDS must be given to person to whom disclosure is required):

(c) section 57 (disclosure of material information and content of PDS and register entry):

(d) section 60 (consent of experts and persons who make endorsements):

(e) section 77 (minimum number or amount condition must be fulfilled before issue or transfer):

(f) section 80 (choices open to offeror if condition in PDS not met or defective disclosure):

(g) section 82 (false or misleading statements, omissions, and new matters requiring disclosure):

(h) section 87(2) (money for financial products must be held in trust):

(i) section 89 (advertising for regulated offers):

(j) sections 97 and 99 (ongoing disclosure):

(k) clauses 13 and 17 of Schedule 1 (restrictions on advertising for small offers and small schemes):

(l) any provision of regulations made for the purposes of clause 26 of Schedule 1 that is prescribed by the regulations to be a Part 3 offer provision and stated to give rise to civil liability under this subsection:

(m) clause 27 of Schedule 1 (false or misleading statements and omissions).

(4) A contravention of any of the following may give rise to civil liability (*see* subpart 3 of Part 8), including a pecuniary penalty not exceeding $200,000 in the case of an individual or $600,000 in any other case:

(a) section 55 (offeror obligations if notice of withdrawal is given):

(b) section 62 (PDS must comply with prescribed requirements relating to form and presentation):

(c) section 75 (publication of lodgement):

(d) section 83 (certain persons must inform offeror about disclosure deficiencies):

(e) section 85 (dealing with applications on expiry):

(f) section 87(3) (money for financial products must be dealt with in prescribed manner and repaid as soon as practicable if required):

(g) section 88 (offering financial products in entity that does not exist):

(ga) any provision of regulations made for the purposes of clause 26 of Schedule 1 that is prescribed by the regulations to be a Part 3 offer provision and stated to give rise to civil liability under this subsection:

(h) clause 28 of Schedule 1 (certain persons must inform offeror about disclosure deficiencies).

Section 101(3)(l): replaced, on 9 August 2017, by section 52(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 101(4)(ga): inserted, on 9 August 2017, by section 52(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 101(4)(h): amended, on 9 August 2017, by section 52(3) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Part 4
Governance of financial products

102 Overview

(1) This Part provides for the governance of regulated products as follows:

(a) subpart 1 sets out the need for a trust deed and a supervisor, and other issuer and supervisor obligations, for regulated offers of debt securities:

(b) subpart 2 sets out the need for a managed investment scheme to be registered for regulated offers of managed investment products, and the need for a governing document and a supervisor, and other issuer, supervisor, and custodian obligations, for registered schemes:

(c) subpart 3—

(i) requires persons associated with those debt securities or registered schemes to make protected disclosures; and

(ii) provides powers of intervention to enable the supervision of those debt securities or registered schemes by the supervisor or the FMA (in addition to the powers in Part 8):

(d) subpart 4 contains ongoing duties of issuers of all regulated products to maintain registers and keep copies of documents.

(2) Subsection (1) is only a guide to the general scheme and effect of this Part.

Subpart 1—Governance of debt securities

103 Need for governing document and supervisor for regulated offer of debt security

(1) A person must not make a regulated offer of a debt security unless—

(a) there is a trust deed for the debt security that—

(i) complies with sections 104 to 106; and

(ii) is lodged with the Registrar with a certificate from the issuer and supervisor to the effect that the trust deed complies with those sections on the basis set out in the certificate; and

(b) there is a licensed supervisor—

(i) who is designated or appointed as the trustee under the trust deed for the debt security (or under the Financial Markets Supervisors Act 2011); and

(ii) whose licence covers supervision of the debt security.

(2) A reference in this subpart to—

(a) a trust deed is a reference to the trust deed required by subsection (1); and

(b) a debt security is a reference to a debt security offered under a regulated offer.

(3) The issuer of the debt security must ensure that there continues to be a trust deed and licensed supervisor as required by subsection (1) until the debt security is cancelled, redeemed, or forfeited, or all of the obligations owing under the debt security have been discharged.

Compare: 1978 No 103 s 33(2)

Governing document requirements

104 Contents of trust deed for debt securities

(1) A trust deed for a debt security must provide that the following are held in trust by the supervisor for the benefit of the holders of the debt security:

(a) the right to enforce the issuer's duty to repay, or to pay interest, under the terms of the debt security; and

(b) any charge or security for repayment; and

(c) the right to enforce any other duties that the issuer, any guarantor, and any other person have under—

(i) the terms of the debt security; or

(ii) the provisions of the trust deed or this Act in relation to the debt security.

(2) Subsection (1) does not prevent a holder of a debt security from enforcing the issuer's duty to repay, or to pay interest, or any other duties that the issuer, any guarantor, or any other person owes to the holder.

(3) The trust deed is treated as containing any provision that is implied into it by or under this Act.

(4) The trust deed must also provide adequately for all of the matters required to be contained in it by section 105 and the regulations.

(5) The trust deed must provide for the contents required by this section in accordance with the frameworks and methodologies specified in notices issued by the FMA under subpart 4 of Part 9 (if any).

Compare: Corporations Act 2001 s 283AB (Aust)

105 Limits on permitted exemptions and indemnities

(1) If a supervisor of a debt security has any rights to be indemnified in relation to the performance of the supervisor's licensee obligations (as defined in section 4 of the Financial Markets Supervisors Act 2011), those rights—

(a) must be set out in the trust deed for the debt security; and

(b) are available only in relation to the proper performance of the duties under sections 112(1) and 113.

(2) No other agreement has any effect to the extent that it purports to confer a right of a kind set out in subsection (1).

Compare: Corporations Act 2001 s 283DB (Aust); 1978 No 103 s 62

106 Trust deed must be legally enforceable

A trust deed for a debt security must be contained in 1 or more documents that are legally enforceable as between the supervisor, the issuer of the debt security, and the product holders.

107 Effect of trust deed

A trust deed for a debt security has no effect to the extent that it contravenes, or is inconsistent with, this Act, the regulations, or any term implied into it by this Act or the regulations.

108 Changes to trust deed

(1) An amendment to or a replacement of a trust deed for a debt security has no effect unless made—

(a) with the consent of the supervisor of the debt security under this section; or

(b) under section 109; or

(c) under section 22(7) or 37(6) of the Financial Markets Supervisors Act 2011 or any other power to amend or replace the trust deed under an enactment.

(2) The supervisor must not consent to an amendment to, or a replacement of, the trust deed under this section unless—

(a) either—

(i) the amendment or replacement is approved by, or is contingent on approval by, the holders of the debt security; or

(ii) the supervisor is satisfied that the amendment or replacement does not have a material adverse effect on the holders of the debt security; and

(b) the supervisor certifies to that effect and certifies, or obtains a certificate from a lawyer, that the trust deed, as amended or replaced, will comply with sections 104 to 106 on the basis set out in the certificate.

(3) The approval of the holders of the debt security for the purposes of subsection (2)(a) must be the approval of a special resolution of—

(a) the holders of the debt security; or

(b) each class of holders of the debt security that is or may be adversely affected by the amendment or replacement.

(4) Subsection (2) is subject to section 112(2)(b).

109 Power to make FMA-approved changes to trust deeds

(1) An issuer may amend or replace a trust deed for a debt security with the FMA's consent if the FMA is satisfied that it is necessary to enable the trust deed to comply with this subpart or any enactment or rule of law.

(2) Subsection (1) applies despite anything to the contrary in the trust deed or in any enactment, rule of law, or agreement, including anything relating to the consent of any person to the making of amendments to the trust deed.

(3) The FMA's discretion to set preconditions for requests to it includes (without limitation) a discretion to set preconditions that satisfy the FMA that it is appropriate for the amendment or replacement to be made under this section rather than by means of another power or process.

(4) An amendment or a replacement made under this section must be treated for all purposes as if it were authorised by, and made in accordance with, the trust deed.

110 Lodging of changes to trust deed

(1) Within 5 working days after an amendment to or a replacement of a trust deed for a debt security, the issuer must ensure that notice of the amendment or replacement, and a copy of the certificate for the amendment or replacement (if any), is lodged with the Registrar.

(2) An issuer that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Application of Trusts Act 2019

Heading: inserted, on 30 January 2021, by section 166 of the Trusts Act 2019 (2019 No 38).

110A Application of Trusts Act 2019

(1) This section applies to a trust constituted (or to be constituted) under a trust deed for a debt security if the trust deed—

(a) has been lodged under section 103; or

(b) has been or will be entered into with the intention that the deed will be lodged under section 103.

(2) The following provisions of the Trusts Act 2019 do not apply to a trust referred to in subsection (1):

(a) section 25 (duty to act honestly and in good faith):

(b) section 29 (general duty of care):

(c) section 39 (adviser must alert settlor to modification or exclusion of default duty):

(d) sections 40 to 42 (exemption and indemnity clauses):

(e) section 43 (adviser must alert settlor to liability exclusion or indemnity clause):

(f) section 44 (court consideration of gross negligence):

(g) sections 45 to 48 (documents to be kept by trustees):

(h) sections 49 to 55 (giving information to beneficiaries):

(i) section 56 (general powers of trustee):

(j) sections 67 to 73 (exercise or performance of trustee powers and functions by others):

(k) sections 74 to 76 (special trust advisers):

(l) sections 81(2) and (3) and 82 to 85 (trustees' indemnities):

(m) sections 92 to 115 (appointment and discharge of trustees):

(n) sections 121 to 123 (termination and variation of trusts):

(o) sections 142 to 148 (alternative dispute resolution):

(p) sections 153 to 158 (investigation of condition and accounts of certain trust property).

Section 110A: inserted, on 30 January 2021, by section 166 of the Trusts Act 2019 (2019 No 38).

Role of supervisor

111 Functions of supervisor

(1) The supervisor of a debt security is responsible for the following functions:

(a) acting on behalf of the holders of the debt security in relation to—

(i) the issuer of the debt security; and

(ii) any matter connected with the trust deed for the debt security or the terms of the regulated offer; and

(iii) any contravention or alleged contravention of the issuer obligations; and

(b) supervising the issuer's performance—

(i) of its issuer obligations; and

(ii) in order to ascertain whether the assets of the issuer and of each guarantor that are or may be available, whether by way of security or otherwise, are sufficient or likely to be sufficient to discharge the amounts of the debt securities as they become due; and

(c) performing or exercising any other functions, duties, and powers conferred or imposed on the supervisor by or under this Act, the Financial Markets Supervisors Act 2011, or the governing document.

(2) The supervisor must not delegate any of its functions under subsection (1) (except as expressly permitted by this Act or as permitted by, and then subject to, conditions imposed under the Financial Markets Supervisors Act 2011).

112 General duties applying in exercise of supervisor's functions

(1) The supervisor of a debt security must—

(a) act honestly and in good faith in acting as a supervisor; and

(b) in exercising its powers and performing its duties as a supervisor, act in the best interests of the holders of the debt security; and

(c) exercise reasonable diligence in carrying out its functions as a supervisor.

(2) The supervisor of a debt security must also—

(a) do all the things it has the power to do to cause any contravention referred to in section 111(1)(a)(iii) to be remedied (unless it is satisfied that the contravention will not have a material adverse effect on holders of the debt security); and

(b) act in accordance with any direction given by a special resolution of the holders of the debt security that is not inconsistent with any enactment, rule of law, or the trust deed in relation to—

(i) seeking a remedy to a contravention referred to in section 111(1)(a)(iii); and

(ii) any other matter connected with the supervisor's functions.

(3) The supervisor is not liable for anything done, or omitted to be done, in good faith in giving effect to a direction to it by holders of the debt security.

(4) The duty in subsection (2)(b) is subject to any order of the court made under section 210.

Compare: SR 2009/230 Schedule 15 cl 1

Section 112(1)(a): amended, on 30 January 2021, by section 167 of the Trusts Act 2019 (2019 No 38).

113 Duty of supervisor to comply with professional standard of care

The supervisor of a debt security must, in exercising its powers and performing its duties as a supervisor, exercise the care, diligence, and skill that a prudent person engaged in the business of acting as a licensed supervisor would exercise in the same circumstances.

114 Duty of issuer to provide reports to supervisor

The issuer of a debt security must, at the prescribed times or on the occurrence of the prescribed events and otherwise in the prescribed manner, prepare and provide to the supervisor reports that contain the information that is required to be provided by the regulations.

Compare: SR 2009/230 Schedule 15 cl 4

115 Duty of issuer to provide requested information and reports to supervisor

(1) If requested by the supervisor of a debt security (or a person authorised by the supervisor to exercise its powers under this section), the issuer must—

(a) make available to the supervisor (or other authorised person) all documents and records relating to the issuer; and

(b) provide the supervisor (or other authorised person) with any other reports or information required by the supervisor (or other authorised person).

(2) Reports or information required under subsection (1) may—

(a) be about any matter relevant to the performance of the supervisor's functions; and

(b) include forward-looking reports.

(3) The reports or information must be provided within the time and in the manner (which must be reasonable in the circumstances) specified by the supervisor.

Compare: SR 2009/230 Schedule 15 cls 2(3), 3A

116 Issuer must report contravention or possible contravention of issuer obligations

If an issuer of a debt security has reasonable grounds to believe that it has contravened, may have contravened, or is likely to contravene any of its issuer obligations in a material respect, the issuer must, as soon as practicable,—

(a) report the contravention or possible contravention to the supervisor; and

(b) advise the supervisor of the steps (if any) that the issuer has taken or intends to take in light of the contravention or possible contravention and the date by which the steps were taken or are to be taken.

117 Restriction on use of reports on contraventions

A report provided by an issuer under section 116 is not admissible as evidence in a criminal proceeding against the issuer, except in a criminal proceeding that concerns the falsity of the report.

118 Duty of issuer to report serious financial problems

(1) This section applies if an issuer of a debt security becomes aware of information on the basis of which it could reasonably form the opinion that the issuer is, or is likely to become, insolvent.

(2) The issuer must, as soon as practicable,—

(a) disclose to the supervisor all information relevant to that matter that is in the possession or under the control of the issuer and that was obtained in the course of, or in connection with, the performance of its functions as issuer; and

(b) advise the supervisor of the steps (if any) that the issuer intends to take in respect of that matter and the date by which the steps are to be taken.

Compare: 2011 No 10 s 47

119 Power of supervisor to engage expert

(1) The supervisor of a debt security is entitled, in the performance of the supervisor's functions, to engage an expert (for example, an auditor, investigating accountant, valuer, or actuary) if the supervisor considers, on reasonable grounds, that it requires the assistance of the expert to—

(a) determine the financial position of the issuer; or

(b) review the business, operation, or management systems, or the governance, of the issuer.

(2) If the supervisor engages an expert under this section,—

(a) the issuer must provide reasonable assistance to the expert to allow the expert to provide the assistance under subsection (1); and

(b) the fees and expenses of the expert, which must be reasonable in the circumstances, must be paid by the issuer.

Compare: SR 2009/230 Schedule 15 cl 3C

Meetings of product holders

120 Meetings of product holders

(1) A meeting of a class of holders of a debt security must be called by the issuer on the written request of—

(a) the supervisor; or

(b) holders of the debt securities that have a combined nominal value of no less than 5% of the nominal value of the debt securities on issue in that class; or

(c) in the case of an issuer that is a credit union, no less than 5% of the number of members of the credit union who hold debt securities on issue in that class; or

(d) a person who is authorised by the trust deed or by the regulations to call the meeting.

(2) Other requirements for meetings, proceedings at meetings, and provision for resolutions in lieu of meetings are governed by the regulations (if any) and the trust deed (if there are no regulations or to the extent that the trust deed is not inconsistent with the regulations).

Compare: SR 2009/230 Schedule 15 cl 3(1)

121 Supervisor's attendance at meetings of product holders and power to appoint chair

The issuer of a debt security must ensure that the supervisor—

(a) is permitted to attend any meeting of holders of the debt security; and

(b) receives the notices and communications that any holder of the debt security is entitled to receive in relation to a meeting of those holders; and

(c) may be heard at any meeting of holders of the debt security on any part of the business of the meeting that concerns the supervisor's functions or the holders for whom the supervisor is acting; and

(d) may appoint the chairperson of any meeting of holders of the debt security.

Compare: SR 2009/230 Schedule 15 cl 3(3)

Change of supervisor

122 Change of supervisor

(1) The supervisor of a debt security ceases to hold that appointment (subject to subsection (2)) if the supervisor—

(a) is removed by the FMA or the issuer under Part 2 of the Financial Markets Supervisors Act 2011; or

(b) is removed by a special resolution of the holders of the debt security; or

(c) is removed or resigns in accordance with the trust deed.

(2) However, a supervisor may not—

(a) be removed or resign under subsection (1)(b) or (c) unless—

(i) all functions and duties of the position have been performed; or

(ii) another licensed supervisor has been appointed, and accepted the appointment, in its place; or

(iii) the court consents:

(b) (despite anything in the trust deed) be removed by an issuer of the debt security under subsection (1)(c) without the FMA's consent.

Compare: 1978 No 103 s 48

123 Lodging of notice of change of supervisor

(1) Within 5 working days after a change to the supervisor of a debt security under section 122, the issuer must ensure that notice of the change is lodged with the Registrar.

(2) An issuer that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Subpart 2—Governance of managed investment products

124 Overview

(1) This subpart—

(a) sets out when managed investment schemes need to be registered; and

(b) requires registered schemes, irrespective of legal form, to meet key common governance and reporting requirements; and

(c) provides for the manager and independent supervisor of a registered scheme to owe statutory duties of care to investors; and

(d) provides for the custodianship of scheme property of a registered scheme to be independent from the manager.

(2) This section is only a guide to the general scheme and effect of this subpart.

Need to register

125 Need to register managed investment scheme for regulated offer of managed investment product

(1) A person must not make a regulated offer of a managed investment product, or accept further contributions if there has been a regulated offer of a managed investment product, unless the managed investment scheme is registered.

(2) However, a managed investment scheme may be registered even if there is no regulated offer of a managed investment product in the scheme but, in this case,—

(a) the managed investment products in the scheme are regulated products under section 41; and

(b) this Act applies accordingly (for example, in addition to this subpart, *see* section 87 (money for financial products must be held in trust) and subpart 4 of Part 3 (ongoing disclosure)).

(3) A scheme that is approved as a Schedule 3 scheme under Schedule 3 may not be registered under this subpart.

Compare: 1960 No 99 s 8; 1978 No 103 s 33(3)

Registration

126 Application for registration

(1) A person may apply to the Registrar for registration of a managed investment scheme.

(2) The application must—

(a) be made in the prescribed manner; and

(b) be accompanied by the written consent to the registration of the manager and supervisor of the scheme; and

(c) contain a copy of the governing document for the scheme; and

(d) contain a certificate from the manager and supervisor of the scheme to the effect that the scheme complies with the registration requirements for schemes that apply to it under section 127(1)(b) to (f) on the basis set out in the certificate; and

(e) if the application is for registration as a particular type of scheme under sections 128 to 132,—

(i) state that fact; and

(ii) comply with any additional prescribed requirements for applications for that type of registration; and

(iii) contain a certificate from the FMA that it is satisfied that the scheme complies with any additional registration requirements for that type of scheme that apply to it under those sections.

(3) The Registrar must register a managed investment scheme if satisfied that the application meets the requirements of this section and section 127(1)(a) (subject to clause 7 of Schedule 2).

127 Initial and ongoing registration requirements for all managed investment schemes

(1) Every registered scheme must meet the following registration requirements:

(a) it must not have a name that, in the opinion of the Registrar, is misleading or offensive or the use of which would contravene an enactment; and

(b) its governing document must comply with sections 135 to 137; and

(c) it must have a licensed manager designated or appointed under the governing document (or this Act) whose licence covers management of the scheme; and

(d) it must have a licensed supervisor designated or appointed under the governing document (or the Financial Markets Supervisors Act 2011) whose licence covers supervision of the scheme; and

(e) the manager and the supervisor of the scheme must not be the same or associated persons; and

(f) the scheme property must be held by the supervisor or another person who meets the custodianship requirements in section 156 (to the extent that it is not held directly by scheme participants).

(2) However, subsection (1)(c) to (e) do not apply to a restricted scheme (and any reference in this Act to a supervisor in relation to a registered scheme does not apply in relation to a restricted scheme (unless the context otherwise requires)).

Compare: 1960 No 99 s 3(1), (4); 2006 No 40 ss 116F, 116G

128 Additional initial and ongoing registration requirements for KiwiSaver schemes

(1) Every KiwiSaver scheme must meet the following registration requirements in addition to those in section 127:

(a) it must be a trust established and governed by a trust deed that is interpreted and administered in accordance with New Zealand law; and

(b) its purpose must be to provide retirement benefits directly to individuals; and

(c) it must, accordingly, restrict redemptions, withdrawals, and the provision of benefits in respect of a member's accumulation (including in the way the trust deed is applied) to those permitted under the KiwiSaver scheme rules under the KiwiSaver Act 2006; and

(d) it must admit as members (both in its conditions of entry of scheme participants and in the way those conditions are applied on entry) only persons who meet the New Zealand criteria set out in subsection (2) or (3); and

(e) it must be a scheme under which contributions are allocated to scheme participants on an individual basis; and

(f) the benefits provided by the scheme must be fully funded as they accrue; and

(g) its manager must have at least 1 director who is a New Zealand resident for tax purposes; and

(h) its manager must be a party to a scheme provider agreement with the Commissioner of Inland Revenue (if required by regulations made under the KiwiSaver Act 2006); and

(i) the FMA must be satisfied that the fees charged in accordance with any information provided in the application will comply with clause 2 of the KiwiSaver scheme rules under the KiwiSaver Act 2006.

(2) The New Zealand criteria are that the person, at the time of becoming a scheme participant,—

(a) is, or normally is, living in New Zealand, or is an employee of the State services (within the meaning of the Public Service Act 2020) who is—

(i) serving outside New Zealand; and

(ii) employed on New Zealand terms and conditions; and

(iii) serving in a jurisdiction where offers of superannuation scheme membership are lawful; and

(b) is a New Zealand citizen or is entitled, in terms of the Immigration Act 2009, to be in New Zealand indefinitely.

(3) A person also meets the New Zealand criteria if the person—

(a) is, immediately before becoming a participant of the KiwiSaver scheme (**scheme A**), a member of another KiwiSaver scheme (**scheme B**); and

(b) is transferring the member's entitlements from scheme B to scheme A.

(4) If the KiwiSaver scheme is a restricted scheme,—

(a) subsection (1)(g) does not apply; but

(b) at least 1 of the trustees or 1 of the directors of the corporate trustee of the scheme must be a New Zealand resident for tax purposes.

Compare: 2006 No 40 s 116

Section 128(2)(a): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

129 Additional initial and ongoing registration requirements for superannuation schemes

(1) Every superannuation scheme must meet the following registration requirements in addition to those in section 127:

(a) it must be a trust established and governed by a trust deed that is interpreted and administered in accordance with New Zealand law; and

(b) its purpose must be to provide retirement benefits directly or indirectly to individuals; and

(c) it must, accordingly, restrict redemptions, withdrawals, and the provision of benefits (including in the way that the trust deed is applied) to those permitted under the superannuation scheme rules set out in the regulations; and

(d) it must admit as members (both in its conditions of entry of scheme participants and in the way those conditions are applied on entry) only either or both of the following:

(i) individuals:

(ii) persons who are the trustees or managers of a retirement scheme; and

(e) it must be—

(i) a defined benefit scheme; or

(ii) a scheme under which contributions are allocated to scheme participants on an individual basis and the benefits provided by the scheme must be fully funded as they accrue; and

(f) it must meet any additional requirements of the superannuation scheme rules that apply to it under the regulations; and

(g) it must not be registered as a KiwiSaver scheme.

(2) However, a superannuation scheme may meet the requirements in subsection (1)(b) to (f) in respect of a section of the scheme only, and, in that case, the scheme is a superannuation scheme in respect of that section of the scheme.

(3) Subsection (1)(b), (c), and (f) do not apply to a scheme, or a section of a scheme, that is closed to new members at the time of its registration (a **legacy scheme**), and instead it must meet the following registration requirements:

(a) its principal purpose must be to provide retirement benefits directly or indirectly to individuals; and

(b) the scheme or section must continue to be closed to new members.

Compare: 1989 No 10 ss 2A, 3(1)

130 Additional initial and ongoing registration requirements for workplace savings schemes

(1) Every workplace savings scheme must meet the following registration requirements in addition to those in section 127:

(a) it must be a trust established and governed by a trust deed that is interpreted and administered in accordance with New Zealand law; and

(b) its purposes must be to provide—

(i) retirement benefits directly or indirectly to individuals; and

(ii) benefits to eligible individuals on ceasing employment or engagement with 1 or more persons specified in the trust deed or in an industry specified in the trust deed (whether immediately on ceasing that employment or engagement, or subsequently); and

(c) it may allow redemptions, withdrawals, and benefits for other purposes (including in the way the trust deed is applied) only if—

(i) they are in accordance with other limited circumstances defined in the trust deed (for example, financial hardship or early partial withdrawal criteria, or insurance benefits to members (including in the event of a death or disability of a member)); and

(ii) they are incidental or secondary to the purposes of the scheme; and

(d) it must admit as members (both in its conditions of entry of scheme participants and in the way those conditions are applied on entry) only either or both of the following:

(i) eligible individuals:

(ii) persons who are the trustees or managers of a retirement scheme; and

(e) it must be—

(i) a defined benefit scheme; or

(ii) a scheme under which contributions are allocated to scheme participants on an individual basis and the benefits provided by the scheme must be fully funded as they accrue; and

(f) it must meet any additional prescribed registration requirements for workplace savings schemes that apply to it; and

(g) it must not be registered as a KiwiSaver scheme.

(2) In this section, **eligible individual**, in relation to a person or industry specified in the trust deed, means—

(a) an employee or director of that person; and

(b) an individual who provides personal services (other than as an employee) principally to that person; and

(c) an individual who is employed or engaged in that industry.

(3) However, a workplace savings scheme may meet the requirements in subsection (1)(b) to (f) in respect of a section of the scheme only, and, in that case, the scheme is a workplace savings scheme in respect of that section of the scheme.

131 Additional ongoing registration requirements for restricted schemes

(1) Every restricted scheme registered under clause 22 of Schedule 4 must meet the following registration requirements in addition to those in section 127:

(a) it must be—

(i) a KiwiSaver scheme; or

(ii) a superannuation scheme or workplace savings scheme or both (in respect of all sections of the scheme); and

(b) it must—

(i) admit as members (both in its conditions of entry of scheme participants and in the way in which those conditions are applied on entry) only 1 or more of the classes of persons referred to in subsection (2); or

(ii) be closed to new members; and

(c) the conditions of entry of scheme participants, or the way in which those conditions have been applied on entry, must not have been changed without the FMA's consent since the date of the scheme's registration under clause 22 of Schedule 4 in a way that expands, or is likely to expand, the classes of people who may become scheme participants; and

(d) its trustees must—

(i) include at least 1 licensed independent trustee whose licence covers the scheme and who is independent under subsection (3); or

(ii) consist only of a sole corporate trustee that has at least 1 director who is a licensed independent trustee whose licence covers the scheme and who is independent under subsection (3); and

(e) the trustees of the scheme must be designated or appointed to manage the scheme under the governing document (or this Act).

(2) The classes of persons for the purpose of subsection (1)(b)(i) are—

(a) persons who are employed by a particular employer:

(b) persons who are employed by a related body corporate of a particular employer:

(c) persons who belong to a particular profession, calling, trade, occupation, or industry:

(d) persons who belong to a particular association, society, or other entity with a definable community of interest:

(e) persons who are immediate family members of, or wholly or partially financially dependent on, a person in 1 or more of the classes of persons described in paragraphs (a) to (d).

(3) In this section,—

immediate family member, in relation to a person, means the person's spouse, civil union partner, de facto partner, parent, child, step-parent, or stepchild

independent means a person that—

(a) is not a related body corporate of any other trustee of the restricted scheme; and

(b) is not an employer that provides access to the scheme for its employees, or an administration manager or an investment manager of the restricted scheme (or a related body corporate of any of them); and

(c) is not a director of, shareholder in, or an employee of any person referred to in paragraph (a) or (b); and

(d) is not a current scheme participant; and

(e) is not a representative in any capacity of an organisation (such as a trade union) that represents the interests of 1 or more scheme participants; and

(f) is not a representative in any capacity of an organisation that represents the interests of 1 or more employer contributors to the scheme; and

(g) is not a corporate trustee if none of its directors are independent under this definition.

Compare: 2006 No 40 s 116A

Section 131(1)(a)(ii): amended, on 9 August 2017, by section 53 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

132 Additional prescribed registration requirements for other particular prescribed types of schemes

A scheme of a particular type of registered scheme specified in the regulations must meet the prescribed registration requirements for that type of scheme (if any) that apply to it in addition to those in section 127.

133 Manager must ensure that ongoing registration requirements are complied with

The manager of a registered scheme must ensure that, until all of the managed investment products in the scheme are cancelled, redeemed, or forfeited, or all of the obligations owing under those products have been discharged, the scheme—

(a) continues to comply with the registration requirements that apply to the scheme under section 127; and

(b) if it is registered as a particular type of scheme under sections 128 to 132, continues to comply with the additional registration requirements for that type of scheme that apply to it under those sections.

134 Changes to registration as particular type of registered scheme

(1) The FMA may direct the removal of the registration of a registered scheme as a particular type of scheme—

(a) if the FMA is satisfied that the scheme does not meet the registration requirements for that type of scheme that apply to it under sections 128 to 132; or

(b) on the written request of the manager of the scheme, if the supervisor certifies or, if there is no supervisor, the manager certifies that—

(i) the removal has been approved by a special resolution of the scheme participants (subject to any restrictions in the governing document); or

(ii) there is no material adverse effect on scheme participants from the removal.

(2) The FMA must not direct removal under subsection (1)(a) unless—

(a) the FMA gives the manager of the scheme no less than 10 working days' written notice of the following matters before it exercises the power:

(i) that the FMA may direct removal; and

(ii) the reasons why it may exercise that power; and

(b) the FMA gives the manager or the manager's representative an opportunity to make written submissions on the matter within that notice period.

(3) The FMA may direct that a registered scheme be registered as a particular type of scheme on the written request of the manager of the scheme if the FMA is satisfied that the scheme meets the registration requirements for that type of scheme that apply to it under sections 128 to 132.

(4) A direction under subsection (1)(a) in relation to the removal of a registration as a restricted scheme must not take effect before the expiry of 6 months after the direction is made (unless the manager consents to an earlier date).

(5) If the FMA makes a direction under this section,—

(a) the FMA must notify the manager and the supervisor of the registered scheme of the direction; and

(b) as soon as practicable after being notified of the direction, the manager must notify the scheme participants of the direction.

Compare: 2006 No 40 s 168A

Section 134(1)(b): amended, on 9 August 2017, by section 54 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Governing document requirements

135 Contents of governing document for registered scheme

(1) The governing document for a registered scheme must provide adequately for all of the following matters under the scheme:

(a) whether or not managed investment products are transferable or redeemable and the rules applying to acquiring or disposing of the managed investment products and, if they are redeemable,—

(i) the manner in which, and the conditions on which, interests are to be redeemed; and

(ii) the method of calculating the price at which interests are to be redeemed; and

(b) the rules applying to becoming a scheme participant or withdrawing from participation in the scheme (if there are any rules); and

(c) the contributions payable, or the manner of calculating the contributions payable, and the rules applying to changing the contributions payable or the manner of their calculation; and

(d) the methodology, or the rules applying to determining the methodology, and other rules applying to valuations of assets of the scheme and pricing of interests in the scheme; and

(e) the rules applying to the determination and payment of benefits to scheme participants; and

(f) the fees and expenses that can be paid out of scheme property to any manager, investment manager, administration manager, supervisor, or custodian, or the basis on which those fees and expenses are to be determined, and any rights of any of those persons to be indemnified out of scheme property (and any other matters required by section 136); and

(g) the appointment and removal of the supervisor (unless none is required under this Part); and

(h) the appointment and removal of the manager; and

(i) the winding up of the scheme; and

(j) any matters required to be contained in it by the regulations; and

(k) any other matters (other than the matters contained in the statement of investment policy and objectives) that materially affect—

(i) the management and operation of the scheme by the manager:

(ii) the rights and duties of scheme participants in the scheme:

(iii) the powers, rights, and duties of the manager and the supervisor of the scheme.

(2) The governing document is treated as containing any provision that is implied into it by or under this Act or the KiwiSaver Act 2006.

(3) The governing document must provide for the contents of the document that are required by this section in accordance with the frameworks and methodologies specified in notices issued by the FMA under subpart 4 of Part 9 (if any).

Compare: 1989 No 10 s 7; 2006 No 40 s 119

136 Limits on permitted exemptions and indemnities

(1) If a manager or supervisor of a registered scheme has any rights to be indemnified for liabilities or expenses incurred in relation to the performance of the manager's issuer obligations or the supervisor's licensee obligations (as defined in section 4 of the Financial Markets Supervisors Act 2011), those rights—

(a) must be set out in the scheme's governing document; and

(b) must be available only in relation to the proper performance of the duties under sections 143(1) and 144 or sections 153(1) and 154.

(2) If an investment manager of a registered scheme has any rights to be indemnified for liabilities or expenses incurred in relation to the performance of the investment manager's contracted functions, those rights—

(a) must be set out—

(i) in the scheme's governing document; or

(ii) in the contract between the investment manager and the manager, provided that the scheme's governing document contains a power that permits such an indemnity; and

(b) must be available only in relation to the proper performance of the duty under section 144.

(3) No other agreement has any effect to the extent that it purports to confer a right of a kind referred to in subsection (1) or (2).

Compare: 1960 No 99 s 24(2); 1978 No 103 s 62; 2006 No 40 s 116J(1); Corporations Act 2001 s 601GA(2) (Aust)

137 Governing document must be legally enforceable

A governing document for a registered scheme must be contained in 1 or more documents that are legally enforceable as between the supervisor, the manager, and the scheme participants.

Compare: Corporations Act 2001 s 601GB (Aust)

138 Effect of governing document

A governing document for a registered scheme has no effect to the extent that it contravenes, or is inconsistent with, this Act, the regulations, or any term implied into it by this Act or the regulations.

139 Changes to governing document

(1) An amendment to or a replacement of a governing document has no effect unless made—

(a) under this section with the consent of the supervisor or, if there is no supervisor, the FMA; or

(b) under section 140 or 187(3); or

(c) under section 22(7) or 37(6) of the Financial Markets Supervisors Act 2011 or any other power to amend or replace the governing document under an enactment.

(2) The supervisor or the FMA must not consent to an amendment to, or a replacement of, the governing document under this section unless—

(a) either—

(i) the amendment or replacement is approved by, or contingent on approval by, the scheme participants; or

(ii) the supervisor or the FMA is satisfied that the amendment or replacement does not have a material adverse effect on the scheme participants; and

(b) in the case of the supervisor, the supervisor certifies to that effect and certifies, or obtains a certificate from a lawyer, that the governing document, as amended or replaced, will comply with sections 135 to 137 on the basis set out in the certificate.

(3) The approval of scheme participants for the purposes of subsection (2)(a) must consist of,—

(a) in the case of an amendment to or a replacement of a governing document of a defined benefit scheme or a superannuation scheme or workplace savings scheme that is registered under clause 22 of Schedule 4 that reduces, postpones, or otherwise adversely affects the benefits, whether vested, contingent, or discretionary, that may in due course flow from, or are attributable to, membership of the scheme up to the date the amendment or replacement is made, the written consent of all scheme participants who would be adversely affected by the amendment or replacement; or

(b) in any other case, a special resolution of the scheme participants or each class of scheme participants that is or may be adversely affected by the amendment or replacement.

(4) Subsection (2) is subject to section 153(2)(b).

Compare: 1989 No 10 ss 9, 12; 2006 No 40 ss 119A, 129, 129A

140 Power to make FMA and court-approved changes to governing documents

(1) A manager of a registered scheme may amend or replace the governing document—

(a) with the FMA's consent if the FMA is satisfied that the amendment or replacement is necessary to enable the governing document to comply with sections 135 to 137 or any enactment or rule of law; or

(b) with the court's consent, in the case of a defined benefit scheme or a superannuation scheme or workplace savings scheme that is registered under clause 22 of Schedule 4, if—

(i) the amendment or replacement would otherwise require the consent of all the scheme participants who would be adversely affected by it; and

(ii) the court considers that it is in the interests of the scheme participants.

(2) Subsection (1) applies despite anything to the contrary in the governing document or in any enactment, rule of law, or agreement, including anything relating to the consent of any person to the making of amendments to the governing document.

(3) The FMA's discretion to set preconditions for requests to it includes (without limitation) a discretion to set preconditions that satisfy the FMA that it is appropriate for the amendment or replacement to be made under this section rather than by means of another power or process.

(4) An amendment or a replacement made under this section must be treated for all purposes as if it were authorised by, and made in accordance with, the governing document.

141 Lodging of changes to governing document

(1) Within 5 working days after an amendment to or a replacement of a governing document, the manager of a registered scheme must ensure that notice of the amendment or replacement, and a copy of the certificate for the amendment or replacement (if any), is lodged with the Registrar.

(2) A manager that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Role of manager

142 Management and administration functions of manager

(1) The manager of a registered scheme is responsible for performing the following functions:

(a) offering the managed investment products; and

(b) issuing the managed investment products; and

(c) managing the scheme property and investments; and

(d) administering the scheme.

(2) In the case of a restricted scheme, the trustees of the scheme acting together as the manager of the scheme have responsibility for those functions and the duties of the manager under this Act (and each trustee is jointly and severally liable with the other trustees for the performance of those functions and duties) unless this Act or the regulations otherwise provide.

Compare: 1960 No 99 s 3(2)(a) and (b); 2006 No 40 s 116B(1)

143 General duties applying in exercise of manager's functions

(1) A manager of a registered scheme must—

(a) act honestly and in good faith in acting as a manager; and

(b) in exercising any powers or performing any duties as a manager,—

(i) act in the best interests of the scheme participants; and

(ii) treat the scheme participants equitably; and

(c) not make use of information acquired through being the manager in order to—

(i) gain an improper advantage for itself or any other person; or

(ii) cause detriment to the scheme participants.

(2) The manager must also carry out the functions of a manager in accordance with the governing document, the statement of investment policy and objectives, and all other issuer obligations.

(3) If the registered scheme is established under a trust deed, the manager has the same duties and liability in the performance of its functions as manager as it would if it performed those functions as a trustee (except to the extent that those duties are altered by or are inconsistent with this Act).

Compare: 1960 No 99 ss 3(2)(c), 12(1)(c), 24(1); SR 2009/230 Schedule 17 cl 3(1); Corporations Act 2001 s 601FC (Aust)

Section 143(1)(a): amended, on 30 January 2021, by section 168 of the Trusts Act 2019 (2019 No 38).

144 Duty of manager and investment manager to comply with relevant professional standard of care

(1) A professional manager of a registered scheme must, in exercising any powers, or performing any duties, exercise the care, diligence, and skill that a prudent person engaged in that profession would exercise in the same circumstances.

(2) In this section, a **professional manager** is—

(a) a manager of a registered scheme (other than a restricted scheme):

(b) an investment manager of a registered scheme:

(c) a licensed independent trustee of a restricted scheme:

(d) any other trustee of a restricted scheme whose profession or business is or includes acting as a trustee or investing money on behalf of others.

(3) A trustee of a restricted scheme who is not a professional manager must, in exercising any powers or performing any duties, exercise the care, diligence, and skill that a prudent person of business would exercise in the same circumstances.

Compare: 1960 No 99 ss 3(2)(c), 24(1); 2006 No 40 s 117; SR 2009/230 Schedule 17 cl 3(3)

145 Duties of directors and senior managers of manager

A director or senior manager of a manager of a registered scheme—

(a) must not make use of information acquired through being the director or senior manager of the manager in order to—

(i) gain an improper advantage for himself or herself or any other person; or

(ii) cause detriment to the scheme participants; and

(b) must not make improper use of the position as a director or senior manager of the manager to gain, directly or indirectly, an advantage for himself or herself or any other person or to cause detriment to the scheme participants.

Compare: Corporations Act 2001 s 601FE (Aust); 1960 No 99 s 26

146 Contracting out of management functions

(1) A manager may, unless prohibited by the governing document, contract out to 1 or more persons (whether or not the person or persons hold a market services licence under this Act covering management of the scheme) some or all of its functions as a manager.

(2) However,—

(a) the manager must take all reasonable steps to—

(i) ensure that those functions are performed in the same manner, and are subject to the same duties and restrictions, as if the manager were performing them directly; and

(ii) monitor the performance of those functions; and

(b) the contracting out does not affect the liability of the manager for the performance of those functions.

147 Duty of manager to provide reports to supervisor or FMA

The manager of a registered scheme must, at the prescribed times or on the occurrence of the prescribed events and otherwise in the prescribed manner, prepare and provide to the supervisor (or, if there is no supervisor, the FMA) reports that contain the information that is required to be provided by the regulations.

Section 147: amended, on 9 August 2017, by section 55 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

148 Duty of manager to provide requested information and reports to supervisor

(1) If requested by the supervisor of a registered scheme (or a person authorised by the supervisor to exercise its powers under this section), the manager must—

(a) make available to the supervisor (or other authorised person) all documents and records relating to the manager and the scheme (including those held by an investment manager or administration manager); and

(b) provide the supervisor (or other authorised person) with any other reports or information required by the supervisor (or other authorised person).

(2) Reports or information required under subsection (1) may—

(a) be about any matter relevant to the performance of the supervisor's functions; and

(b) include forward-looking reports.

(3) The reports or information must be provided within the time and in the manner (which must be reasonable in the circumstances) specified by the supervisor.

Compare: 1960 No 99 s 12(1)(b); SR 2009/230 Schedule 17 cl 2

149 Duty of manager to report contravention or possible contravention of issuer obligations

If a manager of a registered scheme has reasonable grounds to believe that it has contravened, may have contravened, or is likely to contravene any of its issuer obligations in a material respect, the manager must, as soon as practicable,—

(a) report the contravention or possible contravention to the supervisor (or, if there is no supervisor, the FMA); and

(b) advise the supervisor (or, if there is no supervisor, the FMA) of the steps (if any) that the manager has taken or intends to take in light of the contravention or possible contravention and the date by which the steps were taken or are to be taken.

Section 149(a): amended, on 9 August 2017, by section 56 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 149(b): amended, on 9 August 2017, by section 56 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

150 Restriction on use of reports on contraventions

A report provided by a manager under section 149 is not admissible as evidence in a criminal proceeding against the manager, except in a criminal proceeding that concerns the falsity of the report.

151 Duty of manager to report serious financial problems

(1) This section applies if a manager of a registered scheme becomes aware of information on the basis of which it could reasonably form the opinion that—

(a) the manager is, or is likely to become, insolvent; or

(b) the registered scheme is, or is likely to become, insolvent.

(2) The manager must, as soon as practicable,—

(a) disclose to the supervisor (or, if there is no supervisor, to the FMA) all information relevant to that matter that is in the possession or under the control of the manager (including information held by an investment manager or administration manager) and that was obtained in the course of, or in connection with, the performance of its functions as manager; and

(b) advise the supervisor (or the FMA, as the case may be) of the steps (if any) that the manager intends to take in respect of that matter and the date by which the steps are to be taken.

Compare: 2011 No 10 s 47

Role of supervisor

152 Functions of supervisor

(1) The supervisor of a registered scheme is responsible for the following functions:

(a) acting on behalf of the scheme participants in relation to—

(i) the manager; and

(ii) any matter connected to the governing document or the terms of any regulated offer; and

(iii) any contravention or alleged contravention of the issuer obligations; and

(iv) any contravention or alleged contravention of this Act by any other person in connection with the registered scheme; and

(b) supervising—

(i) the performance by the manager of its functions and its issuer obligations; and

(ii) the financial position of the manager and the scheme in respect of the managed investment product to ascertain that it is adequate; and

(c) holding the scheme property, or ensuring that the scheme property is held, in accordance with sections 156 to 158; and

(d) performing or exercising any other functions, powers, and duties conferred or imposed on the supervisor by or under this Act, the Financial Markets Supervisors Act 2011, and the governing document.

(2) The supervisor must not delegate its functions under subsection (1) (except as expressly permitted by section 156 in relation to its function under subsection (1)(c) and otherwise by this Act or as permitted by, and then subject to, conditions imposed under the Financial Markets Supervisors Act 2011).

Compare: 2006 No 40 s 116D(3), (4)

153 General duties applying in exercise of supervisor's functions

(1) The supervisor of a registered scheme must—

(a) act honestly and in good faith in acting as a supervisor; and

(b) in exercising its powers and performing its duties as a supervisor, act in the best interests of the scheme participants; and

(c) exercise reasonable diligence in carrying out its functions as a supervisor.

(2) The supervisor of a registered scheme must also—

(a) do all the things it has the power to do to cause any contravention referred to in section 152(1)(a) to be remedied (unless it is satisfied

that the contravention will not have a material adverse effect on scheme participants); and

(b) act in accordance with any direction given by a special resolution of the scheme participants that is not inconsistent with any enactment, rule of law, or the governing document in relation to—

(i) seeking a remedy to a contravention referred to in section 152(1)(a); and

(ii) any other matter connected with the supervisor's functions.

(3) The supervisor is not liable for anything done, or omitted to be done, in good faith in giving effect to a direction to it by scheme participants.

(4) If the registered scheme is established under a trust deed,—

(a) the supervisor is the trustee of the trust; and

(b) the supervisor has the same duties and liability in the performance of its functions as supervisor as it would if it performed those functions as a trustee (except to the extent that those duties are altered by or are inconsistent with this Act).

(5) The duty in subsection (2)(b) is subject to any order of the court made under section 210.

Compare: 1960 No 99 s 18(2)–(4); SR 2009/230 Schedule 17 cl 1

Section 153(1)(a): amended, on 30 January 2021, by section 169 of the Trusts Act 2019 (2019 No 38).

154 Duty of supervisor to comply with professional standard of care

The supervisor of a registered scheme must, in exercising its powers and performing its duties as a supervisor, exercise the care, diligence, and skill that a prudent person engaged in the business of acting as a licensed supervisor would exercise in the same circumstances.

155 Power of supervisor to engage expert

(1) The supervisor of a registered scheme is entitled, in the performance of the supervisor's functions, to engage an expert (for example, an auditor, investigating accountant, valuer, or actuary) if the supervisor considers, on reasonable grounds, that it requires the assistance of the expert to—

(a) determine the financial position of the manager or the scheme; or

(b) review the business, operation, or management systems, or the governance, of the manager or the scheme.

(2) If the supervisor engages an expert under this section,—

(a) the manager must provide reasonable assistance to the expert to allow the expert to provide the assistance under subsection (1); and

(b) the manager must pay the fees and expenses of the expert, which must be reasonable in the circumstances; and

(c) the manager is entitled to be indemnified for those fees and expenses out of scheme property, subject to any limits referred to in section 136.

Compare: SR 2009/230 Schedule 15 cl 11

Application of Trusts Act 2019

Heading: inserted, on 30 January 2021, by section 170 of the Trusts Act 2019 (2019 No 38).

155A Application of Trusts Act 2019

(1) This section applies to a managed investment scheme constituted (or to be constituted) as 1 or more trusts or as including 1 or more trusts (or both) if the scheme—

(a) has been registered under this subpart; or

(b) has been or will be constituted as 1 or more trusts or as including 1 or more trusts (or both) with the intention that the scheme will be registered under this subpart.

(2) The following provisions of the Trusts Act 2019 do not apply to any relevant trust:

(a) section 25 (duty to act honestly and in good faith):

(b) section 29 (general duty of care):

(c) section 30 (duty to invest prudently):

(d) section 35 (duty of impartiality):

(e) section 38 (duty to act unanimously):

(f) section 39 (adviser must alert settlor to modification or exclusion of default duty):

(g) sections 40 to 42 (exemption and indemnity clauses):

(h) section 43 (adviser must alert settlor to liability exclusion or indemnity clause):

(i) section 44 (court consideration of gross negligence):

(j) sections 45 to 48 (documents to be kept by trustees):

(k) sections 49 to 55 (giving information to beneficiaries):

(l) section 56 (general powers of trustee):

(m) sections 60 and 61 (power to determine treatment of returns and accounts):

(n) sections 67 to 73 (exercise or performance of trustee powers and functions by others):

(o) sections 74 to 76 (special trust advisers):

(p) sections 81(2) and (3) and 82 to 85 (trustees' indemnities):

(q) sections 92 to 115 (appointment and discharge of trustees):

(r) sections 121 to 123 (termination and variation of trusts):

(s) sections 142 to 148 (alternative dispute resolution):

(t) sections 153 to 158 (investigation of condition and accounts of certain trust property).

(3) In this section, **relevant trust** means a trust referred to in subsection (1) if a trust deed for the trust has been or will be lodged with the Registrar by the manager of the scheme.

(4) Despite section 16(1) of the Trusts Act 2019, the trusts of a managed investment scheme may continue indefinitely.

Section 155A: inserted, on 30 January 2021, by section 170 of the Trusts Act 2019 (2019 No 38).

Custodianship of scheme property

156 Requirement to have supervisor or other independent person as custodian

(1) The supervisor of a registered scheme (**A**) must hold the scheme property or, if authorised by the governing document, contract the holding of the scheme property to another person (**B**) who meets the external custodianship requirements.

(2) If there is no supervisor for the scheme (for example, in the case of a restricted scheme), the scheme property must be held in 1 of the following ways:

(a) in the case of a restricted scheme, by a body corporate that is either a corporate trustee of the restricted scheme or has, as its directors, only persons who are trustees of the restricted scheme; or

(b) by a person (**B**) who meets the external custodianship requirements and to whom the manager of the scheme (**A**), if authorised by the governing document, has contracted the holding of the scheme property.

(3) B may, if authorised in writing by A, in turn contract the holding of the scheme property to another person who meets the external custodianship requirements.

(4) To meet the external custodianship requirements, a person must—

(a) be a body corporate that A or (if B contracted the custodian) B believes, on reasonable grounds, to be appropriate to hold, and safeguard, the scheme property; and

(b) not be the same person as, or be associated with, the manager or, in the case of a restricted scheme, any of the trustees (other than by virtue of the custodianship).

(5) If a person contracts the holding of the scheme property to another person (**the nominee**) under this section, the person contracting out that function—

(a) must take all reasonable steps to—

(i) ensure that the function is performed by the nominee in the same manner and subject to the same duties and restrictions as if that person were performing it directly; and

(ii) monitor the performance of that function; and

(b) is jointly and severally liable with the nominee (and any other person who has contracted out the function) for the performance of that function in accordance with paragraph (a).

(6) This section does not apply to the extent that scheme property is held directly by the scheme participants.

Compare: 1960 No 99 ss 3(3), 6–6C; 2006 No 40 ss 116G, 116H, 116I

157 Custodian holds scheme property on trust

(1) The custodian for a registered scheme holds the scheme property on trust for the scheme.

(2) The custodian for a registered scheme must ensure that the scheme property is held separate from property held by any of the following persons on their own account:

(a) the custodian:

(b) any related party of the scheme.

(3) The custodian must also comply with any other prescribed duties and other requirements in relation to the scheme property.

(4) Scheme property—

(a) is not available for the payment of the debts of the custodian or any other creditor of the custodian; and

(b) is not liable to be attached or taken in execution under the order or process of any court at the instance of the custodian or any other creditor of the custodian.

(5) Nothing in this section takes away or affects any lawful lien or claim that a custodian who holds scheme property has against the scheme property.

158 Custodian must keep records of scheme property

(1) The custodian for a registered scheme must keep, or ensure that there are kept, records that—

(a) identify the scheme property; and

(b) show when the scheme property was received; and

(c) if the scheme property has been disposed of, show when the scheme property was disposed of and to whom.

(2) The custodian for a registered scheme must also keep all other prescribed records.

(3) The custodian for a registered scheme must—

(a) keep the records required by this section, or ensure that they are kept, in a manner that enables those records to be conveniently inspected by

the manager and the supervisor and conveniently and properly audited or reviewed; and

(b) comply with the prescribed requirements (if any) relating to those records and their audit, review, or inspection.

159 Custodian must report on scheme property

(1) A custodian for a registered scheme must, in the prescribed circumstances, provide confirmation information to the manager or other prescribed persons in respect of the scheme property held by the custodian.

(2) The confirmation information must be provided in the prescribed manner.

(3) In this section, **confirmation information** means the information relating to the scheme property, or transactions relating to it, that is prescribed.

160 Duty of supervisor to refuse to act on wrongful directions

(1) The supervisor of a registered scheme must refuse, and must direct any other custodian to refuse, to act on a direction of the manager that relates to the acquisition or disposal of scheme property if the supervisor considers that the proposed acquisition or disposal would be—

(a) in breach of the scheme's governing document, any rule of law, or any enactment; or

(b) manifestly not in the interests of the scheme participants.

(2) A custodian of a registered scheme must comply with any direction given to it by a supervisor under this section.

(3) If the supervisor refuses, or directs any other custodian to refuse, to act on a direction of the manager, the supervisor must notify the manager and the FMA in writing of that fact and the supervisor's reasons for the refusal or direction.

(4) A supervisor of a registered scheme, and any other custodian of the scheme, is not liable to the scheme participants or the manager for refusing, or directing any other custodian to refuse, to act on a direction of the manager in accordance with this section.

Compare: 1960 No 99 s 12(1)(c)

Meetings of scheme participants

161 Meetings of scheme participants

(1) A meeting of a class of scheme participants must be called by the manager of the registered scheme on the written request of—

(a) the supervisor; or

(b) scheme participants holding managed investment products that have a combined value of no less than 5% of the value of the managed investment products on issue in that class; or

(c) in the case of a superannuation scheme, a KiwiSaver scheme, a workplace savings scheme, or any other prescribed scheme, no less than 5% of the number of scheme participants who hold managed investment products in that class; or

(d) a person who is authorised by the governing document or by the regulations to call the meeting.

(2) Other requirements for meetings, proceedings at meetings, and provision for resolutions in lieu of meetings are governed by the regulations (if any) and the governing document (if there are no regulations or to the extent that the governing document is not inconsistent with any regulations).

Compare: 1960 No 99 ss 12(1)(d), 18(1)

162 Supervisor's attendance at meetings of scheme participants and power to appoint chair

The manager of a registered scheme must ensure that the supervisor—

(a) is permitted to attend any meeting of scheme participants; and

(b) receives the notices and communications that any scheme participant is entitled to receive in relation to a meeting of those participants; and

(c) may be heard at any meeting of scheme participants on any part of the business of the meeting that concerns the supervisor's functions or the scheme participants for whom the supervisor is acting; and

(d) may appoint the chairperson of any meeting of scheme participants.

Compare: 1960 No 99 s 18(1); SR 2009/230 Schedule 17 cl 2(1), (2)

163 Manager and associated persons cannot vote if interested in resolution

(1) The manager of a registered scheme and its associated persons are not entitled to, and must not, vote their interest on a resolution of scheme participants if they have an interest in the resolution or matter other than as a scheme participant.

(2) However,—

(a) if the managed investment products in the registered scheme are quoted, subsection (1) does not prevent the manager and its associated persons from voting their interest on resolutions to remove the manager and appoint a new manager:

(b) the manager or its associated persons may vote as proxies if the proxy appointment specifies the way they are to vote on the resolution and they vote that way:

(c) subsection (1) does not apply in the prescribed circumstances.

(3) An exercise of a voting right in contravention of subsection (1) is of no effect and must be disregarded in counting the votes concerned.

(4) However, subsections (1) and (3) do not invalidate a resolution if the votes concerned were counted in good faith and without knowledge that the voting rights were exercised in contravention of subsection (1).

Compare: Corporations Act 2001 ss 253A(2), 253E (Aust)

Management of scheme

164 Requirement for statement of investment policy and objectives

(1) A manager of a registered scheme must ensure that there is a statement of investment policy and objectives that provides adequately for the investment policy and objectives of the scheme and for the following matters:

(a) the nature or type of investments that may be made, and any limits on those; and

(b) any limits on the proportion of each type of asset invested in; and

(c) the methodology used for developing and amending the investment strategy and for measuring performance against the investment objectives of the scheme.

(2) However, if there are no limits on a matter referred to in subsection (1)(a) or (b), the statement of investment policy and objectives must clearly disclose that fact.

(3) The statement must provide for the matters set out in this section in accordance with the frameworks and methodologies specified in notices issued by the FMA under subpart 4 of Part 9 that apply to it (if any).

165 Changes to statement of investment policy and objectives

(1) The manager of a registered scheme may amend or replace a statement of investment policy and objectives only after giving prior written notice to the supervisor.

(2) This section does not apply if the scheme does not have a supervisor.

Section 165(2): amended, on 9 August 2017, by section 57 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

166 Lodging of statement of investment policy and objectives and changes to statement

(1) The manager of a registered scheme must, except in the prescribed circumstances,—

(a) lodge the statement of investment policy and objectives with the Registrar before a regulated offer of managed investment products is made or, if no regulated offer is made, before any managed investment product is issued; and

(b) lodge any change to the statement of investment policy and objectives with the Registrar within 5 working days after the change takes effect.

(2) A manager that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

167 Action that must be taken on limit breaks

(1) This section applies to a registered scheme if, under the scheme's statement of investment policy and objectives, there is a material breach of any limits on either of the following (a **limit break**):

(a) the nature or type of investments that may be made; or

(b) the proportion of each type of assets that may be invested in.

(2) If this section applies, the manager of the registered scheme must report the limit break to the supervisor or to the FMA (if there is no supervisor) in the prescribed circumstances and in the prescribed manner.

(3) Whether or not a limit break is material must be determined in accordance with the frameworks and methodologies specified in notices issued by the FMA under subpart 4 of Part 9 (if any).

168 Action that must be taken on pricing errors and failure to comply with pricing methodologies

(1) This section applies to a registered scheme if—

(a) the managed investment products under the scheme are transferable or redeemable; and

(b) the manager (or any person to whom the manager has contracted some or all of its functions as a manager)—

(i) makes or includes an error in the calculation of the price at which the managed investment products are issued or redeemed; or

(ii) fails to comply with the methodology for pricing the managed investment products as set out in the governing document or notices issued by the FMA under subpart 4 of Part 9; and

(c) the pricing error or non-compliance is material.

(2) If this section applies, the manager must ensure that—

(a) the pricing error or non-compliance is corrected; and

(b) the pricing error or non-compliance is reported to the supervisor (or to the FMA if there is no supervisor) in the prescribed manner; and

(c) the prescribed steps are taken (which may include steps to remedy the pricing error or non-compliance and to inform current or former scheme participants).

(3) Whether or not a pricing error or non-compliance is material must be determined in accordance with the frameworks and methodologies specified in notices issued by the FMA under subpart 4 of Part 9 (if any).

Section 168(1)(b)(i): amended, on 9 August 2017, by section 58 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

169 Actuarial examination of defined benefit scheme or life benefit scheme

(1) This section applies to a registered scheme that—

(a) is a defined benefit scheme; or

(b) provides benefits that provide for the payment of money on the happening of a contingency dependent on the termination or continuance of human life, and the risks associated with those benefits are not fully insured with a life insurer within the meaning of section 6(1) of the Insurance (Prudential Supervision) Act 2010 (a **life benefit scheme)**.

(2) The manager of a defined benefit scheme or a life benefit scheme must ensure that a suitably qualified actuary examines the financial position of the scheme as at dates that are no more than 3 years apart.

(3) The manager must ensure that—

(a) the report of the actuary is received no later than 7 months after the date as at which the financial position of the scheme was examined; and

(b) the manager gives a copy of the report, as soon as practicable, to the supervisor (or, if there is no supervisor, to the FMA); and

(c) if there is a supervisor, the manager also gives a copy of the report to the FMA within 20 working days after its receipt by the supervisor.

(4) A manager that contravenes subsection (3)(b) or (c) commits an offence and is liable on conviction to a fine not exceeding $50,000.

(5) The offence in subsection (4) is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1989 No 10 s 15

170 Power of manager to adjust financial benefits to comply with portfolio investment entity rules

The manager of a registered scheme to which section HM 48 of the Income Tax Act 2007 applies may adjust the financial benefits of scheme participants in the way required by that section.

Compare: 1960 No 99 ss 12A, 22

171 Limits on reversion of scheme property in certain schemes to non-scheme participant contributor

(1) Neither the manager nor the supervisor of a registered scheme may permit any part of the scheme property of a KiwiSaver scheme, superannuation scheme, or workplace savings scheme to revert to a contributor who is not a scheme participant under the governing document without the prior written consent of the FMA.

(2) The FMA must not give consent to the reversion of any assets of the scheme to a person under this section unless satisfied that—

(a) sufficient assets will remain to support the interests of all of the scheme participants; and

(b) the reversion is fair and equitable to the scheme participants, taking into account the manner in which the scheme acquired those assets.

Compare: 1989 No 10 s 10; 2006 No 40 ss 129B, 130

Related party transactions

172 Definition of related party benefit

(1) A **related party benefit**, in relation to a registered scheme, is a benefit—

(a) that either is given out of scheme property or creates an exposure to loss for scheme property; and

(b) that is given to, or received by, a related party of the scheme; but

(c) does not include fees or expenses that are paid or reimbursed to the manager in accordance with this Act or the governing document of the scheme.

(2) A **related party** of the scheme is—

(a) any of the following persons (a **scheme-connected person**):

(i) the manager of the scheme or any trustee of a restricted scheme; and

(ii) any investment manager, administration manager, or other person to whom the manager has contracted out some or all of its functions as a manager; and

(iii) for a restricted scheme that is identified on the register of managed investment schemes as an employer-related scheme, any contributor to the scheme who is not a scheme participant (other than the Crown); or

(b) an associated person of a scheme-connected person.

(3) A person is also a related party of the scheme at a particular time if—

(a) the person was a related party of the scheme under subsection (2) at any time within the previous 6 months; or

(b) the person believes or has reasonable grounds to believe that the person is likely to become a related party of the scheme under subsection (2) at any time within the next 12 months.

Compare: Corporations Act 2001 ss 601LA–601LE (Aust)

173 General prohibition on transactions giving related party benefits

(1) A manager of a registered scheme (and any investment manager, administration manager, or other person to whom the manager has contracted out some or all of its functions as a manager) must not enter into a transaction that provides for a related party benefit to be given.

(2) However, subsection (1) does not apply to a transaction or series of transactions if the manager notifies the supervisor of the transaction or transactions, including the related party benefits given under the transaction or transactions, and the key terms of the transaction or transactions and either—

(a) the manager obtains the supervisor's consent to the transaction or transactions; or

(b) section 174 applies to the transaction or transactions or all related party benefits to be given and the manager certifies to that effect.

(3) The supervisor must not consent to a transaction or transactions under this section unless 1 of the following applies and the supervisor certifies to that effect:

(a) the supervisor considers that the transaction or transactions are in the best interests of the scheme participants; or

(b) the transaction or transactions are approved by, or contingent on approval by, a special resolution of the class of scheme participants affected, or potentially affected, by the transaction or transactions.

(4) However, if the registered scheme does not have a supervisor, subsection (1) does not apply to a transaction or series of transactions if 1 of the following applies and the manager certifies to that effect:

(a) the transaction or transactions are in the best interests of the scheme participants; or

(b) section 174 applies to the transaction or transactions or all related party benefits to be given; or

(c) the transaction or transactions are approved by, or contingent on approval by, a special resolution of the class of scheme participants affected, or potentially affected, by the transaction or transactions.

(5) The manager may not certify under subsection (4) unless the licensed independent trustee has consented to the certification.

(6) However, a failure to comply with this section does not affect the validity of any transaction (subject to any court order under Part 8).

(7) *See* also section 126 of the KiwiSaver Act 2006 for an additional prohibition on loans and financial assistance to members of KiwiSaver schemes that have fewer than 20 members.

Compare: Corporations Act 2001 ss 601LA–601LE (Aust)

Section 173(4): amended, on 9 August 2017, by section 59 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

174 Certain related party benefits permitted

This section applies to—

Arm's-length terms

(a) a benefit that is given on terms that—

(i) would be reasonable in the circumstances if the parties were connected or related only by the transaction in question, each acting independently, and each acting in its own best interests; or

(ii) are less favourable to the related party than the terms referred to in subparagraph (i):

Investments in other registered schemes

(b) an acquisition or a disposal of a managed investment product in another registered scheme or of a prescribed interest in a prescribed overseas scheme:

Certain registered bank investments

(c) investments made in the ordinary course of business in products referred to in clause 21(a) to (c) of Schedule 1:

Other prescribed benefits or transactions

(d) a prescribed benefit or transaction.

Compare: Corporations Act 2001 ss 601LA–601LE (Aust)

175 Requirements for certificates as to related party benefits

(1) A certificate under section 173 is effective only if the certificate—

(a) states the specific grounds on which it is given under section 173 and (if relevant) section 174, and the basis for relying on those grounds; and

(b) complies with the prescribed requirements (if any) as to its form, content, or the manner in which it is given.

(2) Nothing in section 173 requires a new certificate if there is an existing certificate that applies (whether specifically or in general terms) to the transaction or transactions.

176 Additional restrictions on acquisitions by restricted schemes of in-house assets

(1) A manager of a restricted scheme (or any person to whom the manager has contracted some or all of its functions as a manager) must not acquire any new in-house asset if, as a result of the acquisition, the restricted scheme would have, or increase, an in-house assets ratio of 5% or more in relation to any related party or scheme participant (**A**).

(2) The in-house assets ratio of a scheme, in relation to A, must be calculated as the ratio, expressed as a percentage, of paragraph (a) to paragraph (b):

(a) the sum of the net asset values of—

(i) the in-house assets of A; and

(ii) the in-house assets of any other related parties of the scheme, or scheme participants, that are associated with A; and

(b) the net asset value of the scheme property.

(3) In this section,—

acquire includes to make a loan or an investment, or enter into a lease or lease arrangement, if the resulting loan, investment, or asset subject to the lease or lease arrangement would be an in-house asset

in-house asset—

(a) means, in relation to a related party or scheme participant (**A**), an asset of the scheme that is a loan to, or an investment in, A (or an associate of A) or an asset of the scheme that is subject to a lease or lease arrangement with A (or an associate of A); but

(b) excludes investments referred to in section 174(b) or (c)

investment means the application of assets in any way, or a contract entered into, for the purpose of gaining interest, income, profit, or gain

lease arrangement means, in relation to an asset, an agreement in the nature of a lease under which a person is to use, or control the use of, the asset (whether or not the agreement is enforceable)

loan includes the provision of credit or any other form of financial accommodation (whether or not enforceable).

(4) The in-house assets ratio of a scheme must be calculated under this section in accordance with the frameworks and methodologies specified in notices issued by the FMA under subpart 4 of Part 9 (if any).

(5) This section does not apply in the prescribed circumstances.

Compare: Superannuation Industry (Supervision) Act 1993 s 83 (Aust)

177 General duties not affected

The fact that a transaction is consented to, approved by scheme participants, or otherwise permitted under sections 172 to 176 does not affect the manager's or supervisor's obligations to comply with its duties under this Act and otherwise in connection with the transaction.

Compare: Corporations Act 2001 s 230 (Aust)

Scheme participant transfer rules for KiwiSaver, superannuation, and workplace savings schemes

178 Application of scheme participant transfer rules

(1) Sections 179 to 182 apply to both of the following types of transfer (a **transfer**):

(a) the transfer of a scheme participant from one KiwiSaver scheme or superannuation scheme or workplace savings scheme to another KiwiSaver scheme or superannuation scheme or workplace savings scheme:

(b) the transfer of a scheme participant from one section of a KiwiSaver scheme to another section of the same scheme:

(c) the transfer of a scheme participant from one section of a superannuation scheme or workplace savings scheme to another section of the same scheme (but only if the scheme is registered as a superannuation scheme or workplace savings scheme in respect of both sections).

(2) In sections 179 to 182,—

(a) a person proposed to be transferred is a **proposed transferee**:

(b) the scheme, or section of the scheme, from which the person is proposed to be transferred is the **old scheme**:

(c) the scheme, or section of the scheme, into which the person is proposed to be transferred is the **new scheme**.

(3) Sections 179 to 182 do not apply to transfers to which subpart 3 of Part 2 of the KiwiSaver Act 2006, or any other power to transfer scheme participants under an enactment, applies.

Compare: 1989 No 10 s 9B; 2006 No 40 ss 119B, 119D(6)

Section 178(1)(c): amended, on 9 August 2017, by section 60 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

179 Methods of transfer of scheme participants to another scheme or another section of scheme

(1) No scheme participant may be transferred from one registered scheme to another registered scheme, or to another section of the same scheme, except in accordance with this section.

(2) A scheme participant may be transferred—

(a) with the scheme participant's written consent (which must be obtained in accordance with section 180, if that section applies), if authorised by a governing document; or

(b) in accordance with the FMA's consent under section 181 (despite anything to the contrary in the governing document); or

(c) in accordance with regulations made under section 230 of the KiwiSaver Act 2006 (despite anything to the contrary in the governing document),

if the old scheme is a default KiwiSaver scheme that is subject to a terminating event under section 138 of the KiwiSaver Act 2006.

(3) However, the FMA may permit a transfer to occur under subsection (2)(a) without the scheme participant's consent if the FMA is satisfied that—

(a) the manager of the old scheme has taken all reasonable steps to contact all of the relevant scheme participants, but has not been able to do so; and

(b) the proposed action is not unreasonable in relation to the best interests of any of those scheme participants who have not been contacted.

(4) No scheme participant may be transferred from a KiwiSaver scheme into another scheme that is not a KiwiSaver scheme under this section.

Compare: 1989 No 10 ss 9B, 9BAA(1), 9BA; 2006 No 40 ss 119C, 119G(1), 119I

180 Transfer of substantial numbers of scheme participants with scheme participant consent

(1) This section applies to a transfer (whether at the same time or over an extended period) of all, or a substantial number, of the scheme participants from an old scheme to a new scheme.

(2) The manager of the old scheme and the manager of the new scheme must each consult their own scheme's supervisor about the proposed transfer and give notice of the proposed transfer in accordance with this section.

(3) The notice must—

(a) be given to the FMA and every scheme participant of the old scheme and the new scheme, other than scheme participants who, in the opinion of the FMA, are not likely to be affected by the proposed transfer; and

(b) set out—

(i) the proposal and its implications for the proposed transferees; and

(ii) the date of the proposed transfer; and

(iii) the date on which the proposed transferees' written consent must be received by the manager or the trustees; and

(iv) the fact that the notice has also been sent to the FMA; and

(c) be given at least 1 month before the date on which, under the notice, the proposed transferees' written consent must be received by the manager or the trustees.

(4) Giving notice under this section does not derogate from the need to comply with any other requirement of the KiwiSaver Act 2006 (in relation to a KiwiSaver scheme).

Compare: 1989 No 10 s 9B; 2006 No 40 s 119D

181 Transfer with FMA consent

(1) The FMA may consent to a transfer if the FMA is satisfied that—

(a) the terms and conditions of the new scheme are no less favourable to the proposed transferees than the terms and conditions of the old scheme; and

(b) the transfer is otherwise reasonable in all the circumstances (including having regard to the value of the assets transferred from the old scheme to the new scheme); and

(c) the person applying for the transfer is the manager of the old or new scheme, a relevant employer, or another person who the FMA considers has an appropriate interest in the transfer; and

(d) the applicant has given notice to every proposed transferee that—

(i) the applicant has applied for the FMA's consent to transfer the person without the person's written consent; and

(ii) the person may make submissions to the FMA about the transfer.

(2) The FMA must have regard to any submissions received by proposed transferees before deciding whether or not to give its consent.

(3) The FMA may give its consent subject to any terms and conditions that the FMA sets out in the written notice of consent.

(4) The transfer must be carried out in accordance with those terms and conditions.

Compare: 1989 No 10 s 9BAA; 2006 No 40 ss 119G, 119H

182 Transfers from KiwiSaver scheme

(1) This section applies to an old scheme if it was a KiwiSaver scheme.

(2) The provider of the old scheme must give the following information to the provider of the new scheme in respect of a scheme participant (**A**) who transfers under sections 179 to 181:

(a) A's name, address, and date of birth; and

(b) A's tax file number; and

(c) the date on which A first became a member of a KiwiSaver scheme and (if known and different) the date on which A first contributed to a KiwiSaver scheme; and

(d) (if known) the aggregate amounts of each of—

(i) A's contributions to the old scheme; and

(ii) the Crown contribution to the old scheme in respect of A; and

(iii) any employer contributions to the old scheme in respect of A; and

(e) the name, address, and tax file number of both the provider and the old scheme; and

(f) any other information that the Commissioner of Inland Revenue requires the provider of the old scheme to give to the provider of the new scheme.

(3) In this section, **provider** has the meaning set out in section 5 of the KiwiSaver Act 2006.

Compare: 2006 No 40 s 119F

Provisions as to deferred benefits for superannuation schemes and workplace savings schemes

183 Deferred benefits

(1) A scheme participant in respect of a superannuation scheme or workplace savings scheme who continues to be employed by an employer after the participant's expected age or date of retirement (as defined in the governing document of the scheme) may elect to defer the receipt of any benefit that the participant is eligible to receive under the scheme until the date on which the participant ceases to be employed by that employer.

(2) Subsection (1) applies despite anything to the contrary contained in the governing document of the scheme.

(3) Nothing in subsection (1) or in the Human Rights Act 1993 has the effect of requiring either an employer or a scheme participant to continue to contribute, or to cease to contribute, to the scheme after the participant's expected age or date of retirement, as defined in the governing document of the scheme.

(4) If a scheme participant has the right, under subsection (1), to elect to defer receipt of any benefit that the participant is eligible to receive under the scheme, the manager must inform the participant in writing of that right.

Compare: 1989 No 10 s 9C

Change of manager

184 Application of sections 185 to 192

Sections 185 to 192 apply to—

(a) the manager of a registered scheme (other than a restricted scheme); or

(b) each of the trustees of a restricted scheme (including, to avoid doubt, the independent trustee).

185 Removal of manager of registered scheme

(1) A manager of a registered scheme ceases to hold that office if—

(a) the manager is removed by written direction of the supervisor after the supervisor certifies that it is in the best interests of scheme participants that the manager be removed; or

(b) the manager is removed by a special resolution of the scheme participants; or

(c) in the case of an independent trustee of a restricted scheme,—

(i) the trustee's licence expires or is cancelled under Part 6; or

(ii) the trustee is removed by the FMA if it is satisfied that the trustee no longer meets the requirements in section 131(1)(d); or

(d) the manager is substituted by the court under section 209; or

(e) the manager is otherwise removed or resigns in accordance with the governing document.

(2) Subsection (1)(a) and (b) do not apply to a restricted scheme.

(3) However, a licensed independent trustee may not—

(a) be removed or resign under subsection (1)(e) unless—

(i) all functions and duties of the position have been performed; or

(ii) another licensed independent trustee has been appointed, and accepted the appointment, in its place; or

(iii) the court consents:

(b) (despite anything in the governing document) be removed under subsection (1)(e) without the FMA's consent.

(4) If a manager ceases to hold office under subsection (1), the manager and any delegate of the manager must immediately desist from all activities relating to the registered scheme unless the supervisor agrees to the contrary.

Compare: 1960 No 99 s 19

186 Supervisor or FMA may make temporary appointment

(1) This section applies if a registered scheme does not, for any reason, have a manager or (in the case of a restricted scheme) a licensed independent trustee.

(2) The supervisor or the FMA must appoint a person (the **temporary manager**) to fill the vacancy in the office until a substitute appointment may be made under the governing document.

(3) That person must be,—

(a) if the appointment is by the supervisor, a person who meets the requirements in section 127(1)(c) and (e):

(b) if the appointment is by the FMA, a person whom the FMA considers appropriate (but who need not be a person who meets the requirements in section 127(1)(c) and (e) or (in the case of an independent trustee) section 131(1)(d)).

(4) However, the FMA may act under this section only if—

(a) it is satisfied that the supervisor has had a reasonable opportunity to act under this section but has not done so; or

(b) it is satisfied that it is necessary as a matter of urgency for the FMA to do so and it is not reasonably practicable to wait for the supervisor to do so; or

(c) the supervisor requests the FMA to act; or

(d) there is no supervisor.

(5) If the FMA appoints a person who does not meet the requirements of section 127(1)(c) and (e) or 131(1)(d), that person does not contravene section 388, and the scheme does not fail to meet those registration requirements, as a result of that appointment.

Compare: 1960 No 99 s 23

187 Term, powers, and duties of temporary manager

(1) A temporary manager may hold the appointment until a substitute manager is appointed—

(a) under the governing document; or

(b) otherwise under this Act.

(2) The temporary manager has all of the powers and duties of the manager of the registered scheme and (if applicable) of the independent trustee that are conferred or imposed by the governing document or by law.

(3) However, the FMA may, in the prescribed manner (if any), amend a governing document, in so far as it applies to a temporary manager appointed by the FMA, if—

(a) the supervisor consents; and

(b) the FMA is satisfied that the change will have no material adverse effect on the interests of scheme participants.

(4) An amendment made under this section must be treated for all purposes as if it were made in accordance with the governing document.

(5) Section 141 (lodging of changes to governing document) applies to an amendment to the governing document under this section.

188 FMA's costs must be reimbursed from scheme

(1) The FMA's costs and expenses incurred in connection with the holding of the appointment by a temporary manager appointed by the FMA must be reimbursed out of scheme property of the registered scheme.

(2) An amount payable under subsection (1) is recoverable by the FMA in any court of competent jurisdiction as a debt due to the FMA.

189 Supervisor or FMA must take reasonable steps to arrange for new appointment

(1) The supervisor of a registered scheme or the FMA (if there is no supervisor) must take all reasonable steps to secure, in accordance with the governing

document, the appointment of a person as a permanent manager in place of the temporary manager (other than a temporary independent trustee).

(2) The trustees of a restricted scheme must take all reasonable steps to secure, in accordance with the governing document, the appointment of a person as a permanent licensed independent trustee in place of the temporary independent trustee.

(3) The temporary manager may be appointed to hold the office as a permanent manager, but in this case—

(a) if the person was appointed by the FMA, the person ceases to be appointed by the FMA for the purposes of sections 186 to 188; and

(b) must meet the requirements in section 127(1)(c) and (e) or 131(1)(d) (if applicable).

(4) The supervisor or trustees must, when acting under this section, comply with the prescribed requirements (if any).

190 Former manager must hand over records and give reasonable assistance

(1) If the person who holds an appointment as a manager of a registered scheme changes, the person who previously held the appointment (the **former manager**) must,—

(a) as soon as practicable, give the person that currently holds the appointment (the **current manager**) all of the information held or controlled by the former manager that is reasonably necessary to allow the current manager to hold the office; and

(b) give the current manager all reasonable assistance to facilitate the change.

(2) The former manager may withhold information, or retain a copy of information,—

(a) with the FMA's written consent; or

(b) otherwise in the prescribed circumstances.

(3) If a temporary manager has been appointed to an office, for the purposes of this section, **former manager** includes the person who held the office immediately before the temporary manager and **current manager** includes the person who held the office immediately after the temporary manager.

191 Statutory novation of rights, obligations, and liabilities of former manager

(1) If the manager of a registered scheme changes, the rights, obligations, and liabilities of the former manager in relation to the scheme become the rights, obligations, and liabilities of the new manager.

(2) Despite subsection (1), the following rights, obligations, and liabilities remain rights, obligations, and liabilities of the former manager:

(a) any right of the former manager to be paid fees for the performance of its functions, or to be indemnified for liabilities or expenses it incurred, before it ceased to be the manager of the scheme; and

(b) any right, obligation, or liability that the former manager had as a scheme participant; and

(c) any liability for which the former manager could not have been indemnified out of the scheme property if it had remained the scheme's manager.

(3) This section is subject to any order of the court under section 209.

192 Lodging of notice of changes to manager

(1) Within 5 working days after a change to the manager of a registered scheme, the new manager must ensure that notice of the change is lodged with the Registrar.

(2) A manager that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Change of supervisor

193 Change of supervisor

(1) The supervisor of a registered scheme ceases to hold that appointment (subject to subsection (2)) if the supervisor—

(a) is removed by the FMA if it is satisfied that the manager and the supervisor no longer meet the requirements in section 127(1)(e) (registration requirements); or

(b) is removed by the FMA or the issuer under Part 2 of the Financial Markets Supervisors Act 2011; or

(c) is removed by a special resolution of the scheme participants; or

(d) is removed or resigns in accordance with the governing document.

(2) However, a supervisor may not—

(a) be removed or resign under subsection (1)(c) or (d) unless—

(i) all functions and duties of the position have been performed; or

(ii) another licensed supervisor has been appointed, and accepted the appointment, in its place; or

(iii) the court consents:

(b) (despite anything in the governing document) be removed by the manager under subsection (1)(d) without the FMA's consent.

Compare: 1960 No 99 s 10; 1978 No 103 s 48; 2006 No 40 s 116E(2)

194 Lodging of notice of change of supervisor

(1) Within 5 working days after a change of supervisor of a registered scheme, the manager must ensure that notice of the change is lodged with the Registrar.

(2) A manager that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Cancellation of registration

195 Cancellation of registration

(1) The FMA may direct that the registration of a registered scheme be cancelled—

(a) if satisfied on reasonable grounds that the scheme does not meet the registration requirements under section 127; or

(b) if the FMA has reasonable cause to believe that the scheme has no scheme participants; or

(c) on the written request of the manager of the scheme (subject to subsection (4)), if the supervisor certifies or, if there is no supervisor, the manager certifies that—

(i) the cancellation has been approved by a special resolution of the scheme participants (subject to any restriction in the governing document); or

(ii) there is no material adverse effect on the scheme participants from the cancellation; or

(d) if the scheme has been wound up or dissolved or has otherwise ceased to exist.

(2) The FMA must not direct cancellation under subsection (1)(a) or (b) unless—

(a) the FMA gives the manager of the scheme no less than 20 working days' written notice of the following matters before it exercises the power:

(i) that the FMA may direct cancellation; and

(ii) the reasons why it may exercise that power; and

(b) the FMA gives the manager or the manager's representative an opportunity to make written submissions on the matter within that notice period.

(3) If the FMA makes a direction under this section,—

(a) the FMA must notify the manager and the supervisor of the registered scheme of the direction; and

(b) as soon as practicable after being notified of the direction, the manager must notify the scheme participants of the direction.

148

(4) The FMA may, instead of cancelling a scheme's registration on the request of the manager under this section, exercise its rights to apply for an order winding up the scheme under section 211 (power to order winding up).

Compare: 1989 No 10 s 19; 2006 No 40 s 168

Section 195(1)(c): amended, on 9 August 2017, by section 61 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

196 Registrar must remove scheme from register on cancellation of registration

(1) On the cancellation of the registration of a scheme under section 195, the Registrar must remove it from the register of managed investment schemes.

(2) The cancellation must be treated as taking effect on the date on which the scheme is removed from the register.

(3) The Registrar must give notice of the cancellation of registration, as soon as practicable after the registration of the scheme is cancelled, to—

(a) the manager of the scheme; and

(b) the supervisor of the scheme; and

(c) the Commissioner of Inland Revenue (in the case of a KiwiSaver scheme).

Compare: 2006 No 40 s 170

Subpart 3—Intervention in debt securities offered under regulated offer or registered schemes

Provisions assisting supervisor or FMA to intervene

197 Application

This subpart applies in relation to debt securities offered under a regulated offer and registered schemes.

198 Duty of auditor to report to supervisor or FMA

(1) This section applies to the auditor of an issuer of a debt security or a registered scheme.

(2) If the auditor provides the issuer, any of the issuer's members or shareholders, or any of the holders of the debt security or managed investment product with any document required by an Act or a trust deed relating to the financial product or scheme, the auditor must, as soon as practicable, send a copy to the supervisor of the debt security or registered scheme or, if there is no supervisor, to the FMA.

(3) If, in the performance of the auditor's duties, the auditor becomes aware of a matter that, in the auditor's opinion, is relevant to the exercise or performance of the powers or duties of the supervisor of the debt security or registered

scheme, the auditor must, within 7 working days of becoming aware of the matter, send—

(a) a written report on the matter to the issuer; and

(b) a copy of the report to the supervisor or, if there is no supervisor, to the FMA.

(4) The auditor must, from time to time, at the request of the supervisor, provide the supervisor with any information relating to the issuer or registered scheme—

(a) that the supervisor requests; and

(b) that is within the auditor's knowledge; and

(c) that is, in the auditor's opinion, relevant to the exercise or performance of the powers or duties of the supervisor.

(5) Section 214 (protected disclosure) applies to a disclosure in good faith under this section.

Compare: 1978 No 103 s 50

199 Duty of auditor, investment manager, administration manager, custodian, or actuary to report serious problems

(1) This section applies to an auditor of an issuer of a debt security and to an investment manager, an administration manager, a custodian, an auditor, or an actuary of a registered scheme.

(2) A person to whom this section applies must take the steps set out in section 200 if the person has reasonable grounds to believe that any of the following has arisen in relation to a relevant financial product (a **serious problem**):

(a) the issuer of the relevant financial product has contravened, may have contravened, or is likely to contravene an issuer obligation in a material respect; or

(b) the issuer or scheme is, or is likely to become, insolvent; or

(c) the financial position of the scheme or issuer or the security of benefits or the management of the scheme or issuer is otherwise inadequate; or

(d) the manager of the scheme has contravened, may have contravened, or is likely to contravene any of the manager's market services licensee obligations in a material respect; or

(e) the supervisor of the scheme has contravened, may have contravened, or is likely to contravene any of the supervisor's licensee obligations (as defined in section 4 of the Financial Markets Supervisors Act 2011) in a material respect; or

(f) the custodian of the scheme has contravened, may have contravened, or is likely to contravene any of the custodian's obligations in a material respect.

Compare: 2006 No 40 s 191

200 What person must do if duty to report serious problem applies

(1) If section 199 applies, the person to whom that section applies must, as soon as practicable,—

(a) report the serious problem to the supervisor or, if subsection (2) applies, to the FMA; and

(b) disclose to the supervisor or the FMA (as applicable under paragraph (a)) all information relevant to the serious problem that is in the possession or control of the relevant person and was obtained in the course of, or in connection with, the performance of functions of that relevant person.

(2) A serious problem must be reported to the FMA instead of the supervisor if—

(a) there is no supervisor; or

(b) the serious problem concerns a contravention or likely contravention of an obligation by the supervisor; or

(c) the contravention relates to the custodian and the custodian is a related body corporate of the supervisor.

(3) Section 214 (protected disclosure) applies to a disclosure in good faith under this section.

(4) To avoid doubt, section 199 and this section do not require a relevant person to carry out functions additional to those functions that the person would ordinarily carry out in the course of holding the person's office (other than as expressly required by subsection (1)).

Compare: 2006 No 40 s 191(2), (4)

201 Protections extend to volunteers of supporting information for other protected disclosures

(1) Section 214 (protected disclosure) applies to a disclosure that is supporting information volunteered by a person under this section.

(2) A person volunteers supporting information under this section if the person—

(a) is an employee of a person in respect of whom a protected disclosure is made by another person under this Act; and

(b) provides information, in support of that other protected disclosure, to—

(i) the supervisor or the FMA (whichever receives the other protected disclosure); or

(ii) the person who made the disclosure; and

(c) makes the disclosure in good faith; and

(d) wishes to provide the supporting information so that a serious problem can be investigated.

(3) However, an employee does not volunteer supporting information under this section if the employee provides the supporting information only after being—

(a) required to do so under any enactment, rule of law, or agreement for the purposes of the investigation; or

(b) approached during the course of the investigation by, or on behalf of, the FMA or any other person investigating the matter.

202 FMA may require supervisor to attest as to issuer's compliance with issuer obligations

(1) The FMA may require a supervisor of a debt security or registered scheme to attest to the FMA, at a time and in a manner specified by the FMA, as to whether the supervisor is satisfied that the issuer has not contravened an issuer obligation in a material respect.

(2) If the FMA requires a supervisor to attest to the FMA under this section, the supervisor must—

(a) provide that attestation; or

(b) if unable to attest to the FMA as required, report the reason, including the details of any contravention or possible contravention and, if applicable, the report under section 203.

(3) Section 214 (protected disclosure) applies to a report made in good faith under this section.

Compare: 2011 No 10 s 45

203 Duty of supervisor to report contravention or possible contravention of issuer obligations to FMA

(1) If a supervisor of a debt security or registered scheme has reasonable grounds to believe that the issuer has contravened, may have contravened, or is likely to contravene an issuer obligation in a material respect, the supervisor must, as soon as practicable,—

(a) report the contravention or possible contravention to the FMA; and

(b) advise the FMA of the steps (if any) that the supervisor intends to take in respect of the contravention or possible contravention and the date by which the steps are to be taken.

(2) Section 214 (protected disclosure) applies to a report made in good faith under this section.

Compare: 2011 No 10 s 46

204 Duty of supervisor to report serious financial problems to FMA

(1) This section applies if a supervisor of a debt security or registered scheme becomes aware, in the course of or in connection with the performance of its functions as supervisor, of information on the basis of which it could reasonably form the opinion that—

(a) the issuer is, or is likely to become, insolvent; or

(b) in the case of a registered scheme, the scheme is, or is likely to become, insolvent.

(2) The supervisor must, as soon as practicable,—

(a) disclose to the FMA all information relevant to that matter that is in the possession or under the control of the supervisor and that was obtained in the course of, or in connection with, the performance of its functions as supervisor; and

(b) advise the FMA of the steps (if any) that the supervisor intends to take in respect of that matter and the date by which the steps are to be taken.

(3) Section 214 (protected disclosure) applies to a report made in good faith under this section.

Compare: 2011 No 10 s 47

205 FMA's powers of direction

(1) The FMA may exercise a power under subsection (2) if it is satisfied that—

(a) there is a significant risk that the interests of holders of a debt security or scheme participants in a registered scheme will be materially prejudiced; and

(b) 1 of the following applies:

(i) the supervisor of the debt security or registered scheme is aware of that risk and has had a reasonable opportunity to take action to eliminate or reduce the risk but has not done so; or

(ii) action is urgently required to eliminate or reduce the risk and it is not reasonably practicable to wait for the supervisor to do so; or

(iii) there is no supervisor.

(2) The FMA may, by written notice to the supervisor and otherwise in the prescribed manner, give a direction to the supervisor.

(3) If there is no supervisor, the FMA may, by written notice to the issuer and otherwise in the prescribed manner, give a direction to the issuer.

Compare: 2011 No 10 s 49(1), (2)

206 FMA's directions to supervisor (or issuer)

(1) If the notice under section 205 gives a direction to the supervisor (or, if there is no supervisor, the issuer), the notice must specify—

(a) the step or steps that the supervisor (or issuer) must take in relation to the issuer, the registered scheme (if any), or the financial products; and

(b) the date by which each step will be taken.

(2) The supervisor or the issuer (as the case may be) must comply with the direction (*see* subpart 3 of Part 8, which provides for civil remedies for a contravention of this provision).

(3) A supervisor or issuer (as the case may be) that refuses or fails, without reasonable excuse, to comply with the direction commits an offence and is liable on conviction to a fine not exceeding $300,000.

Compare: 2011 No 10 s 49(3)–(5)

Powers to obtain court orders to intervene

207 Power of supervisor or FMA to apply for order to remedy problems

(1) A supervisor of a debt security or a registered scheme, or the FMA, may apply for an order under section 208 if it is satisfied that—

(a) the issuer and any guarantor of the financial products are unlikely to be able to pay all money owing in respect of the financial products when it becomes due; or

(b) the issuer is insolvent; or

(c) in the case of a registered scheme, the scheme is insolvent; or

(d) the financial position of the scheme or issuer or the security of benefits or the management of the scheme or issuer is otherwise inadequate; or

(e) in the case of a registered scheme, the scheme does not meet the registration requirements, or the requirements for registration as a particular type of scheme, that apply to it under sections 127 to 132; or

(f) there is a significant risk that the interests of product holders will be materially prejudiced for any other reason; or

(g) the provisions of a governing document are no longer adequate to give proper protection to product holders.

(2) However, the FMA may apply for the order only if it is satisfied that—

(a) the supervisor has had a reasonable opportunity to apply for the order but has not done so; or

(b) it is necessary as a matter of urgency for the FMA to do so and it is not reasonably practicable to wait for the supervisor to do so; or

(c) there is no supervisor.

Compare: 1960 No 99 s 19A; 1978 No 103 s 49; 2006 No 40 s 116K(1), (2); 2011 No 10 s 50(1)–(3)

208 Court orders to remedy problems

(1) The court may, on the application by a supervisor or the FMA under section 207 and after giving the issuer and any other person as the court thinks fit the opportunity to be heard, make 1 or more of the orders listed in subsection (2).

(2) The order or orders may—

(a) amend the provisions of the governing document:

(b) impose restrictions on the activities of the issuer (including restrictions on advertising) that the court thinks are necessary to protect the interests of product holders:

(c) direct that no offers, issues, sales, or transfers of debt securities or managed investment products specified in the order be made while the order is in force:

(d) direct that an issuer must not accept further contributions or deposits in respect of debt securities or managed investment products specified in the order while the order is in force:

(e) direct the issuer or the supervisor to convene a meeting of product holders for the purpose of—

(i) having placed before the product holders by the issuer or the supervisor the information or proposal that the court, the supervisor, or the FMA thinks necessary or appropriate relating to the product holders' interests; and

(ii) obtaining the opinions or directions of product holders:

(f) give directions in relation to the conduct of any meeting convened in accordance with paragraph (e):

(g) stay any civil actions or civil proceedings before the court by or against the supervisor, the issuer, or any guarantor of the financial products:

(h) restrain the payment of money by the custodian, the issuer, or any guarantor of the financial products to product holders or a class of product holders or restrain the transfer of scheme property by the custodian:

(i) appoint a receiver or manager of the property that constitutes the security (if any) for the financial products (with any powers that the court orders):

(j) remove a receiver or manager of the property that constitutes the security (if any) for the financial products:

(k) give any other directions that the court considers necessary to protect the interests of product holders, any guarantor of the financial products, or the public.

(3) The court may vary or cancel an order made under this section.

(4) In exercising its powers under this section, the court must have regard to the interests of all creditors of the issuer (in the case of a debt security) and

all creditors in respect of the registered scheme (in the case of a managed investment product).

Compare: 1960 No 99 s 19A; 1978 No 103 s 49; 2006 No 40 s 116K(3)–(6); 2011 No 10 s 50(4)–(7)

209 Power of court to appoint new manager, provide for manager powers, and deal with changes of managers

(1) The court may, on the application of the supervisor of a registered scheme, the FMA, a scheme participant in a registered scheme, or (in the case of an order under paragraph (b)) a manager of a registered scheme, make an order to—

(a) appoint a new manager of a registered scheme (with any powers that the court orders) if there is no manager or in substitution for an existing manager:

(b) confer an additional power on the manager of a registered scheme (either generally or specifically) to facilitate a transaction or type of transaction that the court considers to be in the interests of the scheme participants, and provide for the exercise of that additional power:

(c) direct that section 191 not apply in whole or in part and also, if an agreement has been entered into between a manager of a registered scheme that has been removed and any other person,—

(i) vary the agreement or any collateral agreement as specified in the order and, if the court thinks fit, declare the agreement to have had effect as so varied on and after a date before the order was made, as specified in the order; or

(ii) cancel the agreement and, if the court thinks fit, declare the cancellation to have had effect on and after a date before the order was made, as specified in the order:

(d) amend the governing document to provide for a new or temporary appointment of a manager of a registered scheme (whether the appointment is by a court order or under the governing document or this Act) or otherwise in connection with another order made under this section:

(e) cancel in whole or in part any liability of the scheme to make any payment or transfer any property to a manager of a registered scheme that has been removed.

(2) The court may under this section (without limiting subsection (1)) appoint a new manager in substitution for a manager who—

(a) has been held by the court to have contravened any issuer obligation; or

(b) is insolvent.

(3) A manager appointed by the court under this section has all of the powers and duties of the manager of the registered scheme that are conferred or imposed by the governing document or by law.

Compare: 1960 No 99 s 22

210 Power of court to direct supervisor

(1) The court may, on an application made under subsection (2), make an order directing a supervisor of a debt security under a regulated offer or of a registered scheme not to comply with a special resolution of product holders if the court is satisfied that compliance would be objectionable (for example, because it would be oppressive to the minority).

(2) The supervisor, the FMA, or a product holder may apply for an order under this section within 20 working days after the special resolution (or, with leave of the court, within any longer period).

211 Court power to order winding up of scheme

(1) The court may, on the application of the FMA or a supervisor of the registered scheme, direct that a registered scheme must be wound up if it is satisfied that—

(a) the manager or the scheme is insolvent; or

(b) the manager has persistently or seriously failed to comply with this Act or any other financial markets legislation; or

(c) no permanent manager is appointed under the governing document or this Act; or

(d) no supervisor is appointed under the governing document or the Financial Markets Supervisors Act 2011 (if required under this Part); or

(e) the scheme does not meet the registration requirements that apply to it under sections 127 to 132; or

(f) it is just and equitable that the scheme be wound up.

(2) However, the FMA may apply for an order to wind up a scheme only if it is satisfied that—

(a) the supervisor has had a reasonable opportunity to do so but has not done so; or

(b) it is necessary as a matter of urgency for the FMA to do so rather than wait for the supervisor to do so; or

(c) there is no supervisor.

(3) The court may give any other directions that it thinks fit for the purpose of facilitating the winding up (and, if there is any conflict between those directions and the provisions of the governing document, those directions prevail).

212 Initial steps in winding up of registered scheme

(1) If a registered scheme is to be wound up, the supervisor or (if there is no supervisor) the manager must, within 10 working days after a winding-up resolution or an order by the court that the scheme be wound up is made,—

(a) give a copy of any order or resolution to the FMA; and

(b) in the case of a KiwiSaver scheme or a complying superannuation fund,—

(i) give a copy of any order or resolution to the Commissioner of Inland Revenue; and

(ii) give notice to the Commissioner of Inland Revenue of the name, tax file number, and address of each member of the registered scheme.

(2) *See* sections 50 to 52 of the KiwiSaver Act 2006 (which set out the effect of notice to the Commissioner of Inland Revenue in relation to members of a KiwiSaver scheme) and subpart 3 of Part 2 of that Act (which relates to the transfer of members' interests to another KiwiSaver scheme).

(3) A supervisor or manager that contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding $50,000.

(4) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Compare: 2006 No 40 s 173

Section 212(1): amended, on 9 August 2017, by section 62(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 212(3): amended, on 9 August 2017, by section 62(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

213 Winding-up report

(1) The person who was the supervisor of the relevant registered scheme or, if there was no supervisor, the person who was the manager of the relevant registered scheme immediately before the scheme was wound up—

(a) must, within 4 months after the date on which the winding up takes effect, ensure that final financial statements of the scheme, showing the financial position of the scheme as at the date on which the winding up takes effect, are prepared in accordance with generally accepted accounting practice and audited; and

(b) must, within 20 working days after the final financial statements have been audited, ensure that—

(i) a copy of those financial statements is sent to the FMA and to every person who was a scheme participant immediately before it was wound up; and

(ii) the FMA and the scheme participants are advised in writing as to the manner in which the remaining assets (if any) of the scheme are to be distributed; and

(c) may make a partial distribution of assets of the scheme at any time before a copy of the final financial statements is sent to the FMA under paragraph (b) (unless prohibited by the governing document); and

(d) must inform the FMA of the date on which the distribution of the assets is completed.

(2) The FMA may, by giving notice to the relevant person, extend the time period within which a person must comply with any of the requirements set out in this section.

(3) A person that contravenes—

(a) subsection (1)(a) commits an offence:

(b) subsection (1)(b) commits an offence:

(c) subsection (1)(d) commits an offence.

(4) A person that commits an offence under subsection (3) is liable on conviction to a fine not exceeding $50,000.

(5) Each offence in subsection (3) is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1989 No 10 s 21(1), (1A); 2006 No 40 ss 174, 175

Section 213(1): amended, on 9 August 2017, by section 63 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Miscellaneous

214 Protection for persons in respect of disclosure under this subpart or subpart 4

(1) No civil, criminal, or disciplinary proceedings may be brought against a person by reason of the person having made a protected disclosure.

(2) No person may terminate the appointment of a person by reason of the person having made a protected disclosure.

(3) No tribunal, body, or authority that has jurisdiction in respect of the professional conduct of a person may make an order against, or do any act in relation to, the person by reason of the person having made a protected disclosure.

(4) In this Act, **protected disclosure** means a disclosure of information to which this section applies under this subpart or subpart 4.

Compare: 1978 No 103 s 50C; 2006 No 40 s 192; 2011 No 10 s 48

Subpart 4—Registers and keeping copies of documents

Registers

215 Issuers must keep registers of regulated products

(1) Every issuer of regulated products must ensure that there is kept, in the manner specified in section 216,—

(a) a register of those regulated products and of all financial products that are of the same class as those regulated products of which it is the issuer; and

(b) a register of other financial products of which it is the issuer that is required to be kept by the regulations.

(2) However, subsection (1) does not apply—

(a) to derivatives (unless those derivatives are of a prescribed type); or

(b) to prescribed financial products; or

(c) otherwise in the prescribed circumstances.

(3) If subsection (1) does not apply to derivatives of a particular type, the issuer must comply with the requirements prescribed for the purposes of this subsection (if any).

(4) An issuer that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(5) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1978 No 103 s 51(1)

216 Manner of keeping registers

(1) A register kept under this subpart must be kept in New Zealand.

(2) A register kept under this subpart may—

(a) be an electronic register; or

(b) be kept in any other reasonable manner that the issuer thinks fit.

217 Contents of registers

(1) Every issuer of regulated products must ensure that every register kept by, or on behalf of, the issuer under this subpart contains, in respect of every financial product entered in the register,—

(a) the name and address of the holder; and

(b) the date on which the product was issued or transferred to the holder, as the case may be; and

(c) the nature of the product; and

(d) the amount of the product (if any); and

(e) the due date of the product (if any); and

(f) all other prescribed particulars (if any).

(1A) However, a register is not required to contain the information specified in a paragraph in subsection (1) if the circumstances prescribed in respect of that paragraph apply.

(2) No notice of any trust, expressed, implied, or constructive, may be entered on a register kept under this subpart (except in the prescribed circumstances).

(3) Every register kept under this subpart is prima facie evidence of the matters required by this Act to be entered in it.

(4) An issuer that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(5) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1978 No 103 s 51(2)–(5)

Section 217(1A): inserted, on 9 August 2017, by section 64 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

218 Audit or review of registers

(1) Every issuer of regulated products must ensure that registers kept by, or on behalf of, the issuer under this subpart are audited or reviewed in accordance with the prescribed requirements by a qualified auditor.

(2) An issuer that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1978 No 103 s 51(6)

219 Auditor must advise if auditor considers that subpart is not being complied with

(1) If the auditor referred to in section 218 considers at any time that this subpart is not being complied with, the auditor must, as soon as practicable,—

(a) advise the issuer and the FMA; and

(b) advise,—

(i) in the case of equity securities, the security holders at their next meeting if the non-compliance is material:

(ii) in the case of debt securities or managed investment products, the supervisor.

(2) Section 214 (protected disclosure) applies to a disclosure made in good faith under this section.

Compare: 1978 No 103 s 51(8)

220 Issuer must notify Registrar of registers

(1) Every issuer of regulated products must send a notice to the Registrar of the place where its registers under this subpart are kept and of any change in that place.

(2) The notice must be sent within 10 working days after the register being established or after the change in place (as the case may be).

(3) This section does not apply to an issuer that is a company if the registers of the company are kept at its registered office.

(4) An issuer that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(5) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1978 No 103 s 51(9), (10)

221 Public inspection of register

(1) Every issuer of regulated products must ensure that every register kept by, or on behalf of, the issuer under this subpart is available for inspection in the manner referred to in section 222.

(2) Subsection (1) does not apply—

(a) to a register of managed investment products in respect of a superannuation scheme, workplace savings scheme, or KiwiSaver scheme:

(b) to a register of derivatives:

(c) in the prescribed circumstances.

(3) However,—

(a) a register of managed investment products in respect of a superannuation scheme, workplace savings scheme, or KiwiSaver scheme must be available for inspection by the supervisor in the manner referred to in section 222 if the supervisor serves written notice on the issuer of intention to inspect:

(b) the part of a register of managed investment products in respect of a superannuation scheme, workplace savings scheme, or KiwiSaver scheme that concerns financial products of a particular scheme participant must be available for inspection by the scheme participant in the manner referred to in section 222 if the scheme participant serves written notice on the issuer of intention to inspect:

(c) the part of a register of derivatives that concerns derivatives entered into by a particular person must be available for inspection by the person in the manner referred to in section 222 if the person serves written notice on the issuer of intention to inspect.

(4) An issuer that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(5) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1978 No 103 s 52

222 Manner of inspection

For the purposes of section 221, a register kept under this subpart must—

(a) be available for inspection, by a person who serves on the issuer written notice of intention to inspect, at the place at which the register is kept between the hours of 9 am and 5 pm on each working day during the inspection period; and

(b) otherwise be available for inspection in the prescribed manner (if any).

Compare: 1993 No 105 s 217

223 Copies of documents

(1) A person may require a copy of, or an extract from, a register that is available for inspection by the person under section 221 to be sent to the person—

(a) within 5 working days after the person has made a written request for the copy or extract to the issuer; and

(b) if the person has paid the prescribed fee (if any).

(2) The issuer must comply with the request (subject to section 224).

(3) An issuer that contravenes subsection (2) commits an offence and is liable on conviction to a fine not exceeding $50,000.

(4) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1993 No 105 s 218

224 Reasons for request must be given and FMA may authorise non-compliance

(1) A person who makes a request under section 223(1) (other than a request for information about that person) must include in the request a statement of the person's reasons for the request (including the purpose for which the person intends to use the copy of, or extract from, the register), and the issuer may, if it thinks fit, provide a copy of that statement to the FMA.

(2) If the issuer provides a copy of the statement to the FMA before the expiry of the 5-working-day period referred to in section 223(1)(a),—

(a) the period within which the request may be complied with is 10 working days after the person made the request (rather than 5 working days); and

(b) the issuer does not have to comply with the request at all if the FMA, within that 10-working-day period, gives written notice to the issuer that it is not required to comply.

225 Restriction on use of information in registers

(1) A person must not—

(a) use information about a person obtained from a register kept under this subpart to contact or send material to that person; or

(b) disclose information of that kind knowing that the information is likely to be used to contact or send material to the person.

Example

An example of using information to send material to a person is putting a person's name and address on a mailing list for advertising material.

(2) Subsection (1) does not apply if the use or disclosure of the information is—

(a) relevant to the holding of the interests recorded in the register or the exercise of the rights attaching to those interests; or

(b) approved by the issuer that keeps the register.

(3) A person must not—

(a) use information obtained from a register kept under this subpart—

(i) for any prescribed purpose; or

(ii) in the case of a request under section 223(1), for any purpose other than the purpose disclosed in the statement under section 224(1); or

(b) disclose information of that kind knowing that the information is likely to be used for any such purpose.

(4) Subsection (3)(a)(ii) does not apply to a person who makes a request under section 223(1) for information about that person.

Compare: Corporations Act 2001 s 177 (Aust)

226 Certain provisions prevail over Companies Act 1993

If a provision of sections 221 to 225 is inconsistent with a provision in the Companies Act 1993, the provision of sections 221 to 225 prevails.

Copies of documents to be retained

227 Copies of documents must be retained for 7 years

(1) The issuer of a regulated product, the offeror under a regulated offer, or the manager of a registered scheme must, in respect of each document required by or for the purposes of this Act in respect of the regulated product, regulated offer, or registered scheme,—

(a) keep a copy of the document for a period of at least 7 years after the date on which the document comes into the possession of the issuer, offeror, or manager; and

(b) comply with the prescribed requirements relating to where the copy is kept, inspection of the copy, and making copies of the document available on payment of a reasonable printing and administration fee set by the issuer, offeror, or manager.

(2) Subsection (1) applies only if the document is given, made, or provided by or to the issuer, offeror, or manager.

(3) A person that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(4) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Subpart 5—Civil liability for certain contraventions of this Part

228 Part 4 governance provisions

(1) All of the provisions specified in subsections (3) and (4) are Part 4 governance provisions.

(2) A contravention of any of the provisions listed in subsection (3) may give rise to civil liability (*see* subpart 3 of Part 8), including a pecuniary penalty not exceeding the greatest of the consideration for the relevant transaction, 3 times the amount of the gain made or the loss avoided, and $1 million in the case of an individual or $5 million in any other case.

(3) The provisions are the following:

(a) section 103 (need for governing document and supervisor for regulated offer of debt security):

(b) section 125 (need to register managed investment scheme for regulated offer of managed investment product):

(c) sections 156 to 158 (requirements relating to custodianship of scheme property):

(d) section 185(4) (manager and delegate must desist from all activities relating to scheme on removal).

(4) A contravention of any of the following may give rise to civil liability (*see* subpart 3 of Part 8), including a pecuniary penalty not exceeding $200,000 in the case of an individual or $600,000 in any other case:

(a) section 108(2) (changes to trust deed):

(b) sections 112 and 113 (duties applying to supervisor of debt security):

(c) sections 114 to 118 and 119(2) (duties on issuer to provide various reports, information, and assistance):

(d) sections 120, 121, 161, and 162 (meetings of product holders):

(e) section 133 (manager must ensure that ongoing registration requirements are complied with):

(f) section 134(5)(b) (manager must notify scheme participants of direction):

(g) section 139(2) (changes to governing document):

(h) sections 143 to 146 (duties applying to manager, investment manager, and directors and senior managers of manager):

(i) sections 147 to 151 and 155(2) (duties on issuer to provide various reports, information, and assistance):

(j) sections 153 and 154 (duties applying to supervisor of registered scheme):

(k) section 159 (custodian must report on scheme property):

(l) section 160 (duty of supervisor to refuse to act on wrongful directions):

(m) section 163(1) (manager and associated persons cannot vote if interested in resolution):

(n) sections 164 and 165 (requirements relating to statement of investment policy and objectives):

(o) sections 167 to 169 (actions that must be taken on limit breaks, pricing errors, and other non-compliances, and requirements for actuarial examinations):

(p) section 171 (limits on reversion of scheme property in certain schemes to non-scheme participant contributor):

(q) section 173 (general prohibition on related party transactions):

(r) section 176 (additional restrictions on acquisitions by restricted schemes of in-house assets):

(s) sections 179, 180, 181(4), and 182 (scheme participant transfer rules):

(t) section 190 (former manager must hand over records and give reasonable assistance):

(u) section 195(3)(b) (manager must notify scheme participants of direction):

(v) sections 198 to 200, and 202 to 204 (duties to report problems):

(w) section 206(2) (FMA's directions to supervisor):

(wa) section 219 (auditor must advise if auditor considers that subpart is not being complied with):

(x) section 225 (restriction on use of information in registers).

Section 228(4)(wa): inserted, on 9 August 2017, by section 65 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Part 5
Dealing in financial products on markets

Subpart 1—Purposes, overview, and interpretation

229 Additional purposes of Part

(1) This Part has the following purposes for financial product markets (in addition to those set out in sections 3 and 4):

(a) to promote fair, orderly, and transparent financial product markets:

(b) to encourage a diversity of financial product markets to take account of the differing needs and objectives of issuers and investors.

(2) This section does not limit section 3 or 4.

230 Overview

(1) In this Part,—

(a) this subpart contains the additional purposes of this Part and interpretation provisions:

(b) subpart 2 prohibits insider trading on licensed markets:

(c) subpart 3 prohibits market manipulation on licensed markets:

(d) subpart 4 requires listed issuers to comply with the continuous disclosure provisions of listing rules of a licensed market:

(e) subpart 5 requires substantial product holders in listed issuers to disclose their interests:

(f) subpart 6 requires directors and senior managers of a listed issuer to disclose their interests and dealings in quoted financial products of, or connected to, the listed issuer:

(g) subpart 7 provides for the licensing of financial product markets, the approval of market rules of licensed markets, the ability to impose a control limit on licensed market operators, and the ability to make regulations modifying this subpart for particular markets:

(h) subpart 8 contains requirements applying in the operation of a licensed market:

(i) subpart 9 provides for the transfer of transferable financial products:

(j) subpart 10 regulates the making of unsolicited offers to purchase financial products off-market.

(2) Provisions of this Part may be disapplied or modified in relation to a licensed market (and any issuers listed on that licensed market) under regulations made under section 351.

(3) This section is a guide only to the general scheme and effect of this Part.

Material information and generally available to the market

231 Meaning of material information

(1) In this Part, **material information**, in relation to a listed issuer, is information that—

(a) a reasonable person would expect, if it were generally available to the market, to have a material effect on the price of quoted financial products of the listed issuer; and

(b) relates to particular financial products, a particular listed issuer, or particular listed issuers, rather than to financial products generally or listed issuers generally.

(2) In this Part, **material information**, in relation to quoted derivatives, the underlying of quoted derivatives, or the issuer of a financial product underlying quoted derivatives, is information that—

(a) a reasonable person would expect, if it were generally available to the market, to have a material effect on the price of the derivatives; and

(b) relates to particular derivatives, a particular underlying, or a particular issuer of a financial product underlying quoted derivatives, rather than to derivatives generally or underlyings generally or issuers generally.

Compare: 1988 No 234 ss 3, 3A

232 Meaning of generally available to the market

(1) In this Part, information is **generally available to the market**—

(a) if—

(i) it is information that has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in relevant financial products; and

(ii) since it was made known, a reasonable period for it to be disseminated among those persons has expired; or

(b) if it is likely that persons who commonly invest in relevant financial products can readily obtain the information (whether by observation, use of expertise, purchase from other persons, or any other means); or

(c) if it is information that consists of deductions, conclusions, or inferences made or drawn from either or both of the kinds of information referred to in paragraphs (a) and (b).

(2) In this section, **relevant financial products** means financial products of a kind the price of which might reasonably be expected to be affected by the information.

(3) Information that is notified in accordance with a continuous disclosure obligation is generally available to the market under subsection (1)(a) immediately on it being made available to participants in a licensed market (without limiting how quickly the reasonable period of dissemination in subsection (1)(a)(ii) may be satisfied in other cases).

Compare: 1988 No 234 s 4

Certain derivatives treated as being quoted financial products of listed issuer

233 Certain derivatives treated as being quoted financial products of listed issuer

(1) If the underlying of a derivative is a quoted financial product of a listed issuer, the derivative must, for the purposes of this subpart and subpart 2, be treated as being a quoted financial product of the listed issuer (whether the derivative is quoted or not).

(2) Subsection (1) does not apply in relation to subpart 5.

(3) *See also* section 275 (which treats a person as holding financial products where the person has a relevant interest in certain derivatives) and section 298 (which relates to the disclosure of relevant interests and dealings in relevant interests by directors and senior managers).

Insider conduct

234 Meaning of information insider, inside information, and adviser

(1) In this Part, a person is an **information insider** of a listed issuer if that person—

(a) has material information relating to the listed issuer that is not generally available to the market; and

(b) knows or ought reasonably to know that the information is material information; and

(c) knows or ought reasonably to know that the information is not generally available to the market.

(2) A listed issuer may be an information insider of itself.

(3) In this Part, a person is an **information insider** in relation to quoted derivatives if that person—

(a) has material information relating to any of the following that is not generally available to the market:

(i) the derivatives:

(ii) the underlying:

(iii) the issuer of a financial product underlying the derivatives; and

(b) knows or ought reasonably to know that the information is material information; and

(c) knows or ought reasonably to know that the information is not generally available to the market.

(4) In this Part, **inside information** means—

(a) the information in respect of which a person is an information insider of the listed issuer in question; or

(b) in the case of quoted derivatives, the information in respect of which a person is an information insider in relation to the derivatives in question.

(5) In this Part, **adviser** means an adviser acting in a professional capacity (for example, a lawyer, an accountant, or a financial adviser).

Compare: 1988 No 234 ss 8A, 8B, 11E

Relevant interests

235 Relevant interests in financial products (basic rule)

(1) In this Act, a person has a **relevant interest** in a financial product if the person—

(a) is a registered holder of the product; or

(b) is a beneficial owner of the product; or

(c) has the power to exercise, or to control the exercise of, a right to vote attached to the product; or

(d) has the power to acquire or dispose of, or to control the acquisition or disposal of, the product.

(2) Subsection (1) applies regardless of whether the power or control is express or implied, direct or indirect, legally enforceable or not, related to a particular financial product or not, exercisable presently or in the future, or exercisable alone or jointly with another person or persons (but a power to cast merely 1 of many votes is not, in itself, a joint power of this kind).

(3) Subsection (1) applies regardless of whether or not the power or control is or can be made subject to restraint or restriction or is exercisable only on the fulfilment of a condition.

(4) If 2 or more persons can jointly exercise a power, each of those persons is taken to have the power.

Compare: 1988 No 234 s 5

236 Extension of basic rule to powers or controls exercisable through trust, agreement, etc

(1) A person has a power or control referred to in section 235 if the power or control is, or may at any time be, exercised under, by virtue of, by means of, or as a result of a revocation or breach of, a trust or an agreement (or any combination of them).

(2) Subsection (1) applies regardless of whether or not the trust or agreement is legally enforceable or whether or not the person is a party to it.

Compare: 1988 No 234 s 5A

237 Extension of basic rule to interests held by other persons under control or acting jointly

A person (**A**) has a relevant interest in a financial product that another person (**B**) has if—

(a) B or B's directors are accustomed or under an obligation (whether legally enforceable or not) to act in accordance with A's directions, instructions, or wishes in relation to a power or control referred to in section 235; or

(b) A has the power to exercise, or control the exercise of, the right to vote attached to 20% or more of the voting products of B; or

(c) A has the power to acquire or dispose of, or to control the acquisition or disposal of, 20% or more of the voting products of B; or

(d) A and B are related bodies corporate; or

(e) A and B have an agreement to act in concert in relation to a power or control referred to in section 235.

Compare: 1988 No 234 s 5B(1)

238 Situations not giving rise to relevant interests

(1) A person (**A**) does not have a relevant interest in a financial product under sections 235 to 237 merely because—

(a) the ordinary business of A consists of, or includes, the lending of money or the provision of financial services, or both, and A has the relevant interest only as security given for the purposes of a transaction entered into in the ordinary course of the business of A; or

(b) A is authorised to undertake trading activities on a licensed market and A acts for another person to acquire or dispose of the product on behalf of that person in the ordinary course of A's business of carrying out those trading activities; or

(c) A has been authorised by resolution of the directors of a body corporate to act as its representative at a particular meeting of product holders, or a class of product holders, of a listed issuer, and a copy of the resolution is deposited with the listed issuer before the meeting; or

(d) A is appointed as a proxy to vote at a particular meeting of product holders, or of a class of product holders, of the listed issuer and the instrument of A's appointment is deposited with the listed issuer before the meeting; or

(e) A is a bare trustee of a trust to which the product is subject; or

(f) A is a director of a body corporate and the body corporate has a relevant interest in the product; or

(g) A is a product holder of a body corporate and the body corporate's constitution gives the product holder pre-emptive rights on the transfer of the product, if all product holders of the products have pre-emptive rights on the same terms; or

(h) A is an operator of a designated FMI and is acting in the ordinary course of that business.

(2) Subsection (1)(a) to (h) do not apply to a person if the person is currently declared by the FMA, by notice under section 562(1)(i), to be a person that is not exempt under any of those paragraphs.

(3) For the purposes of subsection (1)(e), a trustee may be a bare trustee even if he or she is entitled as a trustee to be remunerated out of the income or property of the trust.

(4) In subsection (1)(h), **designated FMI** and **operator** have the meanings given in section 5 of the Financial Market Infrastructures Act 2021.

Compare: 1988 No 234 s 6

Section 238(1)(h): replaced, on 1 March 2024, by section 163(1) of the Financial Market Infrastructures Act 2021 (2021 No 13).

Section 238(4): inserted, on 1 March 2024, by section 163(1) of the Financial Market Infrastructures Act 2021 (2021 No 13).

Territorial scope

239 Territorial scope

(1) Subparts 2 to 6 apply to conduct in relation to quoted financial products or listed issuers regardless of whether the conduct is in New Zealand or outside New Zealand.

(2) *See* sections 310 and 313 (which require a licence to operate a financial product market in New Zealand).

Subpart 2—Insider trading

Insider conduct prohibited

240 Prohibition on insider conduct

(1) A person must not do any of the things set out in any of sections 241(1), 242(1), and 243(1) if the person is an information insider of the listed issuer.

(2) A person must not do any of the things set out in any of sections 241(2), 242(2), and 243(2) if the person is an information insider in relation to quoted derivatives.

Compare: 1988 No 234 s 8

241 Information insider must not trade

(1) An information insider of a listed issuer must not trade quoted financial products of the listed issuer.

(2) An information insider in relation to quoted derivatives must not trade the derivatives.

(3) In this subpart and subpart 3, **trade**—

(a) means acquire or dispose of; but

(b) does not include acquire, or dispose of, by inheritance or gift.

Compare: 1988 No 234 s 8C

242 Information insider must not disclose inside information

(1) An information insider (**A**) of a listed issuer must not directly or indirectly disclose inside information to another person (**B**) if A knows or ought reasonably to know or believes that B will, or is likely to,—

(a) trade quoted financial products of the listed issuer; or

(b) advise or encourage another person (**C**) to trade or hold those products.

(2) An information insider (**A**) in relation to quoted derivatives must not directly or indirectly disclose inside information to another person (**B**) if A knows or ought reasonably to know or believes that B will, or is likely to,—

(a) trade the derivatives; or

(b) advise or encourage another person (**C**) to trade or hold those derivatives.

Compare: 1988 No 234 s 8D

243 Information insider must not advise or encourage trading

(1) An information insider (**A**) of a listed issuer must not—

(a) advise or encourage another person (**B**) to trade or hold quoted financial products of the listed issuer:

(b) advise or encourage B to advise or encourage another person (**C**) to trade or hold those financial products.

(2) An information insider (**A**) in relation to quoted derivatives must not—

(a) advise or encourage another person (**B**) to trade or hold the derivatives:

(b) advise or encourage B to advise or encourage another person (**C**) to trade or hold those derivatives.

Compare: 1988 No 234 s 8E

244 Criminal liability for insider conduct

(1) A person who contravenes any of sections 241 to 243 commits an offence if the person knows—

(a) that the information is material information; and

(b) that the information is not generally available to the market; and

(c) in the case of a contravention of section 242, of any of the matters set out in section 242(1)(a) or (b) or (2)(a) or (b).

(2) A person who commits an offence under subsection (1) is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 5 years, a fine not exceeding $500,000, or both; and

(b) in any other case, to a fine not exceeding $2.5 million.

Compare: 1988 No 234 s 8F

When prohibition on insider conduct does not apply

245 Exception for trading required by enactment or rule of law

Section 241 does not apply to trading in financial products that is required by an enactment or any rule of law.

Compare: 1988 No 234 s 9

246 Exception for disclosure required by enactment or rule of law or by FMA

Section 242 does not apply to disclosure that is required by—

(a) an enactment or any rule of law; or

(b) the FMA when exercising a power under this Act or any other enactment.

Compare: 1988 No 234 s 9A

247 Exception for disclosure in connection with preparing PDS or limited disclosure document

Section 242 does not apply to disclosure that is necessary, in connection with an offer of financial products for sale, in order to assist in the preparation of a PDS, a register entry, or a limited disclosure document for that offer.

Section 247 heading: amended, on 9 August 2017, by section 66(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 247: amended, on 9 August 2017, by section 66(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

248 Exceptions in respect of underwriting agreements

(1) Section 241 does not apply to the acquisition of the financial products of a listed issuer under an underwriting or a sub-underwriting agreement.

(2) Section 242 does not apply if the inside information is disclosed to a person for the sole purpose of negotiating an underwriting or a sub-underwriting agreement with that person in respect of the financial products in question.

(3) Section 243 does not apply if the advice or encouragement is given for the sole purpose of persuading the person to whom it is given to enter into an underwriting or a sub-underwriting agreement in respect of the financial products in question.

Compare: 1988 No 234 s 9B

249 Exceptions in case of knowledge of person's own intentions or activities

(1) A person (**A**) does not contravene section 241(1) merely because A trades the financial products with the knowledge that A proposes to enter into, or has previously entered into, 1 or more transactions or agreements in relation to the financial products or the listed issuer or the listed issuer's business activities.

(2) A person (**B**) does not contravene section 243(1) merely because B advises or encourages another person (**A**) to trade or hold financial products when B has

knowledge, acquired in the course of acting as A's adviser, that A proposes to enter into, or has previously entered into, 1 or more transactions or agreements in relation to the financial products or the listed issuer or the listed issuer's business activities.

Compare: 1988 No 234 s 9C

250 Exceptions in case of knowledge in relation to derivatives

(1) A person (**A**) does not contravene section 241(2) merely because A trades in derivatives with knowledge of A's own past, current, or proposed—

(a) transactions or agreements concerning those or any other derivatives; or

(b) business activities, transactions, or agreements concerning the underlying.

(2) If a person (**B**) advises or encourages another person (**A**) to trade or hold derivatives, B does not contravene section 243(2) merely because B has knowledge, acquired in the course of acting as A's adviser, of A's past, current, or proposed—

(a) transactions or agreements concerning derivatives; or

(b) business activities, transactions, or agreements concerning the underlying.

Compare: SR 2010/354 r 3

251 Exception for agent executing trading instruction only

Section 241 does not apply in the case of a person (**A**) if,—

(a) in trading the financial products, A was acting on behalf of another person (**B**); and

(b) A traded the financial products on B's specific instruction; and

(c) before trading, A did not disclose inside information to B; and

(d) A did not advise or encourage B to instruct A to trade.

Compare: 1988 No 234 s 9D

252 Exceptions from section 241 for takeovers

(1) Section 241 does not apply to—

(a) trading that results from a takeover offer under the Takeovers Code; or

(b) entering into an agreement to acquire or dispose of financial products at a fixed price under a future takeover offer that complies with the Takeovers Code; or

(c) the acquisition or disposal of financial products in performance of an agreement to acquire or dispose of those financial products at a fixed price under a future takeover offer that complies with the Takeovers Code.

(2) For the purposes of this section and section 253, if an exemption has been granted under section 45 of the Takeovers Act 1993 in relation to a takeover offer and the offer is made in accordance with the terms and conditions of the exemption and the applicable provisions of the Takeovers Code from which there is no exemption, the offer must be taken to—

(a) be a takeover offer under the Takeovers Code; and

(b) comply with the Takeovers Code.

Compare: 1988 No 234 s 9E(1)

253 Exceptions from sections 242 and 243 for takeovers

(1) Section 242 does not apply to the following conduct:

(a) disclosure of inside information to a prospective offeror or its advisers under a prospective takeover offer under the Takeovers Code:

(b) disclosure of inside information to encourage competing bona fide offers to be made in competition with a takeover offer under the Takeovers Code:

(c) disclosure of inside information by a prospective offeror or its advisers under a prospective takeover offer under the Takeovers Code for the purpose of forming a consortium to make a takeover offer:

(d) disclosure of inside information to an independent adviser to enable that adviser to make a report required by the Takeovers Code.

(2) A person's reliance on subsection (1)(a) to (c) is subject to the conditions that—

(a) the recipient of the information is bound by an obligation of confidentiality in respect of the information; and

(b) the purpose of the conduct is to enable or encourage the recipient to make a takeover offer or to participate in a takeover offer.

(3) Section 243 does not apply to advice or encouragement given—

(a) by the directors of a company that is the target company under a takeover offer under the Takeovers Code, to the extent that the advice or encouragement is given to the company's shareholders and relates to those shareholders trading or holding their financial products; or

(b) by a prospective offeror under a prospective takeover offer under the Takeovers Code for the purpose of forming a consortium to make a takeover offer.

(4) A person (**A**) does not contravene section 242 or 243 merely because A, in relation to a takeover offer or prospective takeover offer under the Takeovers Code, discloses inside information to another person (**B**) or advises B to trade or hold financial products of the listed issuer when A has that inside informa-

tion, or is an information insider, only through acting as B's adviser in relation to the takeover offer or prospective takeover offer.

Compare: 1988 No 234 s 9E(2)–(5)

254 Exceptions for schemes of arrangement approved under Companies Act 1993

(1) Section 241 does not apply to trading that results from an arrangement approved under Part 15 of the Companies Act 1993.

(2) Section 243 does not apply to advice or encouragement by the directors of a company that is the subject of an arrangement approved, or a proposed arrangement to be approved, under Part 15 of the Companies Act 1993, to the extent that the advice or encouragement is given to the company's shareholders and relates to those shareholders trading or holding their shares.

255 Exception for redemption of managed investment products

Section 241 does not apply to the redemption of managed investment products in a managed investment scheme if the redemption price is calculated by reference to the underlying value of the assets of the scheme.

Compare: 1988 No 234 s 9F

256 Exception for Reserve Bank

Section 241 does not apply to trading by the Reserve Bank in financial products issued by the Reserve Bank or by the Crown.

Compare: 1988 No 234 s 9G

Defences

257 Absence of knowledge of trading

In any proceeding against a person (**A**) for contravention of section 241, it is a defence if A did not know, and could not reasonably be expected to know, that A traded the financial products.

Compare: 1988 No 234 s 10

258 Inside information obtained by independent research and analysis

(1) In any proceeding against a person (**A**) for contravention of section 241 or 242, it is a defence if the inside information was obtained by research and analysis and was not obtained directly or indirectly from the listed issuer concerned.

(2) In any proceeding against a person (**A**) for contravention of section 243, it is a defence if A encouraged or advised on the basis of inside information that was obtained by research and analysis and that was not obtained directly or indirectly from the listed issuer concerned.

(3) In subsections (1) and (2), **research** means planned investigation undertaken to gain new knowledge and understanding.

Compare: 1988 No 234 s 10A

259 Equal information

(1) In any proceeding against a person (**A**) for contravention of section 241, it is a defence if the opposite party to the transaction knew, or ought reasonably to have known, the same inside information as A before the transaction took place.

(2) In any proceeding against a person (**A**) for contravention of section 242, it is a defence if the person to whom the information is disclosed knew, or ought reasonably to have known, the same inside information as A before it was disclosed.

(3) In any proceeding against a person (**A**) for contravening section 242 or 243 by disclosing inside information to another person (**B**) or by advising or encouraging B to trade or hold quoted financial products, it is a defence if A has that inside information, or is an information insider, only through acting as B's adviser in relation to trading or holding those financial products.

Compare: 1988 No 234 s 10B

260 Options and trading plans

(1) In any proceeding against a person (**A**) for contravention of section 241, it is a defence if—

(a) A traded the financial products under a fixed trading plan or under options with a fixed exercise price; and

(b) A entered into the trading plan, or acquired the options, as the case may be,—

(i) before A obtained the inside information; and

(ii) without any intent to evade section 241.

(2) A **fixed trading plan** is a trading plan—

(a) that—

(i) is fixed for a period of time; and

(ii) gives the investor no right to withdraw before the end of that period; and

(iii) is not subject to any influence by the investor as to trading decisions after the plan has begun; or

(b) that is an employee share purchase scheme that comes within paragraph (a) except that the plan may be earlier terminated, and the investor may withdraw, on the termination of the investor's employment or appointment.

Compare: 1988 No 234 s 10C

261 Chinese wall defence

(1) In any proceeding against a person (**A**) for contravention of section 241 or 243, it is a defence if—

(a) A had in place arrangements that could reasonably be expected to ensure that no individual who took part in the decision to trade the financial products or to advise or encourage (as the case may be) received, or had access to, the inside information or was influenced, in relation to that decision, by an individual who had the information; and

(b) no individual who took part in that decision received, or had access to, the inside information or was influenced, in relation to that decision, by an individual who had the information; and

(c) every individual who had the information and every individual who took part in that decision acted in accordance with the arrangements referred to in paragraph (a).

(2) In any proceeding against a person (**A**) for disclosing information to another person (**B**) in contravention of section 242, it is a defence if A believed on reasonable grounds that B had in place arrangements that could reasonably be expected to ensure that no individual who would take part in the decision to trade the financial products or to advise or encourage (as the case may be) would receive, or have access to, the inside information or would be influenced, in relation to that decision, by an individual who had the information.

Subpart 3—Market manipulation

262 False or misleading statement or information

A person must not make a statement or disseminate information if—

(a) a material aspect of the statement or information is false or the statement or information is materially misleading; and

(b) the person knows or ought reasonably to know that a material aspect of the statement or information is false or that the statement or information is materially misleading; and

(c) the statement or information is likely to—

(i) induce a person to trade in quoted financial products; or

(ii) have the effect of increasing, reducing, maintaining, or stabilising the price for trading in those financial products; or

(iii) induce a person to exercise a voting right attached to a quoted financial product in a particular way, or to abstain from exercising such a right.

Compare: 1988 No 234 s 11

263 Exception for takeovers

Section 262 does not apply to conduct in relation to a takeover offer for financial products under the Takeovers Code or to conduct under that offer to the extent that the conduct is regulated by the Takeovers Code or the Takeovers Act 1993.

Compare: 1988 No 234 s 14

264 Criminal liability for false or misleading statement or information

(1) A person who contravenes section 262 commits an offence if the person knows that the statement or information is false in a material aspect or is materially misleading.

(2) A person who commits an offence under subsection (1) is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 5 years, a fine not exceeding $500,000, or both; and

(b) in any other case, to a fine not exceeding $2.5 million.

Compare: 1988 No 234 s 11A

265 False or misleading appearance of trading

A person must not do, or omit to do, anything if—

(a) the act or omission will have, or is likely to have, the effect of creating, or causing the creation of, a false or misleading appearance—

(i) with respect to the extent of active trading in quoted financial products; or

(ii) with respect to the supply of, demand for, price for trading in, or value of those financial products; and

(b) the person knows or ought reasonably to know that the person's act or omission will, or is likely to have, that effect.

Compare: 1988 No 234 s 11B

266 Exception for short selling and crossings

(1) Short selling and crossings under the business rules of a licensed market do not contravene section 262 or 265 merely by reason of being short selling or crossings.

(2) In this section,—

crossing, in relation to a transaction in financial products, means a transaction where a person acts as—

(a) buyer and seller for that transaction in an agency capacity; or

(b) buyer or seller on one side of that transaction in an agency capacity and as a principal on the other side

short selling means a sale of any financial product where, at the time of the sale,—

(a) the seller does not have a presently exercisable and unconditional right to vest the financial product in the buyer except where the seller has an unconditional agreement to acquire that right before the date required to settle the sale; or

(b) the financial product being sold has been borrowed and the seller has a presently exercisable and unconditional right to vest the product in the buyer.

Compare: SR 2007/373 rr 19, 20

267 Persons treated as contravening false or misleading appearance of trading prohibition

(1) A person (**A**) must be treated as contravening section 265 if A is directly or indirectly a party to trading in the quoted financial products of a listed issuer from which no change in beneficial ownership results.

(2) Subsection (1) does not apply if,—

(a) in trading the financial products, A was acting on behalf of another person; and

(b) A did not know, and ought not reasonably to have known, when trading the financial products that no change in beneficial ownership would result.

(3) A person (**A**) must be treated as contravening section 265 if—

(a) A has made an offer to trade the financial products of a listed issuer; and

(b) either A or, to A's knowledge, an associated person of A has made or proposes to make an opposite offer (the **opposite offer**) to trade financial products of the listed issuer; and

(c) the opposite offer substantially matches A's offer as to the number and price of the financial products.

(4) This section is subject to section 268.

Compare: 1988 No 234 s 11C(1), (2), (4)

268 Defence

In any proceeding against a person (**A**) for contravention of section 265, it is a defence if the trading in the financial products occurred, or the offer to trade was made, in conformity with accepted market practices and for a proper purpose.

Example

The trustees of the ABC Family Trust hold financial products on trust.

New trustees have been appointed to replace the original trustees. The financial products are transferred to the new trustees in connection with the appointment.

No change in the beneficial ownership results (*see* section 267(1)). However, there is no contravention of section 265 because the transfer was in conformity with accepted market practices and for a proper purpose.

Compare: 1988 No 234 s 11C(3), (4)

269 Criminal liability for false or misleading appearance of trading

(1) A person who contravenes section 265 commits an offence if the person knows that the act or omission will have, or is likely to have, the effect of creating, or causing the creation of, a false or misleading appearance—

(a) with respect to the extent of active trading in quoted financial products; or

(b) with respect to the supply of, demand for, price for trading in, or value of those products.

(2) A person who commits an offence under subsection (1) is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 5 years, a fine not exceeding $500,000, or both; and

(b) in any other case, to a fine not exceeding $2.5 million.

Compare: 1988 No 234 s 11D

Subpart 4—Continuous disclosure

270 Listed issuers must disclose in accordance with listing rules if continuous disclosure listing rules apply

(1) A listed issuer must notify information in accordance with the continuous disclosure provisions of the listing rules for the licensed market if—

(a) the listed issuer is a party to a listing agreement with the licensed market operator; and

(b) the listed issuer has information that those continuous disclosure provisions require it to notify; and

(c) the information is material information that is not generally available to the market.

(2) Subsection (1) does not affect or limit the situations in which action can be taken (other than under this Act) for a failure to comply with provisions of the listing rules for a licensed market.

Compare: 1988 No 234 s 19B

271 What are continuous disclosure provisions

In this Act, **continuous disclosure provisions** means provisions that require a listed issuer that is a party to a listing agreement with a licensed market operator to notify information about events or matters as they arise for the

purpose of that information being made available to participants in the licensed market.

Compare: 1988 No 234 s 19D

272 No contravention of continuous disclosure provisions by person who takes reasonable steps to ensure listed issuer complies

A person (**A**) does not, in relation to the contravention by a listed issuer of a continuous disclosure obligation or a term or condition of a continuous disclosure exemption, contravene, or become involved in the contravention of, that obligation or term or condition if—

(a) A took all steps (if any) that were reasonable in the circumstances to ensure that the listed issuer complied with the obligation or term or condition; and

(b) after doing so, A believed on reasonable grounds that the listed issuer was complying with the obligation or term or condition.

Compare: 1988 No 234 s 19PA

Subpart 5—Disclosure of interests of substantial product holders in listed issuers

Substantial holding disclosure obligations

273 Purposes of subpart

(1) The purposes of this subpart are to promote an informed market, and to deter insider conduct, market manipulation, and secret dealings in potential takeover bids, by ensuring that participants in financial product markets have access to information concerning the identity and trading activities of persons who are, or may at any time be, entitled to control or influence the exercise of significant voting rights in a listed issuer.

(2) This section does not limit—

(a) any of section 3, 4, or 229; or

(b) the purpose of section 290.

274 Meaning of substantial product holder, substantial holding, and percentage

(1) A person is a **substantial product holder** in a listed issuer for the purposes of this Act if that person has a substantial holding in that listed issuer.

(2) A person has a **substantial holding** in a listed issuer for the purposes of this Act if the person has a relevant interest in quoted voting products that comprise 5% or more of a class of quoted voting products of the listed issuer.

(3) A person has a separate substantial holding for the purposes of this Act for each class in respect of which the person has a substantial holding under subsection (2).

(4) The percentage of financial products that a person has in a class, for the purposes of this subpart, is calculated as follows:

$$\left(\frac{\text{number held}}{\text{total}}\right) \times 100$$

where—

number held is the number of financial products, in that class, in which the person has a relevant interest

total is the total number of financial products in that class.

Compare: 1988 No 234 s 21

275 Person may be treated as holding financial products where person has relevant interest in certain derivatives

(1) This section applies in relation to a derivative if the underlying of the derivative is a quoted voting product of a listed issuer.

(2) For the purposes of this subpart, if a person has a relevant interest in the derivative, the person must be treated as having a relevant interest in a number of the underlying quoted voting products that is determined in the prescribed manner.

(3) The number of quoted voting products in which a person is treated as having a relevant interest under subsection (2) is in addition to any other relevant interest that the person has in products of that class.

276 Persons must disclose if begin to have substantial holding

(1) A person who begins to have a substantial holding (or another substantial holding for another class) in a listed issuer must disclose that fact in accordance with sections 280 and 281.

(2) The disclosure must be given as soon as the person knows, or ought reasonably to know, that the person has the substantial holding.

Compare: 1988 No 234 s 22

277 Substantial product holders must disclose if subsequent movement of 1% or more in holdings

(1) A substantial product holder in a listed issuer must disclose, in accordance with sections 280 and 281, any movement of 1% or more in the substantial holding.

(2) There is a movement of 1% or more in a substantial holding if—

(a) there is a change in the number of financial products held by the substantial product holder (where **number held** has the same meaning as in section 274(4)); and

(b) the percentage worked out using the formula in section 274(4) increases or decreases by 1 or more percentage points from the percentage last disclosed under this subpart in relation to the substantial holding.

(3) The disclosure must be given as soon as the person knows, or ought reasonably to know, that that movement has occurred.

Compare: 1988 No 234 s 23

278 Substantial product holders must disclose if subsequent changes in nature of relevant interests

(1) A substantial product holder in a listed issuer must disclose, in accordance with sections 280 and 281, any change in the nature of any relevant interest in the substantial holding.

(2) The disclosure must be given as soon as the person knows, or ought reasonably to know, of the change.

Compare: 1988 No 234 s 24

279 Persons must disclose if cease to have substantial holding

(1) A person who ceases to have a substantial holding (or any of the person's substantial holdings) in a listed issuer must disclose that fact in accordance with sections 280 and 281.

(2) The disclosure must be given as soon as the person knows, or ought reasonably to know, that the person has ceased to have a substantial holding.

Compare: 1988 No 234 s 25

280 What disclosure required

(1) A person must disclose the matters required to be disclosed under any of sections 276 to 279 or section 289 to—

(a) the listed issuer; and

(b) every operator of a licensed market by which the financial products of the listed issuer are quoted.

(2) The person must also disclose, in the prescribed manner, any further matters relating to those matters, the relevant event, or the substantial holding that are required by the regulations.

(3) The disclosure must also be accompanied by, or have annexed, any prescribed information.

Compare: 1988 No 234 s 26

281 Form and method of disclosure

A person must give the disclosure in the prescribed manner.

Compare: 1988 No 234 s 27

282 Listed issuer must give acknowledgement of disclosure

Every listed issuer must, at the request of a person by whom disclosure is given to it under this subpart, give to the person an acknowledgement of the disclosure in the prescribed manner.

Compare: 1988 No 234 s 28

283 How to ascertain total financial products in class for purposes of disclosure

(1) For the purposes of this subpart, a person may assume that the total number of financial products of a listed issuer in a class most recently published by the following methods is correct:

(a) in a document published by a listed issuer and distributed to the holders of that class of products; or

(b) on an Internet site maintained by the relevant licensed market operator.

(2) Subsection (1) does not apply if that person knows that number is not correct.

Compare: 1988 No 234 s 29

Exemptions

284 Exemption for persons with interest in other substantial product holders who comply

A person (**A**) need not comply with any of sections 276 to 279 in relation to a substantial holding in a listed issuer if—

(a) another person (**B**) is required to comply, and does comply, with that section in relation to the same listed issuer; and

(b) A has that substantial holding merely for 1 or more of the following reasons:

(i) A has a power to exercise, or control the exercise of, the right to vote attached to 20% or more of the voting products of B (*see* section 237(b)):

(ii) A has a power to acquire or dispose of, or control the acquisition or disposition of, 20% or more of the voting products of B (*see* section 237(c)):

(iii) A and B are related bodies corporate (*see* section 237(d)).

Compare: 1988 No 234 s 30

285 Exemption for corporate trustees and nominee companies

(1) A person (**A**) need not comply with any of sections 276 to 279 in relation to 1 or more substantial holdings in 1 or more listed issuers if—

(a) A has that substantial holding merely because A acts for another person in the ordinary course of business as a corporate trustee or a nominee company; and

(b) A has opted in to this exemption by written notice to the FMA (and not withdrawn the notice by further written notice to the FMA).

(2) Subsection (1) does not apply if A is currently declared by the FMA, by notice under section 562(1)(i), to be a person that is not exempt under this section.

Compare: 1988 No 234 s 31

286 Conditions of exemption for corporate trustees and nominee companies

A person (**A**) to whom section 285(1) applies must—

(a) keep under continuing review the transactions of all persons for whom A holds, in A's name, quoted voting products; and

(b) inform the listed issuer of the financial products and the operator of the licensed market by which those products are quoted if section 276 or 279 applies to any of those persons; and

(c) inform that operator if A exercises, or proposes to exercise, in A's own right any voting rights in respect of 5% or more of a class of quoted voting products of a listed issuer.

Compare: 1988 No 234 s 32

287 Exemption for persons under control or acting jointly with corporate trustees and nominee companies

(1) A person (**A**) need not comply with any of sections 276 to 279 in relation to 1 or more substantial holdings in 1 or more listed issuers if A has the substantial holding merely because A has, under section 237, the relevant interests in financial products that a corporate trustee or a nominee company that is exempt in relation to that substantial holding under section 285 has.

(2) Subsection (1) does not apply if A is currently declared by the FMA, by notice under section 562(1)(i), to be a person that is not exempt under this section.

Compare: 1988 No 234 s 32A

288 Extended time for disclosure for trustees, executors, and administrators

If a person is required to comply with section 276, 277, or 279 merely because the person is the trustee of a testamentary trust or the executor or administrator of the estate of a deceased person,—

(a) the time limit for disclosure in that section does not apply; and

(b) the disclosure must instead be given before the expiry of 14 days after the grant of administration under the Administration Act 1969.

Compare: 1988 No 234 s 33

Tracing and disclosure of interests in listed issuers

289 FMA may require persons to disclose to market relevant interests and powers to acquire relevant interests

(1) The FMA may, by written notice given after having regard to the purpose of this subpart in section 273(1), require a person to disclose all (or any class of)—

(a) relevant interests that the person has in financial products of a listed issuer; or

(b) powers that the person has or may at any time have to acquire a relevant interest in financial products of a listed issuer.

(2) Subsection (1) applies regardless of whether the financial products referred to in subsection (1)(a) and (b) are voting products or not, are quoted or non-quoted, or are issued or yet to be issued.

(3) The person must disclose the information required under subsection (1) in accordance with sections 280 and 281 as soon as practicable after the person receives the notice.

(4) Sections 235 to 238 apply in determining whether or not a person has a power referred to in subsection (1)(b) (and for this purpose every reference in those sections to a relevant interest must be read as including a reference to a power to acquire a relevant interest).

Compare: 1988 No 234 s 34

290 Listed issuer may require registered holder or relevant interest holder to disclose relevant interests to it

(1) The purpose of this section is to enable a listed issuer to ascertain who has a relevant interest in quoted voting products of the listed issuer and the nature of that interest (regardless of whether those persons are substantial product holders).

(2) A listed issuer may, by written notice, require a relevant person to disclose—

(a) the name and address of every person who has a relevant interest in quoted voting products of the listed issuer and the nature of that interest; and

(b) to the extent that that relevant person is unable to supply any of that information in relation to a person having a relevant interest in those financial products, other particulars that will, or are likely to, assist in identifying that person and the nature of the interest.

(3) The relevant person must disclose the information required under subsection (2) in writing to the listed issuer as soon as practicable after the person receives the notice.

(4) In this section, **relevant person**, in relation to a listed issuer, means a person who—

(a) is registered as the holder of quoted voting products of the listed issuer; or

(b) was named in a previous disclosure under this section as having a relevant interest in quoted voting products of the listed issuer.

Compare: 1988 No 234 s 35; Corporations Act 2001 ss 672A, 672B (Aust)

291 Listed issuer may require person who has relevant interest to disclose information to it

(1) A listed issuer may, by written notice, require a person who the listed issuer believes has, or may have, a relevant interest in quoted voting products of the listed issuer to disclose the information the listed issuer specifies for the purpose of assisting the listed issuer to ascertain who is, or may be, a substantial product holder in the listed issuer.

(2) The relevant interest holder must disclose the information required under subsection (1) in writing to the listed issuer as soon as practicable after the holder receives the notice.

Compare: 1988 No 234 s 35A

292 Form and method of notice requiring disclosure

The notice requiring disclosure under section 289, 290, or 291 must be given in the prescribed manner (if any).

Compare: 1988 No 234 s 35B

293 Listed issuers must make available information on substantial holdings

(1) Every listed issuer must, in accordance with this section, make available the following information:

(a) the names of all persons who, according to the issuer's records and disclosures made under section 280(1)(b), are substantial product holders in the listed issuer as at each balance date; and

(b) the number and class of quoted voting products of the listed issuer that, according to the issuer's records and disclosures made under section 280(1)(b), form part of each substantial holding in the listed issuer as at each balance date; and

(c) the total number of voting products in each of those classes as at each balance date.

(2) The information must be made available,—

(a) for listed issuers that are required to prepare an annual report under the Companies Act 1993 or any other enactment, in the annual report for the period ending on the balance date; and

(b) for every other listed issuer, in a notice sent to every holder of its quoted voting products not later than 3 months after the balance date.

(3) A listed issuer that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(4) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1988 No 234 ss 35F, 35H

294 No liability for publication of substantial holdings

No listed issuer is liable for any false or misleading information made available under section 293 if the information was derived by the issuer under this subpart and the issuer did not know that the information was false or misleading.

Compare: 1988 No 234 s 35I

295 Notice under this subpart not to affect incorporation of listed issuer or constitute notice of trust

(1) Nothing in, or done under, this subpart—

(a) affects the incorporation of a listed issuer; or

(b) limits section 92, 93, or 94 of the Companies Act 1993.

(2) A listed issuer is not, because of anything done for the purposes of this subpart, affected with notice of, or put on inquiry as to, the rights of any person in relation to any financial products.

Compare: 1988 No 234 s 35J

Subpart 6—Disclosure of relevant interests in quoted financial products by directors and senior managers of listed issuers

296 Purposes of subpart

(1) The purposes of this subpart are to promote good corporate governance, and to deter, and to assist in the monitoring of, insider conduct and market manipulation, by—

(a) ensuring that information about directors' and senior managers' trading activities in listed issuers is available to participants in financial product markets; and

(b) enabling the dates of trades to be checked against the dates at which material information became generally available to the market.

(2) This section does not limit any of section 3, 4, or 229.

297 Directors and senior managers of listed issuers must disclose relevant interests and dealings in relevant interests

(1) A director or senior manager of a listed issuer who has a relevant interest in a quoted financial product of the listed issuer or a related body corporate must

disclose that fact, in accordance with sections 299 and 300, within 5 trading days of this section becoming applicable as a result of—

(a) the listing of the listed issuer; or

(b) the person's appointment as a director or senior manager.

(2) A director or senior manager of a listed issuer who acquires or disposes of a relevant interest in a quoted financial product of the listed issuer or a related body corporate must disclose that fact, in accordance with sections 299 and 300, within,—

(a) in the case of any of the following acquisitions or disposals, 20 working days after the acquisition or disposal:

(i) an acquisition under an employee share purchase scheme:

(ii) an acquisition under a dividend reinvestment plan:

(iii) an acquisition under a share top-up plan:

(iv) an acquisition or a disposal that results from an amalgamation under Part 13 of the Companies Act 1993:

(v) an acquisition or a disposal that results from an arrangement approved under Part 15 of the Companies Act 1993:

(vi) a prescribed acquisition or disposal; or

(b) in any other case, 5 trading days after the acquisition or disposal.

(3) This section does not apply to specified derivatives.

(4) This section is subject to sections 299 to 303A.

(5) In this section,—

dividend reinvestment plan means a plan of the kind referred to in clause 10 of Schedule 1

share top-up plan means a plan established by an issuer under which previously issued shares of the issuer are offered, whether by the issuer or another person, only to some or all existing holders of the same class of shares, and those shares are sold in consideration for a direction made to the issuer to apply amounts that are payable to each existing holder from dividends declared by the issuer to the purchase of the shares.

Compare: 1988 No 234 s 19T

Section 297(4): amended, on 9 August 2017, by section 67 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

298 Disclosure of relevant interests and dealings in relevant interests in relation to specified derivatives

(1) A director or senior manager of a listed issuer who has a relevant interest in a specified derivative must disclose that fact, in accordance with sections 299 and 300, within 5 trading days of this section becoming applicable as a result of—

(a) the listing of the listed issuer; or

(b) the person's appointment as a director or senior manager.

(2) A director or senior manager of a listed issuer who acquires or disposes of a relevant interest in a specified derivative must disclose that fact, in accordance with sections 299 and 300, within 5 trading days of the acquisition or disposal.

(3) In this subpart, **specified derivative**, in relation to a director or senior manager of a listed issuer, means—

(a) a quoted derivative where the underlying is a financial product of the listed issuer or a related body corporate; or

(b) a derivative that is treated as being a quoted financial product of the listed issuer under section 233.

(4) This section is subject to sections 299 to 303A.

Section 298(4): amended, on 9 August 2017, by section 68 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

299 What disclosure required

(1) The director or senior manager must disclose the relevant interest, acquisition, or disposal—

(a) to the licensed market operator with which the listed issuer is a party to a listing agreement; and

(b) in the interests register of the listed issuer kept under this subpart.

(2) The director or senior manager must also disclose, in the prescribed manner, any further matters relating to the relevant interest, acquisition, or disposal that are required by the regulations.

Compare: 1988 No 234 s 19U

300 Form and method of disclosure

The director or senior manager must disclose the relevant interest, acquisition, or disposal in the prescribed manner.

Compare: 1988 No 234 s 19V

301 Disclosure obligation applies for 6 months after ceasing to hold office

A person is treated as being a director or senior manager for the purposes of this subpart for 6 months after that person ceases to be a director or senior manager, and must continue to comply with this subpart for that period.

Compare: 1988 No 234 s 19W

302 Exemption for directors or senior managers who disclose substantial holdings

A director or senior manager who has, or who acquires or disposes of, a relevant interest in a quoted financial product does not have to disclose that fact under section 297 if—

(a) the director or senior manager must make a disclosure under section 276, 277, or 279 in relation to a substantial holding in the listed issuer of the financial product to which the relevant interest relates or related; and

(b) the disclosure under that section concerns the same relevant interest; and

(c) the director or senior manager discloses in accordance with that section; and

(d) it is stated in the disclosure made in accordance with that section that the director or senior manager is a director or senior manager of the listed issuer.

Compare: SR 2003/382 r 21

303 Exemption for overseas listed issuers

(1) A director or senior manager of an overseas listed issuer who has, or who acquires or disposes of, a relevant interest in a quoted financial product of that overseas listed issuer does not have to disclose that fact under section 297.

(2) A director or senior manager of an overseas listed issuer who has, or who acquires or disposes of, a relevant interest in a specified derivative does not have to disclose that fact under section 298 if the underlying is a financial product of the overseas listed issuer.

(3) A director or senior manager of an overseas listed issuer who has, or who acquires or disposes of, a relevant interest in a quoted financial product of a related body corporate of that overseas listed issuer does not have to disclose that fact under section 297 unless—

(a) the director or senior manager is also a director or senior manager of the related body corporate; and

(b) the related body corporate is a listed issuer, but not an overseas listed issuer.

(4) A director or senior manager of an overseas listed issuer who has, or who acquires or disposes of, a relevant interest in a specified derivative does not have to disclose that fact under section 298 if the underlying is a financial product of a related body corporate of the overseas listed issuer unless—

(a) the director or senior manager is also a director or senior manager of the related body corporate; and

(b) the related body corporate is a listed issuer, but not an overseas listed issuer.

(5) In this section, **overseas listed issuer** means a listed issuer—

(a) whose financial products are also approved for trading on a securities exchange that—

(i) is not a licensed market; and

(ii) has primary jurisdiction for the listing requirements for the listed issuer and the quotation of its financial products; and

(b) in relation to which no licensed market has primary jurisdiction for the listing requirements for the listed issuer and the quotation of its financial products.

Compare: SR 2004/105 cl 12

303A Extended time for disclosure for trustees, executors, and administrators

(1) This section applies if—

(a) a person (**A**) is a director or senior manager of a listed issuer; and

(b) A acquires a relevant interest in—

(i) a quoted financial product of the listed issuer or a related body corporate; or

(ii) a specified derivative; and

(c) the relevant interest is acquired merely because A is the trustee of a testamentary trust or the executor or administrator of the estate of a deceased person.

(2) The time limit for disclosure in section 297 or 298 in respect of the acquisition of the relevant interest does not apply and the disclosure must instead be given before the expiry of 14 days after the grant of administration under the Administration Act 1969.

Section 303A: inserted, on 9 August 2017, by section 69 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

304 Listed issuer must keep interests register

(1) A listed issuer must keep an interests register for disclosures made to it under this subpart.

(2) The interests register must be kept at—

(a) the registered office of the listed issuer; or

(b) any other place in New Zealand of which notice is given in accordance with subsection (3).

(3) If the interests register is not kept at the listed issuer's registered office, or the place at which it is kept is changed, the listed issuer must give written notice to the FMA of the place at which it is kept within 10 working days after it is first kept elsewhere or is moved.

(4) The interests register may be the same interests register as that kept under section 189(1)(c) of the Companies Act 1993.

(5) This section and sections 305 and 306 do not limit the Companies Act 1993.

Compare: 1988 No 234 s 19Z

305 Public inspection of interests register

An interests register must—

(a) be available for inspection, by a person who serves on the listed issuer a written notice of an intention to inspect, at the place at which the register is kept between the hours of 9 am and 5 pm on each working day during the inspection period; and

(b) otherwise be available for inspection in the prescribed manner (if any).

306 Copies of documents

A person may require a copy of, or an extract from, an interests register to be sent to the person—

(a) within 5 working days after the person has made a request in writing for the copy or extract; and

(b) if the person has paid a prescribed fee.

307 Offences relating to interests register

(1) A listed issuer that contravenes section 304(1) to (3) or 305 commits an offence and is liable on conviction to a fine not exceeding $50,000.

(2) If a listed issuer fails to provide a copy of, or an extract from, an interests register in accordance with a request under section 306, the issuer commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) The offences in this section are infringement offences (*see* subpart 5 of Part 8).

Compare: 1988 No 234 s 19ZF

Subpart 7—Licensing of markets for trading financial products

308 Principles guiding exercise of powers under this subpart

The Minister and the FMA must (without limitation) have regard to the following matters in the exercise of powers under this subpart:

(a) the purposes of this Part (in addition to the main and additional purposes of this Act set out in sections 3 and 4):

(b) the following matters (if relevant):

(i) the nature of the activities conducted, or proposed to be conducted, on the market; and

(ii) the size, or proposed size, of the market; and

(iii) the nature of the financial products dealt with, or proposed to be dealt with, on the market; and

(iv) the persons who participate in, or are likely to participate in, the market (either directly or by using the services of participants); and

(v) the technology used, or proposed to be used, in the operation of the market:

(c) in relation to an application for a licence issued under section 317, or another power under this subpart relating to a market licensed under that section, the matters set out in that section.

Need for financial product market licence

309 What is a financial product market

(1) For the purposes of this Act, a **financial product market** is a facility by means of which—

(a) offers to acquire or dispose of financial products are made or accepted; or

(b) offers or invitations are made to acquire or dispose of financial products that are intended to result or may reasonably be expected to result, directly or indirectly, in—

(i) the making of offers to acquire or dispose of financial products; or

(ii) the acceptance of offers of that kind.

(2) However, subsection (1) does not apply to the extent that the facility constitutes—

(a) a person making or accepting offers or invitations to acquire or dispose of financial products on the person's own behalf or on behalf of 1 party to the transaction only (for example, a continuous issuer of financial products):

(b) an issuer or a related body corporate of an issuer matching persons who wish to acquire financial products of that issuer with persons who wish to dispose of financial products of that issuer (whether at a specified price or otherwise):

(c) a service that is covered by a market services licence:

(d) any other conduct of a kind prescribed by the regulations.

(3) Subsection (2)(a) does not apply if the conduct of a person is declared by the FMA, by notice under section 562(1)(i), to be conduct that is not exempt under that paragraph.

Compare: Corporations Act 2001 s 767A (Aust)

310 Need for financial product market licence

A person must not operate, or hold out that the person operates, a financial product market in New Zealand, unless—

(a) the person has a licence to operate that market under this Part; or

(b) the market is exempt from the licensing requirement under this subpart under section 312.

Compare: Corporations Act 2001 s 791A (Aust)

311 Prohibitions on holding out

A person must not, if it is not the case, hold out that—

(a) the person has a financial product market licence; or

(b) the operation of a financial product market in New Zealand is authorised by a financial product market licence; or

(c) a financial product market is exempt from this Part; or

(d) the person is a participant in a licensed market.

Compare: Corporations Act 2001 s 791B (Aust)

312 Exemptions

(1) A financial product market is exempt from the licensing requirement under this subpart if—

(a) the market satisfies either of the following criteria (assessed in accordance with the frameworks or methodologies specified in notices issued by the FMA under subpart 4 of Part 9):

(i) the number of relevant transactions on the market does not exceed 100 transactions; or

(ii) the aggregate value of the financial products acquired under the relevant transactions on the market is less than $2 million; or

(b) it is a prescribed wholesale market; or

(c) it is a prescribed exempt market.

(2) The **relevant transactions on the market** for the purpose of subsection (1)(a) are—

(a) if the market has been in operation for a full financial year of the market operator, the transactions entered into on the market during that financial year:

(b) if paragraph (a) does not apply, all of the transactions entered into on the market in the previous 12 months.

313 When financial product market taken to be operated in New Zealand

(1) For the purposes of this subpart, a financial product market is taken to be operated in New Zealand if—

(a) it is operated by an entity that is incorporated or registered in New Zealand or by an individual who is ordinarily resident in New Zealand; or

(b) all, or a significant part of, the facility for the financial product market is located in New Zealand; or

(c) the financial product market is promoted to investors in New Zealand by or on behalf of the operator of that market or by or on behalf of an associated person of that operator.

(2) For the purposes of subsection (1)(c), a financial product market is not promoted to investors in New Zealand merely because it is accessible by those investors.

(3) Subsection (1) does not limit the circumstances in which a financial product market is operated in New Zealand for the purposes of this subpart.

Compare: Corporations Act 2001 s 791D (Aust)

General obligations of licensed market operator

314 General obligations in respect of licensed markets

(1) A licensed market operator must,—

(a) to the extent that is reasonably practicable, do all things necessary to ensure that each of its licensed markets is a fair, orderly, and transparent market; and

(b) have adequate arrangements for operating its licensed markets, including arrangements—

(i) for notifying disclosures made to it under a disclosure obligation and for continuing to make those disclosures available; and

(ii) for handling conflicts between the commercial interests of the licensed market operator and the need for the licensed market operator to ensure that the markets operate in the way referred to in paragraph (a); and

(iii) for monitoring the conduct of participants on or in relation to the markets; and

(iv) for enforcing compliance with the relevant market rules (for example, by having a sufficiently independent adjudicative body to adjudicate on contraventions of market rules that are referred to it); and

(c) have sufficient resources (including financial, technological, and human resources) to operate its licensed markets properly; and

(d) have adequate arrangements for ensuring that the criteria specified in section 316(c) or 317(1)(d), as the case may be, continue to be met.

(2) In subsection (1)(b)(i), **disclosure obligation** means—

(a) any provision of subpart 4, 5, or 6 that requires information to be notified or disclosed to a licensed market operator:

(b) an alternative disclosure obligation:

(c) a provision of this Act, the regulations, or another enactment that requires information to be notified or disclosed to a licensed market operator for the purpose of the information being made available to participants in a licensed market.

Compare: 1988 No 234 s 36Y; Corporations Act 2001 s 792A (Aust)

Section 314(1)(b)(i): replaced, on 9 August 2017, by section 70(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 314(2): inserted, on 9 August 2017, by section 70(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Issue of licence

315 Application for licence

(1) A person may apply for a licence to operate a financial product market in the manner that is specified by the FMA.

(2) The applicant must provide to the FMA or the Minister the information that is required by the FMA or the Minister to assist in determining the application (for example, the draft market rules).

(3) The FMA must, within a reasonable time, give the application to the Minister with advice about the application.

316 When licence may be issued

The Minister, after receiving an application under section 315, may issue a financial product market licence, by written notice to the applicant, if the Minister is satisfied that—

(a) the applicant is capable of operating a financial product market in accordance with the general obligations under section 314 (having regard to the proposed conditions of the licence); and

(b) there is no reason to believe that the applicant will not comply with the market operator obligations that will apply if the licence is granted; and

(c) the applicant is a body corporate and is, or will be, registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 on and from commencing to operate the financial product market.

Compare: Corporations Act 2001 s 795B(1) (Aust)

317 When licence may be issued for overseas-regulated market

(1) If an applicant is authorised to operate a financial product market in an overseas jurisdiction in which its principal place of business is located, the Minister, after receiving an application under section 315, may issue a licence authorising the applicant to operate the same market in New Zealand, by written notice to the applicant, if the Minister is satisfied that—

(a) there is no reason to believe that the applicant will not comply with the market operator obligations that will apply if the licence is granted; and

(b) the operation of the market in that jurisdiction is subject to requirements and supervision that are sufficiently equivalent, in relation to the degree of investor protection and market integrity they achieve, to the requirements and supervision to which financial product markets are subject under this Act in relation to those matters; and

(c) the applicant undertakes to co-operate with the FMA by sharing information and in other appropriate ways; and

(d) no director, senior manager, or controlling owner of the applicant—

(i) would be disqualified under section 14(2) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (if the applicant were a provider to which that Act applied); or

(ii) has been disqualified from managing a body corporate under the laws of any other jurisdiction.

(2) In considering an application for a licence under this section or exercising another power under this subpart in relation to a market licensed under this section, the Minister must have regard to the following matters (in addition to the matters in section 308):

(a) the criteria that the licensed market operator or applicant satisfied to obtain an authorisation to operate the same market in the overseas jurisdiction in which its principal place of business is located; and

(b) the obligations the licensed market operator or applicant must continue to satisfy to keep the authorisation; and

(c) the level of supervision to which the operation of the market in that jurisdiction is subject; and

(d) whether adequate arrangements exist for co-operation between the FMA and the authority that is responsible for that supervision.

(3) Nothing in this section prevents the Minister from issuing a licence under section 316 to an applicant that is authorised to operate a financial product market in an overseas jurisdiction.

Compare: Corporations Act 2001 s 795B(2) (Aust)

318 Conditions of licence

(1) A financial product market licence is subject to the following conditions:

(a) a condition that the licensed market operator may, under the licence, operate only the financial product market covered by the licence (as described in the licence); and

(b) a condition that specifies the clearing and settlement arrangements that must be followed or the type of settlement arrangements that may be used for the financial product markets covered by the licence; and

(c) a condition that specifies the arrangements for enforcing breaches of the market rules; and

(d) any other conditions imposed by the Minister that the Minister thinks fit.

(2) The Minister may only impose those conditions on issue of the licence or by varying the conditions under section 322.

(3) The licensed market operator must comply with the conditions of the licence.

Compare: Corporations Act 2001 s 796A (Aust)

319 Procedural requirements

(1) The Minister must not refuse to issue a licence, or include conditions that are materially more restrictive than those requested in the application, unless—

(a) the Minister gives the applicant no less than 10 working days' written notice of the following matters before he or she exercises the power:

(i) that the Minister may refuse to issue the licence or may include conditions that are materially more restrictive than those requested in the application; and

(ii) the reasons why he or she may do so; and

(b) the Minister gives the applicant or the applicant's representative an opportunity to make written submissions on the matter within that notice period.

(2) The FMA must give written notice of the Minister's decision under section 316 or 317 to the applicant.

320 Licence may cover more than 1 financial product market

(1) The same financial product market licence may cover 2 or more financial product markets.

(2) In that case,—

(a) a reference in this Act to the financial product market to which a licence covers is taken instead to be a reference to each of those financial product markets severally; and

(b) the decision to add another financial product market to a licence must be made on the same basis as a decision to issue a licence; and

(c) a financial product market licence may be varied, suspended, or cancelled in respect of 1 of those markets only, as if each of those markets were separately licensed.

321 FMA must maintain list of licensed markets on Internet site

(1) The FMA must maintain a list of licensed markets on its Internet site.

(2) The list must include, for each licensed market,—

(a) the financial product market that the licence covers; and

(b) the name of the licensed market operator; and

(c) when the licence was issued; and

(d) the conditions of the licence; and

(e) a reference to the market rules for the financial product market that have been approved under this subpart (but the list need not incorporate them); and

(f) if it is a market to which regulations apply under section 351, which regulations apply to it; and

(g) if the licence is issued under section 317, that it is an overseas-regulated market for the purposes of this Act; and

(h) if the licence has been suspended or cancelled, that fact and the date on which that action took effect.

(3) The FMA must update the list if it becomes aware that there is a change, or error, in the information on the list (for example, the approval of the market rules or a change in the name of the licensed market operator).

Changes to licences

322 Variation of conditions

(1) The Minister may, on his or her own initiative under subsection (2) or on the application of a licensed market operator, vary the conditions of the licence at any time after the licence is issued by written notice to the licensed market operator.

(2) The Minister may vary the conditions of the licence on his or her own initiative only—

(a) in 1 of the following circumstances:

(i) if there is a significant change in market circumstances that the Minister is satisfied makes it necessary to vary the conditions, having regard to the market operator obligations and the matters referred to in section 308; or

(ii) in accordance with section 343; and

(b) after following the procedure set out in section 324(1).

(3) A licensed market operator may apply, in the manner that is specified by the FMA, for the Minister to vary the conditions of the licence.

(4) A licensed market operator must provide to the FMA or the Minister the information that is required by the FMA or the Minister to assist it in determining the application.

(5) For the purposes of this subpart, **vary**, in relation to the conditions of a licence, includes to vary, revoke, add to, or substitute any of those conditions.

323 Minister may suspend or cancel licence

The Minister may, by written notice to the licensed market operator, suspend (for a specified period or until a specified requirement is met) or cancel a licence—

(a) if the licensed market operator, by written notice, requests the Minister to do so; or

(b) if the Minister is satisfied that the licensed market operator has ceased to carry on the business of operating the financial product market; or

(c) if—

(i) the licensed market operator has ceased to be registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (in the case of a licence issued under section 316); or

(ii) the Minister is satisfied that the licensed market operator has ceased to meet the requirement in section 317(1)(d) (in the case of a licence issued under section 317 (overseas-regulated markets)); or

(d) if the licensed market operator has become subject to an insolvency event; or

(e) in accordance with section 343; or

(f) in the case of a licence issued under section 317 (overseas-regulated markets), if—

(i) the licensed market operator ceases to be authorised to operate a financial product market in the overseas jurisdiction in which the licensed market operator's principal place of business is located; or

(ii) there is a change to the regulatory regime applying in relation to the market to which the licence relates in the jurisdiction in which the licensed market operator's principal place of business is located and, because of that change, the Minister is not satisfied as to the matters in section 317(1)(b).

Compare: Corporations Act 2001 s 797B (Aust)

324 Procedure for varying of conditions or suspension or cancellation of licence

(1) The Minister must not vary the conditions of a licence on his or her own initiative under section 322(1), refuse an application for a variation under section 322, or suspend or cancel a licence under section 323 unless—

(a) the Minister gives the licensed market operator no less than 10 working days' written notice of the following matters before he or she exercises the power:

(i) that the Minister may exercise the power; and

(ii) the reasons why he or she may exercise the power; and

(b) the Minister gives the licensed market operator or the licensed market operator's representative an opportunity to make written submissions on the matter within that notice period.

(2) The FMA must give written notice of the Minister's decision under section 322 or 323 to the licensed market operator.

325 Effect of suspension

(1) A person whose financial product market licence is suspended is taken not to hold that licence while it is suspended.

(2) However, the Minister may specify in the written notice to the licensed market operator that subsection (1) does not apply for specified purposes.

Compare: Corporations Act 2001 s 797D (Aust)

326 Variation or revocation of suspension

The Minister may at any time vary or revoke a suspension of a financial product market licence by giving written notice to the licensed market operator.

Compare: Corporations Act 2001 s 797E (Aust)

Approval of contractual market rules

327 Licensed markets must be operated under market rules that comply with this subpart

(1) A licensed market operator must not operate a licensed market except in accordance with market rules for that market that—

(a) include the required matters set out in section 328; and

(b) have effect under section 329.

(2) This section and sections 328 to 332 do not apply to a licensed market that is licensed under section 317 (overseas-regulated markets).

Compare: 1988 No 234 s 36G

328 Required matters for market rules

(1) Market rules for a financial product market for trading equity securities, debt securities, or managed investment products must include listing rules and business rules (by whatever name called and however they are imposed).

(2) Market rules for a financial product market for trading derivatives must include business rules (by whatever name called and however they are imposed).

(3) Listing rules must include rules that—

(a) relate to the approval of persons for the purpose of enabling financial products issued by those persons to be traded on the market; and

(b) require those persons to be party to a listing agreement with the licensed market operator and that relate to the entry into, and revocation of, listing agreements; and

(c) relate to the governance of those persons; and

(d) relate to the conduct or activities of those persons in relation to that market or to financial products traded on that market; and

(e) relate to the monitoring and enforcement of those rules.

(4) Business rules must include rules that—

(a) relate to the authorisation of persons to undertake trading activities on, or otherwise participate in, the market; and

(b) relate to the conduct or activities of those persons in relation to the market; and

(c) govern the conduct of business on the market; and

(d) relate to the monitoring and enforcement of those rules.

Compare: 1988 No 234 s 36H

329 When market rules have effect

A market rule, or change to a market rule, for a licensed market has no effect, either in contract or for the purposes of section 327, until it has been approved under section 331.

330 Approval process for proposed market rules and rule changes

(1) If a person applies for the approval of any proposed market rules or proposed rule change by the FMA, the FMA must, within the approval period,—

(a) approve the market rules or rule change; or

(b) extend the approval period; or

(c) decline to approve the market rules or rule change.

(2) An application under this section must be made in the manner specified by the FMA.

(3) The approval period is 40 working days, or (if extended under subsection (1)(b)) 60 working days, after the FMA receives the application.

(4) If, during the approval period, the applicant revises and resubmits the proposed market rules or rule change, then this does not result in the commencement of a new approval period under this section if the revision—

(a) is made in response to comments by the FMA; or

(b) consists of immaterial changes (for example, typographical changes).

Compare: 1988 No 234 s 36K

331 Approval of proposed market rules and changes

(1) The FMA must approve the proposed market rules or rule change provided to it under section 330 unless the FMA is satisfied that—

(a) it is not in the public interest to do so after having had regard to—

(i) the purposes of this Part (and the main and additional purposes of the Act stated in sections 3 and 4); and

(ii) the consistency of the rules or the rule change with the obligations under section 314; or

(b) (if subpart 4 would apply to the rules once approved) the rules, or the rules as changed, for the financial product market will not provide appropriate continuous disclosure by listed issuers of material information that is not generally available to the market, after having regard to—

(i) the purposes of this Part (and the main and additional purposes of the Act stated in sections 3 and 4); and

(ii) any other matters that the FMA considers relevant.

(2) The FMA must, in considering whether to approve proposed market rules for a new market, take into account any previously approved market rules that the applicant proposes to also apply to the relevant market.

(3) An approval under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

(4) However, the approval does not need to incorporate the market rules or rule change that have been approved.

Compare: 1988 No 234 s 36L

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	The maker must comply with section 332(3)	LA19 ss 73, 74(1)(a), Sch 1 cl 14
	The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019	LA19 ss 74(2), 75
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 331(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 331(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

332 Notice of decision on rules

(1) The FMA must give written notice of its decision under section 331 to—

(a) the applicant for approval; and

(b) every other prescribed person.

(2) If the FMA extends the approval period under section 330 or declines to approve the rules, the written notice under subsection (1) must include a statement of the FMA's reasons for exercising the power.

(3) If the FMA approves the proposed market rules or rule change, the FMA must also publish a notice on an Internet site maintained by or on behalf of the FMA, identifying the market rules approved under section 331 (but need not incorporate them).

(4) *[Repealed]*

Section 332(3): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 332(4): repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

333 Power of FMA to request changes to market rules on certain matters

(1) The FMA may, if it considers it necessary or desirable to promote any of the purposes of this Part or the meeting of any of the market operator obligations, request a licensed market operator to prepare a draft change to the market rules for any of its licensed markets on a specified matter.

(2) The FMA may make a request under subsection (1) by written notice to the licensed market operator only—

(a) after carrying out a review under section 338(1) or (2); or

(b) if it believes on reasonable grounds that it is urgent to do so at any other time.

(3) The licensed market operator must, as soon as practicable but, in any case, before the expiry of 60 working days after receiving the written notice (or any further time allowed by the FMA), do either or both of the following things:

(a) provide a proposed rule change to the FMA under section 330 that addresses the requested matter:

(b) provide the FMA with a written report that—

(i) identifies any requested matter or matters that have not been addressed by a proposed rule change; and

(ii) explains why the licensed market operator has not done so; and

(iii) suggests alternative ways (if any) by which the matter or matters are being or may be dealt with; and

(iv) sets out if, when, and how the licensed market operator proposes to provide for the matter or matters (if at all).

(4) This section does not allow the FMA to request a draft market rule or change on a matter that is not within the matters set out in section 328.

Compare: 1988 No 234 s 36M

334 Overseas-regulated markets must give notice of market rules and rule changes to FMA

(1) A licensed market operator of a market licensed under section 317, or an applicant for a licence under that section, must—

(a) provide the market rules of the licensed market to the FMA at the time of the application under section 315; and

(b) as soon as practicable after any changes are made to those rules, provide the rule change to the FMA together with the date of the change and an explanation of its purpose.

(2) The FMA may, by written notice to the licensed market operator (or applicant for a licence under section 317), specify the rules for the financial product market (which must be rules dealing with some or all of the matters referred to in section 328) that are the market rules of the licensed market for the purpose of this subpart.

Compare: Corporations Act 2001 s 793D (Aust)

335 Market rules must be available for public inspection

(1) A licensed market operator must ensure that a copy of the market rules for each of its licensed markets—

(a) is available for public inspection, free of charge and during normal office hours, at the head office of that licensed market operator; and

(b) is published on an Internet site maintained by, or on behalf of, the licensed market operator at all reasonable times.

(2) A licensed market operator that fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1988 No 234 s 36Q

336 Application of Acts relating to regulations to contractual market rules

To avoid doubt, market rules are not—

(a) regulations for any purpose; or

(b) secondary legislation.

Compare: 1988 No 234 s 36R

Section 336(b): replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Monitoring of market operator obligations

337 Licensed market operator must give report on compliance with market operator obligations to FMA

(1) A licensed market operator must, within 3 months after the end of its reporting period, give a report to the FMA and the Minister on the extent to which it

has complied with its market operator obligations in the preceding reporting period.

(2) The report must contain, or be accompanied by, the information (if any) in relation to the licensed market operator's performance against its market operator obligations specified by the FMA before the commencement of the relevant reporting period.

(3) The **reporting period** for the purposes of this subpart is the financial year of the licensed market operator or any longer reporting period set in the conditions of the licence.

Compare: 1988 No 234 s 36YA

338 FMA to carry out market operator obligations reviews

(1) The FMA may, at any time, carry out a review of how well a licensed market operator is meeting any or all of its market operator obligations.

(2) The FMA must carry out a review of how well a licensed market operator is meeting all of its market operator obligations at least once in respect of each reporting period of the licensed market operator.

(3) The FMA—

(a) may, in carrying out the review, take into account the most recent report and other information provided under section 337 and any other information it considers appropriate; and

(b) must, after carrying out the review, provide a draft written report on its review to the licensed market operator and take into account any submissions made by the licensed market operator within the reasonable period for submissions specified by the FMA.

(4) The FMA must not carry out a review of a designated FMI (as defined in section 5 of the Financial Market Infrastructures Act 2021) of a licensed market operator under this section (but nothing in this subsection prevents a review under that Act being carried out in conjunction with a review under this section).

Compare: 1988 No 234 s 36YB

Section 338(4): amended, on 1 March 2024, by section 163(1) of the Financial Market Infrastructures Act 2021 (2021 No 13).

339 FMA must make written report on market operator obligations review

(1) The FMA must give a written report on a review under section 338 to the Minister and the licensed market operator—

(a) as soon as practicable after carrying out the review; and

(b) in any case, within 3 months after the licensed market operator has provided its report to the FMA under section 337.

(2) The FMA must also publish the written report on the review on an Internet site maintained by or on behalf of the FMA.

(3) However, the FMA may, in publishing the written report of its review, omit from the published report any information for which it considers there would be a good reason for withholding under the Official Information Act 1982 if a request for that information were made under that Act.

Compare: 1988 No 234 s 36YC

340 FMA may require licensed market operator to submit action plan on failure to meet market operator obligations

(1) If the FMA considers, after carrying out a review under section 338(1) or (2), that a licensed market operator has failed or is failing to meet any 1 or more of its market operator obligations, it may, by written notice, require the licensed market operator to submit an action plan to the FMA.

(2) The notice must—

(a) set out the details of the failure; and

(b) specify the date by which the action plan must be submitted to the FMA.

(3) The licensed market operator must, as soon as practicable but in any case before the date specified by the FMA, do either or both of the following things:

(a) provide an action plan that addresses the failure and specifies—

(i) the actions that the licensed market operator proposes to take to remedy the failure or to avoid any further failure; and

(ii) the timetable for taking those actions:

(b) provide the FMA with a written report that—

(i) identifies any matter that has not been addressed by an action plan; and

(ii) explains why the licensed market operator does not consider that matter to be a failure or gives any other reasons why the licensed market operator has not provided an action plan on the matter.

Compare: 1988 No 234 s 36YD

341 Approval, amendment, or rejection of action plan

(1) If a licensed market operator submits an action plan, the FMA may—

(a) approve the action plan; or

(b) require the licensed market operator to amend the action plan and resubmit it to the FMA by a specified date for approval or rejection; or

(c) reject the action plan.

(2) If the FMA requires the licensed market operator to amend an action plan provided to the FMA, the licensed market operator must do either or both of the following things:

(a) provide an amended action plan that addresses the matter required to be amended:

(b) provide the FMA with a written report that—

(i) identifies any matter that has not been addressed by an amendment to the action plan first provided; and

(ii) explains why the licensed market operator does not consider that the matter needs amending or gives any other reasons why the licensed market operator has not provided an amendment addressing the matter.

(3) If the FMA approves the action plan (whether as first provided or after amendment), the licensed market operator must comply with the action plan.

(4) An action plan that has been approved by the FMA may be varied at any time by agreement between the licensed market operator and the FMA.

Compare: 1988 No 234 s 36YE

342 Minister may give market operator obligations direction to licensed market operator

(1) The Minister may, after having regard to any advice of the FMA, give a written direction to a licensed market operator if—

(a) the Minister considers that the licensed market operator has failed or is failing to meet any 1 or more of its market operator obligations; and

(b) any of the following has occurred:

(i) the licensed market operator has not provided an action plan when required under section 340; or

(ii) the licensed market operator has not provided an amended action plan when required under section 341; or

(iii) the FMA has rejected a licensed market operator's action plan; or

(iv) the licensed market operator has not complied with an approved action plan.

(2) The direction may specify—

(a) the actions that the licensed market operator must take to remedy any failure or to avoid any further failure to meet any 1 or more of its market operator obligations; and

(b) the timetable for taking those actions.

(3) The licensed market operator must comply with the direction.

Compare: 1988 No 234 s 36YF

343 Minister may vary, suspend, or cancel licence

(1) If the Minister could give a direction under section 342, the Minister may also, by written notice to the licensed market operator, vary the conditions of the licence (following the procedure set out in section 324).

(2) If the Minister could give a direction under section 342 and the Minister is satisfied that the licensed market operator does not meet the requirements referred to in section 316 or 317, the Minister may also, by written notice to the licensed market operator, suspend or cancel the licence (following the procedure set out in section 324).

Control limits on licensed market operators

344 Power to impose control limits on licensed market operators

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations imposing, altering, or revoking a control limit (which is the highest percentage of voting rights in the body corporate that may be held or controlled by any person) for a body corporate that—

(a) is, or may be, a licensed market operator; or

(b) is a holding company of a body corporate referred to in paragraph (a).

(2) A control limit does not apply to a body corporate before its licence as a licensed market operator takes effect.

(3) The Minister must not make a recommendation for the purposes of subsection (1) unless he or she has consulted the body corporate and is satisfied that it is in the public interest to make the recommendation.

(4) For the purposes of this section and the rest of this subpart,—

control, in relation to a voting right, means having, directly or indirectly, effective control of the voting right

voting right means a currently exercisable right to cast a vote at meetings of members or shareholders of a body corporate, not being a right to vote that is exercisable only in 1 or more of the following circumstances:

(a) during a period in which a payment or distribution (or part of a payment or distribution) in respect of the financial product that confers the voting right is in arrears or some other default exists:

(b) on a proposal that affects rights attached to the financial product that confers the voting right:

(c) during the liquidation of the body corporate:

(d) in respect of a special, immaterial, or remote matter that is inconsequential to control of the body corporate.

(5) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1988 No 234 s 36S

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)

Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 344(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

345 Control limit not to be exceeded

(1) No person may hold or control voting rights in a body corporate that exceed any control limit for that body corporate that applies under regulations made under section 344, except in accordance with an approval under section 347.

(2) For the purposes of this section, voting rights held or controlled by an associated person of a person must be treated as voting rights held or controlled by that person.

(3) Subsection (1) does not apply to any voting rights in a body corporate held or controlled by a person to the extent that those rights were held or controlled by that person before the control limit was imposed or decreased, as the case may be.

Compare: 1988 No 234 s 36T

346 Effect of exceeding control limit

(1) Every person who contravenes section 345—

(a) must take the steps that are necessary to ensure that the person is no longer in contravention of that section at the end of 60 working days after the date of first contravention; and

(b) must not exercise or control the exercise of any voting rights that exceed the control limit while the person contravenes that section.

(2) An exercise of voting rights in a body corporate by or under the control of a person in contravention of subsection (1)(b) is of no effect, and must be disregarded in counting the votes concerned.

(3) However, subsections (1)(b) and (2) do not invalidate a resolution if the votes concerned were counted by the body corporate in good faith and without knowledge that the voting rights were exercised in contravention of subsection (1)(b).

Compare: 1988 No 234 s 36U

347 Application for approval to exceed control limit

(1) A person may apply to the FMA for approval for any person or class of persons to exceed a control limit for a body corporate that applies under regulations made under section 344.

(2) The FMA must, within a reasonable time, give the application to the Minister with advice about the application.

(3) The Governor-General may, by Order in Council made on the recommendation of the Minister, approve an application under subsection (1) and specify the terms and conditions (if any) applying to the approval.

(4) The Minister may not make a recommendation for the purposes of subsection (3) unless,—

(a) if the body corporate is not the applicant or 1 of the applicants for the approval, he or she has consulted the body corporate on the application; and

(b) he or she is satisfied that it is in the public interest to make the recommendation.

(5) An approval granted under subsection (3)—

(a) may have retrospective effect; but

(b) is of no effect if any term or condition of the approval has not been complied with.

(6) An approval granted under subsection (3) is for the purposes of the control limit only, and not for the purposes of any other enactment.

(7) An order under this section—

(a) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements); but

(b) may commence in accordance with subsection (5)(a), even if it is not yet published.

Compare: 1988 No 234 s 36V

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives, unless it relates exclusively to an individual (in which case a transitional exemption applies under Schedule 1 of the Legislation Act 2019)	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 347(7): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

348 Revocation or amendment of approval

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister,—

(a) revoke an approval granted under section 347; or

(b) vary, revoke, or suspend any term or condition of such an approval.

(2) The Minister may not make a recommendation for the purposes of subsection (1) unless—

(a) he or she has consulted the person to whom the approval was granted and the body corporate concerned; and

(b) he or she is satisfied that it is in the public interest to make the recommendation.

(3) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1988 No 234 s 36W

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives, unless it relates exclusively to an individual (in which case a transitional exemption applies under Schedule 1 of the Legislation Act 2019)	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 348(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Other provisions relating to licensing of financial product markets

349 FMA may give advice to Minister

(1) The FMA may give advice to the Minister in relation to any matter in respect of which the Minister has a discretion under this subpart or any other matter concerning financial product markets.

(2) If the Minister has delegated a function or power to the FMA under this subpart, any obligation under this subpart for the FMA to give advice to the Minister, or for the Minister to have regard to the advice of the FMA, in connection with that matter does not apply.

350 Delegation of Minister's licensing functions and powers to FMA

(1) The Minister may, either generally or particularly, delegate to the FMA all or any of the Minister's functions or powers under this subpart in connection with the licensing of financial product markets.

(2) A delegation under this section must be in writing.

(3) The FMA must not delegate any functions or powers delegated to it under this section except in accordance with the terms of the delegation.

(4) The power of the Minister to delegate under this section—

(a) is subject to any prohibitions, restrictions, or conditions contained in any other Act in relation to the delegation of the Minister's functions or powers; but

(b) does not limit any power of delegation conferred on the Minister by any other Act.

(5) The FMA may perform or exercise any functions or powers delegated to it under this section in the same manner and with the same effect as if they had been conferred on the FMA directly (subject to any restrictions or conditions imposed under the delegation).

(6) If the FMA purports to act under a delegation under this section, the FMA must, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(7) No delegation affects or prevents the performance or exercise of any function or power by the Minister or affects the responsibility of the Minister for the actions of a person acting under the delegation.

351 Regulations modifying this Part or Part 7 or 7A for licensed markets

(1) The Governor-General may, on the recommendation of the Minister in accordance with subsection (3), make regulations for any 1 or more of the following purposes:

(a) providing that any 1 or more of the provisions in subparts 2 to 8 of this Part (including any definitions in this Act as they apply in the relevant provisions, but excluding the obligations in section 314) do not apply in respect of a licensed market or class of licensed markets (and accordingly do not apply in relation to any issuers listed or financial products quoted on those markets):

(ab) providing that section 451(1)(d) does not apply in respect of persons that are listed issuers only in respect of a licensed market or class of licensed markets, and providing for replacement or modified requirements to apply relating to—

(i) accounting records and financial reporting:

(ii) CRD records and climate-related disclosures (for those listed issuers that would otherwise be climate reporting entities under section 461O(1)(a)):

(b) providing for replacement or modified provisions to apply in respect of the licensed market or class of licensed markets (for example, instead of having continuous disclosure provisions in the listing rules and requiring listed issuers to comply with those provisions, having periodic or event-based disclosure or some other way of dealing with any information asymmetries in the market):

(c) stating which provisions of the regulations (if any) are Part 5 market provisions for the purposes of this Act and, if so, whether the provisions give rise to civil liability under section 385(3) or (4) (*see* Part 8, in which Part 5 market provisions are specified to be civil liability provisions), including which provisions are alternative disclosure obligations for the purposes of section 314:

(d) providing that a financial product market must not be treated as a licensed market for the purposes of any provision or provisions of this Act or any other specified enactment:

(e) providing that issuers of a specified class must not be treated as listed issuers for the purposes of any provision or provisions of this Act or any other specified enactment:

(f) providing that, in specified circumstances, financial products must not be treated as quoted financial products for the purposes of any provision or provisions of this Act or any other specified enactment.

(2) Any regulations made under subsection (1) must specify the licensed market or class of licensed market to which they apply.

(3) The Minister must, in relation to a recommendation under this section,—

(a) have regard to the matters set out in section 308; and

(b) be satisfied, in relation to any recommendation relating to subsection (1)(a) or (d), that the extent to which the regulations disapply any enactment to a licensed market is not broader than is reasonably necessary to address the matters that gave rise to the regulations; and

(c) be satisfied, in relation to any recommendation relating to subsection (1)(e) or (f), that the extent to which the regulations disapply any enactment to issuers or financial products is not broader than is reasonably necessary to address the matters that gave rise to the regulations.

(4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 351 heading: amended, on 27 October 2022, by section 6(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 351 heading: amended, on 1 April 2014, by section 47(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 351(1)(ab): replaced, on 27 October 2022, by section 6(2) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 351(1)(e): inserted, on 9 August 2017, by section 71(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 351(1)(f): inserted, on 9 August 2017, by section 71(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 351(3)(b): amended, on 9 August 2017, by section 71(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 351(3)(c): inserted, on 9 August 2017, by section 71(3) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 351(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Subpart 8—Operation of licensed markets

352 Licensed market operator must notify FMA of disciplinary actions and suspected contraventions

(1) A licensed market operator must notify the FMA, in accordance with sections 353 and 354, if—

(a) the operator takes any disciplinary action against a participant in the licensed market:

(b) the operator knows or suspects that a person has committed, is committing, or is likely to commit a significant contravention of—

(i) the market rules; or

(ii) this Act, the Takeovers Act 1993, or any enactment made under either of those Acts.

(2) The FMA must notify the licensed market operator of its decision to take, or not to take, any action in relation to a notification under subsection (1)(b)(ii).

Compare: 1988 No 234 s 36ZD

353 When notification required

The licensed market operator must give the notice under section 352 immediately after taking the disciplinary action or knowing or suspecting the person has committed, is committing, or is likely to commit a significant contravention.

Compare: 1988 No 234 s 36ZE

354 Details and method of notification

(1) The notice under section 352 must include—

(a) the person's name and contact details; and

(b) if it relates to a disciplinary action, the grounds for, nature of, and reasons for the action taken; and

(c) if it relates to a known or suspected contravention, the facts supporting the licensed market operator's view and the obligation to which the known or suspected contravention relates; and

(d) any other information required by the regulations or by the FMA under section 357.

(2) The licensed market operator must give the notice in the form and by the method required by the regulations (if any).

Compare: 1988 No 234 s 36ZF

355 Licensed market operator must ensure FMA has access to real-time trading and other information

(1) A licensed market operator must, if requested by the FMA, give to the FMA the information that is necessary to enable the FMA to carry out real-time surveillance of the operation of the licensed market.

(2) The FMA must pay all reasonable costs of the licensed market operator in providing the information under this section.

Compare: 1988 No 234 s 36ZFA

356 Waiver of notification and disclosure obligations

(1) Sections 352 to 355 do not apply to the extent that the FMA—

(a) waives its entitlement to any notice or information or class or classes of notices or information; or

(b) agrees with the licensed market operator a different time, form, or method of notification or disclosure.

(2) A waiver or an agreement under this section must be in writing.

Compare: 1988 No 234 s 36ZJ

357 Licensed market operator must give FMA or Takeovers Panel other information and assistance on request

(1) A licensed market operator must give to the FMA or the Takeovers Panel (or any person authorised by the FMA or the Takeovers Panel) information, assistance, and access to the licensed market operator's facilities if the FMA or the Takeovers Panel reasonably requests it in order to carry out its functions.

(2) The FMA or the Takeovers Panel must require that information, assistance, or access by notice in writing to the licensed market operator.

Compare: 1988 No 234 s 36ZK

358 Power to disclose further information

(1) A licensed market operator may provide to the FMA any information that the licensed market operator considers may assist the FMA in the performance of the FMA's functions.

(2) A licensed market operator may provide to the Takeovers Panel any information that the licensed market operator considers may assist the Takeovers Panel in the performance of its functions.

Compare: 1988 No 234 s 36ZL

359 Licensed market operator must give notice and have regard to submissions on continuous disclosure determinations

(1) This section and section 360 apply to a determination by a licensed market operator if—

(a) the determination exempts from, waives, or determines the meaning of a continuous disclosure provision of its listing rules for a licensed market (or varies or revokes a determination of that kind); and

(b) that continuous disclosure provision relates to material information that is not generally available to the market.

(2) The licensed market operator must—

(a) give the FMA no less than 2 trading days' written notice, before making the determination, of—

(i) the proposed terms of the determination; and

(ii) the reasons for the proposed determination; and

(b) have regard to any written submissions made to it by the FMA within that notice period; and

(c) must, as soon as is reasonably practicable after making the determination, give written notice to the FMA of—

(i) the terms of the determination; and

(ii) the reasons for the determination.

(3) A failure to comply with this section or section 360 does not affect the validity of a determination.

Compare: 1988 No 234 s 36ZM

360 Limited notice and submissions for urgent determinations

If a licensed market operator thinks it is necessary or desirable in the public interest for a determination to be made more urgently than section 359(2) permits,—

(a) it may give less than 2 trading days' notice before it makes the determination, and the notice and submissions may be oral rather than written; but

(b) it must include in that notice the reasons for acting urgently and must otherwise comply with that subsection.

Compare: 1988 No 234 s 36ZN

361 FMA may give directions to licensed market operators

(1) The FMA may give a direction under subsection (2) in accordance with sections 362 to 366 in relation to a licensed market.

(2) The FMA may, for up to 15 trading days,—

(a) direct a licensed market operator to suspend trading of quoted financial products or a class of quoted financial products; or

(b) give the licensed market operator any other direction in relation to that trading; or

(c) direct a licensed market operator to suspend participation by a participant or class of participants in the licensed market.

(3) To avoid doubt, the FMA may not use its power to direct the licensed market operator to amend the market rules or to direct the licensed market operator on the making of a determination on the market rules.

(4) The direction is subject to appeal only in accordance with section 532.

Compare: 1988 No 234 s 36ZO

362 Grounds for continuous disclosure direction

(1) A direction on the grounds in this section is a continuous disclosure direction.

(2) A direction may be given under section 361 in accordance with sections 364 to 366 if the FMA—

(a) has regard to the purpose of this Part (and the main and additional purposes of the Act stated in sections 3 and 4) and any other matters it considers relevant; and

(b) is satisfied that 1 of the following grounds applies:

(i) a listed issuer has contravened a continuous disclosure obligation or a term or condition of a continuous disclosure exemption; or

(ii) a determination by a licensed market operator to which section 359 applies does not achieve appropriate continuous disclosure by a listed issuer of material information that is not generally available to the market; or

(iii) the licensed market operator's administration of the continuous disclosure provisions of its listing rules does not achieve appropriate continuous disclosure by a listed issuer of material information that is not generally available to the market; and

(c) is also satisfied that the direction is necessary or desirable to protect people who are trading the quoted financial products or the class of quoted financial products and that there is no more appropriate course of action to address the situation.

Compare: 1988 No 234 s 36ZP

363 Grounds for other directions

A direction may also be given under section 361 in accordance with sections 364 to 366 if the FMA is satisfied that—

(a) the direction is necessary or desirable to protect people who are trading the quoted financial products, or the class of quoted financial products, of 1 or more listed issuers; but

(b) it is not a matter relating to continuous disclosure.

Compare: 1988 No 234 s 36ZQ

364 Notice, opportunity for licensed market operator to act, and submissions before FMA gives directions

(1) A direction may be given under section 361 only if—

(a) the FMA has given written notice to the licensed market operator and listed issuer or issuers concerned of—

(i) its opinion that the requirements of section 362 or 363 are satisfied; and

(ii) the proposed terms of the direction; and

(iii) the reasons for its opinion; and

(b) after receiving the FMA's notice, the licensed market operator does not take, within the reasonable period stated in the notice,—

(i) in the case of a proposed direction to suspend trading of the quoted financial products, action to prevent that trading; or

(ii) in any other case, any other action that, in the FMA's view, is adequate to address the situation raised in the notice; and

(c) the FMA has had regard to any written submissions made to it by the licensed market operator and the listed issuer or issuers concerned within that notice period; and

(d) the FMA still considers that it is appropriate to give the direction to the licensed market operator.

(2) A reasonable period in subsection (1)(b) is, in the case of a continuous disclosure direction, 2 trading days (or any longer time the FMA wishes to allow) and, in the case of any other direction, any longer time that is reasonable in the circumstances.

Compare: 1988 No 234 s 36ZR

365 Limited notice and submissions for urgent continuous disclosure directions

If the FMA thinks it is necessary or desirable in the public interest for a continuous disclosure direction to be made more urgently than section 364 permits,—

(a) it may give less than 2 trading days' notice before it gives the direction, and the notice and submissions may be oral rather than written; but

(b) it must include in that notice the reasons for acting urgently and must otherwise comply with that section.

Compare: 1988 No 234 s 36ZS

366 Notice and opportunity to be heard and represented after FMA gives direction

If a direction is given under section 361, the FMA—

(a) must, as soon as is reasonably practicable, give written notice to the licensed market operator and listed issuer or issuers (if any) concerned of—

(i) its opinion that the requirements of section 362 or 363 are satisfied; and

(ii) the terms of the direction; and

(iii) the reasons for its opinion; and

(b) must, after the direction is given, give each of those persons or the person's representative an opportunity to make written submissions and to be heard on the matter; and

(c) may also give notice to any other person of the matters in paragraph (a).

Compare: 1988 No 234 s 36ZT

367 Effect of directions to licensed market operator

(1) A direction under section 361 has effect for the period specified in it (which may be a period of up to 15 working days) and, during that period, the licensed market operator must comply with the direction and must not allow any trading that is contrary to the direction to take place.

(2) If the FMA considers that the direction should have effect for a period longer than 15 working days, it may apply to the court for, and the court may make, an order that the licensed market operator comply with the direction for the period that the court thinks fit.

Compare: 1988 No 234 s 36ZU

368 Provisions as to directions

(1) The FMA may vary a direction under section 361 in the same way as it may make that direction.

(2) The FMA may revoke a direction under section 361 by giving written notice to the licensed market operator.

Compare: 1988 No 234 s 36ZV

369 Contracting out of or modification of continuous disclosure process requirements

(1) The FMA and a licensed market operator may, by agreement in writing, contract out of, or modify, any of the requirements of sections 359, 360, and 364 to 366.

(2) For that purpose, the licensed market operator may agree to waive or modify obligations under those sections that are owed to listed issuers listed on the relevant licensed market.

Compare: 1988 No 234 s 36ZW

370 Offence for failing to comply with direction

A licensed market operator that refuses or fails, without reasonable excuse, to comply with a direction under section 361 commits an offence and is liable on conviction to a fine not exceeding $300,000.

Compare: 1988 No 234 s 36ZX

Subpart 9—Transfer of transferable financial products

371 Financial products to which this subpart applies

(1) This subpart applies to financial products if—

(a) the financial products are transferable; and

(b) the names of the holders of the products are entered in a register kept under this Act or otherwise kept in New Zealand.

(2) However, this subpart does not apply to—

(a) interests in a superannuation scheme or KiwiSaver scheme:

(b) derivatives:

(c) financial products of a prescribed kind.

(3) In this subpart, **specified financial product** means a financial product to which this subpart applies.

Transfer of specified financial products using transfers in prescribed form or containing prescribed information

372 Transfer of specified financial products by products transfer

(1) Specified financial products disposed of in an authorised transaction may be transferred by means of a products transfer that—

(a) either—

(i) is in the form prescribed for the purposes of this section; or

(ii) contains the prescribed information; and

(b) is duly completed; and

(c) is executed, in New Zealand, by the transferor (whether or not it is also executed by the transferee).

(2) However, subsection (1) does not apply if the specified financial products impose a liability to the issuer on the transferee.

(2A) An indemnity given by the product holder of a financial product to the issuer in respect of any liability of the issuer for the acts, omissions, or obligations of the holder is not a liability for the purpose of subsection (2).

(3) In this subpart, **authorised transaction** means an acquisition or disposal of financial products in which each of the parties is, or is acting through the

agency of, any of the following persons (who are acting in the ordinary course of business):

(a) a person authorised to undertake trading activities on a licensed market:

(b) a lawyer in practice on his or her own account:

(c) a qualified statutory accountant:

(d) a trustee corporation (as defined in section 2 of the Protection of Personal and Property Rights Act 1988):

(e) a registered bank:

(f) a person prescribed for the purposes of this definition.

Compare: 1991 No 119 s 3

Section 372(2A): inserted, on 9 August 2017, by section 72 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 372(3)(c): amended, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

Section 372(3)(d): amended, on 30 January 2021, by section 161 of the Trusts Act 2019 (2019 No 38).

373 Transfer of specified financial products by products transfer and brokers transfer

(1) Specified financial products sold in a licensed market transaction may be transferred by means of—

(a) a products transfer that—

(i) either is in the form prescribed for the purposes of this paragraph or contains the prescribed information; and

(ii) is duly completed; and

(iii) is executed, in New Zealand, by the transferor (whether or not it is also executed by the transferee); and

(iv) specifies financial products that include the financial products sold; and

(b) a brokers transfer that—

(i) either is in the form prescribed for the purposes of this paragraph or contains the prescribed information; and

(ii) is duly completed; and

(iii) specifies the financial products sold.

(2) Subsection (1) applies whether or not the specified financial products impose a liability to the issuer on the transferee.

(3) In this subpart, **licensed market transaction** means a sale and purchase of financial products in which each of the parties is, or is acting through the

agency of, a person authorised to undertake trading activities on a licensed market who is acting in the ordinary course of that business.

Compare: 1991 No 119 s 4

374 Products transfer does not need to be witnessed

(1) The execution of a products transfer for the purposes of section 372 or 373(1)(a) does not need to be witnessed.

(2) Subsection (1) does not affect any enactment, rule of law, constitution, deed, or agreement regulating the execution of documents by companies or other bodies corporate or by any particular company or body corporate.

Compare: 1991 No 119 s 5

375 Transfers to be instruments of transfer for purposes of other enactments and instruments

For the purposes of any enactment, rule of law, constitution, deed, or agreement that relates to the transfer of financial products or to instruments of transfer of financial products,—

(a) a products transfer to which section 372 applies must be treated as being an instrument of transfer of the financial products specified in the products transfer:

(b) a products transfer to which section 373 applies and a brokers transfer together must be treated as being an instrument of transfer of the financial products specified in both transfers.

Compare: 1991 No 119 s 6(1)

Transfer of specified financial products by electronic means

376 Approval of electronic transfer system

(1) The Governor-General may, on the advice of the Minister given in accordance with a recommendation of the FMA, by Order in Council, approve a system or systems that is or that are wholly or partly electronic for the transfer of specified financial products.

(2) A system of transfer may be approved under this section by reference to the name of the system or any name by which it is commonly known.

(3) A system of transfer may be approved under this section whether or not it also involves the use of a procedure or part of a procedure for the transfer of financial products that is authorised under this Act or otherwise.

(4) The FMA must not make a recommendation under subsection (1) unless the FMA has consulted the persons or representatives of the persons that the FMA considers will be substantially affected by the Order in Council.

(5) A failure to comply with subsection (4) does not affect the validity of an Order in Council made under this section.

(6) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1991 No 119 s 7(1)–(3), (6)–(8)

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 376(6): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

377 Specified financial products may be transferred under approved system

(1) Specified financial products disposed of, whether in an authorised transaction or licensed market transaction or otherwise, may be transferred in accordance with a system of transfer that is approved under section 376.

(2) Subsection (1) applies whether or not the specified financial products impose a liability to the issuer on the transferee.

Compare: 1991 No 119 s 7(5)

378 Minor technical modifications to system

Modifications of a minor technical nature may, from time to time, be made to a system of transfer approved by an Order in Council made under section 376 and, in any such case, the system incorporating those modifications must be treated as having been approved by the order.

Compare: 1991 No 119 s 7(4)

Registration may not be refused

379 Registration may not be refused on ground that financial products have been transferred under this subpart

(1) If financial products have been transferred in accordance with section 372, 373, or 377, no person may refuse to register the transfer on the ground that the financial products have been so transferred or that the financial products have not been transferred by other means.

(2) Nothing in this section affects any right a person has to refuse to register a transfer of securities on any other ground.

Compare: 1991 No 119 s 8

380 Effect of this Act on other enactments

(1) This subpart has effect despite anything to the contrary in any enactment, rule of law, constitution, deed, or agreement (but subject to any order made under this Act).

(2) Nothing in this subpart affects the validity of any means of transferring financial products other than under this subpart.

(3) Sections 35, 39(1), and 84 of the Companies Act 1993 must be read subject to the provisions of this subpart.

Compare: 1991 No 119 s 9

Subpart 10—Unsolicited offers to purchase financial products off-market

381 Definitions relating to unsolicited offer regulations and related provisions

(1) For the purposes of this Act, an **unsolicited offer** means an offer to which all of the following apply:

(a) the offer is to acquire a financial product, to acquire a power to dispose of a financial product, or to acquire another interest in or right attaching to a financial product, made by a person (**A**) to another person (**B**) (whether the acquisition is by A or an associated person of A):

(b) the offer is unsolicited by B:

(c) the offer is not made on a licensed market:

(d) the offer is within the class or classes of unsolicited offers to which the regulations apply:

(e) the offer is not a takeover offer for a financial product under the Takeovers Code nor an acquisition or a redemption by a company of its shares under the Companies Act 1993.

(2) For the purposes of this subpart, and any regulations made under this subpart, an **offer** made by A includes an invitation or a proposal for A (or an associated person of A) to make an offer.

Compare: 1988 No 234 s 48DA

382 Regulations concerning unsolicited offers

(1) The Governor-General may, on the recommendation of the Minister in accordance with subsection (3), make regulations setting out the rules applying to unsolicited offers for any or all of the purposes set out in subsection (2).

(2) The purposes are—

(a) ensuring offerees are fully informed of—

(i) the current market price of a quoted financial product or, for a non-quoted financial product, a fair estimate of the value of the non-quoted financial product and the basis for making that estimate; and

(ii) the material terms of the offer and their effect; and

(iii) any warnings issued by the FMA (if ordered by the FMA to be contained in or to accompany offer documents); and

(iv) their rights and remedies under the regulations:

(b) ensuring that notice of an unsolicited offer to product holders is given to the relevant listed issuer or issuer and the FMA:

(c) ensuring that no agreement to transfer may bind offerees for a minimum period for the purpose of enabling offerees to consider, and reconsider, any decision to accept an offer:

(d) requiring a minimum or maximum offer period, or both:

(e) setting out any other rules applying to unsolicited offers.

(3) In formulating recommendations to make regulations under this section, the Minister must—

(a) have regard to the objective of preventing unfair practices in the making of unsolicited offers; and

(b) consult the FMA.

(4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1988 No 234 s 48DB

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 382(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

383 Specific provisions for regulations concerning unsolicited offers

The regulations made under section 382 may, without limiting that section,—

(a) define the class or classes of unsolicited offers and financial products to which the regulations apply:

(b) define or clarify the meaning of unsolicited for the purposes of this subpart:

(c) prescribe requirements in relation to unsolicited offers and the making of those offers, including requirements as to the form and content of those offers, variations of those offers, the updating and resending of offer documents or other corrective statements, and the implication of terms into the offer or any resulting agreement:

(d) prescribe the information, statements, certificates, or other documents that must be supplied to offerees, the relevant listed issuer or issuer, and the FMA:

(e) provide for any duties or functions of the FMA in connection with the rules applying to unsolicited offers:

(f) state which provisions are unsolicited offer provisions for the purposes of this Act:

(g) provide for the exercise of a right to withdraw a notification of a decision to accept an unsolicited offer, a right to refuse to complete a transfer, or any other right or remedy of offerees, and any consequences and obligations that apply in those cases:

(h) provide for any powers of, and requirements on, listed issuers, issuers, or their agents in connection with transfers under an unsolicited offer and provide for protections from liability for those persons, persons administering a register of financial products, and other persons for the purposes of section 384:

(i) provide for the regulations to—

(i) extend to or apply in respect of any conduct of an associated person of an offeror and any conduct that, in substance or effect, constitutes an unsolicited offer:

(ii) prohibit contracting out of the regulations and include any other provision or provisions designed to prevent avoidance of the regulations (for example, prohibiting persons from inviting others to make an offer to sell a financial product in circumstances in which, if the invitation were an offer to acquire the financial product, it would be an unsolicited offer to which the regulations applied):

(j) provide for transitional matters.

Compare: 1988 No 234 s 48DC

384 Protection from liability in connection with unsolicited offer provisions

(1) This section applies to any person who—

(a) is stated by regulations made under section 382 to be a protected person for the purposes of this section; and

(b) is not in contravention of an unsolicited offer provision or exemption.

(2) A person to whom this section applies is not liable for any act done or omitted to be done by that person in good faith if the act or omission is stated by regulations made under section 382 to be a protected act or omission for the purposes of this section.

Compare: 1988 No 234 s 47AA

Subpart 11—Civil liability for certain contraventions of this Part

385 Part 5 market provisions

(1) All of the provisions specified in subsections (3) and (4) are Part 5 market provisions.

(2) A contravention of any of the provisions listed in subsection (3) may give rise to civil liability (*see* subpart 3 of Part 8), including a pecuniary penalty not exceeding the greatest of the consideration for the relevant transaction, 3 times the amount of the gain made or the loss avoided, and $1 million in the case of an individual or $5 million in any other case.

(3) The provisions are the following:

(a) sections 241 to 243 (insider conduct prohibited):

(b) sections 262 and 265 (market manipulation):

(c) section 270 (continuous disclosure):

(d) section 310 (need for financial product market licence):

(e) section 311 (prohibition on holding out):

(f) any provision of regulations made under section 351 that is stated by those regulations to be a Part 5 market provision and to give rise to civil liability under this subsection.

(4) A contravention of any of the following may give rise to civil liability (*see* subpart 3 of Part 8), including a pecuniary penalty not exceeding $200,000 in the case of an individual or $600,000 in any other case:

(a) sections 276 to 279 and sections 289 to 291 (substantial holding disclosure obligations):

(b) section 286 (conditions of exemption for corporate trustees and nominee companies):

(c) sections 297 and 298 (directors' and senior managers' disclosure obligations):

(d) section 327 (licensed markets must be operated under market rules that comply with subpart):

(e) section 334 (overseas-regulated markets must give notice of market rules and rule changes to FMA):

(f) section 342 (Minister may give market operator obligations direction to licensed market operator):

(g) section 346(1)(a) (effect of exceeding control limit):

(h) any provision of regulations made under section 351 that is stated by those regulations to be a Part 5 market provision and to give rise to civil liability under this subsection:

(i) sections 352, 355, 357, 359, and 367 (requirements applying in operation of licensed market):

(j) unsolicited offer provisions imposed under section 382.

Part 6
Licensing and other regulation of market services

386 Overview

(1) This Part provides for the licensing of market services and regulates the provision of market services by licensees and other persons as follows:

(a) subpart 1 determines which market service providers must be licensed, and which other providers of market services may be licensed:

(b) the issue of those licences, their conditions, and their expiry or cancellation are dealt with in subpart 2:

(c) subpart 3 provides for the monitoring and enforcement of those licences:

(d) subpart 4 provides for disclosure to investors about certain services:

(e) subpart 5 requires there to be client agreements for certain services:

(ea) subpart 5A regulates the giving of financial advice and the provision of financial advice services:

(eb) subpart 5B provides disclosure and conduct obligations for providers of client money or property services:

(f) subpart 6 regulates the provision of retail discretionary investment management services under a licence and the provision of related custodial services by a custodian:

(g) subpart 7 provides for the making of regulations on the holding and application of investors' funds and property by derivatives issuers (whether or not they are licensed or are making regulated offers of derivatives):

(ga) subpart 7A provides for additional purposes relating to licences to act as an administrator of a financial benchmark, and additional powers in respect of licensees, authorised bodies, or contributors to financial benchmarks:

(h) subpart 8 identifies the civil liability provisions under this Part.

(2) This section is a guide only to the general scheme and effect of this Part.

Section 386(1)(ea): inserted, on 15 March 2021, by section 13 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 386(1)(eb): inserted, on 15 March 2021, by section 13 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 386(1)(ga): inserted, on 14 March 2021, by section 36 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

387 Territorial scope for licensing and other regulation of certain market services

(1) This Part applies to the following services received by a client or an investor in New Zealand, regardless of where the person providing the service is resident, is incorporated, or carries on business:

(a) a financial advice service:

(b) a discretionary investment management service:

(c) a prescribed intermediary service:

(d) a client money or property service.

(2) For other licensed market services that relate to regulated offers, *see* section 47 as to the territorial scope of Part 3.

Section 387 heading: amended, on 15 March 2021, by section 14(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 387(1): replaced, on 15 March 2021, by section 14(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

387A Other provisions relating to financial advice services and client money or property services

The provisions set out in Schedule 5 have effect according to their terms.

Section 387A: inserted, on 15 March 2021, by section 15 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Subpart 1—Key provisions

388 When provider of market services needs to be licensed

A person must not provide any of the following market services without holding, or being authorised to provide the service under, a market services licence that covers that service (unless an exemption applies under section 389):

(a) acting as a manager of a registered scheme (other than a restricted scheme):

(b) acting as an independent trustee of a restricted scheme:

(ba) acting as a provider of a financial advice service (*see* section 431D):

(c) acting as a provider of a discretionary investment management service (*see* subparts 4 to 6):

(d) acting as a derivatives issuer in respect of a regulated offer of derivatives that is made by the derivatives issuer (*see* subpart 5).

Section 388(ba): inserted, on 15 March 2021, by section 16 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

389 Exemptions from need for market services licence

General exemptions

(1) A person is exempt from the licensing requirement under section 388 to the extent that the person—

(a) carries out activities that are covered by a financial product market licence:

(b) acts as an operator of a designated FMI:

(c) carries out activities as a participant in a licensed market, or in another prescribed overseas market, in the prescribed circumstances.

(1A) In subsection (1)(b), **designated FMI** and **operator** have the meanings given in section 5 of the Financial Market Infrastructures Act 2021.

Exemptions for financial advice service

(2) A person is exempt from the licensing requirement under section 388(ba) in respect of a service (unless a declaration applies under subpart 3 of Part 9) to the extent that—

(a) the service is not provided to any retail clients; or

Example

A service provider may provide a financial advice service to a number of clients. As long as the service provider has no retail clients for that service, the provider need not be licensed as a financial advice provider.

(b) the service is a prescribed exempt service.

Exemptions for DIMS

(3) A person is exempt from the licensing requirement under section 388(c) in respect of a service (unless a declaration applies under subpart 3 of Part 9) to the extent that—

(a) the service is not a retail service (*see* clause 35 of Schedule 1); or

Example

A service provider may provide a discretionary investment management service to a number of investors using a model portfolio. As long as no retail investor is within the relevant class of investors, the provider need not be a DIMS licensee.

(b) the service is a prescribed exempt service.

Section 389(1) heading: inserted, on 15 March 2021, by section 17(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 389(1)(b): replaced, on 1 March 2024, by section 163(1) of the Financial Market Infrastructures Act 2021 (2021 No 13).

Section 389(1A): inserted, on 1 March 2024, by section 163(1) of the Financial Market Infrastructures Act 2021 (2021 No 13).

Section 389(2) heading: inserted, on 15 March 2021, by section 17(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 389(2): replaced, on 15 March 2021, by section 17(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 389(3) heading: inserted, on 15 March 2021, by section 17(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 389(3): inserted, on 15 March 2021, by section 17(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

390 When providers of other market services may be licensed

(1) In addition, a person may hold a market services licence—

(a) to act as a provider of prescribed intermediary services (for example, a person-to-person lending intermediary or a crowd funding intermediary if prescribed by regulations); or

(b) to act as an administrator of a financial benchmark.

(2) *See* clause 6 of Schedule 1 for exclusions for offers through licensed intermediaries and subparts 4 and 5 of this Part for other provisions that may govern these services.

Section 390(1): replaced, on 14 March 2021, by section 37 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

391 Prohibitions on holding out

(1) A person must not hold out that the person holds a market services licence if that is not the case.

(2) A person must not hold out that the person holds a market services licence that covers a service if that is not the case.

392 Meaning of discretionary investment management service and related terms

[Repealed]

Section 392: repealed, on 15 March 2021, by section 18 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Subpart 2—Issue of licences, conditions, and duration

393 Principles guiding the exercise of FMA powers

In exercising a power under this subpart, the FMA must be guided by the following principles:

(a) exercising the power must be necessary or desirable in order to promote 1 or more of the following:

(i) either or both of the main purposes specified in section 3:

(ii) any of the additional purposes specified in section 4:

(iii) in the case of a market services licence to act as an administrator of a financial benchmark, either or both of the additional purposes specified in section 448B:

(iv) in the case of financial advice services, the additional purpose in section 431B; and

(b) in exercising the power, the FMA should not unnecessarily restrict the licensing of persons.

Section 393(a): replaced, on 14 March 2021, by section 38 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 393(a)(iv): inserted, on 15 March 2021, by section 19 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Issue of licences

394 FMA may issue licence

The FMA may issue a licence in accordance with this subpart.

395 Application for licence

(1) A person may apply for a licence in the manner that is specified by the FMA.

(1A) The FMA may—

(a) specify any of the matters referred to in section 548(1)(p)(i) to (iv); and

(b) specify different matters for different classes of applicant or other circumstances (including specifying time frames within which different classes of applicant must make an application for a licence); and

(c) refuse to consider the application if the person does not apply for the licence in the specified manner.

Example

In order to facilitate the orderly and efficient processing of applications, the FMA specifies that if a particular type of provider wants a licence by a particular date or for a particular purpose, the provider must apply by some other date. A different date may apply to different classes of provider.

(2) The application may be for a licence to cover 1 or more market services (or 1 or more classes of services, if the FMA specifies, on its Internet site, classes into which a market service is divided).

(3) An applicant must provide to the FMA the information that is required by the FMA to assist it in determining the application.

Section 395(1A): inserted, on 9 April 2019, by section 20 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

396 When licence must be issued

The FMA must, after receiving an application under section 395, issue a licence that covers a market service or the class of market service to which the application relates if the FMA is satisfied that—

(a) the eligibility criteria (if any) that are prescribed by the regulations for licences for that service are satisfied; and

(b) the applicant's directors, senior managers, and proposed directors and senior managers are fit and proper persons to hold their respective positions and otherwise satisfy the requirements that are prescribed by the regulations for licences for that service (if any); and

(c) the applicant is capable of effectively performing that service (having regard to the proposed conditions of licence); and

(d) there is no reason to believe that the applicant is likely to contravene the market services licensee obligations; and

(e) the applicant is, or will be, registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 on and from commencing to provide that service; and

(f) in the case of an applicant for a licence to act as a manager of a registered scheme or to be a DIMS licensee, the applicant or any authorised body under section 400 does not have in its constitution any provision under which directors of the applicant or authorised body (as the case may be) may, when exercising powers or performing duties as a director, act otherwise than in the best interests of the applicant or authorised body; and

(g) in the case of an application for a licence to act as an administrator of a financial benchmark, the issue of a licence is necessary or desirable in order to promote either or both of the additional purposes set out in section 448B.

Section 396(g): inserted, on 14 March 2021, by section 39 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

397 Procedural requirements

(1) The FMA must, before making a decision under section 396,—

(a) have regard to the prescribed matters; and

(b) have regard to whether the applicant, or 1 or more of the applicant's directors or senior managers, is a licensed provider (within the meaning of section 4 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008); and

(c) have regard to whether the provision of the market service to which the application relates is merely incidental to the provision of another market service that is or will be covered by a licence; and

(d) consult all prescribed persons or classes of prescribed persons (if any).

(1A) The FMA must make a decision under section 396 in the prescribed manner (if any).

(2) The FMA must not refuse to issue a licence, or include limits, restrictions, or other conditions under section 403(3)(a) or (4) that are materially more restrictive than those requested in the application, unless—

(a) the FMA gives the applicant no less than 10 working days' written notice of the following matters before it exercises the power:

(i) that the FMA may refuse to issue the licence or impose the limits, restrictions, or other conditions; and

(ii) the reasons why it may exercise that power; and

(b) the FMA gives the applicant or the applicant's representative an opportunity to make written submissions on the matter within that notice period.

(3) *[Repealed]*

Section 397(1)(b): amended, on 15 March 2021, by section 21(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 397(1A): inserted, on 9 August 2017, by section 73 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 397(2): amended, on 15 March 2021, by section 21(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 397(2)(a)(i): amended, on 15 March 2021, by section 21(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 397(3): repealed, on 15 March 2021, by section 21(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

398 Notice of decision

(1) The FMA must give written notice of its decision under section 396 to—

(a) the applicant; and

(b) every other prescribed person.

(2) If the FMA refuses to issue a licence or includes limits, restrictions, or other conditions under section 403(3)(a) or (4) that are materially more restrictive than those requested in the application, the written notice under subsection (1) must include a statement of the FMA's reasons for exercising the power.

Section 398(2): amended, on 15 March 2021, by section 22 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

399 Licence must be issued for particular market services

(1) If the FMA decides to issue a licence, it must ensure that it specifies the particular market services, or class of market services, that it covers.

(2) The same licence may cover more than 1 type of market services.

(3) In that case,—

(a) a reference in this Act to the market services that a licence covers is taken instead to be a reference to each of those market services severally; and

(b) the decision to add another market service or class of market services to a licence must be made on the same basis as a decision to issue a licence; and

(c) a licence may be varied, suspended, or cancelled in respect of 1 of those market services or classes only, as if each were separately licensed.

400 Licence may cover authorised bodies

(1) A licence may, in its conditions, authorise 1 or more named related bodies corporate of the licensee to provide a market service covered by the licence if the FMA is satisfied that—

(a) arrangements are or will be in place to ensure that the licensee will maintain appropriate control or supervision over the provision of that service by the related body corporate under the licence; and

(b) the related body corporate is capable of effectively performing that service (having regard to the proposed conditions of licence); and

(c) there is no reason to believe that the related body corporate is likely to contravene the market services licensee obligations; and

(d) the related body corporate is, or will be, registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 on and from commencing to provide that service; and

(e) the related body corporate meets the eligibility criteria and other requirements prescribed by the regulations for the purposes of this section (if any).

(1A) A licence may also, in its conditions, authorise 1 or more named entities to provide a financial advice service covered by the licence if the FMA is satisfied that—

(a) arrangements are or will be in place to ensure that the licensee will maintain appropriate control or supervision over the provision of that service by the entity under the licence; and

(b) the entity is capable of effectively providing that service (having regard to the proposed conditions of the licence); and

(c) there is no reason to believe that the entity is likely to contravene the market services licensee obligations; and

(d) the entity is, or will be, registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 on and from commencing to provide that service; and

(e) the entity meets the eligibility criteria and other requirements prescribed by the regulations for the purposes of this section (if any).

(1B) However, subsections (1) and (1A) do not apply if the licensee is an individual.

(2) The licence may also, in its conditions, determine that, for the purposes of 1 or more provisions of this Part, notices or reports need to be given to or by, or powers or duties may be exercised or performed by, only—

(a) the licensee (and in this case the relevant action must be treated, for that purpose, as being given to or by, or exercised or performed by, the 1 or more bodies authorised under subsection (1) or (1A)); or

(b) 1 or more bodies authorised under subsection (1) or (1A) (and in this case the relevant action must be treated, for that purpose, as being given to or by, or exercised or performed by, the licensee).

(3) If an authorised body contravenes any market services licensee obligation, the licensee must be treated as also having contravened that market services licensee obligation.

Section 400 heading: amended, on 15 March 2021, by section 23(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 400(1)(c): replaced, on 9 August 2017, by section 74 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 400(1A): inserted, on 15 March 2021, by section 23(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 400(1B): inserted, on 15 March 2021, by section 23(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 400(2)(a): amended, on 15 March 2021, by section 23(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 400(2)(b): amended, on 15 March 2021, by section 23(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

401 FMA must send licence details to Registrar

(1) The FMA must send the details specified in subsection (2) to the Registrar.

(2) The details, for each licence, are—

(a) the name of the licensee; and

(b) the market services or class of market services covered by the licence; and

(c) the conditions of the licence imposed by the FMA (including whether an associated custodian is permitted for the purposes of a discretionary investment management service); and

(d) the authorised bodies (if any); and

(e) any other prescribed information.

(3) The FMA may publicly notify any details about a licence as it thinks fit.

Conditions of licence

402 Conditions of licence

(1) The licence is subject to—

(a) a condition that the licensee or authorised body may, under the licence, provide only the market services or class of market services to which the licence relates and for which each person is authorised under the licence; and

(b) the conditions imposed by the FMA under section 403; and

(c) the conditions imposed by regulations (if any).

(2) The condition in subsection (1)(a) is subject to the limits and restrictions imposed under section 403(3)(a).

(3) The licensee and every authorised body must comply with the conditions imposed on the licensee's licence.

403 When FMA may impose permitted conditions

(1) The FMA may, by written notice to the applicant or licensee,—

(a) impose conditions on a licence when the licence is issued; and

(b) vary, revoke, add to, or substitute any conditions of licence imposed under this section at any time after the licence is issued.

(2) A condition referred to in subsection (1) may only be of a prescribed kind or relate to a prescribed matter (except as set out in subsections (3) to (5)).

(3) A condition referred to in subsection (1) may—

(a) impose limits or restrictions on the services that are covered by the licence (for example, by reference to particular financial products or other financial advice products, issuers, investors, or clients, or classes of financial products or other financial advice products, issuers, investors, or clients, or by reference to any other matters):

(b) impose conditions relating to the requirements referred to in section 396 or 400 (for example, to ensure that those requirements continue to be satisfied and to require verification that those requirements continue to be satisfied):

(c) specify the date of expiry of the licence (the **expiry date**).

(4) In the case of a licence relating to a financial advice service, a condition referred to in subsection (1) may also—

(a) state which types of financial advice may, or may not, be given by the following on behalf of the licensee or an authorised body:

(i) financial advisers in general, a class or classes of financial advisers, or 1 or more particular financial advisers:

(ii) nominated representatives in general, a class or classes of nominated representatives, or 1 or more particular nominated representatives:

(b) authorise the licensee or an authorised body (**P**) to do either or both of the following:

(i) engage an entity to give regulated financial advice to P's retail clients on P's behalf:

(ii) engage an individual through 1 or more interposed persons (as described in section 431E(b)) to give advice to P's retail clients on P's behalf:

(c) if the licence includes an authorisation under paragraph (b), impose limits or restrictions on that authorisation (including, for example, by requiring the entity or an interposed person to be authorised by a licence (whether as licensee or an authorised body) to provide a financial advice service, or to be registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008, or both):

(d) prohibit (whether absolutely, in specified circumstances, or unless specified requirements are met) P from engaging a financial adviser to give regulated financial advice on P's behalf if P knows or ought to know that the financial adviser is also engaged by another financial advice provider to give regulated financial advice on that other provider's behalf.

(5) In the case of a licence to act as an administrator of a financial benchmark, a condition referred to in subsection (1) may also impose conditions to achieve the purposes set out in section 448B (for example, to ensure that the benchmark complies with applicable international requirements).

Section 403(2): amended, on 14 March 2021, by section 40(1) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 403(3)(a): amended, on 15 March 2021, by section 24(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 403(4): inserted, on 15 March 2021, by section 24(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 403(5): inserted, on 14 March 2021, by section 40(2) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

404 Licensee may apply for variation of conditions

(1) A licensee may apply, in the manner that is specified by the FMA, for the FMA to exercise a power under section 403(1)(b) (for example, to vary a condition that imposes restrictions on the services that can be provided under the licence or to vary the authorised bodies or the market services or class of services that those bodies may provide).

(2) A licensee must provide to the FMA the information that is required by the FMA to assist it in determining the application.

405 Procedure for variation of conditions

The FMA must not exercise a power under section 403(1)(b) (except on an application under section 404), or refuse an application for a variation under section 404, unless—

(a) the FMA gives the licensee no less than 10 working days' written notice of the following matters before it exercises the power:

(i) that the FMA may exercise the power; and

(ii) the reasons why it may exercise the power; and

(b) the FMA gives the licensee or the licensee's representative an opportunity to make written submissions on the matter within that notice period.

406 Consequences of contravening conditions

(1) If a licensee or an authorised body contravenes a condition of a licence, the FMA may exercise a power under subpart 3 (for example, it may require the licensee or authorised body to submit an action plan).

(2) Subsection (1) does not limit subpart 3 of Part 8 (which provides for civil liability that may be imposed in relation to a contravention of a condition imposed by regulations).

406A Effect of condition requiring giver of advice or interposed person to be authorised by licence or registered

(1) This section applies if, under section 403(4)(b) and (c), a licence relating to a financial advice service—

(a) authorises the licensee or an authorised body (**P**) to do either or both of the following:

(i) engage an entity (**E**) to give regulated financial advice to P's retail clients on P's behalf:

(ii) engage an individual through 1 or more interposed persons (**F**) to give advice to P's retail clients on P's behalf; and

(b) includes either or both of the following conditions:

(i) a condition requiring E or F to be authorised by a licence to provide a financial advice service (a **licensing condition**):

(ii) a condition requiring E or F to be registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (**FSP Act**) (a **registration condition**).

(2) If the licence includes a licensing condition, for the purpose of enabling compliance with that condition, this Part applies,—

(a) in relation to E, as if E, in giving regulated financial advice on behalf of P, were providing a financial advice service; and

(b) in relation to F, as if F, in engaging individuals to give regulated financial advice on behalf of P, were providing a financial advice service.

(3) If the licence includes a registration condition, for the purpose of enabling compliance with that condition, the FSP Act applies,—

(a) in relation to E, as if E, in giving regulated financial advice on behalf of P, were providing a financial advice service; and

(b) in relation to F, as if F, in engaging individuals to give regulated financial advice on behalf of P, were providing a financial advice service.

(4) This section does not affect the application of this Part or the FSP Act to P.

Section 406A: inserted, on 15 March 2021, by section 25 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Expiry, suspension, or cancellation of licences

407 Duration of licence

(1) A licence continues in force until the close of its expiry date unless sooner cancelled.

(2) If a licensee applies for a new licence no later than 2 months before the expiry date of an existing licence that the new licence is intended to supersede, and the application is not disposed of before the expiry date, the existing licence continues in force until the application is disposed of.

408 When FMA may suspend or cancel licence

The FMA may suspend (for a specified period or until a specified requirement is met and in relation to the licensee, any authorised body or bodies, or all of them) or cancel a licence—

(a) if the licensee, by written notice, requests the FMA to do so; or

(b) if the FMA is satisfied that the licensee or an authorised body has died, is incapacitated, has ceased to exist, or has become subject to an insolvency event; or

(c) in accordance with subpart 3.

409 Effect of expiry, suspension, or cancellation of licence on appointments

(1) The expiry or cancellation of a licence does not, of itself, terminate an appointment held by the licensee or any authorised body (but, if the person continues to hold the appointment and does not obtain a licence, or authorisation under a licence, that covers the appointment, the person may contravene section 388).

(2) If a licence is suspended, the person or persons to whom the suspension relates are taken not to hold, or be authorised by, that licence while the suspension is in effect.

Subpart 3—Monitoring and enforcement of licences

410 Meaning of material change of circumstances

In this subpart, **material change of circumstances**, in relation to a licence, means—

(a) a change that adversely affects the licensee's or an authorised body's capacity to perform the market services covered by the licence in an effective manner; or

(b) a change that means that the requirements referred to in section 396(a) to (g) or 400(1)(a) to (e) or (1A)(a) to (e) are not, or are no longer, satisfied

(where those provisions are applied with all necessary modifications as if references to the applicant or body corporate (or entity) were references to the licensee or authorised body respectively).

Section 410(b): replaced, on 15 March 2021, by section 26 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Reports

411 Licensee must deliver reports to FMA

Every licensee must, at the prescribed times or on the occurrence of the prescribed events and otherwise in the prescribed manner, send to the FMA reports that contain the prescribed information.

412 Licensee must report certain matters

(1) Every licensee must ensure that there are in place effective methods for—

(a) monitoring the licensee's and every authorised body's compliance with the market services licensee obligations; and

(b) identifying material changes in circumstances.

(2) Subsection (3) applies if a licensee believes that—

(a) the licensee or an authorised body has contravened, may have contravened, or is likely to contravene a market services licensee obligation in a material respect; or

(b) a material change of circumstances has occurred, may have occurred, or is likely to occur in relation to the licence; or

(c) the information provided under section 395 or 404 is false or misleading in a material particular.

(3) The licensee must, as soon as practicable after the licensee forms the belief referred to in subsection (2), send a report containing details of the belief, the licensee's grounds for the belief, and all other prescribed information—

(a) to the FMA; or

(b) if the licensee is a manager of a registered scheme (other than a restricted scheme),—

(i) to the FMA and the supervisor, if the report is of a contravention or possible contravention of a market services licensee obligation imposed by a condition of the licence; or

(ii) to the supervisor, if the report is of a contravention or possible contravention of any other market services licensee obligation.

413 Restriction on use of report

A report provided by a licensee under section 412 is not admissible as evidence in a criminal proceeding against the licensee, except in a criminal proceeding that concerns the falsity of the report.

FMA's powers in case of contravention of market services licensee obligation, material change, etc

414 FMA's powers in case of contravention of market services licensee obligation, material change, etc

(1) The FMA may exercise a power under subsection (2) if it is satisfied that—

(a) a licensee or an authorised body has materially contravened a market services licensee obligation; or

(b) a material change of circumstances has occurred in relation to a licence; or

(c) the information provided under section 395 or 404 by a licensee is false or misleading in a material particular; or

(d) a licensee or an authorised body is likely to materially contravene a market services licensee obligation or a material change of circumstances is likely to occur in relation to a licence.

(2) The FMA may, by written notice to the licensee or an authorised body and otherwise in the prescribed manner, do 1 or more of the following:

(a) censure the licensee or authorised body (or both):

(b) require the licensee or authorised body (or both) to submit an action plan to the FMA within the time and in the manner specified by the FMA:

(c) give a direction to the licensee or authorised body (or both).

(3) The FMA may also, by written notice to the licensee and otherwise in the prescribed manner, suspend (for a specified period or until a specified requirement is met and in relation to the licensee, any authorised body or bodies, or all of them) or cancel the licence of the licensee if it is satisfied that—

(a) subsection (1)(a), (b), or (c) applies; and

(b) the licensee or an authorised body does not meet, or no longer meets, the requirements referred to in section 396(a) to (g) or 400(1)(a) to (e) or (1A)(a) to (e) (where those provisions are applied with all necessary modifications as if references to the applicant or body corporate (or entity) were references to the licensee or authorised body respectively).

(4) Section 403 also provides for the FMA to vary, revoke, add to, or substitute any conditions of a licence (for example, by removing an authorisation for an authorised body).

Section 414(3)(b): replaced, on 15 March 2021, by section 27 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

415 Procedure for exercising powers

(1) The FMA must not exercise a power under section 414 unless—

(a) the FMA gives the licensee or an authorised body no less than 10 working days' written notice of the following matters before it exercises the power:

(i) that the FMA may exercise the power; and

(ii) the reasons why it may exercise the power; and

(b) the FMA gives the licensee or authorised body or the licensee's or authorised body's representative an opportunity to make written submissions on the matter within that notice period.

(2) The FMA must, before exercising a power under section 414(3), consider whether, in the circumstances, it would be more appropriate to exercise a power under section 414(2).

416 Notice requirements

(1) A notice under section 414(2) or (3) must—

(a) state the FMA's reasons for giving the notice; and

(b) in the case of section 414(3), specify the date on which the suspension or cancellation takes effect.

(2) The FMA must give a copy of the notice to every prescribed person (if any).

Action plan

417 Action plan

If a notice under section 414 requires a person to submit an action plan to the FMA, the person must, as soon as practicable but in any case within the time specified by the FMA and otherwise in the manner specified by the FMA, submit to the FMA an action plan that specifies—

(a) the actions, as the case may be, that the person proposes to take to—

(i) remedy or avoid the contravention or likely contravention of the market services licensee obligation; or

(ii) avoid any further contravention of the market services licensee obligation; or

(iii) mitigate or avoid any adverse effects or changes arising, or likely to arise, from the material change of circumstances; or

(iv) correct the false or misleading information or mitigate the adverse consequences of providing the false or misleading information (or both); and

(b) the date by which each step will be taken.

418 Approval, amendment, or rejection of action plan

(1) If a person submits an action plan, the FMA may—

(a) approve the action plan; or

(b) require the person to amend the action plan and resubmit it to the FMA by a specified date for approval or rejection; or

(c) reject the action plan.

(2) If the FMA requires the person to amend an action plan provided to the FMA, the person must, within the time specified by the FMA, provide an amended action plan that addresses the matter required to be amended.

(3) If the FMA approves the action plan (whether as first provided or after amendment), the person must comply with the action plan.

(4) An action plan that has been approved by the FMA may be varied at any time by agreement between the person and the FMA.

419 Consequences of failure to submit action plan, rejection of action plan, or failure to comply with action plan

(1) The FMA may exercise a power under section 414(2)(a) or (c) or (3) if—

(a) a person fails to submit an action plan or amended action plan within the time and in the manner specified by the FMA; or

(b) the FMA rejects an action plan; or

(c) the FMA is satisfied that an action plan has not been complied with.

(2) A contravention of section 417 or 418 may also give rise to civil liability (*see* subpart 3 of Part 8).

Directions

420 Directions

(1) If a notice under section 414 gives a direction to a person, the notice must specify—

(a) the actions, as the case may be, that the person must take to—

(i) remedy or avoid the contravention or likely contravention of the market services licensee obligation; or

(ii) avoid any further contravention of the market services licensee obligation; or

(iii) mitigate or avoid any adverse effects or changes arising, or likely to arise, from the material change of circumstances; or

(iv) correct the false or misleading information or mitigate the adverse consequences of providing the false or misleading information (or both); and

(b) the date by which each step must be taken.

(2) The person to whom the direction is given must comply with the direction.

421 Consequences of failure to comply with directions

(1) A person that refuses or fails, without reasonable excuse, to comply with a direction under section 414(2)(c) commits an offence and is liable on conviction to a fine not exceeding $300,000.

(2) If the FMA is satisfied that a direction under section 414(2)(c) has not been complied with, the FMA may (without limitation) exercise a power under section 414(2)(a) or (3).

(3) A contravention of section 420 may also give rise to civil liability (*see* subpart 3 of Part 8).

Subpart 4—Disclosure obligations for certain services provided to retail investors

422 Application of subpart

This subpart applies to a licensee or an authorised body in respect of any of the following services provided under a licence:

(a) the provision of a discretionary investment management service that is a retail service:

(b) the provision of a prescribed intermediary service (but only if the regulations state that this subpart applies).

423 Disclosure must be made to retail investor

A licensee or an authorised body that provides a service to which this subpart applies must ensure that a disclosure statement relating to the service is provided to each retail investor who receives the service, in accordance with this Act and the regulations.

424 Timing and method of disclosure

(1) The disclosure statement required by section 423 must be provided in accordance with subsection (2) (unless subsection (3) applies),—

(a) in the case of a discretionary investment management service, before the investment authority is granted by the retail investor; or

(b) in the case of a prescribed intermediary service, at the prescribed time.

(2) The disclosure statement must be given to the retail investor or delivered or sent to the retail investor's last known address or an address (including an electronic address) specified by the investor for that purpose.

(3) If it is not practicable to comply with subsection (1) or (2) by reason of any prescribed circumstance, the licensee or authorised body must, under section 423,—

(a) give the minimum prescribed disclosure statement in accordance with the regulations; and

(b) provide the disclosure statement that would otherwise be required under that section to the retail investor as soon as practicable afterwards.

425 Purpose of disclosure statement

The purpose of a disclosure statement under section 423 is to provide certain information that is likely to assist a retail investor to decide—

(a) whether or not to proceed, or continue to proceed, with the service by the licensee or authorised body in question; or

(b) to change any instruction in relation to the provision of that service by the licensee or authorised body.

426 Disclosure statement

(1) A disclosure statement may be combined with other disclosure statements under section 423 (and may be combined with other disclosure statements under this Act or the Banking (Prudential Supervision) Act 1989) except in the prescribed circumstances.

(2) A disclosure statement must—

(a) be in writing; and

(b) state the date as at which the disclosure statement is prepared; and

(c) state the name and contact details of the licensee or authorised body providing the service; and

(d) contain all of the information that it is required to contain by the regulations; and

(e) be accompanied by all the documents that the regulations require it to be accompanied by; and

(f) comply with all other requirements of the regulations relating to the content of the disclosure statement.

(3) The disclosure statement must comply with all requirements of the regulations relating to the form and presentation of the statement.

(4) Subsection (2) does not apply to the minimum prescribed disclosure statement referred to in section 424(3)(a).

Section 426(1): amended, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 426(1): amended, on 15 March 2021, by section 28 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

426A Further prescribed information to be made available

(1) A licensee or an authorised body that provides the service must,—

(a) at the request of a prescribed person or at the prescribed times or on the occurrence of the prescribed events, make available to the prescribed

person the information that is required to be made available under this section by the regulations; and

(b) at the prescribed times or on the occurrence of the prescribed events, make publicly available the information that is required to be made publicly available by the regulations.

(2) The information must be made available in the prescribed manner.

Section 426A: inserted, on 30 March 2018, by section 75 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

427 False or misleading statements and omissions

(1) Subsections (2) to (5) apply if—

(a) there is—

(i) a statement in a disclosure statement that is false or misleading or is likely to mislead; or

(ii) an omission from a disclosure statement of information that is required to be contained in the disclosure statement by the regulations; and

(b) the statement or omission is materially adverse from the point of view of a retail investor.

(2) The licensee or authorised body must not provide the disclosure statement to a person under section 423.

(3) If the disclosure statement has already been provided to a person (**A**), the licensee or authorised body must not continue to provide the service to A—

(a) in the prescribed circumstances (if any); or

(b) if the licensee or authorised body fails to comply with any prescribed conditions.

(4) If the licensee or authorised body continues to provide the service to A, the licensee or authorised body must provide to A a new disclosure statement that is not defective in terms of subsection (1)(a) and (b).

(5) The new disclosure statement under subsection (4) must be provided in the prescribed manner (if any).

(6) A person must not make available to any person or the public any information under section 426A (the **further disclosure**) if—

(a) there is—

(i) a statement in the further disclosure that is false or misleading or is likely to mislead; or

(ii) an omission from the further disclosure of information that is required to be contained in the further disclosure by this Act or the regulations; and

(b) the statement or omission is materially adverse from the point of view of a retail investor.

(7) *See* section 511 (offence to knowingly or recklessly contravene subsection (2) or (6)).

Section 427: replaced, on 30 March 2018, by section 76 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

428 Miscellaneous provisions relating to false or misleading statements and omissions

(1) For the purposes of section 427, a statement about a future matter (including the doing of, or refusing to do, an act) must be taken to be misleading if the person making the statement does not have reasonable grounds for making it.

(2) Subsection (1) does not limit the meaning of a reference to a misleading statement.

(3) Section 427 does not limit sections 423 to 426A.

Section 428: replaced, on 30 March 2018, by section 77 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Subpart 5—Requirement for certain services to be provided under client agreements

429 Application of subpart

This subpart applies to a licensee or an authorised body in respect of any of the following services provided under the licence:

(a) the provision of a discretionary investment management service that is a retail service:

(b) acting as a derivatives issuer in respect of a derivative offered under a regulated offer:

(c) the provision of a prescribed intermediary service (but only if the regulations state that this subpart applies).

430 Need for client agreement

(1) The licensee or authorised body that provides the service to an investor must ensure that there is a client agreement governing that service.

(2) The client agreement must be entered into,—

(a) in the case of a discretionary investment management service, at the same time as or before the investment authority is granted by the investor; and

(b) in the case of a derivative offered under a regulated offer, before the derivative is issued to the investor; and

(c) in the case of a prescribed intermediary service, at the prescribed time.

431 Contents, form, and effect of client agreement

(1) A client agreement required by this subpart must provide adequately for the matters prescribed by the regulations.

(2) The client agreement is treated as containing any provision that is implied into it by or under this Act.

(3) The client agreement must be in writing and be contained in 1 or more documents that are legally enforceable as between the retail investor and the licensee or authorised body.

(4) The client agreement has no effect to the extent that it contravenes, or is inconsistent with, this Act or any term implied into it by or under this Act.

Subpart 5A—Additional regulation of financial advice and financial advice services

Subpart 5A: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Preliminary matters

Heading: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431A Overview of financial advice and financial advice services regime

(1) This subpart and other parts of this Act regulate financial advice and financial advice services as follows:

(a) a person gives financial advice if the person makes a recommendation, gives an opinion, or provides financial planning of a kind described in section 431C(1). The advice is regulated financial advice if it is given in the ordinary course of a business and is not excluded under clauses 8 to 18 of Schedule 5 (*see* section 431C(3)):

(b) a person must not carry on a business of giving regulated financial advice unless the person is authorised by a market services licence or exempt from the licensing requirement (*see* sections 388(ba), 389(2), and 431D). A person may be authorised as a licensee or as an authorised body (*see* section 400):

(c) there are limitations on who can give regulated financial advice on behalf of a financial advice provider to a retail client (*see* section 431F). This section is a Part 6 services provision, contravention of which may give rise to civil liability (*see* section 449):

(d) conditions of the provider's licence may also limit the types of advice that may be given by financial advisers or nominated representatives (*see* sections 403(4)(a) and 546(1)(d)(iv)):

(e) people who give financial advice, financial advice providers, and any interposed persons are subject to the duties set out in sections 431I to 431R:

(f) section 431H sets out who is responsible if those duties are contravened and the nature of the person's liability. Sections 431I to 431R are also Part 6 services provisions under section 449.

(2) This section is a guide only to the general scheme and effect of this Act in relation to financial advice and financial advice services.

Section 431A: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431B Additional purpose of subpart

(1) This subpart has the additional purpose (in addition to those set out in sections 3 and 4) of regulating the giving of financial advice and provision of financial advice services with a view to ensuring—

(a) the availability of financial advice for persons seeking that advice; and

(b) the quality of financial advice and financial advice services.

(2) This section does not limit section 3 or 4.

Section 431B: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Interpretation

Heading: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431C Meaning of financial advice and regulated financial advice

(1) A person gives **financial advice** if the person—

(a) makes a recommendation or gives an opinion about acquiring or disposing of (or not acquiring or disposing of) a financial advice product; or

(b) makes a recommendation or gives an opinion about switching funds within a managed investment scheme; or

(c) designs an investment plan for a person that—

(i) purports to be based on—

(A) an analysis of the person's current and future overall financial situation (including investment needs); and

(B) the identification of the person's investment goals; and

(ii) includes 1 or more recommendations or opinions on how to realise 1 or more of those goals; or

(d) provides financial planning of a kind prescribed by the regulations.

(2) However, a person does not give financial advice merely by doing 1 or more of the things set out in clause 7 of Schedule 5.

(3) Financial advice is **regulated financial advice** if—

(a) it is given in the ordinary course of a business; and

(b) it is not excluded under any of clauses 8 to 18 of Schedule 5.

(4) Subsections (1) and (3) are subject to a declaration under section 562(1)(gb).

Section 431C: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431D When financial advice service is provided

(1) A person (**P**) provides a **financial advice service** if, in the ordinary course of P's business,—

(a) P engages 1 or more other persons to give regulated financial advice to P's clients on P's behalf; or

(b) P gives regulated financial advice to P's clients on P's own account.

(2) Subsection (1) is subject to a declaration under section 562(1)(gc).

Example

ABC Limited (**ABC**) is a firm that gives a range of investment advice to its clients. Some of this advice is given through its employees. Some of this advice is given through its Internet site. ABC provides a financial advice service (and must be licensed or be an authorised body under a licence (*see* section 388(ba))). ABC is also required to be registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the **FSP Act**).

As part of ABC's business, Susan is employed by ABC to give financial advice to ABC's clients on its behalf. Although Susan is giving advice, she is not giving it on her own account, so she is not providing a financial advice service (and does not need to hold a licence).

Under the conditions of ABC's licence, the type of service that Susan gives may not be given by a nominated representative. The type of service can be given only by a financial adviser (that is, a person who is registered under the FSP Act in relation to a financial advice service). *See* section 22C of the FSP Act, which allows Susan to register even though, as an employee, she is not in the business of providing financial advice services.

If Susan were to leave ABC and set up business giving financial advice on her own account, she would be providing a financial advice service and would therefore be a financial advice provider (who must, therefore, hold a licence).

Section 431D: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431E Meaning of engaged

A person (**A**) is **engaged** by another person (**P**) if—

(a) A is engaged directly by P (for example, if A is an employee or a contractor of P); or

(b) A is engaged indirectly through 1 or more interposed persons (for example, if A is an employee of another person who is a contractor of P).

Section 431E: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Limitations on giving regulated financial advice and holding out

Heading: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431F Limitation on who can give regulated financial advice to retail clients on behalf of financial advice provider

(1) A person (**A**) must not give regulated financial advice on behalf of a financial advice provider (**P**) to a retail client unless—

(a) both of the following apply:

(i) A is a financial adviser or a nominated representative nominated under section 431T by P:

(ii) A is engaged directly by P (as described in section 431E(a)); or

(b) all of the following apply:

(i) A is a financial adviser or a nominated representative nominated under section 431T by P:

(ii) A is engaged by P indirectly through 1 or more interposed persons (as described in section 431E(b)):

(iii) the conditions on P's licence authorise P to engage A through those interposed persons to give the advice; or

(c) both of the following apply:

(i) A is an entity:

(ii) the conditions on P's licence authorise P to engage A to give the advice.

(2) A financial advice provider or an interposed person must not allow a person engaged by the provider or person to give advice in contravention of subsection (1).

(3) In this section, **P's licence** means the licence under which P is authorised (as licensee or an authorised body) to provide the financial advice service.

Section 431F: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431G Prohibitions on holding out in relation to giving financial advice

A person must not hold out that the person, or another person,—

(a) is a financial advice provider, a financial adviser, or a nominated representative if that is not the case; or

(b) is lawfully able to do any of the following if that is not the case:

(i) provide a financial advice service:

(ii) provide a particular kind of financial advice service:

(iii) give regulated financial advice:

(iv) give a particular kind of regulated financial advice:

(v) give regulated financial advice about a particular financial advice product or a particular kind of financial advice product:

(vi) give regulated financial advice to retail clients, to wholesale clients, or to retail and wholesale clients:

(vii) provide a financial advice service, or give regulated financial advice, in particular circumstances.

Section 431G: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Duties on persons giving regulated financial advice

Heading: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431H Liability for duties

(1) Sections 431I to 431P (the **duty provisions**) impose duties on persons who give regulated financial advice to clients.

(2) Sections 431Q and 431R impose additional duties on financial advice providers and interposed persons that engage others to give regulated financial advice.

(3) If a financial advice provider contravenes a duty provision or section 431Q or 431R, the provider—

(a) may be civilly liable for the contravention:

(b) is not liable to disciplinary action or a deregistration or suspension order:

(c) may face consequences under subpart 3 (which relates to enforcement of licences).

(4) If a person (**A**) who gives advice on behalf of a financial advice provider (**P**) contravenes a duty provision, liability is as follows:

(a) if A is a financial adviser, A—

(i) is not civilly liable for the contravention; but

(ii) may be subject to either or both of the following:

(A) disciplinary action:

(B) a deregistration or suspension order:

(b) if A is an individual but not a financial adviser, A is not civilly liable for the contravention:

(c) if A is an entity, A may be civilly liable for the contravention:

(d) P—

(i) may be civilly liable for contravening the duty provision as a result of the operation of sections 535 and 536 (which relate to the attribution of state of mind and conduct) (but *see also* section 431U, which limits when pecuniary penalty orders may be made); and

(ii) may be liable for contravening section 431Q:

(e) if A was engaged by P indirectly through 1 or more interposed persons (as described in section 431E(b)), each interposed person—

(i) may be civilly liable for contravening the duty provision as a result of the operation of sections 535 and 536 (which relate to the attribution of state of mind and conduct); and

(ii) may be liable for contravening section 431Q.

(5) If an interposed person (as described in section 431E(b)), contravenes section 431Q or 431R, that person—

(a) may be civilly liable for the contravention:

(b) is not liable to disciplinary action or a deregistration or suspension order:

(c) if they are a licensee or an authorised body, may face consequences under subpart 3 (which relates to enforcement of licences).

(6) The fact that an interposed person may be liable under subsection (4)(e) or (5) does not affect the liability of any other interposed person or of the provider.

(7) This section—

(a) does not affect any liability that a person may have for a contravention as a person who is involved in the contravention (*see* section 533); and

(b) does not affect any criminal liability that a person may have for a contravention (for example, under section 511 for contravening section 431P); and

(c) does not limit the exercise by the FMA or a court of any of its powers under Part 8 other than subpart 3.

(8) In this section,—

civil liability, in relation to the contravention of a provision that is a Part 6 services provision (*see* section 449), means civil liability under subpart 3 of Part 8 for that contravention

deregistration or suspension order means an order under section 469(2) in relation to a person's registration under the Financial Service Providers (Registration and Dispute Resolution) Act 2008

disciplinary action, in relation to a contravention of a provision, means disciplinary action under Part 5 of Schedule 5 for the conduct constituting the contravention.

Section 431H: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431I Duty to meet standards of competence, knowledge, and skill

A person must not give regulated financial advice to a retail client unless the person meets—

(a) the standards of competence, knowledge, and skill (including any continuing professional development requirements) provided in the code of conduct for giving the advice; and

(b) any prescribed eligibility criteria in relation to the giving of the advice.

Section 431I: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431J Duty to ensure client understands nature and scope of advice

A person must not give regulated financial advice to a retail client unless the person has taken reasonable steps to ensure that the client understands the nature and scope of the advice being given, including any limitations on the nature and scope of the advice.

Section 431J: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431K Duty to give priority to client's interests

(1) This section applies if—

(a) a person (**A**) gives regulated financial advice to a client (**C**); and

(b) A knows, or ought reasonably to know, that there is a conflict between—

(i) C's interests; and

(ii) A's own interests or the interests of a person connected with the giving of the advice.

(2) In giving the advice, A must give priority to C's interests by taking all reasonable steps to ensure that the advice is not materially influenced by any of the following:

(a) A's own interests:

(b) the interests of a person connected with the giving of the advice.

(3) In this section, each of the following is a person **connected with the giving of the advice**:

(a) a person associated with A:

(b) if A gives the advice on behalf of a financial advice provider,—

(i) the financial advice provider:

(ii) a person associated with the financial advice provider:

(iii) if A is engaged by the provider through 1 or more interposed persons,—

(A) an interposed person:

(B) a person associated with an interposed person.

Section 431K: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431L Duty to exercise care, diligence, and skill

A person who gives regulated financial advice to a client must exercise the care, diligence, and skill that a prudent person engaged in the occupation of giving regulated financial advice would exercise in the same circumstances.

Compare: 2008 No 91 s 33

Section 431L: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431M Duty to comply with code of conduct

A person who gives regulated financial advice to a retail client must comply with the standards of ethical behaviour, conduct, and client care required by the code of conduct.

Compare: 2008 No 91 s 37

Section 431M: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431N Duty relating to offer that contravenes Act or regulations

(1) A person (**A**) who gives regulated financial advice to a client (**C**) must not recommend that C acquire a financial product if—

(a) the product is a contravening product; and

(b) A knows, or ought reasonably to know, that the product is a contravening product.

(2) A financial product is a **contravening product**—

(a) if the product is being offered under a regulated offer and that offer contravenes this Act or the regulations; or

(b) if,—

(i) when the product was offered, the offer was a regulated offer and contravened this Act or the regulations; and

(ii) the contravention has not been remedied.

Section 431N: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431O Duty to make prescribed information available

(1) A person who gives regulated financial advice to a client must make the prescribed information available in the prescribed manner when required to do so by the regulations.

(2) The regulations may (without limitation) require information to be made available—

(a) at the request of a prescribed person, at prescribed times, or when a prescribed event occurs:

(b) to a particular person or persons or to the public.

Examples

ABC Limited (**ABC**) provides investment advice to a client (**C**).

ABC must (if required by the regulations) provide information to C when the service is first provided (for example, about fees, material interests, relationships and associations, the type of advice, dispute resolution arrangements, and other matters relevant to the performance of the service).

ABC must also (if required by the regulations) provide ongoing information to C.

Compare: 2008 No 91 ss 21–31

Section 431O: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431P False or misleading statements and omissions

(1) A person must not make information available under section 431O if—

(a) there is—

(i) a statement in the information that is false or misleading or is likely to mislead; or

(ii) an omission from the information that is required by the regulations; and

(b) the statement or omission is materially adverse from the point of view of the client.

(2) For the purposes of this section, information about a future matter (including the doing, or not doing, of an act) is misleading if the person making the statement does not have reasonable grounds for making it.

(3) Subsection (2) does not limit the meaning of a reference to a misleading statement.

(4) This section does not limit section 431O.

(5) *See* section 511 (offence to knowingly or recklessly contravene this section).

Compare: 2008 No 91 s 34

Section 431P: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Additional duties on financial advice providers and interposed persons that engage others to give advice

Heading: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431Q Persons engaging others to give advice must ensure compliance with duties

(1) A financial advice provider that engages another person (**A**) to give regulated financial advice must take all reasonable steps to ensure that A complies with sections 431I to 431P.

(2) If A is engaged by the provider indirectly through 1 or more interposed persons (as described in section 431E(b)), each of those interposed persons must also take all reasonable steps to ensure that A complies with sections 431I to 431P.

Section 431Q: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431R Duties of persons who engage nominated representatives

(1) A financial advice provider (**P**) that engages 1 or more nominated representatives to give regulated financial advice on P's behalf must have in place processes and controls that—

(a) limit the nature and scope of the advice that the nominated representatives give; and

(b) allow P to regulate what advice is given and the circumstances in which it is given.

(2) The processes and controls must ensure that the advice given by a nominated representative is commensurate with their competence, knowledge, and skill.

(3) P and any interposed person through whom any of the nominated representatives are engaged must—

(a) ensure that the nominated representatives comply with P's processes and controls; and

(b) monitor the nominated representatives and the advice they give to ensure that—

(i) those processes and controls are effective and are complied with; and

(ii) the nominated representatives comply with their duties under this subpart.

(4) Neither the provider nor any interposed person may give, or offer to give, to any of its nominated representatives any kind of payment or other incentive that is intended to encourage, or is likely to have the effect of encouraging, a nominated representative to engage in conduct that contravenes any duty under sections 431I to 431P.

Section 431R: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Miscellaneous provisions

Heading: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431S Protection of individual who reports breach

(1) This section applies if an individual who gives regulated financial advice (**A**)—

(a) reasonably believes that a person has contravened a provision of this Act that relates to the giving of financial advice or the provision of a financial advice service; and

(b) reports that belief to the FMA.

(2) If A makes the report in good faith,—

(a) no civil, criminal, or disciplinary proceedings may be brought against A as a result of A having made the report; and

(b) no person may terminate A's employment or appointment as a result of A having made the report; and

(c) no tribunal, body, or authority that has jurisdiction in respect of A's professional conduct may make an order against, or do any act in relation to, A as a result of A having made the report.

Section 431S: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431T Nomination of nominated representatives

(1) A financial advice provider (**P**) may nominate an individual (**A**) as a nominated representative of P if—

(a) P holds, or is authorised to provide a service under, a licence that covers financial advice services; and

(b) A—

(i) is engaged by P to give financial advice on P's behalf; and

(ii) is not a financial adviser or a financial advice provider; and

(iii) is not a nominated representative of any other financial advice provider.

(2) However, subsection (1)(b)(iii) does not prevent an individual being nominated as a nominated representative of 2 or more financial advice providers if—

(a) the providers are authorised to provide a financial advice service under the same licence; or

(b) the nomination of the same individual as a nominated representative of 2 or more providers is authorised by conditions on the providers' licences

and those conditions are related to an arrangement referred to in section 403(4)(b)(ii).

(3) A nomination must be made in the manner (if any) specified by the FMA.

(4) A nomination—

(a) takes effect on the date it is made or any later date specified in it; and

(b) remains in force until the first to occur of the following:

(i) P revokes the nomination by giving written notice to A:

(ii) P ceases to comply with subsection (1)(a):

(iii) A ceases to comply with subsection (1)(b).

(5) A financial advice provider must keep an up-to-date record of its nominated representatives in the prescribed manner.

Section 431T: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431U Limitation on pecuniary penalty orders against financial advice providers

(1) This section applies if—

(a) a financial adviser contravenes a duty provision (as defined in section 431H(1)); and

(b) the financial advice provider on whose behalf the financial adviser was acting is civilly liable for the contravention of a duty provision (as described in section 431H(4)(d)(i)); and

(c) the financial advice provider took all reasonable steps to ensure that the financial adviser did not contravene the duty provision.

(2) A pecuniary penalty order may not be made under section 489 against the financial advice provider in relation to the contravention of the duty provision.

Section 431U: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Subpart 5B—Regulation of client money or property services

Subpart 5B: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431V Overview of client money or property services regime

(1) This subpart and other legislation regulate client money or property services as follows:

(a) the Financial Service Providers (Registration and Dispute Resolution) Act 2008 provides for when a person in the business of providing the service must be registered under that Act and when that provider must be a member of an approved dispute resolution scheme. The provider is not required to hold a market services licence:

(b) a person who provides the service must—

(i) disclose information to retail clients under section 431X; and

(ii) exercise care, diligence, and skill under section 431ZA; and

(iii) handle client money and property in accordance with sections 431ZC to 431ZH, including holding the money or property on trust (if those duties apply under section 431Z(2)):

(c) section 431ZI sets out who is responsible if those duties are contravened.

(2) This section is a guide only to the general scheme and effect of this subpart and other legislation in relation to client money or property services.

Section 431V: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Interpretation

Heading: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431W Meaning of client money or property service and certain other terms

(1) A **client money or property service**—

(a) is the receipt of client money or client property by a person and the holding, payment, or transfer of that client money or client property; and

(b) includes a custodial service.

(2) A **custodial service** is the holding of client money or client property by a person (**A**) in trust for, or on behalf of, a client (**C**), or another person nominated by C, under an agreement between A and C or between A and another person with whom C has an agreement (whether or not there are also other parties to the agreement).

(3) The mere transmission of a non-transferable instrument payable to another person is not a client money or property service.

(4) A client money or property service is a **regulated client money or property service** if it is not excluded under any of clauses 19 to 23 of Schedule 5.

(5) In this subpart,—

client money means money—

(a) received in connection with acquiring, holding, or disposing of a financial advice product or otherwise in connection with a financial advice product; and

(b) received from, or on account of, a client by a person (**A**) (and not on A's own account)

client property means property (other than money) to which the following apply:

(a) the property is a financial advice product, is a beneficial interest in a financial advice product, or is received in connection with a financial advice product; and

(b) the property is received from, or on account of, the client by a person (**A**) (and not on A's own account)

provider means a provider of client money or property services.

Compare: 2008 No 91 s 77B

Section 431W: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Disclosure obligations for services for retail clients

Heading: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431X Provider must make disclosure before receiving client money or client property from retail client

A person who provides a regulated client money or property service to a retail client must, in the prescribed manner, disclose the prescribed information to the retail client—

(a) before receiving client money or client property from or on behalf of the client; or

(b) if not practicable before, as soon as practicable after receiving client money or client property from or on behalf of the client.

Compare: 2008 No 91 s 77E

Section 431X: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431Y False or misleading statements and omissions

(1) A person must not provide information under section 431X if—

(a) there is—

(i) a statement in the information that is false or misleading or is likely to mislead; or

(ii) an omission from the information that is required by the regulations; and

(b) the statement or omission is materially adverse from the point of view of a client.

(2) For the purposes of this section, information about a future matter (including the doing, or not doing, of an act) is misleading if the person making the statement does not have reasonable grounds for making it.

(3) Subsection (2) does not limit the meaning of a reference to a misleading statement.

(4) This section does not limit section 431X.

(5) *See* section 511 (offence to knowingly or recklessly contravene this section).

Section 431Y: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Conduct obligations

Heading: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431Z Application of conduct obligations

(1) Sections 431ZA and 431ZB apply to all regulated client money or property services.

(2) Sections 431ZC to 431ZH—

(a) apply to regulated client money or property services provided to a retail client; and

(b) apply to custodial and other regulated client money or property services provided to every investor under a retail service of a DIMS licensee (as provided by section 446); and

(c) otherwise apply to client money or property services provided to a wholesale client only if provided by the regulations; and

(d) do not apply to a broker within the meaning of the Insurance Intermediaries Act 1994 in relation to any money to which section 14 or 15 of that Act applies.

Compare: 2008 No 91 s 77J

Section 431Z: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431ZA Provider must exercise care, diligence, and skill

A provider must, when providing a regulated client money or property service, exercise the care, diligence, and skill that a prudent person engaged in the business of providing the service would exercise in the same circumstances.

Compare: 2008 No 91 s 77K

Section 431ZA: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431ZB Provider must not receive client money if offer contravenes Act or regulations

(1) A provider must not receive client money or client property from a person for the acquisition of a financial product if—

(a) the product is a contravening product; and

(b) the provider knows, or ought reasonably to know, that the product is a contravening product.

(2) A financial product is a **contravening product**—

(a) if the product is being offered under a regulated offer and that offer contravenes this Act or the regulations; or

(b) if,—

(i) when the product was offered, the offer was a regulated offer and contravened this Act or the regulations; and

(ii) the contravention has not been remedied.

Compare: 2008 No 91 s 77O

Section 431ZB: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Obligations for handling client money and client property

Heading: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431ZC Provider must pay client money into separate trust account and hold client property on trust

(1) A provider who receives client money or client property, as part of a client money or property service,—

(a) must hold the client money or client property, or ensure the client money or client property is held, on trust for the client; and

(b) must ensure that the client money is paid promptly into a bank in New Zealand (or into any other prescribed entity) to—

(i) a trust account of the provider or of a related body corporate specified in the regulations; or

(ii) if section 445 applies, a trust account of a person permitted to hold the money under that section.

(2) A provider must ensure that the client money and client property are held separate from money or property held by or for the provider, or other person referred to in subsection (1)(b)(i) or (ii), on its own account.

(3) However,—

(a) subsection (2) does not apply in the prescribed circumstances; and

(b) money or property that is not held separate from client money or client property—

(i) must be treated as client money or client property for all or any purposes if the regulations so provide:

(ii) must be separated from client money or client property if required by the regulations or may be so separated if permitted by the regulations.

(4) A provider must comply with any prescribed duties and other requirements in relation to the client money and client property held on trust under this section.

Compare: 2008 No 91 s 77P

Section 431ZC: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431ZD Provider must account for client money and client property

A provider who receives or holds client money or client property on trust for a client must account properly, or ensure that account is properly made, to the client for that client money or client property.

Compare: 2008 No 91 s 77Q

Section 431ZD: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431ZE Provider must keep records of client money and client property

(1) A provider who receives or holds client money on trust for a client must keep, or ensure that there are kept, trust account records that disclose clearly the position of the client money in the trust account.

(2) A provider who receives or holds client property on trust for a client must keep, or ensure that there are kept, records that—

(a) identify the client property; and

(b) show the date when the client property was received; and

(c) if the client property has been disposed of, show when the client property was disposed of and to whom.

(3) A provider must also keep all other prescribed records.

(4) A provider must—

(a) keep the records required by this section, or ensure that they are kept, in a manner that enables those records to be conveniently and properly audited, reviewed, or inspected; and

(b) comply with the prescribed requirements (if any) relating to those records and their audit, review, or inspection.

Compare: 2008 No 91 s 77R

Section 431ZE: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431ZF Provider must report on client money and client property

(1) A provider must, in the prescribed circumstances, provide confirmation information to a client or other prescribed persons in respect of client money or client property received or held on behalf of the client.

(2) The confirmation information must be provided in the prescribed manner.

(3) In this section, **confirmation information** means the information relating to the client money or client property, or transactions relating to it, that is prescribed.

Compare: 2008 No 91 s 77RA

Section 431ZF: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431ZG Restrictions on use of client money and client property

A person must not use or apply client money or client property received or held on trust for a client by a provider in any way except—

(a) as expressly directed by the client (either generally or specifically); or

(b) in accordance with section 431ZC (which relates to payment of client money into a trust account).

Compare: 2008 No 91 s 77S

Section 431ZG: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431ZH Protection of client money and client property held on trust

(1) The client money or client property that is received or held by a provider on trust for a client—

(a) is not available for the payment of the debts owing to any other creditor of the provider; and

(b) is not liable to be attached or taken in execution under the order or process of any court at the instance of another creditor of the provider.

(2) Nothing in section 431ZG or this section takes away or affects any lawful lien or claim that a provider who holds client money or client property has against the client money or client property.

Compare: 2008 No 91 s 77T

Section 431ZH: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Persons acting in course of business of employers or principals

Heading: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431ZI Who is responsible for obligations

(1) If a client money or property service is provided by a person (**A**) on behalf of the business of another person (**B**), B (and not A) is treated as the provider of the service having the obligations under this subpart.

(2) This section does not affect the liability of A or B under any other Act or rule of law for A's actions.

Compare: 2008 No 91 s 77U

Section 431ZI: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Application of Trusts Act 2019

Heading: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431ZJ Application of Trusts Act 2019

(1) This section applies to a trust constituted (or to be constituted) for the purposes of section 431ZC.

(2) The following provisions of the Trusts Act 2019 do not apply to a trust referred to in subsection (1):

(a) section 29 (general duty of care):

(b) section 39 (adviser must alert settlor to modification or exclusion of default duty):

(c) sections 45 to 48 (documents to be kept by trustees):

(d) sections 49 to 55 (giving information to beneficiaries):

(e) section 56 (general powers of trustee):

(f) section 72 (trustee's liability for acts of delegate limited):

(g) sections 81 to 85 (trustees' indemnities):

(h) sections 142 to 148 (alternative dispute resolution):

(i) sections 153 to 158 (investigation of condition and accounts of certain trust property).

(3) If this section commences before the commencement of the Trusts Act 2019 under section 2(1) of that Act, this section applies only on or after the commencement of that Act.

Section 431ZJ: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Subpart 6—Additional regulation of discretionary investment management services

432 Application of subpart

This subpart applies to—

(a) a DIMS licensee in respect of the provision of a discretionary investment management service that is a retail service under a licence:

(b) a person who acts as a custodian of investor money or investor property under a discretionary investment management service of that kind.

432A Meaning of discretionary investment management service and related terms

(1) In this Act, a person (**A**) provides a **discretionary investment management service** (a **DIMS**) if—

(a) A—

(i) decides which financial products to acquire or dispose of on behalf of an investor (**B**); and

(ii) in doing so, is acting under an authority granted to A to manage some or all of B's holdings of financial products; or

(b) A gives financial advice in the ordinary course of, and incidentally to, providing a discretionary investment management service under paragraph (a) (for example, as to the appropriate scope of an investment authority).

(2) In determining whether A has an authority under subsection (1)(a)(ii), it does not matter if B has the right to be consulted on, or to countermand, A's decisions.

(3) In this Act,—

DIMS licensee means a person that acts as a provider of a discretionary investment management service under a licence under this Part

investment authority means, in relation to a discretionary investment management service, the authority granted by an investor to manage some or all of an investor's holdings of financial products under the service

provider of a discretionary investment management service means a person who is in the business of providing a discretionary investment management service.

Section 432A: inserted, on 15 March 2021, by section 30 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Duties of DIMS licensee

433 DIMS licensee's duties

(1) A DIMS licensee must—

(a) act honestly in providing the service; and

(b) in exercising any powers or performing any duties as a DIMS licensee under the client agreement or investment authority for the service,—

(i) act in the best interests of the investors using the service and treat those investors equitably (if the service is provided to a class of investors); and

(ii) act in the best interests of the particular investor using the service (if the service is provided to only that investor); and

(c) not make use of information acquired through being the DIMS licensee in order to—

(i) gain an improper advantage for itself or any other person; or

(ii) cause detriment to the investors using the service.

(2) A DIMS licensee must provide the service in accordance with a client agreement that complies with subpart 5 and an investment authority that complies with section 437.

434 Duties of directors and senior managers of DIMS licensee

A director or senior manager of a DIMS licensee—

(a) must not make use of information acquired through being the director or senior manager of the DIMS licensee in order to—

(i) gain an improper advantage for itself or any other person; or

(ii) cause detriment to the investors using the service; and

(b) must not make improper use of the position as a director or senior manager of the DIMS licensee to gain, directly or indirectly, an advantage for himself or herself or any other person or to cause detriment to the investors using the service.

Compare: Corporations Act 2001 s 601FE (Aust)

435 Duty of DIMS licensee to comply with professional standard of care

A DIMS licensee must, in exercising any power of investment or performing any duties in that capacity in relation to the service, exercise the care, diligence, and skill that a prudent person engaged in that profession would exercise in the same circumstances.

436 Limits on permitted indemnities

(1) If a DIMS licensee has any rights to be indemnified by an investor for liabilities incurred in relation to the performance of the service, those rights—

(a) must be set out in the client agreement; and

(b) must be available only in relation to the proper performance of the duties under sections 433(1) and 435.

(2) No other agreement has any effect to the extent that it purports to confer a right of a kind set out in subsection (1).

Compare: Corporations Act 2001 s 601GA(2) (Aust)

437 Requirement for agreed investment authority

(1) A DIMS licensee must ensure that there is a written investment authority granted by the investor for the service.

(2) The DIMS licensee must ensure that the investment authority provides adequately for the investment objectives and the scope of the investment authority, including the following matters:

(a) the nature or type of investments that may be made, and any limits on those; and

(b) any limits on the proportion of each type of asset invested in; and

(c) the methodology used for developing and amending the investment strategy and for measuring performance against the investment objectives.

(3) However, if there are no limits on the investment authority on a matter referred to in subsection (2)(a) or (b) or if the matter is capable of change without the prior written consent of the investor, the investment authority must clearly disclose that fact.

(4) The investment authority must provide for the matters set out in this section in accordance with the frameworks and methodologies specified in notices issued by the FMA under subpart 4 of Part 9 (if any).

438 Action that must be taken on limit breaks

(1) This section applies to a DIMS licensee if there is a material breach of any limits under an investment authority referred to in section 437 on either of the following (a **limit break**):

(a) the nature or type of investments that may be made:

(b) the proportion of each type of assets that may be invested in.

(2) If this section applies, the DIMS licensee must report the limit break to the FMA in the prescribed circumstances and in the prescribed manner.

(3) Whether or not a limit break is material must be determined in accordance with the frameworks and methodologies specified in notices issued by the FMA under subpart 4 of Part 9 (if any).

Related party transactions

439 Definition of related party benefits

(1) In sections 440 and 441, a **related party benefit**, in relation to a DIMS licensee providing the service, is a benefit that—

(a) is either given out of investor property or creates an exposure to loss for investor property; and

(b) is given to, or received by, a related party of the service; but

(c) does not include fees or expenses that are paid or reimbursed to the DIMS licensee in accordance with the client agreement for that service.

(2) A **related party** of the service is the DIMS licensee or an associated person of the DIMS licensee.

(3) A person is also a related party of the service at a particular time if—

(a) the person was a related party of the service under subsection (2) at any time within the previous 6 months:

(b) the person believes or has reasonable grounds to believe that the person is likely to become a related party of the service under subsection (2) within the next 12 months.

Compare: Corporations Act 2001 ss 601LA–601LE (Aust)

440 General prohibition on transactions giving related party benefits

(1) A DIMS licensee (or any person acting on behalf of the DIMS licensee) must not enter into a transaction that provides for a related party benefit to be given.

(2) However, subsection (1) does not apply to a transaction or series of transactions if one of the following applies and the DIMS licensee certifies to that effect:

(a) the transaction or transactions are,—

(i) if the service is provided to a class of investors, in the best interests of the investors using the service; or

(ii) if the service is provided to only 1 investor, in the best interests of the particular investor affected; or

(b) section 441 applies to the transaction or transactions or all related party benefits to be given.

(3) A failure to comply with this section does not affect the validity of any transaction (subject to any court order under Part 8).

Compare: Corporations Act 2001 ss 601LA–601LE (Aust)

441 Certain related party benefits permitted

This section applies to—

Arm's-length terms

(a) a benefit that is given on terms that—

(i) would be reasonable in the circumstances if the parties were connected or related only by the transaction in question, each acting independently, and each acting in its own best interests; or

(ii) are less favourable to the DIMS licensee or the associated person of the DIMS licensee than the terms referred to in subparagraph (i):

Transactions in registered schemes

(b) an acquisition or a disposal of a managed investment product in a registered scheme or of a prescribed interest in a prescribed overseas scheme:

Certain registered bank investments

(c) investments made in the ordinary course of business in products referred to in clause 21(a) to (c) of Schedule 1:

Other prescribed benefits or transactions

(d) a prescribed benefit or transaction.

Compare: Corporations Act 2001 ss 601LA–601LE (Aust)

442 Requirements for certificates as to related party benefits

(1) A certificate under section 440 is effective only if the certificate—

(a) states the specific grounds on which it is given under section 440 and (if relevant) section 441 and the basis for relying on those grounds; and

(b) complies with the prescribed requirements (if any) as to its form, content, or the manner in which it is given.

(2) Nothing in that section requires a new certificate if there is an existing certificate that applies (whether specifically or in general terms) to the transaction or transactions.

443 General duties still apply

The fact that a transaction is permitted under section 440 or 441 does not affect the DIMS licensee's obligations to comply with its duties under this Act and otherwise in connection with the transaction.

Compare: Corporations Act 2001 s 230 (Aust)

Broking and custodial service performed as part of discretionary investment management service

444 Meaning of investor money and investor property

In this Act,—

investor money, in relation to a discretionary investment management service, means money to which the following applies:

(a) the money is received under that service; and

(b) the money is received from, or on account of, the investor by a person (**A**) (and not on A's own account)

investor property, in relation to a discretionary investment management service, means property (other than money) to which the following applies:

(a) the property is a financial product, is a beneficial interest in a financial product, or is received under that service; and

(b) the property is received from, or on account of, the investor by a person (**A**) (and not on A's own account).

445 Requirements for custodian

(1) A DIMS licensee must ensure that the investor money and investor property that is held under the service is held on behalf of the investor by 1 or more persons that meet the custodianship requirements set out in subsection (2).

(2) A custodian of the investor money and investor property—

(a) must be a body corporate (other than the DIMS licensee) that the DIMS licensee believes, on reasonable grounds, to be appropriate to hold, and safeguard, the money or property; and

(b) may be an associated person of the DIMS licensee (other than by virtue of the custodianship) only if—

(i) that is permitted by conditions imposed under section 402; and

(ii) those conditions are observed.

(3) The DIMS licensee is jointly and severally liable with any custodian for ensuring that investor money and investor property is held in accordance with this subpart.

(4) This section does not apply—

(a) to the extent that money or property is held directly by the investor; or

(b) in the prescribed circumstances.

446 Certain client money or property service obligations under subpart 5B apply

(1) A DIMS licensee, and a custodian of investor money or investor property under the service, must provide the custodial and other client money or property services under the service to every investor in accordance with sections 431ZC to 431ZH.

(2) Those sections apply as if every reference to a client were to the investor and every reference to client money or client property were to investor money or investor property.

(3) This section does not limit the application of those sections to a DIMS licensee or a custodian as a provider of a client money or property service.

Section 446: replaced, on 15 March 2021, by section 31 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Subpart 7—Holding and application of investor funds and property by derivatives issuers

447 Application of regulations made under this subpart

Regulations made under this subpart may apply to a derivatives issuer (whether or not it is licensed and whether or not it makes any regulated offer).

448 Regulations regulating holding and application of investor funds and property by derivatives issuers

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with subsection (2), make regulations for the purposes of—

(a) regulating the receipt of money and property from, or on account of, investors by derivatives issuers and the application of that money and property:

(b) prescribing requirements relating to the deposit of that money and property in separate investors' funds accounts or safe custody:

(c) specifying the duties and obligations of derivatives issuers in relation to investors' funds accounts, including obligations to make payments into those accounts:

(d) providing for the protection of money deposited into investors' funds accounts and property deposited in safe custody from claims against derivatives issuers:

(e) providing for the investment of money referred to in paragraph (d):

(f) providing for the FMA to carry out functions under the regulations, and its powers and procedures in doing so:

(g) stating which provisions are Part 6 services provisions for the purposes of this Act.

(2) The Minister must consult the FMA before making a recommendation under this section.

(3) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 448(1)(a): amended, on 9 August 2017, by section 78 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 448(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Subpart 7A—Additional regulation of licences relating to financial benchmarks

Subpart 7A: inserted, on 14 March 2021, by section 43 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

448A Application of subpart

This subpart applies to market services licences to act as an administrator of a financial benchmark.

Section 448A: inserted, on 14 March 2021, by section 43 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

448B Additional purposes for licences relating to financial benchmarks

(1) In relation to market services licences to act as an administrator of a financial benchmark, this Part has the purposes (in addition to those set out in sections 3 and 4) of—

(a) ensuring the accuracy, integrity, and reliability of financial benchmarks, and providing for their continued availability, to support the purposes set out in sections 3 and 4; and

(b) promoting the recognition of New Zealand financial benchmarks in overseas jurisdictions by ensuring that—

(i) those benchmarks comply with applicable international requirements; and

(ii) an administrator of a financial benchmark is subject to effective regulation when generating and operating those benchmarks; and

(iii) those benchmarks may be referenced or otherwise used in international instruments.

(2) This section does not limit section 3 or 4.

Section 448B: inserted, on 14 March 2021, by section 43 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

448C FMA's powers to direct contributor to provide information or data

(1) The FMA may exercise a power under subsection (2) if it is satisfied that—

(a) a contributor has ceased or is likely to cease providing or making available information or data relevant to the generation or operation of the financial benchmark specified in a licence; and

(b) it is necessary or desirable in order to promote any of the purposes set out in section 448B.

(2) The FMA may, by written notice and otherwise in the prescribed manner, give a direction to a contributor requiring the contributor to provide information or data to a licensee, an authorised body, or another entity, where the provision of that information or data is necessary or desirable for the generation or operation of the financial benchmark specified in a licence.

(3) A direction may (without limitation) specify either or both of the following:

(a) requirements relating to the manner and form in which the information or data must be provided:

(b) the entity to which the information or data must be provided.

(4) In this subpart, **contributor** means a person whose activities have previously resulted in information or data being provided or made available to a licensee or an authorised body for the generation or operation of the financial benchmark specified in a licence (regardless of whether the information or data is provided or made available directly or indirectly to the licensee or authorised body).

(5) Subsection (4) applies regardless of where a contributor is resident, is incorporated, or carries on business.

(6) The contributor must comply with the direction (*see* subpart 3 of Part 8, which provides for civil liability for a contravention of this section).

Section 448C: inserted, on 14 March 2021, by section 43 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

448D FMA's powers to direct administration of financial benchmark

(1) The FMA may exercise a power under subsection (2) if it is satisfied that—

(a) a licensee or an authorised body has ceased or is likely to cease generating or operating a financial benchmark specified in a licence; and

(b) it is necessary or desirable in order to promote any of the purposes set out in section 448B.

(2) The FMA may, by written notice and otherwise in the prescribed manner, give a direction to a licensee or an authorised body—

(a) to continue to generate or operate the financial benchmark in a particular way; or

(b) to transfer or cease the generation or operation of the financial benchmark in a particular way.

(3) A direction may (without limitation) specify 1 or more requirements relating to the following:

(a) changes to the rules or procedures by which the financial benchmark is generated:

(b) changes to the documents under which the financial benchmark is generated or operated (for example, any compliance documents required by a condition of the licence):

(c) the orderly transfer of the generation or operation of the financial benchmark to another person:

(d) the orderly cessation of the generation or operation of the financial benchmark:

(e) the provision of material (including information, data, computer software, instructions, methodologies, formulas, or algorithms) to another person, where the provision of that material is necessary or desirable for the generation, operation, or transfer of that financial benchmark.

(4) The licensee or authorised body must—

(a) give the FMA all reasonable assistance to facilitate the continued generation and operation of the financial benchmark (or the orderly cessation of the financial benchmark); and

(b) comply with the direction.

(5) *See* subpart 3 of Part 8, which provides for civil liability for a contravention of this section.

Section 448D: inserted, on 14 March 2021, by section 43 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

448E Duration of direction

(1) A direction under section 448C or 448D must specify the period (not exceeding 12 months) during which the contributor, licensee, or authorised body must comply with the direction.

(2) The FMA may, by written notice, extend the period referred to in subsection (1) by a further period of not more than 12 months.

Section 448E: inserted, on 14 March 2021, by section 43 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

448F FMA must follow steps for giving direction

Sections 475 to 477 apply to a direction under section 448C or 448D as if the direction were an order under Part 8.

Section 448F: inserted, on 14 March 2021, by section 43 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

448G FMA may give interim direction pending exercise of power

(1) The FMA may give an interim direction (an **interim direction**) of the kind referred to in section 448C or 448D that is in force for the period referred to in subsection (2) if—

(a) the FMA is considering, at any time, whether it may exercise a power under section 448C or 448D; and

(b) the FMA considers that making an interim direction is necessary or desirable in the public interest.

(2) An interim direction is in force from the time at which it is given until the close of—

(a) the date that is 15 working days after the day on which it is given; or

(b) a later date specified by the FMA by notice to the person to whom the interim direction relates.

(3) For the purposes of subsection (2)(b),—

(a) the FMA may specify a later date if the FMA is of the opinion that it is not reasonably practicable for it to complete its consideration as referred to in subsection (1)(a) within the 15-working-day period referred to in subsection (2)(a); and

(b) the later date must be a date that is no more than 30 working days after the day on which the interim direction is given.

(4) The FMA—

(a) may act under subsection (1) or (2)(b) without giving the person to whom the interim direction relates an opportunity to make submissions to, or be heard before, the FMA in respect of the matter; but

(b) must, after acting under subsection (1) or (2)(b), give that person or that person's representative an opportunity to make written submissions and to be heard on the matter.

(5) The person to whom the interim direction relates must comply with the direction (*see* subpart 3 of Part 8, which provides for civil liability for a contravention of this section).

Section 448G: inserted, on 14 March 2021, by section 43 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

448H FMA must give notice after giving interim direction

If the FMA gives an interim direction, the FMA—

(a) must, as soon as is reasonably practicable, give written notice to the person to whom the interim direction relates of—

(i) the terms and conditions of the interim direction; and

(ii) the reasons for the interim direction; and

(iii) any other information the FMA thinks relevant in the circumstances; and

(b) in the case of an interim direction to a contributor, must also give the written notice referred to in paragraph (a) to the relevant licensee in respect of the financial benchmark; and

(c) may also make the direction available on its Internet site; and

(d) may also give notice to any other person of those matters.

Section 448H: inserted, on 14 March 2021, by section 43 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

448I General provisions on FMA's directions

(1) The FMA may give a direction under this subpart on the terms and conditions that the FMA thinks fit.

(2) The FMA may vary a direction in the same way as it may give the direction under this subpart.

(3) The FMA may revoke a direction or suspend a direction on the terms and conditions it thinks fit.

Section 448I: inserted, on 14 March 2021, by section 43 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

448J Protection for persons in respect of provision of material, information, or data under this subpart

No civil or criminal proceedings may be brought against a person by reason of the person having provided material, information, or data in good faith and in accordance with a direction under this subpart.

Section 448J: inserted, on 14 March 2021, by section 43 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Subpart 8—Miscellaneous provisions

Civil liability

449 Part 6 services provisions

(1) All of the provisions specified in subsections (3) and (4) are Part 6 services provisions.

(2) A contravention of any of the provisions listed in subsection (3) may give rise to civil liability (*see* subpart 3 of Part 8), including a pecuniary penalty not exceeding the greatest of the consideration for the relevant transaction, 3 times the amount of the gain made or the loss avoided, and $1 million in the case of an individual or $5 million in any other case.

(3) The provisions are the following:

(a) section 388 (when provider of market services needs to be licensed):

(b) section 391 (prohibitions on holding out):

(c) section 427(2), (3), and (6) (false or misleading statements and omissions):

(d) section 430 (need for client agreement):

(e) section 431 (contents, form, and effect of client agreement):

(ea) section 431P, to the extent that a person may be civilly liable for a contravention of the provision under section 431H (false or misleading statements and omissions):

(eb) section 431Y (false or misleading statements and omissions):

(f) section 445 (requirements for custodian):

(g) section 446 (certain client money or property service obligations under subpart 5B apply to DIMS licensees and custodians).

(4) A contravention of any of the following may give rise to civil liability (*see* subpart 3 of Part 8), including a pecuniary penalty not exceeding $200,000 in the case of an individual or $600,000 in any other case:

(a) section 411 (licensee must deliver reports to FMA):

(b) section 412 (licensee must report certain matters):

(c) section 417 (action plan):

(d) section 418 (approval, amendment, or rejection of action plan):

(e) section 420 (directions):

(f) section 423 (disclosure must be made to retail investor):

(g) section 426A (further prescribed information to be made available):

(ga) section 427(4) or (5) (failure to provide a new disclosure statement):

(gb) section 431F (limitation on who can give regulated financial advice to retail clients on behalf of financial advice provider):

(gc) section 431G (prohibitions on holding out in relation to giving financial advice):

(gd) sections 431I to 431O, to the extent that a person may be civilly liable for a contravention of the provision under section 431H (duties on persons giving regulated financial advice):

(ge) sections 431Q, 431R, and 431T(5) (additional duties on financial advice providers and interposed persons that engage others to give advice):

(gf) section 431X (client money or property service disclosure obligations):

(gg) sections 431ZA and 431ZB (client money or property service conduct obligations):

(gh) sections 431ZC to 431ZH (obligations for handling client money and client property):

(h) sections 433 to 435 (duties of DIMS licensee and of directors and senior managers of DIMS licensee):

(i) section 437 (requirement for agreed investment authority):

(j) section 438 (action that must be taken on limit breaks):

(k) section 440 (general prohibition on transactions giving related party benefits):

(ka) section 448C, 448D, or 448G (directions to a contributor or an administrator of a financial benchmark):

(l) those conditions imposed on a market services licence by the regulations that are stated by those regulations to be Part 6 services provisions:

(m) those provisions of the regulations made under subpart 7 that are stated by those regulations to be Part 6 services provisions.

Section 449(3)(c): amended, on 30 March 2018, by section 79(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 449(3)(ea): inserted, on 15 March 2021, by section 32(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 449(3)(eb): inserted, on 15 March 2021, by section 32(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 449(3)(g): replaced, on 15 March 2021, by section 32(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 449(4)(g): amended, on 30 March 2018, by section 79(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 449(4)(ga): inserted, on 30 March 2018, by section 79(3) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 449(4)(gb): inserted, on 15 March 2021, by section 32(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 449(4)(gc): inserted, on 15 March 2021, by section 32(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 449(4)(gd): inserted, on 15 March 2021, by section 32(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 449(4)(ge): inserted, on 15 March 2021, by section 32(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 449(4)(gf): inserted, on 15 March 2021, by section 32(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 449(4)(gg): inserted, on 15 March 2021, by section 32(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 449(4)(gh): inserted, on 15 March 2021, by section 32(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 449(4)(ka): inserted, on 14 March 2021, by section 44 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Part 7
Financial reporting

Part 7: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Subpart 1—Overview, application, and interpretation

Subpart 1 heading: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

450 Overview

(1) This Part provides for FMC reporting entities to—

(a) keep proper accounting records; and

(b) prepare financial statements, to have those financial statements audited, and to lodge those financial statements.

(2) This section is only a guide to the general scheme and effect of this Part.

Section 450: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

451 Meaning of FMC reporting entity

(1) In this Act, **FMC reporting entity** means—

(a) every person who is an issuer of a regulated product (but *see* section 452):

(b) every person who holds a licence under Part 6 (other than an independent trustee of a restricted scheme or a person referred to in subsection (2)):

(c) every licensed supervisor:

(d) every listed issuer (but *see* section 351(1)(ab)):

(e) every operator of a licensed market (other than a market licensed under section 317 (overseas-regulated markets)):

(f) every recipient of money from a conduit issuer (*see* section 453):

(g) every registered bank:

(h) every licensed insurer:

(i) every credit union:

(j) every building society:

(k) every person that is an FMC reporting entity under clause 27A of Schedule 1.

(2) Despite subsection (1)(b), a person who holds a licence under Part 6 is not an FMC reporting entity if—

(a) the licence only covers acting as an administrator of a financial benchmark or a financial advice service (or both); and

(b) the person is not a person referred to in subsection (1)(a) or (c) to (k).

Section 451: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 451(1)(b): amended, on 14 March 2021, by section 45(1) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 451(2): inserted, on 14 March 2021, by section 45(2) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 451(2)(a): amended, on 15 March 2021, by section 33(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

452 Company that issues equity securities not FMC reporting entity if fewer than 50 shareholders

(1) A company within the meaning of section 2(1) of the Companies Act 1993 is not an FMC reporting entity under section 451(1)(a) if it—

(a) has fewer than 50 shareholders or fewer than 50 parcels of shares that are voting products; and

(b) would, but for this section, be an FMC reporting entity by reason only of being an issuer of equity securities that are both voting products and regulated products.

(2) In this section, **shareholder** means a shareholder holding a voting product.

Compare: 1993 No 106 s 6(g); 1993 No 107 s 2A

Section 452: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 452(1): amended, on 14 March 2021, by section 46 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

453 Recipients of money from conduit issuers

In section 451, a person (**A**) is a **recipient of money from a conduit issuer** if—

(a) A is an associated person of another person (the **conduit issuer**); and

(b) the conduit issuer raises an amount of money by the issue of financial products under—

(i) a regulated offer; or

(ii) an offer made, in the prescribed circumstances, in reliance upon an exclusion in Schedule 1; and

(c) that money is raised as part of an agreement under which 75% or more of that money is provided, directly or indirectly and whether by 1 transaction or a series of transactions, for the use of—

(i) A; or

(ii) A and 1 or more third persons that are associated persons of A; and

(d) the money that is provided to A under paragraph (c) is 10% or more of the money that is raised under paragraph (b); and

(e) all or part of the money that is provided under paragraph (c) has not yet been repaid or returned to the conduit issuer.

Compare: 1993 No 106 s 4A

Section 453: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

454 Miscellaneous provisions relating to application

(1) If a person ceases to be an FMC reporting entity during an accounting period, that person must be treated as continuing to be an FMC reporting entity in relation to that accounting period for the purposes of this Act and every other enactment.

(2) Nothing in this Part or clause 20 of Schedule 4 requires an FMC reporting entity to ensure the completion of financial statements or group financial statements and the lodgement of those financial statements in relation to an accounting period that ended before the accounting period in which that person became an FMC reporting entity.

Compare: 1993 No 106 ss 5, 21

Section 454: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Subpart 2—Accounting records

Subpart 2 heading: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

455 FMC reporting entities must keep proper accounting records

(1) Every FMC reporting entity must ensure that there are kept at all times accounting records that—

(a) correctly record the transactions of the FMC reporting entity; and

(b) in the case of a manager of a registered scheme, correctly record the transactions of the scheme; and

(c) will enable the FMC reporting entity to ensure that the financial statements of the FMC reporting entity and of any such scheme comply with generally accepted accounting practice and any prescribed requirements; and

(d) will enable the financial statements of the FMC reporting entity and of any such scheme to be readily and properly audited.

(2) Every FMC reporting entity must establish and maintain a satisfactory system of control of its accounting records.

(3) In this subpart, **financial statements** means the financial statements or group financial statements that are required to be prepared for the purposes of this Act or the regulations.

Compare: 1978 No 103 s 53

Section 455: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

456 Place where accounting records to be kept

(1) Accounting records required to be kept by this subpart must be kept—

(a) at the registered office of the FMC reporting entity (if any); or

(b) at another place that the directors of the FMC reporting entity think fit.

(2) The accounting records may be kept at a place outside New Zealand only if there are sent to, and kept at a place in, New Zealand documents in respect of the business dealt with in those accounting records that will enable the preparation in accordance with this Act of—

(a) the financial statements of the FMC reporting entity and any registered scheme referred to in section 455; and

(b) any other document annexed to any of those statements that gives information that is required by any enactment.

Compare: 1978 No 103 s 53A

Section 456: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

457 Accounting records to be in English

(1) Accounting records required to be kept by this subpart and the documents referred to in section 456(2) must be kept—

(a) in written form and in English; or

(b) in a form or manner in which they are easily accessible and convertible into written form in English.

(2) An FMC reporting entity that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1978 No 103 s 53B

Section 457: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

458 Period for which accounting records to be kept

Accounting records kept under this subpart, or copies of them, must be retained by the FMC reporting entity for a period of at least 7 years after the later of—

(a) the date the records are made; and

(b) the date of completion of the transaction to which the records relate.

Compare: 1978 No 103 s 53C

Section 458: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

459 Inspection of accounting records

(1) Every FMC reporting entity must make the accounting records required to be kept under this subpart and the documents referred to in section 456(2) available, in written form in English at all reasonable times for inspection without charge, to—

(a) the directors of the FMC reporting entity; and

(b) any supervisor (if the FMC reporting entity is an issuer of debt securities or the manager of a registered scheme); and

(c) the FMA; and

(d) any other persons authorised or permitted by an enactment to inspect the accounting records of the FMC reporting entity or scheme.

(2) An FMC reporting entity that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1978 No 103 s 53D

Section 459: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Subpart 3—Preparation, audit, and lodgement of financial statements

Subpart 3 heading: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Preparation of financial statements

Heading: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

460 Financial statements must be prepared

(1) Every FMC reporting entity must ensure that, within 4 months after the balance date of the entity, financial statements that comply with generally accepted accounting practice are—

(a) completed in relation to the entity and that balance date; and

(b) dated and signed on behalf of the entity by 2 directors of the entity or, if the entity has only 1 director, by that director.

(2) Subsection (1) is subject to sections 461(2) and 461A(4).

Compare: 1993 No 106 ss 10(1), 11(1)

Section 460: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

461 Group financial statements must be prepared

(1) Every FMC reporting entity that has, on the balance date of the entity, 1 or more subsidiaries must ensure that, within 4 months after that balance date, group financial statements that comply with generally accepted accounting practice are—

(a) completed in relation to the group and that balance date; and

(b) dated and signed on behalf of the entity by 2 directors of the entity or, if the entity has only 1 director, by that director.

(2) Section 460 does not apply to an FMC reporting entity in relation to a balance date if the entity has, on that date, 1 or more subsidiaries (and is, accordingly, required to prepare group financial statements under subsection (1)).

(3) The board of an FMC reporting entity must ensure that the balance date of the FMC reporting entity is the same as the balance date of its subsidiaries.

(4) This section is subject to section 461A(4).

Compare: 1993 No 106 ss 7(8), 13(1)

Section 461: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

461A Financial statements for registered schemes and funds

(1) This section applies to every manager of a registered scheme.

(2) If the liabilities of the manager and the scheme are not limited to a particular group of assets (a **separate fund**), the manager must ensure that, within 4 months after the balance date of the scheme, financial statements that comply with generally accepted accounting practice are—

(a) completed in relation to the scheme and that balance date; and

(b) dated and signed on behalf of the manager by 2 directors of the manager or, if the manager has only 1 director, by that director.

(3) If the liabilities of the manager or the scheme are limited to a separate fund, the manager must ensure that, within 4 months after the balance date of the scheme, financial statements that comply with generally accepted accounting practice are—

(a) completed in relation to the scheme and that balance date; and

(b) completed in relation to the separate fund and that balance date; and

(c) dated and signed on behalf of the manager by 2 directors of the manager or, if the manager has only 1 director, by that director.

(4) If the manager is an FMC reporting entity by reason only of being a manager of a restricted scheme, the manager—

(a) is required to comply with this section; but

(b) is not required to comply with sections 460 and 461.

Compare: 1993 No 106 s 9A(1), (2)

Section 461A: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 461A(2): amended, on 9 August 2017, by section 80 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 461A(3): amended, on 9 August 2017, by section 80 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

461B Financial statements for overseas FMC reporting entity to include financial statements for New Zealand business

(1) If an FMC reporting entity that is an overseas company is required to prepare financial statements under section 460, the financial statements that are prepared must include, in addition to the financial statements of the entity, financial statements for its New Zealand business prepared as if that business were conducted by a company formed and registered in New Zealand.

(2) If an FMC reporting entity that is an overseas company is required to prepare group financial statements under section 461, the group financial statements that are prepared must include, in addition to the financial statements of the group, financial statements for the group's New Zealand business prepared as if the members of the group were companies formed and registered in New Zealand.

(3) In this section, **overseas company** means a body corporate that is incorporated outside New Zealand.

Compare: 1993 No 106 ss 8(2), 9(2)

Section 461B: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

461C Failure to comply with authoritative notice does not give rise to pecuniary penalty

(1) This section applies if financial statements or group financial statements referred to in this subpart fail to comply with generally accepted accounting practice as a result of a failure to comply with an authoritative notice.

(2) A pecuniary penalty order may not be made under section 489 in relation to the failure to comply with the authoritative notice.

(3) *[Repealed]*

Section 461C: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 461C(3): repealed, on 27 October 2022, by section 7 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Audit of financial statements

Heading: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

461D Financial statements must be audited

Every FMC reporting entity must ensure that the financial statements or group financial statements that are required to be prepared under this subpart are audited by a qualified auditor.

Compare: 1978 No 103 s 53E

Section 461D: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

461E Meaning of qualified auditor

(1) For the purposes of this Act, **qualified auditor** means—

(a) a licensed auditor; or

(b) a registered audit firm; or

(c) in the case of an FMC reporting entity that is a public entity under the Public Audit Act 2001, the Auditor-General or any other person who may act as the auditor under that Act.

(2) In this section, **licensed auditor** and **registered audit firm** have the same meanings as in section 6(1) of the Auditor Regulation Act 2011.

(3) The appointment of a registered audit firm that is a partnership by the firm name to be the qualified auditor for the purposes of this Act is deemed to be the appointment of all the partners in the firm, from time to time, who are licensed auditors.

(4) None of the following persons is qualified for appointment as the qualified auditor of an FMC reporting entity:

(a) the FMC reporting entity, or a director, an officer, or an employee of the FMC reporting entity:

(b) a person who is a partner, or in the employment, of a person specified in paragraph (a):

(c) a body corporate that is not a registered audit firm.

(5) A person is not qualified for appointment as the qualified auditor of an FMC reporting entity if the person is, by virtue of subsection (4), disqualified for appointment as auditor of a related body corporate.

Compare: 1978 No 103 s 2C

Section 461E: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 461E(3): amended, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

Section 461E(4)(c): amended, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

461F Audit must be carried out in accordance with auditing and assurance standards

An auditor must, in carrying out an audit for the purposes of section 461D, comply with all applicable auditing and assurance standards.

Section 461F: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

461G Auditor's report

(1) The auditor's report on the financial statements or group financial statements that are required to be audited under this subpart must comply with the requirements of all applicable auditing and assurance standards.

(2) If the auditor's report indicates that the requirements of this Part have not been complied with, the auditor must, within 7 working days after signing the report, send a copy of the report, and a copy of the financial statements or group financial statements to which it relates, to—

(a) the FMA; and

(b) the External Reporting Board; and

(c) in the case of an issuer of debt securities or a manager of a registered scheme, the supervisor.

Compare: 1993 No 106 s 16(1), (2)

Section 461G: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Lodgement of financial statements

Heading: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

461H Lodgement of financial statements

(1) Every FMC reporting entity must ensure that, within 4 months after the balance date of the entity, copies of the financial statements or group financial statements that are required to be prepared under any of sections 460, 461, and 461B, together with a copy of the auditor's report on those statements, are delivered to the Registrar for lodgement.

(1A) Every manager of a registered scheme must ensure that, within 4 months after the balance date of the scheme, copies of the financial statements that are required to be prepared under section 461A, together with a copy of the auditor's report on those statements, are delivered to the Registrar for lodgement.

(2) An FMC reporting entity that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1993 No 106 s 18(1)–(2)

Section 461H: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 461H(1): amended, on 9 August 2017, by section 81(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 461H(1A): inserted, on 9 August 2017, by section 81(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Offences

Heading: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

461I Offence to knowingly fail to comply with financial reporting standards

(1) An FMC reporting entity and every director of the entity commit an offence if—

(a) any of the following fail to comply with an applicable financial reporting standard:

(i) the financial statements of the entity prepared under section 460:

(ii) group financial statements in relation to a group comprising the entity and its subsidiaries prepared under section 461:

(iii) in the case of a manager of a registered scheme, financial statements for the scheme or a fund referred to in section 461A:

(iv) the financial statements prepared by the entity under section 461B; and

(b) the entity or the director (as the case may be) knows that the financial statements or group financial statements (as the case may be) fail to so comply when those statements are lodged.

(2) A person who commits an offence under subsection (1) is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 5 years, a fine not exceeding $500,000, or both; and

(b) in any other case, to a fine not exceeding $2.5 million.

Section 461I: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

FMC reporting entities with higher level of public accountability

Heading: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

461J External Reporting Board must have regard to indication of level of public accountability

(1) Subsection (2) applies when the External Reporting Board is preparing a proposal to vary or replace the strategy for establishing different tiers of financial reporting (*see* sections 29 to 33 of the Financial Reporting Act 2013).

(2) The External Reporting Board must have regard to which FMC reporting entities are considered to have a higher level of public accountability under section 461K.

(3) Nothing in this section or section 461K requires any particular class of FMC reporting entity to be included within a particular tier of financial reporting (for example, some entities referred to in section 461K(1) could be included in one tier while other entities referred to in that subsection could be included in another tier).

Section 461J: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

461K FMC reporting entities considered to have higher level of public accountability

(1) The following FMC reporting entities are considered to have a higher level of public accountability than other FMC reporting entities:

(a) issuers of equity securities or debt securities under a regulated offer:

(b) managers of registered schemes, but only in respect of financial statements of a scheme or fund prepared under section 461A:

(c) listed issuers:

(d) registered banks:

(e) licensed insurers:

(f) credit unions:

(g) building societies:

(h) an FMC reporting entity, or a class of FMC reporting entities, specified for the purposes of this paragraph by a notice issued under section 461L(1)(a).

(2) However, an FMC reporting entity, or a class of FMC reporting entities, is not considered to have a higher level of public accountability than other FMC reporting entities if the entity or class is specified for the purposes of this subsection by a notice issued under section 461L(1)(b).

(3) Subsection (1)(b) does not limit subsection (1)(h).

Section 461K: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 461K heading: amended, on 9 August 2017, by section 82 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

461L FMA may issue notice relating to level of public accountability

(1) The FMA may issue a notice that specifies an FMC reporting entity, or a class of FMC reporting entities, for the purposes of—

(a) section 461K(1)(h); or

(b) section 461K(2).

(2) The FMA must, before issuing a notice under subsection (1), be satisfied that the notice is necessary or desirable in order to promote the main purposes of this Act as specified in section 3 or any of the additional purposes specified in section 4.

(3) Subpart 5 of Part 9 (general provisions relating to certain FMA instruments) applies to a notice under this section.

Section 461L: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Subpart 4—Civil liability for certain contraventions of this Part

Subpart 4: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

461M Part 7 financial reporting provisions

(1) All of the provisions specified in subsections (3) and (4) are Part 7 financial reporting provisions.

(2) A contravention of any of the provisions listed in subsection (3) may give rise to civil liability (*see* subpart 3 of Part 8), including a pecuniary penalty not exceeding the greatest of the consideration for the relevant transaction, 3 times the amount of the gain made or the loss avoided, and $1 million in the case of an individual or $5 million in any other case.

(3) The provisions are the following:

(a) section 455 (FMC reporting entities must keep proper accounting records):

(b) sections 460, 461, 461A, and 461B (financial statements and group financial statements must be prepared):

(c) section 461D (financial statements must be audited):

(d) section 461H (financial statements must be lodged).

(4) A contravention of section 456 or 458 (place where, and period for which, accounting records to be kept) may give rise to civil liability (*see* subpart 3 of Part 8), including a pecuniary penalty not exceeding $200,000 in the case of an individual or $600,000 in any other case.

Section 461M: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Part 7A
Climate-related disclosures for certain FMC reporting entities with higher level of public accountability

Part 7A: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Subpart 1—Overview, application, and interpretation

Subpart 1: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461N Overview

(1) This Part provides for climate reporting entities to—

(a) keep proper records relating to their obligations to make climate-related disclosures; and

(b) prepare climate statements; and

(c) lodge those statements.

(2) This section is only a guide to the general scheme and effect of this Part.

Section 461N: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461O Meaning of climate reporting entity

(1) In this Act, a person who is an FMC reporting entity that, under section 461K, is considered to have a higher level of public accountability than other FMC reporting entities is a **climate reporting entity** if that person is 1 or more of the following:

(a) a listed issuer that—

(i) is a large listed issuer; and

(ii) is not an excluded listed issuer:

(b) a registered bank that is large:

(c) a licensed insurer that is large:

(d) a credit union that is large:

(e) a building society that is large.

(2) In this Act, a manager of a registered scheme (other than a restricted scheme) is a **climate reporting entity** in respect of the scheme if—

(a) the manager is a large manager; and

(b) section 461K(1)(b) applies to the manager in respect of the scheme.

(3) In this section,—

excluded listed issuer has the meaning set out in section 461P

large, in relation to a registered bank, licensed insurer, credit union, or building society, has the meaning set out in section 461Q

large listed issuer has the meaning set out in section 461P

large manager has the meaning set out in section 461S.

Section 461O: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461P Definitions relating to listed issuers

(1) For the purposes of this Part, a listed issuer is a **large listed issuer** in respect of an accounting period if at least 1 of the following applies to the listed issuer:

(a) the listed issuer,—

(i) at any time in the accounting period, has quoted equity securities; and

(ii) as at the balance date of each of the 2 preceding accounting periods, has equity securities (whether quoted or unquoted) that have a total value, as implied by the market price or fair value of those equity securities, that exceeds $60 million:

(b) the listed issuer,—

(i) at any time in the accounting period, has quoted debt securities; and

(ii) at any time in the 2 preceding accounting periods, has quoted debt securities with a total face value that exceeds $60 million:

(c) the listed issuer is large after amalgamation (within the meaning of section 461R) in respect of the accounting period.

(2) For the purposes of this Part, a listed issuer is an **excluded listed issuer** in respect of an accounting period if, at all times during the accounting period,—

(a) any equity securities of the issuer and any debt securities of the issuer that are quoted are quoted only on a growth market; or

(b) the issuer has no quoted equity securities and no quoted debt securities.

(3) *And see* section 351(1)(ab) (which may allow for some listed issuers not to be FMC reporting entities and, consequentially, not climate reporting entities under section 461O(1)(a)).

(4) For the purposes of subsection (1)(a)(ii), fair value must be determined in accordance with generally accepted accounting practice.

(5) In this section, **growth market** means a financial product market if—

(a) the operator has a licence to operate the market issued under section 316; and

(b) either or both of the following apply:

(i) the licence is subject to a condition that limits the size of issuers that are eligible to become, or to remain, listed issuers on the financial product market (for example, a limit based on the issuer's market capitalisation):

(ii) the market is otherwise designed for, and clearly targeted at, small- and medium-sized entities.

Section 461P: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461Q Meaning of large (in relation to registered banks, licensed insurers, credit unions, and building societies)

(1) For the purposes of this Part, a registered bank, credit union, or building society (**A**) is **large** in respect of an accounting period if either or both of the following apply:

(a) as at the balance date of each of the 2 preceding accounting periods, the total assets of A and A's subsidiaries (if any) exceed $1 billion:

(b) A is large after amalgamation (within the meaning of section 461R) in respect of the accounting period.

(2) For the purposes of this Part, a licensed insurer is **large** in respect of an accounting period if at least 1 of the following paragraphs applies to the licensed insurer:

(a) as at the balance date of each of the 2 preceding accounting periods, the total assets of the licensed insurer and its subsidiaries (if any) exceed $1 billion:

(b) in each of the 2 preceding accounting periods, the annual gross premium revenue of the licensed insurer and its subsidiaries (if any) exceeds $250 million:

(c) the licensed insurer is large after amalgamation (within the meaning of section 461R) in respect of the accounting period.

(3) However, if a registered bank, credit union, building society, or licensed insurer is an overseas company,—

(a) subsections (1) and (2) do not apply; and

(b) the overseas company is large for the purposes of section 461O(1)(b) to (e) if its New Zealand business, or its group's New Zealand business, is large under subsection (4).

(4) The New Zealand business of an overseas company or its group is **large** in respect of an accounting period if at least 1 of the following paragraphs applies (calculated as if the New Zealand business were an entity):

(a) as at the balance date of each of the 2 preceding accounting periods, the total assets of the New Zealand business exceed $1 billion:

(b) the overseas company is a licensed insurer and, in each of the 2 preceding accounting periods, the annual gross premium revenue of the New Zealand business exceeds $250 million.

(5) A financial reporting standard (or a part of a standard) issued by the External Reporting Board that is expressed as applying for the purposes of subsection (4) must be applied in determining whether that provision applies.

(6) In this section, **overseas company** means a body corporate that is incorporated outside New Zealand.

Section 461Q: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461R Meaning of large after amalgamation

(1) For the purposes of this Part, a person (**A**) is **large after amalgamation** in respect of an accounting period if—

(a) A amalgamated with a large entity during the accounting period; or

(b) A is a new entity formed on the amalgamation of 2 or more entities during the accounting period, and at least 1 of those entities was a large entity.

(2) If A is large after amalgamation under subsection (1) in respect of an accounting period, A continues to be **large after amalgamation** in respect of the next accounting period.

(3) In this section, **large entity** means an entity that, in respect of the accounting period, was any of—

(a) a large listed issuer under section 461P(1) (other than an issuer described in section 461P(2)(a) or (b) for the accounting period up to the time of amalgamation):

(b) a registered bank, licensed insurer, credit union, or building society that is large under section 461Q.

Section 461R: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461S Meaning of large manager

(1) For the purposes of this Part, a manager (**A**) that holds a market services licence that covers the service referred to in section 388(a) is a **large manager** in respect of an accounting period of A if, as at the balance date of each of A's 2 preceding accounting periods, the total assets of the following schemes exceed $1 billion:

(a) all schemes for which A is manager; and

(b) all schemes for which the manager is an authorised body that provides the service of acting as a manager of a registered scheme under A's market services licence.

(2) If A is a large manager, every manager described in subsection (1)(b) is also a **large manager**.

Example

Company A holds a licence that covers acting as a manager of registered schemes. A's subsidiaries, B and C, also provide this service under A's licence (as authorised bodies).

The assets of the schemes for which A is manager total $700 million on the balance date of each of A's 2 preceding accounting periods (the **relevant balance dates**).

The assets of the schemes managed by B total a further $300 million, and the assets of the schemes managed by C total $200 million, on each of the relevant balance dates.

The total assets therefore exceed $1 billion. A is a large manager. B and C are also large managers.

(3) Subsections (4) and (5) apply if—

(a) a manager and a scheme managed by the manager have different balance dates; and

(b) the manager becomes, or ceases to be, a large manager.

(4) If the manager was not a large manager in respect of an accounting period (**AP1**) but becomes a large manager in respect of the next accounting period (**AP2**), the manager—

(a) is not treated as a large manager in respect of the scheme in relation to the accounting period of the scheme that starts in AP1 and ends in AP2 unless paragraph (b) applies:

(b) must be treated as a large manager in respect of the scheme in relation to the accounting period of the scheme that starts in AP1 and ends in AP2 if—

(i) the manager was not the manager of the scheme at the start of that accounting period of the scheme; and

(ii) the manager at the start of that accounting period of the scheme was a climate reporting entity in respect of the scheme.

(5) If the manager was a large manager in respect of an accounting period (**AP3**) but ceases to be a large manager in the next accounting period (**AP4**), the manager must be treated as a large manager in respect of the scheme in relation to the accounting period of the scheme that starts in AP3 and ends in AP4.

(6) In this section, the **total assets** of a scheme are—

(a) as reported in the most recent audited financial statements, prepared in accordance with generally accepted accounting practice, for the scheme; or

(b) if there are no such statements, as calculated—

(i) for a date as near as possible to the balance date of the manager; and

(ii) as if for the purpose of preparing financial statements for the scheme in accordance with generally accepted accounting practice.

(7) In this section, **scheme** means a registered scheme (other than a restricted scheme).

Section 461S: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461T Application if person's status changes during accounting period

(1) If a person ceases to be a climate reporting entity during an accounting period, that person is treated as continuing to be a climate reporting entity in relation to that accounting period for the purposes of this Act and every other enactment.

(2) However, subsection (3) applies if the person (**A**)—

(a) ceased to be a climate reporting entity under section 461O(1); and

(b) on the balance date, is not a climate reporting entity under section 461O(1) (disregarding the rule in subsection (1)).

(3) If this subsection applies,—

(a) A is not required to ensure the completion of climate statements or group climate statements under any of sections 461Z to 461ZB and the lodgement of those climate statements in relation to the accounting period:

(b) records required to be kept by A up to the date that A ceased to be a climate reporting entity under section 461O(1) are CRD records for the purposes of sections 461W to 461Y.

(4) In any case where a person is, or was, the manager of a registered scheme (and a climate reporting entity under section 461O(2) in respect of the scheme), subsection (1) does not limit—

(a) section 461S(5) (which applies if the manager and the scheme have different balance dates); or

(b) section 461ZD (which may apply if the manager of a scheme changes during an accounting period).

Section 461T: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461U Miscellaneous provision relating to application

Nothing in this Part requires a climate reporting entity to ensure the completion of climate statements or group climate statements and the lodgement of those climate statements in relation to an accounting period that ended before the accounting period in which that person became a climate reporting entity.

Section 461U: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Subpart 2—CRD records

Subpart 2: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461V Climate reporting entities must keep proper CRD records

(1) Every climate reporting entity under section 461O(1) must ensure that there are kept at all times records that will enable the climate reporting entity to ensure that the climate statements of the climate reporting entity comply with the climate-related disclosure framework.

(2) Every manager that is a climate reporting entity in respect of a registered scheme must ensure that there are kept at all times records that will enable the manager to ensure that the climate statements relating to the registered scheme comply with the climate-related disclosure framework.

(3) Every climate reporting entity must establish and maintain a satisfactory system of control of the records that it is required to keep under this section.

(4) In this section,—

climate statements of the climate reporting entity means the climate statements or group climate statements that are required to be prepared under any of sections 461Z to 461ZB

climate statements relating to the registered scheme means the climate statements of the separate funds of the scheme or the climate statements of the scheme that are required to be prepared under section 461ZC.

Section 461V: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461W Manner in which CRD records to be kept

(1) Every climate reporting entity must keep the CRD records in the prescribed manner (if any).

(2) A climate reporting entity that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Section 461W: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461X Period for which CRD records to be kept

CRD records, or copies of them, must be retained by the climate reporting entity for a period of at least 7 years after the date the records are made.

Section 461X: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461Y Inspection of CRD records

(1) Every climate reporting entity must make the CRD records available, in the prescribed manner at all reasonable times for inspection without charge, to—

(a) the directors of the climate reporting entity; and

(b) any supervisor (if the climate reporting entity is an issuer of debt securities or the manager of a registered scheme); and

(c) the FMA; and

(d) any other persons authorised or permitted by an enactment to inspect the CRD records of the climate reporting entity or scheme.

(2) A climate reporting entity that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Section 461Y: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Subpart 3—Preparation of climate statements

Subpart 3: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Climate statements of climate reporting entities

Heading: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461Z Climate statements must be prepared

(1) Every climate reporting entity must ensure that, within 4 months after the balance date of the entity, climate statements that comply with the climate-related disclosure framework are—

(a) completed in relation to the entity and that balance date; and

(b) dated and signed on behalf of the entity by 2 directors of the entity or, if the entity has only 1 director, by that director.

(2) However, subsection (1) does not apply to—

(a) a climate reporting entity that, on the balance date referred to in subsection (1), has 1 or more subsidiaries; or

(b) an overseas climate reporting entity, unless it is a climate reporting entity under section 461O(1)(a); or

(c) a person that is a climate reporting entity only under section 461O(2).

Example

A company (incorporated in New Zealand and with no subsidiaries) is a large manager of 2 registered schemes.

The company is also a large registered bank, so subsection (2)(c) does not apply. Subsection (1) applies to the company (and *see* section 461ZC, which also applies to the company in respect of its registered schemes).

Section 461Z: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461ZA Group climate statements must be prepared

(1) Subsection (2) applies to every climate reporting entity in relation to a balance date of the entity if the entity has, on that balance date, 1 or more subsidiaries.

(2) The climate reporting entity must ensure that, within 4 months after that balance date, group climate statements that comply with the climate-related disclosure framework are—

(a) completed in relation to the group and that balance date; and

(b) dated and signed on behalf of the entity by 2 directors of the entity or, if the entity has only 1 director, by that director.

(3) However, subsection (2) does not apply to—

(a) an overseas climate reporting entity, unless it is a climate reporting entity under section 461O(1)(a); or

(b) a person that is a climate reporting entity only under section 461O(2).

Section 461ZA: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461ZB Climate statements for overseas climate reporting entities

(1) This section applies to every overseas climate reporting entity, unless it is a climate reporting entity under section 461O(1)(a).

(2) The climate reporting entity must ensure that, within 4 months after the balance date of the entity, climate statements that comply with the climate-related disclosure framework are—

(a) prepared for its New Zealand business as if that business were conducted by a company formed and registered in New Zealand; and

(b) dated and signed on behalf of the entity by 2 directors of the entity or, if the entity has only 1 director, by that director.

(3) However, if the climate reporting entity has, on that balance date, 1 or more subsidiaries, subsection (2) does not apply and instead the entity must ensure that, within 4 months after the balance date of the entity, climate statements that comply with the climate-related disclosure framework are—

(a) prepared for the group's New Zealand business as if the members of the group were companies formed and registered in New Zealand; and

(b) dated and signed on behalf of the entity by 2 directors of the entity or, if the entity has only 1 director, by that director.

(4) Subsection (3) does not limit any obligation under this subpart of a subsidiary of the climate reporting entity.

Section 461ZB: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Climate statements relating to registered schemes

Heading: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461ZC Climate statements for separate funds of registered schemes, etc

(1) This section applies to every manager of a registered scheme that is a climate reporting entity in respect of the scheme.

(2) The manager must ensure that, within 4 months after the balance date of the scheme, climate statements that comply with the climate-related disclosure framework are—

(a) completed in relation to each separate fund of the scheme and that balance date; and

(b) if any liabilities of the manager and the scheme are not limited to a separate fund, completed in relation to the scheme and that balance date; and

(c) dated and signed on behalf of the manager by 2 directors of the manager or, if the manager has only 1 director, by that director.

(3) However, if the manager was not the manager of the scheme at the start of the scheme's accounting period, subsection (2) applies to the manager only if the manager of the scheme at the start of the scheme's accounting period was a climate reporting entity in respect of the scheme.

Section 461ZC: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461ZD Application if manager of registered scheme changes and new manager is not large manager

(1) This section applies if—

(a) the manager of a registered scheme changes during an accounting period of the scheme; and

(b) the person who was the manager of the scheme at the start of the accounting period (the **old manager**) was a climate reporting entity in respect of the scheme; and

(c) the person who is the manager of the scheme at the end of the accounting period (the **new manager**) is not a large manager (within the meaning of section 461S).

(2) If this section applies, the new manager is not required to ensure the completion of climate statements under section 461ZC(2) and the lodgement of those climate statements in relation to the accounting period.

(3) Records kept by the old manager up to the date that the old manager ceased to hold office as manager of the scheme are CRD records for the purposes of sections 461W to 461Y.

Section 461ZD: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Miscellaneous

Heading: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461ZE Climate statements may be combined in single document

Nothing in this Part prevents any of the following from being combined in a single document:

(a) climate statements and group climate statements that are required to be prepared under any of sections 461Z to 461ZB in relation to an accounting period and 1 or more members of a group:

(b) climate statements that are required to be prepared under section 461ZC in relation to an accounting period and a registered scheme.

Section 461ZE: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461ZF Failure to comply with authoritative notice does not give rise to pecuniary penalty

(1) This section applies if climate statements or group climate statements referred to in this subpart fail to comply with the climate-related disclosure framework as a result of a failure to comply with an authoritative notice.

(2) A pecuniary penalty order may not be made under section 489 in relation to the failure to comply with the authoritative notice.

Compare: s 461C

Section 461ZF: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Offences

Heading: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461ZG Offence to knowingly fail to comply with climate standards

(1) A climate reporting entity and every director of the entity commit an offence if—

(a) any of the following fail to comply with an applicable climate standard:

(i) the climate statements of the entity prepared under section 461Z:

(ii) group climate statements in relation to a group comprising the entity and its subsidiaries prepared under section 461ZA:

(iii) the climate statements or group climate statements prepared by the entity under section 461ZB:

(iv) in the case of a manager of a registered scheme, the climate statements for any separate fund or for the scheme prepared under section 461ZC; and

(b) the entity or the director (as the case may be) knows that the climate statements or group climate statements fail to so comply when those statements are lodged.

(2) A person who commits an offence under subsection (1) is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 5 years, a fine not exceeding $500,000, or both; and

(b) in any other case, to a fine not exceeding $2.5 million.

Compare: s 461I

Section 461ZG: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Subpart 4—Assurance engagements

Subpart 4: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461ZH No requirement for assurance of climate statements on commencement of Part

(1) A climate reporting entity is not required to obtain an assurance engagement in relation to the climate statements or group climate statements that are required to be prepared under any of sections 461Z to 461ZC.

(2) *See* Part 2 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021, which sets out assurance requirements to apply from a later date.

Section 461ZH: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Subpart 5—Lodgement of climate statements

Subpart 5: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461ZI Lodgement of climate statements

(1) Every climate reporting entity that is required to prepare climate statements or group climate statements under any of sections 461Z to 461ZB must ensure that, within 4 months after the balance date of the entity, copies of those statements are delivered to the Registrar for lodgement.

(2) Every manager that is a climate reporting entity in respect of a registered scheme must ensure that, within 4 months after the balance date of the scheme, copies of the climate statements that are required to be prepared under section 461ZC are delivered to the Registrar for lodgement.

(3) A climate reporting entity that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(4) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Section 461ZI: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461ZJ Information about climate statements of climate reporting entities to be made available in annual report

(1) This section applies to every climate reporting entity that is required to prepare—

(a) climate statements or group climate statements under any of sections 461Z to 461ZB; and

(b) an annual report under the Companies Act 1993 or any other enactment.

(2) The climate reporting entity must include, in its annual report for the period ending on the balance date,—

(a) a statement that the entity is a climate reporting entity for the purposes of this Act; and

(b) a copy of the climate statements or group climate statements prepared by the entity under any of sections 461Z to 461ZB, or the address of (or a link to) the Internet site where a copy of those statements can be accessed.

(3) A climate reporting entity that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(4) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

(5) In this section, **annual report** includes a concise annual report.

Section 461ZJ: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Subpart 6—Civil liability for certain contraventions of this Part

Subpart 6: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461ZK Part 7A climate-related disclosure provisions

(1) All of the provisions specified in subsections (3) and (4) are Part 7A climate-related disclosure provisions.

(2) A contravention of any of the provisions listed in subsection (3) may give rise to civil liability (*see* subpart 3 of Part 8), including a pecuniary penalty not

exceeding $1 million in the case of an individual or $5 million in any other case.

(3) For the purposes of subsection (2), the provisions are the following:

(a) section 461V (climate reporting entities must keep proper CRD records):

(b) sections 461Z to 461ZC (climate statements and group climate statements must be prepared):

(c) section 461ZI (climate statements must be lodged).

(4) A contravention of section 461X (CRD records to be kept for 7 years) may give rise to civil liability (*see* subpart 3 of Part 8), including a pecuniary penalty not exceeding $200,000 in the case of an individual or $600,000 in any other case.

Section 461ZK: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Part 8
Enforcement, liability, and appeals

Subpart 1—FMA's enforcement powers

Stop orders

462 When FMA may make stop orders

(1) The FMA may make a stop order if it is satisfied that—

(a) a PDS, a register entry, or a limited disclosure document for an offer of financial products—

(i) is false or misleading, or is likely to mislead or confuse, in a material particular; or

(ii) contains any material misdescription or material error or any material matter that is not clearly legible; or

(iii) does not comply with this Act or the regulations; or

(b) any provision of Part 3, clause 13, 17, 26, 27, or 28 of Schedule 1, or clause 25 of Schedule 4 has been, or is likely to be, contravened in respect of an offer of financial products; or

(c) section 103 (need for governing document and supervisor) has been, or is likely to be, contravened in respect of debt securities; or

(d) section 125 (need to register) has been, or is likely to be, contravened in respect of managed investment products; or

(e) a registered scheme no longer meets the registration requirements in section 127 or the registration requirements for a particular type of scheme under sections 128 to 132; or

(f) a restricted communication relating to an offer, or intended offer, of financial products, or the supply, or possible supply, of financial services,—

(i) is false or misleading, or is likely to mislead or confuse, in a material particular; or

(ii) is materially inconsistent with any disclosure document referred to in it; or

(iii) contains any material misdescription or material error or any material matter that is not clearly legible; or

(iv) does not comply with this Act or the regulations; or

(g) disclosure relating to financial products under subpart 4 of Part 3, or a disclosure document relating to market services under subpart 4, 5A, or 5B of Part 6,—

(i) is false or misleading, or is likely to mislead or confuse, in a material particular; or

(ii) contains any material misdescription or material error or any material matter that is not clearly legible; or

(iii) does not comply with this Act or the regulations; or

(ga) an issuer of financial products, or a person that provides a licensed market service, has contravened any provision of Part 7 or 7A; or

(h) any provision of section 388, 391, 423, 431G, 431O, or 431X has been, or is likely to be, contravened in respect of the supply of market services.

(2) If the FMA is satisfied that a provision referred to in subsection (1)(b) to (d) or (h) is likely to be contravened by a person (**A**) in the future, the FMA may make a stop order—

(a) whether or not A has previously contravened the provision; and

(b) whether or not there is an imminent danger of substantial damage to any person if the provision is contravened.

Section 462(1)(a): amended, on 9 August 2017, by section 83 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 462(1)(g): replaced, on 15 March 2021, by section 35(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 462(1)(ga): inserted, on 1 April 2014, by section 49 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 462(1)(ga): amended, on 27 October 2022, by section 9 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 462(1)(h): amended, on 15 March 2021, by section 35(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

463 Terms of stop order

A stop order may, in relation to the offer, financial products, registered scheme, or market or other financial services referred to in section 462(1), do 1 or more of the following:

(a) prohibit offers, issues, sales, or other acquisitions or disposals of financial products specified in the order from being made while the order is in force:

(b) prohibit an offeror from accepting applications for financial products specified in the order while the order is in force:

(c) prohibit the distribution of 1 or more of the following while the order is in force:

(i) a PDS or any other disclosure document:

(ii) a restricted communication referred to in section 462(1)(f):

(iii) any restricted communication that relates to the offer of financial products, or supply of financial services, specified in the order:

(d) prohibit a person from accepting further contributions, investments, or deposits in respect of financial products specified in the order while the order is in force:

(e) prohibit the supply of financial services specified in the order from being made while the order is in force.

464 Meaning of restricted communication

(1) In this Act, **restricted communication** means a form of communication—

(a) that—

(i) directly or indirectly refers to an offer, or intended offer, of financial products or the supply, or possible supply, of a financial service; or

(ii) is reasonably likely to induce persons to apply for financial products or request the supply of a financial service; or

(iii) is reasonably likely to induce persons to make further contributions, investments, or deposits referred to in section 11(2)(c); and

(b) that is authorised or instigated by, or on behalf of, the offeror, the issuer, the service provider, or an associated person of the offeror or issuer or service provider or that is prepared with the co-operation of, or by arrangement with, any of those persons; and

(c) that is to be, or has been, distributed to a person.

(2) In this Act, references to a financial product in relation to a restricted communication must be treated as a reference to a financial product as defined in section 18.

(3) In this Act, **restricted communication** includes any advertisement.

465 FMA may make interim stop order pending exercise of powers

(1) The FMA may make an interim order (an **interim stop order**) of the kind referred to in section 463 that is in force for the period referred to in subsection (2) if—

(a) the FMA is considering, at any time, whether it may exercise a power under section 462; and

(b) the FMA considers that making an interim stop order is desirable in the public interest.

(2) An interim stop order is in force from the time at which it is made until the close of—

(a) the date that is 15 working days after the day on which it is made; or

(b) a later date specified by the FMA by notice to the issuer, offeror, or service provider to which the order relates.

(3) For the purposes of subsection (2)(b),—

(a) the FMA may specify a later date if the FMA is of the opinion that it is not reasonably practicable for it to complete its consideration as referred to in subsection (1)(a) within the 15-working-day period referred to in subsection (2)(a); and

(b) the later date must be a date that is no more than 30 working days after the day on which the interim stop order is made.

(4) The FMA—

(a) may act under subsection (1) or (2)(b) without giving the issuer, offeror, or service provider to which the order relates an opportunity to make submissions to, or be heard before, the FMA in respect of the matter (and, accordingly, section 475 does not apply); but

(b) must, after acting under subsection (1) or (2)(b), give that issuer, offeror, or service provider or that person's representative an opportunity to make written submissions and to be heard on the matter.

Compare: 1978 No 103 s 43K

466 Persons to whom stop orders and interim stop orders may apply

(1) A stop order or an interim stop order of the kind referred to in—

(a) section 463(a), (b), (d), or (e) may apply to any person specified in the order (for example, an issuer, an offeror, or a service provider):

(b) section 463(c) may apply to 1 or more of an issuer, an offeror, a service provider, or any associated persons of an issuer, an offeror, or a service provider.

(2) If a stop order or an interim stop order of the kind referred to in section 463(c) extends to associated persons of the issuer, offeror, or service provider, the order may require—

(a) all, or any specified class or classes, of the associated persons to comply with the order (including associated persons that may be incorporated or formed after the date of the order); and

(b) the issuer, offeror, or service provider to provide a copy of the order to all or any of those associated persons.

(3) For the purpose of subsection (2), the order is not required to refer to the associated persons by name.

467 Extended application of subpart

(1) The FMA may make a stop order or an interim stop order in respect of a restricted communication that is distributed or to be distributed to a person outside New Zealand by a person resident, incorporated, registered, or carrying on business in New Zealand.

(2) In this section, **registered** means registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

Direction orders

468 When FMA may make direction orders

(1) The FMA may make a direction order if it is satisfied that, by engaging in any conduct, a person (**the relevant person**) has contravened, or is likely to contravene,—

(a) a Part 2 fair dealing provision:

(b) a Part 3 offer provision:

(c) a Part 4 governance provision:

(d) a Part 5 market provision:

(e) a Part 6 services provision:

(f) a Part 7 financial reporting provision:

(fa) a Part 7A climate-related disclosure provision:

(g) an infringement offence provision:

(h) an obligation under Schedule 3 or under a trust deed for a Schedule 3 scheme:

(i) clause 21, 22(1)(b) or (c), 25, or 39 of Schedule 4 (transitional requirements):

(j) a term or condition of an exemption granted under subpart 2 of Part 9.

(2) If the FMA is satisfied that, by engaging in any conduct, the relevant person is likely to contravene a provision referred to in subsection (1) in the future, the FMA may make a direction order—

(a) whether or not the relevant person has previously contravened the provision; and

(b) whether or not there is an imminent danger of substantial damage to any person if the provision is contravened.

(3) In this section, an **infringement offence provision** is a provision in respect of which a contravention is an infringement offence.

Section 468(1)(fa): inserted, on 27 October 2022, by section 10 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

469 Terms of direction orders

(1) A direction order may—

(a) direct the relevant person to comply with the relevant provision referred to in section 468 (the **provision**):

(b) stipulate any reasonable steps that the relevant person must take in order to comply with the provision or to avoid or mitigate any actual or potential adverse effects of a contravention, including (without limitation)—

(i) disclosing, in accordance with the order, information for the purpose of securing compliance with the provision:

(ii) publishing, at the relevant person's own expense and in the manner and at the times specified in the order, corrective statements that are specified in, or are to be determined in accordance with, the order:

(iii) complying in accordance with the order with a prohibition or restriction on the making of any statement or the distribution of any document by, or on behalf of, the relevant person for the purpose of preventing a contravention or further contravention of the provision:

(c) in the case of section 468(1)(j), prohibit the relevant person from relying on the exemption:

(d) require the relevant person to report to the FMA within the time specified in the order stating how and when the order has been or will be implemented.

(2) If the FMA is satisfied that the relevant person (**A**) is a financial adviser who, by engaging in any conduct, has contravened, or is likely to contravene, any of sections 431I to 431P, a direction order may do 1 or more of the following (whether or not in addition to an order under subsection (1)):

(a) direct the Registrar to deregister A under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the **FSP Act**):

(b) direct the Registrar to—

(i) deregister A under the FSP Act; and

(ii) prevent A for a specified period from being reregistered for a financial advice service under the FSP Act:

(c) direct the Registrar to suspend A's registration under the FSP Act for a period of no more than 12 months or until A meets specified conditions relating to the registration (but, in any case, not for a period of more than 12 months).

Section 469(2): inserted, on 15 March 2021, by section 36 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Order to prohibit use of simplified disclosure PDS

470 FMA may order that simplified disclosure PDS may not be used

(1) The FMA may make an order prohibiting an offeror from distributing a simplified disclosure PDS, or otherwise making an offer under a simplified disclosure PDS, if the FMA is satisfied that the offeror (or the issuer of the relevant financial products) has failed to comply with any of the following at any time during the previous 12 months before the order is made:

(a) a continuous disclosure obligation:

(b) any provision under Part 7:

(ba) any provision under Part 7A:

(c) any prescribed provision.

(2) In this section, **simplified disclosure PDS** means a PDS of a class that is declared by the regulations as being a class of simplified disclosure PDSs.

(3) Subsection (1) does not limit any other power of the FMA by or under this Act.

Section 470(1)(ba): inserted, on 27 October 2022, by section 11 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Order to prohibit offer under recognition regime

471 FMA may order that offer may not be made under recognition regime

(1) The FMA may make an order prohibiting a person (**A**) from making an offer under a recognition regime set out in regulations made under section 576 if the FMA is satisfied that—

(a) 1 or more of the requirements of those regulations have been contravened in relation to a previous offer by A or an associated person of A; and

(b) the contravention was not minor or technical only.

(2) The order must specify the period during which the prohibition applies (which must be no longer than 5 years from the day on which the order is made).

(3) Subsection (1) does not limit any other power of the FMA by or under this Act.

Compare: Corporations Act 2001 s 1200P(1) (Aust); SR 2008/153 r 13(4)

Unsolicited offer orders

472 When FMA may make unsolicited offer orders

(1) The FMA may make an unsolicited offer order if the FMA is satisfied that a person has acted, is acting, or is likely to act in contravention of an unsolicited offer provision.

(2) If the FMA is satisfied that an unsolicited offer provision is likely to be contravened by a person (**A**) in the future, the FMA may make an unsolicited offer order—

(a) whether or not A has previously contravened the provision; and

(b) whether or not there is an imminent danger of substantial damage to any person if the provision is contravened.

Compare: 1988 No 234 s 42EA

473 Terms of unsolicited offer orders

(1) An unsolicited offer order may—

(a) restrain a person from acquiring a financial product, a power to dispose of a financial product, or an interest in or a right attaching to a financial product, as a result of the unsolicited offer:

(b) restrain a person from taking any action that is, or that may reasonably be expected to constitute, a contravention of an unsolicited offer provision:

(c) restrain a person from taking specified steps to complete or perform a contract that has been, or may reasonably be expected to be, entered into in contravention of an unsolicited offer provision:

(d) direct a person not to register the transfer of a financial product:

(e) direct a person to disclose information, make corrective statements, or take any other specified steps, at the person's own expense and in the manner and at the times specified in the order, for the purpose of securing compliance with an unsolicited offer provision.

(2) An unsolicited offer order may be directed at any person.

Compare: 1988 No 234 s 42EB

Orders that exclusion does not apply

474 FMA may order that exclusion for offers of products of same class as quoted products does not apply

(1) The FMA may make an order that clause 19 of Schedule 1 does not apply in respect of an issuer if the FMA is satisfied that the issuer has failed to comply with any of the following at any time during the previous 12 months before the order is made:

(a) a continuous disclosure obligation:

(b) any provision under Part 7:

(ba) any provision under Part 7A:

(c) any prescribed provision.

(2) Subsection (1) does not limit any other power of the FMA by or under this Act.

Section 474(1)(ba): inserted, on 27 October 2022, by section 12 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Process for FMA's orders

475 FMA must follow steps before making orders

(1) The FMA may make an order under this Part only if it first takes the following steps:

(a) gives the person to whom the order is proposed to be directed written notice—

(i) that the FMA may make an order under this Part; and

(ii) of the reasons why it is considering exercising that power; and

(b) also gives that written notice to the relevant licensed market operator, in the case of a direction order for a contravention of a continuous disclosure obligation or exemption or an order under section 470 or 474; and

(c) gives the notice referred to in paragraph (a) or (b) at least 5 working days before the FMA makes the order; and

(d) gives each person to whom notice of the order must be given or the person's representative an opportunity to make written submissions and to be heard on the matter within that notice period.

(2) However,—

(a) the FMA may shorten these steps in accordance with section 476; and

(b) in the case of a stop order under section 463(c), the FMA does not have to give the notice referred to in subsection (1)(a) to any associated persons of the issuer, offeror, or service provider.

(3) In the case of a direction order under section 469(2), the financial adviser that is the subject of the order is the person referred to in subsection (1)(a) and (d) and section 477(1)(a).

Compare: 1988 No 234 s 42F

Section 475(3): inserted, on 15 March 2021, by section 37 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

476 FMA may shorten steps for specified orders

If the FMA thinks it necessary or desirable in the public interest for any order to be made more urgently than section 475 permits,—

(a) it may give less than 5 working days' notice before it makes the order, and the submissions may be oral rather than written; but

(b) it must include in that notice the reasons for acting urgently and must otherwise comply with that section.

Compare: 1988 No 234 s 42G

477 FMA must give notice after making orders

(1) If the FMA makes an order under this Part, the FMA—

(a) must, as soon as is reasonably practicable, give written notice to the person to whom the order is directed of—

(i) the terms and conditions of the order; and

(ii) the reasons for the order; and

(iii) any other information the FMA thinks relevant in the circumstances; and

(b) must also give the written notice referred to in paragraph (a) to the Registrar and make the notice available on its Internet site, in the case of a stop order, an interim stop order, or an order under section 470; and

(c) in the case of an order other than a stop order or an interim stop order, may also give the written notice referred to in paragraph (a) to the Registrar and make the notice available on its Internet site; and

(d) must also give the written notice referred to in paragraph (a) to the relevant licensed market operator, in the case of a direction order for a contravention of a continuous disclosure obligation or exemption or an order under section 470 or 474; and

(e) may also give notice to any other person of those matters.

(2) In the case of a stop order of the kind referred to in section 463(c), the FMA does not have to give the notice referred to in subsection (1)(a) to any associated persons of the issuer, offeror, or service provider (but the issuer, offeror, or service provider may be required to do so).

Compare: 1988 No 234 s 42H

General provisions

478 General provisions on FMA's orders

(1) The FMA may make an order under this Act on the terms and conditions that the FMA thinks fit.

(2) The FMA may vary an order in the same way as it may make the order under this Act.

(3) The FMA may revoke an order or suspend an order on the terms and conditions it thinks fit.

Compare: 1988 No 234 s 42I

479 Consequences of failing to comply with FMA's orders

(1) If an order made by the FMA under this Act applies to a person, the person must comply with the order (*see* subpart 3, which provides for civil liability for a contravention of this duty).

(2) A person who refuses or fails, without reasonable excuse, to comply with an order made by the FMA under this Act commits an offence and is liable on conviction to a fine not exceeding $300,000.

Compare: 1988 No 234 s 42J

Subpart 2—High Court's enforcement powers

Injunctions

480 Court may grant injunctions

The court may, on application by the FMA or any other person, grant an injunction restraining a person from engaging in conduct that constitutes or would constitute a contravention, or involvement in a contravention, of a provision of this Act or the regulations.

Compare: 1988 No 234 s 42K

481 When court may grant injunctions and interim injunctions

(1) The court may grant an injunction restraining a person from engaging in conduct of a particular kind if—

(a) it is satisfied that the person has engaged in conduct of that kind; or

(b) it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind.

(2) The court may grant an interim injunction restraining a person from engaging in conduct of a particular kind if in its opinion it is desirable to do so.

(3) Subsections (1)(a) and (2) apply whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind.

(4) Subsections (1)(b) and (2) apply whether or not the person has previously engaged in conduct of that kind or there is an imminent danger of substantial damage to any other person if that person engages in conduct of that kind.

Compare: 1988 No 234 s 42L

482 Undertaking as to damages not required by FMA

(1) If the FMA applies to the court for the grant of an interim injunction under this subpart, the court must not, as a condition of granting an interim injunction, require the FMA to give an undertaking as to damages.

(2) In determining the FMA's application for the grant of an interim injunction, the court must not take into account that the FMA is not required to give an undertaking as to damages.

Compare: 1988 No 234 s 42M

Court may make FMA orders under this Part

483 Court may make FMA orders under this Part

The court may, on application by any person, make any order that the FMA may make under this Part if the court is satisfied of the same matters that the FMA would need to be satisfied of if the FMA were to exercise that power.

Subpart 3—Civil liability

Overview of civil liability

484 Overview of civil liability

(1) The following orders (**civil liability orders**) are available for a contravention, or involvement in a contravention, of a civil liability provision (except if otherwise provided) under this subpart:

(a) a declaration of contravention:

(b) a pecuniary penalty order (on application by the FMA only):

(c) a compensatory order:

(d) other civil liability orders under section 497.

(2) This section is a guide only to the general scheme and effect of this subpart.

Compare: 1988 No 234 s 42R

485 What are civil liability provisions

In this subpart, a **civil liability provision** is—

(a) a Part 2 fair dealing provision:

(b) a Part 3 offer provision:

(c) a Part 4 governance provision:

(d) a Part 5 market provision:

(e) an unsolicited offer provision:

(f) a Part 6 services provision:

(g) a Part 7 financial reporting provision:

(ga) a Part 7A climate-related disclosure provision:

(h) section 479(1) (failing to comply with FMA's orders):

(i) clause 21, 22(1)(b) or (c), 25, or 39 of Schedule 4 (transitional requirements).

Compare: 1988 No 234 s 42S

Section 485(ga): inserted, on 27 October 2022, by section 13 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Declarations of contravention and pecuniary penalty orders

486 When court may make declarations of contravention

(1) The court may, on the application of the FMA or any other person, make a declaration of contravention if it is satisfied that a person has—

(a) contravened a civil liability provision; or

(b) been involved in a contravention of a civil liability provision.

(2) The court may also make a declaration of contravention under section 489(2)(b).

487 Purpose and effect of declarations of contravention

(1) The purpose of a declaration of contravention is to enable an applicant for a compensatory order or other civil liability order under section 497 to rely on the declaration of contravention in the proceedings for that order, and not be required to prove the contravention or involvement in the contravention.

(2) Accordingly, a declaration of contravention is conclusive evidence of the matters that must be stated in it under section 488.

Compare: 1988 No 234 s 42U

488 What declarations of contravention must state

A declaration of contravention must state the following:

(a) the civil liability provision to which the contravention or involvement in the contravention relates; and

(b) the person who engaged in the contravention or was involved in the contravention; and

(c) the conduct that constituted the contravention or the involvement in the contravention and, if a transaction constituted the contravention, the transaction; and

(d) the issuer, offeror, or service provider to which the conduct relates (if relevant).

Compare: 1988 No 234 s 42V

489 When court may make pecuniary penalty orders

(1) The FMA may apply for a pecuniary penalty order against a person under this Act.

(2) If the FMA applies for a pecuniary penalty order against a person under this Act, the court—

(a) must determine whether the person has contravened, or been involved in a contravention of, a civil liability provision; and

(b) must make a declaration of contravention if it is satisfied that the person has contravened, or been involved in a contravention of, a civil liability provision; and

(c) may order the person to pay to the Crown a pecuniary penalty that the court considers appropriate if it is satisfied that the person has contravened, or been involved in a contravention of, a civil liability provision.

(3) However, a pecuniary penalty order may not be made—

(a) for a contravention, or involvement in a contravention, of section 19:

(b) in the circumstances referred to in section 431U, 461C, or 461ZF.

(4) The court may make a pecuniary penalty order against a director who is treated as contravening a civil liability provision under section 534 (but only if the FMA has applied for the order against the director).

Compare: 1988 No 234 s 42T

Section 489(3): replaced, on 1 April 2014, by section 50 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 489(3)(b): amended, on 27 October 2022, by section 14 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 489(3)(b): amended, on 15 March 2021, by section 38 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

490 Maximum amount of pecuniary penalty

(1) The maximum amount of a pecuniary penalty for a contravention, or involvement in a contravention, of a civil liability provision referred to in subsection (2) is the greatest of—

(a) the consideration for the transaction that constituted the contravention (if any); and

(b) if it can be readily ascertained, 3 times the amount of the gain made, or the loss avoided, by the person who contravened the civil liability provision; and

(c) $1 million in the case of a contravention, or involvement in a contravention, by an individual or $5 million in any other case.

(2) The civil liability provisions to which subsection (1) applies are—

(a) a Part 2 fair dealing provision (other than a provision specified in section 38(3)):

(b) a Part 3 offer provision (other than a provision specified in section 101(4)):

(c) a Part 4 governance provision (other than a provision specified in section 228(4)):

(d) a Part 5 market provision (other than a provision specified in section 385(4)):

(e) a Part 6 services provision (other than a provision specified in section 449(4)):

(f) a Part 7 financial reporting provision (other than a provision specified in section 461M(4)):

(fa) a Part 7A climate-related disclosure provision (other than section 461X):

(g) an unsolicited offer provision:

(h) clause 21, 22(1)(b) or (c), or 25 of Schedule 4 (transitional requirements).

(3) The maximum amount of a pecuniary penalty for a contravention, or involvement in a contravention, of any other civil liability provision is—

(a) $200,000 in the case of a contravention, or involvement in a contravention, by an individual; or

(b) $600,000 in any other case.

Compare: 1988 No 234 s 42W

Section 490(2)(f): amended, on 1 April 2014, by section 51 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 490(2)(fa): inserted, on 27 October 2022, by section 15 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

491 Guidance for court on how to determine gains made or losses avoided for purposes of maximum amount

(1) For the purposes of section 490(1)(b), a person must be treated as—

(a) making a gain if the person acquires a financial product for less than its value:

(b) avoiding a loss if the person disposes of a financial product for more than its value.

(2) In this case, the gain made or loss avoided is the difference between the consideration paid or received (as the case may be) and the value the financial product would have had at the time of the issue or sale if,—

(a) in the case of a contravention of any of sections 241 to 243, the material information had been generally available to the market; or

(b) in the case of a contravention of section 262 or 265, the conduct, statement, or information had not been misleading, deceptive, or false; or

(c) in any other case, the contravention had not occurred.

(3) This section does not—

(a) limit the circumstances in which the court may find that a person has made a gain or avoided a loss; or

(b) prevent the court from finding that the amount of the gain made, or the loss avoided, by a person exceeds an amount calculated under this section.

Compare: 1988 No 234 s 42X

492 Considerations for court in determining pecuniary penalty

In determining an appropriate pecuniary penalty, the court must have regard to all relevant matters, including—

(a) the purposes stated in sections 3 and 4 and any other purpose stated in this Act that applies to the civil liability provision; and

(b) the nature and extent of the contravention or involvement in the contravention; and

(c) the nature and extent of any loss or damage suffered by any person, or gains made or losses avoided by the person in contravention or who was involved in the contravention, because of the contravention or involvement in the contravention; and

(d) whether or not a person has paid an amount of compensation, reparation, or restitution, or taken other steps to avoid or mitigate any actual or potential adverse effects of the contravention; and

(e) the circumstances in which the contravention, or involvement in the contravention, took place; and

(f) whether or not the person in contravention, or who was involved in the contravention, has previously been found by the court in proceedings under this Act, or any other enactment, to have engaged in any similar conduct; and

(g) in the case of section 534 (directors treated as having contravened), the circumstances connected with the director's appointment (for example, whether the director is a non-executive or an independent director); and

(h) the relationship of the parties to the transaction constituting the contravention.

Compare: 1988 No 234 s 42Y

493 Court must order that recovery from pecuniary penalty be applied to FMA's actual costs

If the court orders that a person pay a pecuniary penalty, the court must also order that the penalty must be applied first to pay the FMA's actual costs in bringing the proceedings.

Compare: 1988 No 234 s 42Z

Compensatory orders

494 When court may make compensatory orders

(1) The court may make a compensatory order, on application by the FMA or any other person, if the court is satisfied that—

(a) there is a contravention of a civil liability provision; and

(b) a person (the **aggrieved person**) has suffered, or is likely to suffer, loss or damage because of the contravention.

(2) The court may make a compensatory order whether or not the aggrieved person is a party to the proceedings.

Compare: 1988 No 234 s 42ZA

495 Terms of compensatory orders

(1) If section 494 applies, the court may make any order it thinks just to compensate an aggrieved person in whole or in part for the loss or damage, or to prevent or reduce the loss or damage, referred to in that section.

(2) An order under this section may include an order to direct a relevant person to pay to the aggrieved person the amount of the loss or damage (in whole or in part).

(3) Subsection (2) does not limit subsection (1).

(4) In this section, **relevant person** means—

(a) any person in contravention (including any director who is treated as contravening the civil liability provision under section 534); or

(b) any person involved in the contravention.

Compare: 1988 No 234 s 42ZB

496 Person treated as suffering loss or damage in case of defective disclosure

(1) The purpose of this section is to provide that certain contraventions must be treated as causing a person to suffer loss or damage unless the contrary is proved.

(2) This section applies if—

(a) a person (**A**)—

(i) acquires financial products under an offer that contravenes section 82; or

(ii) acquires financial products, or makes further contributions, investments, or deposits in respect of financial products, after the issuer of the financial products contravenes section 99; or

(iii) acquires financial products under an offer where a person contravenes clause 27 of Schedule 1 in relation to that offer; and

(b) the financial products, contributions, investments, or deposits referred to in paragraph (a) have declined in value after the contravention referred to in paragraph (a).

(3) A must be treated as having suffered loss or damage because of the contravention unless it is proved that the decline in value was caused by a matter other than the relevant statement, omission, or circumstance.

(4) In this section, the **relevant statement, omission, or circumstance** is, as the case may be,—

(a) the statement that is false or misleading or is likely to be misleading referred to in section 82(1)(a)(i) or 99(1)(a)(i) or clause 27(1)(a)(i) of Schedule 1; or

(b) the omission referred to in section 82(1)(a)(ii) or 99(1)(a)(ii) or clause 27(1)(a)(ii) of Schedule 1; or

(c) the circumstance referred to in section 82(1)(a)(iii).

(5) This section does not limit section 495 (which provides for the court to make any order it thinks just to compensate an aggrieved person for the loss or damage in whole or in part).

Other civil liability orders

497 When court may make other civil liability orders

The court may, on application by the FMA or any other person, make a civil liability order described in section 498 if the court is satisfied that a person has contravened, intends to contravene, or was involved in a contravention of a civil liability provision.

Compare: 1988 No 234 s 42ZE

498 Terms of other civil liability orders

A civil liability order under section 497 may—

(a) direct the person in contravention, or the person involved in the contravention, to refund money or return property to a person who has suffered, or is likely to suffer, loss or damage because of the contravention (the **aggrieved person**):

(b) if an agreement has been entered into between the person in contravention, a person involved in the contravention, or an associated person of either of those persons (**A**), and the aggrieved person,—

(i) vary the agreement or any collateral arrangement as specified in the order and, if the court thinks fit, declare the agreement or arrangement to have had effect as so varied on and after a date before the order was made, as specified in the order:

(ii) cancel the agreement and, if the court thinks fit, declare the cancellation to have had effect on and after a date before the order was made, as specified in the order:

(iii) require A to take any action the court thinks fit to reinstate the parties as near as may be possible to their former positions:

(c) restrain the exercise of rights attaching to financial products, or the exercise of relevant interests, or declare an exercise of those rights or relevant interests to be void and of no effect:

(d) restrain the issue or transfer of financial products or restrain any distribution due in relation to financial products:

(e) restrain the acquisition or disposal of financial products or of relevant interests, or restrain the registration of any transfer of that kind:

(f) direct the disposal of financial products or of relevant interests (including the person or class of persons to which the products or interests must, or must not, be disposed of) and direct the payment of the proceeds of any disposal:

(g) require financial products to be forfeited and require the issuer to cancel the forfeited financial products:

(h) cancel an agreement for the acquisition or disposal of financial products or relevant interests.

Compare: 1988 No 234 s 42ZF

Defences for person in contravention of civil liability provisions

499 General defences for person in contravention

(1) In any proceeding under this subpart against a person (**A**) for a contravention of a civil liability provision, it is a defence if A proves that—

(a) A's contravention was due to reasonable reliance on information supplied by another person; or

(b) both of the following apply:

(i) A's contravention was due to the act or default of another person, or to an accident or to some other cause beyond A's control; and

(ii) A took reasonable precautions and exercised due diligence to avoid the contravention.

(2) For the purposes of subsection (1)(a) and (b), **another person** does not include a director, an employee, or an agent of A.

(3) Subsection (1)(b) does not apply to a contravention of section 82, 99, 427(2) or (6), 431P, or 431Y or clause 27 of Schedule 1 (but *see* the defences in sections 500 and 501).

Compare: 1986 No 121 s 44(1) and (2)

Section 499(3): amended, on 15 March 2021, by section 39 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

500 Disclosure defences for person in contravention

(1) In any proceeding under this subpart against a person (**A**) for a contravention of section 82, 99, 427(2) or (6), 431P, or 431Y or clause 27 of Schedule 1 because of a statement that is false or misleading or that is likely to mislead, it is a defence if A proves that A—

(a) made all inquiries (if any) that were reasonable in the circumstances; and

(b) after doing so, believed on reasonable grounds that the statement was not false or misleading.

(2) In any proceeding under this subpart against a person (**A**) for a contravention of section 82, 99, 427(2) or (6), 431P, or 431Y or clause 27 of Schedule 1 because of an omission from a disclosure document or register entry in relation to a particular matter, it is a defence if A proves that A—

(a) made all inquiries (if any) that were reasonable in the circumstances; and

(b) after doing so, believed on reasonable grounds that there was no omission from the disclosure document or register entry in relation to that matter.

(3) In any proceeding under this subpart against a person (**A**) for a contravention of section 82 because of a circumstance referred to in section 82(1)(a)(iii), it is a defence if A proves that A was not aware of the matter.

Compare: Corporations Act 2001 ss 731, 733(4) (Aust)

Section 500(1): amended, on 15 March 2021, by section 40 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 500(2): amended, on 15 March 2021, by section 40 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

501 Additional disclosure or financial reporting or climate-related disclosure defence for directors who are treated as contravening

(1) This section applies if—

(a) a person (**A**) contravenes any of sections 82, 99, 427, 460 to 461B, 461D, 461H, 461Z to 461ZC, and 461ZI or clause 27 of Schedule 1; and

(b) a person (**B**) is a director of A who is treated as being in contravention under section 534.

(2) In any proceeding under this subpart against B, it is a defence if B proves that B took all reasonable steps to ensure that A complied with the provision referred to in subsection (1)(a).

(3) Subsection (2) does not limit any defence that B may have under section 499 or 500 (as a person who is treated as contravening a provision referred to in subsection (1)(a)).

Section 501 heading: amended, on 27 October 2022, by section 16(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 501 heading: amended, on 1 April 2014, by section 52(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 501(1)(a): amended, on 27 October 2022, by section 16(2) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 501(1)(a): amended, on 1 April 2014, by section 52(2) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 501(2): amended, on 15 March 2021, by section 41 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 501(3): amended, on 9 August 2017, by section 86 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

501A Additional defence for licensees who are treated as contravening

(1) This section applies if—

(a) an authorised body (**A**) contravenes any market services licensee obligation; and

(b) a person (**B**) is the licensee who is treated as being in contravention under section 400(3).

(2) In any proceeding under this subpart against B, it is a defence if B proves that B took all reasonable and proper steps to ensure that A complied with the market services licensee obligation.

(3) Subsection (2) does not limit any defence that B may have under section 499 or 500 (as a person who is treated as contravening a market services licensee obligation).

Section 501A: inserted, on 9 August 2017, by section 87 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

502 Conduct still contravenes even if defence is available

In this Act, conduct must still be treated as contravening a civil liability provision even if the conduct does not lead to any liability under this subpart because of the availability of a defence.

Defences for person involved in contravention of civil liability provisions

503 General defences for person involved in contravention

(1) This section applies if—

(a) a person (**A**) contravenes a civil liability provision; and

(b) another person (**B**) is involved in the contravention.

(2) In any proceeding under this subpart against B for involvement in the contravention of a civil liability provision, it is a defence if B proves that—

(a) B's involvement in the contravention was due to reasonable reliance on information supplied by another person; or

(b) B took all reasonable steps to ensure that A complied with the provision.

(3) For the purposes of subsection (2)(a), **another person** does not include a director, an employee, or an agent of B.

(4) To avoid doubt, this section applies to an involvement in the contravention of any civil liability provision, including sections 82, 99, 427, 431P, and 431Y and clause 27 of Schedule 1.

Section 503(2)(b): amended, on 15 March 2021, by section 42(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 503(4): amended, on 15 March 2021, by section 42(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Miscellaneous provisions relating to defences

504 Defendant must identify other person

A person (**A**) is not, without the leave of the court, entitled to rely on the defence provided by section 499(1)(a) or 503(2)(a) that the contravention or involvement in the contravention was due to reasonable reliance on information supplied by another person, or provided by section 499(1)(b) that the contravention was due to the act or default of another person, unless A has, not later than 7 days before the date on which the hearing of the proceeding commences, served on the other party to the proceeding a written notice identifying that person.

Compare: 1986 No 121 s 44(3)

Interrelationship of civil liability orders

505 More than 1 civil liability order may be made for same conduct

The court may make a civil liability order of one kind against a person even though the court has made another civil liability order of a different kind against the person for the same conduct.

Examples

The court may make a compensatory order and a pecuniary penalty order for the same conduct.

The court may make a civil liability order requiring forfeiture of financial products and declaring a previous exercise of voting rights attaching to those products to be void.

Compare: 1988 No 234 s 42ZG

506 Only 1 pecuniary penalty order may be made for same conduct

If conduct by a person constitutes a contravention, or the involvement in the contravention, of 2 or more civil liability provisions, proceedings may be brought against that person for the contravention, or involvement in the

contravention, of any 1 or more of the provisions, but no person is liable to more than 1 pecuniary penalty order for the same conduct.

Compare: 1988 No 234 s 42ZH

507 No pecuniary penalty and fine for same conduct

A person cannot be ordered to pay a pecuniary penalty and be liable for a fine under this Act, the Fair Trading Act 1986, or the Financial Service Providers (Registration and Dispute Resolution) Act 2008 for the same conduct.

Compare: 1978 No 103 s 65F; 1988 No 234 s 43ZC

Section 507: amended, on 15 March 2021, by section 43 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Limitation defences

508 Limitation defences

(1) The Limitation Act 2010 prescribes a defence to a money claim that is a claim for monetary relief under this subpart (for example, a pecuniary penalty order or a compensatory order).

(2) Subsections (3) to (5) apply to a claim for relief (other than any form of monetary relief or declaratory relief) under this subpart.

(3) It is a defence to the claim if the defendant proves that the date on which the claim is filed is at least 6 years after the date of the act or omission on which the claim is based.

(4) The claim has both a late knowledge period and a longstop period, and sections 11(3)(a) and (b) and 14 of the Limitation Act 2010 apply to it—

(a) as if it were a money claim; and

(b) as if the period in subsection (3) were its primary period.

(5) Every defence prescribed by this section is subject to the exceptions and modifications set out in the Limitation Act 2010 as if prescribed by that Act.

(6) Any term or expression that is defined in the Limitation Act 2010 and used in this section has the same meaning as in the Limitation Act 2010.

Compare: 2010 No 110 s 37

General

509 Rules of civil procedure and civil standard of proof apply to civil liability

The proceedings under this subpart are civil proceedings and the usual rules of court and rules of evidence and procedure for civil proceedings apply (including the standard of proof).

Compare: 1988 No 234 s 42ZI

Subpart 4—Offences relating to defective disclosure and false statements

510 Offence of knowingly or recklessly contravening prohibition on offers where defective disclosure in PDS or register entry

(1) An offeror that contravenes section 82 commits an offence if the offeror—

(a) knows that, or is reckless as to whether, the statement referred to in section 82(1)(a)(i) is false or misleading or is likely to mislead; or

(b) knows that, or is reckless as to whether, there is an omission as referred to in section 82(1)(a)(ii); or

(c) knows of, or is reckless as to whether there is, a circumstance of a kind referred to in section 82(1)(a)(iii).

(2) If an offeror contravenes section 82, a director of the offeror commits an offence if—

(a) the offer, or the continuing of the offer, of the financial products under the regulated offer takes place with the director's authority, permission, or consent; and

(b) the director—

(i) knows that, or is reckless as to whether, the statement referred to in section 82(1)(a)(i) is false or misleading or is likely to mislead; or

(ii) knows that, or is reckless as to whether, there is an omission as referred to in section 82(1)(a)(ii); or

(iii) knows of, or is reckless as to whether there is, a circumstance of a kind referred to in section 82(1)(a)(iii).

(3) A person who commits an offence under subsection (1) or (2) is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 10 years, a fine not exceeding $1 million, or both; and

(b) in any other case, to a fine not exceeding $5 million.

511 Offence of knowingly or recklessly contravening other provisions relating to defective disclosure

(1) A person who contravenes a disclosure provision commits an offence if the person—

(a) knows that, or is reckless as to whether, the relevant statement is false or misleading or is likely to mislead; or

(b) knows that, or is reckless as to whether, there is a relevant omission.

(2) If an entity contravenes a disclosure provision, a director of the entity commits an offence if—

(a) the relevant act takes place with the director's authority, permission, or consent; and

(b) the director—

(i) knows that, or is reckless as to whether, the relevant statement is false or misleading or is likely to mislead; or

(ii) knows that, or is reckless as to whether, there is a relevant omission.

(3) A person who commits an offence under subsection (1) or (2) is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 5 years, a fine not exceeding $500,000, or both; and

(b) in any other case, to a fine not exceeding $2.5 million.

(4) In this section,—

disclosure provision means section 99, 427(2) or (6), 431P, or 431Y or clause 27 of Schedule 1

relevant act means,—

(a) in relation to section 99, the act of providing or making available the ongoing disclosure:

(b) in relation to section 427(2), the act of providing the disclosure statement to a person:

(c) in relation to section 427(6), the act of providing or making available the further disclosure:

(d) in relation to section 431P or 431Y, the act of making the information available to a person:

(e) in relation to clause 27 of Schedule 1, the act of providing the limited disclosure document to a person

relevant omission means an omission as referred to in section 99(1)(a)(ii), 427(1)(a)(ii) or (6)(a)(ii), 431P(1)(a)(ii), or 431Y(1)(a)(ii) or clause 27(1)(a)(ii) of Schedule 1 (as the case may be)

relevant statement means the statement referred to in section 99(1)(a)(i), 427(1)(a)(i) or (6)(a)(i), 431P(1)(a)(i), or 431Y(1)(a)(i) or clause 27(1)(a)(i) of Schedule 1 (as the case may be).

Section 511(1): amended, on 15 March 2021, by section 44(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 511(1)(a): amended, on 15 March 2021, by section 44(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 511(1)(b): amended, on 15 March 2021, by section 44(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 511(2): amended, on 15 March 2021, by section 44(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 511(2)(b)(i): amended, on 15 March 2021, by section 44(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 511(2)(b)(ii): amended, on 15 March 2021, by section 44(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 511(4): replaced, on 15 March 2021, by section 44(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

512 General offence for false or misleading statements

(1) Every person commits an offence who, with respect to a document required by or for the purposes of this Act, makes, or authorises the making of, a statement in it that is false or misleading in a material particular knowing it to be false or misleading.

(2) A person who commits an offence under subsection (1) is liable on conviction to imprisonment for a term not exceeding 5 years, a fine not exceeding $200,000, or both.

Compare: 1993 No 105 s 377(1)

Subpart 5—Infringement offences

513 Infringement offences

(1) If a person is alleged to have committed an infringement offence, that person may—

(a) be proceeded against by filing a charging document under section 14 of the Criminal Procedure Act 2011; or

(b) be served with an infringement notice as provided in section 514.

(2) Proceedings commenced in the way described in subsection (1)(a) do not require leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957.

514 Infringement notices

(1) The FMA may issue an infringement notice to a person if the FMA believes on reasonable grounds that the person is committing, or has committed, an infringement offence.

(2) The FMA may revoke an infringement notice before the infringement fee is paid, or an order for payment of a fine is made or deemed to be made by a court under section 21 of the Summary Proceedings Act 1957.

(3) An infringement notice is revoked by giving written notice to the person to whom it was issued that the notice is revoked.

515 Procedural requirements for infringement notices

(1) An infringement notice may be served on a person—

(a) by delivering it, or a copy of it, personally to the person who the FMA believes has committed the infringement offence; or

(b) by sending it, or a copy of it, by post, addressed to the person at the person's last known place of residence or business.

(2) An infringement notice sent under subsection (1)(b) must be treated as having been served on the person on the date it was posted.

(3) An infringement notice must be in the prescribed form and must contain—

(a) details of the alleged infringement offence that are sufficient to fairly inform a person of the time, place, and nature of the alleged offence; and

(b) the amount of the infringement fee; and

(c) an address at which the infringement fee may be paid; and

(d) the time within which the infringement fee must be paid; and

(e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and

(f) a statement that the person served with the notice has a right to request a hearing; and

(g) a statement of what will happen if the person served with the notice does not pay the fee and does not request a hearing; and

(h) any other prescribed matters.

(4) If an infringement notice has been issued, proceedings in respect of the infringement offence to which the notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957 and, in that case,—

(a) reminder notices may be prescribed; and

(b) in all other respects, section 21 of the Summary Proceedings Act 1957 applies with all necessary modifications.

(5) Reminder notices must contain the prescribed information.

516 Payment of infringement fee

The FMA must pay all infringement fees received into a Crown Bank Account.

Subpart 6—Banning orders

517 When court may make banning orders

(1) The court may, on application by an entitled person, make a banning order against a person (**A**) if—

(a) a pecuniary penalty order has been made against A under this Act; or

(b) A has been convicted of an offence under any Act referred to in Part 1 of Schedule 1 of the Financial Markets Authority Act 2011; or

(c) A has been convicted of an offence under any Act referred to in Part 2 of Schedule 1 of the Financial Markets Authority Act 2011 (where A is, or has been, a financial markets participant); or

(d) A has, while a director of an entity,—

(i) persistently contravened, or been involved in the contravention of, any Act specified in Part 1 of Schedule 1 of the Financial Markets Authority Act 2011; or

(ii) persistently contravened, or been involved in the contravention of, any Act specified in Part 2 of Schedule 1 of the Financial Markets Authority Act 2011 (where A is, or has been, a financial markets participant); or

(iii) if the entity has persistently contravened any of the Acts referred to in subparagraph (i) or (ii), persistently failed to take all reasonable steps to obtain compliance with those Acts; or

(e) A has been convicted of a crime involving dishonesty as defined in section 2(1) of the Crimes Act 1961 (where A is, or has been, a financial markets participant); or

(f) A has been prohibited in an overseas jurisdiction from carrying on activities that the court is satisfied are substantially similar to any of the activities referred to in section 518 in connection with a contravention of any law relating to the offering or trading of financial products or the supply of financial services.

(2) Subsection (1)(d)(iii) applies in respect of the Acts specified in Part 2 of Schedule 1 of the Financial Markets Authority Act 2011 only if the entity is, or has been, a financial markets participant.

(3) An **entitled person** is—

(a) the FMA:

(b) an entity that—

(i) A is a director of at the time of the application; or

(ii) A was a director of at the time of the ground that triggers the making of the order under subsection (1):

(c) the liquidator of an entity referred to in paragraph (b):

(d) a person who is, or has been, a product holder or creditor of an entity referred to in paragraph (b).

(4) An application under this section may be made in the course of any civil or criminal proceedings or at any other time.

(5) In this section, a reference to any Act referred to in Schedule 1 of the Financial Markets Authority Act 2011 includes a reference to any regulations made under any of those Acts.

(6) In this subpart, **director**—

(a) has the same meaning as in section 6(1); and

(b) includes, in relation to an entity,—

(i) a person in accordance with whose directions or instructions a person referred to in paragraph (a) may be required or is accustomed to act; and

(ii) a person in accordance with whose directions or instructions the board or other governing body of the entity may be required or is accustomed to act; and

(iii) a person who exercises or who is entitled to exercise or who controls or is entitled to control the exercise of powers that, apart from the constitution of the entity, would fall to be exercised by the board or other governing body of the entity; and

(iv) a person to whom a power or duty of the board or governing body of the entity has been directly delegated by the board or governing body with that person's consent or acquiescence, or who exercises the power or duty with the consent or acquiescence of the board or governing body.

Compare: 1978 No 103 s 60A; 1988 No 234 s 43F

518 Terms of banning orders

(1) A banning order may, permanently or for a period specified in the order, prohibit or restrict the person, without the leave of the court, from doing either or both of the following things:

(a) being a director or promoter of, or in any way (whether directly or indirectly) being concerned or taking part in the management of, an entity (other than an overseas company, or other entity, that does not carry on business in New Zealand):

(b) providing financial advice services or client money or property services, or contributing, as employee or agent, to the provision of those services.

(2) The court may make a banning order permanent or for a period longer than 10 years only in the most serious of cases for which a banning order may be made.

Compare: 1978 No 103 s 60B; 1988 No 234 s 43G

Section 518(1)(b): replaced, on 15 March 2021, by section 45 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

519 Offence of contravening banning order

An individual who contravenes a banning order under this subpart commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 years, a fine not exceeding $200,000, or both.

Compare: 1978 No 103 s 60C; 1988 No 234 s 43H

520 Only 1 banning order may be made for same conduct

If conduct by a person constitutes grounds for making an order under any 1 or more of this subpart, section 44F of the Takeovers Act 1993, and section 383 of the Companies Act 1993, proceedings may be brought against that person

under any 1 or more of those provisions, but no person is liable to more than 1 order under those provisions for the same conduct.

Compare: 1978 No 103 s 60D; 1988 No 234 s 43J

521 General provisions for banning orders

(1) A Registrar of the court must, as soon as practicable after the making of a banning order by the court under this subpart,—

(a) give notice to the Registrar of Companies, the Registrar of Financial Service Providers, and the FMA that the order has been made; and

(b) give notice in the *Gazette* of the name of the person against whom the order is made and the period or dates for which the order applies (or that the order is permanent).

(2) A person intending to apply for the leave of the court as referred to in section 518 must give to the FMA not less than 10 working days' written notice of that person's intention to apply.

(3) The FMA, and any other persons that the court thinks fit, may attend and be heard at the hearing of the application.

Compare: 1978 No 103 s 60F; 1988 No 234 s 43O

Subpart 7—Orders to protect interests of aggrieved persons in case of financial markets investigations or proceedings

522 When court may make order to protect interests of aggrieved persons

(1) This section applies if—

(a) an investigation is being carried out under the Financial Markets Authority Act 2011 in relation to an act or omission by a person that—

(i) constitutes or may constitute a contravention, or involvement in a contravention, of any Act specified in Part 1 of Schedule 1 of the Financial Markets Authority Act 2011; or

(ii) constitutes or may constitute a contravention, or involvement in a contravention, of any Act specified in Part 2 of Schedule 1 of the Financial Markets Authority Act 2011 (where the person is, or has been, a financial markets participant); or

(iii) may result in a prosecution or civil proceedings of the kind referred to in any of paragraphs (b) to (d) being begun against the person; or

(b) a prosecution has begun against a person for an offence under—

(i) any Act specified in Part 1 of Schedule 1 of the Financial Markets Authority Act 2011; or

(ii) any Act specified in Part 2 of Schedule 1 of the Financial Markets Authority Act 2011 (where the person is, or has been, a financial markets participant); or

(c) civil proceedings have begun against a person under, or in respect of,—

(i) any Act specified in Part 1 of Schedule 1 of the Financial Markets Authority Act 2011; or

(ii) any Act specified in Part 2 of Schedule 1 of the Financial Markets Authority Act 2011 (where the person is, or has been, a financial markets participant); or

(d) civil proceedings have begun against a person that, in connection with the offer, issue, transfer, supply, or use of financial products or financial services, seek damages or other relief for a contravention, involvement in a contravention, fraud, negligence, breach of duty, or other misconduct.

(2) The court may, on application by the FMA or by an aggrieved person, make 1 or more of the orders listed in section 523 if the court considers it necessary or desirable to do so for the purpose of protecting the interests of an aggrieved person.

(3) In this section, a reference to any Act referred to in Schedule 1 of the Financial Markets Authority Act 2011 includes a reference to any regulations made under any of those Acts.

(4) In this section and section 523,—

aggrieved person means any person to whom a relevant person is liable

associate means an associated person of the relevant person

civil proceedings means proceedings in a court (other than criminal proceedings)

liable means liable, or may be or become liable, to pay money (whether in respect of a debt, by way of damages or compensation, or otherwise) or to account for financial products or other property

relevant person means a person referred to in subsection (1).

Compare: 1978 No 103 s 60G; 1988 No 234 s 43P

523 What orders may be made

(1) The orders that may be made under this subpart are—

(a) an order prohibiting the relevant person from transferring, charging, or otherwise dealing with money, financial products, or other property held or controlled by the relevant person:

(b) an order prohibiting a person who is indebted to the relevant person, or to an associate, from making a payment in total or partial discharge

of the debt to, or to another person at the direction or request of, the relevant person or associate:

(c) an order prohibiting a person who holds money on behalf of the relevant person, or on behalf of an associate, from paying all or any of the money to the person, or to another person at the direction or request of that person, on whose behalf the money is held:

(d) an order prohibiting a person who holds financial products or other property on behalf of the relevant person, or on behalf of an associate, from transferring or otherwise parting with possession of the financial products or property to the person, or to another person at the direction or request of that person, on whose behalf the financial products or other property is held:

(e) an order prohibiting the taking or sending out of New Zealand by a person of money of the relevant person or of an associate:

(f) an order prohibiting the taking, sending, or transfer by a person of financial products or other property of the relevant person or of an associate from a place in New Zealand to a place outside New Zealand (including the transfer of financial products from a register in New Zealand to a register outside New Zealand):

(g) an order requiring the relevant person, an associate, or any person holding money, financial products, or other property on behalf of the relevant person or an associate, to pay or transfer money, financial products, or other property to a specified person to be held on trust pending determination of the investigation, prosecution, or civil proceedings referred to in section 522(1):

(h) an order appointing,—

(i) if the relevant person is an individual, a receiver or trustee, having any powers that the court orders, of the property or of part of the property of that person; or

(ii) if the relevant person is a body corporate, a receiver or receiver and manager, having any powers that the court orders, of the property or of part of the property of that person:

(i) an order removing a person from being a manager of a managed investment scheme to which the investigation, prosecution, or civil proceedings referred to in section 522(1) relates or relate:

(j) an order appointing a person as the manager of a managed investment scheme to which the investigation, prosecution, or civil proceedings referred to in section 522(1) relates or relate (with any powers, rights, and obligations that the court orders):

(k) if the relevant person is an individual, an order requiring that person to deliver up to the court his or her passport and any other documents that the court thinks fit:

(l) if the relevant person is an individual, an order prohibiting that person from leaving New Zealand without the consent of the court.

(2) A reference in subsection (1)(f) or (h) to property of a person includes a reference to property that the person holds otherwise than as sole beneficial owner, for example,—

(a) as trustee for, as nominee for, or otherwise on behalf of or on account of, another person; or

(b) in a fiduciary capacity.

(3) An order may be expressed to operate for a specified period or until the order is discharged by a further order under this section.

Compare: 1978 No 103 s 60H; 1988 No 234 s 43Q

524 Interim orders

(1) If an application is made to the court for an order under section 522, the court may, if in the opinion of the court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.

(2) The court must not require the FMA, as a condition of making an interim order, to give an undertaking as to damages.

(3) In determining the FMA's application for the grant of an interim order, the court must not take into account that the FMA is not required to give an undertaking as to damages.

Compare: 1978 No 103 s 60I; 1988 No 234 s 43R

525 Relationship with other law

Nothing in this subpart affects the powers that the court has apart from this subpart.

Compare: 1978 No 103 s 60J; 1988 No 234 s 43S

Subpart 8—Indemnities or insurance for directors, employees, and auditors of issuers, offerors, and licensees

526 Prohibition on indemnities or insurance for directors or employees of issuers, offerors, or licensees that are not New Zealand companies

(1) A specified person, or a related body corporate, must not indemnify, or directly or indirectly effect insurance for, a director or an employee of the specified person in respect of—

(a) liability, in connection with conduct regulated by the financial markets legislation, for any contravention, involvement in a contravention, neg-

ligence, breach of duty, or breach of trust in his or her capacity as a director or an employee; or

(b) costs incurred by that director or employee in defending or settling any claim or proceeding relating to that liability.

(2) An indemnity given in breach of this section is void.

(3) This section does not apply to a specified person or related body corporate that is a company within the meaning of section 2(1) of the Companies Act 1993 (*see* section 162 of the Companies Act 1993, which provides for limitations on indemnities and insurance).

(4) This section is subject to sections 527 and 528.

Compare: 1978 No 103 s 61

527 Permitted indemnities for certain liabilities or costs

(1) A specified person, or a related body corporate, may, if expressly authorised by its constitution, indemnify a director or an employee of the specified person for any costs incurred by him or her in defending or settling a proceeding that relates to liability of a kind referred to in section 526(1)(a) if—

(a) judgment is given in his or her favour or if he or she is acquitted; or

(b) the proceeding is discontinued.

(2) A specified person or a related body corporate may, if expressly authorised by its constitution, indemnify a director or an employee of the specified person in respect of—

(a) liability to any person other than the specified person for any act or omission in his or her capacity as a director or an employee (not being a liability specified in subsection (3)); or

(b) costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability.

(3) The liability specified in this subsection is—

(a) criminal liability; or

(b) a liability that arises out of a failure to act in good faith when acting in the capacity as a director or an employee.

Compare: 1978 No 103 s 61A

528 Permitted insurance for certain liability or costs

(1) A specified person, or a related body corporate, may, if expressly authorised by its constitution and with the prior approval of its board of directors, effect insurance for a director or an employee of the specified person in respect of—

(a) liability (other than criminal liability) of a kind referred to in section 526(1)(a); or

(b) costs incurred by that director or employee in defending or settling any claim or proceeding relating to that liability; or

(c) costs incurred by that director or employee in defending any criminal proceedings—

(i) that have been brought against the director or employee in relation to any alleged act or omission in his or her capacity as a director or employee; and

(ii) in which he or she is acquitted.

(2) The directors of the specified person, or of the related body corporate, who vote in favour of authorising the insurance under subsection (1) must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the specified person or related body corporate (as the case may be).

(3) The director or employee who is insured is personally liable to the specified person or related body corporate for the cost of effecting insurance if—

(a) subsection (2) has not been complied with in effecting the insurance; or

(b) reasonable grounds did not exist for the opinion set out in the certificate given under subsection (2).

(4) However, subsection (3) does not apply to the extent that the insurance was fair to the specified person or related body corporate at the time the insurance was effected.

Compare: 1978 No 103 s 61B

529 Prohibition on indemnity or insurance for auditors of issuers, offerors, or licensees

(1) A specified person, or a related body corporate, must not indemnify, or directly or indirectly effect insurance for, an auditor of the specified person, or an auditor engaged by the specified person, in respect of—

(a) liability, in connection with conduct regulated by the financial markets legislation, for any contravention, involvement in a contravention, negligence, breach of duty, or breach of trust in his or her capacity as an auditor; or

(b) costs incurred by that auditor in defending or settling any claim or proceeding relating to that liability.

(2) However, a specified person, or a related body corporate, may indemnify an auditor referred to in subsection (1) for any costs incurred by him or her in defending or settling a proceeding that relates to liability of a kind referred to in subsection (1)(a) if—

(a) judgment is given in his or her favour or if he or she is acquitted; or

(b) the proceeding is discontinued.

(3) An indemnity given in breach of this section is void.

530 Interpretation for this subpart

In this subpart,—

director includes a former director

effect insurance includes to pay, whether directly or indirectly, the costs of the insurance

employee includes a former employee

specified person means—

(a) an issuer of financial products offered under a regulated offer; or

(b) an offeror of financial products offered under a regulated offer; or

(c) a person that holds a market services licence or is an authorised body; or

(d) a licensed market operator; or

(e) a licensed supervisor.

Compare: 1978 No 103 s 61C

Subpart 9—Appeals

531 Appeals against market services licence decisions

A person may appeal to the court against a decision of the FMA under Part 6 to—

(a) decline to issue a licence to the person or to authorise the person to provide a service under the licence; or

(b) impose conditions on the person's licence or proposed licence or to vary, revoke, add to, or substitute any conditions on the person's licence; or

(c) decline an application to vary the conditions of the person's licence; or

(d) exercise a power in respect of the person under section 414 or 418 (which relates to the FMA's powers in the case of contraventions, etc).

532 Appeals against other decisions of FMA on questions of law only

An aggrieved person that considers that any of the following decisions of the FMA is wrong in law may appeal to the court against the decision on a question of law only:

(a) a refusal to give a certificate under section 126(2)(e)(iii) (certificate that the FMA is satisfied that a scheme complies with certain requirements):

(b) a decision under section 134 (direction to change a registration):

(c) a decision under section 193(1)(a) (removal of a supervisor of a registered scheme):

(d) a decision under section 195 (cancellation of the registration of a scheme):

(e) a decision under section 205 (direction to the supervisor or issuer):

(f) a decision under section 361 (direction to a licensed market operator):

(fa) a decision under section 448C, 448D, or 448G (directions to a contributor or an administrator of a financial benchmark):

(g) a decision under subpart 1 (FMA's enforcement powers).

Compare: 1988 No 234 s 47A

Section 532(fa): inserted, on 14 March 2021, by section 47 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

532A Appeals against decisions of disciplinary committee

(1) A person may appeal to the District Court against a decision of the disciplinary committee to take any action referred to in clause 46 of Schedule 5 against the person.

(2) The decision of the District Court on an appeal under this section is final, except as provided in section 532C.

Section 532A: inserted, on 15 March 2021, by section 46 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

532B Orders as to publication of names

(1) On an appeal under section 532A, the District Court may, if in its opinion it is proper to do so, prohibit the publication of the name or particulars of the affairs of a financial adviser or any other person.

(2) In deciding whether to make an order, the court must have regard to—

(a) the interests of any person (including, without limitation, the privacy of any complainant); and

(b) the public interest.

Compare: 2008 No 91 s 145

Section 532B: inserted, on 15 March 2021, by section 46 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

532C Appeal on question of law

A party to an appeal under section 532A may appeal to the High Court against a decision of the District Court on a question of law only.

Compare: 2008 No 91 s 146

Section 532C: inserted, on 15 March 2021, by section 46 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Subpart 10—Miscellaneous

Accessories and attribution of liability

533 Involvement in contraventions

(1) In this Act, a person is **involved in a contravention** if the person—

(a) has aided, abetted, counselled, or procured the contravention; or

(b) has induced, whether by threats or promises or otherwise, the contravention; or

(c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or

(d) has conspired with others to effect the contravention.

(2) Subsection (1) does not apply to proceedings for offences (but *see* Part 4 of the Crimes Act 1961, which relates to parties to the commission of offences).

Compare: Corporations Act 2001 s 79 (Aust)

534 Directors treated as having contravened in case of defective disclosure, financial reporting contravention, or climate-related disclosure contravention

(1) This section applies if, in a proceeding under subpart 3, the court is satisfied that—

(a) an offeror has contravened section 82 (defective disclosure in PDS or register entry); or

(b) an issuer has contravened section 99 (defective ongoing disclosure); or

(c) a licensee or an authorised body has contravened section 427 (defective disclosure statement); or

(ca) an FMC reporting entity has contravened any of sections 460 to 461B, 461D, and 461H (financial reporting obligations); or

(cb) a climate reporting entity has contravened any of sections 461Z to 461ZC and 461ZI (climate-related disclosure obligations); or

(d) an entity that provided a limited disclosure document under clause 26 of Schedule 1 has contravened clause 27 of that schedule (defective disclosure).

(2) However, this section does not apply in the prescribed circumstances.

(3) For the purposes of subpart 3, every director of the offeror, issuer, licensee, authorised body, FMC reporting entity, climate reporting entity, or entity at the time of the contravention must be treated as also having contravened the provision referred to in subsection (1)(a), (b), (c), (ca), (cb), or (d) (as the case may be).

(4) Every director that is treated as contravening a provision under this section may, under subpart 3, be ordered to pay to the Crown a pecuniary penalty, ordered to pay compensation under section 495, or subject to any other order under subpart 3.

(5) Nothing in this section limits the liability of the offeror, issuer, licensee, authorised body, FMC reporting entity, climate reporting entity, or entity referred to in subsection (1).

(6) *See* sections 499(1)(a), 500, and 501, which provide defences to a director.

Section 534 heading: amended, on 27 October 2022, by section 17(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 534(1)(ca): inserted, on 1 April 2014, by section 53(2) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 534(1)(cb): inserted, on 27 October 2022, by section 17(2) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 534(1)(d): replaced, on 9 August 2017, by section 89 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 534(3): amended, on 27 October 2022, by section 17(3)(a) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 534(3): amended, on 27 October 2022, by section 17(3)(b) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 534(3): amended, on 1 April 2014, by section 53(3) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 534(3): amended, on 1 April 2014, by section 53(4) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 534(5): amended, on 27 October 2022, by section 17(4) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 534(5): amended, on 1 April 2014, by section 53(3) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

535 State of mind of directors, employees, or agents attributed to body corporate or other principal

(1) If, in a proceeding under this Act in respect of any conduct engaged in by a body corporate, being conduct in relation to which any provision of this Act applies, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, employee, or agent of the body corporate, acting within the scope of his or her actual or apparent authority, had that state of mind.

(2) If, in a proceeding (other than a proceeding for an offence) under this Act in respect of any conduct engaged in by a person other than a body corporate, being conduct in relation to which any provision of this Act applies, it is necessary to establish the state of mind of the person, it is sufficient to show that an employee or agent of the person, acting within the scope of his or her actual or apparent authority, had that state of mind.

(3) In this Act, **state of mind**, in relation to a person, includes the knowledge, intention, opinion, belief, or purpose of the person and the person's reasons for that intention, opinion, belief, or purpose.

Compare: 1986 No 5 s 90(1), (3), (5)

536 Conduct of directors, employees, or agents attributed to body corporate or other principal

(1) Conduct engaged in on behalf of a body corporate by any of the following must be treated, for the purposes of this Act, as having been engaged in also by the body corporate:

(a) a director, employee, or agent of the body corporate, acting within the scope of his, her, or its actual or apparent authority:

(b) any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee, or agent of the body corporate, given within the scope of the actual or apparent authority of the director, employee, or agent.

(2) Conduct engaged in on behalf of a person other than a body corporate (**A**) by any of the following must be treated, for the purposes of this Act, as having been engaged in also by A:

(a) an employee or agent of A acting within the scope of his, her, or its actual or apparent authority:

(b) any other person at the direction or with the consent or agreement (whether express or implied) either of A or of an employee or agent of A, given within the scope of the actual or apparent authority of the employee or agent.

Compare: 1986 No 5 s 90(2), (4)

Miscellaneous

537 Time for filing charging document for certain offences

(1) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of a category 1 offence or a category 2 offence under this Act ends on the date that is 3 years after the date on which the offence was committed.

(2) Nothing in subsection (1) affects the application of section 25 of the Criminal Procedure Act 2011 in relation to any offence not mentioned in that subsection.

(3) In this section, **category 1 offence** and **category 2 offence** have the same meanings as in section 6(1) of the Criminal Procedure Act 2011.

538 Jurisdiction of courts in New Zealand

The High Court has exclusive jurisdiction to hear and determine proceedings in New Zealand under this Act, other than proceedings for offences.

Compare: 1978 No 103 s 65A

539 Orders to secure compliance

The court may, for the purpose of securing compliance with any other order it makes under this Act, direct a person to do or refrain from doing a specified act.

Compare: 1978 No 103 s 65C; 1988 No 234 s 43X

540 General provisions as to court's orders

(1) A court order under this Act may be made on the terms and conditions the court thinks fit.

(2) The court may revoke, vary, or suspend an order made under this Act on the terms and conditions the court thinks fit.

Compare: 1978 No 103 s 65E; 1988 No 234 s 43Z

541 Persons entitled to appear before court

The following persons are entitled to appear and be heard at the hearing of an application to the court taken under this Act:

(a) the applicant:

(b) a relevant issuer, offeror, or service provider:

(c) a person who is alleged to have suffered, or to be likely to suffer, loss or damage because of an alleged contravention (whether that person or another person makes the allegation):

(d) the FMA:

(e) any relevant licensed market operator:

(f) a person directed to be given notice of the application:

(g) with the leave of the court, any other person.

Compare: 1988 No 234 s 43ZA

542 Saving of liability under Crimes Act 1961 and general law

Nothing in this Act limits or diminishes any liability that any person may incur under any rule of law or the Crimes Act 1961 or any other enactment other than this Act (*see*, for example, sections 220 and 242 of the Crimes Act 1961, which relate to theft by a person in a special relationship and false statements by promoters).

Compare: 1978 No 103 s 65

Part 9
Regulations, transitional provisions, and miscellaneous provisions

Subpart 1—Regulations

543 Regulations for purposes of Part 3 (Disclosure of offers of financial products)

(1) The Governor-General may, by Order in Council, on the recommendation of the Minister in accordance with section 549, make regulations for all or any of the following purposes:

Product disclosure statements, register entries, and other matters relating to disclosure

(a) regulating product disclosure statements and register entries, including—

(i) prescribing the information that must, or must not, be contained in product disclosure statements or register entries; and

(ii) prohibiting or restricting the use in product disclosure statements or register entries of prescribed words, information, sounds, images, graphics, or other matters; and

(iii) prescribing requirements as to the layout or method of presentation of product disclosure statements (including the length of a PDS and of parts of a PDS, the size of type used, and when information may be incorporated by reference); and

(iv) prescribing the documents that must, or must not, accompany a PDS; and

(v) prescribing circumstances for the purposes of sections 51(1)(c) and 57(3); and

(vi) prescribing information for the purposes of section 63; and

(vii) prescribing circumstances and requirements for the purposes of sections 71(2), 80(4), and 85(6); and

(viii) prescribing circumstances in which an offeror is permitted to act under section 80(1)(d) and a period for the purposes of that paragraph; and

(ix) prescribing matters for the purposes of section 84; and

(x) prescribing circumstances in which a register entry is not required for a regulated offer; and

(xi) declaring classes of PDSs to be simplified disclosure PDSs for the purposes of section 470 and prescribing provisions for the purposes of section 470(1)(c); and

(xii) prescribing provisions for the purposes of section 474(1)(c):

(b) amending any of the dollar amounts specified in Schedule 1 (other than the amounts in clause 12 of that schedule (small offers)) by increasing those amounts:

(c) providing for the matters referred to in clause 26 of Schedule 1, including prescribing—

(i) the circumstances in which a limited disclosure document is required:

(ii) the information to be contained in, or to accompany, a limited disclosure document, who must prepare the disclosure document, and requirements as to the layout or method of presentation of a disclosure document:

(iii) the period within which the limited disclosure document must be provided, the person or persons to whom it must be provided, and other matters relating to the manner in which it is provided:

(iiia) requirements relating to an entry for the offer in the register of offers of financial products:

(iiib) information that must be provided, the person or persons to whom it must be provided, and other matters relating to the manner in which it is provided:

(iiic) limits or restrictions that apply in connection with an offer, financial products, or investors:

(iv) requirements and other matters relating to certificates, acknowledgements, consents, approvals, and governance:

(v) other conditions that must be complied with:

(vi) the circumstances in which the requirements, conditions, and other matters referred to in subparagraphs (iiia) to (v) apply:

(vii) matters for the purposes of clause 26(6) of Schedule 1 (including requirements, conditions, or other matters that an issuer must comply with or ensure are met):

(viii) which provisions of the regulations made for the purposes of clause 26 of Schedule 1 (if any) are Part 3 offer provisions for the purposes of this Act and, if a provision is so prescribed, stating whether the provision gives rise to civil liability under section 101(3) or (4) (*see* Part 8, in which Part 3 offer provisions are specified to be civil liability provisions):

Ongoing disclosure and updating of registers

(d) prescribing changes that must be notified under section 95 and a period or periods within which those changes must be notified:

(e) prescribing the information that must be made available under section 96 or 97, the times or events referred to in either of those sections, and the manner of making the information available (including prescribing the manner in which the information is to be presented, calculated, or prepared):

(ea) prescribing the persons who may make a request under section 96 and the persons to whom information must be made available under section 96 (for example, investors, a supervisor, the FMA, or the Registrar):

(f) prescribing circumstances for the purposes of section 98(2)(b):

(g) prescribing matters for the purposes of section 100, including prescribing circumstances, prescribing the manner of providing the product or confirmation information, and prescribing information as confirmation information:

Miscellaneous

(h) prescribing matters in connection with money relating to financial products that is held in trust (including prescribing, for the purposes of section 87(3)(a), requirements relating to the investment of money that

is held in trust and providing for how interest or other income from that investment is to be paid, retained, or otherwise dealt with):

(i) prescribing financial products for the purposes of the definition of specified financial products in clause 8(2) of Schedule 1:

(j) prescribing schemes for the purposes of clause 11(3)(a) of Schedule 1:

(k) prescribing markets and persons for the purposes of clause 20(4) of Schedule 1:

(l) prescribing kinds of financial products or currency forwards for the purposes of clause 21(a), (c), or (d) or 38(4)(a) of Schedule 1:

(la) prescribing circumstances for the purposes of section 453(b)(ii):

(lb) prescribing circumstances for the purposes of clause 27A of Schedule 1:

(m) prescribing circumstances for the purposes of clause 31(1)(c)(ii) or (2)(d)(ii) or 34(1)(d)(ii) of Schedule 1:

(n) prescribing matters for the purposes of the definitions of relevant person, relevant time, and prescribed transaction in clause 49 of Schedule 1:

(o) prescribing forms and information for the purposes of clause 46 of Schedule 1.

(2) Subsection (1)(a)(v) and (x) and (f) are subject to section 550 (which provides for certain procedural requirements relating to regulations made under those provisions).

(3) A time or an event prescribed under subsection (1)(e) in respect of regulated products may be any time, or any event that occurs, on or after the time at which the products are first offered under a regulated offer or otherwise become regulated products (regardless of whether or not the products have been issued).

(4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 543(1)(c)(i): amended, on 9 August 2017, by section 90(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 543(1)(c)(ii): amended, on 9 August 2017, by section 90(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 543(1)(c)(iii): amended, on 9 August 2017, by section 90(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 543(1)(c)(iiia): inserted, on 9 August 2017, by section 90(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 543(1)(c)(iiib): inserted, on 9 August 2017, by section 90(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 543(1)(c)(iiic): inserted, on 9 August 2017, by section 90(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 543(1)(c)(vi): amended, on 9 August 2017, by section 90(3) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 543(1)(c)(vii): inserted, on 9 August 2017, by section 90(4) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 543(1)(c)(viii): inserted, on 9 August 2017, by section 90(4) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 543(1)(d): amended, on 9 August 2017, by section 90(5) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 543(1)(e): amended, on 9 August 2017, by section 90(6) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 543(1)(ea): inserted, on 9 August 2017, by section 90(7) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 543(1)(l): replaced, on 9 April 2019, by section 47 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 543(1)(la): inserted, on 1 April 2014, by section 54 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 543(1)(lb): inserted, on 1 April 2014, by section 54 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 543(3): inserted, on 9 August 2017, by section 90(8) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 543(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

544 Regulations for purposes of Part 4 (governance of financial products)

(1) The Governor-General may, by Order in Council, on the recommendation of the Minister in accordance with section 549, make regulations for all or any of the following purposes:

Reporting to supervisor

(a) prescribing the information that must be made available under subpart 1 or 2 of Part 4, the times or events referred to in either of those subparts, and the manner of making the information available (including prescribing the manner in which the information is to be presented, calculated, or prepared):

Particular types of schemes

(b) prescribing, for registrations as particular types of schemes, additional application requirements:

(c) prescribing other types of registered schemes, and any additional registration requirements applying to those types of schemes:

(d) prescribing, as the superannuation scheme rules for the purposes of section 129, the permitted withdrawals for retirement or other purposes of the scheme and the other incidental or secondary permitted withdraw-

als (for example, financial hardship withdrawals, early partial withdrawals, and insurance benefits) and any other registration requirements for superannuation schemes (which may include provisions to be implied in a governing document: *see* subsection (2)):

(e) prescribing application and registration requirements for superannuation schemes and workplace savings schemes:

(f) providing for the FMA to carry out any function of determining whether a scheme is or is not employer-related or has, or does not have, any other status under this Act or the regulations, and the criteria it must apply and its powers and procedures in doing so:

Contents of governing documents

(g) prescribing the matters that must be contained in a governing document required for the purposes of Part 4 (including to supplement, require more detail to be provided in relation to, or add to, the matters required to be contained in it by that Part):

(h) prescribing provisions to be implied in a governing document (*see* subsection (2)):

Meetings of product holders

(i) authorising a person to call meetings of product holders (whether in general, or at specified times or in relation to events or in connection with specified matters):

(j) prescribing the frequency of meetings of product holders, the methods of holding meetings, the quorum, and the other procedures to be followed in calling and conducting meetings of product holders (including providing for electronic voting by product holders and for product holder proposals) and providing for the making of written resolutions in lieu of meetings:

(k) prescribing circumstances for the purposes of section 163:

Custodians

(l) prescribing the duties and obligations of custodians in relation to scheme property:

(m) prescribing provisions regulating the keeping, retention, reconciliation, inspection, and audit or review of records or procedures of a custodian:

(n) prescribing matters for the purposes of section 159, including prescribing circumstances, prescribing the manner of providing the confirmation information, and prescribing information as confirmation information:

Management of registered schemes

(o) prescribing circumstances for the purposes of section 166:

(p) prescribing matters relating to the reporting of limit breaks and pricing errors and non-compliance with pricing methodologies:

(q) prescribing any steps that must be taken for the purposes of section 168 (including whose position needs to be remedied or restored, who needs to be informed, when and how those steps must be taken, and any related obligations or other matters):

(r) prescribing overseas schemes, interests, benefits, or transactions for the purposes of section 174(b) and (d):

(s) prescribing circumstances for the purposes of section 176(5):

(t) prescribing requirements for the purposes of section 189:

(u) prescribing circumstances for the purposes of section 190(2)(b):

Registers and keeping copies of documents

(v) prescribing matters for the purposes of subpart 4 of Part 4, including—

(i) matters for the purposes of section 215(1)(b):

(ii) types of derivatives for the purposes of section 215(2)(a):

(iii) financial products for the purposes of section 215(2)(b):

(iv) circumstances for the purposes of section 215(2)(c):

(v) requirements for the purposes of section 215(3), including requirements relating to the keeping of records in respect of derivatives, the audit or review of those records, the inspection of those records, and making copies of, or extracts from, those records available:

(vi) particulars for the purposes of section 217(1)(f):

(via) circumstances in which information specified in a paragraph in section 217(1) is not required to be contained in a register:

(vii) circumstances for the purposes of section 217(2):

(viii) requirements for the purposes of section 218, including when an audit or a review must be carried out, the prescribed manner in which the audit or review must be carried out, and the required scope or extent of the audit or review:

(ix) circumstances for the purposes of section 221(2)(c):

(x) purposes for the purposes of section 225(3)(a):

(xi) requirements for the purposes of section 227(1)(b):

Miscellaneous

(w) prescribing the form of, or information that must or must not be contained in or attached to, any information required to be provided or made available by or under Part 4 and the manner in which it may be made available or given.

(2) A provision prescribed for the purposes of subsection (1)(d) or (h) may, without limitation, do any of the following (including to supplement, or to add to,

duties and powers prescribed by this Act, the Financial Markets Supervisors Act 2011, and, in relation to KiwiSaver schemes, the KiwiSaver Act 2006):

(a) specify the duties and powers of the supervisor of the debt security or the scheme:

(b) specify the duties of the issuer of the debt security or the manager of the scheme.

(3) Subsection (1)(k), (o), (r), (s), and (v)(iii), (iv), (via), and (ix) are subject to section 550 (which provides for certain procedural requirements relating to regulations made under those subparagraphs).

(4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 544(1)(v)(via): inserted, on 9 August 2017, by section 91(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 544(3): amended, on 9 August 2017, by section 91(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 544(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

545 Regulations for purposes of Part 5 (dealing in financial products on markets)

(1) The Governor-General may, by Order in Council, on the recommendation of the Minister in accordance with section 549, make regulations for all or any of the following purposes:

Insider conduct and market manipulation

(a) exempting (on terms and conditions, if any) conduct from being—

(i) insider conduct that is conduct that would otherwise fall within section 241, 242, or 243:

(ii) market manipulation that is conduct that would otherwise fall within section 262 or 265:

Substantial holding disclosure

(b) prescribing further matters relating to a matter, a relevant event, or a substantial holding, that must be disclosed under subpart 5 of Part 5, which may include (without limitation)—

(i) the nature of the relevant interests in the substantial holding (including before and after the relevant event in the case of sections 277 and 278):

(ii) the number, nominal value (if any), and class of financial products in which the person has or had the substantial holding (including before and after the relevant event in the case of sections 277 and 278):

(iii) the date of the relevant event:

(iv) the terms and conditions (including consideration) of the transaction giving rise to the relevant event:

(v) details as to the circumstances in which the relevant event occurred:

(vi) the date of the last disclosure by the person under that subpart in respect of the substantial holding:

(vii) information relating to the relevant event or substantial holding and concerning other persons who have made disclosures under that subpart:

(c) prescribing the documents, certificates, and statements that must accompany or be annexed to those disclosures:

(d) determining when disclosure of the further matters referred to in paragraph (b) is required (including by requiring disclosure only on request):

(e) prescribing the form of or for, and the method of, disclosure under that subpart (and of any other acknowledgments or notices required by the subpart) or providing for the relevant licensed market operator to determine that form or method and providing for the way in which it must do so:

(f) prescribing the manner referred to in section 275:

(g) exempting (on terms and conditions, if any) classes of persons, classes of transactions, or classes of relevant interests, substantial holdings, or relevant events from compliance with any provisions of that subpart or regulations made under any of paragraphs (b) to (e):

Directors' and senior managers' disclosure obligations

(h) prescribing further matters relating to a relevant interest, or acquisition or disposal of a relevant interest, that must be disclosed by directors and senior managers under subpart 6 of Part 5, which may include (without limitation)—

(i) the nature of the relevant interest:

(ii) the number and class of financial products to which the relevant interest relates or related:

358

(iii) the date of the disclosure obligation becoming applicable, or the date of the acquisition or disposal:

(iv) the consideration paid or received for the acquisition or disposal:

(v) details as to the circumstances in which the acquisition or disposal occurred:

(vi) the date of the last disclosure by the director or senior manager:

(i) determining when the disclosure in paragraph (h) is required (including by requiring disclosure only on request) and prescribing the form of or for, and the method of, disclosure or providing for the relevant licensed market operator to determine that form or method and for the way in which it must do so:

(j) exempting (on terms and conditions, if any) classes of persons, classes of transactions, or classes of relevant interests, acquisitions, or disposals from compliance with any provisions of that subpart or regulations made under paragraph (h) or (i):

(k) prescribing acquisitions or disposals for the purposes of section 297(2)(a)(vi):

Licensed markets

(l) prescribing conduct that does not constitute a financial product market for the purposes of this Act:

(m) exempting (on terms and conditions, if any) wholesale markets or other financial product markets from the operation of subpart 7 of Part 5:

(n) prescribing information and the form and method referred to in section 354:

Transfer of transferable financial products

(o) prescribing matters for the purposes of subpart 9 of Part 5, including—

(i) financial products to which that subpart does not apply:

(ii) forms for the purposes of that subpart:

(iii) information to be included in products transfers or brokers transfers:

(iv) persons for the purposes of paragraph (f) of the definition of authorised transaction in section 372(3).

(2) Subsection (1)(a), (g), (j), and (m) are subject to section 550 (which provides for certain procedural requirements relating to regulations made under those paragraphs).

(3) Before making a recommendation in relation to subsection (1)(l) or (m), the Minister must have regard to the matters set out in section 308.

(4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 545(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

546 Regulations for purposes of Part 6 (market services)

(1) The Governor-General may, by Order in Council, on the recommendation of the Minister in accordance with section 549, make regulations for all or any of the following purposes:

Issue of licences

(a) prescribing matters relating to the issue of market services licences, including—

(i) eligibility criteria for licences and for the purposes of section 400 (including requirements relating to competence, qualifications, and experience, prudential requirements, and requirements relating to the business, operation, or management of an applicant and, for the purposes of section 400, a related body corporate or an entity referred to in section 400(1A)):

(ii) requirements that the applicant's directors, senior managers, and proposed directors and senior managers must satisfy:

(iii) matters that the FMA must have regard to:

(iv) persons or classes of persons whom the FMA must consult:

(v) information for the purposes of section 401(2)(e):

(vi) eligibility criteria to be met by a DIMS licensee before a custodian of investor money or investor property is, subject to conditions imposed, under paragraph (d)(iii), permitted to be an associated person of the DIMS licensee:

(b) prescribing overseas markets and circumstances for the purposes of section 389(1)(c):

(c) exempting (on terms and conditions, if any) services from the licensing requirement for providers of financial advice services for the purposes of section 389(2)(b):

(ca) exempting (on terms and conditions, if any) services from the licensing requirement for providers of discretionary investment management services for the purposes of section 389(3)(b):

(cb) prescribing terms and conditions of the exemption for Lloyd's underwriters under section 389(4)(a), including any term or condition that

imposes requirements on Lloyd's, Lloyd's underwriters, or Lloyd's managing agents (*see* section 449A):

(cc) exempting (on terms and conditions, if any) services from the licensing requirement for providers of the service of acting as a financial institution for the purposes of section 389(4)(b):

Conditions of licences

(d) prescribing conditions that market services licences are subject to, the kinds of conditions that the FMA may impose on those licences, or matters to which conditions imposed by the FMA may relate, including (without limitation) providing for—

(i) conditions that regulate the manner in which licensed market services must be carried out under the licence:

(ii) conditions that impose prudential requirements on licensees or authorised bodies or otherwise regulate the business, operation, or management of licensees or authorised bodies (for example, requirements to have a credit rating or to maintain a minimum amount of capital, requirements relating to margins, or requirements relating to the receipt of money and property from clients):

(iii) in the case of a DIMS licensee, the conditions subject to which a custodian of investor money or investor property is permitted to be an associated person of the DIMS licensee:

(iv) in the case of a licence relating to a financial advice service, conditions of a kind described in section 403(4):

(v) in the case of a licence to act as an administrator of a financial benchmark, conditions of a kind described in section 403(5):

(vi) in relation to a licence relating to acting as a financial institution, conditions that prohibit or regulate incentives, or the offer or giving of incentives to any person, in connection with a relevant service or an associated product:

(e) stating whether a condition imposed on a market services licence by the regulations is a Part 6 services provision that gives rise to civil liability under section 449(4):

Reporting

(f) prescribing matters relating to reports or other disclosure under subpart 3 of Part 6, including the times and events referred to in that subpart and the information that must be contained in the reports (including prescribing the manner in which the information is to be presented, calculated, or prepared):

Disclosure obligations

(g) prescribing the information that must, or must not, be contained in disclosure statements for the purposes of subpart 4 of Part 6 (including prescribing the manner in which the information is to be presented, calculated, or prepared):

(h) prohibiting or restricting the use in those disclosure statements of prescribed words, information, sounds, images, graphics, or other matters:

(i) prescribing requirements as to the form, layout, or method of presentation of those disclosure statements (including the length of the whole or any part of the statement, the size of type used, and when information may be incorporated by reference):

(j) determining when disclosure is required, and when minimum disclosure may be given, under that subpart (including by requiring disclosure only on request) and what minimum disclosure must be given:

(k) prohibiting or restricting the combining of disclosure statements:

(ka) prescribing the information that must be made available under section 426A, the times or events referred to in that section, the persons who may make a request, the persons to whom information must be made available, and the manner of making the information available (including prescribing the manner in which the information is to be presented, calculated, or prepared):

(kb) prescribing circumstances for the purposes of section 427(3)(a):

(kc) prescribing conditions for the purposes of section 427(3)(b) (for example, requiring a corrective statement or a warning notice to be provided to an investor or requiring some other specified action to be taken to avoid or mitigate any actual or potential adverse effects of making the defective disclosure as referred to in section 427(1)):

Client agreements

(l) prescribing the matters that must be contained in a client agreement required for the purposes of subpart 5 of Part 6:

(m) prescribing provisions to be implied in a client agreement (*see* subsection (3)):

Financial advice services and client money or property services

(ma) prescribing kinds of financial planning for the purposes of section 431C(1)(d):

(mb) prescribing eligibility criteria for the purposes of section 431I:

(mc) prescribing the information that must be made available under section 431O, and when and the manner in which it must be made available:

(md) prescribing the information that must be disclosed under section 431X and the manner in which it must be disclosed (including prescribing

the manner in which the information is to be presented, calculated, or prepared):

(me) prescribing documents or information the giving of which does not constitute the giving of financial advice under clause 7(f) of Schedule 5:

(mf) prescribing activities for the purposes of clause 7(g) of Schedule 5 (activities that are not giving financial advice):

(mg) prescribing occupations for the purposes of clause 8(2) or 19(1) of Schedule 5:

(mh) prescribing circumstances in which financial advice is not regulated financial advice for the purposes of clause 17 of Schedule 5:

(mi) prescribing circumstances in which a client money or property service is not a regulated client money or property service for the purposes of clause 22 of Schedule 5:

(mj) providing for any or all of sections 431ZC to 431ZH to apply to wholesale clients and the extent to which and the circumstances in which they so apply:

(mk) prescribing the duties and obligations of providers of client money or property services in relation to client money and client property:

(ml) prescribing entities for the purposes of section 431ZC:

(mm) specifying who may be a related body corporate for the purposes of section 431ZC:

(mn) prescribing circumstances for the purposes of section 431ZC(3)(a):

(mo) providing for the matters referred to in section 431ZC(3)(b):

(mp) regulating the establishment and operation of a trust account under subpart 5B of Part 6 and the receipt, handling, and application of client money and client property by a provider of client money or property services (including prescribing requirements relating to the investment of money that is held in trust and providing for how interest or other income from that investment is to be paid, retained, or otherwise dealt with):

(mq) regulating the keeping, retention, reconciliation, inspection, and audit or review of trust account records and other records and procedures of providers of client money or property services:

(mr) prescribing any other requirements necessary or desirable to ensure that trust accounts are duly kept and that persons on whose behalf client money and client property are held by providers are informed of the client money and client property held and of the transactions made in connection with it (including prescribing what confirmation information must be made available and any other matters for the purposes of section 431ZF):

(ms) prescribing matters to regulate the delivery of client money or client property to the person on whose behalf they are held, and other steps to be taken or provisions to apply, in connection with the termination of any client money or property service:

Discretionary investment management services

(n) prescribing matters relating to the reporting of limit breaks:

(o) prescribing circumstances for the purposes of section 445:

Regulating conduct of financial institutions

(oa) prescribing requirements for fair conduct programmes, including (without limitation) additional, or more detailed, requirements relating to the matters set out in section 446J(1)(a) to (l) or requirements relating to 1 or more of the following in connection with a relevant service or an associated product:

(i) governance and management of conduct and risks associated with that conduct:

(ii) monitoring outcomes for consumers, including whether consumers' interests are being had regard to:

(iii) how the services or products are designed and managed:

(iv) dealing with consumer complaints:

(v) dealing with insurance claims:

(vi) communicating with consumers, including particular disclosure requirements and requirements for warnings:

(vii) procedures or processes that intermediaries or agents must follow to support the financial institution's compliance with the fair conduct principle:

(viii) the design and management of incentives:

(ob) prescribing classes of service for the purposes of section 446F(1)(b):

(oc) prescribing matters for the purposes of section 446H:

(od) prescribing factors for the purposes of section 446J(2)(g):

(oe) prescribing requirements for the purposes of section 446J(4)(a) or (b):

(of) prescribing matters for the purposes of section 446Q(4)(b) and (c):

(og) prohibiting or regulating any incentive, or any practice, activity, or other conduct in connection with offering or giving any incentive to any person, in connection with a relevant service or an associated product, including prescribing the manner in which an incentive may be offered or given:

(oh) prescribing classes of contract for the purposes of paragraph (b)(i) of the definition of consumer credit contract in section 446P:

(oi) prescribing matters for the purposes of section 446V(3)(b):

Miscellaneous

(oj) prescribing the procedure of the code committee:

(ok) prescribing the procedure of the disciplinary committee:

(p) prescribing persons or classes of persons to whom notices under Part 6 must be given:

(q) prescribing the circumstances referred to in section 424(3) or 426(1):

(r) prescribing overseas schemes, benefits, interests, or transactions for the purposes of section 441(b) and (d):

(s) prescribing the form or contents of any certificate or other document referred to in Part 6, and the manner in which it may be made or given.

(2) Subsection (1)(b), (c), (ca), (cc), (me), (mf), (mg), (mh), (mi), (mn), (o), (ob), (oe), and (of) is subject to section 550 (which provides for certain procedural requirements relating to regulations made under that paragraph).

(3) A provision prescribed for the purposes of subsection (1)(m) may, without limitation, specify the duties of the licensee or authorised body under the client agreement (including to supplement, or to add to, any duties prescribed by this Act).

(4) The Minister may make a recommendation for regulations under subsection (1)(og) (which relates to prohibiting or regulating incentives) only if the Minister—

(a) has had regard to the purposes of this Act and the fair conduct principle; and

(b) has had regard to whether the regulations are likely to—

(i) appropriately reduce or manage conflicts or potential conflicts between the interests of consumers and the interests of persons who would otherwise be entitled to receive incentives; or

(ii) otherwise mitigate or avoid the actual or potential adverse effects of incentives on the interests of consumers; and

(c) has had regard to the likely effect of the regulations—

(i) on the availability of financial advice and the availability of financial services and financial advice products; and

(ii) on the financial services industry generally; and

(d) is satisfied that the matters to which the regulations relate are not more appropriately dealt with in an Act.

(5) The breach of a term or condition prescribed under subsection (1)(c), (ca), (cb), or (cc) is a breach of section 388 (unless the regulations otherwise provide).

(7) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 546(1)(a)(i): amended, on 9 April 2019, by section 48(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(c): replaced, on 9 April 2019, by section 48(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(ca): inserted, on 9 April 2019, by section 48(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(cb): inserted, on 30 June 2022, by section 21(1) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(1)(cc): inserted, on 30 June 2022, by section 21(1) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(1)(d)(iv): inserted, on 9 April 2019, by section 48(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(d)(v): inserted, on 14 March 2021, by section 48 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 546(1)(d)(vi): inserted, on 30 June 2022, by section 21(2) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(1)(ka): inserted, on 9 August 2017, by section 92 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 546(1)(kb): inserted, on 9 August 2017, by section 92 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 546(1)(kc): inserted, on 9 August 2017, by section 92 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 546(1)(ma) heading: inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(ma): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(mb): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(mc): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(md): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(me): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(mf): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(mg): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(mh): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(mi): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(mj): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(mk): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(ml): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(mm): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(mn): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(mo): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(mp): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(mq): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(mr): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(ms): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(oa) heading: replaced, on 30 June 2022, by section 21(3) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(1)(oa): replaced, on 30 June 2022, by section 21(3) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(1)(ob): replaced, on 30 June 2022, by section 21(3) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(1)(oc): inserted, on 30 June 2022, by section 21(3) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(1)(od): inserted, on 30 June 2022, by section 21(3) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(1)(oe): inserted, on 30 June 2022, by section 21(3) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(1)(of): inserted, on 30 June 2022, by section 21(3) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(1)(og): inserted, on 30 June 2022, by section 21(3) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(1)(oh): inserted, on 30 June 2022, by section 21(3) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(1)(oi): inserted, on 30 June 2022, by section 21(3) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(1)(oj) heading: inserted, on 30 June 2022, by section 21(3) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(1)(oj): inserted, on 30 June 2022, by section 21(3) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(1)(ok): inserted, on 30 June 2022, by section 21(3) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(2): amended, on 30 June 2022, by section 21(4) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(2): amended, on 30 June 2022, by section 21(5) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(2): amended, on 9 April 2019, by section 48(6) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(4): inserted, on 30 June 2022, by section 21(6) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(5): inserted, on 30 June 2022, by section 21(6) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(7): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

547 Transitionals, savings, and orderly implementation of Act and related enactments

[Repealed]

Section 547: repealed, on 15 September 2018, by section 547(3).

548 Other regulations

(1) The Governor-General may, by Order in Council, on the recommendation of the Minister in accordance with section 549, make regulations for all or any of the following purposes:

Part 2 fair dealing

(a) declaring financial advice products as financial products for the purposes of any provision of Part 2 or section 464:

(b) prescribing circumstances for the purposes of section 34(2)(e):

(c) prescribing kinds of entities for the purposes of the definition of co-operative in section 34(4):

Definitions

(d) providing for matters relating to terms defined in this Act and related matters, including the following:

(i) excluding dealing from being dealing in financial products for the purposes of this Act:

(ia) declaring products to be financial advice products:

(ii) declaring classes of services not to be financial services for the purposes of any provision of this Act:

(iii) *[Repealed]*

(iv) prescribing services for the purposes of the definition of prescribed intermediary services and applying subpart 4 or 5 of Part 6 (or both) to those services:

(iva) specifying persons as product providers for the purposes of the definition of product provider in section 6(1):

(v) declaring interests or rights not to be securities for the purposes of this Act:

(vi) prescribing circumstances for the purposes of section 6(3) (whether in relation to the redemption date, the interest rate, or both):

(vii) prescribing matters for the purposes of section 8(4)(a)(ii):

(viii) excluding (whether by class or in a particular case) a price, estimate, rate, index, or value from being a financial benchmark for the purposes of section 6(7):

(e) prescribing kinds of schemes and deposit products for the purposes of section 11(2) and specifying conduct for the purposes of section 11(2)(c)(iv) (definitions relating to issued and issuer):

(f) prescribing circumstances for the purposes of section 13(3):

(g) prescribing matters relating to when information may be incorporated by reference for the purposes of section 13(4):

Excluded circumstances relating to when directors are treated as having contravened provisions

(h) prescribing circumstances for the purposes of section 534(2):

Trusts Act 2019 disapplied

(ha) providing that specified provisions of the Trusts Act 2019 do not apply to a trust, or a class of trusts,—

(i) that is or will be regulated by or under this Act:

(ii) that would be regulated by or under this Act except for the fact that an exclusion under Schedule 1 applies:

Schedule 3 schemes

(i) prescribing the information that must be prepared and provided under clause 6 of Schedule 3, the times or events referred to in that clause, and the manner of providing the information (including prescribing the manner in which the information is to be presented, calculated, or prepared):

(j) prescribing provisions to be implied in a trust deed of a Schedule 3 scheme (which may, without limitation, specify duties under the trust deed, including by supplementing, or adding to, any duties prescribed by this Act):

(ja) prescribing criteria, requirements, or both for the purposes of clause 2(1)(b)(iv) of Schedule 3:

Registers

(k) prescribing procedures, requirements, and other matters, not inconsistent with this Act, for any register kept under this Act, including matters that relate to—

(i) the operation of the register:

(ii) the form of the register:

(iii) the information to be contained in the register:

(iv) access to the register:

(v) search criteria for the register:

(vi) circumstances in which amendments must be made to the register:

Giving of information and other service requirements

(l) prescribing how information may or must be given to, provided to, or served on any person under this Act and other matters relating to that procedure (including when the information is treated as received, or as having been given, provided, or served, for the purposes of this Act and the regulations):

Enforcement

(m) setting the infringement fee for each infringement offence, which must not exceed $20,000:

(n) prescribing information to be included in infringement notices and reminder notices and the form of notices:

Fees and charges

(o) prescribing fees and charges payable in respect of any matter under this Act or the manner in which fees and charges may be calculated:

Prescribed manner

(p) prescribing, for the purposes of any provision of this Act that requires a thing to be done in a prescribed manner (or for the purposes of any other regulations empowered to prescribe the manner in which something must be done), the manner in which the thing must be done, including prescribing—

(i) by whom, when, where, and how the thing must be done:

(ii) the form that must be used in connection with doing the thing:

(iii) what information or other evidence or documents must be provided in connection with the thing:

(iv) requirements with which information, evidence, or documents that are provided in connection with the thing must comply:

(v) that fees or charges must be paid in connection with doing the thing:

(vi) that the FMA may determine or prescribe any of the matters under subparagraphs (i) to (iv):

General

(q) prescribing, for the purposes of provisions of this Act that require money to be repaid with interest, the rate of interest or method for determining the rate of interest:

(r) prescribing kinds of schemes for the purposes of paragraph (b) of the definition of special resolution in section 6(1) and section 161(1)(c):

(s) prescribing a date or dates for the purposes of clause 57(1)(a) of Schedule 4:

(t) prescribing clauses of Schedule 1 for the purposes of clause 59(1) of Schedule 4:

(u) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

(2) Subsection (1)(b), (d)(i), (ii), (iii), (v), and (viii), (h), and (ha) are subject to section 550 (which provides for certain procedural requirements relating to regulations made under those subparagraphs).

(3) Subsection (1)(d)(iii) is repealed on 1 April 2017 (but any regulations made under that subparagraph continue in force despite that repeal).

(4) Nothing in sections 543 to 547, or in any other provision that authorises regulations to be made under this Act, limits subsection (1)(p).

(5) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 548(1)(a): amended, on 9 April 2019, by section 49(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 548(1)(d)(ia): inserted, on 9 April 2019, by section 49(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 548(1)(d)(iii): repealed, on 1 April 2017, by section 548(3).

Section 548(1)(d)(iva): inserted, on 9 April 2019, by section 49(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 548(1)(d)(viii): inserted, on 14 March 2021, by section 49(1) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 548(1)(ha) heading: inserted, on 30 January 2021, by section 171(1) of the Trusts Act 2019 (2019 No 38).

Section 548(1)(ha): inserted, on 30 January 2021, by section 171(1) of the Trusts Act 2019 (2019 No 38).

Section 548(1)(ja): inserted, on 9 April 2019, by section 49(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 548(2): amended, on 14 March 2021, by section 49(2) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 548(2): amended, on 30 January 2021, by section 171(2) of the Trusts Act 2019 (2019 No 38).

Section 548(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

549 Minister must consult FMA about regulations

The Minister must consult the FMA before making a recommendation under this subpart.

550 Procedural requirements for regulations relating to exemptions, exclusions, and definitions

(1) The Minister must, before making a recommendation in relation to a provision referred to in—

(a) subsection (2), have regard to the main and additional purposes of this Act set out in sections 3 and 4; and

(b) subsection (2)(a), (b), or (e), be satisfied that the extent to which requirements are disapplied is not broader than is reasonably necessary to address the matters that gave rise to the regulations; and

(c) subsection (2)(c), (d), (da), (db), (ea), (eb), and (f), be satisfied that the extent of the exemption or exclusion is not broader than is reasonably necessary to address the matters that gave rise to the regulations; and

(d) subsection (2)(g), be satisfied that the extent to which the application of section 534 is reduced is not broader than is reasonably necessary to address the matters that gave rise to the regulations; and

(e) subsection (2)(h), have regard to the purpose and principles of the Trusts Act 2019 and be satisfied that the extent to which that Act is disapplied is not broader than is reasonably necessary to address the matters that gave rise to the regulations.

(2) The provisions are—

(a) sections 543(1)(a)(v) and (x), and (f), and 548(1)(b) (regulations may prescribe circumstances in which requirements do not apply):

(b) section 544(1)(k), (o), (r), (s), and (v)(iii), (iv), (via), and (ix) (regulations may prescribe circumstances in which requirements do not apply):

(c) section 545(1)(a), (g), (j), and (m) (regulations may provide for exemptions from certain requirements):

(d) section 546(1)(b), (c), (ca), and (cc) (regulations may prescribe exemptions relating to requirement to be licensed):

(da) section 546(1)(me), (mf), (mg), (mh), and (mi) (regulations may prescribe matters in relation to exclusions from definitions of financial

advice, regulated financial advice, and regulated client money or property service):

(db) section 546(1)(mn) (regulations may prescribe circumstances in which requirements do not apply):

(e) section 546(1)(o) and (oe) (regulations may disapply requirements):

(ea) section 546(1)(ob) (regulations may exclude services from being relevant services under subpart 6A of Part 6):

(eb) section 546(1)(of) (regulations may exclude occupations and activities from involvement in provision of relevant services or associated products):

(f) section 548(1)(d)(i), (ii), (v), and (viii) (regulations relating to definitions):

(g) section 548(1)(h) (regulations may prescribe circumstances in which section 534 does not apply):

(h) section 548(1)(ha) (regulations may disapply provisions of Trusts Act 2019).

(3) The Minister must, before making a recommendation in relation to section 548(1)(d)(iii) (regulations relating to definition of retirement scheme) in relation to any enactment, have regard to the purposes of that enactment and be satisfied that the extent of the exclusion is not broader than is reasonably necessary to address the matters that gave rise to the regulations.

Section 550(1)(c): amended, on 30 June 2022, by section 22(1) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 550(1)(c): amended, on 9 April 2019, by section 50(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 550(1)(d): amended, on 30 January 2021, by section 172(1) of the Trusts Act 2019 (2019 No 38).

Section 550(1)(e): inserted, on 30 January 2021, by section 172(2) of the Trusts Act 2019 (2019 No 38).

Section 550(2)(b): amended, on 9 August 2017, by section 93 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 550(2)(d): amended, on 30 June 2022, by section 22(2) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 550(2)(d): amended, on 9 April 2019, by section 50(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 550(2)(da): inserted, on 9 April 2019, by section 50(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 550(2)(db): inserted, on 9 April 2019, by section 50(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 550(2)(e): replaced, on 30 June 2022, by section 22(3) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 550(2)(ea): inserted, on 30 June 2022, by section 22(4) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 550(2)(eb): inserted, on 30 June 2022, by section 22(4) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 550(2)(f): amended, on 14 March 2021, by section 50 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 550(2)(h): inserted, on 30 January 2021, by section 172(3) of the Trusts Act 2019 (2019 No 38).

551 Miscellaneous provisions relating to exemptions

(1) The breach of a term or condition of an exemption provided by regulations is a breach of the obligation for which the exemption applies (unless the regulations otherwise provide).

(2) Exemptions made under regulations may extend to all, or classes of, persons, transactions, or other matters in relation to specified overseas jurisdictions.

(3) Subsection (2) does not limit this subpart.

Compare: 1988 No 234 ss 49E, 49F

552 Miscellaneous provisions relating to fees and charges

(1) Regulations may authorise a person to whom a fee or charge is payable to refund or waive, in whole or in part and on any conditions that may be prescribed, payment of the fee or charge in relation to any person or class of persons.

(2) A person to whom a prescribed fee or charge is payable may refuse to perform a function or exercise a power until the prescribed fee or charge is paid.

(3) Any fee, charge, or other amount payable to a person under this Act is recoverable by the person in any court of competent jurisdiction as a debt due to the person.

(4) This subpart does not limit section 67 of the Financial Markets Authority Act 2011.

(5) If regulations authorise a person to grant a refund or waiver to a class of persons,—

(a) the instrument granting the refund or waiver is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements); and

(b) the regulations must contain a statement to that effect.

Legislation Act 2019 requirements for secondary legislation referred to in subsection (5)		
Publication	See the relevant publication, presentation, and disallowance table in the regulations under which it is made	LA19 ss 73, 74, Sch 1 cl 14
Presentation	The Minister must present it to the House of Representatives, unless a transitional exemption applies under Schedule 1 of the Legislation Act 2019	LA19 s 114, Sch 1 cl 32
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 552(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

552A Validation of fees used to recover costs of other Companies Office registers, etc

(1) This section applies to a fee—

(a) that—

(i) is or was payable or purportedly payable on or before 30 June 2022 under any of the Acts listed in subsection (4) or any regulations made under any of those Acts; and

(ii) was (or is or will be) used in whole or in part to recover the costs or a share of the costs of the Registrar in operating 1 or more registers under this Act or in exercising or performing any other powers, functions, and duties of the Registrar under this Act or any regulations made under this Act; or

(b) that—

(i) is or was payable or purportedly payable on or before 30 June 2022 under this Act or any regulations made under this Act; and

(ii) was (or is or will be) used in whole or in part to recover the costs or a share of the costs of 1 or more registers operated under any of the Acts listed in subsection (5) or in exercising or performing the powers, functions, and duties of a Registrar under any of those Acts or any regulations made under any of those Acts.

(2) The fee is and always has been validly imposed.

(3) Money received by the Registrar of any register maintained by the Companies Office in payment of the fee—

(a) is and always has been lawfully collected and applied; and

(b) may continue to be applied on and after 1 July 2022 to recover costs referred to in subsection (1)(a)(ii) and (b)(ii).

(4) The Acts are—

(a) the Auditor Regulation Act 2011:

(b) the Building Societies Act 1965:

(c) the Companies Act 1993:

(d) the Financial Reporting Act 1993:

(e) the Financial Service Providers (Registration and Dispute Resolution) Act 2008:

(f) the Friendly Societies and Credit Unions Act 1982:

(g) the Incorporated Societies Act 1908:

(h) the Insolvency Practitioners Regulation Act 2019:

(i) the Limited Partnerships Act 2008:

(j) the Personal Property Securities Act 1999:

(k) the Retirement Villages Act 2003:

(l) the Securities Act 1978.

(5) The Acts are—

(a) the Auditor Regulation Act 2011:

(b) the Building Societies Act 1965:

(c) the Charitable Trusts Act 1957:

(d) the Companies Act 1993:

(e) the Financial Reporting Act 1993:

(f) the Financial Reporting Act 2013:

(g) the Financial Service Providers (Registration and Dispute Resolution) Act 2008:

(h) the Friendly Societies and Credit Unions Act 1982:

(i) the Incorporated Societies Act 1908:

(j) the Incorporated Societies Act 2022:

(k) the Industrial and Provident Societies Act 1908:

(l) the Insolvency Practitioners Regulation Act 2019:

(m) the Limited Partnerships Act 2008:

(n) the New Zealand Business Number Act 2016:

(o) the Personal Property Securities Act 1999:

(p) the Retirement Villages Act 2003:

(q) the Securities Act 1978.

(6) In this section,—

Companies Office means the division or part of each of the following departments (formerly or currently in existence) that collected or collects fees under this Act or any of the Acts listed in subsections (4) and (5):

(a) the former Department of Justice:

(b) the former Ministry of Commerce:

(c) the former Ministry of Economic Development:

(d) the Ministry of Business, Innovation, and Employment

fee—

(a) includes any penalty or overdue fee imposed, or interest charged, in respect of an unpaid or overdue fee; and

(b) in relation to the Insolvency Practitioners Regulation Act 2019, includes a levy imposed under section 81 of that Act.

Section 552A: inserted, on 25 May 2022, by section 11 of the Companies Office Registers Funding Validation Act 2022 (2022 No 27).

553 Miscellaneous provisions relating to implied provisions

Any provision that is implied into a deed or an agreement by or under this Act—

(a) applies despite anything to the contrary in the deed or agreement; and

(b) is enforceable by the parties to the deed or agreement and by any person on whom the provision confers, or purports to confer, a benefit; but

(c) applies subject to any exemption from compliance with that provision by the FMA under subpart 2.

554 Regulations or exemptions may require compliance with generally accepted accounting practice, standards, frameworks, or FMA methodologies

(1) Regulations, notices issued under subpart 4, or exemptions granted by the FMA may require any person, class of persons, information, or class of information to comply with any of the following:

(a) generally accepted accounting practice, either generally or in specified circumstances:

(b) a financial reporting standard:

(baaa) the climate-related disclosure framework, either generally or in specified circumstances:

(ba) a climate standard:

(c) an auditing and assurance standard:

(d) a notice issued under subpart 4.

(2) Regulations, a notice issued under subpart 4, or an exemption granted by the FMA may require compliance with generally accepted accounting practice, a financial reporting standard, the climate-related disclosure framework, a climate standard, an auditing and assurance standard, or a notice issued under subpart 4—

(a) in whole or in part; and

(b) with modifications, additions, or variations specified in the regulations, notice, or exemption.

(3) In this section,—

auditing and assurance standard has the same meaning as in section 5(1) of the Financial Reporting Act 2013

climate standard has the same meaning as in section 5(1) of the Financial Reporting Act 2013

financial reporting standard has the same meaning as in section 5(1) of the Financial Reporting Act 2013.

Section 554 heading: amended, on 27 October 2022, by section 18(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 554(1)(baaa): inserted, on 27 October 2022, by section 18(2) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 554(1)(ba): inserted, on 27 October 2022, by section 18(2) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 554(2): amended, on 27 October 2022, by section 18(3) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 554(3): replaced, on 1 April 2014, by section 56 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 554(3) **climate standard**: inserted, on 27 October 2022, by section 18(4) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

555 Different matters may be prescribed in respect of different circumstances

Different matters may be prescribed, prohibited, restricted, specified, or required under the regulations in respect of different kinds or classes of financial products, services, persons, or other circumstances.

Subpart 2—Exemptions

556 FMA may grant exemptions

(1) The FMA may, on the terms and conditions (if any) that it thinks fit, exempt any person or class of persons or any transaction or class of transactions from compliance with any provision or provisions of—

(a) Parts 2 to 7A, subpart 8 of Part 8, and any of the schedules; or

(b) any regulations.

(2) To avoid doubt, an exemption may extend to exempt from compliance with any provision that is implied into a deed or an agreement by or under any other provision referred to in subsection (1).

(3) Nothing in subpart 6 or 7 limits subsection (1).

(3A) The FMA may, on the terms and conditions (if any) that it thinks fit, exempt any trust or class of trusts (or any person or class of persons in respect of a trust or class of trusts) from any provision or provisions of the Trusts Act 2019 if—

(a) the trust or that class of trusts is constituted (or is to be constituted) under a trust deed or trust deeds that would be required to be lodged under section 103 except for the fact that the FMA has granted or will grant an exemption from that requirement under subsection (1); or

(b) both of the following apply:

(i) a managed investment scheme is constituted (or is to be constituted) as 1 or more trusts or as including 1 or more trusts (or both):

(ii) the scheme would be required to be registered under subpart 2 of Part 4 except for the fact that the FMA has granted or will grant an exemption from that requirement under subsection (1).

(4) Subpart 5 (general provisions relating to certain FMA instruments) applies to an exemption granted under this section.

Section 556(1)(a): amended, on 27 October 2022, by section 19 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 556(1)(a): amended, on 9 August 2017, by section 94 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 556(3A): inserted, on 30 January 2021, by section 173 of the Trusts Act 2019 (2019 No 38).

557 Restriction on FMA's exemption power

(1) The FMA must not grant an exemption under this subpart unless it is satisfied that—

(a) granting the exemption is necessary or desirable in order to promote either or both of the main purposes of this Act as specified in section 3 or any of the additional purposes specified in section 4; and

(b) the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.

(2) In the case of section 556(3A), the FMA must also have regard to the purpose and principles of the Trusts Act 2019.

Section 557(2): inserted, on 30 January 2021, by section 174 of the Trusts Act 2019 (2019 No 38).

558 Exemption in force for not more than 5 years

An exemption granted under this subpart may continue in force for not more than 5 years (and at the close of the date that is 5 years after the exemption first comes into force, the exemption must be treated as having been revoked unless it is sooner revoked or expires).

559 Breach of exemption conditions

The breach of a term or condition of an exemption granted under this subpart is a breach of the provision to which the exemption relates (unless the terms of the exemption otherwise provide).

Compare: 1988 No 234 s 49E

560 Exemptions in respect of specified overseas jurisdictions

(1) Exemptions granted under this subpart may extend to all, or classes of, persons, transactions, or other matters in relation to specified overseas jurisdictions.

(2) Subsection (1) does not limit this subpart.

Compare: 1988 No 234 s 49F

561 Effect of exemptions on regulated offers

(1) If the FMA grants an exemption under this subpart from any provision of subpart 1 or 2 of Part 3 or Schedule 1 and that exemption applies in respect of an offer of financial products that would be a regulated offer, the offer continues to be a regulated offer unless subsection (2) applies.

(2) An offer of financial products that would, but for this subsection, be a regulated offer is not a regulated offer if the terms of an exemption granted under this subpart state that the offer is not a regulated offer.

(3) A statement under subsection (2) may be in respect of an offer or a class of offers.

561A Financial reporting and climate-related disclosure exemptions

(1) An exemption granted under this subpart in relation to any provision of Part 7 may, if the FMA thinks fit, apply to an accounting period that commenced before the exemption is granted (including an accounting period that ended before the exemption is granted) if the exemption is granted before the financial statements or group financial statements for that period are required to be lodged under that Part.

(1A) An exemption granted under this subpart in relation to any provision of Part 7A may, if the FMA thinks fit, apply to an accounting period that commenced before the exemption is granted (including an accounting period that ended before the exemption is granted) if the exemption is granted before the climate statements or group climate statements for that period are required to be lodged under that Part.

(2) In deciding whether to grant, amend, or revoke an exemption under this subpart in relation to any provision of Part 7 or 7A, the FMA must consult the Reserve Bank if the exemption concerns any of the following:

(a) a registered bank:

(b) a licensed insurer:

(c) an NBDT.

Section 561A: inserted, on 1 April 2014, by section 57 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 561A heading: replaced, on 27 October 2022, by section 20(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 561A(1A): inserted, on 27 October 2022, by section 20(2) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 561A(2): amended, on 27 October 2022, by section 20(3) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Subpart 3—FMA's designation power

562 FMA's designation power

(1) The FMA may—

(a) declare that a security that would not otherwise be a financial product is a financial product of a particular kind:

(b) declare that a financial product is, or is to become, a financial product of a particular kind (whether or not it was previously a financial product of a different kind):

Example

A share is normally an equity security.

However, a particular type of share may have terms that mean that, in substance, the share is similar to a debt security.

The FMA may declare that a share of that kind is a debt security.

(c) declare that a security that would otherwise be a financial product of a particular kind is not a financial product:

(d) declare that an offer of financial products that would not otherwise require disclosure under Part 3 because of an exclusion under Part 1 of Schedule 1 does require disclosure under Part 3:

Example

A small offer is generally excluded from requiring disclosure (*see* clause 12 of Schedule 1).

However, an offer of a particular kind may involve significant risks for investors that may otherwise be undisclosed to investors.

The FMA may declare that disclosure under Part 3 is required despite the exclusion (and, accordingly, the offer is a regulated offer).

(e) declare that an offer of financial products for sale that would not otherwise require disclosure under Part 3 does require disclosure under Part 3 (*see* section 563(1)(c)):

Example

Offers of financial products for sale generally require disclosure only in limited circumstances (*see* Part 2 of Schedule 1).

However, an issuer could structure an offer with a view to circumventing, evading, or defeating the disclosure provisions of this Act.

The FMA may declare that disclosure of the offer under Part 3 is required despite the fact that the provisions in Part 2 of Schedule 1 do not apply.

(f) declare, in relation to a managed investment product or if a declaration is made under paragraph (a) or (b) declaring that a security or financial product is a managed investment product, that a scheme is, or is to become, a managed investment scheme in relation to that managed investment product:

(g) if a declaration is made under paragraph (a), (b), or (f), declare that a person or class of person is, or is to become, the issuer or offeror of the relevant financial products:

(ga) declare that a person or class of person that would otherwise be a wholesale investor or a wholesale client is, or is to become, a retail investor or a retail client:

(gb) declare that advice—

(i) that would not otherwise be financial advice is financial advice; or

(ii) that would otherwise be financial advice is not financial advice; or

(iii) that would not otherwise be regulated financial advice is regulated financial advice; or

(iv) that would otherwise be regulated financial advice is not regulated financial advice:

(gc) declare that a service—

(i) that would not otherwise be a financial advice service is a financial advice service; or

(ii) that would otherwise be a financial advice service is not a financial advice service:

(h) declare a person, service, or conduct to be not exempt under any exemption that would otherwise apply under any of the following provisions (and accordingly the licensing requirement under this Act applies):

(i) section 389(2):

(ii) section 389(3):

(i) declare a person, service, or conduct to be not exempt under any exemption or exclusion that would otherwise apply under section 238(1)(a) to (h) (in relation to either subpart 5 or 6 of Part 5), or under section 285, 287, or 309.

(2) A declaration may specify terms and conditions relating to—

(a) the circumstances in which the declaration applies, including (without limitation) by reference to any person or class of persons or any transaction or class of transactions:

(b) transitional matters.

(3) Nothing in this section prevents the FMA from granting an exemption under subpart 2 that applies to an offer, a financial product, or any other matter that is the subject of a declaration under this section.

Example

The FMA declares that a particular type of share (which would otherwise be an equity security) is a debt security.

However, some of the regulatory requirements that relate to debt securities are inappropriate in respect of these shares.

Accordingly, the FMA grants an exemption (on terms and conditions) from those requirements in order to customise the regulatory requirements that will apply.

(4) The provisions of this Act apply subject to a declaration under this subpart.

(5) Subpart 5 (general provisions relating to certain FMA instruments) applies to a declaration under this section.

Section 562(1)(g): amended, on 9 April 2019, by section 51(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 562(1)(ga): inserted, on 9 April 2019, by section 51(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 562(1)(gb): inserted, on 9 April 2019, by section 51(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 562(1)(gc): inserted, on 9 April 2019, by section 51(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 562(1)(h): replaced, on 9 April 2019, by section 51(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

563 Procedural requirements

(1) The FMA must not make a declaration under this subpart unless—

(a) it is satisfied that the declaration is necessary or desirable in order to promote either or both of the main purposes of this Act specified in section 3 or any of the additional purposes specified in section 4; and

(b) in the case of section 562(1)(a) to (d), it has had regard to the economic substance of the relevant security; and

(c) in the case of section 562(1)(e), it is satisfied that the offer or class of offers has, or would have, a purpose or an effect of circumventing, evading, or defeating any of the purposes referred to in paragraph (a) (having regard to the economic substance of the offer or offers); and

(ca) in the case of section 562(1)(gb), (gc), or (h)(i), it is satisfied that the declaration is necessary or desirable in order to promote the additional purpose specified in section 431B; and

(d) it has consulted the persons or representatives of the persons that the FMA considers will be substantially affected by the declaration.

(2) A failure to comply with subsection (1)(d) does not affect the validity of the declaration.

Section 563(1)(ca): inserted, on 9 April 2019, by section 52 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

564 Transitional matters

A declaration under this subpart—

(a) does not apply to financial products issued or transferred before the commencement of the declaration; and

(b) applies subject to any terms and conditions of the declaration relating to transitional matters.

565 FMA may make interim orders pending exercise of powers

(1) The FMA may make an interim order that no offers, issues, sales, or other acquisitions or disposals of securities specified in the order may be made, or services specified in the order may be supplied, while the interim order is in force if—

(a) the FMA is considering, at any time, whether it may exercise a power under this subpart in respect of those securities or services; and

(b) the FMA considers that making an interim order is desirable in the public interest.

(2) An order under subsection (1)—

(a) must specify the offeror or offerors or service provider or providers to which the order applies; and

(b) may require—

(i) all, or any specified class or classes, of the associated persons of the offeror or offerors or service provider or providers to comply with the order (including associated persons that may be incorporated or formed after the date of the order); and

(ii) an offeror or service provider to provide a copy of the order to all or any of those associated persons.

(3) For the purpose of subsection (2), the order is not required to refer to the associated persons by name.

(4) The FMA—

(a) may act under subsection (1) or section 566(1)(b) without giving the offeror or service provider to which the order relates an opportunity to make submissions to, or be heard before, the FMA in respect of the matter; but

(b) must, after acting under subsection (1) or section 566(1)(b), give that offeror or service provider or that person's representative an opportunity to make written submissions and to be heard on the matter.

(5) The FMA must, immediately after making the order, notify each of the following that the order has been made and the reasons for the order:

(a) each offeror or service provider to which the order relates:

(b) the Registrar, if the order relates to a regulated offer.

566 Period in which interim order is in force

(1) An interim order under section 565 is in force from the time at which it is made until the close of—

(a) the date that is 15 working days after the day on which it is made; or

(b) a later date specified by the FMA by notice to the offeror or service provider to which the order relates.

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

(a) the FMA may specify a later date if the FMA is of the opinion that it is not reasonably practicable for it to complete its consideration as referred to in section 565(1)(a) within the 15-working-day period referred to in subsection (1)(a):

(b) the later date must be a date that is no more than 30 working days after the day on which the interim order is made.

Subpart 4—Frameworks or methodologies

567 Purpose

(1) The purpose of this subpart is to provide for the FMA to issue frameworks or methodologies relating to detailed or technical matters (rather than matters of general principle).

(2) A notice issued under this subpart applies only to the extent provided for in this Act or the regulations (*see* section 554).

568 FMA may specify frameworks or methodologies

(1) The FMA may issue a notice that specifies frameworks or methodologies relating to how matters are required or permitted to be determined, calculated, valued, presented, or prepared for the purposes of—

(a) information that is to be made available under subpart 4 of Part 3:

(b) the governing documents for debt securities and registered schemes, statements of investment policy and objectives, and determining the materiality of limit breaks or pricing errors under Part 4:

(c) the eligibility criteria for the issue of market services licences:

(d) the conditions that may be imposed on market services licences:

(e) any other matter that, by this Act or any other enactment, is required or permitted to be done in accordance with those frameworks or methodologies or the notices issued under this subpart.

(2) The frameworks or methodologies may (without limitation)—

(a) include requirements relating to how income, values, assets, revenue, liabilities, financial products, transactions, amounts payable, or other matters are to be determined, calculated, valued, presented, or prepared:

(b) provide for income, values, assets, revenue, liabilities, financial products, transactions, amounts payable, or other matters to be included or disregarded (in whole or in part) for the purposes of paragraph (a).

(3) A notice issued by the FMA—

(a) may specify different matters and requirements in respect of different kinds or classes of financial products, services, persons, or other circumstances:

(b) must not specify matters and requirements that are inconsistent with this Act or any regulations.

(4) Subpart 5 (general provisions relating to certain FMA instruments) applies to a notice issued under this section.

Compare: 1978 No 103 s 54D

569 Consultation

(1) The FMA must not issue a notice under this subpart unless the FMA has consulted the persons or representatives of the persons that the FMA considers will be substantially affected by the issue of the notice.

(2) A failure to comply with subsection (1) does not affect the validity of the notice.

Compare: 1978 No 103 s 54E

Subpart 5—General provisions relating to certain FMA instruments

570 Application of subpart

This subpart applies to the following instruments:

(a) notices issued under section 69:

(ab) notices issued under section 461L:

(b) exemptions granted under subpart 2:

(c) declarations made under subpart 3:

(d) notices issued under subpart 4.

Section 570(ab): inserted, on 1 April 2014, by section 58 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

571 Status and publication of instruments

(1) An instrument to which this subpart applies is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

(2) *[Repealed]*

(3) *[Repealed]*

(4) *[Repealed]*

(5) The FMA's reasons for making an instrument (including why the instrument is appropriate) must be published together with the instrument.

(6) *[Repealed]*

Legislation Act 2019 requirements for secondary legislation made under section 69, or under section 461L in respect of a class of FMC reporting entities

Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Legislation Act 2019 requirements for secondary legislation made under section 461L in respect of a specified FMC reporting entity, or under subpart 4

Publication	The maker must: • notify it in the *Gazette* • publish it on a website maintained by, or on behalf of, the maker • make it available in printed form for purchase on request by members of the public	LA19 ss 73, 74(1)(a), Sch 1 cl 14
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Legislation Act 2019 requirements for secondary legislation made under subpart 2 that is of general application and applies to a class of persons or transactions, but not including secondary legislation granted in relation to a particular person or transaction or persons associated with, or transactions involving, a particular person

Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives, unless the exemption in Schedule 3 of the Legislation Act 2019 applies	LA19 s 114, Sch 3
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Legislation Act 2019 requirements for all other secondary legislation made under subpart 2

Publication	The maker must: • notify it in the *Gazette* • publish it on a website maintained by, or on behalf of, the maker • make it available in printed form for purchase on request by members of the public However, that requirement does not apply if the presentation exemption in Schedule 3 of the Legislation Act 2019 applies. While that exemption applies, it is not required to be published	LA19 ss 73, 74(1)(a), Sch 1 cl 14
	The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019	LA19 ss 74(2), 75
Presentation	The Minister must present it to the House of Representatives, unless the exemption in Schedule 3 of the Legislation Act 2019 applies	LA19 s 114, Sch 3
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Legislation Act 2019 requirements for secondary legislation made under subpart 3 that is of general application and applies to a class of persons or transactions, but not including secondary legislation granted in relation to a particular person or transaction or persons associated with, or transactions involving, a particular person

Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Legislation Act 2019 requirements for all other secondary legislation made under subpart 3

Publication	The maker must: • notify it in the *Gazette* • publish it on a website maintained by, or on behalf of, the maker • make it available in printed form for purchase on request by members of the public	LA19 ss 73, 74(1)(a), Sch 1 cl 14
	The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019	LA19 ss 74(2), 75
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 571(1): replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 571(2): repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 571(3): repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 571(4): repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 571(6): repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

571A Deferral of obligations to publish, notify, and make available non-class exemptions

[Repealed]

Section 571A: repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

572 Variation and revocation

The FMA may vary or revoke an instrument to which this subpart applies in the same way as it may make the instrument (with the provisions relating to the making of the instrument applying with all necessary modifications).

Subpart 6—Recognition and application regimes

573 Purpose of this subpart

The purpose of this subpart is to enable recognition and application regimes to be implemented that—

(a) provide for exemptions from this Act and the regulations so that offerors may offer financial products in New Zealand in accordance with the securities laws of designated countries:

(b) extend the territorial scope of this Act and the regulations so that offerors may offer financial products in designated countries in accordance with New Zealand laws, and investors in those countries may rely on and enforce those laws.

Compare: 1978 No 103 s 71

574 Definition of country in this subpart

In this subpart and subpart 7, **country** includes a state, territory, country, or group of countries in respect of which a single securities law, or set of laws, is in force.

Compare: 1978 No 103 s 72

Exemption from Act and regulations for New Zealand offers under recognition regime

575 Exemption from Act and regulations for New Zealand offers under recognition regime

(1) A provision of this Act or the regulations does not apply to a financial product offered to a person in New Zealand if—

(a) a recognition regime set out in regulations made under section 576 applies to the product; and

(b) the recognition regime provides an exemption from that provision for the product; and

(c) the offeror of the product has opted into the recognition regime; and

(d) any other preconditions of the recognition regime are met.

(2) For the purposes of subsection (1), an offeror opts into a recognition regime in respect of a product by notifying the Registrar—

(a) that an offer of the financial product is to be made under the recognition regime; and

(b) of the full name and address in New Zealand of 1 or more persons resident or incorporated in New Zealand who are authorised to accept service in New Zealand at that address of documents on behalf of the offeror.

(3) The Registrar must send a copy of the notification to the FMA.

Compare: 1978 No 103 s 73

576 Power to exempt from Act and regulations under recognition regime

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations, for the purpose of implementing a recognition regime for a designated country, that provide for—

(a) exemptions from provisions of this Act and the regulations; and

(b) the other matters set out in section 577.

(2) The Minister may recommend making an Order in Council under this section only—

(a) if he or she is satisfied that it is in the public interest after having regard to—

(i) the securities laws of the designated country; and

(ii) the interests of New Zealand investors; and

(b) after consulting with the FMA.

(3) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1978 No 103 s 74

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 576(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

577 Matters that must be stated in regulations implementing recognition regime

(1) The regulations made under section 576 must state—

(a) the country to which the recognition regime applies; and

(b) the classes of financial products to which the recognition regime applies (whether by reference to type of issuer, offeror, offer, or any other matter); and

(c) the exemptions from provisions of this Act and the regulations for those products; and

(d) the preconditions that must be met for the recognition regime to apply, for example (without limitation), requiring specified information relating

to the offer or financial products to be provided to the FMA or Registrar; and

(e) the terms and conditions that must be complied with under the recognition regime, for example (without limitation), requiring—

(i) the offer of the financial products to be made in accordance with specified provisions of the designated country's laws:

(ii) warnings to be given to investors so as to inform them that the offer of the financial products is regulated under the designated country's laws and that New Zealand laws relating to the offer of financial products do not apply to the offer:

(iii) specified information relating to the offer or financial products to be provided to the FMA or Registrar.

(2) Regulations may provide different exemptions, preconditions, and terms and conditions for different classes of financial products, offers, persons, or circumstances.

Compare: 1978 No 103 s 75

578 FMA may declare failure to meet preconditions of recognition regime to be non-material

(1) If the FMA is satisfied, in relation to an offer, that a failure to meet a precondition referred to in section 577(1)(d) is minor or technical only, the FMA may declare in writing that the failure is non-material.

(2) If the FMA makes a declaration, the precondition must be treated as having been met at the time it was required to be met by the regulations made under section 576.

Compare: Corporations Act 2001 s 1200B(3), (4) (Aust); SR 2008/153 r 8(3), (4)

579 Offence for breach of regulations implementing recognition regime

If there is a contravention, in respect of a financial product, of a term or condition that must be complied with under a recognition regime, each of the following persons commits an offence and is liable on conviction to a fine not exceeding $50,000:

(a) the offeror of the financial product; and

(b) every person who is a director of the offeror at the time of the contravention; and

(c) every person who has authorised himself or herself to be named, and is named, in any advertisement relating to the financial product as a director of the offeror or as having agreed to become a director either immediately or after an interval of time.

Compare: 1978 No 103 s 76

Extension of Act and regulations to overseas offers under application regime

580 Extension of Act and regulations to overseas offers under application regime

A provision of this Act or the regulations applies to a financial product that is offered to a person outside New Zealand if—

(a) an application regime set out in regulations made under section 581 applies to the financial product; and

(b) the application regime applies that provision to the financial product; and

(c) any other preconditions of the application regime are met.

Compare: 1978 No 103 s 77

581 Power to extend Act and regulations under application regime

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations, for the purpose of implementing an application regime for a designated country, that provide for—

(a) the application of provisions of this Act and the regulations to financial products offered to persons in that country; and

(b) the other matters set out in section 582.

(2) The Minister may recommend making an Order in Council under this section only—

(a) if he or she is satisfied that it is appropriate for New Zealand laws to apply to financial products offered to persons in the designated country as set out in the proposed application regime; and

(b) after consulting with the FMA.

(3) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1978 No 103 s 78

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 581(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

582 Matters that must be stated in regulations implementing application regime

(1) The regulations made under section 581 must state—

(a) the country to which the application regime applies; and

(b) the classes of financial products to which the application regime applies (whether by reference to type of issuer, offeror, offer, or any other matter); and

(c) the provisions of this Act and the regulations that apply to those financial products; and

(d) whether or not, or the extent to which, exemptions from those provisions granted by the FMA under this Act may also apply to those financial products; and

(e) the preconditions (if any) that must be met for the application regime to apply; and

(f) the terms and conditions (if any) that must be complied with under the application regime.

(2) The regulations may provide different applications of provisions, preconditions, and terms and conditions for different classes of financial products, offers, persons, or circumstances.

Compare: 1978 No 103 s 79

Subpart 7—Enforcement of overseas pecuniary penalties under application regime

583 Purpose of this subpart

The purpose of this subpart is to enable application regimes to be implemented that provide for enforcement in New Zealand of fines and pecuniary penalties imposed for breaches of securities laws of designated countries.

Compare: 1978 No 103 s 71

584 Enforcement of overseas pecuniary penalties under application regime

This subpart applies to a judgment given by a court under a provision of the law of another country if—

(a) an application regime set out in regulations made under section 585 applies this subpart to that provision of the law of that country; and

(b) the judgment requires payment of a penalty; and

(c) any other preconditions of the application regime are met.

Compare: 1978 No 103 s 80

585 Power to enforce overseas penalties under application regime

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, for the purpose of implementing an application regime for a designated country, make regulations that provide for—

(a) the application of this subpart to provisions of the securities laws of that country under or in respect of which a penalty may be imposed; and

(b) the preconditions of the application regime (if any).

(2) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1978 No 103 s 81

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 585(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

586 Interpretation

In this subpart,—

court of rendition, in relation to a judgment, means the court by which the judgment was given

enforcement, in relation to a judgment, includes execution of a judgment

judgment includes an order

penalty means a fine or other pecuniary penalty (whether criminal or civil)

place of rendition, in relation to a judgment, means the country in which the court of rendition is established

registered judgment means a judgment that is registered under section 587.

Compare: 1978 No 103 s 82

587 Registration of judgment

The High Court must register a judgment to which this subpart applies under section 584 as a civil judgment debt if an application is made to it in accordance with regulations made under section 585.

Compare: 1978 No 103 s 83

588 Effect of registration

(1) A registered judgment has the same force and effect, and may give rise to the same proceedings by way of enforcement, as if the judgment had been given by the High Court.

(2) Subsection (1) is subject to sections 589 and 590.

Compare: 1978 No 103 s 84

589 Enforceability of registered judgment

A registered judgment is capable of being enforced in or by the High Court only if, and to the extent that, at the time when the proceeding for enforcement is or is to be taken, the judgment is capable of being enforced in or by—

(a) the court of rendition; or

(b) a court in the place of rendition.

Compare: 1978 No 103 s 85

590 Stay may be granted

(1) The High Court may, on application by a person against whom the registered judgment has been given, order that proceedings in the High Court to enforce the judgment—

(a) not be commenced until a specified time; or

(b) be stayed for a specified period.

(2) The order—

(a) must be made subject to conditions that,—

(i) within the period specified in the order, the person make and prosecute an appropriate application for relief in respect of the registered judgment; and

(ii) the application be prosecuted in an expeditious manner; and

(b) may be made subject to other conditions, including as to the giving of security, that the High Court thinks fit.

(3) For the purposes of subsection (2)(a)(i), an **appropriate application for relief** is an application to set aside, vary, or appeal against the registered judgment that is made to a court or tribunal that has jurisdiction under the law in force in the place of rendition to grant the application.

Compare: 1978 No 103 s 86

591 Costs

(1) The following are recoverable in proceedings by way of enforcement of a registered judgment:

(a) the reasonable costs and expenses of, and incidental to, obtaining and lodging the copy of the judgment; and

(b) the costs and expenses reasonably incurred in attempting to execute the judgment in the court of rendition.

(2) The entitlement of a person to, and the liability of a person for, the costs or expenses of, and incidental to, those proceedings are the same as they are in proceedings by way of enforcement of—

(a) a similar judgment given by the High Court; or

(b) if there is no such similar judgment, the most closely analogous judgment given by the High Court.

Compare: 1978 No 103 s 87

592 Interest

Interest on the amount of a registered judgment—

(a) is payable at the same rate or rates and in respect of the same period or periods as would be applicable in the court of rendition; and

(b) is recoverable to the extent that the judgment creditor satisfies the High Court as to the amount of the interest.

Compare: 1978 No 103 s 88

593 Rules of private international law not to apply

If a judgment is registered in the High Court under this subpart, the courts of New Zealand must not, merely because of the operation of a rule of private international law, refuse to permit proceedings by way of enforcement of the registered judgment to be taken or continued.

Compare: 1978 No 103 s 89

594 Other regulations for registration of judgments under application regime

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for the registration of judgments under this subpart, including (without limitation) providing for—

(a) the verification requirements for those judgments:

(b) the registration and service of facsimiles of those judgments:

(c) the service of notice of registration of those judgments:

(d) other requirements for the way in which those judgments may be registered (for example, the currency of registrations and the registration of partly satisfied judgments).

(2) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1978 No 103 s 90

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 594(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Subpart 8—Miscellaneous provisions

Subpart 8 heading: amended, on 9 April 2019, by section 54 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

595 Registers

The provisions in Schedule 2 apply to the keeping of registers under this Act.

596 Schedule 3 schemes

The FMA may approve, or withdraw an approval of, a scheme as a Schedule 3 scheme under Schedule 3, and the provisions of that schedule apply to a Schedule 3 scheme.

597 Transitional provisions

[Repealed]

Section 597: repealed, on 9 April 2019, by section 55 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 1
Provisions relating to when disclosure is required and exclusions for offers and services

ss 39, 40

Contents

Page

Part 1
Disclosure exclusions for offers of financial products for issue or sale

1 Overview of Part 400
2 Part subject to FMA's power to require disclosure 400

Exclusion for wholesale investors

3 Offer to wholesale investor 400

Exclusion for persons in close relationship

4 Offers to close business associates 401
5 Offers to relatives 402

Exclusion for offers through licensed intermediaries and DIMS licensees

6 Offers of financial products through licensed intermediaries 403
7 Offers of financial products through DIMS licensees 403

Exclusion for employee share purchase schemes

8 Offers under employee share purchase schemes 403

Exclusion for persons under control

9 Offers to persons under control do not need disclosure 404

Exclusion for dividend reinvestment plan

10 Offers of financial products under dividend reinvestment plans 404

Exclusion for financial products for no consideration

11 Offers of financial products for no consideration 406

Exclusion for small offers

12 Small offers 406
13 Advertising restriction for small offers 407
14 Matters relating to calculation 408

Exclusion for transfer of controlling interest

15 Offers of controlling interest where 5 or fewer investors 409

Exclusion for small schemes

16 Exclusion for small schemes 409

17 Advertising restriction for small schemes 409
18 Counting of scheme participants 409

Exclusion for quoted financial products

19 Exclusion for offers of financial products of same class as quoted financial products 410

Exclusions for derivatives

20 Exclusions for certain offers of derivatives 411

Exclusion for registered banks

21 Offers of prescribed financial products or debt securities by registered banks 411

Exclusion for the Crown, etc

22 Offers by the Crown, etc 412

Exclusion for retirement villages

23 Offers of interests in retirement villages 412

Exclusion for renewals or variations

24 Offers of renewals or variations 413

Limited disclosure and other requirements

25 Purposes of clauses 26 to 29 413
26 Disclosure and other requirements 413
27 False or misleading statements and omissions 415
27A Offeror is FMC reporting entity in prescribed circumstances 415
28 Persons who must inform offeror about deficiencies in limited disclosure document 415
28A Failure to lodge or give information to Registrar or FMA 416
29 Regulations may prevent exclusions from applying in inappropriate circumstances 416

Part 2
Which offers of financial products for sale require disclosure

30 Application of this Part 417
31 Sale where financial products issued with view to original holder dealing with products 417
32 Sale where issuer advises, encourages, or knowingly assists offeror 418
33 Off-market sale by controller 419
34 Sale amounting to indirect off-market sale by controller 419

Part 3
Definitions and certificates for exclusions for offers and services

35 Meaning of retail investor and retail service 420
36 Meaning of wholesale investor 420

37 Investment businesses 421
38 Investment activity criteria 421
39 Meaning of large 422
40 Definition of government agency 423
41 Eligible investors 423
42 Offeror may not rely on eligible investor certificate in certain circumstances 424
43 Confirmation of certification 425
44 Safe harbour if certificate given 426
45 Offeror or provider may not rely on safe harbour certificate if knows A was not in fact wholesale investor 426
46 Other provisions relating to certificates 427
47 Offences relating to certificates 427

Control and other definitions for schedule

48 Meaning of control in this schedule 427
49 Other definitions for schedule 428

Part 1
Disclosure exclusions for offers of financial products for issue or sale

1 Overview of Part

In this Part,—

(a) clauses 3 to 11 specify that offers to particular persons do not require disclosure under Part 3 of this Act (although disclosure to other persons may be required):

(b) clauses 12 to 24 specify that certain offers as a whole do not require disclosure under Part 3 of this Act, whether as a result of the nature of the offer (for example, a small offer) or the nature of the issuer (for example, an offer by the Crown):

(c) clauses 25 to 29 provide for limited disclosure and other requirements, and for restrictions, in relation to the exclusions.

2 Part subject to FMA's power to require disclosure

This Part is subject to a declaration under section 562(1)(d) (FMA's power to declare that an offer requires disclosure).

Exclusion for wholesale investors

3 Offer to wholesale investor

(1) An offer of financial products to a wholesale investor does not require disclosure under Part 3 of this Act.

(2) A person is a **wholesale investor** if—

(a) the person is an investment business (*see* clause 37); or

(b) the person meets the investment activity criteria specified in clause 38; or

(c) the person is large (*see* clause 39); or

(d) the person is a government agency (*see* clause 40).

(3) A person is also a **wholesale investor**, in relation to an offer of financial products, if—

(a) the person is an eligible investor (*see* clause 41); or

(b) in relation to an offer of financial products for issue or sale,—

(i) the minimum amount payable by the person on acceptance of the offer is at least $750,000; or

(ii) the amount payable by the person on acceptance of the offer plus the amounts previously paid by the person for financial products of the issuer of the same class that are held by the person add up to at least $750,000; or

(iii) it is proposed that the person will acquire the financial products under a bona fide underwriting or sub-underwriting agreement; or

(c) in relation to an offer of a derivative for issue or sale, the notional value of the derivative is at least $5 million (*see* clause 49).

(4) In calculating the amount payable, or paid, for financial products for the purposes of subclause (3)(b)(i) or (ii), any amount payable, or paid, must be disregarded to the extent to which it is to be paid, or was paid, out of money lent by the offeror or any associated person of the offeror.

Exclusion for persons in close relationship

4 Offers to close business associates

(1) An offer of financial products to a close business associate of the offeror does not require disclosure under Part 3 of this Act.

(2) A person (**A**) is a close business associate of the offeror if—

(a) A is a director or senior manager of the offeror or of a related body corporate of the offeror; or

(b) A holds or controls 5% or more of the voting products of the offeror; or

(c) A is a related body corporate of the offeror; or

(d) A holds or controls 20% or more of the voting products of a related body corporate of the offeror; or

(e) A is a partner of the offeror or of a director of the offeror (under the Partnership Law Act 2019); or

(f) A is a spouse, civil union partner, or de facto partner of a person who is a close business associate of the offeror under any of paragraphs (a) to (e) or subclause (3); or

(g) A is a child, parent, brother, or sister of a person who is a close business associate of the offeror under any of paragraphs (a) to (f) or subclause (3) (whether or not by a step relationship).

(3) A person (**A**) is also a close business associate of the offeror, in relation to an offer of financial products, if A has a close professional or business relationship with the offeror, or a director or senior manager of the offeror, that allows A to—

(a) assess the merits of the offer; or

(b) obtain information from the offeror or any other person involved in the offer that will enable A to assess the merits of the offer.

(4) In this clause, **control**, in relation to a voting product, means having, directly or indirectly, effective control of the voting rights attached to the product.

Schedule 1 clause 4(2)(e): amended, on 21 April 2020, by section 86 of the Partnership Law Act 2019 (2019 No 53).

5 Offers to relatives

(1) An offer of financial products to a relative of the offeror or of a director of the offeror does not require disclosure under Part 3 of this Act.

(2) In this clause, **relative**, in relation to a person (**A**), means any of the following:

(a) A's spouse, civil union partner, or de facto partner (**B**):

(b) a grandparent, parent, child, grandchild, brother, sister, nephew, niece, uncle, aunt, or first cousin of A or B, whether or not by a step relationship:

(c) a spouse, civil union partner, or de facto partner of a person who is a relative under paragraph (b):

(d) a trustee of a trust under which A, or a relative of A (under paragraphs (a) to (c)), is a beneficiary who—

(i) is presently entitled to a share of the trust estate or of the income of the trust estate; or

(ii) is, individually or together with other beneficiaries, in a position to control the trustee:

(e) a trustee of a trust if—

(i) the trust is a family trust within the meaning of section 173M(5) of the Tax Administration Act 1994; and

(ii) a majority of the individuals who are beneficiaries under the trust are relatives of A (under paragraphs (a) to (c)).

Exclusion for offers through licensed intermediaries and DIMS licensees

6 Offers of financial products through licensed intermediaries

(1) An offer of financial products to a person (**A**) does not require disclosure under Part 3 of this Act if—

(a) the offer is by or through a licensed intermediary in the course of supplying prescribed intermediary services to A; and

(b) the prescribed intermediary services supplied to A by the licensed intermediary in relation to the offer are covered by the market services licence held by the licensed intermediary.

(2) In this clause, **licensed intermediary** means a person who holds a market services licence that covers prescribed intermediary services.

7 Offers of financial products through DIMS licensees

An offer of financial products to a person (**A**) does not require disclosure under Part 3 of this Act if—

(a) the offer is through a DIMS licensee; and

(b) the DIMS licensee decides whether to acquire the financial products on behalf of A in the course of supplying a discretionary investment management service to A.

Exclusion for employee share purchase schemes

8 Offers under employee share purchase schemes

(1) An offer of specified financial products to an eligible person under an employee share purchase scheme does not require disclosure under Part 3 of this Act if—

(a) the offer is made as part of the remuneration arrangements for the eligible person or is otherwise made in connection with the employment or engagement of the eligible person; and

(b) raising funds for the issuer is not the primary purpose of the offer to the eligible person; and

(c) the total number of specified financial products issued or transferred under all of the issuer's employee share purchase schemes in any 12-month period does not exceed,—

(i) in the case of an offer of voting products or options over voting products, 10% of the voting products of the issuer as at the start of the 12-month period:

(ii) in the case of any other offer of specified financial products, 10% of the specified financial products of the issuer that are of the same class as at the start of the 12-month period.

(2) In this clause,—

eligible person—

(a) means an employee or a director of the issuer of the specified financial products or of any of its subsidiaries; and

(b) includes a person who provides personal services (other than as an employee) principally to the issuer of the specified financial products or any of its subsidiaries

specified financial products means—

(a) equity securities; or

(b) prescribed financial products.

(3) In calculating the total number of specified financial products issued or transferred under all of the issuer's employee share purchase schemes for the purposes of subclause (1)(c), an issue or a sale to a person must be disregarded if the issue or sale results from an offer that—

(a) does not require disclosure under Part 3 of this Act for any reason other than as a result of the application of this clause; or

(b) is not received in New Zealand; or

(c) is a regulated offer that is separate from the offer under the employee share purchase scheme.

Schedule 1 clause 8(1)(c): amended, on 9 August 2017, by section 95(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 1 clause 8(3): amended, on 9 August 2017, by section 95(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 1 clause 8(3)(a): replaced, on 9 August 2017, by section 95(3) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Exclusion for persons under control

9 Offers to persons under control do not need disclosure

If, under any of clauses 3 to 8, an offer of financial products to a person (**A**) would not require disclosure under Part 3 of this Act, an offer of those financial products to an entity controlled by A does not require disclosure under Part 3 of this Act (*see* clause 48).

Exclusion for dividend reinvestment plan

10 Offers of financial products under dividend reinvestment plans

(1) An offer of specified financial products to a person (**A**) under a dividend reinvestment plan does not require disclosure under Part 3 of this Act if—

(a) A already holds financial products of the issuer that are of the same class as the specified financial products, and—

(i) A is entitled to acquire those products by applying all or any specified part of any dividends declared by the issuer and payable to A; or

(ii) A has a right to require the issuer to issue those products to A as fully paid financial products in consideration only for A forgoing the right to receive all or any specified part of any dividends declared by the issuer and otherwise payable to A; and

(b) the dividend reinvestment plan contains provisions requiring that,—

(i) at the time the price of the specified financial products is set, the issuer has no information that is not publicly available that would, or would be likely to, have a material adverse effect on the realisable price of the financial products if the information were publicly available; and

(ii) the right to acquire, or require the issuer to issue, specified financial products is offered to all holders of financial products of the issuer of the same class, other than product holders who are resident outside New Zealand and who are excluded by the issuer to avoid a risk of breaching the laws of the relevant overseas country; and

(iii) every product holder to whom the right is offered is given a reasonable opportunity to accept it; and

(iv) the specified financial products issued or transferred to a product holder are issued on the terms disclosed to the holder; and

(v) the specified financial products issued or transferred to a product holder are subject to the same rights as the financial products issued to all holders of financial products of the same class who agree to receive the financial products.

(2) In this clause,—

dividend means,—

(a) in relation to equity securities in a company within the meaning of section 2(1) of the Companies Act 1993, a dividend within the meaning of section 53 of that Act; and

(b) in relation to any other equity securities, a distribution of the income or gains of the issuer to a holder of the equity securities that is comparable to a dividend referred to in paragraph (a); and

(c) in relation to managed investment products, a distribution of the financial benefits of the scheme to a holder of the product

specified financial products means—

(a) equity securities in a company:

(b) managed investment products.

Schedule 1 clause 10(1)(b)(iv): amended, on 9 August 2017, by section 95(4) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 1 clause 10(1)(b)(v): amended, on 9 August 2017, by section 95(4) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Exclusion for financial products for no consideration

11 Offers of financial products for no consideration

(1) An offer of financial products (other than options or other financial products to which this clause does not apply) does not require disclosure under Part 3 of this Act if no consideration is to be provided for the issue or transfer of the products.

(2) An offer of an option to a person does not require disclosure under Part 3 of this Act if—

(a) no consideration is to be provided for the issue or transfer of the option; and

(b) no consideration is to be provided for the underlying financial products on the exercise of the option.

(3) This clause does not apply if the financial products—

(a) are interests in a KiwiSaver scheme, a superannuation scheme, a work-place savings scheme, or a prescribed scheme; or

(b) are derivatives other than options; or

(c) impose or may impose a liability on the product holder in respect of the issuer or a registered scheme (for example, an obligation to make contributions or to pay a call).

Exclusion for small offers

12 Small offers

(1) Personal offers of financial products do not require disclosure under Part 3 of this Act if—

(a) the financial products are equity securities or debt securities; and

(b) none of the offers results in a breach of the 20-investor limit under subclause (2)(a) or (3)(a); and

(c) none of the offers results in a breach of the $2 million limit under subclause (2)(b) or (3)(b).

(2) An offer by a person to issue financial products—

(a) results in a breach of the 20-investor limit if it results in the number of persons to whom financial products of the issuer have been issued exceeding 20 in any 12-month period:

(b) results in a breach of the $2 million limit if it results in the amount being raised from the issue of financial products of the issuer exceeding $2 million in any 12-month period.

(3) An offer by a person to sell financial products of an issuer—

(a) results in a breach of the 20-investor limit if it results in the number of persons to whom the person sells financial products of the issuer exceeding 20 in any 12-month period:

(b) results in a breach of the $2 million limit if it results in the amount being raised by the person from selling financial products of the issuer exceeding $2 million in any 12-month period.

(4) Subclause (1) does not apply to an offer for sale to which clause 31 or 34 applies.

(5) In this clause,—

financial products of the issuer means equity securities and debt securities issued by the issuer (regardless of whether or not those products are of the same class or kind as those under offer)

income year has the same meaning as in section YA 1 of the Income Tax Act 2007

personal offer means an offer that is made to, and may only be accepted by, a person who—

(a) is likely to be interested in the offer, having regard to—

(i) previous contact between the person making the offer and that person; or

(ii) some professional or other connection between the person making the offer and that person; or

(iii) statements or actions by that person that indicate that that person is interested in offers of that kind (for example, through that person's membership of or participation in an angel network); or

(b) has an annual gross income of at least $200,000 for each of the person's 2 most recently completed income years before the relevant time; or

(c) is controlled by a person referred to in paragraph (b) (*see* clause 48).

13 Advertising restriction for small offers

(1) A person must not advertise an offer or intended offer of financial products that would be a regulated offer but for clause 12.

(2) Subclause (1) does not apply to a communication that is distributed by or on behalf of the offeror if the offeror took all reasonable steps to ensure that the only persons who received the communication were persons referred to in the definition of personal offer in clause 12(5) or persons acting on their behalf.

(3) A contravention of this clause does not prevent the exclusion referred to in clause 12 from continuing to apply (but may give rise to consequences under Part 8 of this Act).

14 Matters relating to calculation

(1) In calculating issues and sales of the financial products of an issuer, and the amount raised from issues and sales, for the purposes of clause 12, an issue or a sale to a person must be disregarded if the issue or sale results from an offer that—

(a) does not require disclosure under Part 3 of this Act because of any other exclusion under this schedule; or

(b) is not received in New Zealand; or

(c) is a regulated offer that is separate from the small offer.

(2) If financial products are issued or sold to 2 or more persons as joint holders of the products, those persons must be treated as a single person for the purposes of counting the number of persons to whom financial products are issued or sold under clause 12.

(3) In calculating the amount of money raised by the person by issuing financial products, the following must be included:

(a) the amount payable for the products at the time when the products are issued:

(b) if the products are shares issued partly paid, any amount payable at a future time if a call is made:

(c) if the product is an option, any amount payable on the exercise of the option:

(d) if the products carry a right to convert the products into other financial products, any amount payable on the exercise of that right.

(4) For the purposes of paragraph (b) of the definition of personal offer in clause 12,—

(a) in determining the annual gross income of the person, the annual gross income of an entity controlled by the person may be included in the annual gross income of the person; and

(b) the frameworks and methodologies prescribed by the FMA under subpart 4 of Part 9 of this Act for the purposes of that paragraph (if any) must be complied with when determining whether the paragraph is satisfied.

Exclusion for transfer of controlling interest

15 Offers of controlling interest where 5 or fewer investors

(1) An offer of equity securities that comprise more than 50% of the voting products of an entity does not require disclosure under Part 3 of this Act if—

(a) 5 or fewer persons acquire equity securities under the offer; and

(b) if more than 1 person acquires equity securities under the offer, those persons are acting jointly or in concert; and

(c) in the circumstances, the persons who acquire equity securities under the offer are in a position to—

(i) assess the merits of the offer; or

(ii) obtain information from the offeror or any other person involved in the offer that will enable them to assess the merits of the offer.

(2) If equity securities are acquired by 2 or more persons as joint holders of the securities, those persons must be treated as a single person for the purposes of counting the number of persons who acquire the securities under subclause (1).

Exclusion for small schemes

16 Exclusion for small schemes

An offer of managed investment products does not require disclosure under Part 3 of this Act if the relevant managed investment scheme—

(a) has 5 or fewer scheme participants (*see* clause 18); and

(b) is not promoted by a person, or an associate of a person, who is in the business of promoting managed investment schemes.

17 Advertising restriction for small schemes

(1) A person must not advertise an offer or intended offer of financial products that would be a regulated offer but for clause 16.

(2) A contravention of this clause does not prevent the exclusion referred to in clause 16 from continuing to apply (but may give rise to consequences under Part 8 of this Act).

18 Counting of scheme participants

(1) For the purposes of counting the number of scheme participants in a managed investment scheme,—

(a) joint holders of a managed investment product count as a single scheme participant; and

(b) a managed investment product held on trust for a beneficiary is taken to be held by the beneficiary (rather than the trustee) if the beneficiary is presently entitled to a share of the trust estate or of the income of

the trust estate or the beneficiary is, individually or together with other beneficiaries, in a position to control the trustee.

(2) The FMA may, in writing, determine that the total number of scheme participants in all of the schemes subject to the determination must be counted (as if they were 1 scheme) for the purposes of determining the number of scheme participants of any 1 of those schemes under this Part.

(3) The FMA must give written notice of the determination to the manager of each of the schemes.

Exclusion for quoted financial products

19 Exclusion for offers of financial products of same class as quoted financial products

(1) An offer of financial products does not require disclosure under Part 3 of this Act if—

(a) the financial products are equity securities, debt securities, or managed investment products; and

(b) the financial products are of the same class as quoted financial products that have been quoted on a licensed market at all times during the 3-month period before the time of the offer; and

(c) trading in that class of financial products on the licensed market on which they are quoted was not suspended for more than a total of 5 trading days during the 3-month period referred to in paragraph (b); and

(d) in the case of an offer by way of issue, it is a term of the offer that the issuer will take any necessary steps to ensure that the financial products are, immediately after the issue, quoted; and

(e) in the case of an offer by way of sale, the offeror has reasonable grounds to believe that the financial products will, immediately after sale, be quoted; and

(f) the market rules of the licensed market on which the financial products are quoted contain continuous disclosure provisions.

(1A) An offer of options to acquire, by way of issue, financial products (and the offer of those option underlyings) does not require disclosure under Part 3 of this Act if—

(a) the options and option underlyings are equity securities, debt securities, or managed investment products; and

(b) the option underlyings are of the same class as quoted financial products that have been quoted on a licensed market at all times during the 3-month period before the time of the offer; and

(c) trading in those quoted financial products on the licensed market on which they are quoted was not suspended for more than a total of 5 trading days during the 3-month period referred to in paragraph (b); and

(d) it is a term of the offer that the issuer will take any necessary steps to ensure that, immediately after the option underlyings are issued, the option underlyings are quoted; and

(e) the market rules of the licensed market on which the option underlyings are quoted contain continuous disclosure provisions.

(1B) In this clause, **option underlyings**, in relation to an offer of options, means the underlying financial products to which the options relate.

(2) However, this clause does not apply to the financial products of an issuer if the FMA has made an order under section 474 in respect of the issuer.

Schedule 1 clause 19(1)(e): replaced, on 9 April 2019, by section 56(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 1 clause 19(1A): inserted, on 9 August 2017, by section 95(5) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 1 clause 19(1B): inserted, on 9 August 2017, by section 95(5) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Exclusions for derivatives

20 Exclusions for certain offers of derivatives

(1) An offer of a derivative for issue does not require disclosure under Part 3 of this Act if the person who offers the derivative is not a derivatives issuer.

(2) An offer of a derivative for sale does not require disclosure under Part 3 of this Act if the derivative was not issued by a derivatives issuer.

(3) An offer of a quoted derivative for issue or sale does not require disclosure under Part 3 of this Act if the derivative is issued by a participant in the licensed market on which the derivative is quoted.

(4) An offer of a derivative for issue or sale does not require disclosure under Part 3 of this Act if the derivative is—

(a) approved for trading on a prescribed overseas market; and

(b) issued by a prescribed person or class of persons.

Exclusion for registered banks

21 Offers of prescribed financial products or debt securities by registered banks

An offer of financial products does not require disclosure under Part 3 of this Act if the financial products are—

(a) financial products of a kind prescribed for the purposes of this paragraph that are issued by a registered bank; or

(b) debt securities issued by a registered bank; or

(c) financial products of a kind prescribed for the purposes of this paragraph that are issued by a subsidiary of a registered bank; or

(d) prescribed currency forwards that are issued by a registered bank or a subsidiary of a registered bank.

Schedule 1 clause 21 heading: amended, on 15 March 2021, by section 56(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 1 clause 21(a): replaced, on 15 March 2021, by section 56(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 1 clause 21(c): amended, on 15 March 2021, by section 56(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Exclusion for the Crown, etc

22 Offers by the Crown, etc

(1) An offer of financial products does not require disclosure under Part 3 of this Act if the issuer of the financial products is—

(a) the Crown; or

(b) the Board of Trustees of the National Provident Fund continued under the National Provident Fund Restructuring Act 1990; or

(c) the Reserve Bank; or

(d) Kāinga Ora–Homes and Communities established by the Kāinga Ora–Homes and Communities Act 2019; or

(e) the Māori Trustee, but in relation only to money constituted in the common fund of the Māori Trustee that is entitled to the protection against deficiency afforded by section 27 of the Māori Trustee Act 1953; or

(f) Public Trust, but in relation only to money constituted in the common fund of Public Trust that is entitled to the protection against deficiency afforded by section 52 of the Public Trust Act 2001.

(2) An offer of an interest in the Government Superannuation Fund does not require disclosure under Part 3 of this Act.

Schedule 1 clause 22(1)(d): amended, on 1 October 2019, by section 33 of the Kāinga Ora–Homes and Communities Act 2019 (2019 No 50).

Exclusion for retirement villages

23 Offers of interests in retirement villages

An offer of an interest in a retirement village does not require disclosure under Part 3 of this Act if the interest is exempted from Part 3 of this Act by section 107(1) of the Retirement Villages Act 2003.

Exclusion for renewals or variations

24 Offers of renewals or variations

An offer of a renewal or variation of the terms or conditions of a financial product does not require disclosure under Part 3 of this Act.

Limited disclosure and other requirements

25 Purposes of clauses 26 to 29

The purposes of clauses 26 to 29 are to—

(a) provide for limited disclosure or other requirements (or both) to apply where, although full compliance with Parts 3 and 4 of this Act is not necessary, some disclosure or other requirements are necessary or desirable in order to promote either or both of the main purposes of this Act specified in section 3 or any of the additional purposes specified in section 4; and

(b) prevent an exclusion from applying in inappropriate circumstances (having regard to whether the exclusion may cause significant detriment to investors).

26 Disclosure and other requirements

(1) This clause applies to a person (**A**) who offers financial products to another person (**B**) without disclosure under Part 3 of this Act in reliance upon any of clauses 3 to 24.

(2) A must ensure that—

(a) B or a prescribed person or both are provided with a limited disclosure document (an **LDD**) that complies with subclause (4); and

(aa) the prescribed requirements (if any) relating to an entry for the offer in the register of offers of financial products (a **register entry**) are complied with; and

(ab) B or a prescribed person or both are provided with any other prescribed information in the prescribed manner; and

(ac) all prescribed limits or restrictions (if any) applying in connection with the offer, the financial products, or the investors are met; and

(b) B or a prescribed person or both have, in the prescribed manner, given a certificate or an acknowledgement that is required by the regulations (if any); and

(c) the directors of A or a prescribed person or both have, in the prescribed manner, given any consents or approvals that are required by the regulations (if any); and

(d) all governance requirements (for example, relating to governing documents and supervision) that are required by the regulations (if any) are complied with; and

(e) all other prescribed conditions (if any) are complied with (for example, restrictions on advertising and publicity, a requirement to keep records, or a requirement to provide information relating to the offer to the Registrar or the FMA).

(3) A must perform the duty under subclause (2)(a) in the prescribed manner.

(4) The LDD must—

(a) contain, or be accompanied by, the prescribed information (if any); and

(b) comply with all requirements of the regulations relating to the form and presentation of the document.

(5) Subclauses (2)(a) and (3) apply only if the regulations require an LDD to be provided.

(6) The following apply if A is not the issuer of the financial products:

(a) the issuer must, if required by the regulations, ensure that a requirement, a condition, or any other matter of a kind referred to in any of paragraphs (a) to (e) of subclause (2) is complied with (and the issuer must perform that duty in the prescribed manner):

(b) the regulations may provide for a requirement, a condition, or any other matter of a kind referred to in any of paragraphs (a) to (e) of subclause (2) to be complied with by A or the issuer or both (and, accordingly, A or the issuer or both must so comply).

(7) A contravention of a requirement prescribed for the purposes of this clause does not prevent the exclusion referred to in subclause (1) from continuing to apply (but may give rise to consequences under Part 8 of this Act or an offence under clause 28A).

Schedule 1 clause 26(2)(a): replaced, on 9 August 2017, by section 95(6) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 1 clause 26(2)(aa): inserted, on 9 August 2017, by section 95(6) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 1 clause 26(2)(ab): inserted, on 9 August 2017, by section 95(6) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 1 clause 26(2)(ac): inserted, on 9 August 2017, by section 95(6) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 1 clause 26(4): amended, on 9 August 2017, by section 95(7) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 1 clause 26(5): amended, on 9 August 2017, by section 95(8) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 1 clause 26(6): replaced, on 9 August 2017, by section 95(9) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 1 clause 26(7): inserted, on 9 August 2017, by section 95(9) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

27 False or misleading statements and omissions

(1) A person must not provide an LDD to a person if—

(a) there is—

(i) a statement in the LDD, any application form that accompanies the LDD, or the register entry that is false or misleading or is likely to mislead; or

(ii) an omission from the LDD or the register entry of information that is required to be contained in the LDD or the register entry by this Act or the regulations; and

(b) the matter referred to in paragraph (a) is materially adverse from the point of view of an investor.

(2) For the purposes of this clause, a statement about a future matter (including the doing of, or refusing to do, an act) must be taken to be misleading if the person making the statement does not have reasonable grounds for making it.

(3) Subclause (2) does not limit the meaning of a reference to a misleading statement.

(4) This clause does not limit clause 26(2) to (4).

(5) *See* section 511 (offence to knowingly or recklessly contravene this clause) and section 496 (which provides that a person may be treated as suffering loss or damage in the case of a contravention of this clause).

Schedule 1 clause 27(1): replaced, on 9 August 2017, by section 95(10) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

27A Offeror is FMC reporting entity in prescribed circumstances

A person to whom clause 26 applies is an FMC reporting entity in the prescribed circumstances.

Schedule 1 clause 27A: inserted, on 1 April 2014, by section 60 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

28 Persons who must inform offeror about deficiencies in limited disclosure document

(1) A person referred to in subclause (2) must, in relation to an offer of financial products made without disclosure under Part 3 of this Act in reliance upon any of clauses 3 to 24, notify the offeror in writing as soon as practicable if the person becomes aware at any time before the end of the application period that—

(a) a material statement in the LDD or the register entry is false or misleading or is likely to mislead; or

(b) there is a material omission from the LDD or the register entry of information that is required to be contained in the LDD or the register entry by this Act or the regulations.

(2) The persons are—

(a) each director of the offeror:

(b) the issuer (if the offeror is not the issuer) and each director of the issuer:

(c) a person who is required to give a consent or an approval as referred to in clause 26(2)(c).

(3) A person referred to in subclause (2)(c) is required to notify the offeror of matters under this clause only if the matters relate to the matter to which the person's consent or approval relates.

(4) In this clause, **application period** means the period in which applications for financial products under the LDD may be made.

Schedule 1 clause 28 heading: amended, on 9 August 2017, by section 95(11) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 1 clause 28(1)(a): replaced, on 9 August 2017, by section 95(12) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 1 clause 28(1)(b): replaced, on 9 August 2017, by section 95(12) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 1 clause 28(4): replaced, on 9 August 2017, by section 95(13) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

28A Failure to lodge or give information to Registrar or FMA

(1) A person who fails to comply with a requirement under clause 26 to lodge or otherwise give any information or other document to the Registrar or the FMA commits an offence and is liable on conviction to a fine not exceeding $50,000.

(2) The offence in this clause is an infringement offence (*see* subpart 5 of Part 8).

Schedule 1 clause 28A: inserted, on 9 August 2017, by section 95(14) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

29 Regulations may prevent exclusions from applying in inappropriate circumstances

(1) An exclusion under any of clauses 3 to 24 does not apply—

(a) in the circumstances prescribed by regulations made under this clause; or

(b) if any additional requirements prescribed by regulations made under this clause are not satisfied.

(2) The Governor-General may, by Order in Council, on the recommendation of the Minister in accordance with subclause (3), make regulations—

(a) prescribing circumstances in which an exclusion referred to in subclause (1) does not apply:

(b) prescribing additional requirements that must be satisfied before an exclusion referred to in subclause (1) may apply:

(c) prescribing transitional and savings provisions in connection with any regulations made under paragraph (a) or (b).

(3) The Minister must, before making a recommendation under subclause (2),—

(a) consult the FMA; and

(b) be satisfied that the regulations are needed in order to prevent an exclusion referred to in subclause (1) from applying in inappropriate circumstances, having regard to whether the exclusion may cause significant detriment to investors.

(4) Regulations under this clause are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this clause		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Schedule 1 clause 29(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Part 2
Which offers of financial products for sale require disclosure

30 Application of this Part

(1) Clauses 31 to 34 specify when an offer of financial products for sale requires disclosure under Part 3 of this Act.

(2) Despite subclause (1), an offer of financial products for sale does not require such disclosure if an exclusion under Part 1 of this schedule applies to the offer of financial products for sale.

(3) An offer of financial products for sale may also require disclosure under Part 3 of this Act as a result of a declaration under section 562(1)(e).

31 Sale where financial products issued with view to original holder dealing with products

(1) An offer of financial products for sale requires disclosure under Part 3 of this Act if—

(a) the issuer issued the financial products with a view to the original holder dealing with the products; and

(b) the offer of the financial products for sale is made within 12 months after the date on which the financial products were issued; and

(c) the financial products have not previously been offered for issue or sale—

(i) under a regulated offer; or

(ii) under an offer made, in the prescribed circumstances, in reliance upon clause 19; or

(iii) under an offer outside New Zealand under an application regime under subpart 6 of Part 9 of this Act.

(2) An offer of financial products for sale to a person outside New Zealand requires disclosure under Part 3 of this Act if—

(a) section 50 (when PDS must be given) applies to the products under section 580; and

(b) the issuer issued the financial products with a view to the financial products being offered for sale outside New Zealand in circumstances in which an application regime under subpart 6 of Part 9 of this Act would have applied to the products; and

(c) the offer of the financial products for sale is made within 12 months after the date on which the financial products were issued; and

(d) the financial products have not previously been offered for issue or sale—

(i) under a regulated offer; or

(ii) under an offer made, in the prescribed circumstances, in reliance upon clause 19; or

(iii) under an offer outside New Zealand under an application regime under subpart 6 of Part 9 of this Act.

(3) Financial products must be taken to be issued with the view referred to in subclause (1)(a) or (2)(b) if there are reasonable grounds for concluding that the products were issued with the view (whether or not there may have been other reasons or purposes for the issue).

(4) In this clause,—

dealing with the products means selling or transferring the financial products, or granting, issuing, or transferring interests in, or options over, the financial products

original holder means the person to whom the financial products were issued.

Compare: 1978 No 103 s 6(2), (2AA); Corporations Act 2001 s 707(3), (4) (Aust)

32 Sale where issuer advises, encourages, or knowingly assists offeror

(1) An offer of financial products for sale requires disclosure under Part 3 of this Act if—

(a) the issuer advises, encourages, or knowingly assists the offeror in connection with the offer of the financial products; or

(b) the issuer is the offeror.

(2) However, subclause (1) does not apply—

(a) if the offer of the financial products is made only to persons who, at the time of the offer, are holders of financial products of the issuer under terms of a relevant instrument that require the offer to be made to those persons; or

(b) to an offer of quoted financial products for sale; or

(c) to an offer of financial products for sale through a facility that is described in section 309(2)(b).

(3) In subclause (2)(a), **relevant instrument**, in relation to an offer of financial products, means—

(a) the constitution of the issuer; or

(b) a pre-emptive rights agreement between all of the product holders of the class of financial products under offer.

Compare: 1978 No 103 s 6(2A), (3)

33 Off-market sale by controller

An offer of financial products for sale requires disclosure under Part 3 of this Act if—

(a) the offeror controls the issuer; and

(b) either—

(i) the financial products are not quoted; or

(ii) although the financial products are quoted, the products are not offered for sale in the ordinary course of trading on a licensed market.

Compare: Corporations Act 2001 s 707(2) (Aust)

34 Sale amounting to indirect off-market sale by controller

(1) An offer of financial products for sale requires disclosure under Part 3 of this Act if—

(a) the offer of the financial products is made within 12 months after the date on which the products were sold by a person who controlled the issuer (the **controller**) at the time of the sale; and

(b) the controller sold the financial products with a view to the purchaser dealing with the products; and

(c) at the time of the sale by the controller,—

(i) the financial products were not quoted; or

(ii) although the financial products were quoted, those products were not offered for sale in the ordinary course of trading on a licensed market; and

(d) the controller sold the financial products otherwise than under—

(i) a regulated offer; or

(ii) an offer made, in the prescribed circumstances, in reliance upon clause 19.

(2) Financial products must be taken to be sold with the view referred to in subclause (1)(b) if there are reasonable grounds for concluding that the products were sold with that view (whether or not there may have been other reasons or purposes for the sale).

(3) In this clause,—

dealing with the products means selling or transferring the financial products, or granting, issuing, or transferring interests in, or options over, the financial products

purchaser means the person to whom the financial products were sold by the controller.

Compare: Corporations Act 2001 s 707(5), (6) (Aust)

Part 3
Definitions and certificates for exclusions for offers and services

35 Meaning of retail investor and retail service

(1) A person is a **retail investor**, in relation to an offer of financial products, the supply of a discretionary investment management service, or any other relevant transaction, if the person is not a wholesale investor in relation to the offer or service.

(2) A service is a **retail service** if that service is supplied—

(a) to a retail investor; or

(b) to a class of investors where there is at least 1 retail investor in that class.

36 Meaning of wholesale investor

A person is a **wholesale investor**,—

(a) in relation to an offer of financial products, when the person is a wholesale investor under the definition of that term in clause 3; or

(b) in relation to the supply of a discretionary investment management service or any other relevant transaction, if (at the relevant time) the person—

(i) is an investment business (*see* clause 37); or

(ii) meets the investment activity criteria specified in clause 38; or

(iii) is large (*see* clause 39); or

(iv) is a government agency (*see* clause 40); or

(v) is an eligible investor (*see* clause 41).

37 Investment businesses

(1) A person is an **investment business** if the person is—

(a) an entity whose principal business consists of 1 or more of the following:

(i) investing in financial products; or

(ii) acting as an underwriter; or

(iii) providing a financial advice service; or

(iv) providing a client money or property service; or

(v) trading in financial products on behalf of other persons; or

(b) a registered bank; or

(c) an NBDT; or

(d) a licensed insurer (within the meaning of section 6(1) of the Insurance (Prudential Supervision) Act 2010); or

(e) a manager of a registered scheme, or a discretionary investment management service, that holds a market services licence; or

(f) a derivatives issuer that holds a market services licence; or

(g) a financial adviser.

(2) Subclause (1)(a) does not apply to an entity if the entity was established or acquired with a view to using it as an entity to which offers of financial products may be made in reliance upon the exclusion in clause 3.

(3) Subclause (2) does not limit clause 9.

Schedule 1 clause 37(1)(a)(iii): replaced, on 15 March 2021, by section 56(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 1 clause 37(1)(a)(iv): replaced, on 15 March 2021, by section 56(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 1 clause 37(1)(c): replaced, on 1 May 2014, by section 102 of the Non-bank Deposit Takers Act 2013 (2013 No 104).

Schedule 1 clause 37(1)(g): replaced, on 15 March 2021, by section 56(6) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

38 Investment activity criteria

(1) A person (**A**) meets the investment activity criteria for the purposes of clause 3(2)(b) or 36(b)(ii) if at least 1 of the following paragraphs applies:

(a) A owns, or at any time during the 2-year period before the relevant time has owned, a portfolio of specified financial products of a value of at least $1 million (in aggregate):

(b) A has, during the 2-year period before the relevant time, carried out 1 or more transactions to acquire specified financial products where the amount payable under those transactions (in aggregate) is at least

$1 million and the other parties to the transactions are not associated persons of A:

(c) A is an individual who has, within the last 10 years before the relevant time, been employed or engaged in an investment business and has, for at least 2 years during that 10-year period, participated to a material extent in the investment decisions made by the investment business.

(2) For the purposes of—

(a) subclause (1)(a), in determining the specified financial products owned by A, the specified financial products owned by an entity controlled by A may be treated as being owned by A:

(b) subclause (1)(b), in determining the transactions carried out by A, transactions carried out by an entity controlled by A may be treated as carried out by A:

(c) applying subclause (1)(a) and (b) in relation to derivatives, the value of a derivative or the amount payable under a transaction to acquire a derivative must be treated as being the notional value of the derivative divided by 10 (*see* clause 49).

(3) The frameworks and methodologies prescribed by the FMA under subpart 4 of Part 9 of this Act for the purposes of this clause (if any) must be complied with when determining whether any of the paragraphs of subclause (1) are satisfied.

(4) In this clause, **specified financial products**, in relation to A, means financial products other than—

(a) financial products of a kind prescribed for the purposes of this paragraph:

(b) interests in a retirement scheme:

(c) financial products issued by an associated person of A.

Schedule 1 clause 38(4)(a): replaced, on 15 March 2021, by section 56(7) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

39 Meaning of large

(1) A person is **large** if at least 1 of the following paragraphs applies:

(a) as at the last day of each of the 2 most recently completed financial years of the person before the relevant time, the net assets of the person and the entities controlled by the person exceeded $5 million:

(b) in each of the 2 most recently completed financial years of the person before the relevant time, the total consolidated turnover of the person and the entities controlled by the person exceeded $5 million.

(2) The frameworks and methodologies prescribed by the FMA under subpart 4 of Part 9 of this Act for the purposes of this clause (if any) must be complied with when determining whether either of the paragraphs of subclause (1) is satisfied.

40 Definition of government agency

A **government agency** is any of the following:

(a) a public service agency as defined in section 5 of the Public Service Act 2020:

(b) a Crown entity under section 7 of the Crown Entities Act 2004:

(c) a local authority:

(d) a State enterprise (within the meaning of section 2 of the State-Owned Enterprises Act 1986):

(e) the Reserve Bank:

(f) the Board of Trustees of the National Provident Fund continued under the National Provident Fund Restructuring Act 1990 (and a company appointed under clause 3(1)(b) of Schedule 4 of that Act).

Schedule 1 clause 40(a): replaced, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

41 Eligible investors

(1) A person (**A**) is an **eligible investor**, in relation to a relevant transaction or class of relevant transactions, if—

(a) A certifies in writing, before the relevant time,—

(i) as to the matters specified in subclause (2) or (2A) or (3) or (4) (as the case may be); and

(ii) that A understands the consequences of certifying himself, herself, or itself to be an eligible investor; and

(b) A states in the certificate the grounds for this certification; and

(c) a financial adviser, a qualified statutory accountant, or a lawyer signs a written confirmation of the certification in accordance with clause 43.

(2) In relation to an offer of financial products (or a class of those transactions), A must certify that A has previous experience in acquiring or disposing of financial products that allows A to assess—

(a) the merits of the transaction or class of transactions (including assessing the value and the risks of the financial products involved); and

(b) A's own information needs in relation to the transaction or those transactions; and

(c) the adequacy of the information provided by any person involved in the transaction or those transactions.

(2A) In relation to the supply of a financial advice service or a client money or property service (or a class of those services), A must certify that A has previous experience in acquiring or disposing of financial advice products that allows A to assess—

(a) the merits of the service or services to be provided (including assessing their value and the risks involved); and

(b) A's own information needs in relation to the service or services; and

(c) the adequacy of the information provided by any person involved in the service or services.

(3) In relation to the supply of a discretionary investment management service (or a class of those services), A must certify that A has previous experience in acquiring or disposing of financial products that allows A to assess—

(a) the merits of the service or services to be provided (including assessing its value and the risks involved); and

(b) A's own information needs in relation to the service or services; and

(c) the adequacy of the information provided by any person involved in the service or services.

(4) In relation to any other relevant transaction (or a class of those transactions), A must certify as to A's experience and other matters prescribed for the purposes of this subclause.

(5) The certification must specify the offer of financial products, market service, or other relevant transaction or class of relevant transactions to which it applies.

(6) In relation to the supply of a financial advice service or client money or property service (or a class of those services), the certification under subclause (1)(a)(ii) must include a certificate that A understands that the competency standards and requirements of the code of conduct will not be applicable (if relevant) and that the financial adviser or provider may not be a member of an approved dispute resolution scheme.

Schedule 1 clause 41(1)(a)(i): amended, on 15 March 2021, by section 56(8) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 1 clause 41(1)(c): amended, on 15 March 2021, by section 56(9) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 1 clause 41(1)(c): amended, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

Schedule 1 clause 41(2A): inserted, on 15 March 2021, by section 56(10) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 1 clause 41(6): inserted, on 15 March 2021, by section 56(11) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

42 Offeror may not rely on eligible investor certificate in certain circumstances

(1) Clause 41 does not apply to an offer of financial products, the supply of a market service, or any other relevant transaction if the offeror, provider, or other relevant person, before the relevant time, knew that A did not in fact have previous experience of the kind referred to in clause 41(2), (2A), (3), or (4) (as the case may be).

(2) Clause 41 does not apply to an offer of financial products, the supply of a market service, or any other relevant transaction if the offeror, provider, or other relevant person knew, or had reasonable grounds to believe, that the—

(a) financial adviser, qualified statutory accountant, or lawyer referred to in clause 41(1)(c) was an associated person of the offeror, provider, or other relevant person; or

(b) financial adviser or qualified statutory accountant referred to in clause 41(1)(c) had, within the 2 years immediately before the relevant time, provided professional services to the offeror, provider, or other relevant person, or a related body corporate of the offeror, provider, or relevant person.

(3) Clause 41 does not apply to an offer of financial products, the supply of a market service, or any other relevant transaction if the certificate was given more than 2 years before the relevant time.

Schedule 1 clause 42(1): amended, on 15 March 2021, by section 56(12) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 1 clause 42(2)(a): amended, on 15 March 2021, by section 56(13) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 1 clause 42(2)(a): amended, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

Schedule 1 clause 42(2)(b): amended, on 15 March 2021, by section 56(13) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 1 clause 42(2)(b): amended, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

43 Confirmation of certification

(1) A financial adviser, a qualified statutory accountant, or a lawyer (**A**) must not confirm a certification of a person (**B**) under clause 41 unless A, having considered B's grounds for the certification,—

(a) is satisfied that B has been sufficiently advised of the consequences of the certification; and

(b) has no reason to believe that the certification is incorrect or that further information or investigation is required as to whether or not the certification is correct.

(2) A may be the financial adviser, qualified statutory accountant, or lawyer of B (but does not need to be).

Schedule 1 clause 43(1): amended, on 15 March 2021, by section 56(14) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 1 clause 43(1): amended, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

Schedule 1 clause 43(2): amended, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

44 Safe harbour if certificate given

(1) The purpose of this clause is to provide certainty (subject to clauses 45 to 46) to—

(a) an offeror (or other relevant person) that a person is a wholesale investor of the kind referred to in clause 3(2); or

(b) a provider (or other relevant person) that a person is a wholesale investor of the kind referred to in clause 36(b)(i) to (iv).

(2) A person (**A**) must be treated as being a wholesale investor as referred to in subclause (1)(a) or (b) (as the case may be) if A—

(a) certifies in writing that A—

(i) is a wholesale investor within the meaning of clause 3(2) or 36(b) (as the case may be); and

(ii) understands the consequences of certifying himself, herself, or itself to be a wholesale investor; and

(b) states in the certificate—

(i) the paragraph in clause 3(2) or the subparagraph in clause 36(b) that is claimed to apply to A; and

(ii) the grounds on which A claims that the paragraph or subparagraph applies; and

(c) gives a copy of the certificate to the offeror, provider, or other relevant person.

(3) A certificate under this clause ceases to be effective for the purposes of subclause (2) on the date that is 2 years after the date on which it was given.

45 Offeror or provider may not rely on safe harbour certificate if knows A was not in fact wholesale investor

(1) Clause 44(2) does not apply to an offer of financial products to A if the offeror, before the financial products are issued or transferred to A under the offer, knows that A was not in fact a wholesale investor within the meaning of clause 3(2) at the time the certificate was given.

(2) Clause 44(2) does not apply to the supply of a discretionary investment management service to A if the provider, before the investment authority is granted for the service, knows that A was not in fact a wholesale investor within the meaning of clause 36(b) at the time the certificate was given.

(3) Clause 44(2) does not apply to any other relevant transaction entered into with A if the relevant person, before the relevant time for that transaction (rather than the relevant time for the certificate), knows that A was not in fact a wholesale investor within the meaning of clause 3(2) or 36(b) at the time the certificate was given.

46 Other provisions relating to certificates

(1) A certificate under clause 41 or 44 is effective only if the certificate—

(a) is in a separate written document; and

(b) is in the prescribed form (if any); and

(c) contains the prescribed information (if any); and

(d) is otherwise given in the prescribed manner (if any).

(2) If a person gives written notice to an offeror, provider, or other relevant person that the certificate under clause 41 or 44 is revoked, the offeror, provider, or relevant person may not rely on the certificate in respect of any subsequent offer, service, or transaction.

47 Offences relating to certificates

(1) Every person commits an offence who gives a certificate under clause 41 or 44 knowing that it is false or misleading in a material particular.

(2) Every person (**A**) commits an offence who incites, counsels, or procures any person to give a certificate under clause 41 or 44 that A knows is false or misleading in a material particular.

(3) Every person who commits an offence under this clause is liable, on conviction, to a fine not exceeding $50,000.

Control and other definitions for schedule

48 Meaning of control in this schedule

(1) In this schedule, a person **controls** an entity if the person—

(a) is the entity's holding company (within the meaning of section 5 of the Companies Act 1993); or

(b) has the capacity to determine the outcome of decisions about the entity's financial and operating policies.

(2) In determining whether the person has the capacity referred to in subclause (1)(b),—

(a) the practical influence the person can exert (rather than the rights the person can enforce) is the issue to be considered; and

(b) any practice or pattern of behaviour affecting the entity's financial or operating policies must be taken into account (even if it involves a breach of an agreement or a breach of trust).

(3) The person does not control the entity by virtue of subclause (1)(b) merely because the person and another person jointly have the capacity to determine the outcome of decisions about the entity's financial and operating policies.

Compare: Corporations Act 2001 s 50AA (Aust)

49 Other definitions for schedule

(1) In this schedule,—

notional value, in relation to a derivative, means the face value or the notional amount in respect of the derivative as at the date on which the relevant agreement is entered into by the parties (*see* subclause (2))

relevant person, in relation to—

(a) an offer of financial products, means the offeror:

(ab) the supply of a financial advice service or a client money or property service to a person, means the provider of the service:

(b) the supply of a discretionary investment management service, means the provider of that service:

(c) any other relevant transaction, means the person prescribed for the purposes of this definition

relevant time, in relation to—

(a) applying the investment activity criteria in clause 38 and the meaning of large in clause 39 for the purposes of a certificate given under clause 44, means immediately before the certificate is given:

(b) an offer of financial products to a person in any other case, means immediately before financial products are issued or transferred to the person under the offer:

(ba) the supply of a financial advice service or a client money or property service to a person, means immediately before the service is supplied:

(c) the supply of a discretionary investment management service to a person in any other case, means immediately before the investment authority for the service is granted:

(d) a relevant transaction in any other case, means the time prescribed for the purposes of this definition

relevant transaction means—

(a) an offer of financial products for issue or sale; or

(ab) the supply of a financial advice service or client money or property service; or

(b) the supply of a discretionary investment management service; or

(c) any other prescribed transaction or service involving any dealing in financial products or any supply of a market service.

(2) For the purposes of determining the notional value of a derivative under this schedule, the frameworks and methodologies prescribed by the FMA under subpart 4 of Part 9 of this Act for the purposes of this subclause (if any) must be complied with.

Schedule 1 clause 49(1) **relevant person** paragraph (ab): inserted, on 15 March 2021, by section 56(15) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 1 clause 49(1) **relevant time** paragraph (ba): inserted, on 15 March 2021, by section 56(16) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 1 clause 49(1) **relevant transaction** paragraph (ab): inserted, on 15 March 2021, by section 56(17) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 2
Registers

ss 6, 595

Contents

Page

Register of offers of financial products

1 Register of offers of financial products 430
2 Purposes of register 430
3 Contents of register 431

Register of managed investment schemes

4 Register of managed investment schemes 432
5 Purposes of register 432
6 Contents of register 432
7 Registration directions by FMA 433

Keeping of registers under this schedule

8 Registrar may keep other registers 433
9 Registers to be kept by Registrar 433
10 Operation of and access to registers 433
11 Amendments to registers 433
12 Search of register 434

Miscellaneous

13 Lodging or giving documents or otherwise notifying Registrar 434
14 Certificate of lodgement or registration 434
15 When documents are lodged 435
16 Registrar may give notice of lodgement or notification of changes 435
17 Certified copy of information on register 435
18 Power of Registrar to delegate 435

Register of offers of financial products

1 Register of offers of financial products

A register called the register of offers of financial products is established.

Compare: 1978 No 103 s 43N

2 Purposes of register

The purposes of the register of offers of financial products are—

(a) to give public notice of offers of financial products; and

(b) to enable any person to—

(i) obtain information contained in, or concerning, product disclosure statements; and

(ii) obtain other information about, or copies of documents relating to, offers of financial products; and

(iii) compare information about offers of financial products; and

(c) to assist any person to decide whether or not to acquire financial products under an offer of financial products; and

(d) to assist any person to give financial advice or to otherwise comment on an offer of financial products; and

(e) to assist any person—

(i) in the exercise of the person's powers under this Act or any other enactment; or

(ii) in the performance of the person's functions or duties under this Act or any other enactment.

Compare: 1978 No 103 s 43O

Schedule 2 clause 2(d): amended, on 15 March 2021, by section 57 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

3 Contents of register

(1) The register of offers of financial products must contain all of the following information, to the extent that the information is relevant, for each regulated offer:

(a) the name of the issuer and the issuer's financial service provider number (if any):

(b) in the case of a sale offer, the name of the offeror and the offeror's financial service provider number (if any):

(c) the name of any supervisor and the supervisor's financial service provider number (if any):

(d) a copy of the PDS:

(e) the name of the offer that is specified in the PDS and the offer number given by the Registrar on lodgement of the PDS:

(f) the kind of financial product or products being offered (for example, an equity security, a debt security, a managed investment product, or a derivative):

(g) the date of the PDS:

(h) the status of the PDS (being a status that is determined and described in the prescribed manner):

(i) any other prescribed information.

(2) The register must contain any other prescribed information (whether or not relating to a regulated offer).

(3) In this clause, **financial service provider number**, in relation to a person, is the number given to the person on the person's registration under the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

Register of managed investment schemes

4 Register of managed investment schemes

A register called the register of managed investment schemes is established.

5 Purposes of register

The purposes of the register of managed investment schemes are—

(a) to give public notice of the registration of managed investment schemes; and

(b) to enable any person to—

(i) obtain information about, and copies of documents relating to, registered schemes; and

(ii) know how to contact the managers and supervisors of registered schemes; and

(c) to assist any person—

(i) in the exercise of the person's powers under this Act or any other enactment; or

(ii) in the performance of the person's functions or duties under this Act or any other enactment.

6 Contents of register

(1) The register of managed investment schemes must contain all of the following information, to the extent that the information is relevant, for each scheme:

(a) the name of the scheme:

(b) the type or types of scheme it is (if any) or any status that it has (and whether that applies to the scheme or in respect of a section of the scheme only) (for example, whether it is a KiwiSaver scheme, a superannuation scheme, a legacy scheme, a restricted scheme, a complying superannuation fund, or other type of scheme):

(c) the name of each person who is a licensed manager or licensed supervisor of the scheme and an address for service in each case:

(d) for a restricted scheme, the name of the licensed independent trustee:

(e) any other prescribed information.

(2) However, the register of managed investment schemes is not required to contain information in the prescribed circumstances.

7 Registration directions by FMA

The Registrar must make the appropriate entry in the register of managed investment schemes (or not enter a matter in the register) in accordance with any direction—

(a) made by the FMA that a scheme be registered or is not entitled to be registered, is or is not a particular type of registered scheme, or has or does not have any particular status; or

(b) otherwise made by the FMA in the exercise of any other discretion under Part 4 that relates to, or affects, the register.

Keeping of registers under this schedule

8 Registrar may keep other registers

The Registrar may keep any other registers that he or she considers necessary for the purposes of this Act.

9 Registers to be kept by Registrar

Each register established under this schedule (the **register**) must be kept by the Registrar in accordance with this schedule and the regulations.

10 Operation of and access to registers

(1) The register may—

(a) be an electronic register; or

(b) be kept in any other manner that the Registrar thinks fit.

(2) The register must be operated at all times unless—

(a) the Registrar suspends the operation of the register, in whole or in part, in accordance with subclause (3); or

(b) otherwise provided in regulations.

(3) The Registrar may refuse access to the register or otherwise suspend the operation of the register, in whole or in part, if the Registrar considers that it is not practical to provide access to the register.

11 Amendments to registers

(1) The Registrar may amend the register if—

(a) an issuer or the FMA informs the Registrar of information that is different from the information entered on the register; or

(b) the Registrar is satisfied at any time that the register contains a typographical error or a mistake, or omits information supplied to the Registrar.

(2) The Registrar must amend the register if the regulations require the Registrar to do so in circumstances specified by the regulations.

Compare: 1978 No 103 s 43R

12 Search of register

(1) A person may search the register in accordance with this Act or the regulations.

(2) The register may be searched only by reference to the contents of the register required by this schedule or any other prescribed criteria.

(3) A search of the register may be carried out only by the following persons for the following purposes:

(a) a person, for a purpose referred to in clause 2 or 5 or, in the case of a register kept under clause 8, a prescribed purpose:

(b) a person, for the purpose of advising another person in connection with any of the purposes referred to in this subclause:

(c) an individual, or a person with the consent of the individual, for the purpose of searching for information about that individual.

(4) A person who searches the register for personal information in breach of this clause must be treated, for the purposes of Parts 5 and 6 of the Privacy Act 2020, as having breached an information privacy principle under section 69(2)(a)(i) of that Act.

Compare: 1978 No 103 s 43S

Schedule 2 clause 12(4): replaced, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

Miscellaneous

13 Lodging or giving documents or otherwise notifying Registrar

(1) If a document or notification required by or for the purposes of this Act must or may be lodged with or given to the Registrar, the document or notification must be lodged or given in the manner specified by the Registrar (who, for example, may specify a form to be used or require notification by electronic means, or may specify any of the matters referred to in section 548(1)(p)(i) to (iv)).

(2) The Registrar may refuse to perform or exercise a function, power, or duty in relation to the document or notification if subclause (1) is not complied with.

Schedule 2 clause 13(1): amended, on 9 August 2017, by section 96 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

14 Certificate of lodgement or registration

(1) The Registrar must, on the lodgement of a PDS, give a certificate of the lodgement (and the certificate is conclusive evidence that the PDS has been lodged).

(2) The Registrar must, on the registration of a managed investment scheme, give a certificate of the registration (and the certificate is conclusive evidence that the scheme has been registered).

(3) The certificate must, in the case of a PDS, specify an offer number for the regulated offer.

Compare: 1978 No 103 s 42(3), (4)

15 When documents are lodged

(1) A document is lodged when—

(a) the document is constituted as part of the register; or

(b) particulars of the document are entered in the register.

(2) However, if the document does not relate to an offer for which there is or will be a register entry, the document is lodged when it is received by the Registrar.

16 Registrar may give notice of lodgement or notification of changes

(1) If a document or notification is lodged with or given to the Registrar under this Act, the Registrar may, in any manner that the Registrar thinks fit, give notice of the lodgement or notification to any person or class of persons or to the public generally.

(2) The Registrar may, in any manner that the Registrar thinks fit, give notice to any person or class of persons or to the public generally of any changes in the information kept in a register.

17 Certified copy of information on register

(1) The Registrar must provide a copy, or a certified copy, of any information on a register to any person who applies for it and pays the prescribed fee (if any).

(2) A certified copy of information on a register purporting to be signed by the Registrar is conclusive evidence for all purposes that the information in the certified copy has been duly entered in the register.

18 Power of Registrar to delegate

(1) The Registrar may delegate to any person, either generally or particularly, any of the Registrar's functions, duties, and powers under this Act except the power of delegation.

(2) A delegation—

(a) must be in writing; and

(b) may be made subject to any restrictions and conditions the Registrar thinks fit; and

(c) is revocable at any time, in writing; and

(d) does not prevent the performance or exercise of a function, duty, or power by the Registrar.

(3) A person to whom any functions, duties, or powers are delegated may perform and exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.

(4) A person who appears to act under a delegation is presumed to be acting in accordance with the terms of the delegation in the absence of evidence to the contrary.

Schedule 3
Schedule 3 schemes

ss 6(1), 596

1 Purpose of schedule

The purpose of this schedule is to provide for the statutory recognition of single-person self-managed superannuation schemes.

2 Approval of Schedule 3 schemes

(1) The FMA may, by written notice to the trustees of a scheme,—

(a) approve the scheme as a Schedule 3 scheme if it is satisfied the scheme meets the approval criteria set out in clause 3:

(b) withdraw an approval of the scheme if—

(i) it is no longer satisfied that the scheme meets those approval criteria; or

(ii) the trustees have contravened the obligations relating to the scheme under this schedule; or

(iii) the trustees have contravened the trust deed; or

(iv) the trustees apply for the approval to be withdrawn and the FMA is satisfied that the prescribed criteria and requirements (if any) are satisfied.

(2) If a Schedule 3 scheme is wound up, the approval of the scheme must be treated as withdrawn as soon as the distribution of assets has been completed.

Schedule 3 clause 2(1)(b)(iii): replaced, on 15 March 2021, by section 58(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 3 clause 2(1)(b)(iv): inserted, on 15 March 2021, by section 58(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 3 clause 2(2): inserted, on 15 March 2021, by section 58(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

3 Criteria for approving Schedule 3 schemes

(1) A scheme may be approved as a Schedule 3 scheme if—

(a) the scheme meets the following requirements:

(i) it is a trust established and governed by a trust deed that is interpreted and administered in accordance with New Zealand law; and

(ii) its purpose is to provide retirement benefits to the scheme participant; and

(iii) participation in the scheme is restricted to persons who meet the New Zealand criteria set out in subclause (2); and

(iv) it is not a defined benefit scheme; and

(b) the scheme has only 1 scheme participant who is an individual and who meets the New Zealand criteria set out in subclause (2); and

(c) the scheme participant is either a trustee, or a director of a sole corporate trustee, of the scheme.

(2) The New Zealand criteria are that the person, at the time of becoming a participant,—

(a) is, or normally is, living in New Zealand, or is an employee of the State services (within the meaning of the Public Service Act 2020) who is—

(i) serving outside New Zealand; and

(ii) employed on New Zealand terms and conditions; and

(iii) serving in a jurisdiction where offers of superannuation scheme membership are lawful; and

(b) is a New Zealand citizen or is entitled, in terms of the Immigration Act 2009, to be in New Zealand indefinitely.

Schedule 3 clause 3(2)(a): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

4 Procedure for exercising powers

The FMA must not exercise a power under clause 2(1)(b)(i) to (iii), or refuse an application for approval to be withdrawn, unless—

(a) the FMA gives the trustees no less than 10 working days' written notice of the following matters before it exercises the power:

(i) that the FMA may exercise the power or refuse the application; and

(ii) the reasons why it may do so; and

(b) the FMA gives the trustees or the trustees' representative an opportunity to make written submissions on the matter within that notice period.

Schedule 3 clause 4: replaced, on 15 March 2021, by section 58(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

5 Notice requirements

(1) The notice under clause 2(1)(b) must—

(a) state the FMA's reasons for giving the notice; and

(b) specify the date on which the withdrawal of the approval takes effect.

(2) The FMA must give a copy of the notice to every prescribed person.

Schedule 3 clause 5(1): amended, on 15 March 2021, by section 58(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

6 Reporting obligations for approved Schedule 3 schemes

The trustees of an approved Schedule 3 scheme must, at the prescribed times or on the occurrence of the prescribed events and otherwise in the prescribed

manner, prepare and provide to the FMA reports that contain the information that is required to be provided by the regulations.

7 Implied provisions of trust deed

(1) The trust deed of an approved Schedule 3 scheme is treated as containing any provision that is implied into it under this Act.

(2) The trust deed has no effect to the extent that it contravenes, or is inconsistent with, any implied provision.

8 Application of Trusts Act 2019

Section 14 of the Trusts Act 2019 (sole trustee cannot be sole beneficiary) does not apply to—

(a) an approved Schedule 3 scheme; or

(b) a scheme that has been or will be constituted with the intention that the scheme will be approved as a Schedule 3 scheme.

Schedule 3 clause 8: inserted, on 30 January 2021, by section 175 of the Trusts Act 2019 (2019 No 38).

Schedule 4
Transitional, savings, and related provisions

s 14A

Schedule 4 heading: amended, on 9 April 2019, by section 59(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 4 heading: amended, on 9 April 2019, by section 59(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Contents

		Page
1	Overview	445
2	Transitional provisions subject to transitional regulations and exemptions	446
3	Interpretation	446
	Part 1 **Transitional provisions on enactment of this Act for offers of financial products**	
4	Act applies to offer unless former enactments continue to apply	446
5	Former enactments continue to apply if prospectus registered before commencement	447
6	Issuer may elect to comply with former enactments instead of this Act if prospectus registered within 12 months or 2 years of commencement	447
7	Former enactments apply if no prospectus required unless issuer elects otherwise	448
8	This Act and 1978 Act are (on transitional basis) alternative means of compliance	448
9	All offers and allotments under old law must cease after scheme registered	448
10	All offers and allotments under old law must cease within 2 years of commencement	448
10A	Banks' regulatory capital	449
11	FMA may continue to perform and exercise functions, duties, and powers	449
12	Part does not prevent PDS from being lodged	449
13	Part 2 applies even if former enactments apply to offer	449
14	Unsubstantiated representations prohibitions do not apply to prospectuses and investment statements	450
	Part 2 **Transitional provisions on enactment of this Act relating to securities allotted under Securities Act 1978**	
15	Part applies to securities allotted under Securities Act 1978	450

16 Interpretation in this Part 450

Until effective date

17 Former enactments continue to apply until effective date in accordance with regulations 451
18 KiwiSaver schemes, superannuation schemes, and unit trusts continue under former enactments until effective date 451
19 Transition period 452

Transitional provisions on and after effective date

20 Ongoing requirements of this Act apply on and after effective date 452
21 Issuer of debt security must lodge trust deed and supply information 453
22 Managed investment scheme treated as being registered and issuer must supply information 453
23 Type of registration 454
24 Registrar to amend register 456
25 Restriction on making regulated offers and accepting contributions if requirements have not been complied with 456
26 Issuer may amend or replace governing document with FMA's consent 456
27 Conversion of governing documents to separate governing documents *[Repealed]* 457
28 Amalgamation of schemes *[Repealed]* 458
29 Amended enactments continue to apply or have effect in connection with securities in accordance with regulations 458
30 Issuer must send notification to security holders 458
31 PDS treated as having been given 459
32 FMA may continue to perform and exercise functions, duties, and powers 460
33 Certain requirements of former law continue for participatory securities that are not financial products 460

Part 3
Other transitional provisions on enactment of this Act

Unit trusts and superannuation schemes in relation to which offers to public have not been made

34 Unit trusts in relation to which offers to public have not been made 461
35 Superannuation schemes in relation to which offers to public have not been made 461

Amended enactments continue to apply or have effect in connection with schemes

36 Amended enactments continue to apply or have effect in connection with schemes in accordance with regulations 462

37 KiwiSaver schemes and superannuation schemes are retirement schemes during transition period 462

Extra transitional provisions relating to managed investment schemes

38 Remaining trustees (if any) cease to hold office 463
39 Restricted schemes have 3 years to sell investments so as to comply with related party asset 5% cap rule 463
40 Savings related to Superannuation Schemes Act 1976 463

Repealed enactments continue to be financial markets legislation

41 Repealed enactments continue to be financial markets legislation 463

Licensing of financial product markets

42 Transition process for existing financial product markets 464

Substantial holding disclosure

43 Previous disclosure under former enactment has effect under this Act 465
44 Corporate trustees and nominee companies that opt in to substantial holding exemption 465

Market services licences

45 Authorised dealers treated as holding market services licence 466
46 FMA may exercise powers in respect of licences 466

Approval of electronic transfer systems continues

47 Approval of electronic transfer systems continues 467

Banning orders

48 References to banning orders under this Act include references to banning orders under former enactments 467
49 References to failing to comply with this Act include references to failing to comply with former enactments for purposes of banning orders 467

Financial reporting

50 Issuers continue to be issuers under Financial Reporting Act 1993 *[Repealed]* 468
51 Section 10A of Auditor Regulation Act 2011 also applies to exemptions granted under Securities Act 1978 468

Offences and contraventions under repealed, revoked, or amended enactments

52 Transitional provision for offences and contravention under repealed, revoked, or amended enactments 468

Contributory mortgages

53 Former law continues for contributory mortgages 469

Appointments as default KiwiSaver scheme providers

54 Appointments as default KiwiSaver scheme providers 469

Persons who participate in offer under Securities Act 1978 continue to be financial service providers

55 Persons who participate in offer under Securities Act 1978 continue to be financial service providers 470

Miscellaneous matters relating to Schedule 1

56 Sale offers under clauses 31 and 34 of Schedule 1 471
57 Transitional disclosure exclusion 471
58 Exclusions for employee share purchase schemes and small offers can take into account offers under former law 471
59 Additional Securities Act 1978 exemption 471

Recognition regime regulations

60 FMA may make order prohibiting recognition regime offer on basis of contravention of former regulations 472
61 FMA may declare failure to meet preconditions of recognition regime under Securities Act 1978 to be non-material 472

Amendment to section 46 of Trustee Act 1956

62 Amendment to section 46 of Trustee Act 1956 does not affect existing proceedings 472

Part 4
Transitional provisions relating to Regulatory Systems (Commercial Matters) Amendment Act 2017

63 Financial reporting for registered schemes and funds 473

Part 5
Transitional provisions relating to Financial Markets Conduct Regulations 2014

64 Definition 473
65 Certification as to eligible investors under Financial Advisers Act 2008 473
66 Service disclosure statement and investment proposal for existing DIMS 473
67 Existing licences continue and cover supervision 474
68 Extension of licences to cover substantially the same matters under new law 474
69 Governance requirements for PIE call fund units, PIE term fund units, and bank notice products that are specified units 475
70 Certain superannuation schemes that elect to be treated as registered 475

Part 6
Transitional provisions relating to Financial Services Legislation Amendment Act 2019

Subpart 1—Transitional licences

71 FMA may issue transitional licence 475
72 Duration and coverage of transitional licence 476
73 When transitional licence must be issued 476
74 Licence may cover authorised bodies 477
75 Certain transitional licence holders may not engage nominated representatives 477
76 Transitional licence may authorise entity to be engaged 478
77 Application of Part 6 of Act, etc 478
78 FMA may refuse to consider application made before specified time, event, or circumstance 479

Subpart 2—Renewal of financial adviser authorisation and QFE status not required in transitional period

79 Renewal of financial adviser authorisation and QFE status not required in transitional period 479

Subpart 3—Preparation of code

80 Code may be prepared before commencement 480

Subpart 4—Miscellaneous transitional provisions

81 New competency requirements do not prevent certain persons from continuing to give certain advice 481
82 Former QFE advisers not prevented from providing certain services 482
83 Nominated representatives not prevented from providing certain services 482
84 Financial advisers treated as holding DIMS licence 483
85 How service disclosure statement for existing DIMS is made available to existing clients 484
86 Code working group continues as code committee 485
87 Certification for eligible investors under Financial Advisers Act 2008 continues under this Act 486
88 Disciplinary committee continues 486
89 Continuation of pending investigations and disciplinary proceedings 486

Subpart 5—Transitional and savings regulations

90 Transitional and savings regulations *[Repealed]* 487

Part 7
Provisions relating to Part 1 of Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021

91 Interpretation in this Part 487
92 Definitions of large listed issuer, large, and large manager may take into account accounting periods that commence before commencement of clause 487
93 Climate-related disclosures for climate reporting entities under section 461O(1) 487
94 Climate-related disclosures relating to registered schemes 488

Part 8
Provisions relating to Financial Markets (Conduct of Institutions) Amendment Act 2022

95 Dealing with applications to act as financial institution from existing banks, insurers, and NBDTs 488
96 Regulations may provide that licensing requirement does not apply until particular date 489
97 Applications for financial institution licence may be made before commencement 490
98 Incentives regulations may apply to existing agreements 490

1 Overview

(1) This schedule provides for transitional provisions as follows:

(a) Part 1 provides for whether the former law (in particular, the Securities Act 1978) or the new law (this Act) applies to an offer of financial products:

(b) Part 2 provides for the former law to continue to apply to securities allotted under the Securities Act 1978 until an effective date, at which point ongoing requirements of this Act may apply:

(c) Part 3 provides for miscellaneous transitional provisions relating to the enactment of this Act (for example, provisions relating to the licensing of financial product markets):

(d) Part 4 provides for a transitional provision relating to the Regulatory Systems (Commercial Matters) Amendment Act 2017:

(e) Part 5 provides for transitional provisions relating to the Financial Markets Conduct Regulations 2014:

(f) Part 6 provides for transitional provisions relating to the Financial Services Legislation Amendment Act 2019:

(g) Part 7 provides for transitional provisions relating to Part 1 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021:

(h) Part 8 provides for transitional provisions relating to the Financial Markets (Conduct of Institutions) Amendment Act 2022.

(2) Subclause (1) is only a guide to the general scheme and effect of this schedule.

Schedule 4 clause 1(1)(d): inserted, on 9 August 2017, by section 97(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 4 clause 1(1)(e): inserted, on 9 August 2017, by section 97(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 4 clause 1(1)(f): inserted, on 9 April 2019, by section 59(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 4 clause 1(1)(g): inserted, on 27 October 2022, by section 21(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Schedule 4 clause 1(1)(h): inserted, on 25 July 2023, by section 23 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

2 Transitional provisions subject to transitional regulations and exemptions

This schedule is subject to—

(a) any regulations made under section 547:

(b) any exemption granted under subpart 2 of Part 9 of this Act.

3 Interpretation

In this schedule, **this Act** means the Financial Markets Conduct Act 2013 and includes the Financial Markets (Repeals and Amendments) Act 2013.

Part 1
Transitional provisions on enactment of this Act for offers of financial products

4 Act applies to offer unless former enactments continue to apply

(1) This Act applies to an offer of financial products unless the former enactments apply in accordance with this Part.

(2) In this Part,—

1978 Act means the Securities Act 1978

12-month date means the date that is 12 months after the commencement of this clause

2-year date means the date that is 2 years after the commencement of this clause

continuous issue securities means debt securities or managed investment products that are of a kind that were, before the commencement of this clause, continuously offered by a continuous issuer to the public for subscription

continuous issuer means an issuer that in the ordinary course of its business before the commencement of this clause continuously offered debt securities or managed investment products to the public for subscription

former enactments means each of the following:

(a) the 1978 Act (as in force immediately before the commencement of this clause):

(b) the Securities Regulations 2009 and any other regulations made under the 1978 Act (as in force immediately before the commencement of this clause):

(c) exemptions granted under the 1978 Act (to the extent that those exemptions apply to the relevant offer of securities)—

(i) as in force immediately before the commencement of this clause (but subject to any variation or revocation under clause 11); or

(ii) as in force after being granted by the FMA under clause 11.

(3) In this Part, **issuer**, **prospectus**, **registered prospectus**, and **securities** have the same meanings as in the 1978 Act.

(4) In this Part, a reference to an offer of securities to the public has the same meaning as in section 3 of the 1978 Act.

5 Former enactments continue to apply if prospectus registered before commencement

If securities are offered in a prospectus that is registered under the 1978 Act before the commencement of this clause, the former enactments continue to apply to the offer and allotment of those securities under that prospectus as if this Act had not been enacted.

6 Issuer may elect to comply with former enactments instead of this Act if prospectus registered within 12 months or 2 years of commencement

(1) Despite the repeal of the 1978 Act, an issuer of securities may register a prospectus in respect of the securities in accordance with the former enactments on or before—

(a) the 2-year date in the case of continuous issue securities; or

(b) the 12-month date in any other case.

(2) If securities are offered in a prospectus that is registered under subclause (1) and the issuer makes an election under subclause (3), the former enactments apply, as if this Act had not been enacted, to the offer and allotment of those securities under that prospectus.

(3) For the purposes of subclause (2), an issuer may elect for the former enactments to apply to an offer of securities by including a statement in the prospectus to the effect that the Securities Act 1978 applies to the offer.

(4) The statement referred to in subclause (3) may include additional information about an applicable exemption granted under the 1978 Act that is necessary to ensure that the statement is not misleading.

7 Former enactments apply if no prospectus required unless issuer elects otherwise

(1) If, under the 1978 Act or an exemption granted under that Act, no registered prospectus is required for an offer of securities to the public in New Zealand, the former enactments apply, as if this Act had not been enacted, to any offer and allotment of those securities that is made before the close of the 2-year date unless the issuer makes an election, under subclause (3), for this Act to apply.

(2) However,—

(a) subclause (1) does not permit an offer to be made in reliance upon section 5(2CB) or (2CBA) of the 1978 Act:

(b) subclause (1) does not apply in the prescribed circumstances.

(3) For the purposes of subclause (1), an issuer may elect for this Act to apply to an offer of securities made after a particular date by—

(a) giving to the FMA, before that date, a notice to the effect that this Act applies to the offer of the securities made after that date; and

(b) including a copy of that notice on an Internet site maintained by, or on behalf of, the issuer at all reasonable times during the period between that date and the earlier of the close of the offer or the close of the 2-year date.

8 This Act and 1978 Act are (on transitional basis) alternative means of compliance

If, in accordance with this Part,—

(a) this Act applies to an offer of securities, the former enactments do not apply to the offer:

(b) the former enactments apply to an offer of securities, this Act does not apply to the offer.

9 All offers and allotments under old law must cease after scheme registered

Despite clauses 4 to 8, no offer or allotment of managed investment products may be made under the former enactments after the date on which the managed investment scheme to which the products relate becomes a registered scheme (or is treated as being a registered scheme under Part 2 of this schedule).

10 All offers and allotments under old law must cease within 2 years of commencement

Despite clauses 4 to 8, no offer or allotment of securities may be made under the former enactments after the 2-year date (and this Act applies to all offers and acquisitions of financial products made after that date).

10A Banks' regulatory capital

(1) This clause applies in respect of convertible securities offered and allotted before the close of the 2-year date (unless the issuer makes an election as referred to in clause 7(3)).

(2) Despite clauses 7 and 10,—

(a) the former enactments apply, as if this Act had not been enacted, to any offer and allotment of the convertible securities and the specified equity securities to which the convertible securities relate; and

(b) an allotment of those specified equity securities may be made before, on, or after the 2-year date; and

(c) in the case of a specified equity security that is allotted after the 2-year date, clause 20 applies to the security on and after its allotment.

(3) In this clause, **convertible security** and **specified equity security** have the same meanings as in the Securities Act (Banks' Regulatory Capital) Exemption Notice 2014 (as in force before its revocation).

(4) In this clause, **former enactments**—

(a) has the same meaning as in clause 4(2); and

(b) includes the Securities Act (Banks' Regulatory Capital) Exemption Notice 2014 and the Securities Act (Heartland Bank Regulatory Capital) Exemption Notice (No 3) 2016 as in force on 30 November 2016 (as if those notices continued in force after their revocation).

Schedule 4 clause 10A: inserted, on 9 August 2017, by section 97(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

11 FMA may continue to perform and exercise functions, duties, and powers

If the former enactments continue to apply to an offer of securities, the FMA may continue to perform and exercise all of its functions, duties, and powers conferred or imposed on it by or under the former enactments as if this Act had not been enacted (for example, it may grant, vary, or revoke an exemption under section 70B of the 1978 Act).

12 Part does not prevent PDS from being lodged

Nothing in this Part prevents an issuer from lodging a PDS in preparation for making an offer of financial products under Part 3 of this Act.

13 Part 2 applies even if former enactments apply to offer

(1) Despite clause 8, Part 2 of this Act (and any other provision of this Act relating to the enforcement, application, or effect of that Part) applies to an offer of securities to which the former enactments apply.

(2) However, conduct that contravenes, or leads to liability under, sections 55A to 57 (in respect of an untrue statement) or 58 of the 1978 Act does not contravene sections 19 to 23 of this Act.

(3) For the purpose of this section, conduct must be treated as contravening, or leading to liability under, sections 55A to 57 or 58 of the 1978 Act even if the conduct does not constitute an offence, or does not lead to any liability, because of the availability of a defence.

Compare: Australian Securities and Investments Commission Act 2001 ss 12DA(1A), 12DB(2) (Aust)

14 Unsubstantiated representations prohibitions do not apply to prospectuses and investment statements

(1) Section 23 and the provision of the Fair Trading Act 1986 that corresponds to section 23 do not apply to a representation made in a registered prospectus or an investment statement (within the meaning of the 1978 Act).

(2) Subclause (1) applies despite clause 13(1).

Part 2
Transitional provisions on enactment of this Act relating to securities allotted under Securities Act 1978

15 Part applies to securities allotted under Securities Act 1978

(1) This Part applies to an allotted security offered pursuant to an offer for which, or for which but for an exemption granted by the FMA or the Securities Commission under the 1978 Act, an investment statement or a registered prospectus, or both, is or was required under that Act.

(2) However, this Part does not apply to a security if, before the commencement of this clause, the security was cancelled, redeemed, or forfeited, or all of the obligations owing under the security had been discharged.

(3) A security referred to in subclause (1) includes a security allotted under an offer to which the 1978 Act applies under Part 1 of this schedule.

16 Interpretation in this Part

(1) In this Part,—

1978 Act means the Securities Act 1978

effective date, in relation to a particular security, means the earlier of the dates set out in clause 19(1)

former enactments—

(a) means the 1978 Act, the Securities Regulations 2009, exemptions granted under the 1978 Act, and any other enactments made under the 1978 Act; and

(b) includes,—

(i) in relation to an interest in a KiwiSaver scheme, the KiwiSaver Act 2006:

(ii) in relation to an interest in a superannuation scheme (other than a KiwiSaver scheme), the Superannuation Schemes Act 1989:

(iii) in relation to a unit in a unit trust, the Unit Trusts Act 1960:

(iv) the Securities Trustees and Statutory Supervisors Act 2011

issuer, in relation to a security, means,—

(a) before the effective date, the issuer within the meaning of the 1978 Act:

(b) on and after the effective date, the issuer within the meaning of section 11

KiwiSaver schemes register means the KiwiSaver schemes register established under the KiwiSaver Act 2006

transition period has the meaning set out in clause 19(1).

(2) In this Part, **investment statement**, **registered prospectus**, and **securities** have the same meanings as in the 1978 Act (as in force immediately before the commencement of this clause).

(3) In this clause and clause 18, **KiwiSaver scheme**, **scheme**, **superannuation scheme**, **unit**, and **unit trust** have the same meanings as in section 2(1) of the 1978 Act (as in force immediately before the commencement of this clause).

Until effective date

17 Former enactments continue to apply until effective date in accordance with regulations

(1) If a former enactment would apply (but for its repeal, revocation, or amendment by this Act) to a security to which this Part applies (or to any scheme to which the security relates), that enactment continues to apply during the transition period in accordance with regulations made under section 547 (if any).

(2) *See* section 547, under which regulations may provide for former enactments to continue to apply (or to apply with modifications or additions), or for provisions of this Act or the Financial Markets (Repeals and Amendments) Act 2013 to apply with modifications or additions, as set out in the regulations.

(3) Despite subclauses (1) and (2), the provisions of the KiwiSaver Act 2006 amended by sections 101, 105, and 107 of the Financial Markets (Repeals and Amendments) Act 2013 apply as amended to an interest in a KiwiSaver scheme to which this Part applies and to that KiwiSaver scheme.

18 KiwiSaver schemes, superannuation schemes, and unit trusts continue under former enactments until effective date

(1) If a security to which this Part applies is—

(a) an interest in a KiwiSaver scheme, the KiwiSaver scheme continues to be registered in the KiwiSaver schemes register during the transition period as if this Act had not been enacted:

(b) an interest in a superannuation scheme (other than a KiwiSaver scheme), the superannuation scheme continues to be registered under the Superannuation Schemes Act 1989 during the transition period as if this Act had not been enacted:

(c) a unit in a unit trust, the unit trust continues to be subject to the Unit Trusts Act 1960 during the transition period as if this Act had not been enacted.

(2) This clause does not limit clause 17.

19 Transition period

(1) In this Part, the **transition period** for a particular security is the period beginning on the date on which this clause comes into force and ending on the close of the day before the earlier of the following dates:

(a) the date that the issuer of the security elects; or

(b) the date that is 2 years after the commencement of this clause.

(2) If the issuer elects an effective date that is earlier than 2 years after the commencement of this clause, the issuer must notify the FMA and the Registrar of the elected date at least 20 working days before that date.

Transitional provisions on and after effective date

20 Ongoing requirements of this Act apply on and after effective date

(1) On and after the effective date for a particular security to which this Part applies, the following apply to the security (and, in the case of a managed investment product, to the managed investment scheme to which it relates):

(a) subpart 4 of Part 3 of this Act (ongoing disclosure) other than section 95:

(b) Part 4 of this Act (governance of financial products):

(c) Part 7 of this Act (financial reporting):

(d) any regulations made for the purposes of subpart 4 of Part 3, Part 4, or Part 7 of this Act:

(e) any other provision of this Act relating to the enforcement, application, or effect of subpart 4 of Part 3, Part 4, or Part 7 of this Act.

(2) The provisions referred to in subclause (1) apply with all necessary modifications as if the security had been offered and allotted under a regulated offer under this Act.

(2A) For the purposes of subclause (1), the security must, on and after the effective date, be treated as being a regulated product under section 451(1)(a) and,

accordingly, the issuer must be treated as being an FMC reporting entity (unless section 452 applies).

(2B) *See* section 56 of the Financial Reporting Act 2013 (which provides for the former law to generally continue to apply to accounting periods that commence before the commencement of that Act).

(3) However, subclause (1) and clauses 21, 22, and 30 (obligations relating to registration of a scheme under this Act) do not apply to a security if,—

(a) before the effective date, the security is cancelled, redeemed, or forfeited, or all of the obligations owing under the security have been discharged; or

(b) on the effective date, the security is not a financial product within the meaning of section 7 (but *see* clause 33); or

(c) under the 1978 Act, the security was a debt security but, as a result of section 5(2C) or (3) of that Act, section 33(2) of that Act did not apply to the security; or

(d) under the 1978 Act, the security was a participatory security but, as a result of section 5(3) of that Act, section 33(3) of that Act did not apply to the security.

Schedule 4 clause 20(2A): inserted, on 1 April 2014, by section 61(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Schedule 4 clause 20(2A): amended, on 14 March 2021, by section 51 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Schedule 4 clause 20(2B): inserted, on 1 April 2014, by section 61(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

21 Issuer of debt security must lodge trust deed and supply information

(1) If a security to which this Part applies is a debt security (within the meaning of section 8), the issuer must—

(a) ensure that a copy of the trust deed that complies with sections 104 to 106 is lodged with the Registrar before the effective date; and

(b) supply to the Registrar and the FMA, before the effective date,—

(i) the names and addresses of the persons who, on the effective date, will be the issuer and the licensed supervisor; and

(ii) all other prescribed information relating to the debt security.

(2) *See* subpart 3 of Part 8 of this Act, which provides for civil liability for a contravention of subclause (1).

22 Managed investment scheme treated as being registered and issuer must supply information

(1) If a security to which this Part applies is a managed investment product,—

(a) the managed investment scheme to which the product relates (the **scheme**) must, on and after the effective date, be treated as being a registered scheme; and

(b) the issuer must ensure that a copy of the governing document for the scheme that complies with sections 135 to 137 is lodged with the Registrar before the effective date; and

(c) the issuer must supply to the Registrar and the FMA, before the effective date,—

(i) the name and address of the person who, on the effective date, will be the manager; and

(ii) the name and address of the person who, on the effective date, will be the licensed supervisor (unless the scheme is a restricted scheme); and

(iii) all other prescribed information relating to the managed investment product and the scheme.

(2) *See* subpart 3 of Part 8 of this Act, which provides for civil liability for a contravention of subclause (1)(b) or (c).

(3) Nothing in this clause or clause 23 prevents the FMA from—

(a) directing that the registration of a scheme to which this clause applies be cancelled under section 195; or

(b) exercising any other power in respect of such a scheme.

23 Type of registration

(1) A managed investment scheme that is treated as being registered under clause 22 must be treated as being registered on the register of managed investment schemes as the 1 or more of the following types of scheme that apply to it:

(a) a KiwiSaver scheme if, immediately before the effective date, the scheme was registered as a KiwiSaver scheme in the KiwiSaver schemes register:

(b) a KiwiSaver scheme that is a restricted scheme if paragraph (a) applies and, immediately before the effective date, the scheme was identified as a restricted scheme on the KiwiSaver schemes register:

(c) a superannuation scheme if, immediately before the effective date, the scheme was registered under the Superannuation Schemes Act 1989 (unless paragraph (f) applies):

(d) a superannuation scheme that is a restricted scheme if paragraph (c) applies and an Order in Council has designated the scheme as a restricted scheme under subclause (2):

(e) a superannuation scheme that is a legacy scheme if paragraph (c) applies and an Order in Council has designated the scheme as a legacy scheme under subclause (2):

(f) a workplace savings scheme if, immediately before the effective date, the scheme was registered under the Superannuation Schemes Act 1989 and an Order in Council has designated the scheme as a workplace savings scheme under subclause (2):

(g) a workplace savings scheme that is a restricted scheme if paragraph (f) applies and an Order in Council has designated the scheme as a restricted scheme under subclause (2):

(h) a restricted scheme that is an employer-related scheme if paragraph (b), (d), or (g) applies and an Order in Council under subclause (2) has designated the scheme as an employer-related scheme:

(i) a complying superannuation fund if paragraph (c) applies and, immediately before the effective date, the scheme was approved as a complying superannuation fund under section 35 of the Superannuation Schemes Act 1989.

(2) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the FMA,—

(a) designate a scheme as a restricted scheme for the purposes of subclause (1)(d) or (g):

(b) designate a scheme as a legacy scheme for the purposes of subclause (1)(e):

(c) designate a scheme as a workplace savings scheme for the purposes of subclause (1)(f):

(d) designate any scheme that will be a restricted scheme under this section as being an employer-related scheme for the purposes of section 172.

(3) A scheme may be designated under subclause (2)(b) or (c) as a type of scheme in respect of a section of the scheme only and, in that case, subclause (1) treats the scheme as being on the register of managed investment schemes as that type in respect of that section of the scheme.

(4) Section 131(1)(c) (which prevents certain changes without the FMA's consent to the conditions of entry of scheme participants) applies to a restricted scheme on and after the date on which a designation by Order in Council comes into force under subclause (2) in all cases as if that date of designation were the date of the scheme's registration under this Part.

(5) An order under this clause is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this clause

Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)

Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Schedule 4 clause 23(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

24 Registrar to amend register

(1) The Registrar must, on or as soon as practicable after the effective date for a managed investment scheme to which clause 22(1)(a) applies, amend the register of managed investment schemes to include an entry relating to the scheme.

(2) The Registrar is not required to act under subclause (1) before clause 22(1)(b) and (c) have been complied with.

25 Restriction on making regulated offers and accepting contributions if requirements have not been complied with

(1) This clause applies if an issuer contravenes clause 22(1)(b) or (c) in respect of a managed investment scheme that is treated as being a registered scheme under clause 22(1)(a).

(2) The issuer must not, on and after the effective date, make a regulated offer of a managed investment product, or accept further contributions, in respect of that managed investment scheme.

(3) Subclause (2) ceases to apply if—

(a) the issuer lodges with the Registrar a copy of the governing document for the scheme that complies with sections 135 to 137; and

(b) the issuer supplies to the Registrar and the FMA the prescribed information; and

(c) the register of managed investment schemes includes an entry relating to the scheme.

(4) *See* subpart 3 of Part 8 of this Act, which provides for civil liability for a contravention of this clause.

26 Issuer may amend or replace governing document with FMA's consent

(1) This clause applies—

(a) to a governing document that, immediately before the commencement of this clause, relates to a debt security or constitutes or governs a scheme; and

(b) despite anything to the contrary in the governing document or in any enactment, rule of law, or agreement, including anything relating to the consent of any person to the making of amendments to the governing document.

(2) The issuer of the debt security or the manager of the scheme (as the case may be) may amend or replace the governing document with the FMA's consent if the FMA is satisfied that—

(a) the amendment or replacement is necessary or desirable to ensure, or in connection with ensuring, that the governing document complies with the requirements of this Act; or

(b) (for any amendments or differences in the replaced governing document to which paragraph (a) does not apply) the procedures of the existing governing document for amendments have been complied with.

(3) An amendment or a replacement made under this clause must be treated for all purposes as if it were made in accordance with the governing document.

(4) On the amendment or replacement under this clause of a governing document that constitutes or governs a scheme,—

(a) the scheme must be treated as the same scheme as it was immediately before the amendment or replacement of the existing governing document; and

(b) the persons who were members of the scheme immediately before the amendment or replacement of the existing governing document continue to be members of the same scheme; and

(c) the assets or liabilities of a scheme or fund must be treated as if they vested in the scheme or fund immediately after the amendment or replacement of the existing governing document, but for the purposes of the Inland Revenue Acts this must be treated as if it is not a transfer (as defined in section YA 1 of the Income Tax Act 2007).

(5) In this clause and clauses 27 and 28, **scheme** has the same meaning as in section 2(1) of the 1978 Act (as in force immediately before the commencement of this clause).

(6) To avoid doubt, this clause does not limit the ways in which a governing document may be amended or replaced in accordance with its terms or any enactment or rule of law.

(7) The FMA's discretion to set preconditions for requests to it includes (without limitation) a discretion to set preconditions that satisfy the FMA that it is appropriate for the amendment or replacement to be done under this section rather than by means of another power or process.

27 Conversion of governing documents to separate governing documents

[Repealed]

Schedule 4 clause 27: repealed, on 1 December 2016, by clause 27(5).

28 Amalgamation of schemes

[Repealed]

Schedule 4 clause 28: repealed, on 1 December 2016, by clause 28(5).

29 Amended enactments continue to apply or have effect in connection with securities in accordance with regulations

(1) If, before the commencement of this clause, an enactment that is amended by this Act applied, or had an effect, in connection with a security to which this Part applies, the enactment continues to apply, or have the effect, in connection with the security in accordance with regulations made under section 547 (if any) until the effective date.

(2) *See* section 547, under which regulations may provide for an enactment that is amended by this Act to continue to apply (or to apply with modifications or additions), or for provisions of this Act or the Financial Markets (Repeals and Amendments) Act 2013 to apply with modifications or additions, as set out in the regulations.

(3) Subclause (1) must be treated as applying to a security offered under the 1978 Act in accordance with Part 1 of this schedule.

(4) *See* clause 36 (amended enactments continue to apply or have effect in connection with schemes).

30 Issuer must send notification to security holders

(1) The issuer of a security must, before or within 3 months after the effective date, send a written notice containing the following information to the security holder at the holder's last known address:

(a) the effective date and a statement to the effect that the requirements of this Act will apply after that date:

(b) the names and addresses of the issuer, the supervisor (if any), and the custodian (if any):

(c) in the case of a debt security or managed investment product,—

(i) a statement to the effect that the holder may obtain a copy of the governing document by electronic means; and

(ii) a statement to the effect that the holder has a right to receive from the issuer, free of charge, a copy of the governing document if the holder, within 15 working days of receiving the notice, makes a request to the issuer to receive a copy of the governing document:

(d) if a PDS has been lodged for an offer of financial products of the same class as the security, a statement to the effect that the holder may obtain a copy of the PDS by electronic means:

(e) in the case of a managed investment product, the statement of investment policy and objectives or a statement to the effect that the holder may obtain a copy of that statement by electronic means:

(f) if the notice contains a statement to the effect that the holder may obtain a copy of a document by electronic means, a statement as to how the holder may obtain a copy of the document by electronic means (for example, from a specified Internet site address):

(g) any other prescribed information.

(2) This section does not apply to a security referred to in clause 20(3).

(3) If a security holder, within 15 working days of receiving the notice, makes a request to the issuer to receive a copy of the governing document, the issuer must, as soon as practicable, send to the holder, free of charge, a copy of that document.

(4) A person who contravenes this clause commits an offence and is liable on conviction to a fine not exceeding $50,000.

(5) The offence in this clause is an infringement offence (*see* subpart 5 of Part 8 of this Act).

(6) In this clause and clause 31, **security holder** means,—

(a) in the case of a security to which section 215(1) does not apply, the holder of that security on the date that the notice is sent under subclause (1); or

(b) in the case of any other security, the person who is registered as the holder of the security in a register kept under subpart 4 of Part 4 of this Act on the date that the notice is sent under subclause (1).

31 PDS treated as having been given

(1) This clause applies if—

(a) a notice is sent to a security holder under clause 30 before the effective date; and

(b) a PDS has, before the effective date, been lodged for an offer of financial products of the same class as the security held by the security holder; and

(c) a statement is included in the notice referred to in paragraph (a) as required by clause 30(1)(d); and

(d) the security held by the security holder is a financial product that the issuer, in the ordinary course of its business, continuously offers for issue.

(2) The PDS referred to in subclause (1)(b) must be treated as having been given to the security holder for the purposes of section 50.

32 FMA may continue to perform and exercise functions, duties, and powers

If the former enactments continue to apply to securities or a scheme under this Part, the FMA may continue to perform and exercise all of its functions, duties, and powers conferred or imposed on it by or under the former enactments as if this Act had not been enacted (for example, it may grant, vary, or revoke an exemption under section 70B of the 1978 Act).

33 Certain requirements of former law continue for participatory securities that are not financial products

(1) This clause applies to a participatory security to which this Part applies if—

(a) a statutory supervisor was, or was required to be, appointed in respect of the security under section 33(3) of the Securities Act 1978; and

(b) on the effective date, the security is not a financial product within the meaning of section 7.

(2) However, this clause—

(a) does not apply in relation to a participatory security if, before the effective date, the security was cancelled, redeemed, or forfeited, or all of the obligations owing under the security had been discharged:

(b) ceases to apply to a security (and the scheme to which it relates) if the participatory security holders in the scheme opt out of this clause by way of a resolution approved by those holders holding no less than 75% of the value of the participatory securities.

(3) The following enactments continue to apply on and after the effective date (as if this Act had not been enacted) to a security to which this clause applies, the scheme to which the security relates, and the statutory supervisor of the security:

(a) sections 45, 48, and 49 of the 1978 Act:

(b) regulations 41 and 42 and Schedules 16 and 17 of the Securities Regulations 2009:

(c) any other provision of the 1978 Act or the Securities Regulations 2009 relating to the enforcement, application, or effect of the provisions referred to in paragraph (a) or (b) or the making of regulations relating to, or the granting of exemptions from compliance with, those provisions:

(d) the Securities Trustees and Statutory Supervisors Act 2011.

(4) For the purposes of this clause, the Governor-General may, by Order in Council, make regulations under section 70(1)(g) of the 1978 Act (as if that Act continued in force) for the purpose of replacing any regulations made under that paragraph (and those regulations that are replaced then cease to apply under subclause (3)).

(5) Regulations for the purposes of subclause (4) are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation referred to in subclause (5)		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Schedule 4 clause 33(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Part 3
Other transitional provisions on enactment of this Act

Unit trusts and superannuation schemes in relation to which offers to public have not been made

34 Unit trusts in relation to which offers to public have not been made

(1) This clause applies to a unit trust to which the Unit Trusts Act 1960 applied immediately before the commencement of this clause unless Part 2 of this schedule applies to any unit in the unit trust.

(2) The Unit Trusts Act 1960 continues to apply during the transition period described in subclause (3) as if this Act had not been enacted.

(3) The transition period for a unit trust is the period beginning on the date on which this clause comes into force and ending on the close of the day before the earlier of the following dates:

(a) the date that the unit trust is registered as a registered scheme under this Act; or

(b) the date that is 2 years after the commencement of this clause.

(4) In this clause, **unit** and **unit trust** have the same meanings as in section 2(1) of the Securities Act 1978.

35 Superannuation schemes in relation to which offers to public have not been made

(1) This clause applies to a superannuation scheme that, immediately before the commencement of this clause, was registered under the Superannuation Schemes Act 1989 unless Part 2 of this schedule applies to any interest in the scheme.

(2) The Superannuation Schemes Act 1989 continues to apply during the transition period described in subclause (3) as if this Act had not been enacted.

(3) The transition period for a superannuation scheme is the period beginning on the date on which this clause comes into force and ending on the close of the day before the earlier of the following dates:

(a) the date that the scheme is registered as a registered scheme under this Act or is approved as a Schedule 3 scheme; or

(b) the date that is 2 years after the commencement of this clause.

Amended enactments continue to apply or have effect in connection with schemes

36 Amended enactments continue to apply or have effect in connection with schemes in accordance with regulations

(1) If, before the commencement of this clause, an enactment that is amended by this Act applied, or had an effect, in connection with a specified scheme, the enactment continues to apply, or have the effect, in connection with the specified scheme in accordance with regulations made under section 547 until the end of the transition period.

(2) *See* section 547, under which regulations may provide for an enactment that is amended by this Act to continue to apply (or to apply with modifications or additions), or for provisions of this Act or the Financial Markets (Repeals and Amendments) Act 2013 to apply with modifications or additions, as set out in the regulations.

(3) In this clause and clause 37,—

specified scheme means any of the following:

(a) a KiwiSaver scheme, superannuation scheme, or unit trust referred to in clause 18:

(b) a unit trust referred to in clause 34:

(c) a superannuation scheme referred to in clause 35

transition period means, in relation to a specified scheme, the transition period that applies to the scheme under Part 2 of this schedule or clause 34 or 35 (as the case may be).

37 KiwiSaver schemes and superannuation schemes are retirement schemes during transition period

A specified scheme that is a KiwiSaver scheme or superannuation scheme must, during the transition period, be treated as being a retirement scheme (as defined in section 6(1)).

Extra transitional provisions relating to managed investment schemes

38 Remaining trustees (if any) cease to hold office

(1) This clause applies to a person (if any) who is a trustee of a registered scheme that is a trust and who is not the manager or supervisor of the scheme under this Act.

(2) The person ceases to hold office at the end of the transition period referred to in clause 36(3), provided that there is a manager or supervisor for the scheme as required by this Act.

39 Restricted schemes have 3 years to sell investments so as to comply with related party asset 5% cap rule

The manager of a restricted scheme must ensure that, on or before the third anniversary after the date on which this clause comes into force, the restricted scheme does not have an in-house assets ratio of 5% or more in relation to any related party or scheme participant (as determined in accordance with section 176).

40 Savings related to Superannuation Schemes Act 1976

(1) All superannuation annuities, superannuation allowances, annuities, amounts, expenses, and refunds that were payable out of the Consolidated Account under sections 5A(2), 6(4), and 7(6) of the Superannuation Schemes Act 1976 (which related to certain payments out of the Consolidated Account as a result of the dissolution of the New Zealand Superannuation Corporation and the New Zealand Superannuation Scheme) continue to be so payable as if those sections and section 5A(3) of that Act had not been repealed.

(2) This clause applies despite the repeal of—

(a) the Superannuation Schemes Act 1976 by section 32 of the Superannuation Schemes Act 1989; and

(b) section 33 of the Superannuation Schemes Act 1989 by this Act.

Compare: 1989 No 10 s 33

Repealed enactments continue to be financial markets legislation

41 Repealed enactments continue to be financial markets legislation

Every enactment that is repealed or revoked by this Act and that was, immediately before the commencement of this clause, financial markets legislation within the meaning of section 4 of the Financial Markets Authority Act 2011 must be treated as continuing to be financial markets legislation within the meaning of that Act (and to be referred to within the same Part of Schedule 1 of that Act).

Licensing of financial product markets

42 Transition process for existing financial product markets

(1) In this clause,—

deemed licence means a financial product market licence that an existing exchange is, by subclause (2), deemed to hold

existing exchange means a person that, immediately before the commencement of subclause (2), was a registered exchange within the meaning of section 2(1) of the Securities Markets Act 1988 or an authorised futures exchange within the meaning of section 37(1) of that Act

existing market means a market that, immediately before the commencement of subclause (2), was a registered market within the meaning of section 2(1) of the Securities Markets Act 1988 or an authorised futures market within the meaning of section 37(1) of that Act

existing market rules means market rules, within the meaning of section 2(1) of the Securities Markets Act 1988, that, immediately before the commencement of subclause (2), applied to an existing market

existing unlicensed market operator means a person other than an existing exchange that, immediately before the commencement of subclause (7), lawfully operated a securities market or a futures market within the meaning of the Securities Markets Act 1988

market of an existing exchange, in relation to an existing exchange, means an existing market that the existing exchange was, immediately before the commencement of subclause (2), authorised to operate

transitional period means the period that commences on the commencement of subclause (7) and ends on the commencement of section 310.

Existing exchanges

(2) On and from the commencement of this subclause, every existing exchange is deemed to hold, under this Act, for each market of the existing exchange, a financial product market licence that authorises the existing exchange to operate a financial product market that is of the same kind as the existing market of the existing exchange.

(3) Every existing market rule for an existing market continues to have effect in relation to that market as if it had been approved under section 331 or, as the case requires, been notified under section 334.

(4) Section 321, so far as applicable and with any necessary modifications, applies to each existing market, and the FMA must, as soon as practicable after the commencement of this subclause, set out, for each existing market, the matters required to be included by subsection (2) of that section and, in doing so, must—

(a) treat the commencement of this subclause as the date on which the deemed licence was issued; and

(b) formulate, in consultation with the existing exchange, the conditions of the deemed licence, being conditions of the kind described in section 318(1)(a) to (d) (and, for that purpose, the references to the Minister in section 318(1)(d) must be treated as being references to the FMA); and

(c) determine whether the deemed licence is deemed to have been issued under section 316 or 317.

(5) Any matter stated under section 321(2), as applied by subclause (4), is deemed to be incorporated into the deemed licence.

(6) Nothing in this clause prevents—

(a) the Minister from exercising a power under this Act—

(i) to vary, revoke, add to, or substitute the conditions of a deemed licence; or

(ii) to suspend or cancel a deemed licence; or

(b) the exercise, in respect of a deemed licence, of any other power that may, under this Act, be exercised in respect of a financial product market licence.

Existing unlicensed market operator

(7) On an application to the Minister by an unlicensed market operator, the Minister may, during the transitional period, issue a financial product market licence to the existing unlicensed market operator and, after the transitional period, that licence has effect as if it had been issued under section 316 or, as the case requires, section 317.

(8) During the transitional period, the Minister may approve any proposed market rules for the market operated by an existing unlicensed market operator and, after the transitional period, that approval has effect as if it had been given by the FMA under section 331.

Substantial holding disclosure

43 Previous disclosure under former enactment has effect under this Act

A disclosure of a substantial holding under subpart 3 of Part 2 of the Securities Markets Act 1988 must be treated as a disclosure under subpart 5 of Part 5 of this Act for the purposes of section 277 and other provisions of that Part.

44 Corporate trustees and nominee companies that opt in to substantial holding exemption

If, before the commencement of this clause, a person has opted in to an exemption under section 31 of the Securities Markets Act 1988 (and has not

withdrawn the notice to opt in), the person must be treated as having opted in to the exemption in section 285.

Market services licences

45 Authorised dealers treated as holding market services licence

(1) Every person who, immediately before the commencement of this clause, is authorised or approved to carry on the business of dealing in futures contracts under section 38 of the Securities Markets Act 1988 must be treated as holding, on and from the commencement of this clause, a licence issued under subpart 2 of Part 6 of this Act.

(2) Subclause (1) does not apply if the person is not required to hold a licence under Part 6 of this Act.

(3) The licence under subclause (1) must be treated as—

(a) covering the same service that is authorised or approved under section 38 of the Securities Markets Act 1988 (and that service must be treated as a market service for the purposes of this Act):

(b) subject to the conditions, limitations, or restrictions that, immediately before the commencement of this clause, were imposed by or under the Securities Markets Act 1988 on the authorisation or approval (and those conditions, limitations, or restrictions must be treated as the conditions of the licence for the purposes of this Act):

(c) in the case of a registered bank, covering the service of acting as a derivatives issuer for all derivatives:

(d) expiring on the earlier of—

(i) the date that the licence is cancelled under Part 6 of this Act; and

(ii) the date that is 2 years after the commencement of this clause.

(4) Subclause (3)(a) and (b) do not limit subclause (3)(c).

46 FMA may exercise powers in respect of licences

(1) Nothing in clause 45 prevents the FMA from exercising—

(a) a power under Part 6 of this Act to vary, revoke, add to, or substitute any of the conditions of a licence referred to in that clause; or

(b) any other powers under this Act in respect of the licence.

(2) A licence referred to in clause 45 may also be subject to the conditions prescribed by the regulations.

Approval of electronic transfer systems continues

47 Approval of electronic transfer systems continues

An Order in Council made under section 7 of the Securities Transfer Act 1991 that is in force immediately before the repeal of that Act continues in force as if it had been made under section 376 (and may be amended or revoked as if it had been made under that section).

Banning orders

48 References to banning orders under this Act include references to banning orders under former enactments

(1) This clause applies to a provision of any enactment that refers to a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under this Act (or any similar reference).

(2) The provision must be treated as including a reference to a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Securities Act 1978, the Securities Markets Act 1988, or the Financial Advisers Act 2008.

Example

Section 151(2)(ea) of the Companies Act 1993 specifies that a person is disqualified from being a director of a company if the person is prohibited from being a director or promoter under this Act.

If a person has been so prohibited under the Securities Act 1978, the Securities Markets Act 1988, or the Financial Advisers Act 2008, the person will be disqualified under section 151(2)(ea) of the Companies Act 1993.

49 References to failing to comply with this Act include references to failing to comply with former enactments for purposes of banning orders

(1) This clause applies to a provision of any enactment that—

(a) gives a court or a Registrar the power to make an order prohibiting a person from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body (or any order to similar effect); and

(b) refers to a failure or persistent failure to comply with this Act as a ground for making the order.

(2) The reference to a failure or persistent failure to comply with this Act must be treated as including a reference to a failure or persistent failure to comply

with the Securities Act 1978, the Securities Markets Act 1988, or the Financial Advisers Act 2008.

Example

Section 383 of the Companies Act 1993 refers to persistently failing to comply with this Act as a ground for disqualifying a director.

This ground must be treated as including a persistent failure to comply with the Securities Act 1978, the Securities Markets Act 1988, or the Financial Advisers Act 2008.

Financial reporting

50 Issuers continue to be issuers under Financial Reporting Act 1993

[Repealed]

Schedule 4 clause 50: repealed, on 1 April 2014, by section 61(2) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

51 Section 10A of Auditor Regulation Act 2011 also applies to exemptions granted under Securities Act 1978

Section 10A of the Auditor Regulation Act 2011 (which provides that licence and registration requirements of that Act do not apply if an FMA exemption applies) also applies in relation to exemptions granted by the FMA under the Securities Act 1978 as if references to the Financial Markets Conduct Act 2013 were references to that Act.

Offences and contraventions under repealed, revoked, or amended enactments

52 Transitional provision for offences and contravention under repealed, revoked, or amended enactments

(1) This section applies to an offence committed under, or a contravention of, any of the enactments repealed or revoked by section 4 or 5 of the Financial Markets (Repeals and Amendments) Act 2013, or amended by the Financial Markets (Repeals and Amendments) Act 2013, before the commencement of the provision that repealed, revoked, or amended that enactment.

(2) The enactments repealed or revoked by section 4 or 5 of the Financial Markets (Repeals and Amendments) Act 2013, or amended by the Financial Markets (Repeals and Amendments) Act 2013, continue to have effect as if they had not been repealed, revoked, or amended for the purpose of—

(a) investigating an offence or a contravention to which this section applies:

(b) commencing or completing proceedings for an offence or a contravention to which this section applies:

(c) imposing a penalty or other remedy, or making an order, in relation to an offence or a contravention to which this section applies.

Contributory mortgages

53 Former law continues for contributory mortgages

(1) This clause applies in relation to an interest in a contributory mortgage that was offered to the public for subscription by a contributory mortgage broker under the Securities Act 1978.

(2) However, this clause does not apply in relation to an interest in a contributory mortgage if, before the commencement of this clause, the interest was cancelled, redeemed, or forfeited, or all of the obligations owing under the interest had been discharged.

(3) To the extent that the following enactments would otherwise apply to an interest to which this clause applies, those enactments continue to apply as if this Act had not been enacted:

(a) the Securities Act 1978:

(b) the Securities Act (Contributory Mortgage) Regulations 1988:

(c) an exemption granted under the Securities Act 1978 from any of the provisions of those regulations that are in force immediately before the commencement of this clause.

(4) For the purposes of an interest to which this clause applies, the Governor-General may, by Order in Council, make regulations under section 70(1)(h) of the Securities Act 1978 (as if that Act continued in force) for the purpose of replacing any regulations made under that paragraph (and those regulations that are replaced then cease to apply under subclause (3)).

(5) Regulations for the purposes of subclause (4) are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation referred to in subclause (5)		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Schedule 4 clause 53(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Appointments as default KiwiSaver scheme providers

54 Appointments as default KiwiSaver scheme providers

(1) If, immediately before the commencement of this clause, an instrument of appointment is in effect under section 177 of the KiwiSaver Act 2006, the instrument continues in effect as if it had been made under section 132 of that Act (and, accordingly, an appointment under the instrument continues subject to the terms and conditions of the appointment).

(2) If a default KiwiSaver scheme that is the subject of an instrument of appointment referred to in subclause (1) has not yet been reregistered under clause 22(1)(a), the grounds for revocation of the instrument of appointment under section 137(2) of the KiwiSaver Act 2006 include the grounds in section 184(2) of the KiwiSaver Act 2006 (as in force on the date on which this Act receives the Royal assent).

Persons who participate in offer under Securities Act 1978 continue to be financial service providers

55 Persons who participate in offer under Securities Act 1978 continue to be financial service providers

(1) The definition of **financial service** in section 5 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 must be treated as including the following services:

(a) participating in an offer of securities to the public under the Securities Act 1978 in either of the following capacities (within the meaning of those terms under section 2(1) of that Act):

(i) as an issuer of the securities:

(ii) as a promoter:

(b) acting in any of the following capacities (within the meaning of those terms under section 2(1) of the Securities Act 1978) in respect of securities offered to the public under that Act:

(i) as a trustee:

(ii) as a statutory supervisor:

(iii) as a unit trustee:

(iv) as a superannuation trustee:

(v) as a manager.

(2) The service referred to in—

(a) subclause (1)(a) must be treated as being a service referred to in section 5(1)(i) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008:

(b) subclause (1)(b) must be treated as being a service referred to in section 5(1)(ia) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

(3) The references in subclause (1)(a) and (b) to an offer to the public under the Securities Act 1978 include an offer to which the Securities Act 1978 applies in accordance with Part 1 of this schedule.

Miscellaneous matters relating to Schedule 1

56 Sale offers under clauses 31 and 34 of Schedule 1

(1) Clause 31(1)(c) and (2)(d) of Schedule 1 must be treated as including a reference to an issue or a sale to the public in New Zealand under the Securities Act 1978 or to the public outside New Zealand under an application regime under Part 5 of that Act.

(2) Clause 34(1)(d) of Schedule 1 must be treated as including a reference to an offer to the public in New Zealand under the Securities Act 1978.

57 Transitional disclosure exclusion

(1) An offer of financial products does not require disclosure under Part 3 of this Act if the offer—

(a) is made before the relevant prescribed date; and

(b) is of a kind that, had it been made under the Securities Act 1978,—

(i) nothing in Part 2 of the Securities Act 1978 (except sections 38B and 58) would have applied in respect of the financial products offered as a result of section 5(2CB) or (2CBA) of that Act; or

(ii) the offer would not have been an offer of securities to the public as a result of section 3(2)(a)(i) to (iii) of that Act.

(2) For the purposes of subclause (1)(a), different dates may be prescribed in relation to different kinds of offers or other circumstances.

(3) Subclause (1) must be treated as being an exclusion under Part 1 of Schedule 1.

58 Exclusions for employee share purchase schemes and small offers can take into account offers under former law

The reference to a regulated offer in clauses 8(3)(c) and 14(1)(c) of Schedule 1 (which require issues or sales that result from certain offers to be disregarded in making calculations) must be treated as including a reference to an offer of securities to the public in New Zealand that is made under the Securities Act 1978.

59 Additional Securities Act 1978 exemption

(1) Section 5(1) of the Securities Act 1978 must be treated as including an exemption to the effect that nothing in Part 2 of the Securities Act 1978 applies in respect of a financial product if the offer of the financial product would not require disclosure under Part 3 of this Act (if that Part were in force) as a result of an exclusion in any 1 or more of the clauses of Schedule 1 of this Act that are prescribed for the purposes of this subclause.

(2) If a person makes an offer in reliance upon subclause (1), clauses 26 to 28 of Schedule 1 apply to the person and the offer with all necessary modifications as if it were an offer made in reliance upon any of the clauses of Schedule 1

referred to in subclause (1) (and, accordingly, a contravention of clauses 26 to 28 gives rise to civil liability under Part 8 of this Act).

(3) Conditions, requirements, and other matters may be prescribed under section 543(1)(c) that apply to the exemption referred to in subclause (1) regardless of whether or not those conditions, requirements, or other matters apply to any exclusion in Schedule 1 of this Act.

(4) Regulations may be made under section 70AAA of the Securities Act 1978 in respect of the exemption in subclause (1).

(5) Subclause (1) ceases to apply upon the repeal of the Securities Act 1978 and may not, after it ceases to apply, be relied upon in making an offer under Part 1 of this schedule.

Recognition regime regulations

60 FMA may make order prohibiting recognition regime offer on basis of contravention of former regulations

The reference to regulations in section 471(1)(a) must be treated as including a reference to regulations made under section 74 of the Securities Act 1978.

61 FMA may declare failure to meet preconditions of recognition regime under Securities Act 1978 to be non-material

(1) The references to a precondition in section 578 must be treated as including references to a precondition referred to in section 75(1)(d) of the Securities Act 1978.

(2) The reference to regulations in section 578(2) must be treated as including a reference to regulations made under section 74 of the Securities Act 1978.

Amendment to section 46 of Trustee Act 1956

62 Amendment to section 46 of Trustee Act 1956 does not affect existing proceedings

Nothing in the amendment made to section 46 of the Trustee Act 1956 by section 150 and the Schedule of the Financial Markets (Repeals and Amendments) Act 2013 affects any proceeding commenced before that amendment comes into force, and any such proceeding must be decided as if the amendment had not been made.

Part 4
Transitional provisions relating to Regulatory Systems (Commercial Matters) Amendment Act 2017

Schedule 4 Part 4: inserted, on 9 August 2017, by section 97(3) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

63 Financial reporting for registered schemes and funds

Sections 461A and 461H of this Act, as amended by sections 80 and 81 of the Regulatory Systems (Commercial Matters) Amendment Act 2017, apply to a registered scheme (and any separate fund) in relation to the following accounting periods of the scheme:

(a) an accounting period that commenced before, but ends on or after, the commencement of this clause:

(b) accounting periods that commence on or after the commencement of this clause.

Part 5
Transitional provisions relating to Financial Markets Conduct Regulations 2014

Schedule 4 Part 5: inserted, on 9 August 2017, by section 97(3) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

64 Definition

In clauses 65 to 70, **Regulations** means the Financial Markets Conduct Regulations 2014.

65 Certification as to eligible investors under Financial Advisers Act 2008

(1) This clause applies to a certification that is referred to in clause 3(4) of Schedule 1 of the Regulations and that is in effect immediately before that subclause is revoked.

(2) The certification remains in effect after the revocation (subject to any revocation under section 5F of the Financial Advisers Act 2008).

66 Service disclosure statement and investment proposal for existing DIMS

(1) This clause applies in relation to a DIMS provided by a person (**A**) to an investor (**B**) if, immediately before the commencement of this clause, clause 6 of Schedule 1 of the Regulations (**clause 6**) applies in relation to the DIMS.

(2) The following apply after the revocation of clause 6:

(a) A is not required to provide an SDS under sections 423 and 424 to B if A, under clause 6, was not required to do so before the revocation:

(b) A is not required to provide an investment proposal under regulation 206 of the Regulations to B if A, under clause 6, was not required to do so before the revocation:

(c) regulation 226(1)(a) of the Regulations does not apply to a client agreement if, under clause 6, that paragraph did not apply to the client agreement before the revocation:

(d) section 437(2) to (4) does not apply to an investment authority if, under clause 6, those subsections did not apply to the investment authority before the revocation.

(3) In this clause,—

investment proposal has the same meaning as in regulation 206(2) of the Regulations

SDS has the same meaning as in the Regulations.

67 Existing licences continue and cover supervision

(1) If, immediately before the revocation of clause 8 of Schedule 1 of the Regulations, that clause applies to a licence,—

(a) the licence continues in effect on and after that revocation; and

(b) if the licence is treated as covering certain matters under clause 8(2) of that schedule, the licence must be treated as continuing to cover those matters.

(2) This clause applies despite clause 8(4) of Schedule 1 of the Regulations, but nothing in this clause affects the duration of the licence under section 12 of the Financial Markets Supervisors Act 2011 or prevents the FMA from exercising any power in relation to the licence.

68 Extension of licences to cover substantially the same matters under new law

(1) If, immediately before the revocation of clause 9 of Schedule 1 of the Regulations, that clause applies to a licence, the following apply on and after that revocation:

(a) if, immediately before that revocation, the licence is subject to a variation under clause 9(3) of that schedule, the licence continues to be subject to the variation; and

(b) if the licence continues to be subject to conditions, limitations, or restrictions under clause 9(4) of that schedule, the licence must be treated as continuing to be subject to the conditions, limitations, or restrictions.

(2) This clause applies despite clause 9(7) of Schedule 1 of the Regulations, but nothing in this clause prevents the FMA from exercising any power in relation to the licence.

69 Governance requirements for PIE call fund units, PIE term fund units, and bank notice products that are specified units

(1) This clause applies to a security if, immediately before the commencement of this clause, clause 19 of Schedule 1 of the Regulations applies to the security.

(2) Clauses 20(1), 21, 22, and 30 of this schedule do not apply to the security if clause 28 of Schedule 8 of the Regulations applies in respect of the managed investment scheme to which the security relates.

70 Certain superannuation schemes that elect to be treated as registered

If, immediately before the revocation of clause 30A of Schedule 1 of the Regulations, that clause applies to a scheme and to the interests in the scheme, that clause continues to apply to the scheme and the interests on and after that revocation.

Part 6
Transitional provisions relating to Financial Services Legislation Amendment Act 2019

Schedule 4 Part 6: inserted, on 9 April 2019, by section 59(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Subpart 1—Transitional licences

Schedule 4 Part 6 subpart 1: inserted, on 9 April 2019, by section 59(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

71 FMA may issue transitional licence

(1) The FMA may issue a transitional licence that covers the service of acting as a provider of a financial advice service.

(2) A transitional licence must be treated as being a licence issued under subpart 2 of Part 6 of this Act (subject to the provisions of this subpart).

(3) Section 395(1), (1A), and (3) (application for licence) applies to a transitional licence.

(4) However,—

(a) an application for a transitional licence must be made before the commencement of section 16 of the Financial Services Legislation Amendment Act 2019 (which amends section 388 to make acting as a provider of a financial advice service a market service for which a licence is required); and

(b) a transitional licence may not cover a type of market service other than a financial advice service.

(5) Subclause (4)(a) does not limit section 395(1A) (which allows the FMA to specify time frames within which applications must be made).

(6) This clause does not prevent a licensee from holding both a transitional licence and 1 or more other licences that cover the service referred to in subclause (1) (but *see* clause 72(2)).

Schedule 4 clause 71: inserted, on 9 April 2019, by section 59(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

72 Duration and coverage of transitional licence

(1) A transitional licence continues in force until the close of the date that is 2 years after the commencement of section 16 of the Financial Services Legislation Amendment Act 2019 unless it is sooner cancelled.

(2) However, a transitional licence no longer covers a type of regulated financial advice if—

(a) another licence is issued to the licensee under subpart 2 of Part 6 of this Act; and

(b) that other licence covers that type of regulated financial advice.

(3) Subclause (2)—

(a) applies regardless of what conditions are imposed on the other licence (for example, new limits or restrictions on the regulated financial advice that may be provided):

(b) does not limit the FMA's power under section 408.

Schedule 4 clause 72: inserted, on 9 April 2019, by section 59(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

73 When transitional licence must be issued

The FMA must, after receiving an application for a transitional licence, issue the licence if the FMA is satisfied that—

(a) the eligibility criteria (if any) that are prescribed by the regulations for transitional licences are satisfied; and

(b) the applicant's directors and senior managers are fit and proper persons to hold their respective positions and otherwise satisfy the requirements that are prescribed by the regulations for transitional licences (if any); and

(c) there is no reason to believe that the applicant is likely to contravene the market services licensee obligations; and

(d) the applicant is, or will be, registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 on and from commencing to provide the service.

Schedule 4 clause 73: inserted, on 9 April 2019, by section 59(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

74 Licence may cover authorised bodies

(1) A transitional licence may, in its conditions, authorise 1 or more named entities to provide the market service covered by the licence if the FMA is satisfied that—

(a) there is no reason to believe that the entity is likely to contravene the market services licensee obligations; and

(b) the entity is, or will be, registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 on and from commencing to provide that service; and

(c) the entity meets the eligibility criteria and other requirements prescribed by the regulations for the purposes of this clause (if any).

(2) The entity must be treated as being an authorised body that is authorised under section 400(1A).

(3) This clause does not apply if the licensee is an individual.

Schedule 4 clause 74: inserted, on 9 April 2019, by section 59(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

75 Certain transitional licence holders may not engage nominated representatives

(1) A transitional licence is subject to a condition that the licensee or an authorised body may nominate an individual as a nominated representative of the licensee or body under section 431T only if, immediately before the commencement of this clause, the licensee or body (as the case may be) was any of the following:

(a) a qualifying financial entity (QFE) or a member of a QFE group under the Financial Advisers Act 2008:

(b) an entity that—

(i) is registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 in respect of a financial adviser service; and

(ii) engages 1 or more individuals, who are not registered under that Act, to provide on its behalf a class service (within the meaning of section 5 of the Financial Advisers Act 2008 as in force before its repeal).

(2) If the licensee or authorised body (as the case may be) is an entity referred to in subclause (1)(b) (and is not a person referred to in subclause (1)(a)), the transitional licence is also subject to a condition that a nominated representative must not provide, on behalf of the licensee or body, a personalised service (within the meaning of section 5 of the Financial Advisers Act 2008 as in force before its repeal).

Schedule 4 clause 75: inserted, on 9 April 2019, by section 59(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

76 Transitional licence may authorise entity to be engaged

(1) This clause applies if—

(a) a person (**P**) is a licensee or an authorised body under a transitional licence (**P's licence**); and

(b) another person (**E**) holds a transitional licence or is an authorised body under P's licence; and

(c) immediately before the commencement of this clause, P and E are parties to an agreement under which either or both of the following occurs:

(i) P engages E to give financial advice to P's retail clients on P's behalf:

(ii) P engages E, who engages 1 or more individuals to give financial advice to P's retail clients on P's behalf.

(2) P's licence is subject to a condition that authorises P and E to continue the conduct that is the subject of the agreement referred to in subclause (1)(c) (*see* section 431F(1)(b)).

(3) This clause is subject to any other conditions on P's licence (which may, for example, impose limits or restrictions on the type of advice that may be given).

Schedule 4 clause 76: inserted, on 9 April 2019, by section 59(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

77 Application of Part 6 of Act, etc

(1) Part 6 of this Act applies in relation to transitional licences with all necessary modifications including the following:

(a) references in sections 397 and 398 to a decision under section 396 must be treated as references to a decision under clause 73:

(b) sections 396, 397(1)(b) and (c), 399, 403(3)(c), and 407 do not apply:

(c) references to the requirements of section 396 or 400 in section 403(3)(b) or subpart 3 of Part 6 of this Act must be treated as references to the requirements of clause 73 or 74.

Example

Subpart 3 of Part 6 provides for certain consequences if the licensing requirements in section 396 are not, or are no longer, satisfied. These include a duty for the licence holder to report matters to the FMA (*see* section 412) and the FMA could suspend or cancel the licence (*see* section 414(3)).

ABC Limited satisfies the licensing requirements in clause 73 and is granted a transitional licence. However, a change occurs that means that ABC Limited no longer satisfies a requirement.

Under paragraph (c), the ordinary monitoring and enforcement consequences apply to the transitional licence as if the references to licensing requirements in section 396 were references to the licensing requirements in clause 73.

ABC Limited must, therefore, report the matter to the FMA and the FMA may exercise a power under subpart 3 of Part 6.

(2) However, a transitional licence must be disregarded for the purposes of section 397(1)(b) when the FMA is considering an application for another licence.

(3) Matters may be prescribed under section 546(1)(a) for the purposes of clauses 73(a) and (b) and 74(1)(c).

(4) A decision of the FMA under this subpart may be appealed under subpart 9 of Part 8 of this Act as if it were a decision under Part 6 of this Act.

Schedule 4 clause 77: inserted, on 9 April 2019, by section 59(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

78 FMA may refuse to consider application made before specified time, event, or circumstance

(1) This clause applies to an application for—

(a) a transitional licence; or

(b) a licence under subpart 2 of Part 6 of this Act that covers the service of acting as a provider of a financial advice service.

(2) The FMA may, under section 395(1A), refuse to consider the application if it is made—

(a) before a date specified by the FMA; or

(b) before an event specified by the FMA has occurred; or

(c) before circumstances specified by the FMA have been satisfied.

(3) This clause does not limit section 395(1A).

(4) This clause ceases to apply on the close of the date that is 2 years after the commencement of section 16 of the Financial Services Legislation Amendment Act 2019.

Schedule 4 clause 78: inserted, on 9 April 2019, by section 59(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Subpart 2—Renewal of financial adviser authorisation and QFE status not required in transitional period

Schedule 4 Part 6 subpart 2: inserted, on 9 April 2019, by section 59(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

79 Renewal of financial adviser authorisation and QFE status not required in transitional period

(1) This clause applies to a person (**A**) if,—

(a) immediately before the commencement of this clause, A is an authorised financial adviser or has QFE status (within the meaning of the Financial Advisers Act 2008); but

(b) A's period of authorisation or period of a grant of QFE status would, but for this clause, terminate under section 57(1)(a) or 75A(1)(a) of that Act after that commencement.

(2) Despite sections 57(1)(a) and 75A(1)(a) of the Financial Advisers Act 2008, A's authorisation or QFE status must be treated as continuing until the commencement of section 97(1) of the Financial Services Legislation Amendment Act 2019 (which repeals the Financial Advisers Act 2008).

(3) However, subclause (2) ceases to apply if—

(a) A's authorisation or QFE status terminates under section 57(1)(b) to (d) or 75A(1)(b) to (d) of the Financial Advisers Act 2008; or

(b) an application for the renewal of A's authorisation or QFE status is made before the commencement of this clause but is declined by the FMA after that commencement.

Schedule 4 clause 79: inserted, on 9 April 2019, by section 59(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Subpart 3—Preparation of code

Schedule 4 Part 6 subpart 3: inserted, on 9 April 2019, by section 59(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

80 Code may be prepared before commencement

(1) Any action taken by or on behalf of the body of persons appointed by the Minister and known as the code working group in preparing the code of conduct must be treated as having been validly taken by the code committee under, and for the purposes of, clauses 32 to 39 of Schedule 5.

(2) For the purposes of subclause (1), a reference in clauses 32 to 39 of Schedule 5 to the code committee includes a reference to the code working group.

(3) The Minister may exercise or perform a power or duty under Schedule 5 before that schedule comes into force.

(4) Subclauses (1) and (3) apply regardless of whether the action is taken before or after the Financial Services Legislation Amendment Act 2019 is enacted.

(5) The Minister must ensure that the code comes into force no later than the date on which subpart 5A of Part 6 comes into force.

(6) If Schedule 5 requires the code or any other information to be published on an Internet site maintained by or on behalf of the code committee, the code or information may instead, before the commencement of that schedule, be published on an Internet site maintained by or on behalf of the department of State that is responsible for the administration of this Act.

Schedule 4 clause 80: inserted, on 9 April 2019, by section 59(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Subpart 4—Miscellaneous transitional provisions

Schedule 4 Part 6 subpart 4: inserted, on 15 March 2021, by section 59(6) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

81 New competency requirements do not prevent certain persons from continuing to give certain advice

(1) This clause applies to a person (**A**) if,—

(a) immediately before the commencement of this clause, A is—

(i) an authorised financial adviser (within the meaning of the Financial Advisers Act 2008); or

(ii) an individual who is registered under the FSP Act in respect of a financial adviser service; or

(iii) a qualifying financial entity (within the meaning of the Financial Advisers Act 2008) or an entity that is registered under the FSP Act in respect of a financial adviser service; and

(b) in the case of—

(i) paragraph (a)(i) or (ii),—

(A) A is engaged by a financial advice provider (**P**) to give regulated financial advice as a financial adviser on P's behalf; or

(B) A holds a transitional licence, or a licence issued under subpart 2 of Part 6 of this Act, that covers the service of acting as a provider of a financial advice service; or

(ii) paragraph (a)(iii), A is a financial advice provider that is registered under the FSP Act in respect of a financial advice service.

(2) Section 431I (duty to meet standards of competence) does not prevent A from giving regulated financial advice about a particular matter or in particular circumstances if, immediately before the commencement of this clause, A would have been permitted to provide that advice under the Financial Advisers Act 2008.

(3) Accordingly, P is not required to ensure compliance with section 431I (and is not otherwise liable in relation to that section) to the extent that A is permitted to act under subclause (2).

(4) In the case of subclause (1)(b)(i)(A), subclause (2) applies only if the advice is given on P's behalf.

(5) This clause is subject to the conditions on A's licence or P's licence (which may, for example, impose limits or restrictions on the services that are covered by the licence).

(6) In this clause,—

financial adviser service has the same meaning as in the Financial Advisers Act 2008 (as in force before its repeal)

FSP Act means the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

(7) This clause ceases to apply on the close of the date that is 2 years after the commencement of this clause.

Schedule 4 clause 81: inserted, on 15 March 2021, by section 59(6) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

82 Former QFE advisers not prevented from providing certain services

(1) This clause applies to an individual (**A**)—

(a) who, immediately before the commencement of this clause, is a QFE adviser (within the meaning of the Financial Advisers Act 2008); and

(b) who, after the commencement of this clause, has become a financial adviser; and

(c) who is engaged by a financial advice provider (**P**) to give regulated financial advice on P's behalf.

(2) Section 431I (duty to meet standards of competence) does not prevent A from providing, on behalf of P,—

(a) a personalised service in relation to P's category 1 products (but only if, immediately before the commencement of this clause, P was a QFE or member of a QFE group that engaged A); or

(b) a personalised service in relation to category 2 products; or

(c) a class service in relation to category 1 products or category 2 products.

(3) Accordingly, P is not required to ensure compliance with section 431I (and is not otherwise liable in relation to that section) to the extent that A is permitted to act under subclause (2).

(4) This clause is subject to the conditions on P's licence (which may, for example, impose limits or restrictions on the services that are covered by the licence).

(5) In this clause and clause 83, **category 1 product**, **category 2 product**, **class service**, **personalised service**, **QFE**, and **QFE group** have the same meanings as in section 5 of the Financial Advisers Act 2008 as in force before its repeal.

(6) This clause ceases to apply on the close of the date that is 2 years after the commencement of this clause.

Schedule 4 clause 82: inserted, on 15 March 2021, by section 59(6) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

83 Nominated representatives not prevented from providing certain services

(1) This clause applies to an individual (**A**)—

(a) who becomes a nominated representative in accordance with clause 75; and

(b) who is engaged by a financial advice provider (**P**) to give regulated financial advice on P's behalf.

(2) Section 431I (duty to meet standards of competence) does not prevent A from providing, on behalf of P,—

(a) a personalised service in relation to P's category 1 products; or

(b) a personalised service in relation to category 2 products; or

(c) a class service in relation to category 1 products or category 2 products.

(3) Accordingly, P is not required to ensure compliance with section 431I (and is not otherwise liable in relation to that section) to the extent that A is permitted to act under subclause (2).

(4) However, this clause is subject to clause 75(2) (which imposes a condition restricting the advice that certain nominated representatives may provide).

(5) This clause ceases to apply on the close of the date that is 2 years after the commencement of this clause.

Schedule 4 clause 83: inserted, on 15 March 2021, by section 59(6) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

84 Financial advisers treated as holding DIMS licence

(1) This clause applies to a person (**A**) who, immediately before the commencement of this clause,—

(a) is permitted to provide a discretionary investment management service under section 18(1)(d) of the Financial Advisers Act 2008; and

(b) provides that service to 1 or more retail clients (as defined in that Act).

(2) A must, on and after the commencement of this clause, be treated as holding a market services licence that—

(a) covers the service of acting as a provider of a discretionary investment management service; and

(b) is subject to a condition that the service that A can provide under the licence is limited to the discretionary investment management service that A could provide immediately before the commencement of this clause; and

(c) is subject to the conditions, limitations, or restrictions that, immediately before the commencement of this clause, were imposed by or under the Financial Advisers Act 2008 on A's authorisation under that Act, except standard conditions as defined in section 5 of that Act (and those conditions, limitations, or restrictions that the licence is subject to must be treated as conditions of the licence for the purposes of this Act); and

(d) has an expiry date that is the earliest of the following:

(i) the date that A is issued with another licence that covers the service; and

(ii) the date that the licence is cancelled; and

(iii) the date that is 2 years after the commencement of this clause.

(3) However, subclause (2) does not apply if, before the commencement of this clause, A has given written notification to the FMA that A does not want subclause (2) to apply.

(4) Nothing in this clause—

(a) prevents the FMA from exercising any power in relation to the licence; or

(b) limits the conditions that the licence is subject to under section 402 (for example, conditions imposed by regulations).

Schedule 4 clause 84: inserted, on 15 March 2021, by section 59(6) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

85 How service disclosure statement for existing DIMS is made available to existing clients

(1) This clause applies if—

(a) a person (**A**)—

(i) is a person referred to in clause 84(1); and

(ii) provides a DIMS under the licence referred to in clause 84(2) or a licence issued under Part 6 of this Act; and

(b) A is providing a DIMS to an investor (**C**) under an investment authority that was granted before the commencement of this clause.

(2) The requirement in sections 423 and 424 to provide an SDS relating to the DIMS to C does not apply.

(3) However, subclause (2) ceases to apply on the specified date unless A, before the specified date, has sent a written notice that contains, or is accompanied by, the following information to C at C's last known address:

(a) a statement to the effect that the requirements of this Act apply to the DIMS on and after a date that is referred to in the statement (being the date on which clause 84 comes into force):

(b) the names and addresses of A and the custodian (if any):

(c) either—

(i) a copy of the SDS relating to the DIMS (being an SDS that complies with regulation 205 of the 2014 regulations but subject to subclause (4)(b) of this clause); or

(ii) a statement to the effect that C may obtain a copy of that SDS on request to A and also by electronic means, and a statement as to how C may obtain a copy of that SDS by electronic means (for example, from a specified Internet site address).

(4) If subclause (2) applies,—

(a) regulation 206 of the 2014 regulations (investment proposal must be provided to investors) does not apply in relation to the DIMS provided by A to C; and

(b) the SDS that is made available to C under subclause (3)(c)—

(i) is not required to refer to the investment proposal; but

(ii) must state that information about the investment strategy applying to the investor, and about the returns, fees, and expenses of that strategy, will be made available to the investor by way of regular reports; and

(c) regulation 226(1)(a) of the 2014 regulations does not apply to the client agreement in respect of the DIMS provided to C.

(5) However, subclause (4)(c) ceases to apply on the specified date unless the SDS that is made available to C under subclause (3)(c) provides adequately for the matters in regulation 226(1)(a)(i) to (iv) of the 2014 regulations.

(6) Section 437(2) to (4) does not apply to an investment authority referred to in subclause (1)(b).

(7) However,—

(a) subclause (6) ceases to apply on the specified date unless A, before the specified date, has sent a written notice that discloses the scope of the investment authority to C at C's last known address, including the matters referred to in section 437(2)(a) to (c); and

(b) if there are no limits on the investment authority on a matter referred to in section 437(2)(a) or (b) or if the matter is capable of change without the prior written consent of C, the written notice under paragraph (a) must clearly disclose that fact.

(8) This clause does not apply to an investment authority granted after the licence referred to in subclause (1) is issued.

(9) In this clause,—

2014 regulations means the Financial Markets Conduct Regulations 2014

SDS or **service disclosure statement**, in relation to the DIMS, means a disclosure statement under section 423 for the DIMS

specified date means the first anniversary of the date on which this clause comes into force.

Schedule 4 clause 85: inserted, on 15 March 2021, by section 59(6) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

86 Code working group continues as code committee

(1) The body of persons appointed by the Minister and known as the code working group, its chairperson, and its other members immediately before the commencement of this clause must be treated as being the code committee, its chairperson, and its members under clauses 24 and 26 to 28 of Schedule

5 (with the chairperson and other members having the same period of appointment as they respectively have as members of the code working group).

(2) This clause does not limit clauses 26(1)(b), (2), and (4) and 28(2) and (3) of Schedule 5.

Schedule 4 clause 86: inserted, on 15 March 2021, by section 59(6) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

87 Certification for eligible investors under Financial Advisers Act 2008 continues under this Act

(1) A certification given under section 5D(1) of the Financial Advisers Act 2008 that is in effect immediately before the repeal of that Act remains in effect after the repeal as if it were a certificate given under clause 41(1) and (2A) of Schedule 1 of this Act.

(2) Subclause (1) is subject to clause 42 of Schedule 1.

Schedule 4 clause 87: inserted, on 15 March 2021, by section 59(6) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

88 Disciplinary committee continues

(1) The disciplinary committee established under section 103 of the Financial Advisers Act 2008 must be treated as being the disciplinary committee established under clause 49 of Schedule 5.

(2) A person who, immediately before the commencement of this clause, is the chairperson or another member of the disciplinary committee established under section 103 of the Financial Advisers Act 2008 must be treated as being the chairperson or another member of the disciplinary committee established under clause 49 of Schedule 5.

(3) A person's period of appointment under subclause (2) ends on the same date that the person's appointment would have ended under the Financial Advisers Act 2008.

(4) Subclauses (2) and (3) do not limit clause 52 of Schedule 5.

Schedule 4 clause 88: inserted, on 15 March 2021, by section 59(6) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

89 Continuation of pending investigations and disciplinary proceedings

(1) All investigations and disciplinary proceedings under subpart 2 of Part 4 of the Financial Advisers Act 2008 that have been commenced before the commencement of this clause and that have not been completed before that commencement are to be continued and completed as if the Financial Services Legislation Amendment Act 2019 had not been enacted (with the disciplinary committee established under clause 49 of Schedule 5 acting as the disciplinary committee).

(2) However, the disciplinary committee may exercise a power under clause 46 of Schedule 5 in relation to any of those proceedings if the committee is satisfied

that the person who is the subject of the complaint to which the proceedings relate has breached the code of conduct under the Financial Advisers Act 2008.

Schedule 4 clause 89: inserted, on 15 March 2021, by section 59(6) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Subpart 5—Transitional and savings regulations

Schedule 4 Part 6 subpart 5: inserted, on 9 April 2019, by section 59(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

90 Transitional and savings regulations

[Repealed]

Schedule 4 clause 90: repealed, on the close of 15 March 2024, by clause 90(3).

Part 7
Provisions relating to Part 1 of Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021

Schedule 4 Part 7: inserted, on 27 October 2022, by section 21(2)(a) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

91 Interpretation in this Part

In this Part, **climate standard** has the same meaning as in section 5(1) of the Financial Reporting Act 2013.

Schedule 4 clause 91: inserted, on 27 October 2022, by section 21(2)(a) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

92 Definitions of large listed issuer, large, and large manager may take into account accounting periods that commence before commencement of clause

In sections 461P(1), 461Q, and 461S, a reference to preceding accounting periods may include an accounting period regardless of whether the accounting period commenced before, on, or after the commencement of this clause.

Schedule 4 clause 92: inserted, on 27 October 2022, by section 21(2)(a) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

93 Climate-related disclosures for climate reporting entities under section 461O(1)

(1) The following provisions of this Act apply to a climate reporting entity under section 461O(1) in respect of accounting periods of the entity that commence on or after the date on which the External Reporting Board issues the first climate standard that applies to the entity:

(a) subpart 2 of Part 7A (which relates to CRD records):

(b) subpart 3 of Part 7A (which relates to preparation of climate statements):

(c) subpart 5 of Part 7A (which relates to lodgement of climate statements).

(2) The provisions listed in subclause (1) do not apply to a climate reporting entity under section 461O(1) in respect of accounting periods of the entity that commence before the date on which the External Reporting Board issues the first climate standard that applies to the entity.

Schedule 4 clause 93: inserted, on 27 October 2022, by section 21(2)(a) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

94 Climate-related disclosures relating to registered schemes

(1) The following provisions of this Act apply to a climate reporting entity under section 461O(2) in respect of accounting periods of a registered scheme that commence on or after the date on which the External Reporting Board issues the first climate standard that applies to the scheme:

(a) subpart 2 of Part 7A (which relates to CRD records):

(b) subpart 3 of Part 7A (which relates to preparation of climate statements):

(c) subpart 5 of Part 7A (which relates to lodgement of climate statements).

(2) The provisions listed in subclause (1) do not apply to a climate reporting entity under section 461O(2) in respect of accounting periods of a registered scheme that commence before the date on which the External Reporting Board issues the first climate standard that applies to the scheme.

Schedule 4 clause 94: inserted, on 27 October 2022, by section 21(2)(a) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Part 8
Provisions relating to Financial Markets (Conduct of Institutions) Amendment Act 2022

Schedule 4 Part 8: inserted, on 25 July 2023, by section 23 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

95 Dealing with applications to act as financial institution from existing banks, insurers, and NBDTs

(1) This clause applies to a person (**A**) if,—

(a) immediately before the commencement of this clause, A is a registered bank, a licensed insurer, or a licensed NBDT; and

(b) an application is made for a licence to cover A's service of acting as a financial institution (whether under an existing or a new licence and whether under section 395 or, by way of an application to vary the conditions of a licence, under section 404 of this Act).

(2) To the extent that the application relates to A, the FMA must not decline the application unless the Reserve Bank has given its consent.

(3) The Reserve Bank may withhold its consent only if the Reserve Bank is satisfied,—

(a) in a case where A is a registered bank or a licensed NBDT, that withholding the consent is necessary for maintaining a sound and efficient financial system:

(b) in a case where A is a licensed insurer, that withholding the consent is necessary for maintaining a sound and efficient insurance sector.

(4) If the FMA has asked for the Reserve Bank's consent but the Reserve Bank refuses to give its consent, the FMA must accept the application (to the extent that it relates to A) even if it does not consider that 1 or more of the requirements referred to in section 396 or 400 are satisfied.

(5) The FMA may exercise a power under section 414(2) in respect of the requirements referred to in section 396 or 400 (without having to be satisfied under section 414(1)).

(6) Subclause (5) ceases to apply in relation to a person when the FMA first becomes satisfied that those requirements referred to in section 396 or 400 are satisfied in relation to the person.

Schedule 4 clause 95: inserted, on 25 July 2023, by section 23 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

96 Regulations may provide that licensing requirement does not apply until particular date

(1) The Governor-General may, by Order in Council, on the recommendation of the Minister, make regulations for the purpose set out in subclause (2) (and those regulations have effect despite the commencement of section 8 of the Financial Markets (Conduct of Institutions) Amendment Act 2022).

(2) The purpose is to provide that the requirement to hold, or be authorised under, a licence to provide the service of acting as a financial institution does not apply to a class of persons specified in the regulations until on or after a date specified in those regulations.

(3) A date specified in those regulations must be on or before the fifth anniversary of the date on which the Financial Markets (Conduct of Institutions) Amendment Act 2022 receives the Royal assent.

(4) The Minister must consult the FMA before making a recommendation under this clause.

(5) Regulations made under this clause are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Example

The requirement for financial institutions to hold a market services licence comes into force on a particular date (**date A**).

However, regulations under this clause provide that the requirement does not apply to NBDTs until a later date (**date B**).

While the requirement applies to registered banks and insurers on date A, it only starts to apply to NBDTs on date B.

Legislation Act 2019 requirements for secondary legislation made under this clause		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Schedule 4 clause 96: inserted, on 25 July 2023, by section 23 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

97 Applications for financial institution licence may be made before commencement

(1) A person may apply for a market services licence to cover the service of acting as a financial institution—

(a) before the commencement of section 8 of the Financial Markets (Conduct of Institutions) Amendment Act 2022; and

(b) if regulations under clause 96 apply, before the date referred to in clause 96(2).

(2) For the purposes of dealing with the application, any provisions of the Financial Markets (Conduct of Institutions) Amendment Act 2022 that are relevant to the matter and that are not yet in force must be treated as if they were in force.

(3) The FMA may refuse to consider the application if it is made—

(a) before a date specified by the FMA; or

(b) before an event specified by the FMA has occurred; or

(c) before circumstances specified by the FMA exist.

(4) Subclause (3) ceases to apply to an application made after the later of—

(a) the commencement of section 8 of the Financial Markets (Conduct of Institutions) Amendment Act 2022; and

(b) the date referred to in clause 96(2) (if the regulations made under that clause apply in relation to the applicant).

(5) This clause does not limit section 395(1A).

Schedule 4 clause 97: inserted, on 25 July 2023, by section 23 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

98 Incentives regulations may apply to existing agreements

(1) Regulations made under section 546(1)(og) may provide that they apply to 1 or more classes of incentives offered, given, or otherwise payable on or after the commencement of those regulations.

(2) Subclause (1) may apply even if an incentive is offered, given, or otherwise payable under an agreement entered into before either or both of the following:

(a) the commencement of those regulations:

(b) the enactment of the Financial Markets (Conduct of Institutions) Amendment Act 2022.

(3) However, nothing in those regulations applies to—

(a) any incentive that is given or otherwise paid or payable before the commencement of those regulations; or

(b) any incentive that a person has become entitled to before that commencement (even if it is given or otherwise payable after that commencement).

(4) If the regulations apply to an agreement referred to in subclause (2), compliance with those regulations does not—

(a) place any party to the agreement or any other person in breach of the agreement, or make any of them liable for a civil wrong; or

(b) entitle any person to terminate or cancel an agreement, or to accelerate the performance of an obligation, or to impose a penalty or an increased charge, unless the regulations provide otherwise.

Example

A company (**A**) acts as an insurer. A offers motor vehicle insurance to consumers.

A car dealer (**B**) offers A's insurance to its customers when they buy cars. A is contractually obliged to pay B an incentive based on the volume of A's insurance products that are sold.

The contract providing for the incentive is entered into before commencement of the regulations.

The regulations cannot apply to incentives that are payable before the commencement of the regulations. However, this clause allows the regulations to apply to incentives payable after commencement even though the contract was entered into before commencement.

The regulations ban a certain incentive that would otherwise be payable under the contract.

A must no longer pay the incentive. A does not breach the contract by refusing to pay the incentive and B has no right to cancel the contract because of that refusal.

Schedule 4 clause 98: inserted, on 25 July 2023, by section 23 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Schedule 5
Other provisions relating to financial advice services and client money or property services

ss 6, 387A, 431C, 431W

Schedule 5: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Contents

		Page
1	Overview	494
	Part 1	
	Retail and wholesale financial advice or client money or property service clients	
2	Who are clients	495
3	Who are retail clients	495
4	Who are wholesale clients	495
5	How to opt out of being wholesale client	496
6	Giving notification of opt out	497
	Part 2	
	Financial advice exclusions	
7	Exclusions from definition of financial advice	497
	Exclusions from regulated financial advice	
8	Ancillary services and other occupations	498
9	Incidental to provision of credit by business not providing financial service	499
10	Advice given for purpose of complying with lender responsibilities	499
11	Crown-related entities	500
12	Trustee corporations	501
13	Non-financial not-for-profit organisation	501
14	Workplace financial products	502
15	Advice to product provider	502
16	Activities governed by other regulatory frameworks	502
17	Prescribed circumstances	503
18	Controlling owners, directors, etc	503
	Part 3	
	Client money or property service exclusions	
19	Service given in course of carrying out other occupations	503
20	Crown-related entities	504
21	Other exclusions	505
22	Prescribed circumstances	505
23	Controlling owners, directors, etc	505

Part 4
Code of professional conduct and code committee

Code committee

24	Establishment of code committee	506
25	Functions of code committee	506
26	Membership of code committee	507
27	Who Minister must appoint	507
28	Chairperson	507
29	Proceedings of code committee	508
30	Certain provisions of Crown Entities Act 2004 apply to members of code committee	508
31	Funding of code committee	508

Code of professional conduct for financial advice services

32	Content of code	508
33	Code committee must prepare code	509
34	Minister's approval of draft code	510
35	Minister may require revision or consultation	510
36	Minister's approval of revised draft code	511
37	Consultation with FMA	511
38	Deadline for Minister's approval of draft code	511
39	Commencement and status of code	512

Changes to code

40	Changes to code	512

Part 5
Complaints and disciplinary proceedings

Who deals with complaints

41	Complaint about financial adviser	513
42	Investigation by FMA	513

Complaint about financial adviser

43	FMA may refer complaint to disciplinary committee	513
44	Disciplinary committee must give notice of complaint	514
45	Content of notice of complaint	514
46	Disciplinary committee may discipline financial adviser	514
47	Other matters relating to discipline	515
48	Reasonable opportunity to be heard	516

Disciplinary committee

49	Minister must establish disciplinary committee	516
50	Functions of disciplinary committee	516
51	Membership of disciplinary committee	516
52	Ceasing to be member of disciplinary committee	517
53	Delegation by chairperson of disciplinary committee	518

54 Proceedings of disciplinary committee 518
55 Disciplinary committee may hear evidence in disciplinary proceeding 518
56 Determining proceeding on papers 519
57 Issuing of summons by disciplinary committee 519
58 Serving of summons 520
59 Failure to comply with summons to attend disciplinary committee hearing 520
60 Witnesses' fees, allowances, and expenses 521
61 Protection for witnesses and counsel in disciplinary proceeding 521
62 Contempt of disciplinary committee 521
63 Certain provisions of Crown Entities Act 2004 apply to members of disciplinary committee 522
64 Funding of disciplinary committee 522

1 Overview

(1) This schedule provides for matters relating to—

(a) financial advice services (*see* subpart 5A of Part 6 of this Act); and

(b) client money or property services (*see* subpart 5B of Part 6 of this Act).

(2) In particular,—

(a) Part 1 identifies when a client is a retail client or a wholesale client. This determines whether a financial advice provider needs to be licensed and whether certain duties apply:

(b) Part 2 sets out situations when financial advice is not provided and when financial advice services are not regulated under this Act:

(c) Part 3 sets out situations when client money or property services are not regulated under this Act:

(d) Part 4 provides for a code of professional conduct for financial advice services and for the establishment and operation of a code committee:

(e) Part 5 provides for complaints and disciplinary proceedings against financial advisers.

(3) This clause is only a guide to the general scheme and effect of this schedule.

Schedule 5 clause 1: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Part 1
Retail and wholesale financial advice or client money or property service clients

Schedule 5 Part 1: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

2 Who are clients

In this Act, a **client**,—

(a) in relation to a financial advice service, means a person who receives the service (whether or not on payment of a charge); and

(b) in relation to a client money or property service, means the person on whose behalf the client money or client property is received, held, paid, or transferred under the service (but excludes the product provider); but

(c) does not include a person who receives the financial advice or client money or property service from another person if the service is both provided and received in the course of, and for the purposes of,—

(i) the same business; or

(ii) the businesses of related bodies corporate; or

(iii) the businesses of a group of entities that consists of a licensee and its authorised bodies.

Example

If a company employee (**A**) gives financial advice to the board of directors on investments to be made by the company, the directors are not clients of A. However, if A, in the course of business, gives that same financial advice to another employee (**B**) in relation to B's own investments, B is a client of A for the purposes of this Act.

Compare: 2008 No 91 s 5A

Schedule 5 clause 2: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

3 Who are retail clients

A **retail client**, in respect of a financial advice service or a client money or property service, is a client of a provider of that service who is not a wholesale client.

Compare: 2008 No 91 s 5B

Schedule 5 clause 3: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

4 Who are wholesale clients

(1) A person is a **wholesale client**, in relation to a financial advice service or a client money or property service (unless the person has opted out from being a wholesale client under clause 5) if—

(a) the person is an investment business under clause 37 of Schedule 1; or

(b) the person meets the investment activity criteria specified in clause 38 of Schedule 1; or

(c) the person is large under clause 39 of Schedule 1; or

(d) the person is a government agency under clause 40 of Schedule 1; or

(e) the person is in the business of being a product provider and receives the financial advice service or client money or property service in the course of that business; or

(f) the person is an eligible investor in relation to the service under clause 41 of Schedule 1.

(2) The **relevant time**, for the purposes of applying Schedule 1 under subclause (1), is the time immediately before the service is supplied to the person.

(3) If subclause (1) applies to a person (**C**), it applies equally to any entity controlled by C to the same extent as it applies to C (where **controlled** has a meaning that corresponds to the definition of control in clause 48 of Schedule 1).

Compare: 2008 No 91 s 5C

Schedule 5 clause 4: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

5 How to opt out of being wholesale client

(1) A person may opt out of being a wholesale client, in relation to a financial advice provider or CMPS provider, by giving the financial advice provider or CMPS provider a signed notification to that effect.

(2) A notification may be specific to a particular service, or class of services, or may be general for all services provided by the financial advice provider or CMPS provider to whom it is given.

(3) A person may vary or revoke a notification in the same way as the notification may be given.

(4) A notification (or variation or revocation of a notification) under this clause is effective only in relation to services provided after it is given.

(5) This clause does not apply if a person is a wholesale client by reason of being an eligible investor under clause 41 of Schedule 1.

(6) In this clause and clause 6, **CMPS provider** means a provider of a client money or property service.

Compare: 2008 No 91 s 5G

Schedule 5 clause 5: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

6 Giving notification of opt out

(1) A notification under clause 5 is sufficiently given to a financial advice provider or CMPS provider if it is—

(a) provided to the financial advice provider or CMPS provider; or

(b) delivered or posted to the financial advice provider or CMPS provider at the person's business address stated on the register under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 or the person's last known place of business in New Zealand; or

(c) sent by email to the person's email address stated on the register under the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

(2) The notification is treated as received by the person no later than 7 days after it is posted or 2 days after it is emailed, unless the person to whom it is posted or sent proves that it was not received (otherwise than through fault on the person's part).

Compare: 2008 No 91 s 5H

Schedule 5 clause 6: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Part 2
Financial advice exclusions

Schedule 5 Part 2: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

7 Exclusions from definition of financial advice

A person does not give financial advice merely by doing 1 or more of the following:

(a) providing factual information (for example, information about the cost or terms and conditions of a financial advice product, or about the procedure for acquiring or disposing of a financial advice product):

(b) carrying out an instruction from a person to acquire or dispose of, or not to acquire or dispose of, a financial advice product for that person:

(c) making a recommendation or giving an opinion about a kind of financial advice product in general rather than a particular financial advice product (for example, an opinion about shares generally rather than shares of a particular company):

(d) recommending that a person obtain financial advice:

(e) passing on financial advice given by another person (unless the person holds out that the financial advice is the person's own advice):

(f) giving or making available any of the following:

(i) a disclosure document:

(ii) information from a register entry:

(iii) an advertisement referred to in section 89:

(iv) any other document or information that the person is required by law to give or make available:

(v) a document or information prescribed by the regulations:

(g) carrying out a prescribed activity.

Compare: 2008 No 91 ss 10(3), 14(1)(o)

Schedule 5 clause 7: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Exclusions from regulated financial advice

Heading: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

8 Ancillary services and other occupations

(1) Financial advice is not regulated financial advice if it is given by an incorporated law firm (as defined in section 6 of the Lawyers and Conveyancers Act 2006)—

(a) in the ordinary course of its business; and

(b) as an ancillary part of providing legal services or conveyancing services (as defined in section 6 of that Act).

(2) Financial advice is not regulated financial advice if the person giving the advice—

(a) carries on one of the following occupations:

(i) conveyancing practitioner (as defined in section 6 of the Lawyers and Conveyancers Act 2006):

(ii) journalist:

(iii) lawyer:

(iv) lecturer (being a person employed by an institution (as defined in section 159 of the Education Act 1989) to teach or instruct students of the institution):

(v) qualified statutory accountant:

(vi) real estate agent (being an agent as defined in section 4(1) of the Real Estate Agents Act 2008):

(vii) registered legal executive (being a member of the New Zealand Institute of Legal Executives Incorporated who holds a current annual registration certificate issued by that body):

(viii) registered valuer (as defined in section 2 of the Valuers Act 1948):

(ix) tax agent (as defined in section 3(1) of the Tax Administration Act 1994):

(x) teacher (being a person who holds a teaching position as defined in section 348 of the Education Act 1989):

(xi) an occupation prescribed by the regulations; and

(b) gives the advice—

(i) in the ordinary course of carrying on that occupation; and

(ii) as an ancillary part of carrying on the principal activity of that occupation, being an activity that is not the provision of a financial service.

(3) Financial advice is not regulated financial advice if—

(a) it is given by a person who is not an incorporated law firm and is not carrying on an occupation referred to in subclause (2)(a); and

(b) it is given only as an ancillary part of a business whose principal activity is not the provision of a financial service.

(4) Financial advice is not regulated financial advice if it is given by a director of an entity in the person's capacity as a director.

Compare: 2008 No 91 ss 13(1), 14(1)(a), (d), (i)

Schedule 5 clause 8: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

9 Incidental to provision of credit by business not providing financial service

(1) Financial advice is not regulated financial advice if—

(a) it is given in connection with providing credit under a credit contract; and

(b) the credit is provided, and the advice is given, as an incidental part of a business the principal activity of which is not the provision of a financial service.

(2) In this clause, something is an **incidental part** of a business if it is carried on to facilitate the carrying out of the business or is ancillary to the business.

Compare: 2008 No 91 s 13(2)

Schedule 5 clause 9: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

10 Advice given for purpose of complying with lender responsibilities

(1) Financial advice is not regulated financial advice if—

(a) the advice is given—

(i) by a lender to a borrower; and

(ii) in relation to a consumer credit contract or relevant insurance contract (the **agreement**); and

(iii) either—

(A) in order to comply with the lender's lender responsibilities; or

(B) as a reasonably incidental consequence of complying with the lender's lender responsibilities; and

(b) the lender has taken reasonable steps to ensure that the borrower understands that the advice is not regulated financial advice and the implications of that.

(2) A lender is taken to have complied with subclause (1)(b) if the lender gives the borrower a statement in the prescribed manner.

(3) In this clause,—

borrower has the same meaning as in section 9B(1) of the CCCF Act

CCCF Act means the Credit Contracts and Consumer Finance Act 2003

lender has the same meaning as in section 9B(1) of the CCCF Act

lender responsibilities means the lender responsibilities set out in section 9C(3)(a) to (e) and 9C(5) of the CCCF Act

relevant insurance contract has the same meaning as in section 9B(1) of the CCCF Act.

Schedule 5 clause 10: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

11 Crown-related entities

(1) Financial advice is not regulated financial advice if it is given in the ordinary course of the business of one of the following:

(a) a Crown entity under section 7 of the Crown Entities Act 2004, other than Public Trust:

(b) a department named in Schedule 1 of the State Sector Act 1988:

(c) a government-related organisation as defined in section 4 of the Crown Organisations (Criminal Liability) Act 2002:

(d) the Reserve Bank.

(2) Financial advice is not regulated financial advice if the person giving the advice—

(a) is one of the following:

(i) a Minister of the Crown:

(ii) a member of Parliament:

(iii) an employee (as defined in section 2 of the State Sector Act 1988):

(iv) a chief executive in any part of the State services (as defined in section 2 of the State Sector Act 1988):

(v) the holder of, or a person performing the duties of, an office established by an enactment (other than the Māori Trustee):

(vi) a person performing duties that are expressly conferred on him or her by virtue of his or her office by an enactment; and

(b) gives the advice in the ordinary course of carrying on that occupation, or exercising the powers or performing the functions of that office or position.

Compare: 2008 No 91 s 14(1)(a), (b), (c), (e)

Schedule 5 clause 11: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

12 Trustee corporations

(1) Financial advice is not regulated financial advice if it is given in the ordinary course of the business of a trustee corporation providing—

(a) legal or financial services in relation to the preparation of a will; or

(b) estate management and administration services (and associated legal, financial, and other services carried out under the Act governing the corporation).

(2) In this clause, **trustee corporation** means one of the following:

(a) Public Trust:

(b) the Māori Trustee:

(c) a corporation that is authorised by an Act to administer the estates of deceased persons and other trust estates:

(d) a wholly owned subsidiary of a corporation referred to in paragraph (c) that is guaranteed by the corporation.

Compare: 2008 No 91 s 14(1)(h)

Schedule 5 clause 12: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

13 Non-financial not-for-profit organisation

(1) Financial advice is not regulated financial advice if it is given—

(a) in the ordinary course of the business of a non-financial not-for-profit organisation; and

(b) for no charge.

(2) In this clause, **non-financial not-for-profit organisation** means an organisation—

(a) that operates other than for the purposes of profit or gain to an owner, a member, or a shareholder; and

(b) that is not the product provider (or related to the product provider) of a financial advice product.

Compare: 2008 No 91 s 14(1)(f)

Schedule 5 clause 13: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

14 Workplace financial products

Financial advice is not regulated financial advice if it is given—

(a) by or for an employer; and

(b) to an employee of the employer; and

(c) in relation to a financial advice product that is made available through the employee's workplace.

Compare: 2008 No 91 s 14(1)(g)

Schedule 5 clause 14: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

15 Advice to product provider

Financial advice is not regulated financial advice if it is given—

(a) in connection with a financial advice product; and

(b) to the provider of the financial advice product; and

(c) by a person engaged by the provider to give the advice.

Compare: 2008 No 91 s 14(1)(p)

Schedule 5 clause 15: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

16 Activities governed by other regulatory frameworks

(1) Financial advice is not regulated financial advice if—

(a) the advice is given as part of a discretionary investment management service; and

(b) the provision of that service is—

(i) covered by a market services licence; or

(ii) exempted from the licensing requirement under section 389.

(2) Financial advice is not regulated financial advice if it is given—

(a) in the ordinary course of a business carried on by a rating agency approved under section 86 of the Non-bank Deposit Takers Act 2013 or section 62 of the Insurance (Prudential Supervision) Act 2010; and

(b) in connection with a rating given or to be given by the agency.

(3) Financial advice given to a person (**A**) is not regulated financial advice if—

(a) the advice is given—

(i) in connection with an offer of a financial product; and

(ii) by or on behalf of the offeror; and

(b) the offer to A does not require disclosure under Part 3 because of any 1 or more of clauses 3 to 5 of Schedule 1.

(4) Financial advice is not regulated financial advice if it is given—

(a) by an offeror or a target company in the course of a takeover offer that is regulated under the Takeovers Code; or

(b) by an independent adviser in the course of exercising his or her functions under the Takeovers Code.

Compare: 2008 No 91 s 14(1)(j)–(m)

Schedule 5 clause 16: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

17 Prescribed circumstances

Financial advice is not regulated financial advice if it is given in prescribed circumstances.

Compare: 2008 No 91 s 14(1)(q)

Schedule 5 clause 17: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

18 Controlling owners, directors, etc

If an exclusion under clauses 8 to 17 applies to a person (**A**), it applies equally to any controlling owner, director, employee, agent, or other person acting in the course of, and for the purposes of, A's business to the same extent as it applies to A.

Compare: 2008 No 91 s 14(2)

Schedule 5 clause 18: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Part 3
Client money or property service exclusions

Schedule 5 Part 3: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

19 Service given in course of carrying out other occupations

(1) A client money or property service is not a regulated client money or property service if the person giving the service—

(a) carries on one of the following occupations:

(i) conveyancing practitioner (as defined in section 6 of the Lawyers and Conveyancers Act 2006):

(ii) lawyer:

(iii) qualified statutory accountant:

(iv) real estate agent (being an agent as defined in section 4(1) of the Real Estate Agents Act 2008):

(v) registered legal executive (being a member of the New Zealand Institute of Legal Executives Incorporated who holds a current annual registration certificate issued by that body):

(vi) tax agent (as defined in section 3(1) of the Tax Administration Act 1994):

(vii) an occupation prescribed by the regulations; and

(b) gives the service—

(i) in the ordinary course of carrying on that occupation; and

(ii) as an ancillary part of carrying on the principal activity of that occupation, being an activity that is not the provision of a financial service.

(2) A client money or property service is not a regulated client money or property service if it is given by an incorporated law firm (as defined in section 6 of the Lawyers and Conveyancers Act 2006)—

(a) in the ordinary course of its business; and

(b) as an ancillary part of providing legal services or conveyancing services (as defined in section 6 of that Act).

Compare: 2008 No 91 s 77C(1)(a)

Schedule 5 clause 19: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

20 Crown-related entities

(1) A client money or property service is not a regulated client money or property service if it is given in the ordinary course of the business of one of the following:

(a) a Crown entity under section 7 of the Crown Entities Act 2004, other than Public Trust:

(b) a department named in Schedule 1 of the State Sector Act 1988:

(c) a government-related organisation as defined in section 4 of the Crown Organisations (Criminal Liability) Act 2002:

(d) the Reserve Bank.

(2) A client money or property service is not a regulated client money or property service if the person giving the service—

(a) is one of the following:

(i) an employee (as defined in section 2 of the State Sector Act 1988):

(ii) a chief executive in any part of the State services (as defined in section 2 of the State Sector Act 1988):

(iii) the holder of, or a person performing the duties of, an office established by an enactment:

(iv) a person performing duties that are expressly conferred on him or her by virtue of his or her office by an enactment; and

(b) gives the service in the ordinary course of carrying on that occupation, or exercising the powers or performing the functions of that office or position.

Compare: 2008 No 91 s 77C(1)(b)

Schedule 5 clause 20: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

21 Other exclusions

(1) A client money or property service is not a regulated client money or property service if—

(a) the person giving the service is an operator of a designated FMI and the service is provided by the receipt, holding, payment, or transfer of money or property in accordance with the designated FMI's rules; or

(b) the service is provided by a derivatives issuer in the ordinary course of acting as a derivatives issuer under a licence under Part 6; or

(c) the service is provided by an employer to an employee in connection with a financial product made available through the person's workplace.

(2) In subclause (1)(a),—

designated FMI and **operator** have the meanings given in section 5 of the Financial Market Infrastructures Act 2021

rules is to be read in accordance with section 35 of that Act.

Compare: 2008 No 91 s 77C(1)(c)–(e)

Schedule 5 clause 21: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 5 clause 21(1)(a): replaced, on 1 March 2024, by section 163(1) of the Financial Market Infrastructures Act 2021 (2021 No 13).

Schedule 5 clause 21(2): inserted, on 1 March 2024, by section 163(1) of the Financial Market Infrastructures Act 2021 (2021 No 13).

22 Prescribed circumstances

A client money or property service is not a regulated client money or property service if it is given in prescribed circumstances.

Compare: 2008 No 91 s 77C(1)(f)

Schedule 5 clause 22: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

23 Controlling owners, directors, etc

If an exemption under clauses 19 to 22 applies to a person (**A**), it applies equally to any controlling owner, director, employee, agent, or other person

acting in the course of, and for the purposes of, A's business to the same extent as it applies to A.

Compare: 2008 No 91 s 77C(2)

Schedule 5 clause 23: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Part 4
Code of professional conduct and code committee

Schedule 5 Part 4: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Code committee

Heading: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

24 Establishment of code committee

The code committee is established.

Compare: 2008 No 91 s 81

Schedule 5 clause 24: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

25 Functions of code committee

(1) The functions of the code committee are—

(a) to produce a draft code for approval by the Minister; and

(b) to review the code from time to time; and

(c) to recommend to the Minister changes to the code as the code committee thinks fit; and

(d) to liaise from time to time with the following about the development, review, and implementation of the code:

(i) the Minister:

(ii) the FMA:

(iii) persons that the committee reasonably considers to be representative of the financial advice industry:

(iv) persons that the committee reasonably considers to be representative of consumers of financial advice.

(2) *See* clause 80 of Schedule 4 (which provides for the code to be prepared before the commencement of clauses 32 to 39).

Compare: 2008 No 91 s 82

Schedule 5 clause 25: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

26 Membership of code committee

(1) The Minister may at any time—

(a) appoint a member of the code committee; or

(b) discharge a member of the code committee (and the Minister may exercise this power entirely at his or her discretion).

(2) The appointment of a member of the code committee must be for a specified period, but a member may be discharged under subclause (1)(b) before his or her period of appointment has expired.

(3) The code committee must have not less than 7 members and not more than 11 members, and the Minister must ensure that the number of current members does not fall below 7.

(4) A member of the code committee may resign by notice in writing to the Minister.

Compare: 2008 No 91 s 83(1)–(3), (5)

Schedule 5 clause 26: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

27 Who Minister must appoint

The Minister must appoint as members of the code committee—

(a) 2 persons who, in the Minister's opinion, are each qualified for appointment because of their knowledge of, and skills and experience in relation to, consumer affairs or dispute resolution; and

(b) other persons who, in the Minister's opinion, are each qualified for appointment because of—

(i) their individual knowledge of, and skills and experience in relation to, the provision of financial services; or

(ii) any other appropriate knowledge, skills, and experience that will assist the code committee to perform its functions.

Compare: 2008 No 91 s 83(4)

Schedule 5 clause 27: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

28 Chairperson

(1) The Minister must appoint one of the members of the code committee as the chairperson of the code committee.

(2) The Minister may, at any time and entirely at his or her discretion, discharge the chairperson from that office (whether or not the Minister also discharges the chairperson as a member of the code committee).

(3) The chairperson may, without resigning as a member of the code committee, resign from that office by notice in writing to the Minister.

Compare: 2008 No 91 s 84(2)

Schedule 5 clause 28: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

29 Proceedings of code committee

(1) Meetings of the code committee must be held at the times and places as the code committee or the chairperson from time to time decides.

(2) The quorum for a meeting of the code committee is 5 members.

(3) Every question before the code committee must be determined by a majority of the votes of the members present or otherwise.

(4) The chairperson of the code committee has a deliberative vote and, in the case of an equality of votes, a casting vote.

(5) The code committee may regulate its own procedure.

(6) Subclause (5) applies except as provided in this clause and in any regulations.

Compare: 2008 No 91 s 84

Schedule 5 clause 29: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

30 Certain provisions of Crown Entities Act 2004 apply to members of code committee

Clause 15 of Schedule 5 of the Crown Entities Act 2004 applies as if the code committee were a committee appointed under clause 14 of that schedule and with all other necessary modifications.

Compare: 2008 No 91 s 85

Schedule 5 clause 30: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

31 Funding of code committee

The FMA must fund the code committee.

Compare: 2008 No 91 s 85A

Schedule 5 clause 31: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Code of professional conduct for financial advice services

Heading: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

32 Content of code

(1) The code must provide for minimum standards of professional conduct that must be demonstrated by persons who give regulated financial advice, including minimum standards—

(a) of general competence, knowledge, and skills that apply to all persons that give financial advice; and

(b) of particular competence, knowledge, and skills that apply in respect of different types of financial advice, financial advice products, or other circumstances; and

(c) of ethical behaviour; and

(d) of conduct and client care.

(2) However, the code must not include limits on the types of financial advice that may be given by a person because the person is a nominated representative.

(3) The code—

(a) must identify different types of financial advice, financial advice products, or other circumstances for the purposes of subclause (1)(b); and

(b) may specify different standards under subclause (1), or other matters under subclause (4), in respect of different types of financial advice, financial advice products, or other circumstances.

(4) The code must also provide for—

(a) continuing professional development for persons that give financial advice, including specification of minimum requirements that a person must meet for the purpose of continuing professional development:

(b) the way or ways in which a person may demonstrate their competence, knowledge, and skill.

(5) Subclause (4)(b) does not prevent a person from demonstrating their competence, knowledge, or skill in a way that is not specifically set out in the code.

(6) The code may limit or modify standards, or provide for separate standards, for the duration of 1 or more periods of transition.

Compare: 2008 No 91 s 86

Schedule 5 clause 32: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

33 Code committee must prepare code

(1) The code committee must prepare a draft code.

(2) In preparing the draft code, the code committee must—

(a) have regard to—

(i) the main and additional purposes of this Act specified in sections 3 and 4 and the additional purpose set out in section 431B; and

(ii) New Zealand's international obligations that are relevant to financial markets or financial advice services; and

(b) prepare an impact analysis document that describes how the proposed standards may contribute to, or detract from, the matters referred to in paragraph (a) (including a description of any trade-offs between those impacts); and

(c) consult the FMA; and

(d) consult any persons that it reasonably considers to be representative of the financial advice industry; and

(e) consult any persons that it reasonably considers to be representative of consumers of financial advice; and

(f) allow an opportunity for any person affected by the code to make submissions to the code committee.

(3) The code committee must publish, on an Internet site maintained by or on behalf of the committee,—

(a) the impact analysis document prepared under subclause (2)(b); and

(b) a summary of the submissions made to the committee; and

(c) a brief response to those submissions.

Compare: 2008 No 91 s 87

Schedule 5 clause 33: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

34 Minister's approval of draft code

(1) After receiving the draft code prepared by the code committee, the Minister must—

(a) approve it; or

(b) decline to approve it.

(2) The Minister must approve the draft code prepared by the code committee if the Minister is satisfied that—

(a) a majority of the code committee has approved the draft code; and

(b) the code committee has complied with its obligations under clause 33(2); and

(c) the draft code is consistent with this Act.

(3) A failure by the code committee to comply with its obligations under clause 33(2) or (3) does not affect the validity of the code.

(4) This clause is subject to clause 35.

Compare: 2008 No 91 s 88

Schedule 5 clause 34: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

35 Minister may require revision or consultation

(1) If the Minister is not satisfied as to a matter specified in clause 34(2),—

(a) the Minister must direct the code committee to revise the draft code or undertake further consultation or receive submissions, as necessary; and

(b) the code committee must as soon as practicable comply with the Minister's direction.

(2) If the Minister considers that the draft code is not consistent with this Act, the Minister must, in directing the code committee to revise the draft code, state in what respects the Minister considers that the draft code is not consistent.

Compare: 2008 No 91 s 89

Schedule 5 clause 35: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

36 Minister's approval of revised draft code

(1) After receiving a revised draft code, the Minister must—

(a) approve the revised draft code; or

(b) if the Minister considers that the draft code requires further amendment to be consistent with this Act,—

(i) make any amendments to the draft code that the Minister considers necessary; and

(ii) approve the draft code as amended.

(2) Before making any amendment to the draft code under this clause, the Minister must—

(a) advise the code committee of the Minister's intention to do so; and

(b) give the code committee a reasonable opportunity to make submissions on the matter; and

(c) consider those submissions.

Compare: 2008 No 91 s 90

Schedule 5 clause 36: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

37 Consultation with FMA

The Minister must consult the FMA before exercising a power under clauses 34 to 36.

Schedule 5 clause 37: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

38 Deadline for Minister's approval of draft code

(1) The Minister must approve the draft code within 90 days after receiving the draft code or, if clause 35 applies, within 90 days after receiving the revised draft code.

(2) If the Minister does not do so, the Minister is taken to have approved the code at the expiry of those 90 days.

Compare: 2008 No 91 s 91

Schedule 5 clause 38: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 5 clause 38(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

39 Commencement and status of code

(1) The code may specify different commencement dates for different provisions, but no date may be before the 28th day after the date on which the code is published in accordance with subsection (2).

(2) The approved code is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

(3) That Act applies as if—

(a) the Minister were the maker of the code; and

(b) the code were made by the Minister approving it.

Compare: 2008 No 91 s 94

Legislation Act 2019 requirements for secondary legislation referred to in subclause (2)		
Publication	The maker must: • notify it in the *Gazette* • publish it on a website maintained by, or on behalf of, the code committee	LA19 ss 73, 74(1)(a), Sch 1 cl 14
	The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019	LA19 ss 74(2), 75
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Schedule 5 clause 39: replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Changes to code

Heading: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

40 Changes to code

(1) A change to the code may be proposed by—

(a) the code committee; or

(b) the FMA; or

(c) the Minister.

(2) The procedure for changing the code is the same as the procedure set out in clauses 32 to 39 for the preparation and approval of the draft code.

(3) However, the code committee must, in relation to a proposed change,—

(a) prepare an impact analysis document that describes how the proposed change may contribute to, or detract from, the matters referred to in clause 33(2)(a) (including a description of any trade-offs between those impacts); and

(b) publish the document on an Internet site maintained by or on behalf of the code committee.

Compare: 2008 No 91 s 95

Schedule 5 clause 40: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Part 5
Complaints and disciplinary proceedings

Schedule 5 Part 5: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Who deals with complaints

Heading: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

41 Complaint about financial adviser

(1) Any person may complain to the FMA about the conduct of another person (**A**) in A's capacity as a financial adviser.

(2) The FMA may initiate a complaint.

Compare: 2008 No 91 s 96

Schedule 5 clause 41: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

42 Investigation by FMA

(1) After receiving or initiating a complaint, the FMA may investigate the complaint if it is practicable to do so having regard to—

(a) the nature and number of complaints to be investigated; and

(b) the FMA's regulatory priorities as reflected in its statement of intent; and

(c) the FMA's available resources.

(2) The FMA need not investigate a complaint if it is satisfied that—

(a) the complaint is vexatious; or

(b) the complaint is not sufficiently serious to warrant investigation.

Compare: 2008 No 91 s 97

Schedule 5 clause 42: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Complaint about financial adviser

Heading: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

43 FMA may refer complaint to disciplinary committee

When the FMA has, under clause 42, investigated a complaint about a financial adviser, it may refer the complaint to the disciplinary committee if, in the

FMA's opinion, the conduct complained of amounts to a contravention of a provision of subpart 5A of Part 6 (for example, a contravention of the code).

Compare: 2008 No 91 s 98

Schedule 5 clause 43: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

44 Disciplinary committee must give notice of complaint

The disciplinary committee must serve a written notice of the complaint on a financial adviser if—

(a) the FMA refers a complaint about the financial adviser to the disciplinary committee; and

(b) the disciplinary committee considers that a hearing is necessary to deal with the complaint.

Compare: 2008 No 91 s 99

Schedule 5 clause 44: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

45 Content of notice of complaint

The disciplinary committee's notice of complaint to the financial adviser concerned (**A**) must—

(a) state that the disciplinary committee considers that there is reason to believe that A may have contravened a provision of subpart 5A of Part 6; and

(b) contain the particulars that are reasonably necessary to clearly inform A of the nature of the contravention; and

(c) specify a date, which must not be sooner than 20 working days after the date of service of the notice, on which the disciplinary committee intends to hear the matter.

Compare: 2008 No 91 s 100

Schedule 5 clause 45: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

46 Disciplinary committee may discipline financial adviser

(1) In this clause,—

A is the person who is the subject of the complaint

FSP Act means the Financial Service Providers (Registration and Dispute Resolution) Act 2008

Registrar means the Registrar of Financial Service Providers.

(2) The disciplinary committee may take any of the actions referred to in subclause (3) if it is satisfied that A has contravened a provision of subpart 5A of Part 6.

(3) The disciplinary committee may do 1 or more of the following:

(a) direct the Registrar to deregister A under the FSP Act:

(b) direct the Registrar to—

(i) deregister A under the FSP Act; and

(ii) prevent A from being reregistered for a financial advice service under the FSP Act for a specified period:

(c) direct the Registrar to suspend A's registration under the FSP Act for a period of no more than 12 months or until A meets specified conditions relating to the registration (but, in any case, not for a period of more than 12 months):

(d) censure A:

(e) order that A may, for a period not exceeding 3 years, give regulated financial advice for the purposes of a financial advice service only subject to any conditions as to employment, engagement, supervision, or otherwise that the disciplinary committee may specify in the order:

(f) order that A undertake training specified in the order:

(g) order that A must pay a fine not exceeding $10,000:

(h) take no action.

(4) Deregistration or suspension of A's registration under the FSP Act under subclause (3) relates only to A's registration for a financial advice service.

(5) *See* sections 532A to 532C, which provide for an appeal from a decision under this clause.

Compare: 2008 No 91 s 101(1)–(3)

Schedule 5 clause 46: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

47 Other matters relating to discipline

(1) No fine may be imposed under clause 46(3)(g) in relation to an act or omission that constitutes—

(a) an offence for which A has been convicted by a court; or

(b) a contravention, or an involvement in a contravention, for which A has been ordered to pay a pecuniary penalty.

(2) In any case to which clause 46(2) applies, the disciplinary committee may order that A must pay costs and expenses of, and incidental to, the investigation by the FMA and the disciplinary committee's proceeding.

(3) The disciplinary committee may publicly notify the action in any way that it thinks fit.

(4) Clause 46 and this clause apply whether or not A is a financial adviser at the time of the complaint, the investigation, or the disciplinary proceeding.

Compare: 2008 No 91 s 101(4)–(7)

Schedule 5 clause 47: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

48 Reasonable opportunity to be heard

The disciplinary committee must not take any of the actions specified in clause 46(3) unless it has first—

(a) informed A in writing as to why it may take any of those actions; and

(b) given A or his or her representative a reasonable opportunity to make written submissions and be heard on the question.

Compare: 2008 No 91 s 102

Schedule 5 clause 48: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Disciplinary committee

Heading: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

49 Minister must establish disciplinary committee

The Minister must establish a disciplinary committee.

Compare: 2008 No 91 s 103

Schedule 5 clause 49: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

50 Functions of disciplinary committee

The functions of the disciplinary committee are to—

(a) conduct disciplinary proceedings arising out of complaints regarding financial advisers referred to it by the FMA; and

(b) take any of the actions referred to in clause 46(3) as a result of disciplinary proceedings.

Compare: 2008 No 91 s 104

Schedule 5 clause 50: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

51 Membership of disciplinary committee

(1) The Minister may at any time appoint a member of the disciplinary committee.

(2) The appointment of a member of the disciplinary committee must be for a specified period.

(3) The Minister must appoint one of the members of the disciplinary committee as the chairperson of the disciplinary committee.

(4) The disciplinary committee must have not less than 4 members and not more than 6 members including the chairperson, and the Minister must ensure that the number of current members does not fall below 4.

(5) Apart from the chairperson, the Minister must appoint as members of the disciplinary committee—

(a) at least 1 member who works or has worked in the financial advice industry; and

(b) at least 1 member who is independent of the financial advice industry; and

(c) at least 1 member who is a lawyer with not less than 7 years' legal experience.

Compare: 2008 No 91 s 105

Schedule 5 clause 51: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

52 Ceasing to be member of disciplinary committee

(1) A person ceases to be a member of the disciplinary committee if—

(a) the person is convicted by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 3 months or longer; or

(b) the person dies or is, under the Insolvency Act 2006, adjudged bankrupt; or

(c) the Minister, by notice to the person, removes the person from the committee on the grounds of inability to perform the functions of the office, or for neglect of duty, or misconduct, proved to the satisfaction of the Minister; or

(d) the person resigns by notice in writing to the Minister.

(2) A person who ceases to be a member of the disciplinary committee is not entitled to compensation.

(3) A member continues in office despite the expiry of his or her period of appointment until—

(a) the member is reappointed; or

(b) the member's successor is appointed; or

(c) the member is notified that a replacement member will not be appointed; or

(d) the member vacates or is removed from office.

(4) A member who continues in office for any period under subclause (3), unless he or she was removed from office, may act as a member during that period for the purpose of—

(a) completing any proceedings partly heard by the committee before the expiry of his or her period of appointment:

(b) hearing any other proceedings.

(5) A member who has resigned, or whose successor is appointed or who will not be replaced (unless he or she was removed from office), may continue in office for the purpose of completing any proceedings that are partly or wholly heard.

Schedule 5 clause 52: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

53 Delegation by chairperson of disciplinary committee

(1) The chairperson of the disciplinary committee may delegate any of the chairperson's functions, duties, and powers to a member of the disciplinary committee who the chairperson is satisfied has the necessary capability, skills, and experience to perform or exercise those functions, duties, and powers.

(2) A delegation—

(a) must be in writing; and

(b) must be to a named person; and

(c) is revocable at any time, in writing; and

(d) does not prevent the performance or exercise of a function, duty, or power by the chairperson.

(3) A person to whom any functions, duties, or powers are delegated may perform or exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.

(4) A person who appears to act under a delegation is presumed to be acting in accordance with its terms in the absence of evidence to the contrary.

Schedule 5 clause 53: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

54 Proceedings of disciplinary committee

(1) Meetings of the disciplinary committee must be held at the times and places as the disciplinary committee or the chairperson from time to time decides.

(2) The quorum for a meeting of the disciplinary committee is 3 members.

(3) Every question before the disciplinary committee must be determined by a majority of the votes of the members present at the meeting.

(4) The chairperson of the disciplinary committee has a deliberative vote and, in the case of an equality of votes, a casting vote.

(5) The disciplinary committee may regulate its own procedure.

(6) Subclause (5) applies except as provided in this clause and in any regulations.

Compare: 2008 No 91 s 106

Schedule 5 clause 54: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

55 Disciplinary committee may hear evidence in disciplinary proceeding

(1) In a disciplinary proceeding, the disciplinary committee may—

(a) receive evidence on oath (and for that purpose a member of the disciplinary committee may administer an oath):

(b) permit a person appearing as a witness before it to give evidence by tendering a written statement and verifying that statement by oath, statutory declaration, or otherwise.

(2) A hearing before the disciplinary committee in a disciplinary proceeding is a judicial proceeding for the purposes of sections 108 and 109 of the Crimes Act 1961.

Compare: 2008 No 91 s 107

Schedule 5 clause 55: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

56 Determining proceeding on papers

(1) Despite anything in this Act to the contrary, the disciplinary committee may determine a disciplinary proceeding on the papers if the committee considers it appropriate.

(2) Before doing so, the disciplinary committee must give the parties a reasonable opportunity to comment on whether the proceeding should be dealt with in that manner.

Schedule 5 clause 56: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

57 Issuing of summons by disciplinary committee

(1) For the purposes of any matter before the disciplinary committee, the committee may, on the application of any party to a proceeding, or on the committee's own initiative, issue a summons to any person requiring that person to attend a hearing before the disciplinary committee and to do all or any of the following:

(a) give evidence:

(b) give evidence under oath:

(c) produce documents, things, or information, or any specified documents, things, or information, in the possession or control of that person, that are relevant to the hearing.

(2) The summons must be in writing, be signed by a relevant person, and state—

(a) the date and time when, and the place where, the person must attend; and

(b) the documents, things, or information that the person is required to bring and produce to the disciplinary committee; and

(c) the entitlement to be tendered or paid a sum in respect of witnesses' fees, allowances, and expenses; and

(d) the penalty for failing to attend.

(3) In subclause (2), **relevant person** means—

(a) the chairperson of the disciplinary committee; or

(b) any officer of the disciplinary committee purporting to act by the direction or with the authority of the chairperson.

(4) The disciplinary committee may require that any documents, things, or information produced under this clause be verified by oath, statutory declaration, or otherwise.

Compare: 2008 No 91 s 109

Schedule 5 clause 57: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

58 Serving of summons

(1) A summons may be served—

(a) by delivering it personally to the person summoned; or

(b) by posting it to the person summoned at that person's usual place of residence; or

(c) by emailing it to the person summoned at an email address that is used by the person.

(2) A summons must,—

(a) if it is to be served under subclause (1)(a), be served at least 48 hours before the attendance of the witness is required:

(b) if it is to be served under subclause (1)(b) or (c), be served at least 10 days before the attendance of the witness is required.

(3) A summons that is posted is treated as having been served when it would have been delivered in the ordinary course of post.

(4) In the absence of proof to the contrary, a summons that is emailed to a person must be treated as served on the person on the second working day after the date on which it is emailed, and, in proving that the summons was emailed, it is sufficient to prove that the summons was properly addressed and sent to the email address.

Compare: 2008 No 91 s 110

Schedule 5 clause 58: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

59 Failure to comply with summons to attend disciplinary committee hearing

(1) A person summoned under clause 57 commits an offence if he or she, without reasonable excuse,—

(a) fails to attend in accordance with the summons; or

(b) does not give evidence when required to do so; or

(c) does not give evidence under oath when required to do so; or

(d) does not answer any question that is lawfully asked by the disciplinary committee; or

(e) does not provide any documents, things, or information that the summons requires the person to provide.

(2) A person who commits an offence under this clause is liable on conviction to a fine not exceeding $5,000.

(3) A person must not be convicted of an offence under this clause if witnesses' fees, allowances, and expenses to which the person is entitled under clause 60 have not been paid or tendered to him or her.

Compare: 2008 No 91 s 137

Schedule 5 clause 59: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

60 Witnesses' fees, allowances, and expenses

(1) A witness appearing before the disciplinary committee under a summons is entitled to be paid witnesses' fees, allowances, and expenses in accordance with the scales prescribed by regulations under the Criminal Procedure Act 2011.

(2) The person requiring attendance of the witness must pay or tender to the witness the fees, allowances, and expenses at the time the summons is served or at some other reasonable time before the hearing.

Compare: 2008 No 91 s 111

Schedule 5 clause 60: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

61 Protection for witnesses and counsel in disciplinary proceeding

(1) Every person who does the following things has the same privileges as witnesses have in a court:

(a) provides documents, things, or information to the disciplinary committee in relation to a disciplinary matter; or

(b) gives evidence or answers questions at a hearing of the disciplinary committee in relation to a disciplinary matter.

(2) Every counsel appearing before the disciplinary committee in relation to a disciplinary matter has the same privileges and immunities as counsel in a court.

Compare: 2008 No 91 s 112

Schedule 5 clause 61: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

62 Contempt of disciplinary committee

(1) Every person commits an offence and is liable on conviction to a fine not exceeding $5,000 who—

(a) assaults, threatens, intimidates, or wilfully insults any person, being a member of the disciplinary committee, an officer of the disciplinary committee, or any witness, during that person's sitting or attendance in

the disciplinary committee, or in going to or returning from the disciplinary committee; or

(b) wilfully interrupts or obstructs a proceeding of the disciplinary committee or otherwise misbehaves in the disciplinary committee; or

(c) wilfully and without lawful excuse disobeys any order or direction of the disciplinary committee in the course of the hearing of any proceeding; or

(d) contravenes a condition of an order made by the disciplinary committee under clause 46(3)(e).

(2) A member of the disciplinary committee may order the exclusion from a sitting of the disciplinary committee of any person whose behaviour, in that member's opinion, constitutes an offence against subclause (1), whether or not that person is charged with the offence.

(3) Any constable may take the steps that are reasonably necessary to enforce the exclusion.

Schedule 5 clause 62: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

63 Certain provisions of Crown Entities Act 2004 apply to members of disciplinary committee

Clause 15 of Schedule 5 of the Crown Entities Act 2004 applies as if the disciplinary committee were a committee appointed under clause 14 of that schedule and with all other necessary modifications.

Compare: 2008 No 91 s 113

Schedule 5 clause 63: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

64 Funding of disciplinary committee

The FMA must fund the disciplinary committee.

Compare: 2008 No 91 s 113A

Schedule 5 clause 64: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Notes

1 General

This is a consolidation of the Financial Markets Conduct Act 2013 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 Legal status

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 Editorial and format changes

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 Amendments incorporated in this consolidation

Water Services Acts Repeal Act 2024 (2024 No 2): section 12(1)

Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36): sections 21, 22, 23

Companies Office Registers Funding Validation Act 2022 (2022 No 27): section 11

Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39): Part 1

Reserve Bank of New Zealand Act 2021 (2021 No 31): section 300(1)

Financial Market Infrastructures Act 2021 (2021 No 13): section 163(1) (as amended by Reserve Bank of New Zealand Act 2021 (2021 No 31))

Secondary Legislation Act 2021 (2021 No 7): section 3

Public Service Act 2020 (2020 No 40): section 135

Privacy Act 2020 (2020 No 31): section 217

Partnership Law Act 2019 (2019 No 53): section 86

Kāinga Ora–Homes and Communities Act 2019 (2019 No 50): section 33

Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46): Part 2

Trusts Act 2019 (2019 No 38): sections 161, 166–175

Financial Services Legislation Amendment Act 2019 (2019 No 8): Part 1

Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12): Part 1 subpart 7

Contract and Commercial Law Act 2017 (2017 No 5): section 347

Financial Markets Legislation (Phase 3) Commencement Order 2015 (LI 2015/252)

Financial Reporting Amendment Act 2014 (2014 No 64): section 17

Financial Markets Legislation (Phase 2) Commencement Order 2014 (LI 2014/325): clause 2

Financial Markets Legislation (Phase 1) Commencement Order 2014 (LI 2014/51): clause 2

Non-bank Deposit Takers Act 2013 (2013 No 104): section 102

Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102): sections 46–61

Financial Markets Conduct Act 2013 (2013 No 69): section 547(3), section 548(3), Schedule 4 clauses 27(5), 28(5), 90(3)

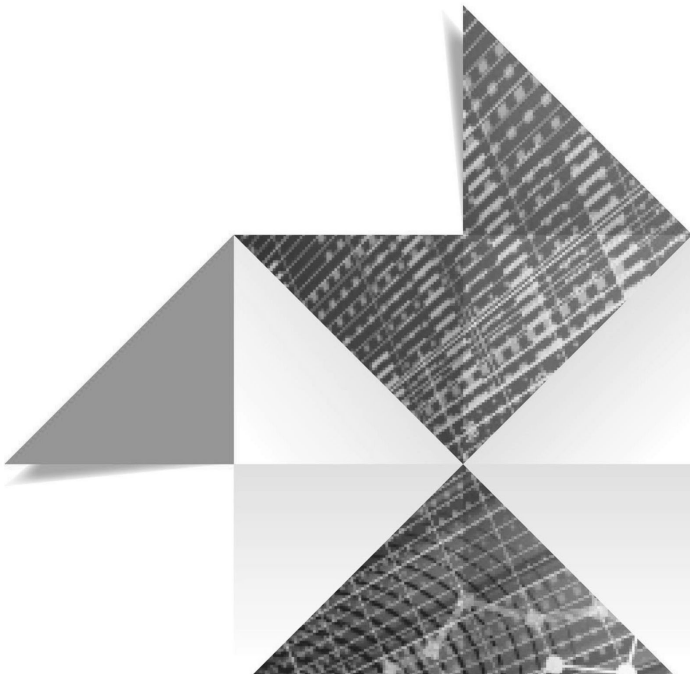
Wellington, New Zealand:
Published under the authority of the New Zealand Government—2024

APPENDIX NZ-2

Listing Rules 2024

NZX Listing Rules

24 July 2024



Contents

Section 1 Listing and Quotation **30**

Eligibility requirements for Equity, Debt & Fund Securities 30

1.1 Eligibility for Listing as an Issuer of Equity Securities and Quotation of EquitySecurities 30

1.2 Eligibility for Listing as an Issuer of Debt Securities and Quotation of DebtSecurities 31

1.3 Rules which do not apply to Issuers of Debt Securities 31

1.4 Eligibility for Listing as an Issuer of Fund Securities and Quotation of FundSecurities 31

1.5 Rules which do not apply to Issuers of Fund Securities 32

Eligibility requirements for NZX Foreign Exempt Issuers 32

1.6 Eligibility for Listing as an NZX Foreign Exempt Issuer 32

1.7 Compliance with rules of Home Exchange 32

Eligibility requirements for Wholesale Debt Securities Issuers 34

1.8 Eligibility for Listing as an Issuer of Wholesale Debt Securities 34

1.9 Rules which do not apply to Issuers of Wholesale Debt Securities 34

Eligibility requirements for Other Financial Products 34

1.10 Listing and Quotation of Other Financial Products 34

Backdoor Listings 35

1.11 Approval of Backdoor or Reverse Listings 35

Application requirements for Listing and Quotation 35

1.12 Application for Listing 35

1.13 Application for Quotation of Equity Securities 36

1.14 Application for Quotation of Debt Securities 36

1.15 Application for Quotation of Fund Securities 37

1.16 Application for Quotation of Other Financial Products 38

Designations 38

1.17 Designations 38

1.18 Non-standard Listings 39

General rules for all Listings and Quotations 39
1.19 NZX discretion as to Listing and Quotation 39
1.20 Separate applications for each Class of Financial Products 39
1.21 Commencement of Listing and Quotation 39
1.22 Nominated Contact for service and other communications 40
1.23 Payment of Fees 41
Section 2 Governance Requirements 42
Governance requirements for Equity Security Issuers 42
2.1 Composition of Board of Directors 42
2.2 Appointment of Directors 42
2.3 Director Nominations and Appointment 42
2.4 Equity Holder appointment rights 43
2.5 Alternate Directors 43
2.6 Independence of Directors 44
2.7 Rotation of Directors 44
2.8 Removal of Directors 44
2.9 Proceedings and Powers of Directors 44
2.10 Interested Directors 44
2.11 Directors' Remuneration 45
2.12 Directors' Remuneration as Employees or in another capacity 46
2.13 Audit Committee 46
2.14 Equity Security holder notices and meetings 47
Governance requirements for Debt Security Issuers 47
2.15 Debt Issuers comply with applicable law 47
Governance requirements for Fund Security Issuers 47
2.16 Fund Issuers comply with applicable law 47
Governance requirements for Issuers of Other Financial Products 48
2.17 NZX to determine governance requirements 48

Governing Document requirements for all Issuers 48
2.18 Requirement to have Governing Document 48
2.19 Solicitor's opinion regarding Governing Document 48
Governing Document requirements for Issuers of Equity Securities 49
2.20 Content of Governing Document for Issuers of Equity Securities 49
Governing Document requirements for Issuers of Debt Securities 50
2.21 Content of Governing Document for Issuers of Debt Securities 50
Governing Document requirements for Issuers of Fund Securities 50
2.22 Governing Document for Issuers of Fund Securities 50
Governing Document requirements for Issuers of Other Financial Products 50
2.23 Governing Document for Issuers of other Financial Products 50
Section 3 Disclosure 51
Continuous disclosure 51
3.1 Disclosure of Material Information 51
3.2 False Market 52
3.3 No Contracting out 52
3.4 Related Party Transactions 52
Periodic disclosure – Equity and Debt Securities 53
3.5 Results Announcement 53
3.6 Preparation and delivery of Annual Reports 53
3.7 Contents of Annual Report 54
3.8 Further Annual Report content for Issuers of Equity Securities 55
3.9 Registered Banks exempt 57
3.10 Announcements by Mining Issuers 57
Periodic disclosure – Fund Securities 57
3.11 Fund Update 57
3.12 Annual Report 57
Announcements of capital changes and distributions 58

3.13 Issues, acquisitions and redemption of capital 58
3.14 Distributions, conversion and calls 59
3.15 Further notice for Convertible Financial Products 60
Announcements relating to offers 61
3.16 Early and Late Offer Closure 61
3.17 Notification of Level of Subscription 61
Further information to be released through MAP 61
3.18 Proposals of Capital Change and Conditions 62
3.19 Meetings 62
3.20 Directors, Senior Manager and Auditor and other information 62
3.21 Change in Issuer's details and balance date 63
3.22 Credit Rating 63
3.23 All notices and communications to be released through MAP 63
3.24 Disclosure of Relevant Interest in Financial Products 64
3.25 Disclosure upon initial Quotation or initial Listing 64
Form of disclosure and communication 64
3.26 Form of Disclosure and Communication for Market 64
3.27 Disclosure under Embargo 65
3.28 Disclosure of additional information 66
3.29 Disclosure to NZX 66
3.30 Ownership of information disclosed 66
Section 4 Changes to Capital 67
Rules applying to Issuers of Equity Securities 67
4.1 Issue of New Equity Securities 67
4.2 Shareholder approval for Issues by Ordinary Resolution 67
4.3 Pro-rata issues and Share Purchase Plans 68
4.4 Rules applicable to pro-rata issues and Share Purchase Plans 69
4.5 15% Placements 71

4.6 3% Issues to Employees and Executive Directors 72
4.7 Issues to Directors as remuneration 73
4.8 Dividend Reinvestment Plan 74
4.9 Issues relating to takeovers, conversions, minimum holdings and amalgamations 74
4.10 Treasury Stock 75
4.11 Issue of discounted Equity Securities 75
4.12 Entitlements to Third Party Securities 76
4.13 Issues and Buybacks of Securities Affecting Control 76
4.14 Buy Backs and Redemption of Equity Securities 76
4.15 Financial Assistance 78
4.16 Shareholder approval of buy backs, redemption and financial assistance 79
4.17 Placement, Rights, Share Purchase Plan and warrant issues additionalrequirements 80
Issuers of Fund Securities 83
4.18 Issues, buy backs and redemptions of Fund Securities 83
Allotment Processes 83
4.19 Allotment of Financial Products 83
Section 5 Major and Related Party Transactions 84
Rules applying to Equity Issuers 84
5.1 Disposal or Acquisition of Assets 84
5.2 Transactions with Related Parties 85
Section 6 Voting Rights and Rights of Equity Securities 87
Voting Rights and Voting Restrictions 87
6.1 Voting at meetings to be by poll 87
6.2 Votes attaching to Financial Products 87
6.3 Voting Restrictions 87
6.4 Condition in Contract 89
Rights of Equity Securities 89
6.5 Option 89

6.6 Lien and Forfeiture 90
6.7 Modifications of Rights of Equity Security Holders 91
6.8 Cancellation of Unpaid Amounts 91
Section 7 Requirements for Documents 92
NZX Review of documents 92
7.1 NZX to review documents 92
7.2 Providing documents to NZX for review 93
Preparing documents 93
7.3 Preparing Offer Document or Profile 93
Content of documents 94
7.4 Content of Offer Document and Profile 94
7.5 Disposal of Major Holdings 95
7.6 Additional Requirements for Debt Securities 96
7.7 Prominence of statements in Offer Documents 96
7.8 Notices of Meeting 96
7.9 Proxy approval 98
7.10 Appraisal reports 99
Section 8 Transfers and Statements 101
Transfers 101
8.1 Transfer of Quoted Financial Products (common rules) 101
8.2 Escrow Agreements 102
Statements 103
8.3 Statements 103
Financial Product Registers 104
8.4 Registration 104
8.5 Legal title transfer 104
Section 9 NZX Powers 106
Status of the Rules and changes to the Rules 106

9.1	Status of Rules	106
9.2	Amendment of Rules	106
9.3	Procedures	106
9.4	Effect of Amendment	107
9.5	Disputed Interpretation	107
9.6	Rulings	108
9.7	Waiver	108
9.8	Interpretation Policy	109
9.9	Trading Halts, Suspension, Cancellations and other Powers	109
Compliance and enforcement		110
9.10	Contract and Commercial Law Act to Apply	110
9.11	Compliance by Subsidiaries and in concert parties	110
9.12	NZX	110
9.13	The Tribunal	112
9.14	Liability and Indemnity	112
9.15	Delegation to RegCo	113
9.16	Costs	113

Glossary

Part A – Definitions

In these Rules the following terms have the following meaning:

Accelerated Offer means an offer with one or more "accelerated features" (as that term is defined in clause 8A(5) of the Takeovers Code (Class Exemptions) Notice (No 2) 2001).

Aggregate Net Value means the net value of the relevant assets calculated as the greater of:

(a) the net tangible asset value or, for leased assets, the value of the right of use (in each case, from the most recently published financial statements of the relevant Issuer, if applicable), or

(b) market value.

Appraisal Report means a report prepared by an appraiser and complying with Rule 7.10.

Associated Person a person (**A**) is associated with, or an **Associated Person** of, another person (**B**) if:

(a) A is able, directly or indirectly, to exert a substantial degree of influence over the activities of B (or vice versa),

(b) B is a body corporate and A has the power, directly or indirectly, to exercise, or control the exercise of, more than 50% of the Votes attaching to the Financial Products of B (or vice versa),

(c) A and B are Relatives or Related Bodies Corporate,

(d) A and B are partners to whom the Partnership Law Act 2019 applies,

(e) A is a director or Senior Manager of B (or vice versa), or

(f) A and B are acting jointly or in concert,

except that:

(g) A is not an Associated Person of B merely because:

(i) A acts as a professional or business adviser to B, without a personal financial interest in the outcome of that advice,

(ii) A's ordinary business includes dealing in Financial Products on behalf of others and A is acting in accordance with the specific instructions of B,

(iii) A acts as a proxy or representative of B for the purposes of a meeting of holders of Financial Products, or

(iv) there is another person with which A and B are both associated,

(h) persons will not be Associated Persons if NZX makes a Ruling that they are not Associated Persons.

Audit Committee means a committee of the Board formed in accordance with Rule 2.13.

Authorisation Code means an alphanumeric identifier authorising access to a Financial Product holder's account at the Issuer's registry.

Authorised Representative means a Primary Authorised Representative or a Secondary Authorised Representative.

Authorised Representative Training means training on Listing Rules and other Issuer compliance matters that is prescribed by NZX from time to time.

Average Market Capitalisation means, in relation to an Issuer, the Average Market Price multiplied by the number of Quoted Equity Securities carrying Votes on Day A.

Average Market Price means, on **Day A**, the lesser of the volume weighted average price of an Issuer's Quoted Equity Securities (or, when calculating a Minimum Holding, the relevant Financial Product) calculated from trades through the Main Board over the following two periods:

(a) 20 Business Days before Day A, or

(b) 5 Business Days before Day A.

If there are no trades in either period, the last traded price.

Aware	an Issuer becomes aware of information if, and as soon as: (a) a Director or a Senior Manager of the Issuer, or (b) if the Issuer is a Managed Investment Scheme, a Director or a Senior Manager of the Manager, has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties.
Backdoor or Reverse Listing	means a transaction, or series of related transactions, entered into by an Issuer which would result in a significant change: (a) in the ownership of a majority of the Equity Securities carrying Votes, and (b) either directly or indirectly, in the nature or scale of its activities, including through the acquisition of a new business.
Bank	means: (a) a Registered Bank, (b) a bank having recognition comparable to that of a Registered Bank under the laws of Australia, the United States of America, Japan, Singapore, Hong Kong, the United Kingdom, Germany, France or other member of the European Economic Area or Organisation for Economic Co-operation and Development (OECD), or (c) any other financial institution approved by NZX.
Board	means the board of Directors of an Issuer.
Business Day	means a time between 8.30 am and 5.30 pm on a day on which NZX is open for trading.
Class	means a class of Financial Products having identical rights, privileges, limitations and conditions, and includes or excludes Financial Products which NZX in its discretion deems to be, or not to be, of that class.

Code Company means an Issuer which is a code company as defined in the Takeovers Code.

Continuous Issuer has the meaning given in section 6 of the FMC Act.

Convert means, in respect of a Financial Product, to:

(a) convert that Financial Product into, or exchange it for, a Financial Product of a different sort (whether at the option of the holder, the Issuer, or otherwise), or

(b) subscribe for, or obtain, a Financial Product of a different sort,

pursuant to a right conferred by the first mentioned Financial Product.

Conversion and **Convertible** have corresponding meanings.

CSN has the meaning given in the NZX Participant Rules.

Day A means, unless a Rule specifies otherwise, the day before a relevant action is taken (e.g. an issue is made or transaction entered into) or the day before it is announced to market, whichever is the earlier.

Debt Market means the debt security financial product market operated by NZX.

Depository Rules means New Zealand Depository Limited's Depository Operating Rules.

Depository System has the meaning given in the Depository Rules.

Debt Security has the meaning given in sections 8(1) and 8(5) of the FMC Act, subject to NZX's sole discretion to declare, by way of a Ruling, a Financial Product to be, or not to be, a Debt Security.

Director means:

(a) in relation to a company incorporated in New Zealand, a director within the meaning of section 126(1)(a) of the Companies Act 1993,

(b) in relation to a Managed Investment Scheme, a director (within the meaning of section 126(1)(a) of the Companies Act 1993) of the Manager, or

(c) in relation to any other entity where paragraph (a) or (b) does not apply, any person occupying a position in that entity, or in the Manager of such entity, that is comparable with that of a director of a company,

Disqualifying Relationship means any direct or indirect interest, position, association or relationship that could reasonably influence, or could reasonably be perceived to influence, in a material way, the Director's capacity to:

(a) bring an independent view to decisions in relation to the Issuer,

(b) act in the best interests of the Issuer, and

(c) represent the interests of the Issuer's Financial Product holders generally,

including having regard to the factors described in the NZX Corporate Governance Code that may impact director independence, if applicable.

Employee means, in relation to an Issuer:

(a) an employee or officer of that Issuer or any of its Subsidiaries,

(b) a labour-only contractor, consultant or consultant company who or which contracts with that Issuer or any of its Subsidiaries,

(c) any trustee or trustees on behalf of any of the above, and

(d) any trustee or trustees of, or in respect of any pension, superannuation or like fund established for the benefit of any of the above.

If the Issuer is a Managed Investment Scheme, a reference to "Issuer" above is to be read as a reference to the Manager of such Issuer.

Equity Security has the meaning given in sections 8(2) and 8(5) of the FMC Act and also includes a Right, subject to NZX's sole discretion to declare, by way of a Ruling, a Financial Product to be, or not to be, an Equity Security (and includes any Fund Security deemed to be an Equity Security under Rule 1.1.2).

Escrow Agreement has the meaning given in Rule 8.2.1.

Executive Director	means a Director who is also an Employee of the Issuer.
Ex Date	in relation to a benefit, means the first Business Day before the Record Date for that benefit, unless NZX determines otherwise.
Financial Product	has the meaning given in section 7 of the FMC Act (as expanded by section 8 of that Act) and also includes a Right.
FMA	means the Financial Markets Authority established under the Financial Markets Authority Act 2011.
FMC Act	means the Financial Markets Conduct Act 2013.
FMC Regulations	means the Financial Markets Conduct Regulations 2014.
Fund Security	means a "managed investment product" as defined in sections 8(3) and 8(5) of the FMC Act in relation to a Managed Investment Scheme, subject to NZX's sole discretion to declare, by way of a Ruling, a Financial Product to be, or not to be, a Fund Security.
Fund Update	has the meaning given in regulation 5 of the FMC Regulations.
Governing Document	means: (a) in the case of an Issuer of Equity Securities, its constitution, articles of association or other constituent documents, (b) in the case of an Issuer of Debt Securities, a trust deed or the one or more deeds, agreements, or instruments that constitute those Debt Securities, (c) in the case of a Managed Investment Scheme constituted as a trust, the one or more trust deeds that constitutes the scheme, or (d) in the case of any other Managed Investment Scheme where (c) does not apply, the one or more deeds, agreements, or instruments that constitute or govern the scheme, and including (in each case) any amendments to a

document referred to in paragraph (a) to (d).

Gross Value means the gross value of the relevant assets calculated as the greater of:

(a) the gross asset value (or, for leased assets, the value of the right of use) from the most recently published financial statements of the relevant Issuer, if applicable, or

(b) market value.

Head Security means the Financial Product which, immediately before the Ex Date, confers on the holder entitlement to a benefit.

Home Exchange means NZX, or any other Recognised Stock Exchange which NZX is satisfied has:

(a) primary jurisdiction in relation to listing requirements for the Issuer and quotation of its Financial Products, or

(b) if Rule 1.6.1(b) applies, primary jurisdiction in relation to the quotation of the relevant Financial Product of the Issuer.

Independent Director means a Director who is not an Employee of the Issuer and who has no Disqualifying Relationship.

ISIN means International Security Identification Number.

Issuer means:

(a) any person which is Listed (and includes, for the purposes of a Listed Managed Investment Scheme, the manager of the scheme), and

(b) includes, as the context permits, all members (other than another Listed entity or that Listed entity's Subsidiary) of any group of companies or other entities of which such Issuer is the holding company or has a controlling interest, to the extent this is necessary to prevent the object of the Rules being frustrated or avoided by the use of a separate legal personality, and

(c) for the purpose of the disclosure of information, the group (as defined in (b)) includes any Associated Persons of the Issuer over which the Issuer has control in law or in fact (other

than another Listed entity or that Listed entity's Subsidiary).

Key Audit Partner means the audit engagement partner, the individual responsible for the audit engagement quality control review, and other partners, if any, on the audit engagement team who make key decisions or judgments on significant matters with respect to the audit of the financial statements on which the firm will express an opinion.

Listed means the status of a person that is party to a listing agreement with NZX under which such person agrees to comply with the Rules and NZX agrees to administer the listing.

List and **Listing** have corresponding meanings.

Main Board means the main board financial product market operated by NZX.

Managed Investment Scheme has the meaning given in section 9 of the FMC Act (including a scheme declared to be such a scheme under Part 9 of that Act) subject to NZX's sole discretion to declare, by way of a Ruling, a scheme or arrangement to be, or not to be, a Managed Investment Scheme.

Manager has the meaning given in section 6(1) of the FMC Act.

MAP means the market announcement platform nominated by NZX from time to time to electronically process, release and store announcements about Issuers and Quoted Financial Products.

Material Information has the meaning given in section 231(1) of the FMC Act (read together with additional terms defined in section 232 of that Act).

Material Transaction means a transaction, or a related series of transactions, whereby an Issuer:

(a) buys, acquires, gains, leases (as lessor or lessee), sells or otherwise disposes of, assets having an Aggregate Net Value above 10% of the Issuer's Average Market Capitalisation,

(b) issues its own Financial Products, or acquires its own Equity Securities, having a market

value above 10% of the Issuer's Average Market Capitalisation (except where Rule 4.5 applies or in the case of an issue of Debt Securities, in which case only the market value of Financial Products being issued to any Related Party or to any Employees of the Issuer are to be taken into account),

(c) borrows, lends, pays or receives money, or incurs an obligation of an amount above 10% of the Average Market Capitalisation of the Issuer (except in the case of an issue of Debt Securities, in which case only the nominal amount of Debt Securities being issued to any Related Party or to any Employees of the Issuer are to be taken into account),

(d) enters into any guarantee, indemnity, underwriting, or similar obligation, or gives any security, which could expose the Issuer to liability above 10% of the Average Market Capitalisation of the Issuer,

(e) provides or obtains any services (including the underwriting of Financial Products or services as an Employee) where the gross cost to the Issuer in any financial year is likely to exceed an amount equal to 1% of the Average Market Capitalisation of the Issuer, or

(f) undertakes an amalgamation, except for amalgamations of a wholly owned Subsidiary with another wholly owned Subsidiary or with the Issuer.

Minimum Holding means a holding of a Class of Financial Products having a value of at least $1,000 (or such lower amount determined by the Issuer and released through MAP) calculated:

(a) prior to Quotation, at the issue or sale price of such Financial Products specified in any Profile or Offer Document (and, if expressed as an indicative price range, the mid-point of that range) or Profile;

(b) at any other time, at the Average Market Price; or

such lower amount determined by the Issuer and released through MAP.

Mining Issuer	has the meaning given to that term in Appendix 4.
Non-Affiliated Holder	means any person other than: (a) a person who holds, or is one of a group of Associated Persons who together hold, 10% or more of a Class of Financial Products, or (b) a person who has, or is one of a group of Associated Persons who together have, the power (whether contingent or not) to appoint one or more Directors of the Issuer, or (c) any other person or group of persons whom NZX in its discretion declares not to be a Non-Affiliated Holder for the purposes of the Rules.
Non-Standard	means a designation given by NZX under Rule 1.18.1.
NZX	means NZX Limited or its predecessors, successors and assigns and, as the context permits, includes any authorised delegate of NZX (including the Tribunal).
NZX Corporate Governance Code	means the code set out in Appendix 1.
NZX Foreign Exempt Issuer	means: (a) an Issuer Listed on the Main Board or Debt Market as a secondary listing under Rule 1.6.1, and (b) where the context permits, an Issuer to the extent it has a Class of Financial Product Quoted and the Home Exchange of such Financial Product is a Recognised Stock Exchange.
NZX Participant Rules	means the NZX Participant Rules made by NZX from time to time.
Offer Document	means in relation to an offer of Financial Products to be Quoted on the Main Board or Debt Market: (a) a PDS, if Part 3 of the FMC Act applies (and, in the case of a Continuous Issuer, also includes a document containing the terms and conditions of the particular Financial Products to the extent not contained in the PDS),

(b) a Schedule 1 Offer Document,

(c) any document of similar effect to a PDS required by the conditions of any applicable exemption granted by FMA from Part 3 of the FMC Act,

(d) any offering document prepared in compliance with the mutual recognition scheme under the FMC Regulations; and

(e) any document which NZX in its sole discretion declares by a Ruling to be an Offer Document.

Option means an option to acquire, by way of issue, a Financial Product.

Ordinary Resolution means a resolution passed by a simple majority of Votes of Financial Product holders entitled to Vote and voting.

Other Financial Product means, a Financial Product that is not an Equity Security, Debt Security or Fund Security subject to NZX's sole discretion to declare, by way of a Ruling, a Financial Product to be, or not to be, an Other Financial Product.

Participant means a person who is a Legal Title Transfer Depository Participant as defined by the Depository Rules.

PDS has the meaning given in section 6 of the FMC Act.

Primary Authorised Representative in relation to an Issuer means a natural person whom is appointed by that Issuer as its primary representative and contact person for time-critical regulatory matters under the Rules and who:

(a) meets the criteria set out in Rule 1.22.2(a), and

(b) either:

(i) falls within limb (a) of the definition of an Employee (being an employee or officer of that Issuer or any of its Subsidiaries), or

(ii) is a Director of that Issuer.

Profile means a document with the content required by Rule 7.4.1, which may be required from time to time by

	NZX under Rule 7.3.1(b).
Prospective Financial Information	means the information set out in clauses 35 and 38 of Schedule 3 of the FMC Regulations for P+1 and P+2 (as those terms are defined in Schedule 3 of the FMC Regulations).
provide to NZX	means to provide such information, material or notice to NZX under Rule 3.29 not for market release.
Public Audit Issuer	means an Issuer that is an entity specified in Schedule 1 or Schedule 2 of the Public Audit Act 2001.
QFP notice	a notice given under clause 20(1)(a) of Schedule 8 of the FMC Regulations.
Quoted	means a Financial Product of an Issuer that is approved for trading on NZX (for the avoidance of doubt, a Financial Product does not cease to be Quoted merely because trading of that product is suspended or halted). **Quote** and **Quotation** have corresponding meanings.
Reciprocal Arrangement	means any agreement or arrangement which provides for the disclosure of information between NZX and any government or non-governmental agency, authority or association in New Zealand or elsewhere whose functions include monitoring, surveillance or regulation of: (a) Issuers' compliance with their obligations under listing rules, applicable laws and regulations, or (b) trading in, or clearance and settlement of, transactions in Financial Products, derivatives or commodities (whether in New Zealand or elsewhere).
Recognised Stock Exchange	means a stock exchange approved by NZX from time to time as enforcing rules, procedures and requirements sufficiently similar to those of these Rules to justify issuers on such stock exchange Listing on the NZX as an NZX Foreign Exempt Issuer.
Record Date	means the time fixed by an Issuer for the determination of the Financial Product holders to

	whom an entitlement, right or obligation relating to the Financial Products of that Issuer applies.
RegCo	means NZX Regulation Limited.
RegCo CEO	means the person occupying the position of Chief Executive Officer of RegCo.
Registered Bank	has the meaning given in section 2 of the Banking (Prudential Supervision) Act 1989.
Related Body Corporate	has the meaning given in section 12(2) of the FMC Act.
Related Party	means a person who, at the time of a Material Transaction, or at any time within the previous six months, was: (a) a Director or Senior Manager of the Issuer or any of its Subsidiaries, (b) the holder of a Relevant Interest in 10% or more of a Class of Equity Securities of the Issuer carrying Votes, (c) an Associated Person of the Issuer or any of the persons referred to in (a) or (b), except where the person becomes an Associated Person as a consequence of the Material Transaction, or (d) a person in respect of whom there are arrangements which are intended to result in that person becoming, or expected to become, a person described in (a), (b), or (c) other than as a consequence of the Material Transaction, but a person is not a Related Party of an Issuer if: (e) the only reason why that person would otherwise be a Related Party of the Issuer is that a Director or Senior Manager of the Issuer is also a Director of that person, so long as: (i) the proportion of Directors of the Issuer who are also Directors of that person is one third or less, and (ii) no Director or Senior Manager of the Issuer has a material direct or indirect economic interest in that person, other than receiving reasonable Director's

fees or executive remuneration, or

(f) that person is a Subsidiary or incorporated joint venture of, or unincorporated joint venture participant with, the Issuer and:

(i) no Related Party of the Issuer has or intends to obtain, other than through the Issuer itself, a material direct or indirect economic interest in that Subsidiary or joint venture other than receiving reasonable Director's fees or executive remuneration, and

(ii) the Issuer has at least 50% of the Votes in or is entitled to at least 50% of the dividends declared or paid by the Subsidiary or incorporated joint venture or is entitled to at least one half of the incomeor profits, and the assets, of the unincorporated joint venture (if and when distributed).

Relative in relation to a person (**A**), means any of the following:

(a) A's spouse, civil union partner, de facto partner

(b) a parent or child of A,

(c) a trustee of a trust under which A, or a relative of A (under paragraphs (a) or (b)), is a beneficiary who is:

(i) presently entitled to a share of the trust estate or income, or

(ii) individually or together with other beneficiaries, in a position to control the trustee,

(d) a trustee of a trust if—

(i) the trust is a family trust within the meaning of section 173M(5) of the Tax Administration Act 1994, and

(ii) a majority of the individuals who are beneficiaries under the trust are relatives of A (under paragraphs (a) or (b)).

Relevant Interest has the meaning given in sections 235 to 238 of the

FMC Act.

Renounceable — in relation to a Right or an offer of Equity Securities means that:

(a) the Right issued in relation to the offer of Equity Securities is transferable (whether on or off-market) by the holder to another person (whether or not an existing holder of any Equity Securities to which the Right or offer relates) and Quoted, or

(b) the offer of Equity Securities in relation to which the Right is issued includes one or more bookbuild(s) for the Shortfall, in respect of which the net proceeds are accounted to non-participating holders of Equity Securities (including any holder excluded from the offer under Rule 4.4.1(e)).

Results Announcement — means an announcement with the applicable information specified in Appendix 2 and such additional content as may be prescribed by NZX from time to time.

Right — means any right (whether conditional or not, whether Renounceable or not and whether Quoted or not) to acquire an Equity Security, including a right under a Share Purchase Plan, which arises, or is issued, in connection with an Equity Security.

Rules — means these NZX Listing Rules.

Ruling — means any decision or determination by NZX as to the meaning, interpretation or application of the Rules and includes any ruling, waiver, or revocation of a waiver given under Rule 9.5, Rule 9.6, or Rule 9.7.

Schedule 1 Offer Document — means a document or documents containing the terms and conditions of:

(a) an offer of Quoted Equity Securities made in reliance on the exclusion contained in clause 10 of Schedule 1 of the FMC Act,

(b) an offer of Quoted Equity Securities or Options, under a Rights issue, or an Accelerated Offer, made in reliance on clause 19 of Schedule 1 of the FMC Act (whether Renounceable or non-

Renounceable),

(c) an offer of Quoted Debt Securities or Quoted Fund Securities made in reliance on clause 19 of Schedule 1 of the FMC Act,

(d) any document or documents of similar effect to those referred to in paragraphs (a) to (c) required by the conditions of any applicable exemption granted by FMA from Part 3 of the FMC Act, or

(e) an offer of Financial Products made under a limited disclosure document, if an exclusion under Schedule 1 of the FMC Act applies to that offer.

Secondary Authorised Representative in relation to an Issuer, means a natural person appointed by that Issuer as its secondary representative and contact person for time-critical regulatory matters under the Rules and who either:

(a) falls within limb (a) of the definition of an Employee (being an employee or officer of that Issuer or any of its Subsidiaries), or

(b) is a Director of that Issuer.

Senior Manager has the meaning given in section 6 of the FMC Act.

Settlement System has the meaning given in the Depository Rules.

Share Purchase Plan means an offer of Equity Securities to all holders of existing Equity Securities of the Issuer carrying Votes (subject to Rule 4.4.1(e)) where:

(a) the consideration payable for the Equity Securities issued under all of the Issuer's Share Purchase Plans (other than any Share Purchase Plan that has been ratified by an Ordinary Resolution) does not in any 12 month period exceed $50,000 per registered holder (or, in the case of Equity Securities held through a custodian, each beneficial owner),

(b) the number of Equity Securities to be issued does not exceed 10% of the Class of Equity Securities already on issue at the time the offer is made which are fully paid and entitle the holder to Vote,

(c) the consideration payable for each Equity

Security offered does not exceed that payable by participants under any other offer of Equity Securities announced together, or made in connection, with the Share Purchase Plan,

(d) if the offer is oversubscribed, all oversubscriptions are accepted (subject to paragraphs (a) and (b) above or such lower limits contained in the Offer Document) or oversubscriptions will be scaled according only to the number of fully paid Equity Securities carrying Votes held by those accepting the offer on the Record Date, and

(e) the Offer Document for the offer must set out the matters in (a) to (d) above.

Shortfall in relation to a pro rata offer of Equity Securities means the aggregate of:

(a) any excluded holders' Rights, or the Equity Securities to which any excluded holders would be entitled if they were eligible to participate in the offer, and

(b) any unexercised Rights, or the Equity Securities in respect of those unexercised Rights,

and, as the context requires for an offer, means either the shortfall for each component of the Offer (such as an Institutional Entitlement Offer and Retail Entitlement Offer) or the offer as a whole.

State Enterprise has the meaning given in section 2 of the State-Owned Enterprises Act 1986.

Statement means a statement of holding of Quoted Financial Products complying with Rule 8.3.

Subsidiary means:

(a) a subsidiary within the meaning of section 5 of the Companies Act 1993 (read together with sections 7 and 8 of that Act), and

(b) an entity treated as a subsidiary within the meaning of any financial reporting standard approved in terms of section 19 of the Financial Reporting Act 2013.

Substantial Product Holder has the meaning given in section 274(1) of the FMC

Act.

Takeovers Code means the Takeovers Regulations 2000.

through MAP means to submit the relevant announcement for market release through MAP in accordance with Rule 3.26.

Treasury Stock means shares held by an Issuer under provisions in the Companies Act 1993 which enable treasury stock to be held by a company. This includes shares held by a Subsidiary of a company other than in accordance with section 82(6) of the Companies Act 1993.

Tribunal means the NZ Markets Disciplinary Tribunal, a body constituted by NZX under the Tribunal Rules and, where the context permits, includes the chairperson, deputy chairperson and any division or authorised delegate of the NZ Markets Disciplinary Tribunal.

Tribunal Rules means the NZ Markets Disciplinary Tribunal Rules.

Vendor Securities means Equity Securities issued by an Issuer at or around the time of its Listing, or at or around the first Quotation of Equity Securities of the same Class, or which are issued with a view to such Listing or Quotation, and which are issued as consideration for (whether directly or indirectly), or in connection with:

(a) the acquisition by the Issuer or its Subsidiary of any material property (including any patent or intellectual property, or goodwill), or

(b) services provided or to be provided to the Issuer or its Subsidiary (whether related to its formation, promotion, or Listing, or otherwise),

and includes:

(c) any Financial Products issued through a consolidation, subdivision, bonus issue, or similar arrangement in respect of Equity Securities referred to above, and

(d) any other Financial Products which NZX determines are Vendor Securities.

Vote means a right to vote at a meeting of Financial Product holders, other than:

(a) a right to vote solely upon matters immaterial or inconsequential to the control of the Issuer or any material part of the Issuer's business,

(b) a right to vote only when payments in respect of the Financial Product in question is in arrears or some other default exists, or on a proposal to change the rights attaching to that Financial Product, or in other circumstances of a special or remote nature, or

(c) a right to vote attaching to Financial Products, other than Equity Securities, which is exercisable only at meetings of holders of those Financial Products.

Wholesale Debt Securities means Debt Securities for which NZX has accepted an application under Rule 1.8.1, where the terms of offer by the Issuer limit subscription in New Zealand to wholesale investors (as defined in Schedule 1 of the FMC Act) or a subset of such wholesale investors.

Part B – Interpretation

1 An Issuer must comply with the Rules as interpreted:

(a) in accordance with their spirit, intention and purpose,

(b) by looking beyond form to substance, and

(c) in a way that best promotes the principles on which the Rules are based.

2 In these Rules (unless the context requires otherwise):

(a) headings to clauses are for reference only and are not an aid in interpretation,

(b) references to a statutory provision, regulation or exemption notice will be construed as a reference to that statutory provision, regulation or exemption notice as it may be amended, re-enacted or modified by other provisions (including by regulation, order-in-council or other instrument), and includes reference to any other statutory provision necessary for the interpretation of thestatutory provision, regulation or exemption notice,

(c) any reference to a person includes that person's successors and permitted assigns,

(d) any reference to a period of time is to be calculated as follows:

(i) A period of time described as beginning at, on, or with a specified day, act, or event includes that day or the day of the act or event.

(ii) A period of time described as beginning from or after a specified day, act, or event does not include that day or the day of the act or event.

(iii) A period of time described as ending by, on, at, or with, or as continuing to or until, a specified day, act, or event includes that day or the day of the act or event.

(iv) A period of time described as ending before a specified day, act, or event does not include that day or the day of the act or event.

(v) A reference to a number of days between 2 events does not include the days on which the events happened.

(e) any reference to a day which is not a Business Day, upon or by which something must be done, is a reference to the next Business Day,

(f) words importing the plural include the singular and vice versa and words importing gender import all genders,

(g) a reference to conduct or engaging in conduct includes doing, omitting to do or refusing to do any act and, unless otherwise stated, extends to causing, permitting, suffering or authorising the act or the omission to occur,

(h) all warranties, representations, indemnities, covenants, agreements and obligations given or entered into by more than one person will be deemed to have been given or entered into jointly and severally,

(i) if a word or expression is given a particular meaning, another part of speech or grammatical form of that word or expression has a corresponding meaning,

(j) a reference to a Rule (e.g. Rule 2.6) includes a reference to all sub-Rules included under that Rule (e.g. Rule 2.6.3) and a reference to a Section (e.g. Section 2) includes a reference to all Rules and sub-Rules within that Section,

(k) a reference to time is a reference to New Zealand time and references to monetary amounts are to New Zealand currency,

(l) if the name of a body (whether incorporated or not) or the name of an office is changed by law, then a reference in these Rules is taken as a reference to the body or office under the new name, and

(m) the appendices to the Rules have the same force and effect as if set out in the body of the Rules.

3 In these Rules the following Rules of interpretation apply:

(a) an **agreement** includes a contract, deed, licence, franchise, undertaking or other document (in each case, whether oral or written) and includes that agreement as modified, supplemented, novated or substituted from time to time,

(b) a **holding company** means a company of which another company is a Subsidiary,

(c) a reference to **including** or similar words means including without limiting the generality of the preceding words,

(d) a **law** includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure, in each case of any relevant jurisdiction (and "lawful" and "unlawful" will be construed accordingly),

(e) the word **person** includes any association of persons whether corporate or unincorporated, and any state or government or department or agency thereof, whether or not having separate legal personality,

(f) **rights** includes authorities, discretions, remedies, powers and causes of action, and

(g) the words **written** and **writing** include all means of communication resulting in permanent visible reproduction.

4 These Rules are governed by, and construed in accordance with, the law of New Zealand. Each Issuer is deemed, by entering into an agreement to be Listed with NZX, to have irrevocably submitted to the non-exclusive jurisdiction of the Courts of New Zealand.

Section 1
Listing and Quotation

Eligibility for Listing and Quotation – Equity, Debt, Funds, Other Financial Products

Application for Listing and Quotation

Backdoor Listings

Eligibility requirements for Equity, Debt & Fund Securities

1.1 **Eligibility for Listing as an Issuer of Equity Securities and Quotation of Equity Securities**

1.1.1 For an applicant to be Listed on the Main Board, with NZX as its Home Exchange and its Equity Securities Quoted:

(a) the applicant must have a Governing Document consistent with Rule 2.18 and Rule 2.20 and applicable legislation, and

(b) a Class of Equity Securities will not generally be considered for initial Quotation unless:

(i) the anticipated market capitalisation of the applicant's Equity Securities tobe Quoted is at least $10 million, and

(ii) NZX is satisfied that, upon Quotation:

(A) at least 20% of the Class of Equity Securities will be held by at least 100 Non-Affiliated Holders (being the registered holders or, in the case of Equity Securities held through a custodian, the beneficial owners of the Equity Securities), with each such Non- Affiliated Holder holding (or having a beneficial interest in) at least a Minimum Holding, or

(B) the applicant will have an appropriate spread of Equity Security holders to ensure a sufficiently liquid market in the Class of Equity Securities.

1.1.2 The Manager of a Managed Investment Scheme may apply to List as an Issuer of Equity Securities, and to have the Financial Products of the Managed Investment Scheme Quoted as Equity Securities, rather than as Fund Securities. If NZX accepts such an application, the Financial Products will be deemed to be Equity Securities and not Fund Securities, and the Rules (including Appendix 3) will apply accordingly.

1.2 **Eligibility for Listing as an Issuer of Debt Securities and Quotation of Debt Securities**

1.2.1 For an applicant to be Listed on the Debt Market, with NZX as its Home Exchange, and its Debt Securities Quoted:

(a) the applicant must have a Governing Document consistent with Rule 2.18 and Rule 2.21, and applicable legislation, and

(b) a Class of Debt Securities will not generally be considered for initial Quotation unless the nominal amount of the applicant's Debt Securities to be Quoted is at least $10 million.

1.3 **Rules which do not apply to Issuers of Debt Securities**

1.3.1 The following Rules do not apply to an Issuer of Debt Securities:

(a) Rules 2.1 to 2.14, 3.4, 3.8, 3.14.4, Section 4 (except for Rule 4.19), Section 5, Section 6, Rule 7.5, Rule 7.8, and

(b) any other Rules that NZX specifies either before or after the Issuer is Listed,

unless the Issuer is also an Issuer of other Quoted Financial Products, in which case the Issuer must comply with the Rules that apply in respect of those Quoted Financial Products.

1.4 **Eligibility for Listing as an Issuer of Fund Securities and Quotation of Fund Securities**

1.4.1 For an applicant to be Listed on the Main Board, with NZX as its Home Exchange and its Fund Securities Quoted:

(a) the applicant must have a Governing Document consistent with Rule 2.18 and Rule 2.22, and applicable legislation,

(b) a Class of Fund Securities will generally not be considered for initial Quotation unless:

(i) the anticipated market capitalisation of the applicant's Fund Securities tobe Quoted is at least $10 million, and

if the applicant is not a Continuous Issuer, NZX is satisfied that, upon Quotation:

(ii) at least 20% of the Class of Fund Securities will be held by at least 100 Non-Affiliated Holders (being the registered holders or, in the case of Fund Securities held through a custodian, the beneficial owners of the Fund Securities), with each such Non-Affiliated Holder holding (or

havinga beneficial interest in) at least a Minimum Holding, or

(iii) the applicant will have an appropriate spread of Fund Security ownership to ensure a sufficiently liquid market in the Class of Fund Securities.

1.5 **Rules which do not apply to Issuers of Fund Securities**

1.5.1 The following Rules do not apply to an Issuer of Fund Securities:

(a) Rules 2.1 to 2.14, 3.5 to 3.10, Section 4 (except for Rules 4.18 and 4.19), Section 5, Section 6, and

(b) any other Rules that NZX specifies either before or after the Issuer is Listed,

unless the Issuer is also an Issuer of other Quoted Financial Products, in which case the Issuer must comply with the Rules that apply in respect of those Quoted Financial Products.

Eligibility requirements for NZX Foreign Exempt Issuers

1.6 **Eligibility for Listing as an NZX Foreign Exempt Issuer**

1.6.1 For an applicant to be Listed with NZX as an NZX Foreign Exempt Issuer, or for an Issuer to have Financial Products Quoted as an NZX Foreign Exempt Issuer, the applicant or Issuer (as applicable) must:

(a) have a Recognised Stock Exchange as its Home Exchange, and

(b) be subject to the listing rules (or their equivalent) of its Home Exchange in respect of the Financial Products it proposes to Quote as an NZX Foreign Exempt Issuer,

and the applicant need not apply for Quotation of all Classes of Financial Products quoted on its Home Exchange.

1.6.2 An existing NZX Foreign Exempt Issuer may apply for a Class of Financial Products to be Quoted, with NZX being the Home Exchange of such Financial Products, while retaining its NZX Foreign Exempt Issuer status in respect of other Financial Products.

1.7 **Compliance with rules of Home Exchange**

1.7.1 An NZX Foreign Exempt Issuer will be deemed (subject to Rule 1.7.2) to satisfy and comply with all the Rules so long as:

(a) it remains listed on its Home Exchange, and

(b) all of the Financial Products of the Issuer Quoted on NZX remain quoted on its

Home Exchange,

unless the NZX Foreign Exempt Issuer is also an Issuer of another class of Financial Product Quoted on NZX, with NZX being the Home Exchange of such Financial Products, in which case the Issuer must comply with applicable laws and the Rules that apply in respect of those Quoted Financial Products.

1.7.2 An NZX Foreign Exempt Issuer must:

(a) release through MAP at the same time as, or promptly and without delay after, any information or notice it has provided to its Home Exchange that is made public, and any additional information NZX requests from time to time, in the manner and form NZX prescribes from time to time,

(b) promptly and without delay release through MAP any notice or other information provided to its Home Exchange by third parties for market release in relation to the Issuer that is made public and released under the listing rules of its Home Exchange or applicable laws (for example, equivalent disclosures by substantial product holders, directors and senior managers or takeover notifications),

(c) continue to comply with the listing rules (or their equivalent) of its Home Exchange,

(d) promptly inform NZX if the Issuer:

(i) has breached any listing rules (or their equivalent) of its Home Exchange,

(ii) is granted a waiver of all or part of any listing rules (or their equivalent) of its Home Exchange, or

(iii) has had its listing cancelled, or the quotation of its Financial Products suspended, on its Home Exchange,

(e) promptly and without delay request a trading halt in respect of its Quoted Financial Products if trading in those Financial Products is halted (or the Issuer has applied for a trading halt) on its Home Exchange, and

(f) comply with the following Rules with all necessary modifications:

(i) Rule 1.7.2, Rule 1.19, Rule 1.21, Rule 1.22.2, Rule 1.23.1, Rule 3.26, and Rule 3.29,

(ii) Section 9, and

(iii) any other Rules that NZX may declare, at any time by notice to the Issuer, to apply to such Issuer regardless of whether the listing rules

(or their equivalent) of its Home Exchange contain a similar provision.

1.7.3 As a general rule, NZX will follow the actions of the Home Exchange in respect of an NZX Foreign Exempt Issuer. NZX will cancel the Listing, suspend Quotation or institute atrading halt on the same terms and, to the extent practicable, at the same time as the Home Exchange of the NZX Foreign Exempt Issuer.

Eligibility requirements for Wholesale Debt Securities Issuers

1.8 **Eligibility for Listing as an Issuer of Wholesale Debt Securities**

1.8.1 For an applicant to be Listed on the Debt Market as an Issuer of Wholesale Debt Securities, for each Class of Wholesale Debt Securities the applicant must provide NZX with:

(a) a copy of the Governing Document,

(b) a copy of the principal offer document or terms sheet for the relevant Wholesale Debt Securities, and

(c) a notice describing the number and details of each Class of Wholesale Debt Securities to be covered by its Listing from time to time.

1.8.2 An Issuer of Wholesale Debt Securities accepted for Listing must not state or imply that its Wholesale Debt Securities will be quoted by NZX at any time.

1.9 **Rules which do not apply to Issuers of Wholesale Debt Securities**

1.9.1 The following Rules do not apply to an Issuer of Wholesale Debt Securities:

(a) Sections 2, 3 (except for Rule 3.13.1, Rule 3.25.2, and Rule 3.26), 4, 5, 6, 7, and 8, and

(b) any other Rules that NZX specifies either before or after the Issuer is Listed,

unless the Issuer is also an Issuer of Quoted Financial Products, in which case the Issuer must comply with the Rules that apply in respect of those Quoted Financial Products.

Eligibility requirements for Other Financial Products

1.10 **Listing and Quotation of Other Financial Products**

1.10.1 An applicant which does not fall within the categories in Rule 1.1, Rule 1.2, Rule 1.4, Rule 1.6 or Rule 1.8 may be accepted for Listing with NZX if NZX is satisfied that such applicant is suitable for Listing and, if applicable, the applicant's Other Financial Products are suitable for Quotation.

1.10.2 An Issuer accepted for Listing under Rule 1.10.1 will be subject to such Rules and other requirements that NZX specifies either before or after the Issuer is Listed.

Backdoor Listings

1.11 **Approval of Backdoor or Reverse Listings**

1.11.1 If an Issuer proposes to enter into a Backdoor or Reverse Listing transaction, then NZX may, in addition to any other rights and powers it has under these Rules, require the Issuer to re-comply with the relevant listing and quotation requirements in Section 1 as if the Issuer was a new applicant for Listing, to the extent NZX considers necessary.

Application requirements for Listing and Quotation

1.12 **Application for Listing**

1.12.1 An applicant may apply to NZX to List on the Main Board or Debt Market if eligible to do so in accordance with the requirements of this Rule 1.12.

1.12.2 The following information and material must be provided with any application to List:

(a) an executed listing agreement, in a form specified by NZX, to the effect that the applicant will at all times comply with the Rules (or a confirmation that the applicant will execute and provide a listing agreement prior to Listing),

(b) a copy of the applicant's Governing Document,

(c) confirmation that any fees prescribed by NZX while Listed will be paid,

(d) if Quotation of a Class of Financial Products is sought at the time of Listing, the further information specified in Rule 1.13, Rule 1.14, Rule 1.15 or Rule 1.16 (as applicable),

(e) a copy of the applicant's certificate of incorporation or commensurate document,

(f) confirmation that the bond or deposit required by Rule 1.23 has been provided, or will be provided prior to Listing,

(g) the number and details of each Class of Financial Product on issue at the time of the application and, to the extent the number and details are known at the time at which the application is made, of any issue or allotment intended prior to Listing (other than, in any case, Debt Securities which are not Quoted or not intended to be Quoted and any Class of Financial Product for which application for Quotation is not sought),

(h) contact details of the applicant (being a phone number, postal address and

email address),

(i) copies of the applicant's annual reports for the last five years, if available,

(j) all other documents or information as specified in any guidance published by NZX from time to time,

(k) contact information for a Primary Authorised Representative and Secondary Authorised Representative, in the form prescribed by NZX from time to time, and

(l) any other information or documents that NZX may request.

1.13 **Application for Quotation of Equity Securities**

1.13.1 An Issuer, or applicant for Listing, may apply to NZX for a Class or Classes of Equity Securities to be Quoted on the Main Board.

1.13.2 The following information and material must be provided with an application under Rule 1.13.1:

(a) details of the Equity Security for which Quotation is sought, including the number of such Equity Securities (to the extent known at the time at which the application is made) and Class,

(b) a draft Offer Document or Profile for the Equity Securities, to the extent required under Rule 7.3.1,

(c) details of proposed arrangements to ensure opportunity for holders to trade on Quotation of the Equity Securities,

(d) notwithstanding Rule 1.22.3(a), confirmation that the Primary Authorised Representative has successfully completed the Authorised Representative Training,

(e) all other documents or information as specified in any guidance published by NZX from time to time, and

(f) any other information or documents that NZX may request.

1.14 **Application for Quotation of Debt Securities**

1.14.1 An Issuer, or applicant for Listing, may apply to NZX for a Class or Classes of Debt Securities to be Quoted on the Debt Market.

1.14.2 The following information and material must be provided with an application under Rule 1.14.1:

(a) details of the Debt Security for which Quotation is sought, including the number or total nominal amount of such Debt Securities (to the extent known at the time at which the application is made), Class, and face value (if any),

(b) a draft Offer Document or Profile for the Debt Securities, to the extent required under Rule 7.3.1,

(c) details of proposed arrangements to ensure the opportunity for holders to trade on Quotation of the Debt Securities,

(d) details of any designation sought for the Debt Securities (e.g. "green bonds") and the certification methodology applied for such designation,

(e) all other documents or information as specified in any guidance published by NZX from time to time, and

(f) any other information or documents that NZX may request.

1.15 **Application for Quotation of Fund Securities**

1.15.1 An Issuer, or applicant for Listing, may apply to NZX for a Class or Classes of Fund Securities to be Quoted on the Main Board.

1.15.2 The following information and material must be provided with an application under Rule 1.15.1:

(a) details of the Fund Security for which Quotation is sought, including the number of such Fund Securities (to the extent known at the time at which the application is made) and Class,

(b) the statement of investment policy and objectives (SIPO) prepared in accordancewith Part 4 of the FMC Act, if applicable,

(c) a draft Offer Document or Profile for the Fund Securities, to the extent required under Rule 7.3.1,

(d) the names of the investment manager, investment adviser, administration agent and custodian of the investment fund (as applicable),

(e) details of proposed arrangements to ensure the opportunity for holders to trade on Quotation of the Fund Securities,

(f) details of any designation sought for the Fund Securities and the certification methodology applied for such designation,

(g) all other documents or information as specified in any guidance published by NZX from time to time, and

(h) any other information requested by NZX.

1.16 **Application for Quotation of Other Financial Products**

1.16.1 An applicant may apply to NZX for Quotation of a Class or Classes of Other Financial Products. For an applicant to apply for Other Financial Products to be Quoted on the Main Board or Debt Market, the following information and material must be provided to NZX:

(a) details of the Other Financial Product for which Quotation is sought, including the number or total nominal amount of such Other Financial Products (to the extent known at the time at which the application is made), Class and face value (if applicable),

(b) any draft Offer Document or Profile for the Other Financial Products, unless the Issuer or applicant is, or intends to be, an NZX Foreign Exempt Issuer in respect of such Other Financial Products, to the extent required under Rule 7.3.1,

(c) details of proposed arrangements to ensure opportunity for holders to trade on Quotation of the Other Financial Products,

(d) details of any designation sought for the Other Financial Products and the certification methodology applied for such designation,

(e) all other documents or information as specified in any guidance published by NZX from time to time, and

(f) any other information requested by NZX.

Designations

1.17 **Designations**

1.17.1 NZX may, on request from an Issuer or an applicant for Listing, approve a designation in respect of Quoted Financial Products (e.g. "green bonds") at NZX's sole discretion and on such terms and conditions as NZX may determine.

1.17.2 If an Issuer has a designation in respect of its Quoted Financial Products, then:

(a) NZX may:

(i) request the Issuer to provide additional information regarding the certification methodology applied for such designation, or

(ii) remove that designation if NZX considers it to be misleading or inaccurate, and

(b) if the Issuer becomes aware that such designation is, or may have become, misleading or inaccurate, the Issuer must provide to NZX details as to why

suchdesignation is, or may be, misleading or inaccurate.

1.18 **Non-standard Listings**

1.18.1 An Issuer, or applicant for Listing, which does not comply fully with all applicable Rules may be Listed, at NZX's sole discretion, with the designation "Non Standard" or "NS". Such an Issuer must ensure that any advertisement (as that term is defined in section 6(1) of the FMC Act), Offer Document, Profile or statement for distribution which refers in any way to the Listing or to the Quotation of the Financial Products, and all annual reports of that Issuer, state prominently:

(a) that the Issuer has a Non Standard designation, and

(b) where it is desirable, taking into account the context and the relevance of the information to the recipients, the reasons for the Non Standard designation.

General rules for all Listings and Quotations

1.19 **NZX discretion as to Listing and Quotation**

1.19.1 NZX may refuse Listing or Quotation in its absolute discretion and without giving any reasons for such refusal.

1.19.2 NZX may at any time impose conditions on an applicant for Listing or Issuer which must be fulfilled in order to obtain or maintain a Listing or Quotation where NZX considers this necessary or desirable to maintain a properly informed market or to ensure compliance with, or achieve the intent of, any of the Rules. Such conditions will be additional to the Rules.

1.19.3 NZX may require an applicant for Listing or Issuer to submit to the scrutiny of an independent expert any technical, financial or other information in any Offer Document, Profile, Appraisal Report or other document provided to NZX. The expert will report to NZX and be hired at the expense of the applicant or Issuer.

1.20 **Separate applications for each Class of Financial Products**

1.20.1 An application for Quotation must be made to NZX for each Class of Financial Products to become Quoted. If a Class of Quoted Financial Products divides into more than one Class, the Issuer must apply for Quotation of each of the resulting Classes.

1.21 **Commencement of Listing and Quotation**

1.21.1 The Rules take effect in respect of an applicant on and from the time at which it is Listed.

1.21.2 Quotation of a Class of Financial Products will be effective from the date and time specified in a notice published by NZX.

1.21.3 Financial Products issued, which are not but may become of the same Class as Quoted Financial Products, will not be Quoted until they have qualified for inclusion in the Class of Financial Product already Quoted (unless application is made for their Quotation as a separate Class).

1.22 **Authorised Representatives and Nominated Contact for service and other communications**

1.22.1 Unless the Issuer (or the Manager of the Managed Investment Scheme) is a company incorporated in New Zealand, an Issuer which has NZX as its Home Exchange must at all times while it is Listed:

(a) appoint and authorise a natural person resident in New Zealand to accept service of notices or legal proceedings from NZX and provide the contact details (being a phone number, postal address and email address) of such person, and

(b) notify NZX promptly and without delay if the person so appointed, or such person's contact details, changes.

1.22.2 An Issuer of Quoted Financial Products must:

(a) appoint a Primary Authorised Representative (who must possess a high degree of familiarity with the operations of that Issuer and have ready access to that Issuer's management and Board in respect of Rule compliance) and a Secondary Authorised Representative,

(b) in the event an Authorised Representative is unavailable for a consecutive period of more than 3 months, revoke that person's status as an Authorised Representative and appoint a new Authorised Representative,

(c) provide to NZX (not for market release), the contact information of the Primary Authorised Representative and Secondary Authorised Representative in the form prescribed by NZX from time to time, and

(d) notify NZX, in the form prescribed by NZX from time to time, as soon as reasonably practicable after the Issuer becomes aware of:

(i) a change to an Authorised Representative's contact information that has previously been provided to NZX, or

(ii) the appointment of a new Authorised Representative.

1.22.3 An Issuer of Quoted Equity Securities must ensure that its Primary Authorised Representative:

(a) who is the Issuer's first appointed Primary Authorised Representative, has successfully completed the Authorised Representative Training within 6 months of the effective date of this Rule, subject to Rule 1.13.2(d),

(b) who is a replacement Primary Authorised Representative, has successfully completed the Authorised Representative Training not later than six months after being appointed as a Primary Authorised Representative, and

(c) successfully completes the Authorised Representative Training within six months after the third anniversary of last having successfully completed the Authorised Representative Training.

1.22.4 NZX may, at its sole discretion, require that an Issuer appoint a new Authorised Representative.

1.23 **Payment of Fees**

1.23.1 Each Issuer must pay to NZX the fees prescribed by NZX.

1.23.2 Every applicant for Listing must provide to NZX a bond in a form approved by NZX, for an amount determined by NZX in accordance with Rule 1.23.3 and given by a person approved by NZX for this purpose. Any Issuer which has not complied with this Rule before Listing must do so when required by NZX. NZX may agree to accept adeposit in lieu of a bond.

1.23.3 Each deposit or bond secures the payment of all amounts payable to NZX by the Issuer under the Rules. NZX may from time to time adjust the amount of each such deposit or bond. If any portion of a deposit or bond is applied in payment of monies payable to NZX by the Issuer, the Issuer must promptly arrange for the deposit or bond to be reinstated to its previous amount.

Section 2
Governance Requirements

Board Composition, Independent Directors

Director Nominations, Rotation, Removal

Audit Committee

Governance for non-Equity issuers

Requirements for Governing Documents

Minimum content for Equity, Debt, Fund Governing Documents

Governance requirements for Equity Security Issuers

2.1 **Composition of Board of Directors**

2.1.1 The composition of the Board of an Issuer of Quoted Equity Securities must satisfy the following requirements at all times (excluding alternate Directors):

(a) there must be at least three Directors,

(b) at least two Directors must be ordinarily resident in New Zealand, and

(c) at least two Directors must be Independent Directors.

2.2 **Appointment of Directors**

2.2.1 A person may be appointed as a Director of the Issuer by:

(a) appointment by the Board, if permitted by the Governing Document of the Issuer,

(b) nomination and appointment at an Issuer's annual or special meeting of Equity Security holders in accordance with Rule 2.3,

(c) appointment by an Equity Security holder, as contemplated in Rule 2.4, or

(d) appointment as an alternate Director under Rule 2.5.

2.3 **Director Nominations and Appointment**

2.3.1 No person (other than a Director retiring at the meeting) may be elected as a Director at a meeting of an Issuer's Equity Security holders unless that person has been nominated

by an Equity Security holder who will be entitled to attend and Vote at the meeting if he, she or it continues to hold Equity Securities on the date on which the entitlement to attend and Vote at the meeting is determined.

2.3.2 An Issuer must comply with the following Director nomination process:

(a) the closing date for nominations must be no more than two months before the date of the relevant meeting at which the election is to take place,

(b) the closing date for nominations must be announced to the market at least 10 Business Days prior to such closing date,

(c) there must be no restriction on who may be nominated as a Director, unless:

(i) the Governing Document requires Directors to hold certain Financial Products to qualify as a Director, or

(ii) applicable legislation restricts who may be a Director of the Issuer,

(d) subject to (c) above, there must be no precondition to the nomination of a Director other than compliance with the time limits in this Rule, and

(e) details of all nominations received prior to the closing date (and not later withdrawn) must be included in the notice of the relevant meeting.

2.3.3 Each resolution of the holders of Equity Securities to appoint, elect or re-elect a Director must be for the appointment, election or re-election of one Director only.

2.4 **Equity Holder appointment rights**

2.4.1 The Governing Document may give an Equity Security holder the right to appoint one or more Directors (and to remove any Director so appointed), provided:

(a) the appointment does not result in the proportion of such Directors to the total number of Directors (excluding alternate Directors) exceeding the proportion of total Votes attaching to the Equity Securities in the Issuer held by the appointer, and

(b) if the appointer exercises its right to appoint one or more Directors with such Director remaining in office at the time of the election of other Directors, the appointer must not also Vote upon the election of other Directors.

2.5 **Alternate Directors**

2.5.1 No Director may appoint an alternate Director to act for him or her except with the consent of a majority of his or her co-Directors. The alternate appointment may be revoked by the appointing Director or by a majority of the Board. A Director may not act as alternate for another Director. No Director may appoint a deputy or agent

otherwise than as an alternate Director.

2.6 **Independence of Directors**

2.6.1 The Board must identify which Directors it has determined to be Independent Directors, having had regard to the non-exhaustive factors described in the NZX Corporate Governance Code that may impact director independence.

2.6.2 The determination under Rule 2.6.1 as to whether a Director is an Independent Director must be made and released through MAP no later than 10 Business Days after any Director's initial appointment.

2.6.3 If, at any time, the Board makes a determination regarding a Director's independence that differs from the position most recently released through MAP (for example, that an Independent Director is no longer independent), such determination must be promptly and without delay released through MAP.

2.6.4 The Issuer is responsible for ensuring that Directors provide sufficient information to the Board for the Board to make a determination under Rule 2.6.1.

2.7 **Rotation of Directors**

2.7.1 A Director of an Issuer must not hold office (without re-election) past the third annual meeting following the Director's appointment or 3 years, whichever is longer. However, a Director appointed by the Board must not hold office (without re-election) past the nextannual meeting following the Director's appointment.

2.7.2 Rule 2.7.1 does not apply to Directors appointed by an Equity Security holder under Rule 2.4.

2.8 **Removal of Directors**

2.8.1 All Directors (other than a Director appointed by an Equity Security holder under Rule 2.4) must be subject to removal from office by Ordinary Resolution.

2.9 **Proceedings and Powers of Directors**

2.9.1 Directors may continue to act where there is a vacancy in their body, but where the number of Directors has fallen below the minimum set by the Governing Document, the continuing Directors may act to remedy the shortfall in Directors or to summon a meeting of the Issuer's Equity Security holders, but for no other purpose.

2.10 **Interested Directors**

2.10.1 A Director must not vote on a Board resolution for, or be counted in a quorum for the consideration of, any matter in which that Director is interested. For this purpose, the term "interested" bears the meaning assigned in section 139 of the Companies Act 1993. If the Issuer is not a company registered under that Act, the reference to the

"company" in that section will be read as a reference to the Issuer.

2.10.2 Notwithstanding Rule 2.10.1, a Director of an Issuer incorporated under the Companies Act 1993 may vote on a Board resolution for, and be counted in a quorum for the consideration of, a matter in which that Director has an interest, if the matter:

(a) is one in respect of which Directors are expressly required under that Act to signa certificate, or

(b) relates to the grant of indemnity under section 162 of that Act.

2.11 **Directors' Remuneration**

2.11.1 No remuneration may be paid by an Issuer, or its Subsidiaries (unless such Subsidiary is Listed), to a Director in his or her capacity as a Director without prior authorisation by an Ordinary Resolution. Such resolution must express Directors' remuneration as either a monetary sum per annum payable to:

(a) all Directors of the Issuer in aggregate, or

(b) any person who from time to time holds office as a Director of the Issuer.

2.11.2 A resolution for the purposes of Rule 2.11.1:

(a) must only be approved if notice of the amount of any increase in remuneration has been given in the notice of meeting, and

(b) may provide that the remuneration may, in whole or in part, be through an issue of Equity Securities, provided the issue is in compliance with Rule 4.7.

2.11.3 If remuneration is expressed in accordance with Rule 2.11.1(a) and there is an increase in the number of Directors from the number of Directors in office at the conclusion of a meeting of Financial Product holders at which the remuneration was approved by an Ordinary Resolution, the Board may, without an Ordinary Resolution, increase the remuneration payable to all Directors of the Issuer in aggregate. The amount of the increase per additional Director may not exceed the amount necessary to enable the additional Director or Directors to be paid the average amount then being paid to each non-Executive Director (other than the chairperson) of the Issuer.

2.11.4 A lump sum payment or pension may be made to a Director or former Director, or to his or her dependents, on retirement or cessation of office provided that the amount of the payment, or the method of calculation, has been authorised by an Ordinary Resolution.

2.11.5 The resolutions referred to in this Rule 2.11 are subject to the voting restrictions in Rule 6.3.

2.12 **Directors' Remuneration as Employees or in another capacity**

2.12.1 Nothing in Rule 2.11 affects:

(a) the remuneration of Executive Directors in their capacity as Employees, or

(b) the amount paid to an Executive Director upon or in connection with the termination of his or her employment with the Issuer, or any payments relating to the contribution (or any normal subsidy related thereto) made by a Director to a superannuation scheme.

2.12.2 A Director's remuneration for work outside his or her capacity as a Director of the Issuer or a Subsidiary may be approved by the Directors without Shareholder approval, subject to Rule 5.2 (if applicable).

2.13 **Audit Committee**

2.13.1 Each Issuer must establish an Audit Committee.

2.13.2 The Audit Committee must:

(a) be comprised solely of Directors of the Issuer,

(b) have at least three members,

(c) have a majority of Independent Directors, and

(d) have at least one member with an accounting or financial background.

2.13.3 Subject to Rule 2.13.4 the responsibilities of an Issuer's Audit Committee include as a minimum:

(a) ensuring processes are in place and monitoring those processes so that the Board is properly and regularly informed and updated on corporate financial matters,

(b) recommending the appointment and removal of the independent auditor,

(c) meeting regularly to monitor and review the independent and internal auditing practices,

(d) having direct communication with and unrestricted access to the independent and any internal auditors or accountants,

(e) reviewing the financial reports and advising all Directors whether they comply with the appropriate laws and regulations, and

(f) ensuring that the Key Audit Partner is changed at least every five years.

2.13.4 The responsibilities of the Audit Committee of a Public Audit Issuer are not required to include the matters specified in Rule 2.13.3(b) and 2.13.3(f), if the Public Audit Issuer has clearly and prominently disclosed in its annual report and any Offer Document, either:

(a) that under the Public Audit Act 2001, the Controller and Auditor-General (**Auditor-General**) is the independent auditor of the Public Audit Issuer;

or

(b) that under the Public Audit Act 2001, the Auditor-General appoints the independent auditor of the Public Audit Issuer and ensures that the Key Audit Partner is changed at least every five years.

2.14 **Equity Security holder notices and meetings**

2.14.1 Equity Security holders of all Classes (whether or not they have a right to Vote) are entitled to attend annual and special meetings and to receive copies, or have access to electronic copies, of all notices, reports and financial statements issued generally to holders of Financial Products carrying Votes.

2.14.2 Where a Quoted Equity Security holder has only supplied an overseas address or an electronic address, notices must be sent to that physical address or sent electronically to such electronic address.

2.14.3 An Issuer which has NZX as its Home Exchange:

(a) may hold meetings as a physical meeting, by audio, audio and visual, and/or electronic means, and

(b) must hold all physical meetings of holders of Quoted Financial Products in New Zealand, or in Australia if holders of Quoted Financial Products in New Zealand may participate in the meeting by audio, audio and visual, and/or electronic means.

Governance requirements for Debt Security Issuers

2.15 **Debt Issuers comply with applicable law**

2.15.1 An Issuer of Debt Securities must comply with Part 4 of the FMC Act to the extent required by law.

Governance requirements for Fund Security Issuers

2.16 **Fund Issuers comply with applicable law**

2.16.1 An Issuer of Fund Securities must comply with Part 4 of the FMC Act to the extent required by law.

2.16.2 If an Issuer of Fund Securities is not subject to Part 4 of the FMC Act, NZX may require, by prior written notice to the Issuer, an Issuer to comply with any requirement in Part 4 of the FMC Act (with all necessary modifications) as if the Issuer were subject to Part 4 of the FMC Act.

2.16.3 The composition of the Board of the Manager of Quoted Fund Securities must include at least one Director ordinarily resident in New Zealand or Australia.

Governance requirements for Issuers of Other Financial Products

2.17 **NZX to determine governance requirements**

2.17.1 An Issuer of Other Financial Products (which are not Equity Securities, Debt Securities or Fund Securities), must comply with Part 4 of the FMC Act to the extent required by law.

2.17.2 If an Issuer of Other Financial Products is not subject to Part 4 of the FMC Act, NZX may require, by prior written notice to the Issuer, an Issuer to comply with any requirement in Part 4 of the FMC Act or the Rules (with all necessary modifications) as if the Issuer were subject to Part 4 of the FMC Act or that Rule.

Governing Document requirements for all Issuers

2.18 **Requirement to have Governing Document**

2.18.1 An Issuer must:

(a) have a Governing Document that complies with the applicable provisions of this Section 2, and

(b) comply with the terms of its Governing Document.

2.19 **Solicitor's opinion regarding Governing Document**

2.19.1 An Issuer or applicant for Listing providing a Governing Document to NZX, or prior to changing its Governing Document, must provide a solicitor's opinion. That opinion must:

(a) be provided by a barrister sole, solicitor or firm of solicitors approved by NZX,

(b) be addressed to NZX and acknowledge that the barrister sole, solicitor or firm of solicitors accepts responsibility to NZX in respect of the opinion,

(c) disclose any conflicting duties or interests the barrister sole, solicitor or firm of solicitors has and confirm that this disclosure is complete in all respects, and

(d) state whether, in the opinion of that barrister sole, solicitor, the document in

question complies with the Rules.

Governing Document requirements for Issuers of Equity Securities

2.20 **Content of Governing Document for Issuers of Equity Securities**

2.20.1 The Governing Document of each Issuer of Quoted Equity Securities must:

(a) incorporate by reference provisions consistent with, and having the same effect as, the following provisions, as modified by any Ruling relevant to the Issuer:

(i) Rule 2.1.1, Rule 2.2.1, Rule 2.5.1, Rule 2.8.1, Rule 2.9.1, Rule 2.10.1 and Rule 2.10.2,

(ii) Rule 6.3.1 to Rule 6.3.3, and Rule 6.3.5, and

(iii) if the Issuer is not a company incorporated under the Companies Act 1993, Rule 6.7.1,

(b) in the case of any non-Code Company, incorporate by reference the provisions required by Appendix 3,

(c) provide that, for so long as the Issuer is Listed, the Issuer must comply with the Rules, and

(d) provide that any Rulings authorising an act or omission which would otherwise be in breach of the Issuer's Governing Document will be deemed to be authorised by the Governing Document unless the Governing Document contains a contrary intention, and

(e) provide that, subject to (d), if a provision in the Governing Document is inconsistent with the Rules, the Rules will prevail.

2.20.2 The Governing Document may provide that failure to comply with:

(a) the Rules, or

(b) a provision of the Governing Document corresponding with a provision of the Rules,

does not affect the validity or enforceability of any transaction, contract, action, decision or vote taken at a meeting of Equity Security holders, or other matter entered into by, or affecting, the Issuer. Such provision must expressly state that the provision does not limit the rights of Equity Security holders against the Issuer or the Directors of the Issuer. If such a provision is included it must also expressly state that a party to a transaction or contract who knew of the non-compliance is not entitled to enforce that transaction or contract.

Governing Document requirements for Issuers of Debt Securities

2.21 **Content of Governing Document for Issuers of Debt Securities**

2.21.1 Every Governing Document governing Quoted Debt Securities must provide that:

(a) a meeting of Quoted Debt Security holders must be convened by the Issuer on the written request of holders of Quoted Debt Securities that have a combined nominal value of 5% or more of the nominal value of the Quoted Debt Securities on issue in that Class, or such other number of holders as required by section 120(1)(b) of the FMC Act (if applicable),

(b) the necessary majority for passing an extraordinary resolution is approval of holders holding at least 75% of the nominal value of those Quoted Debt Securities held by persons entitled to vote and voting, and

(c) must contain such other provisions as NZX may require in any particular case for the protection of holders of the Quoted Debt Securities in question.

Governing Document requirements for Issuers of Fund Securities

2.22 **Governing Document for Issuers of Fund Securities**

2.22.1 Every Governing Document for an Issuer of Fund Securities must:

(a) comply with Part 4 of the FMC Act to the extent required by law, and

(b) contain such other provisions as NZX may require in any particular case for the protection of holders of the Fund Securities in question.

Governing Document requirements for Issuers of Other Financial Products

2.23 **Governing Document for Issuers of other Financial Products**

2.23.1 Every Governing Document governing Other Financial Products must:

(a) comply with Part 4 of the FMC Act to the extent required by law, and

(b) contain such other provisions as NZX may require in any particular case for the protection of holders of the Other Financial Products in question.

Section 3
Disclosure

Continuous disclosure

Periodic Disclosure / Fund Updates

Event Disclosure

Making Announcements to the NZX Market Announcement Platform

Continuous disclosure

3.1 **Disclosure of Material Information**

3.1.1 Once an Issuer becomes Aware of any Material Information relating to it, the Issuer must:

(a) promptly and without delay release that Material Information through MAP, and

(b) not disclose any Material Information to the public, any other stock exchange (except as provided for in Rule 3.26.2(d)) or any other party without first releasing that Material Information through MAP.

3.1.2 Rule 3.1.1 does not apply when:

(a) one or more of the following applies:

(i) release of the information would be a breach of law,

(ii) the information concerns an incomplete proposal or negotiation,

(iii) the information contains matters of supposition or is insufficiently definite to warrant disclosure,

(iv) the information is generated for internal management purposes, or

(v) the information is a trade secret,

(b) the information is confidential and its confidentiality is maintained, and

(c) a reasonable person would not expect the information to be disclosed.

3.2 **False Market**

3.2.1 An Issuer must promptly and without delay release Material Information through MAP to the extent necessary to prevent development or subsistence of a market for its Quoted Financial Products which is materially influenced by false or misleading information emanating from:

(a) the Issuer or any Associated Person of the Issuer, or

(b) other persons in circumstances in each case which would give such information substantial credibility,

and which is of a reasonably specific nature whether or not Rule 3.1.2 applies.

3.3 **No Contracting out**

3.3.1 An Issuer must avoid entering into any obligation which may prejudice its ability to comply freely with the provisions of Rule 3.1 or Rule 3.2 to the extent that is reasonably possible without causing a material adverse effect on the Issuer's business.

3.4 **Related Party Transactions**

3.4.1 Every Issuer must promptly and without delay release through MAP sufficient details to inform the market upon entering into a transaction or related series of transactions with a Related Party under which the Issuer:

(a) purchases, acquires, gains, leases (as lessor or lessee), sells or otherwise disposes of, assets having an Aggregate Net Value above 5% of the Issuer's Average Market Capitalisation,

(b) issues its own Financial Products or acquires its own Equity Securities, having a market value above 5% of the Issuer's Average Market Capitalisation (except where Rule 4.5 applies or for an issue of Debt Securities, in which case only the market value of Financial Products being issued to any Related Party or to any Employees of the Issuer are to be taken into account),

(c) borrows, lends, pays or receives money, or incurs an obligation, of an amount above 5% of the Issuer's Average Market Capitalisation (except for an issue of Debt Securities, in which case only the nominal amount of Debt Securities being issued to any Related Party or to any Employees of the Issuer are to be taken into account), or

(d) enters into any guarantee, indemnity, underwriting or similar obligation, or gives any security, which could expose the Issuer to liability above 5% of the Issuer's Average Market Capitalisation.

3.4.2 Rule 3.4.1 does not apply to a transaction to which Rule 5.2.1 applies.

Periodic disclosure – Equity and Debt Securities

3.5 **Results Announcement**

3.5.1 Subject to Rule 3.5.3, each Issuer of Quoted Equity Securities or Quoted Debt Securities must release a Results Announcement through MAP no later than 60 days after the end of each financial year or half year.

3.5.2 Subject to Rule 3.5.1, a Results Announcement for a full financial year may be made before, or together with, the release of an annual report.

3.5.3 If an Issuer is required to consolidate the financial results of another Listed Issuer, it may make its Results Announcement up to 5 Business Days after the earlier of the release of the other Listed Issuer's Results Announcement and the timeframe required by Rule 3.5.1.

3.6 **Preparation and delivery of Annual Reports**

3.6.1 Each Issuer of Quoted Equity Securities or Quoted Debt Securities must within three months after the end of each financial year:

(a) prepare an annual report, which must contain all information required by all applicable laws and these Rules, and

(b) deliver, subject to Rule 3.6.2, the annual report to:

(i) NZX by release through MAP (including by URL link to the annual report on an Issuer's website) before or at the same time as it is made available to Quoted Financial Product holders, and

(ii) each Quoted Financial Product holder in accordance with Rule 3.6.3.

3.6.2 An Issuer that comes within the State-Owned Enterprises Act 1986 is not required to issue an annual report to its Quoted Financial Product holders or NZX until that report has been provided to the Minister responsible for the State Enterprise in accordance with the requirements of the State-Owned Enterprises Act 1986 and laid by the Minister responsible for that State Enterprise before the House of Representatives in accordance with the State Owned Enterprises Act 1986 or published in the Gazette under section 17(2A) of the State-Owned Enterprises Act 1986, whichever is the earlier.

3.6.3 Annual reports must be made available to Quoted Financial Product holders by:

(a) sending to Quoted Financial Product holders:

(i) a hard copy of the annual report, or

(ii) a notice under 209(3) of the Companies Act 1993, or

(b) complying with regulations 61B to 61F of the FMC Regulations.

For the purposes of this Rule 3.6.3, sections 209 to 209C of the Companies Act 1993 and regulations 61B to 61F of the FMC Regulations will be deemed to be modified so that:

(c) "shareholders" are members of the relevant Class of Quoted Financial Product holders of that Issuer,

(d) "company" includes all Issuers, whatever their structure,

(e) "board of a company" includes the Manager of a Managed Investment Scheme,

(f) "annual report" means an annual report as required by Rule 3.6.1,

(g) references to "working days after it is prepared" and "working days after the annual report for the period is prepared" are, for an Issuer that is a State Enterprise complying with regulations 61B to 61F of the FMC Regulations, interpreted as "working days after the annual report has been provided to the Minister responsible for the State Enterprise in accordance with the requirements of the State-Owned Enterprises Act 1986 and laid by that Minister responsible for that State Enterprise before the House of Representatives in accordance with the State Owned Enterprises Act 1986 or published in the Gazette under section 17(2A) of the State-Owned Enterprises Act 1986, whichever is the earlier."

3.7 **Contents of Annual Report**

3.7.1 The annual report of an Issuer of Quoted Equity Securities or Quoted Debt Securities must contain:

(a) the information required to be published by subpart 5 of Part 5 of the FMC Act and, in the case of a company registered under the Companies Act 1993, the information required by section 211 of that Act,

(b)

(i) audited financial statements and the associated audit report in accordance with the requirements of Part 7 of the FMC Act (unless the Issuer is exempt from Part 7 of that Act) or other applicable law,

(ii) a copy of climate statements prepared by the Issuer in accordance with the requirements of Part 7A of the FMC Act, or the address of (or a link to) the internet site where a copy of those statements can be accessed, (unless the Issuer is not subject to or is exempt from the reporting obligations under Part 7A of that Act),

(c) the names and holdings of the registered holders having the 20 largest holdings of Quoted Financial Products at a date not earlier than two months before publication of the annual report, provided that, where known to the Issuer, Quoted Financial Products held through New Zealand Central Securities Depository Limited must be treated as being held by the persons on whose behalf New Zealand Central Securities Depository Limited is holding those Quoted Financial Products (and, for the avoidance of doubt, New Zealand Central Securities Depository Limited will not be treated as a registered holder) for the purposes of determining the 20 largest holdings,

(d) details of the Quoted Financial Products, and Financial Products that may Convert to Quoted Financial Products, in which each Director has a Relevant Interest at the balance date of the financial year in respect of which the annual report is prepared,

(e) details of the spread of Quoted Financial Product holders as at a date not earlier than two months before the publication of the annual report,

(f) the current credit rating status (if any) of the Issuer,

(g) a summary of all waivers:

(i) granted and published by NZX following an application by the Issuer, or

(ii) relied upon by the Issuer (regardless of when such waiver was granted or published),

in the 12 month period preceding the Issuer's balance date (or a reference to where this information can be found on the Issuer's website, where it must remain available until publication of the next annual report),

(h) details of any public exercise of NZX's powers set out in Rule 9.9.3, and

(i) for an Issuer of Quoted Equity Securities, the additional information set out in Rule 3.8.1.

3.7.2 Any Issuer which extends its annual balance date must:

(a) prepare a report containing such information, to be released through MAP at such time as NZX requires, and

(b) comply with Rule 3.21.2.

3.8 **Further Annual Report content for Issuers of Equity Securities**

3.8.1 Further to the requirements of Rule 3.7.1, the annual report of an Issuer of Quoted Equity Securities must also contain:

(a) a statement on, or URL link to a statement on, the extent to which the Issuer

has followed the recommendations in the NZX Corporate Governance Code during the relevant financial year, and the date at which the corporate governance statement is current (which must be the Issuer's balance date or a later date specified by the entity),

(b) if the Issuer has not followed a recommendation in the NZX Corporate Governance Code for any part of the relevant financial year (or for the most recent past financial year with a balance date occurring after 31 March 2022 in respect of which a disclosure has not been made under this Rule), the Issuer must separately state:

(i) which recommendation, or recommendations, were not followed,

(ii) the period over which this occurred,

(iii) the Issuer's reasons for not following the recommendation,

(iv) what, if any, alternative governance practice was adopted in lieu of the recommendation during that period, and

(v) that the alternative governance practice has been approved by the Board,

however, an Issuer need not separately state those matters for any part of a period prior to first Quotation of a Class of its Equity Securities,

(c) a quantitative breakdown as to the gender composition of the Issuer's Directors and Officers as at the Issuer's balance date, including comparative figures for the prior year which, at a minimum, must include:

(i) the number of Directors who self-identify as male, female and gender diverse, and

(ii) the number of Officers who self-identify as male, female and gender diverse,

at the relevant balance date and with comparative figures for the prior balance date (if any).

For the purposes of this Rule 3.8.1(c), "**Officer**" means a person, however designated, who is concerned or takes part in the management of the Issuer's business and reports directly to:

(iii) the Board, or

(iv) a person who reports to the Board,

(d) an evaluation from the Board on the Issuer's performance with respect to its diversity policy (if applicable),

(e) a statement as to which of its Directors are Independent Directors as at the balance date of the financial year in respect of which the annual report is prepared, and the factors relevant to that determination, and

(f) details of any Director who has been appointed under the provisions of the Governing Document complying with Rule 2.4, and the Financial Product holder which appointed that Director.

3.9 **Registered Banks exempt**

3.9.1 Rule 3.5 does not apply to an Issuer which is a Registered Bank, and Rules 3.6 to Rule 3.8 do not apply to an Issuer which is a Registered Bank that is not an Issuer of Quoted Equity Securities, provided that:

(a) a copy of the Issuer's most recent disclosure statement (and any supplementary disclosure statement) is:

(i) available on the Issuer's website and by contacting the Issuer's registered office, and

(ii) released through MAP on an ongoing basis no later than it is made publicly available elsewhere,

(b) if the Issuer is required to provide a notification of interest payment under Rule 3.14.1, such notification contains a statement providing that the Issuer's latest disclosure statement (any supplementary disclosure statement) is available on the Issuer's website and by contacting the Issuer's registered office, and

(c) the Issuer complies with all reporting requirements applying to Registered Banks, to the extent required by law or regulation.

3.10 **Announcements by Mining Issuers**

3.10.1 A Mining Issuer must comply with the requirements set out in Appendix 4.

Periodic disclosure – Fund Securities

3.11 **Fund Update**

3.11.1 Every Issuer of Fund Securities that is a managed fund (as defined in regulation 5(1) of the FMC Regulations) must prepare a Fund Update in accordance with the FMC Act andthe FMC Regulations to the extent required by law and release that Fund Update through MAP promptly and without delay after it is made publicly available in accordance with the FMC Act.

3.12 **Annual Report**

3.12.1 Every Issuer of Fund Securities must prepare and release through MAP within three

months of the balance date for the relevant scheme, an annual report prepared in accordance with the FMC Act and the FMC Regulations.

Announcements of capital changes and distributions

3.13 **Issues, acquisitions and redemption of capital**

3.13.1 If an Issuer issues, acquires or redeems:

(a) Quoted Financial Products,

(b) Financial Products Convertible into Quoted Equity Securities or Options to acquire Quoted Equity Securities,

(c) Wholesale Debt Securities which form part of the same Class as existing Wholesale Debt Securities;

the Issuer must, subject to Rule 3.13.3, provide for release through MAP in prescribed form (as applicable) details of:

(d) the Class of Financial Product and ISIN,

(e) the number of Financial Products issued, acquired or redeemed,

(f) the nominal value (if any) and the issue, acquisition, or redemption price,

(g) whether payment was in cash,

(h) any amount paid up (if not in full),

(i) for an issue of Convertible Financial Products or Options, the principal terms of Conversion (for example, the conversion price and conversion date and the ranking of the Financial Product in relation to other Classes of Financial Product) or the Option (for example, the exercise price and exercise date),

(j) the percentage of the total Class of Financial Product issued, acquired or redeemed (calculated on the number of Financial Products of the Class, excluding any Treasury Stock, in existence immediately prior to the issue, acquisition or redemption),

(k) the reason for the issue, acquisition or redemption,

(l) the specific authority for the issue, acquisition or redemption (if any),

(m) any terms or details of the issue, acquisition or redemption (such as an escrow provision),

(n) the total number of Financial Products of the Class in existence after the issue, acquisition or redemption (excluding Treasury Stock) and the total number of Financial Products of the Class held as Treasury Stock after the issue,

acquisition or redemption,

(o) in the case of an acquisition of Equity Securities by an Issuer which is a company registered under the Companies Act 1993, whether those Equity Securities are to be held as Treasury Stock, and

(p) the dates of issue, acquisition or redemption.

Subject to Rule 3.13.2, notices required by this Rule must be released through MAP within one Business Day after the issue, acquisition or redemption. For the purposes of this Rule, the sale or transfer of Treasury Stock by an Issuer is deemed to be an issue of Financial Products.

3.13.2 If an Issuer of Fund Securities is a Continuous Issuer, such Issuer may announce issues, acquisitions or redemptions of Fund Securities under Rule 3.13.1 on a consistent monthly basis (for example, by announcing the issues on the first Business Day, or second Friday, of each month).

3.13.3 Rule 3.13.1 does not apply to the acquisitions of Quoted Debt Securities by the Issuer in a market-making capacity, or where such Quoted Debt Securities are held or acquired for the benefit of a third party.

3.14 **Distributions, conversion and calls**

3.14.1 An Issuer must release through MAP, at least 5 Business Days before the Record Date, the details of a proposal to:

(a) pay or distribute a benefit on Quoted Financial Products,

(b) proceed with a Conversion of Quoted Financial Products, or a Conversion of any Financial Products into Quoted Financial Products, or

(c) make a call on a Quoted Financial Product, in the form prescribed by NZX from time to time.

3.14.2 Where the timing of a call on Quoted Financial Products is not stated in the Offer Document or Profile, the Issuer must promptly and without delay notify NZX through MAP after determining that date.

3.14.3 No notification is required under Rule 3.14.1 of:

(a) routine interest payments on Debt Securities, or

(b) the redemption of Debt Securities on the scheduled maturity date.

3.14.4 If the Directors recommend or pay dividends other than in accordance with the Issuer's most recently published dividend policy, they must fully explain the reasons for the divergence by releasing that information through MAP in, or at the same time as, the notice given under Rule 3.14.1.

3.14.5 Where an Issuer decides that it will not pay the interest on any Quoted Debt Securities on the due date for that interest payment, the Issuer must release that decision through MAP promptly and without delay.

3.14.6 A supplementary dividend paid in terms of the Income Tax Act 2007 is not treated as a dividend for the purposes of Rule 3.14.1. An Issuer paying a supplementary dividend in respect of Quoted Financial Products must release through MAP, not less than 5 Business Days before the payment of the supplementary dividend, details of:

(a) the amount (in cents) of the proposed supplementary dividend per Quoted Equity Security, and

(b) the date upon which it will be paid,

in the form prescribed by NZX from time to time.

3.15 **Further notice for Convertible Financial Products**

3.15.1 Where Financial Products are Convertible at the option of the holder before final maturity into Quoted Financial Products, the Issuer must give notice of this option by release through MAP and to all holders of those Financial Products. That notice:

(a) must be given:

(i) if the Financial Products are Convertible on a fixed date or dates, at least six weeks before each such date, or

(ii) if the Financial Products are Convertible on the trigger of an event, as soon as practicable after that event has occurred or promptly and without delay after it becomes apparent that the event will occur,

(b) need not be given if the Financial Products are Convertible at the option of the holder at any time,

(c) must disclose any option for Conversion which may be exercised at a later date, and

(d) must contain a statement to the effect that any Financial Products holders in doubt as to whether Conversion is desirable should seek advice from a financial adviser.

3.15.2 Following each Conversion of Financial Products into Quoted Financial Products, the Issuer must promptly and without delay release through MAP notice of:

(a) the number of Financial Products Converted and the number and Class of Quoted Financial Products into which they have been Converted,

(b) details of any interest or dividend conditions attaching to the Financial Products

into which they have been Converted, and

(c) how many Financial Products of the same Class remain to be Converted.

Announcements relating to offers

3.16 **Early and Late Offer Closure**

3.16.1 Where an offer of Financial Products that are intended to be Quoted is closed before the stated closing date, the Issuer must notify NZX by release through MAP within one Business Day after the closure.

3.16.2 An Issuer wishing to extend the closing date for an offer of Financial Products that are intended to be Quoted must notify NZX by release through MAP of the new date at least 5 Business Days before the original closing date. An Issuer must not, without the prior consent of NZX, extend a closing date more than once.

3.16.3 Nothing in this Rule 3.16 applies to an offer in accordance with Rules 4.6 to 4.9.

3.17 **Notification of Level of Subscription**

3.17.1 If an offer of Financial Products that are intended to be Quoted has been underwritten, the Issuer must promptly and without delay release through MAP appropriate notice of any shortfall (if applicable) once any final shortfall has been calculated (for example, following any shortfall bookbuild in accordance with Rule 4.4.1(a)), and in any event no later than 5 Business Days after the closing date, including the extent to which any of the Financial Products have been or will be taken by any underwriter or any sub-underwriter in any capacity.

3.17.2 If an offer of Financial Products that are intended to be Quoted has not been underwritten, the Issuer must promptly and without delay release through MAP appropriate notice of any shortfall (if applicable) once any final shortfall has been calculated (for example, following any shortfall bookbuild in accordance with Rule 4.4.1(a)), and in any event no later than 5 Business Days after the closing date ofthe offer.

3.17.3 If an offer of Financial Products that are intended to be Quoted is oversubscribed, and the Issuer elects to make an announcement regarding such oversubscription, the Issuer must promptly and without delay release through MAP appropriate notice of such oversubscription after the final extent of oversubscription is calculated, and in any event no later than 10 Business Days after the closing date. The announcement must specify the percentage or the total nominal amount by which the offer has been oversubscribed, rather than the mere fact of oversubscription.

3.17.4 In this Rule 3.17.3, a reference to "oversubscription" does not include the bids in a bookbuild exceeding the price or number of Financial Products intended to be Quoted that are offered through that bookbuild.

Further information to be released through MAP

3.18 **Proposals of Capital Change and Conditions**

3.18.1 Every Issuer must promptly and without delay release through MAP information on any decision to:

(a) in the case of an Issuer with Quoted Equity Securities, sub-divide or consolidate Financial Products, whether they are to be Quoted or not,

(b) in the case of an Issuer with Quoted Equity Securities, issue Equity Securities, or Financial Products that may Convert to Equity Securities, whether they are to be Quoted or not, or

(c) amend conditions of Quoted Financial Products.

3.19 **Meetings**

3.19.1 An Issuer must promptly and without delay release through MAP the following information:

(a) the outcome of each resolution put to a meeting of Quoted Financial Product holders, including the results of polls conducted, and

(b) notice of any adjournment of a meeting of Quoted Financial Product holders to another time or place, and the outcome in respect of each resolution dealt with before the adjournment.

3.19.2 An Issuer must, during or prior to the start of a meeting of Quoted Financial Product holders, release through MAP the contents of any prepared announcement or presentation (including a prepared address by the chairperson) that will be delivered at such meeting, provided that the information released through MAP need not include any information that is of a procedural nature or which relates to the administration of the meeting.

3.20 **Directors, Senior Manager and Auditor and other information**

3.20.1 An Issuer with Quoted Financial Products must promptly and without delay release through MAP information regarding any decision made to change (regardless of whether such change is effective at a later date):

(a) a Director or Senior Manager of the Issuer,

(b) if the Issuer is a Managed Investment Scheme, a Director or Senior Manager of the Manager,

(c) the chairperson of the Issuer, or

(d) the auditor of the Issuer.

3.21 **Change in Issuer's details and balance date**

3.21.1 An Issuer with Quoted Financial Products must promptly and without delay release through MAP (unless otherwise specified by NZX) the following information:

(a) any decision to change the name of an Issuer (such notification must be released not less than 5 Business Days before such name change takes effect),

(b) any change of an Issuer's contact details (including the address of its registered office, its mailing address or its contact telephone number),

(c) any change of ISIN for an Issuer's Quoted Financial Products (such notification must be released not less than 5 Business Days before such change in ISIN takes effect),

(d) any change in the identity of an Issuer's registrar of Quoted Financial Products (such notification must be released not less than 5 Business Days before such change of registrar takes effect), or

(e) the opening or closing of a branch register.

3.21.2 An Issuer with Quoted Equity Securities or Fund Securities must release through MAP any decision to extend its annual balance date to a later date and, in any event, must notify such change not less than one month before the end of the existing half-year reporting period or not less than one month before the existing annual balance date.

3.21.3 An issuer must provide to NZX from time to time such other information as NZX may prescribe from time to time, including by release through MAP.

3.22 **Credit Rating**

3.22.1 An Issuer must promptly and without delay release through MAP any new credit rating, or change to a current credit rating (such as, an upgrade, downgrade or change in outlook), in relation to:

(a) the Issuer,

(b) the Quoted Debt Securities of the Issuer, or

(c) the Issuer's guaranteeing entity,

provided, for the avoidance of doubt, that this Rule 3.22.1 does not apply to an indicative credit rating.

3.23 **All notices and communications to be released through MAP**

3.23.1 Every Issuer must release through MAP:

(a) no later than the time at which it is given to other recipients, an electronic copy in the same format of every notice or communication relating to Financial Products also Quoted by NZX given to:

(i) any stock exchange other than NZX, or

(ii) generally to holders of that Issuer's Quoted Financial Product, except for:

(A) investor relations material (that do not contain Material Information),

(B) personalised letters only sent to some Financial Product holders,

(C) notices under section 209(3) of the Companies Act 1993 or regulations 61B to 61F of the FMC Regulations, and

(D) dividend or transfer statements.

(b) promptly and without delay, any third party notice or communication given to, and released by, any stock exchange other than NZX in respect of the Issuer, or otherwise released by that stock exchange against the ticker code of the Issuer.

3.24 **Disclosure of Relevant Interest in Financial Products**

3.24.1 Every Issuer with Quoted Equity Securities or Quoted Fund Securities must, upon request by NZX, exercise its powers under subpart 5 of Part 5 of the FMC Act in respect of such holders of Financial Products or other persons, as NZX may specify (either individually or by reference to a Class).

3.24.2 Any information obtained by an Issuer through the use of its powers under subpart 5 of Part 5 of the FMC Act (whether at the NZX's request or proactively) must be released through MAP if requested by NZX.

3.25 **Disclosure upon initial Quotation or initial Listing**

3.25.1 Every Issuer must promptly and without delay upon initial Quotation of a Class of Financial Product release through MAP a copy of any Offer Document or Profile relating to the Financial Product.

3.25.2 Once accepted for Listing, an Issuer of Wholesale Debt Securities must release through MAP a copy of the principal offer document or terms sheet for the relevant Wholesale Debt Securities.

Form of disclosure and communication

3.26 **Form of Disclosure and Communication for Market**

3.26.1 All information for release to the market by an Issuer must be:

(a) delivered through, and be compliant with the requirements of, MAP, and

(b) in a format which is convenient for NZX to process and relay by the same means to subscribers to any information service offered by NZX.

NZX may require an Issuer to use specific forms or templates (with such alterations and completions as are satisfactory to NZX).

3.26.2 All announcements using MAP must be:

(a) on the Issuer's letterhead, dated, and:

(i) attributed to an authorised representative of the Issuer stating that person's name and position, and

(ii) provide the contact details of an authorised representative of the Issuer who may answer invest or queries on such information,

(b) prefaced, in the case of long or complex announcements, by a summary of salient points, suitable for immediate transcription and dissemination by NZX without substantial editing,

(c) marked as containing Material Information, using the appropriate flag in MAP, if the announcement contains Material Information and is not otherwise subject to an automated flag in MAP, and

(d) in the case of a NZX Foreign Exempt Issuer, released through MAP at the same time as, or promptly and without delay after release to, the Issuer's Home Exchange and at least 10 minutes before public release in any other jurisdiction.

3.26.3 If a Rule requires an Issuer to release an announcement through MAP, that obligation is satisfied once:

(a) the announcement is submitted into MAP (not when the announcement is subsequently released from MAP by NZX), or

(b) if MAP is unavailable, due to a technology fault, that announcement is sent to such contact at NZX which NZX may specify from time to time.

3.27 **Disclosure under Embargo**

3.27.1 Where announcements are made under embargo, the Issuer must:

(a) release the embargoed announcement through MAP at least 30 minutes before release to any other party, including the media, and

(b) display the times and conditions of the embargo prominently on each page of the announcement.

NZX may choose to ignore the embargo where it considers the market should be immediately informed.

3.27.2 Material Information may not be embargoed under Rule 3.27.1.

3.28 **Disclosure of additional information**

3.28.1 NZX may require any amendment, addition or alteration to an announcement or require the Issuer to disclose further information following release of an announcement.

3.29 **Disclosure to NZX**

3.29.1 Material not to be released publicly (including draft documents lodged with NZX for review) and private correspondence with NZX must be addressed accordingly and marked in a prominent position with the words "Not for Public Release". Any material destined for NZX may be:

(a) sent by electronic mail to: issuer@nzregco.com

(b) delivered to: NZX Limited's Registered Office

(c) posted to: PO Box 2959 (or DX SP3501)
Wellington
New Zealand 6140

3.29.2 Information marked "Not for Public Release" may be released by NZX to the market if NZX forms the opinion that the release of that information is or was required by the Rules. Unless the information is Material Information, NZX will give the Issuer reasonable prior notice of this decision.

3.30 **Ownership of information disclosed**

3.30.1 All information, papers or documents provided to NZX by or on behalf of an Issuer becomes NZX's property and may be copied or (subject to Rule 3.27) disseminated as it thinks fit.

Section 4
Changes to Capital

Shareholder approval to share issues, and exceptions (including 15% placement rule)

Share buybacks and redemptions

Financial assistance

Rights issues and share purchase plans

Rules applying to Issuers of Equity Securities

4.1 **Issue of New Equity Securities**

4.1.1 Except as provided in Rule 4.1.2, an Issuer must only issue Equity Securities with approval by Ordinary Resolution in accordance with Rule 4.2.1.

4.1.2 An Issuer may issue Equity Securities, without approval by Ordinary Resolution, by way of:

(a) a pro-rata Rights issue, bonus issue or a Share Purchase Plan in accordance with Rule 4.3 and, if applicable, Rule 4.4,

(b) an issue under an Issuer's 15% placement capacity in accordance with Rule 4.5.1,

(c) an issue to Employees, in accordance with Rule 4.6, or

(d) other issues for dividend reinvestment plans, director remuneration, takeovers, amalgamation, conversions and Minimum Holdings in accordance with Rules 4.7 to 4.9.

4.2 **Shareholder approval for Issues by Ordinary Resolution**

4.2.1 For the holders of Equity Securities to approve an issue of Equity Securities by the Issuer, the precise terms and conditions of the issue must have been approved by:

(a) separate Ordinary Resolutions of each Class of Quoted Equity Securities whose rights or entitlements could be affected, or

(b) if a Class of Quoted Equity Securities were issued on terms that the holders would vote together with the holders of another Class or Classes of Equity Securities on a resolution of the nature referred to in Rule 4.2.1(a), a single resolution of all such Classes of Equity Securities voting together.

4.2.2 An issue of Equity Securities authorised under Rule 4.2.1 must be completed within:

(a) 36 months after the passing of those resolutions, if the issue is restricted to Employees, and

(b) 12 months after the passing of those resolutions in all other circumstances, otherwise the issue cannot occur until further approval is obtained under Rule 4.2.1.

4.2.3 A resolution under Rule 4.2.1 is not required in relation to the holders of a Class of Equity Securities if the terms of issue of those Equity Securities reserved the right to make the new issue (where the reservation included details of the maximum number, Class of Equity Securities and timeframe within which the further issue would be made).

4.2.4 Except as provided in Rules 6.5.1, 6.5.2 and 6.5.3, no Issuer may re-price or amend the terms of any Equity Securities issued under Rule 4.2.1 held by Employees or Directors, in their capacity as such, without either the approval of NZX or a further Ordinary Resolution of the Quoted Equity Security holders approving the repricing or amendment.

4.2.5 The resolutions referred to in this Rule 4.2 are subject to the voting restrictions in Rule 6.3.

4.3 **Pro-rata issues and Share Purchase Plans**

4.3.1 An Issuer may issue Equity Securities if those Equity Securities are:

(a) offered to existing holders of the Issuer's Equity Securities on a basis which, if the offer were accepted in full by all such holders, would maintain the proportionate Voting and distribution rights of each holder (subject only to rounding), and:

(i) that offer is Renounceable and/or an Accelerated Offer,

(ii) where the offer of Equity Securities includes one or more bookbuild(s) for the Shortfall, oversubscriptions for any Shortfall must be permitted by holders who are not excluded under Rule 4.4.1(e) and have applied for their full entitlement in the offer or the component of the offer to which the bookbuild relates, and

(iii) any Offer Document for the offer or, if there is no Offer Document, the information provided under Rule 4.17.6(b) or 4.17.7(b) must set out the allocation policy to be applied to any Shortfall,

(b) issued to existing holders of the Issuer's Equity Securities as fully paid Equity Securities on a basis which maintains the existing proportionate Voting and distribution rights of each holder (subject only to rounding), or

(c) offered to existing holders of the Issuer's Equity Securities under a Share Purchase Plan.

4.4 **Rules applicable to pro-rata issues and Share Purchase Plans**

4.4.1 Notwithstanding Rule 4.3.1 and Rule 4.4.2, an Issuer is entitled to:

(a) subject to Rule 4.3.1(a)(iii), issue any Equity Securities which have been offered under Rule 4.3.1(a) and not taken up, or held back because of fractional entitlements, provided the price, terms and conditions are not materially more favourable to the person to whom they are issued than the original offer and the issue is completed within three months of the close of that offer,

(b) issue Equity Securities to existing holders of the Issuer's Financial Products where the right to participate in future issues is specifically attached to those existing Financial Products, regardless of the effect on existing proportionate rights to Voting and distribution rights,

(c) authorise a disproportionate offer to the extent necessary to round entitlements to a whole number, round up holdings to a Minimum Holding, or to avoid the creation of a holding which is less than a Minimum Holding,

(d) not offer Equity Securities to holders of existing Equity Securities where the terms of those existing Equity Securities expressly exclude the right to participate in the relevant issue, and

(e) not offer Equity Securities to holders outside New Zealand if, in the Issuer's reasonable opinion, it would be unduly onerous for the Issuer to make that offer in that jurisdiction, provided that in a Renounceable offer the Issuer must arrange the sale of any excluded holders' Rights, or the Equity Securities to which any excluded holders would be entitled if they were eligible to participate, and account to excluded holders for the net proceeds.

4.4.2 An Issuer making an Accelerated Offer under Rule 4.3.1(a) must comply with the following requirements (as applicable to the type of Accelerated Offer undertaken by the Issuer):

(a) any bookbuild(s) must be undertaken pursuant to the terms set out in the Offer Document,

(b) if the Accelerated Offer is Renounceable, instead of arranging the sale of Rights under Rule 4.4.1(e), the Rights of Ineligible Shareholders, or the Equity Securities to which Ineligible Shareholders would be entitled if they were eligible to participate, must be offered under one or morebookbuild(s) undertaken in relation to the Accelerated Offer and any net premium achieved in excess of the price must be returned to Ineligible Shareholders,

(c) if the Accelerated Offer is non-Renounceable:

(i) the ratio of Equity Securities offered must not be greater than one new Equity Security for every three existing Equity Securities held, and

(ii) any Offer Document relating to the Accelerated Offer or, if there is no Offer Document, the information provided under Rule 4.17.7(b) must include a statement as to:

(A) the reason(s) why the Issuer has chosen to make the Accelerated Offer non-Renounceable and why the non-Renounceable nature of the Accelerated Offer is considered to be in the best interests of the Issuer,

(B) the impact of the non-Renounceable nature of the Accelerated Offer on non-participating holders of Equity Securities, and

(C) whether the Issuer has obtained expert investment banking or corporate finance advice in relation to the merits of the non-Renounceable nature of the Accelerated Offer and, if so, the name of the adviser(s) who provided the advice,

(d) notwithstanding Rule 4.17.1, Eligible Institutional Shareholders may be notified of their entitlements under the Accelerated Offer by electronic means and prior to the Record Date,

(e) notwithstanding Rule 4.17.2, any Institutional Entitlement Offer component of an Accelerated Offer may be open for less than 12 Business Days (or 5 Business Days, as applicable) provided that any Offer Document relating to the Accelerated Offer clearly states or, if there is no Offer Document, applicants are advised before subscription that a shorter than usual offer period will apply to Eligible Institutional Shareholders under the Institutional Entitlement Offer (including the length of such shorter period),

(f) if Rule 4.17.6 would otherwise apply to the Accelerated Offer:

(i) rather than comply with Rule 4.17.6(b), an Issuer may elect to release through MAP the information required by Rule 4.17.6(b) promptly and without delay after the decision to make the Accelerated Offer has been made and no later than the Ex Date for the Accelerated Offer, or

(ii) rather than comply with Rule 4.17.6(e), an Issuer may elect for the quotation of Renounceable Rights to cease at the close of trading on the day 4 Business Days before the closing date of the Retail Entitlement Offer,

(g) if Rule 4.17.7 would otherwise apply to the Accelerated Offer, an Issuer may

elect to release through MAP the information required by Rule 4.17.7 promptly and without delay after the decision to make the Accelerated Offer has been made and no later than the Ex Date for the Accelerated Offer,

(h) Rule 4.19.1 must be separately applied to an Institutional Entitlement Offer and a Retail Entitlement Offer.

4.4.3 For the purposes of Rule 4.4.2, the following terms bear the following meanings:

Eligible Institutional Shareholders	means the institutional Equity Security holders of the Issuer, being wholesale investors (as defined in Schedule 1 of the FMC Act) or the equivalent type of investor under securities legislation applying in a jurisdiction outside New Zealand, who are eligible to participate in the Institutional Entitlement Offer.
Ineligible Shareholders	means those Equity Security holders of the Issuer who do not receive an offer to participate in the Institutional Entitlement Offer or Retail Entitlement Offer by reason of Rule 4.4.1(e).
Institutional Entitlement Offer	means an accelerated pro-rata entitlement offer of Equity Securities made at a fixed price (which must not be less than the price at which Equity Securities are offered in any related Retail Entitlement Offer) to the Issuer's Eligible Institutional Shareholders, usually conducted and completed before a Retail Entitlement Offer.
Retail Entitlement Offer	means a pro-rata offer of Equity Securities, made at the same ratio as the related Institutional Entitlement Offer, to the Issuer's existing retail shareholders in New Zealand and certain eligible overseas jurisdictions (if relevant), who did not receive an offer under such Institutional Entitlement Offer.

4.5 **15% Placements**

4.5.1 An Issuer may issue Equity Securities provided the number to be issued, together with all other Equity Securities of the same Class issued under this Rule 4.5.1 over the shorter of the previous 12 months or the period since the Issuer was Listed, will not exceed the aggregate of:

(a) 15% of the Equity Securities of that Class on issue at the beginning of that period, and

(b) 15% of the Equity Securities of that Class issued during that period under any of Rules 4.2.1, 4.3, 4.4.1, 4.6.1, 4.8.1 and 4.9, and

(c) any Equity Securities of that Class issued under this Rule 4.5.1 during that period, the issue of which has been ratified by an Ordinary Resolution (such resolution being subject to the voting restrictions in Rule 6.3), less

(d) 15% of Equity Securities of that Class which have been acquired or redeemed by the Issuer during that period (other than Equity Securities held as Treasury Stock),

provided that:

(e) Employees and Directors of the Issuer, and Associated Persons of a Director of the Issuer may participate only if:

(i) all Directors voting in favour of the resolution to issue the Equity Securities sign a certificate that the participation of such persons is in the best interests of the Issuer and fair to other Equity Security holders,

(ii) the terms of issue are the same for all persons participating in the issue and such persons are not exclusively Employees and / or Directors of the Issuer and / or Associated Persons of a Director of the Issuer, and

(iii) the level of participation of any Employee, Director or Associated Person of a Director, is determined according to criteria applying to all persons participating in the issue, and

(f) Financial Products which may Convert to Quoted Equity Securities are deemed to be of the same Class as the Quoted Equity Securities into which they may Convert, and the Financial Products referred to in paragraph (f) are deemed to be of the same number as the Quoted Equity Securities to which they may Convert, except that for the purpose of this calculation:

(i) in relation to the conversion ratio or conversion price, any reference to the market price (however described) of the underlying Quoted Equity Securities will instead be to the Average Market Price, and

(ii) any provisions for early Conversion at the option of a holder exercisable in limited circumstances (such as due to an event of default or change of control or similar) using a different formula or method will be disregarded.

4.6 **3% Issues to Employees and Executive Directors**

4.6.1 An Issuer may issue Equity Securities if:

(a) the issue is made to, or to a trustee to hold for the benefit of, Employees and may include Employees that are Directors or Associated Persons of Directors only if their participation satisfies the allocation criteria applying to Employees

generally,

(b) the issue is of a Class of Equity Securities already on issue, and

(c) the number to be issued, together with all other Equity Securities of the same Class issued under this Rule 4.6.1 over the shorter of the previous 12 months orthe period since the Issuer was Listed, will not exceed 3% of the aggregate of:

(i) the total number of Equity Securities of that Class on issue at the commencement of that period, and

(ii) the total number of Equity Securities of that Class issued during that period under Rules 4.2.1, 4.3, 4.4.1, 4.5.1, 4.8.1 and 4.9,

provided that for the purposes of this Rule 4.6.1:

(d) Financial Products which may Convert to Quoted Equity Securities are deemed to correspond in number to, and be deemed to be of the same Class as, the Quoted Equity Securities into which they may Convert, and

(e) if the conversion ratio is fixed by reference to the market price of the underlying Equity Securities, unless otherwise specified in the issue terms, this is the Average Market Price.

4.6.2 For the purposes of Rule 4.6.1, an issue to a Director or an Associated Person of a Director made in that person's capacity as a trustee of a bona fide employee share or superannuation scheme or suchlike, where that person has no beneficial interest, is deemed not to be an issue in which Directors or their Associated Persons participate.

4.7 **Issues to Directors as remuneration**

4.7.1 An Issuer may issue Equity Securities to a Director (or a person at the direction of the Director) if:

(a) the issue is made to satisfy Director remuneration in accordance with a resolution passed under Rule 2.11.2,

(b) the issue is of a Class of Equity Securities already on issue,

(c) the issue of Equity Securities is made after the end of the period to which that remuneration is payable, and

(d) the issue price of the Equity Securities is not less than the Average Market Price before the issue is made.

4.8 **Dividend Reinvestment Plan**

4.8.1 An Issuer may issue Equity Securities if the issue is made in lieu of dividends or as part of a dividend reinvestment plan that, if taken up in full by all holders, would not affect the proportionate voting or distribution rights of each holder (except to the extent that the plan excludes holders in a jurisdiction outside New Zealand if, in the Issuer's reasonable opinion, it would be unduly onerous to make the offer in that jurisdiction), subject only to rounding.

4.8.2 If an Issuer issues Equity Securities in lieu of dividends or as part of a dividend reinvestment plan, the last date for an Equity Security holder to elect to participate in thedividend reinvestment plan, must be at least 1 Business Day after the Record Date for the dividend payment to Equity Security holders who do not participate in the issuance.

4.8.3 An Issuer may issue Equity Securities in respect of which an offer under the dividend re-investment plan (under Rule 4.8.1) is not taken up, or held back because of fractional entitlements, provided that:

(a) the price, terms and conditions are not materially more favourable to the person to whom they are issued than the original offer,

(b) the issue is completed within three months of allotments under the dividend re-investment plan, and

(c) the issue of Equity Securities will reduce the Issuer's placement capacity under Rule 4.5.1.

4.8.4 An Issuer making an issue of Equity Securities to Equity Securities holders in accordance with an offer under Rule 4.8.1 must allot those Equity Securities on the same day that dividends are paid to Equity Security holders who do not participate in the issuance.

4.9 **Issues relating to takeovers, conversions, minimum holdings and amalgamations**

4.9.1 An Issuer may issue Equity Securities if:

(a) the issue is in consideration of an offer made by the Issuer in accordance with:

(i) the Takeovers Code or a scheme of arrangement under Part 15 of the Companies Act 1993, or

(ii) the takeover regime of a jurisdiction other than New Zealand which NZX considers provides a similar or greater level of protection to the recipients of the offer as the Takeovers Code or Appendix 3, and

the offer is made to all holders (other than the Issuer) of any Equity Securities

in any other entities Listed on the Main Board or on another stock exchange, except if the other entity is an Associated Person of the Issuer or of any Director of the Issuer,

(b) the issue of Equity Securities (**Security B**) is made on Conversion of any Financial Product (**Security A**), and

(i) the terms of issue of Security A provided for the Conversion to Security Band the issue of Security A was approved in the manner set out in Rule 4.2.1 or Security A was issued in accordance with any of Rules 4.3, 4.4.1, 4.5.1, 4.6, 4.8 or 4.9.1(a) (whether or not any of the Rules quoted applied to the issue of Security A), or

(ii) the issue of Security B is approved in the manner set out in Rule 4.2.1, or Security B is issued in accordance with Rule 4.5.1 or Rule 4.6,

(c) the issue is made to bring an existing holder's holding up to a Minimum Holding, or

(d) the issue is made under an arrangement, amalgamation or compromise effected through Part 13 or Part 15 of the Companies Act 1993 or an equivalent statutory regime in a jurisdiction other than New Zealand which NZX considers is at least as useful to the recipients.

4.10 **Treasury Stock**

4.10.1 Transfer by an Issuer registered under the Companies Act 1993 of Treasury Stock is for the purposes of this Section 4 deemed to constitute an issue of Equity Securities.

4.11 **Issue of discounted Equity Securities**

4.11.1 If:

(a) an Issuer proposes to issue Equity Securities carrying Votes, or Financial Products which are Convertible into Equity Securities carrying Votes, under Rule 4.3.1(c), Rule 4.5.1 or Rule 4.6.1 (the "Affected Securities"), and

(b) the issue price of an Affected Security is less than 85% of the Average Market Price, then

(c) before issuing the Affected Securities, all Directors who voted in favour of the resolution must sign a certificate that the consideration for the Affected Securities is fair and reasonable to the Issuer and to other Equity Security holders,

provided that:

(d) if the Issuer has more than one Class of Equity Securities Quoted, the Quoted Equity Securities in Rule 4.11.1(b) refers to the Class most like the Affected

Securities or, in the case of Convertible Financial Products, the Equity Securities into which the Affected Securities Convert, and

(e) in the case of Convertible Financial Products, if the consideration payable on Conversion is fixed by reference to the market price of existing Equity Securities, any consideration payable on Conversion is at least 85% of the Average Market Price of the Equity Securities into which the Affected Securities Convert.

4.12 **Entitlements to Third Party Securities**

4.12.1 Entitlements conferred by the holding of an Issuer's Equity Securities to Financial Products of a third party (whether or not that third party is an Issuer), may not be created or conferred other than in compliance with Rules 4.1 to 4.10, as if such Financial Products comprised an issue of Equity Securities of the Issuer.

4.13 **Issues and Buybacks of Securities Affecting Control**

4.13.1 Notwithstanding the provisions of Rules 4.1 to 4.10 and Rule 4.14, no issue, acquisition, or redemption of Financial Products may be made by an Issuer if there is a significant likelihood that it will result in any person, or group of Associated Persons, immediately or in the future, either:

(a) increasing their percentage control over the total Votes attaching to Financial Products above one of the following key control thresholds:

(i) 20%,

(ii) 25%,

(iii) 50%,

(iv) 75%,

(v) 90%, or

(b) materially increasing their ability to exercise effective control of that Issuer,

unless the precise terms and conditions of the issue, acquisition or redemption have been approved by an Ordinary Resolution (such resolution being subject to the voting restrictions in Rule 6.3).

4.13.2 Rule 4.13.1 does not apply to a Code Company.

4.14 **Buy Backs and Redemption of Equity Securities**

4.14.1 An Issuer may only acquire or redeem Equity Securities of that Issuer by:

(a) an acquisition effected through NZX's order matching market or through the order matching market of a Recognised Stock Exchange,

(b) an acquisition effected in compliance with:

(i) section 60(1)(a) (read together with section 60(2)) of the Companies Act 1993,

(ii) section 60(1)(b)(ii) (read together with section 61) of the Companies Act 1993, and:

(A) not made from a Director, or an Associated Person of a Director, of the Issuer, and

(B) not of a size which would cause the number of Equity Securities of the same Class acquired under this Rule 4.14.1(b)(ii) either in the 12 months preceding the date of the acquisition or since the issuer was listed, whichever is shorter, to exceed 15% of the total number of Equity Securities of the same Class on issue at the commencement of that period,

(iii) section 61(7) of the Companies Act 1993, or

(iv) sections 110 or 118 of the Companies Act 1993, or other applicable legislation, if required by a shareholder pursuant to such sections or legislation,

(c) a redemption in compliance with section 69(1)(a) of the Companies Act 1993,

(d) an acquisition or redemption:

(i) approved in accordance with Rule 4.16.1,

(ii) of Equity Securities that were issued under Rule 4.6, or

(iii) from a holder who holds less than a Minimum Holding, or

(e) a redemption of Equity Securities issued in compliance with Rule 4.2.1 or 4.3, 4.4.1(a) where the Issuer is bound or entitled to redeem those Equity Securities pursuant to their terms of issue,

provided that for the purposes of Rule 4.14.1(b)(ii)(B):

(f) Financial Products which may convert to Quoted Equity Securities are deemed to be of the same Class as the Quoted Equity Securities into which they may convert, and

(g) the Financial Products referred to in paragraph (f) are deemed to be of the

same number as the Quoted Equity Securities to which they may Convert, except that for the purpose of this calculation:

(i) in relation to the conversion ratio or conversion price, any reference to the market price (however described) of the underlying Quoted Equity Securities will instead be to the Average Market Price, and

(ii) any provisions for early Conversion at the option of a holder exercisable in limited circumstances (such as due to an event of default or change of control or similar) using a different formula or method will be disregarded.

4.14.2 Before an Issuer acquires its own Equity Securities, except from a holder with a less than a Minimum Holding, the Issuer must give at least 3 Business Days' notice through MAP. That notice must specify:

(a) a period of time not exceeding 12 months from the date of the notice within which the Issuer will acquire Quoted Equity Securities, and

(b) the Class and maximum number of Quoted Equity Securities to be acquired in that period.

An Issuer may vary or cancel a notice at any time, subject to providing 3 Business Days' notice through MAP.

4.14.3 Equity Securities that are:

(a) not shares of a company registered under the Companies Act 1993, or

(b) issued by an Issuer which is not a company registered under the Companies Act 1993,

may be acquired or redeemed under Rules 4.14.1(b), (c), (f) and (i) provided the Issuer is compliant with the sections of the Companies Act 1993 referred to in those Rules, modified so that:

(c) "shares" refer to all Equity Securities of the Class which is on offer with references to "shareholders" adapted accordingly, and

(d) in respect of (b), "company" refers to the Issuer, and the company's directors and board refer to any person entering into the Listing Agreement on behalf of that Issuer, and "constitution" refers to the Governing Document which governs the rights of those Equity Securities.

4.15 **Financial Assistance**

4.15.1 An Issuer must not give financial assistance for the purpose of, or in connection with, the acquisition of its Equity Securities except if that assistance:

(a) complies with Rule 4.15.2, or

(b) is approved in accordance with Rule 4.16.1.

4.15.2 An Issuer may give financial assistance of the nature referred to in Rule 4.15.1 provided:

(a) such assistance is not given (either in whole or in part) to any Employee, Director, or Associated Person of a Director, and the amount, together with any other financial assistance given under this paragraph (a) over the preceding 12 months or since the Issuer was listed, whichever is the shorter, does not exceed 10% of the Average Market Capitalisation of the Issuer, or

(b) such assistance is given to Employees of the Issuer and:

(i) the amount, together with all other financial assistance given under this paragraph (b) by the Issuer during:

(A) the shorter of the preceding three years or the period from the date on which the Issuer was Listed, will not exceed $1 million, or

(B) the shorter of the preceding 12 months or the period from the date on which the Issuer was Listed, will not exceed 5% of the Average Market Capitalisation of the Issuer, and

(ii) the amount, together with all other financial assistance given under Rule 4.15.2(b)(i) during the shorter of the preceding five years or the period from the date on which the Issuer was Listed does not exceed 10% of the Average Market Capitalisation of the Issuer, and

(iii) may only be given to a Director of the Issuer who is an Employee, or Associated Person of such Director, if their participation satisfies the allocation criteria applying to Employees generally, or

(c) all holders of Equity Securities of the Issuer are treated, or given the opportunity to be treated, on the same basis.

4.15.3 For the purposes of Rule 4.15.2(b)(iii) financial assistance given to a Director or an Associated Person of a Director solely in that person's capacity as a trustee of a bona fide employee share or superannuation scheme or suchlike, in which that Director or Associated Person has no beneficial interest, is deemed not to be financial assistance given to a Director or Associated Person of a Director.

4.16 **Shareholder approval of buy backs, redemption and financial assistance**

4.16.1 An Issuer may acquire or redeem Equity Securities under Rule 4.14.1(d)(i) or give

financial assistance under Rule 4.15.1(b) if the precise terms and conditions of the transaction have been approved by separate resolutions (passed by a simple majority of Votes) of the holders of each Class of Quoted Equity Securities whose rights or entitlements will be materially and similarly affected.

4.16.2 A transaction authorised by resolutions passed under Rule 4.16.1 must be completed:

(a) within 36 months if transacted only with Employees, and

(b) within 12 months in all other circumstances,

otherwise the transaction cannot occur until further approval is obtained under Rule 4.16.1.

4.17 **Placement, Rights, Share Purchase Plan and warrant issues additional requirements**

4.17.1 Letters of entitlement to Rights (whether or not Renounceable) are to be sent within 5 Business Days after the Record Date for the determination of the entitlement and by means that will give all holders of Rights, including those who are both participating and live overseas, reasonable time to respond.

4.17.2 Without limiting Rule 4.17.1, the closing date for applications under an offer of Equity Securities in respect of which Rights will be issued (whether or not Renounceable) must be at least:

(a) 12 Business Days after the last letter of entitlement is sent, or

(b) 5 Business Days after the last letter of entitlement is sent, provided that holders of Rights are able to accept the offer using electronic means.

4.17.3 Renunciations of Renounceable Rights must be made on or before the closing date for receipt of applications in the offer of Equity Securities (or component of the offer of Equity Securities) in respect of which the Rights are issued.

4.17.4 Entitlements to Rights may be scaled up to a Minimum Holding and can be altered to disregard fractions. Any Offer Document for the offer of Equity Securities in respect of which Rights will be issued must state the terms on these matters.

4.17.5 The terms of an offer of Equity Securities in respect of which Renounceable Rights will be issued must provide that, if the Issuer receives both a renunciation and an acceptance in respect of the same Right(s), the renunciation takes priority over the acceptance.

4.17.6 For an offer of Equity Securities in respect of which Renounceable Rights will be issued and Quotation of the Renounceable Rights is sought, notice in the manner and form required by NZX must be completed and supplied by the Issuer to NZX, together with any QFP notice (unless the QFP notice has already been released through MAP).

If such Quotation is granted:

(a) such notice must be provided to NZX (not for public release) at least 5 Business Days before the Ex Date for the offer of Equity Securities (to the extent such information is available),

(b) such notice must be released through MAP promptly and without delay after the decision to make the offer of Equity Securities has been made and no later than 4 Business Days before the Ex Date for the offer of Equity Securities,

(c) the Quotation of Renounceable Rights will commence on the Ex Date for the offer of Equity Securities or such other date approved by NZX,

(d) the Head Security to which the Rights relate will be quoted ex rights on the Ex Date for the offer of Equity Securities, and

(e) Quotation of Renounceable Rights will cease at the close of trading on the day 4 Business Days before the closing date for receipt of acceptances and renunciations under the offer of Equity Securities.

4.17.7 Subject to Rule 4.17.8, for an offer of Equity Securities in respect of which Rights will be issued (whether Renounceable or not) but Quotation of the Rights is not sought, notice in the manner and form required by NZX must be completed and supplied by the Issuer to NZX, together with any QFP notice (unless the QFP notice has already been released through MAP). Such notice must be:

(a) provided to NZX (not for public release) at least 5 Business Days before the Ex Date for the offer of Equity Securities (to the extent such information is available), and

(b) released through MAP promptly and without delay after the decision to make the offer of Equity Securities has been made and at least 4 Business Days before the Ex Date for the offer of Equity Securities.

4.17.8 If Equity Securities are to be issued under a Share Purchase Plan:

(a) either:

(i) the Record Date must precede the Issuer's announcement of the Share Purchase Plan to the market, and

(ii) notice in the manner and form required by NZX must be completed and supplied by the Issuer to NZX, together with any QFP notice (unless the QFP notice has already been released through MAP). Such notice must be:

(A) provided to NZX (not for public release) at least 5 Business Days before the Ex Date for the Share Purchase Plan (to the

extent such information is available), and

(B) released through MAP promptly and without delay after the decision to make the Share Purchase Plan offer has been made and no later than one Business Day after the Record Date, or

(b) the Issuer must give notice in the manner required by Rule 4.17.6(a) and (b).

4.17.9 If Equity Securities are to be issued under Rule 4.5.1:

(a) notice in the manner and form required by NZX must be completed and supplied by the Issuer to NZX, together with any QFP notice (unless the QFP notice has already been released through MAP). Such notice must be:

(i) provided to NZX (not for public release) at least 5 Business Days before the offer of Equity Securities is proposed to be made (to the extent such information is available), and

(ii) released through MAP promptly and without delay after the decision to make the offer of Equity Securities has been made.

(b) any Offer Document for the offer or, if there is no Offer Document, the information provided under Rule 4.17.9(a) must state whether or not existing holders of the Issuer's Equity Securities are eligible to participate in the offer of Equity Securities and the basis upon which that participation is determined,

(c) within 5 Business Days of the issue of the Equity Securities the Issuer must release through MAP details of the approach the Issuer took in identifying investors to participate in the offer and how it determined their respective allocations in the offer (including the key objectives and criteria that the Issuer adopted in the allocation process, whether one of those objectives was a best effort to allocate on a pro rata basis to existing holders of the Issuer's Equity Securities, and any significant exceptions or deviations from those objectives and criteria), and

(d) within 5 Business Days of being requested to do so by NZX, the Issuer must provide to NZX (not for public release) a detailed allocation spreadsheet in electronic format showing:

(i) details of the persons to whom Equity Securities were allocated in the offer (including their name, existing holding of the Issuer's Equity Securities as understood by the Issuer, the number of Equity Securities they applied for at or above the final price for which Equity Securities were issued or the number of Equity Securities they were offered in the offer, and the number of Equity Securities they were allocated), and

(ii) details of the persons who applied for Equity Securities at or above the

final price for which Equity Securities were issued and who did not receive an allocation in the offer (including their name, existing holding of the Issuer's Equity Securities as understood by the Issuer, and the number of Equity Securities they applied for at or above the final price for which Equity Securities were issued).

4.17.10 This Rule 4.17 is subject to Rule 4.4.2.

Issuers of Fund Securities

4.18 **Issues, buy backs and redemptions of Fund Securities**

4.18.1 An Issuer of Fund Securities that is not a Continuous Issuer must issue, acquire and redeem further Fund Securities in accordance with Rule 4.1 to 4.17 as if the Fund Securities were Equity Securities carrying Votes.

4.18.2 A Continuous Issuer must issue, acquire and redeem Fund Securities in accordance with the Governing Document.

Allotment Processes

4.19 **Allotment of Financial Products**

4.19.1 An Issuer making an offer of Financial Products intended to be Quoted (other than Equity Securities issued under Rule 4.8 or Rule 4.9) must allot such Quoted Financial Products no later than 10 Business Days after the final closing date for the offer.

4.19.2 Where the issue price may be paid by instalments, the Issuer must acknowledge payments made in advance of the due date at allotment.

4.19.3 An Issuer making an issue must ensure that on allotment a CSN is recorded for each person to whom the Financial Products intended to be Quoted are issued.

Section 5
Major and Related Party Transactions

Shareholder approval of major disposal or acquisitions of assets

Shareholder approval of related party transactions, and exceptions

Rules applying to Equity Issuers

5.1 **Disposal or Acquisition of Assets**

5.1.1 An Issuer must not enter into any transaction, or a related series of transactions, to acquire, sell, lease (whether as lessor or lessee), exchange, or otherwise (except by way of charge) dispose of assets where the transaction or related series of transactions:

(a) would significantly change, either directly or indirectly, the nature of the Issuer's business, or

(b) involves a Gross Value above 50% of the Average Market Capitalisation of the Issuer,

unless the transaction, or related series of transactions, is:

(c) approved by an Ordinary Resolution, or a special resolution if approval by way of special resolution is required under section 129 of the Companies Act 1993, or

(d) conditional upon such approval required by paragraph (c) above.

5.1.2 Rule 5.1.1 does not apply to:

(a) a takeover offer made by an Issuer:

(i) to a Code Company in accordance with the Takeovers Act 1993 or by a scheme of arrangement under Part 15 of the Companies Act 1993,

(ii) to an Issuer which is covered by Appendix 3 of these Rules, in accordance with the relevant provisions in the Governing Document of that other Issuer which complies with Appendix 3, or

(iii) to any person, in accordance with the takeover law of a jurisdiction other than New Zealand applicable to that person where this provides, in the opinion of NZX, a similar or greater level of protection to the

recipients ofthe offer as the Takeovers Code or Appendix 3,

(b) any transaction entered into by the Issuer with a Bank as principal, on arm's length terms and in the ordinary course of the Bank's banking business, or

(c) an issue of Financial Products for cash which does not significantly change the nature of the Issuer's business.

5.2 **Transactions with Related Parties**

5.2.1 An Issuer must not enter into a Material Transaction if a Related Party is, or is likely to become:

(a) a direct party to the Material Transaction, or

(b) a beneficiary of a guarantee or other transaction which is a Material Transaction,

unless that Material Transaction is approved by an Ordinary Resolution (such resolution being subject to the voting restrictions in Rule 6.3) or conditional on such approval.

5.2.2 Rule 5.2.1 does not apply to:

(a) any transaction entered into by an Issuer with a Bank as principal, on arm's length terms and in the normal course of the Bank's banking business,

(b) the issue, acquisition or redemption of Financial Products, or the provision of financial assistance in connection with the purchase of Financial Products, or the payment of a distribution, where the Issuer gives each holder of Financial Products of the Class in question the opportunity to receive the same benefit in respect of each Financial Product held (except to the extent that an issue excludes holders outside New Zealand in accordance with Rule 4.4.1(e)),

(c) the issue of Equity Securities by an Issuer under Rule 4.3.1(c) or Rule 4.8,

(d) the issue of Equity Securities by an Issuer by way of an Accelerated Offer under Rule 4.3.1(a), provided that:

(i) Directors of the Issuer, excluding any Director that is an Associated Person of the Related Party, certify, in a form acceptable to NZX, that:

(A) the terms of the Accelerated Offer are fair, reasonable and in the best interests of the Issuer's Equity Security holders, other than the Related Party,

(B) the Issuer will pay and receive fair value under the Accelerated Offer,

(C) the Issuer was not unduly influenced in its decision to enter into the Accelerated Offer by the Related Party,

(D) the Related Party will be not be involved in, or influence, any allocation decision in relation to any bookbuild(s) undertaken in connection with the Accelerated Offer, and

(E) the Related Party will derive no benefit as a result of the Related Party relationship, other than solely through participation in the Accelerated Offer on the same terms and conditions as other Equity Security holders or as an underwriter or sub underwriter on commercial terms.

(e) an employment contract or contract for personal services which is a Material Transaction, where:

(i) the terms of the contract are set on an arm's length, commercial basis and have been approved by the Independent Directors of the Issuer,

(ii) the Independent Directors approving the contract sign and provide to NZX (not for market release) a certificate stating Rule 5.2.2(e)(i) has been complied with, and

(iii) material particulars of the contract (including the Issuer's use of this exception) are disclosed in the next annual report of the Issuer,

(f) indemnification of a Director or Employee of the Issuer, or a Director or Employee of a Related Body Corporate of the Issuer, which would be a Material Transaction, where, at the time the indemnity is to be granted, the relevant Director or Employee has not been involved in proceedings, threatened proceedings or circumstances in any capacity which are likely to result in a claim by them under the indemnity,

(g) arrangements, amalgamations or compromises under Parts 13 or 15 of the Companies Act 1993,

(h) a Material Transaction that is an employment agreement with a natural person who is not a Director of the Issuer, or

(i) a Material Transaction with:

(i) a total value of, or

(ii) in the case of paragraph (e) of the definition of Material Transaction, a gross cost to the Issuer in any financial year of,

$250,000 or less.

Section 6
Voting Rights and Rights of Equity Securities

Voting restrictions

Adjustments to Option terms and other variations exceptions

Voting Rights and Voting Restrictions

6.1 **Voting at meetings to be by poll**

6.1.1 Voting at a meeting of Financial Product holders must be conducted by poll other than in respect of motions that the Chair of the meeting considers to be procedural in nature. Votes must be counted according to the votes attached to the Financial Products of each Financial Product holder entitled to Vote and voting.

6.2 **Votes attaching to Financial Products**

6.2.1 Subject to NZX's approval, Financial Products of an Issuer may carry different numbers of Votes.

6.2.2 Subject to NZX's approval, the Governing Document of an Issuer may allow Votes attaching to a Class of Financial Products to vary from time to time in reference to movements in the economic value of a part or division of the Issuer's operations.

6.2.3 NZX may grant approval under Rule 6.2.1 or Rule 6.2.2 on such conditions as it thinks fit (which may require a resolution approved by holders of any Class or group of Financial Products of the Issuer).

6.2.4 Each Financial Product which is not fully paid will carry the fraction of the Vote which would be exercisable if the Financial Product was fully paid that is proportionate to the payment which has been made (excluding amounts credited and amounts paid in advance of a call).

6.3 **Voting Restrictions**

6.3.1 Notwithstanding anything to the contrary in the Rules, persons identified in Column 2 of the table below are unable to Vote in favour of the resolutions listed in Column 1.

Column 1 RESOLUTION	Column 2 DISQUALIFIED PERSON
Resolutions under Rule 2.11	The Director intended to receive a payment or benefit in respect of the matter being the subject of the resolution, and any Associated Person of that Director.

Column 1 RESOLUTION	Column 2 DISQUALIFIED PERSON
Resolution under Rule 4.2.1	Subject to Rule 6.3.2: (a) any person to whom it is proposed to issue the new Equity Securities referred to in the resolution, and any Associated Person of that person, or (b) if no persons are specified in the resolution, any Director of the Issuer who is not excluded from participation in the terms of the resolution and any Associated Person of that Director.
Resolution under Rule 4.2.1 to approve aRights issue of Equity Securities which is not Renounceable and/or an Accelerated Offer	Any Director of the Issuer and any Associated Person of that Director.
Resolution under Rule 4.5.1(c)	Any person who has been issued, or has acquired, the Equity Securities which are subject to ratification by that resolution, and any Associated Person of that person.
Resolution under Rule 4.13.1	Any person whose effective control of the Issuer would be materially increased, and any Associated Person of that person.
Resolution under Rule 5.2.1	The Related Party referred to in Rule 5.2.1 who is a party or beneficiary (in terms of Rule 5.2.1(a) or Rule 5.2.1(b) and any Associated Person of that person).
Resolution under Rule 6.8	Any person who is intended to benefit from the reduction, deferral, or cancellation and any Associated Person of that person, unless all holders of the Equity Securities are to be treated on the same basis.

6.3.2 A person is not disqualified from Voting on a resolution under Rule 4.2.1 if the new Equity Securities are to be offered on the same basis to all holders of Equity Securities of the same Class.

6.3.3 A person disqualified from Voting under Rule 6.3.1 may act as a proxy or Voting representative for another person who is qualified to Vote in respect of Financial Products held by that person and in accordance with that person's express instructions.

6.3.4 Each Issuer must use reasonable endeavours to ascertain, no later than 5 Business Days before a meeting to consider a resolution referred to in Rule 6.3.1, the identity of those Financial Product holders who are disqualified from voting on such resolution and, if requested by NZX, must supply a list of such holders to NZX.

6.3.5 No resolution of, or proceeding at, a meeting of Financial Product holders will be void on the basis of a breach of Rule 6.3.1.

6.4 **Condition in Contract**

6.4.1 Each Issuer must ensure that all agreements requiring approval by a resolution of Quoted Financial Product holders are conditional upon the passage of such a resolution and that the transaction must not be completed until that resolution is passed.

6.4.2 If that resolution fails, the Issuer must terminate its obligations under that agreement so that the transaction in question does not proceed.

Rights of Equity Securities

6.5 **Option**

6.5.1 An Option can confer the right to participate in a Rights issue only if it:

(a) is exercised before the Record Date for the Rights issue,

(b) was issued through a pro rata offer made under Rule 4.3.1 to the holders of Quoted Equity Securities, or

(c) was issued, with the approval of holders of Quoted Equity Securities, on terms which allow the Option holder to participate in offers to the holders of Quoted Equity Securities,

provided that nothing in this Rule 6.5.1 applies to any Option issued before the Issuer was Listed.

6.5.2 An Option must not confer the right to a change in the exercise price or number of underlying Equity Securities if there is a Rights issue to the holders of the underlying Equity Securities, unless:

(a) it was issued with the approval of Quoted Equity Securities holders, in which case changes can be made in accordance with the formula or provision contained in the terms of the Option, or

(b) the effect of the change is to reduce the exercise price of the Option and the reduction is calculated according to the following formula:

$$O^1 = O - \frac{E[P-(S+D)]}{N+1}$$

where,

O^1 = the new exercise price of the Option.

O = the old exercise price of the Option.

E = the number of underlying Financial Products into which one Option is exercisable.

(Note: E is generally one unless the number has changed because of a bonus issue or capital change.)

P = the volume weighted average market price of underlying Financial Products during the 5 Business Days ending on the day before the Ex Date for the Rights.

S = the subscription price for a Financial Product under the Rights issue.

D = the dividend (in the case of a trust, distribution) due but not yet paid on the existing underlying Financial Products (except those to be issued under the Rights Issue).

N = the number of Financial Products with Rights or entitlements that must be held to receive a Right to one new Equity Security.

Nothing in this Rule applies to any Option which was issued before the Issuer was Listed.

6.5.3 If there is a bonus issue to the holders of the underlying Financial Products, the number of Financial Products over which an Option is exercisable may be increased to include those Financial Products which the Option holder would have received had the Option been exercised before the Record Date for the issue.

6.5.4 If there is a consolidation or subdivision or similar proportionate reconstruction of the underlying Financial Products, the number of Financial Products over which an Option is exercisable may be consolidated or subdivided in the same ratio and the exercise price amended in inverse proportion to that ratio, including any necessary rounding to the number of Financial Products or the exercise price.

6.6 **Lien and Forfeiture**

6.6.1 An Issuer's lien on Equity Securities and on dividends or other distributions from time to time declared in respect of such Equity Securities will be restricted to one in respect of:

(a) unpaid calls, instalments, premiums or other amounts, and any interest payable on such amounts, relating to the specific Equity Securities, and

(b) any amount which the Issuer may be called upon to pay under any legislation in respect of the specific Equity Securities, whether or not the due date for payment has passed.

6.6.2 If Equity Securities are forfeited and sold or are sold to enforce a lien, any balance remaining after payments owing and expenses must be paid to the previous owner, or to the executors, administrators or assigns of the previous owner.

6.6.3 Equity Securities may not be liable to forfeiture due to the failure of persons entitled to those Equity Securities (by transmission or otherwise) to submit evidence proving their title within a specified time.

6.6.4 To avoid doubt, for the purposes of this Rule 6.6, a lien does not include a right ofset-off.

6.7 **Modifications of Rights of Equity Security Holders**

6.7.1 Every Issuer of Equity Securities must comply with the provisions of sections 116 and 117 of the Companies Act 1993 as modified so that:

(a) "shares" will (subject to Rule 6.7.2) refer to all Equity Securities of that Issuer, and references to "shareholders" will be read accordingly, and

(b) "company" will refer to the Issuer, and references to pre-emptive rights under section 45 of that Act will be deemed to have been deleted, and

(c) in respect of Equity Securities which are not shares of a company registered under the Companies Act 1993:

(i) "special resolution" will refer to a resolution approved by a majority of 75% of votes of the holders of those Financial Products entitled to vote and voting, and

(ii) "constitution" will refer to the Governing Document for the rights of those Equity Securities.

6.7.2 Nothing in Rule 6.7.1 requires an Issuer to comply with sections 116 and 117 of the Companies Act 1993 in respect of actions that affect the rights attached to:

(a) Equity Securities which are not Quoted, or

(b) Equity Securities which are not shares of a company if those Equity Securities were issued on terms which expressly allow the action in question to be taken without the prior approval of holders of those Equity Securities, and those terms were clearly disclosed when the Equity Securities were offered.

6.7.3 Rule 6.7.1 does not have the effect of deeming section 118 of the Companies Act 1993 to apply to any Financial Products other than shares of a company registered under the Companies Act 1993.

6.8 **Cancellation of Unpaid Amounts**

6.8.1 No obligation on a holder to pay any unpaid amount on any Equity Security may be cancelled, reduced or deferred without the authority of an Ordinary Resolution (such resolution being subject to the voting restrictions in Rule 6.3).

Section 7
Requirements for Documents

Review of certain documents by NZX

Offer Documents and Profiles

Notices of Meeting of Financial Product Holders, Appraisal Reports and Proxy appointment

NZX Review of documents

7.1 **NZX to review documents**

7.1.1 The documents listed in Rule 7.1.2 must not be circulated to holders of Financial Products, executed or otherwise given effect to in any way, until NZX provides written confirmation that it does not object to the document.

7.1.2 The documents referred to in Rule 7.1.1 are:

(a) any notice of a meeting of Quoted Equity Security holders to consider any matter other than:

(i) consideration of the annual report or financial statements,

(ii) electing Directors,

(iii) fixing Director remuneration,

(iv) changing the name of the Issuer,

(v) appointing or fixing the remuneration of auditors,

(vi) a resolution required or regulated under the Takeovers Code, or a resolution for a scheme of arrangement under Part 15 of the Companies Act 1993 where the Issuer is the target company,

(vii) a shareholder proposal under the Governing Document of the Issuer or under Schedule 1 of the Companies Act 1993, or

(viii) amendments to a Governing Document.

(b) any Offer Document or Profile in respect of Financial Products Quoted or to be Quoted on the Main Board or Debt Market except:

(i) Schedule 1 Offer Documents (subject to the Issuer providing NZX with such information that NZX may prescribe from time to time),

(ii) an Offer Document in respect of a Continuous Issuer, where that Offer Document is comprised of a PDS for which NZX has previously provided written confirmation under Rule 7.1.1 and another document containing the terms and conditions of the particular Financial Products, or

(iii) if NZX has determined approval is not required.

7.2 **Providing documents to NZX for review**

7.2.1 Each document referred to in Rule 7.1.2(a) must be provided to NZX in draft for review at least 10 Business Days before that document is to be printed, circulated, executed, or otherwise given effect to or by such other timeframe that NZX may prescribe or otherwise advise from time to time in relation to any particular category of document.

7.2.2 An Offer Document or Profile requiring review under Rule 7.1.2(b) must generally be submitted at least 20 Business Days before Quotation is sought, with a draft timetable for any offer and Quotation and such other information NZX may require from time to time.

7.2.3 The review period will not commence until NZX has received all relevant documents in their proposed final form. If any alteration not sought by NZX is introduced to a document already submitted, NZX may restart the review timeframe at the time that alteration is received.

7.2.4 If more than one document is required to be reviewed, they must be provided to NZX together. If an Appraisal Report is required to accompany a notice of meeting, drafts of both documents must be provided together with any information required by NZX for the purposes of Rule 7.10.

Preparing documents

7.3 **Preparing Offer Document or Profile**

7.3.1 An Issuer or applicant for Listing must prepare and issue:

(a) an Offer Document, where required by law, in respect of Financial Products Quoted or to be Quoted on the Main Board or the Debt Market.

(b) a Profile, if required to do so by NZX, when:

(i) seeking initial Quotation of a Class of Financial Products,

(ii) Rule 1.11 applies, or

(iii) Rule 5.1.1(a) applies to a transaction undertaken by an Issuer.

Content of documents

7.4 **Content of Offer Document and Profile**

7.4.1 Every Profile must:

(a) unless NZX determines otherwise:

(i) contain the information required in a PDS as if the Financial Products for which Quotation is sought are being offered in a regulated offer under the FMC Act, whether or not those Financial Products have previously been allotted, and

(ii) contain all information required by the Rules, and

(b) contain, or incorporate by reference, all other information NZX, in its sole discretion, might require.

7.4.2 NZX has determined that for the purposes of Rule 7.4.1(a) that:

(a) Prospective Financial Information is not required in a Profile for Equity Securities;

(b) In respect of applications where the applicant is seeking NZX Foreign Exempt Issuer Status, the Profile shall contain the information and be in the form prescribed by NZX from time to time.

7.4.3 Every Offer Document or Profile must contain:

(a) a statement of the principal terms of:

(i) the Financial Products being offered by, or referred to in, that Offer Document or Profile, and

(ii) the offer of those Financial Products (if applicable),

(b) if applicable, a timetable of all relevant dates for:

(i) opening and closing the offer,

(ii) allotment of the Financial Products and/or Rights to those Financial Products,

(iii) quotation and commencement of trading of the Financial Products,

(iv) the payment of initial dividends, interest or other benefits (as applicable),

(c) in the subscription application (if applicable), a field for subscribers to insert their CSN (if any), and

(d) a description of the arrangements that a Financial Product holder would need to have in place in order to trade the Financial Product on the Main Board or the Debt Market.

7.4.4 NZX may require an Offer Document to state:

(a) the number and percentage of Financial Products of the Class being offered which are not available to Non-Affiliated Holders, together with the names or description of any class of persons to whom preference in allotment is to be given, whether the Financial Products in question are part of the issue or not,

(b) the method of dealing with oversubscriptions and the amount of oversubscriptions which will be accepted,

(c) the period within which subscription refunds will be paid, and

(d) if interest will be paid on the amounts refunded under paragraph (c) and, if so, the basis upon which the interest will be calculated.

7.4.5 Every Offer Document or Profile made in contemplation of Quotation of Equity Securities must specify the Directors' intentions as to the Issuer's future dividend policy. Every other Offer Document from an Issuer with existing Quoted Equity Securities may specify the dividend policy or refer readers to the Issuer's website where such information may be obtained.

7.4.6 If Vendor Securities are issued at or about the time as an offer of Equity Securities, the Offer Document or Profile must state any restrictions to be imposed on the disposal by the holders or beneficial owners of effective ownership and control of the Vendor Securities, or that there are none.

7.4.7 A Profile must be distributed to such persons, and in such manner, as NZX may determine and must be released through MAP.

7.5 **Disposal of Major Holdings**

7.5.1 If at the time of the initial Quotation of Equity Securities:

(a) a person holds more than 20% of the Equity Securities of that Class, or

(b) a person is entitled, through a binding arrangement, to subscribe for more than 20% of the Equity Securities of that Class (other than under a bona fide underwriting agreement),

the Offer Document or Profile in respect of such Equity Securities must state, if applicable, the restrictions which are to be imposed upon the disposal of effective ownership and control of all or any of the Equity Securities by the holder of those Equity Securities (and if the holders are not to be the beneficial owners of the Equity Securities, by the beneficial owners). If there are no such restrictions applying to such a person, the Offer Document or Profile must state that.

7.5.2 For the purposes of Rule 7.5.1, Equity Securities will be deemed to be held by a person where that person has a Relevant Interest in those Equity Securities or is a member of a group of Associated Persons with relevant interests in those Equity Securities.

7.6 **Additional Requirements for Debt Securities**

7.6.1 Where an issue provides for early repayment of Debt Securities, the Offer Document or Profile must state the basis on which interest will be calculated until the date of early repayment or refer to the relevant provisions of the Governing Document.

7.6.2 Where a Debt Securities issue provides for repayment or conversion before maturity on a date to be fixed at the discretion of the Issuer, the Offer Document or Profile must state those terms.

7.7 **Prominence of statements in Offer Documents**

7.7.1 Any statement required by the Rules to be contained in an Offer Document or Profile must be sufficiently prominent and legible so as to come to the attention of a reasonable person viewing that document.

7.8 **Notices of Meeting**

7.8.1 The text of any resolution to be put to a meeting of an Issuer required by the Rules must be set out in the notice of the relevant meeting.

7.8.2 Each notice of meeting must contain or be accompanied by sufficient explanation, reports, valuations, and other information, as to enable a reasonable person entitled to Vote to understand the effect of each resolution proposed, including:

(a) the consequences if the resolution in question is not passed (unless such resolution concerns a matter listed in Rule 7.1.2(a)(i) to (viii)), and

(b) a statement outlining who is subject to voting restrictions in relation to such resolution.

7.8.3 Each notice of meeting to consider a resolution to appoint, elect or re-elect a Director must include the following information on each candidate:

(a) the Board's view on whether or not the candidate would qualify as an

Independent Director (or, if the Board is unable to make such an assessment due to a lack of information regarding a candidate nominated by an Equity Security holder, a statement to that effect).

(b) an outline of the candidate's experience (including specific details of relevant roles and organisations) and, if relevant, the qualifications of the candidate, to the extent such information is available to the Issuer after making due inquires, and

(c) any other information that the Board considers may be useful to provide to a Financial Product holder.

7.8.4 As a minimum, the notice of meeting for a resolution to approve an issue, acquisition or redemption of Financial Products, or provision of financial assistance, must state or contain so much of the following information as is applicable and known to the Issuer:

(a) the number of any Financial Products to be issued, acquired, or redeemed or, if the number is not known, the formula to be applied to determine the number, and the maximum number which may be issued, acquired or redeemed,

(b) the purpose of the transaction,

(c) any issue, acquisition or redemption price or, if the price is not known, the formula to be applied to determine the price, and the time or times for payment with sufficient detail to enable Financial Product holders to ascertain the terms to or from any party,

(d) the party or parties to whom any Financial Products are to be issued, or from whom they are to be acquired or redeemed, where that is known, and identifying by name any such parties who are Directors or Associated Persons of the Issuer or any Director,

(e) in the case of an issue, the consideration for the issue and, where that is cash, the specific purpose for raising the cash,

(f) the period of time within which any issue, acquisition or redemption will be made,

(g) in the case of an issue, the ranking of the Financial Products to be issued for any future benefit, and

(h) in the case of a resolution under Rule 4.16.1, the amount and full terms of the financial assistance to be given and the party or parties who will receive it, identifying by name any such parties who are Directors or Associated Persons of the Issuer or any Director.

7.8.5 A notice of meeting to consider a resolution of the nature referred to in Rule 7.8.4 (other than a resolution to permit an issue under Rule 4.7.1) must be accompanied by

an Appraisal Report if:

(a) the resolution is required by Rule 4.13,

(b) more than 50% of the Financial Products to be issued are intended or likely to be acquired by Directors or Associated Persons of Directors, or

(c) more than 50% of the Financial Products to be acquired or redeemed or the financial assistance to be given is intended or likely to go to Directors or Associated Persons of Directors.

7.8.6 Without limiting Rule 7.8.2, notices in respect of proposed changes to a Governing Document must explain the effect of such changes so that they can be understood without reference to the existing or proposed Governing Document.

7.8.7 Where the Issuer is incorporated under the Companies Act 1993 and the effect of the resolution, if passed, is that shareholders will have the right to require the Issuer to buy their shares under section 110 or 118 of that Act, the resolution must contain a prominent statement referring to that right.

7.8.8 A notice of meeting for the purposes of Rule 5.2.1 must:

(a) be reviewed by NZX in accordance with Rule 7.1,

(b) be accompanied by an Appraisal Report, and

(c) contain such other material as is necessary to enable the holders of Financial Products entitled to Vote to decide whether the transaction price and terms are fair.

7.9 **Proxy approval**

7.9.1 So far as is reasonably practicable, resolutions must be framed in a manner which facilitates binary voting instructions for proxy holders.

7.9.2 A proxy appointment form must be sent or made available with each notice of meeting of Quoted Financial Product holders and:

(a) as a minimum, so far as the subject matter and form of the resolutions reasonably permits, provide for a binary voting choice (for or against) to enable a Quoted Financial Product holder to instruct the proxy as to the casting of the vote,

(b) not be sent with any name or office (e.g. chairperson of directors) filled in as proxy holder, and

(c) contain a statement outlining who is subject to voting restrictions in relation to each resolution.

7.9.3 Notwithstanding Rule 7.9.2, an Issuer may provide in the proxy form that:

(a) if, in appointing a proxy, a Quoted Financial Product holder does not name a person as their proxy but otherwise completes the proxy form in full, or

(b) a Quoted Financial Product holder's named proxy does not attend the meeting,

a named person or office will act as that Quoted Financial Product holder's proxy and vote in accordance with their express direction. If such statement is included in the proxyform, the proxy form and notice of meeting must:

(c) clearly and prominently disclose the intention to appoint a named person or office in the circumstances set out in Rule 7.9.3(a) and (b), and

(d) provide that the named person or office acting as proxy must:

(i) only vote in accordance with the express directions of the relevant Quoted Financial Product holder, and

(ii) not vote on a resolution if expressly granted a discretion on how to vote on a resolution and such resolution is subject to a voting restriction that applies to the proxy under Rule 6.3.1.

7.10 **Appraisal reports**

7.10.1 An Appraisal Report for the purposes of the Rules must be made by an independent appropriately qualified person previously approved by NZX. If the report relies on information provided, or an opinion expressed, by a party external to the Issuer, that other party must also be approved by NZX. NZX may refuse to approve, or revoke any prior approval, if not satisfied that the person is independent and appropriately qualified.

7.10.2 An Appraisal Report must:

(a) be addressed to those Directors of the Issuer who are not, and are not associated with, a relevant Associated Person and, where there are no such Directors, to NZX, which at the expense of the Issuer will oversee the distribution of the report. "Relevant" in this context means persons whose association or connection with the Issuer or its Directors, or with parties to the transaction, or whose likelihood of acquiring Financial Products as a result of the transaction, is such that an Appraisal Report must be obtained,

(b) be expressed to be for the benefit of those Equity Security holders who are not associated with any relevant Associated Persons (as defined in (a)),

(c) state the appraiser's opinion, with supporting reasons, as to whether or not the terms and conditions of the proposed transaction are fair to the holders of

Equity Securities, other than those associated with the relevant Associated Persons (as defined in (a)),

(d) state the appraiser's opinion, with supporting reasons, as to whether the information to be provided by the Issuer is sufficient to enable Equity Security holders to make an informed decision, in respect of the question referred to in (c),

(e) state whether the appraiser has obtained all the information needed to prepare the report,

(f) state any material assumptions on which the appraiser's opinion is based,

(g) state any term of reference which may have materially restricted the scope of the report, and

(h) not contain a disclaimer of liability that purports to absolve the appraiser from liability for an opinion expressed recklessly or in bad faith.

If the appraiser considers that the transaction has been structured wholly or partly to confer a benefit on the relevant Associated Persons (as defined in (a)), the appraiser may mention alternative courses of action available to the Issuer. Any indications by the Directors that these alternative courses are not acceptable to them or that they would not propose to pursue them must be disregarded by the Appraiser if there is any reason to suspect that these are motivated, in whole or in part, by concern for the interests of the relevant Associated Persons in distinction to the interests of the other Equity Security holders.

7.10.3 An Issuer may circulate to Financial Product holders a summary of an Appraisal Report rather than the report in full. The summary must be accompanied by a certificate from the appraiser attesting that the summary is accurate and not misleading.

Section 8
Transfers and Statements

Restrictions on transfer

Statements

Financial Product Registers

Transfers

8.1 **Transfer of Quoted Financial Products (common rules)**

8.1.1 Subject to the provisions of any legislation, and to Rule 8.1.4, Rule 8.1.6(a), Rule 8.1.6(b) and Rule 8.2, no Issuer may impose, in its Governing Document or otherwise, any restriction on the right of a holder of a Quoted Financial Product to transfer that Financial Product, or any restriction upon registration of a properly completed transfer of Quoted Financial Products.

8.1.2 A transfer of Quoted Financial Products in writing that has not been properly completed must be promptly returned to the person submitting it, for completion.

8.1.3 Subject to the provisions of Rule 8.1.2 and Rule 8.1.6(a) and (b), and of any applicable legislation, no Issuer may:

(a) require any documentation relating to transfers other than to establish an entitlement to transfer,

(b) require any information relating to the transferee (except for such information necessary to record the transfer), or

(c) impose any restriction on the acceptability of any common form of transfer.

8.1.4 An Issuer may decline to accept or register a transfer of a Quoted Financial Product if:

(a) the Issuer has a lien on such Quoted Financial Product,

(b) the registration, together with the completion of any further transfers then held by the Issuer and awaiting registration, would result in the proposed transferee or a transferor having a holding below a Minimum Holding,

(c) the transfer would be contrary to any permitted restriction on transfer referred to in Rule 8.1.6, or

(d) the Issuer is a co-operative company registered under the Co-operative

Companies Act 1996 and the registration would result in Quoted Financial Products being transferred to persons that are not "transacting shareholders" (as defined in that Act).

8.1.5 Except as expressly permitted by the Rules, no benefit or right attaching to a Quoted Financial Product may be cancelled or varied by reason only of a transfer of that Quoted Financial Product.

8.1.6 The Governing Document of an Issuer may:

(a) restrict the transfer of Debt Securities by requiring that holders must hold those Debt Securities:

(i) in a specified minimum nominal amount (of no more than $10,000, or such higher amount as NZX may specify from time to time), and/or

(ii) in integral multiples of a specified nominal amount (of no more than $1,000, or such higher amount as NZX may specify from time to time),

(b) with the prior approval of NZX, incorporate any other provision restricting the transfer of Relevant Interests in Financial Products, or

(c) prescribe procedures entitling the Issuer to sell Quoted Financial Products held in less than Minimum Holdings and to account to the holders for the proceeds of sale after deduction of reasonable sale expenses. At least three months' prior notice must be given to the affected holders before such an action.

8.2 **Escrow Agreements**

8.2.1 If an Offer Document or Profile describes transfer restrictions under Rules 7.4.5 and 7.5 or otherwise for a period of time specified in that document:

(a) the Issuer must enter into a "Escrow Agreement" with the persons to whom those Financial Products are issued, or to be issued, together with any beneficial owners of those Financial Products and such other persons as NZX considers necessary to ensure that the restrictions can be effectively enforced,

(b) that agreement must prohibit the parties from taking steps which would cause the effective ownership or control of those Financial Products to be disposed of otherwise than in accordance with the restrictions specified in the Offer Document or Profile, and

(c) where the agreement provides a discretion to lift the restrictions before the expiry of an agreed restriction period, the agreement must stipulate that this discretion can be exercised only with the consent of non-interested Directors of the Issuer. For this purpose, the term "interested" has the meaning in section 139 of the Companies Act 1993 and the word "company" will be read as a reference to the Issuer.

8.2.2 No variation or amendment can be made to an Escrow Agreement without the prior approval of NZX. The Issuer must advise NZX promptly and without delay upon becoming aware of any breach or likely breach of an Escrow Agreement and must take such steps as NZX may require to prevent or remedy any breaches.

Statements

8.3 **Statements**

8.3.1 Every Issuer must issue to each holder of Quoted Financial Products on request a Statement that sets out:

(a) the Class and number of Financial Products held by that holder and the total number of Financial Products of that Class issued by the Issuer,

(b) the register on which the holder's Financial Products are held, if other than the principal register,

(c) unless the Quoted Financial Products are ordinary shares, the rights, privileges, conditions and limitations, including restrictions on transfer (if any) attaching to the Quoted Financial Products held by the holder,

(d) the relationship of the Quoted Financial Products held by the holder compared with the other Classes of Quoted Financial Products, and

(e) the holder's number or CSN and address.

8.3.2 An Issuer is not obliged to provide a holder with the Statement required by Rule 8.3.1 if:

(a) such a Statement has been provided within the previous six months, and

(b) the holder has not acquired or disposed of Financial Products of the relevant Class since a previous Statement required by Rule 8.3.1 or Rule 8.3.3 was provided.

8.3.3 Every Issuer must issue a Statement to each holder who obtains or disposes of Quoted Financial Products upon an issue or a transfer within 5 Business Days after the date of allotment or the date of registration of that transfer.

8.3.4 Where the Statement required by Rule 8.3.3 is issued following a transfer, the Statement must include:

(a) all the information specified in Rule 8.3.1, except that the total number of Financial Products of that Class issued by the Issuer need not be shown, and

(b) the number of Financial Products transferred (to or from the holder) in each transfer since the last Statement.

Financial Product Registers

8.4 **Registration**

8.4.1 An Issuer must ensure that any registrar it appoints to keep a register of its Quoted Financial Products complies with the requirements of this Section 8 and the FMC Act. References in this Section 8 to an Issuer will for this purpose include its registrar.

8.4.2 Every Issuer must ensure that its registry functions are performed promptly and properly. This will include indemnifying Participants and persons having dealings with its registrar against any losses or costs incurred through a failure in the performance of these functions which is not fairly attributable to the fault of the person claiming indemnity (or his or her agent).

8.4.3 Subject to the right of any Issuer under Rule 8.1, all properly executed and documented written Quoted Financial Product transfers must be registered within 2 Business Days of their receipt by the Issuer.

8.5 **Legal title transfer**

8.5.1 For the purposes of this Rule 8.5:

"Client Inward Transfer" has the meaning given in the Depository Rules, and "Client Outward Transfer" has the meaning given in the Depository Rules.

8.5.2 Every Issuer with Financial Products Quoted, or that Issuer's registry, must:

(a) connect its register and maintain its registry connection to the Depository System, as specified by NZX, and operate it on all Business Days between the hours of 8.00 am and 6.00 pm,

(b) comply with any time limits for the processing of electronic messages or documentation which NZX may specify in relation to the operation of the Depository System,

(c) not delay the registration of any transfers, except in accordance with the Appendix to the Depository Rules, and

(d) issue holders of Quoted Financial Products who are not Participants directly connected to the Depository System with an Authorisation Code.

8.5.3 Where a Client Inward Transfer is entered without proper authority from the holder of the Financial Product being transferred, the Issuer must immediately reinstate or otherwise compensate the dispossessed Financial Product holder. This obligation on the part of the Issuer does not affect or prejudice any right the Issuer may have against any other person.

8.5.4 A Client Outward Transfer to a bona fide purchaser for value must not in any

circumstance be cancelled or reversed by an Issuer.

8.5.5 Each Participant who completes a Client Inward Transfer will be deemed to have warranted to the Issuer that the transfer is valid and has been authorised by the registered holder of the Financial Products, and to indemnify the Issuer for any loss suffered due to a breach by the Participant of that warranty, without prejudice to any right of the Participant under Rule 8.4.2.

8.5.6 The warranty contained in Rule 8.5.5 will give rise to a cause of action by an Issuer against the Participant in question, provided that this obligation does not affect or prejudice any other right the Participant may have.

8.5.7 The requirement in this Rule 8.5 for an Issuer to connect and operate a registry which is connected to the Depository System will apply only as long as the Rules include the provisions of Rule 8.5.3, Rule 8.5.4, Rule 8.5.5, Rule 8.5.6, and this Rule 8.5.7.

8.5.8 NZX may not exercise its right of waiver under Rule 9.7 in respect of compliance with Rule 8.5.2(a), Rule 8.5.2(d), Rule 8.5.3, Rule 8.5.4, Rule 8.5.5, Rule 8.5.6, or this Rule 8.5.8.

Section 9
NZX Powers

Status of the Rules and changes to Rules

Waivers and Rulings

Trading Halts, Suspension and cancellation of listing

Compliance and enforcement functions

Status of the Rules and changes to the Rules

9.1 **Status of Rules**

9.1.1 These Rules were created by NZX to ensure that the Main Board and Debt Market are fair, orderly and transparent markets.

9.1.2 Any agreement made between NZX and an Issuer on the Main Board or the Debt Market under these Rules becomes a binding contract and is enforceable by NZX. These Rules do not have the status of regulations.

9.1.3 Each Issuer covenants with NZX to observe the Rules and to perform the obligations which the Rules purport to impose on Issuers, in the manner provided in the Rules.

9.2 **Amendment of Rules**

9.2.1 Any amendments to these Rules will become binding on Issuers on the later of:

(a) 20 Business Days after notice has been given to Issuers,

(b) the time (if any) specified in the notice to Issuers, or

(c) approval of the amendments by the FMA.

9.2.2 These timelines will apply even if an Issuer does not receive notice, through accidental omission by NZX or for any other reason.

9.3 **Procedures**

9.3.1 NZX may from time to time approve written procedures relating to the operation of the Rules. Should an inconsistency emerge between any Rule and any procedure, the Rules will prevail.

9.3.2 Any procedures do not form part of the Rules, however, if a Rule requires compliance

with any procedure, failure to comply with that procedure is a contravention of the Rule.

9.4 **Effect of Amendment**

9.4.1 Unless stated otherwise, the amending, deletion or lapsing of a Rule or procedure does not have any retrospective effect. In particular, it does not affect:

(a) the previous operation of that Rule or procedure or anything done under that Rule or procedure,

(b) any right, privilege, obligation or liability acquired, accrued or incurred under that Rule or procedure, or

(c) any penalty, forfeiture, suspension, expulsion or disciplinary action incurred in respect of any contravention of that Rule or procedure. These may proceed as if the change had not taken effect.

9.4.2 When a change to the Rules requires a change to an Issuer's Governing Document, the Issuer will ensure that change is made at the first reasonable opportunity. Where the Rules are incorporated by reference into the Governing Document, the amendment will be deemed to be incorporated on the date specified in the notice given under Rule 9.2.1.

9.4.3 Any transaction:

(a) to which these Rules apply, and

(b) commenced, or undertaken pursuant to an agreement entered into, before an amendment of these Rules came into force,

will be allowed to proceed pursuant to the previously applicable Rules.

9.5 **Disputed Interpretation**

9.5.1 Disputes between an Issuer and a Quoted Financial Product holder of that Issuer in relation to the Rules may be referred to NZX for a Ruling under Rule 9.6, should NZX elect to exercise this power.

9.5.2 Written notice must be provided to NZX with any application under Rule 9.5.1. This must contain a summary of the relevant facts known to the applicant and sufficient explanation to enable NZX to understand the issues in dispute and to identify whether any other parties should be notified or invited to make submissions.

9.5.3 Before commencing legal action which involves determination of a dispute as to the meaning or application of the Rules, a party to the Rules or a Quoted Financial Product holder having the benefit of them, must first apply to have a determination made by NZX under Rule 9.5.1 and await the outcome of NZX's determination.

9.6 **Rulings**

9.6.1 NZX may make Rulings in relation to the Rules for such period and on such terms and conditions as it sees fit. It may do this upon application by an Issuer or at its own instigation, and whether or not a dispute exists. A Ruling may apply to a specific Issuer, or be a class Ruling applying to the Rules generally.

9.6.2 Rulings in respect of an application by an Issuer will be made public, together with the Issuer's identity, the facts of any application and the grounds for NZX's decision, unless:

(a) the affected Issuer establishes satisfactory grounds for maintaining confidentiality, or

(b) NZX elects at its sole discretion not to publish its decision.

9.6.3 Any Ruling given under Rule 9.6.1:

(a) will have effect as if it formed part of the Rules, either in relation to:

(i) the Issuer concerned, or

(ii) the Rules generally if a class Ruling is made,

(b) may be recorded or publicised in such manner as NZX thinks fit, and

(c) may be revoked by NZX at any time by giving notice to either:

(i) the relevant Issuer, or

(ii) to the market generally, if revoking a class Ruling.

9.7 **Waiver**

9.7.1 NZX may waive the application of any one or more of the provisions of the Rules for such period (including retrospectively) and on such terms and conditions as NZX sees fit. It may do this upon application by an Issuer or at its own instigation. A waiver may apply to a specific Issuer, or be a class waiver applying to the Rules generally.

9.7.2 Waivers in respect of an application by an Issuer will be made public, together with the Issuer's identity, the facts of the application and the grounds for NZX's decision, unless:

(a) the affected Issuer establishes satisfactory grounds for maintaining confidentiality, or

(b) NZX elects at its sole discretion not to publish its decision.

9.7.3 Any waiver granted under Rule 9.7.1 may be revoked at any time by NZX by written notice to the Issuer, or to the market generally if revoking a class waiver. Such a revocation has effect from the date stated in the notice (and may apply retrospectively if NZX considers that the waiver granted on the basis of incorrect information).

9.7.4 Subject to Rule 9.7.2, NZX may publish such information relating to a waiver granted or refused under Rule 9.7.1, or revocation of a waiver under Rule 9.7.3, as NZX sees fit.

9.8 **Interpretation Policy**

9.8.1 In the exercise of its powers to make Rulings, NZX will be guided by the policy statements published by it and any relevant Ruling decisions.

9.8.2 In addition to the policy statements referred to in Rule 9.8.1, NZX may from time to time issue further policy statements and practice notes which will have a similar status in the application of the Rules.

9.9 **Trading Halts, Suspension, Cancellations and other Powers**

9.9.1 An Issuer may request, by notice in writing to NZX in the prescribed form:

(a) that trading in its Quoted Financial Products be halted for a period not to exceed 2 Business Days,

(b) that trading in its Quoted Financial Products be suspended for a period specified in the notice, or

(c) with at least one month's notice, that it will cease to be Listed or that some or all of its Quoted Financial Products will cease to be Quoted.

9.9.2 Upon receipt of a written notice under Rule 9.9.1, NZX may at its discretion accept or reject such applications or impose such conditions as it thinks fit.

9.9.3 NZX may at its absolute discretion at any time, without giving any reasons and without prior notice to the Issuer:

(a) cancel the Listing of any Issuer,

(b) cancel, halt or suspend for such period as NZX thinks fit, the Quotation of any or all of an Issuer's Quoted Financial Products, or

(c) refer the conduct of any Issuer, or Director or Associated Person of anyIssuer, to the Tribunal or any statutory or governmental authority.

9.9.4 Where NZX exercises its power under Rule 9.9.3 without giving prior notice or reasons to the Issuer, it will provide that notice, and the reasons for NZX exercising its powers in that manner, as soon as practicable.

9.9.5 Suspension of Quotation or trading does not release the Issuer from any obligation under the Rules. Cancellation of Listing or Quotation does not release the Issuer from any prior obligations in respect of any period or matter occurring before the cancellation.

Compliance and enforcement

9.10 **Contract and Commercial Law Act to Apply**

9.10.1 The Rules are enforceable against each Issuer (including any person who has been Listed) for the benefit of every person who is or was a Quoted Financial Product holder over the period that the Issuer is or was Listed, and subpart 1 of Part 2 of the Contract and Commercial Law Act 2017 will apply accordingly.

9.10.2 Nothing in the status of Quoted Financial Product holders as beneficiaries of the Rules under the Contract and Commercial Law Act 2017 will:

(a) entitle them to challenge the right of NZX or the Tribunal to exercise their powers as they think fit, or to challenge any consequences arising from the exercise, or non-exercise, of such powers,

(b) limit the rights of NZX or the Tribunal in respect of the Rules, including their absolute discretion to make Rulings and to change or revoke all or any of the Rules,

(c) entitle any person other than NZX to exercise the rights and powers provided in Rule 9.12,

(d) entitle any person to be given notice of a Ruling, or

(e) entitle any person to take legal action to enforce any provision of the Rules which is subject to a current Ruling except on the basis of and in accordance with that Ruling.

9.11 **Compliance by Subsidiaries and in concert parties**

9.11.1 Every Issuer must take all steps reasonably practicable to ensure that no Subsidiary or person acting in concert with the Issuer or any of its Subsidiaries does anything that would cause the Issuer to be in breach of the Rules.

9.12 **NZX**

9.12.1 NZX, the Tribunal and anyone authorised by NZX may:

(a) require the Issuer, or require the Issuer to procure any Director, officer, employee or agent of the Issuer, to:

(i) produce for inspection by NZX any books, papers, registers, records, or

accounts (whether hard copy or electronic) held by, or available to, that person, and

(ii) provide written commentary, explanation or responses to questions in relation to any document provided to NZX under (i) above,

(b) inspect, copy or take notes from such documentation,

(c) take physical possession of the information for such time as is reasonable to make copies or records,

(d) require a representative of the Issuer to appear for interview, or

(e) require the Issuer to procure any current, or use reasonable endeavours to procure any former, Director, officer, employee or agent of the Issuer to appear for interview.

9.12.2 Where NZX is exercising its powers under Rule 9.12.1, NZX must deliver on request by the Tribunal, or such other person authorised under Rule 9.12.1, all information obtained under Rule 9.12.1 to the Tribunal or that person.

9.12.3 The Tribunal or authorised person acting under Rule 9.12.1 may provide information obtained from an Issuer to NZX if they consider that it:

(a) should have been made available by the Issuer or otherwise under the Rules, or

(b) discloses some other breach of the Rules.

9.12.4 All information provided to NZX by the Tribunal under Rule 9.12.3 or to NZX under Rule 9.12.1 may be treated in all respects as if it had been supplied by the Issuer in compliance with the Rules, and accordingly fell within Rule 3.30.

9.12.5 Where NZX considers that a breach may have occurred, it may disclose to the Tribunal that information obtained under Rule 9.12.1 which is necessary to establish the fact and nature of the alleged breach and any other relevant facts and circumstances of which it is aware which would support a charge against the Issuer. Such charge will be heard by the Tribunal in accordance with the Tribunal Rules.

9.12.6 Except in accordance with Rule 9.12.2, Rule 9.12.3 or Rule 9.12.5, information obtained by NZX, the Tribunal or any person authorised under Rule 9.12.1 may be disclosed only:

(a) as necessary for the discharge of their functions or the exercise their powers under the Rules,

(b) if disclosure is required by law,

(c) if disclosure is to a solicitor, accountant, or other professional adviser of NZX, the Tribunal or any other person authorised under Rule 9.12.1,

(d) to the NZX Chief Executive and the NZX Board,

(e) to any other person as required or permitted by the FMC Act,

(f) to any other person with whom NZX has a Reciprocal Arrangement in accordance with that Reciprocal Arrangement,

(g) in relation to a NZX Foreign Exempt Issuer, to the Issuer's Home Exchange and the primary financial markets regulator in the jurisdiction of its Home Exchange, or

(h) to any other stock exchange where the Issuer:

(i) is listed (whether or not such stock exchange is the Issuer's Home Exchange), or

(ii) has made an application for listing on such other stock exchange but has not yet been accepted for listing.

9.12.7 A document signed by the RegCo CEO, the Chairperson of the Tribunal or the chairperson of any Division of the Tribunal warranting the appointment of a person to exercise the powers of NZX or the Tribunal is conclusive evidence of the authority thereby warranted. Such a document may be general or specific to the circumstances ofa particular case.

9.12.8 Any exercise by NZX of the powers set out in Rule 9.12.1 will, in the absence of the agreement of the Issuer concerned, require at least one Business Day prior written notice to the Issuer of the intention to exercise the power (which notice may be in a general form) unless NZX has determined that the notice period should not apply in any particular case. The reasons for such determination will be given to the Issuer on request.

9.13 **The Tribunal**

9.13.1 NZX will appoint the Tribunal which will have the powers, rights and discretions set out in the Tribunal Rules, incorporated by reference into these Rules.

9.14 **Liability and Indemnity**

9.14.1 To the maximum extent permitted by law, none of NZX, any director or employee of NZX, or any delegate of NZX will be liable in tort, contract or otherwise for any action taken or not taken in the good faith exercise or purported exercise of the powers or discretions conferred by the Rules.

9.14.2 Each Issuer indemnifies NZX, its directors and employees, and all delegates of NZX

under the Rules, against liabilities and claims arising from any actions or inactions by any such person in relation to the Issuer, which NZX determines to have been in good faith and in response to circumstances for which the Issuer should bear the responsibility in whole or in part. The indemnity will be for all or such part of the liabilities and claims as NZX determines.

9.15 **Delegation to RegCo**

9.15.1 NZX may act by and through RegCo in performing any function or discharging any power set out in these Rules. RegCo shall have the authority to exercise any rights, powers, authorities and discretions under any delegated authority granted to it by NZX.

9.16 **Costs**

9.16.1 An Issuer must pay all costs and expenses sought by NZX, the Tribunal and any person authorised by NZX in the exercise of the functions, rights and powers conferred by the Rules in respect of that Issuer. These payments may include an appropriate proportion of NZX's overhead costs in relation to such matters.

Chapter PH

Securities Regulation in Philippines

Rafael A. Morales[*]

I. LEGAL SYSTEM

§ PH:1 Generally

II. SECURITIES REGULATORY SCHEME

§ PH:2 General
§ PH:3 The Securities Regulation Code
§ PH:4 Administrative agencies in securities regulation
§ PH:5 Self-regulatory organizations

III. PUBLIC SECURITIES MARKET

§ PH:6 Generally

IV. REGULATIONS REGARDING SUBSTANTIVE SECURITIES MATTERS

§ PH:7 Establishment, regulation, and organization of securities regulatory organization—Securities and Exchange Commission
§ PH:8 Definition of securities
§ PH:9 Public offerings and exempt offerings—General
§ PH:10 —Registration statement
§ PH:11 —Restrictions on advertising and other publicity
§ PH:12 Ongoing disclosure requirements of public companies
§ PH:13 —Disclosure of interest in shares
§ PH:14 —Proxy solicitation
§ PH:15 —Penalties for non-compliance with disclosure requirements
§ PH:16 Fraud, manipulation and insider trading—Insider trading
§ PH:17 — —Penalties for insider trading
§ PH:18 —Manipulation of security prices
§ PH:19 —Short-selling
§ PH:20 Tender offers, mergers and acquisitions—Tender offers

---

[*]Rafael A. Morales is the managing partner in Morales & Justiniano in Bonifacio Global—Taguig City, Metro Manila, Philippines, and the head of its banking, finance and securities practice group.

§ PH:21 —Mergers and consolidations
§ PH:22 Examination of accounts
§ PH:23 International securities transactions—In general
§ PH:24 —Stock exchange listing of foreign securities
§ PH:25 —Naturalization of companies
§ PH:26 —Foreign investment regulation
§ PH:27 Investment companies
§ PH:28 Broker, dealers and others authorized to trade in securities
§ PH:29 —Licensing
§ PH:30 —Restrictions on Brokers and Dealers
§ PH:31 —Disciplinary proceedings
§ PH:32 Civil and criminal liability—Civil liability
§ PH:33 —Criminal liability

V. RECENT TRENDS

§ PH:34 Generally

Appendix PH-1. The Securities Regulation Code

Appendix PH-2. The Securitization Act of 2004

Appendix PH-3. 2015 Implementing Rules and Regulations of the Securities Regulation Code

Appendix PH-4. Securities and Exchange Commission SRC Rule 68, as amended [Part I – General Financial Reporting Requirements; Part II—Additional Requirements for Issuers of Securities to the Public]

I. LEGAL SYSTEM

§ PH:1 Generally

The Philippines has a democratic and republican system of government,[1] which is divided into three co-equal branches: the executive, the legislature, and the judiciary.

Executive power is vested in the President of the Philippines, who is directly elected by the people for a term of six years.[2] The President is assisted by a Vice-President and by a Cabinet appointed by the President.[3]

Legislative power is vested in the Congress of the Philippines, a bicameral body.[4] The Senate, the upper house, is composed of 24 sena-

---

[Section PH:1]

[1]Sec. 1, Art. II, Constitution of the Republic of the Philippines.

[2]Secs. 1 and 4, Art. VII, *Id.*

[3]Secs. 3 and 4, Art. VII, *Id.*

[4]Sec. 1, Art. VI, *Id.*

tors,[5] while the lower House of Representatives is composed of not more than 250 members.[6]

Judicial power is exercised by the Supreme Court and the lower courts established by law.[7] The Philippines has no jury system.

Judicial decisions applying or interpreting the laws or the Constitution form part of the law of the land.[8] This case law based on *stare decisis* is essentially the common law component of the legal system. The other component is civil law based on codes and statutes. The Philippine legal system is, therefore, a mixture of civil law and common law. This is not surprising, because the Philippines was a colony of Spain for more than four centuries, and then of the United States for half a century.

II. SECURITIES REGULATORY SCHEME

§ PH:2 General

Act No. 2581, also known as the Blue Sky Law and passed in 1916, was the first securities legislation in the country.[1] In 1936, it was repealed by Commonwealth Act No. 83, the original Securities Act in the Philippines.[2] This was substantially a composite of two federal laws in the United States (namely, the Securities Act of 1933 and the Securities Exchange Act of 1934) as well as the Uniform Sale of Securities Act drafted by the Conference of Commissioners of Uniform State Laws of the United States.[3] Commonwealth Act No. 83 also created the Securities and Exchange Commission (SEC) as the body to safeguard the interests of the investing public.

It was not until 1982 that Commonwealth Act No. 83 was repealed by *Batas Pambansa Blg.* 178, also known as the Revised Securities Act. Eighteen years later, the Revised Securities Act was in turn repealed by the Securities Regulation Code (SRC), which became effective on August 8, 2000.

---

[5]Sec. 2, Art. VI, *Id.*

[6]Sec. 5(1), Art. VI, *Id.*

[7]Sec. 1, Art. VIII, *Id.*

[8]Art. 8, Civil Code of the Philippines.

[Section PH:2]

[1]Act No. 2581 was patterned after similar laws in various states of the United States and directed against speculative schemes that had no more basis than a few feet of the blue sky (People vs. Fernandez, 65 Phil. 675, 679 [1938]).

[2]The mining boom of the 1930s provided occasions for glib-tongued operators to dupe and dump naive investors. To prevent the repetition of these events, the Congress of the Philippines passed Commonwealth Act No. 83 (*see* Jose C. Campos, Jr. and Maria Clara Lopez-Campos, *Notes and Selected Cases on Corporation Law* (Community Publishers, Inc., 1969) at 1066).

[3]*See* Vicente J. Francisco, *Understanding the Securities Act* (East Publishing Co., Inc., 1937) at 1.

§ PH:3 The Securities Regulation Code

There is continuity in the regulatory thrust of the securities laws in the country, notably from Commonwealth Act No. 83 down to the SRC. Basically, there are four salient features aimed at protecting the investing public: (1) the registration of securities, (2) the registration of securities brokers, dealers, and other securities market professionals, (3) the registration of exchanges and other trading markets, and (4) trading regulation.[1]

Essentially, the SRC strengthened further the foregoing regulatory structure, in line with the state policies declared in SRC Section 2, namely, to "establish a socially conscious, free market that regulates itself, encourage the widest participation of ownership in enterprises, enhance the democratization of wealth, promote the development of the capital market, protect investors, ensure full and fair disclosure about securities, minimize if not totally eliminate insider trading and other fraudulent or manipulative devices and practices which create distortions in the free market." This declaration of state policies is the guiding principle in understanding the provisions of the SRC and its implementing rules. Any doubt in the interpretation of the SRC Rules will be resolved by the SEC in a manner that will uphold those state policies.[2]

§ PH:4 Administrative agencies in securities regulation

The SEC is the administrator and watchdog of the SRC. Established in 1936 pursuant to Commonwealth Act No. 83, the SEC is the oldest securities regulatory body in Asia. It has four principal departments each of which is headed by a director. Its core function of regulating the capital market has been assigned to the Markets and Securities Regulation Department, and the Corporation Governance and Finance Department. In turn, the SEC's company registration and enforcement functions are performed respectively by the Company Registration and Monitoring Department and the Enforcement and Investor Protection Department. In addition, the SEC has four support departments (namely, the Human Resource and Administrative Department, the Economic Research and Training Department, the Information and Communications Technology Department, and the Financial Management Department) and three special offices (the Office of the Commission Secretary, the Office of the General Counsel, and the Office of the General Accountant). Four more departments appear in the latest organizational structure of the SEC: the Financing and Lending Companies Department, the Financial Analysis and Audit Department, the External Affairs Department, and the Management Services Department.

[Section PH:3]

[1]*See* Campos and Lopez-Campos, *supra* note 11, at 1034–1092.

[2]SRC Rule 2.

To a certain extent, the *Bangko Sentral ng Pilipinas* (BSP), the country's central monetary authority, is also involved in securities regulation particularly in relation to banks and quasi-banks. Moreover, the BSP is authorized to prescribe rules on margin trading.[1]

§ PH:5 Self-regulatory organizations

In lieu of direct regulation by the SEC of exchanges and other securities-related organizations, the SRC authorizes the formation of self-regulatory organizations (SROs). Under this set-up, the SEC allows self-regulation of those organizations and steps in only if the SROs are unable to perform their functions.

III. PUBLIC SECURITIES MARKET

§ PH:6 Generally

The Philippine Stock Exchange (PSE), which is an SRO, is the principal market for the purchase and sale of equity securities.

One other exchange and SRO is the Philippine Dealing & Exchange Corp. (PDEx) on which fixed-income debt securities are traded. PDEx aims to play a key role in the development of the local capital market by providing an online inter-dealer platform for the secondary trading of Philippine government securities.

In the Philippines, there is a tax disincentive to trading listed securities off the PSE. Under the amended National Internal Revenue Code of 1997, the tax on the sale or disposition of shares of stock listed and traded through the PSE (other than the sale by a dealer in securities) is 0.10% of the gross selling price or gross value in money of the shares sold or disposed. However, the net capital gain from the sale or disposition of shares of stock not traded through the PSE is subject to a 15% tax. Moreover, there is no documentary stamp tax on the sale, barter or exchange of shares of stock listed and traded through the PSE.[1]

IV. REGULATIONS REGARDING SUBSTANTIVE SECURITIES MATTERS

§ PH:7 Establishment, regulation, and organization of securities regulatory organization—Securities and Exchange Commission

The SEC is a collegial body, composed of a Chairperson and four Commissioners, all appointed by the President of the Philippines for a

---

[Section PH:4]

[1]SRC Sec. 48.

[Section PH:6]

[1]Sec. 199(e), National Internal Revenue Code of 1997, as amended.

term of seven years.[1] The Chairperson is the chief executive officer of the SEC.[2] The SEC administers and implements the provisions of the SRC.[3]

§ PH:8 Definition of securities

SRC Subsection 3.1 defines the term "securities" as "shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instrument, whether written or electronic in character." The term "securities" also includes:

(a) Shares of stock, bonds, debentures, notes, evidences of indebtedness, asset-backed securities;

(b) Investment contracts, certificates of interest or participation in a profit sharing agreement, certificates of deposit for a future subscription;

(c) Fractional undivided interests in oil, gas or other mineral rights;

(d) Derivatives like options and warrants;

(e) Certificates of assignments, certificates of participation, trust certificates, voting trust certificates or similar instruments;

(f) Proprietary or nonproprietary membership certificates in corporations; and

(g) Other instruments as may in the future be determined by the SEC.

§ PH:9 Public offerings and exempt offerings—General

The SRC is a "truth-in-securities law," because its aim, according to the state policy declared in SRC Section 2, is to "ensure full and fair disclosure [of information] about securities," with a view to enabling the public to make an informed investment decision in respect of the securities offered for sale. The principal device to ferret out the truth is the registration of such securities (absent any exemption) with the SEC. This is sought to be accomplished by the issuer's filing of a registration statement (including a prospectus) with the SEC.

Section 8 is the centerpiece of the disclosure philosophy under the

---

[Section PH:7]

[1]SRC Subsec. 4.1.

[2]SRC Subsec. 4.3.

[3]It is well to note that there are special laws administered by the SEC and which govern the registration of certain securities. For instance, the Investment Company Act (Republic Act No. 2629) also governs the registration of shares of closed-end companies, as well as open-end ones or mutual funds. On the other hand, asset-backed securities are to be registered pursuant to the Securitization Act of 2004 (Republic Act No. 9267).

SRC. It prohibits the sale or offer for sale of securities to the public within the Philippines, unless a registration statement is duly filed with and approved by the SEC. This rule is especially true during the *pre-filing period*, which is the period when the issuer is contemplating a public offering of its securities within the Philippines, but prior to the filing of the registration statement with the SEC. During this period, it is unlawful to sell or offer to sell securities.

After the filing of the registration statement but before the same has been declared effective by the SEC, it is still unlawful to sell or offer to sell the securities. However, during this *waiting* or *pre-offering period*, certain information on the securities (in such form and substance prescribed by the SEC) may already be made available to prospective purchasers, who may, in turn, indicate their interest in the proposed offering.

It is only after the registration statement has been declared effective by the SEC that the securities may be sold or offered for sale to the public within the Philippines. This is the *offering period.*

Registration is not necessary in the case of *exempt securities*,[1] or where the securities are sold in *exempt transactions*.[2] These exempt securities may be sold and resold, without being subject to registration under the SRC. Essentially, they are exempt because they are either issued by (i) the Philippine government,[3] (ii) a foreign government with which the Philippines maintains diplomatic relations,[4] or (iii) a local agency or entity already being supervised by a government agency other than the SEC, such as the BSP or the Insurance Commission.[5]

Apart from exempt securities, securities sold in "exempt transactions" are not covered by the registration requirement under the SRC. However, unlike exempt securities, which can be sold and resold and never be subject to registration, exempt transactions do not make the securities in question continuously registration-free. In other words, if only the transaction is exempt, then the initial sale of the securities may be exempt but a subsequent resale of the same securities may no longer be exempt from registration. Under SRC Rule 10.1.1, the SEC requires that a *written disclosure* be provided to any offeree, informing him of the provision of SRC Subsection 10.1 under which exemption from registration is claimed, and containing the following legend in bold face, prominent type:

[Section PH:9]

[1]SRC Sec. 9.

[2]SRC Sec. 10.

[3]SRC Subsec. 9.1(a).

[4]SRC Subsec. 9.1(b).

[5]SRC Subsec. 9.1(c)–(e).

THE SECURITIES BEING OFFERED OR SOLD HEREIN HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES REGULATION CODE. ANY FUTURE OFFER OR SALE OF THE SECURITIES IS SUBJECT TO REGISTRATION REQUIREMENTS UNDER THE CODE UNLESS SUCH OFFER OR SALE QUALIFIES AS AN EXEMPT TRANSACTION

The second sentence of this legend confirms that only the present transaction is exempt from the registration requirement and a future offer or sale of the securities in question must itself qualify as an exempt transaction so that it will not be subject to registration.

There is reason to resort to an exempt transaction if available. Considering that the registration process is expensive and time-consuming, and may itself give rise to liability to purchasers of the registered securities if the registration statement contains any material misstatement or omission, it may be advisable or desirable to proceed under an available exemption from the registration requirement.

A more detailed list of exempt securities and exempt transactions under the SRC is set forth below.

A. Exempt Securities

(a) Any security issued or guaranteed by the government of the Philippines, or by any political subdivision or agency thereof, or by any person controlled or supervised by, and acting as an instrumentality of the said government.

(b) Any security issued or guaranteed by the government of any country with which the Philippines maintains diplomatic relations, or by any state, province or political subdivision thereof on the basis of reciprocity; provided, that the SEC may require compliance with the form and content of disclosures that the SEC may prescribe.

(c) Certificates issued by a receiver or by a trustee in bankruptcy duly approved by the proper adjudicatory body.

(d) Any security or its derivatives the sale or transfer of which, by law, is under the supervision and regulation of the Insurance Commission, Housing and Land Use Regulatory Board, or the Bureau of Internal Revenue.

(e) Any security issued by a bank (or a quasi-bank) except its own shares of stock.

B. Exempt Transactions

(a) Any judicial sale, or sale by an executor, administrator, guardian or receiver or trustee in insolvency or bankruptcy.

(b) By or for the account of a pledge holder, or mortgagee or any other similar lien holder selling or offering for sale or delivery in the ordinary course of business and not for the purpose of avoiding the provisions of the SRC, to liquidate a *bona fide* debt, a security pledged in good faith as security for such debt.

(c) An isolated transaction in which any security is sold, offered for sale, subscription or delivery by the owner thereof, or by his representative for the owner's account, such sale or offer for sale, subscription or delivery not being made in the course of repeated and successive transactions of a like character by such owner, or on his account by such representative and such owner or representative not being the underwriter of such security.

(d) The distribution by a corporation, actively engaged in the business authorized by its articles of incorporation, of securities to its stockholders or other security holders as a stock dividend or other distribution out of surplus.

(e) The sale of capital stock of a corporation to its own stockholders exclusively, where no commission or other remuneration is paid or given directly or indirectly in connection with the sale of such capital stock.

(f) The issuance of bonds or notes secured by mortgage upon real estate or tangible personal property, where the entire mortgage together with all the bonds or notes secured thereby are sold to a single purchaser at a single sale.

(g) The issue and delivery of any security in exchange for any other security of the same issuer pursuant to a right of conversion entitling the holder of the security surrendered in exchange to make such conversion; provided, that the security so surrendered has been registered under the SRC or was, when sold, exempt from the provisions of the SRC, and that the security issued and delivered in exchange, if sold at the conversion price, would at the time of such conversion fall within the class of securities entitled to registration under the SRC. Upon such conversion the par value of the security surrendered in such exchange will be deemed the price at which the securities issued and delivered in such exchange are sold.

(h) Broker's transactions, executed upon customer's orders, on any registered exchange or other trading market.

(i) Subscriptions for shares of the capital stock of a corporation prior to the incorporation thereof or in pursuance of an increase in its authorized capital stock under the Revised Corporation Code, when no expense is incurred, or no commission, compensation or remuneration is paid or given in connection with the sale or disposition of such securities, and only when the purpose for soliciting, giving or taking of such subscriptions is to comply with the requirements of such law as to the percentage of the capital stock of a corporation which must be subscribed before it can be registered and duly incorporated, or its authorized capital increased.

(j) The exchange of securities by the issuer with its existing security holders exclusively, where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange.

(k) Private placement, *i.e.,* the sale of securities by an issuer to fewer than 20 persons, who are not qualified buyers, during any 12-month period.

(l) The sale of securities to any number of the following qualified buyers: (i) bank; (ii) registered investment house; (iii) insurance company; (iv) pension fund or retirement plan maintained by the government of the Philippines or any political subdivision thereof or managed by a bank or a trust entity; (v) investment company; or (vi) such other persons as the SEC may by rule determine as qualified buyers, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial and business matters, or amount of assets under management.[6]

A notice of exemption under SEC Form 10-1 is required in respect of private placements and sales to qualified buyers. It must be filed with the SEC, within ten days after the sale of the securities.

The SEC may designate additional exempt securities if it finds that the enforcement of the SRC with respect to such securities is not necessary in the public interest and for the protection of investors.[7] Similarly, the SEC may exempt other transactions, if it finds that the requirement of registration under the SRC is not necessary in the public interest or for the protection of the investors such as by reason of the small amount involved or the limited character of the public offering.[8]

Exempt securities and those sold in exempt transactions are excluded only from the registration requirements. Their purchase and sale are not exempt from the antifraud, civil liability, and other provisions of the SRC, including those on SEC reportorial requirements.

It must be noted that the thrust of the registration requirement under the SRC is directed at the sale or offering of securities to the public *within* the Philippines, consistent with the principle that local laws and rules do not have extraterritorial application. Accordingly, if

---

[6]Under SRC Rule 10.1.11, category (l) may be a "qualified individual buyer" or a "qualified institutional buyer." A qualified individual buyer is a natural person who, at the time of his or her registration with a registrar of qualified buyers, (a) has a minimum annual gross income of P10,000,000 for at least two years prior to such registration; or a total portfolio investment in securities registered with the SEC of at least P10,000,000; or a personal net worth of not less than P30,000,000, and (b) has been engaged in securities trading, in his or her personal capacity or through a fund manager, for a period of one year; or held for at least two years, in any professional or business entity, a position of responsibility that requires knowledge or expertise in securities trading (such as legal consultant, financial adviser, sales person or associated person of a broker-dealer, or finance, treasury or trust officer of a bank or other similar executive officers). On the other hand, a qualified institutional buyer is a juridical person that, at the time of its registration with a registrar of qualified buyers, (a) has a minimum annual gross assets of at least P100,000,000 for at least two years prior to registration; or (b) a total portfolio investment in securities registered with the SEC of at least P60,000,000. Under SEC Memorandum Circular No. 3 (Series of 2008), the authorized registrars of qualified buyers are banks (with respect to their registration as broker-dealer, Government Securities Eligible Dealer and/or underwriter of securities), brokers, dealers, investment houses, investment company advisers, and issuer companies (with respect to offerings of their own securities).

[7]SRC Subsec. 9.2.

[8]SRC Subsec. 10.2.

the sale or offering of securities were made outside of the Philippines, then the SRC would not apply.

§ PH:10 Public offerings and exempt offerings—Registration statement

Set forth below are certain procedural aspects of the registration of securities under the SRC:

1. *Filing of Registration Statement (SEC Form 12-1)*—The issuer of the securities (no one else) must file with the SEC's main office a sworn registration statement using SEC Form 12-1, including (i) a preliminary prospectus; (ii) a duly verified resolution of the issuer's board of directors authorizing the issuance and registration of the securities; (iii) the written consent of any expert named as having certified any part of the registration statement or any document used in connection therewith; and (iv) in case the offering includes shares of existing shareholders, a written certification of such shareholders as to the accuracy of any part of the registration statement contributed by such shareholders. The registration statement must be signed by the issuer's executive officer, principal operating officer, principal financial officer, comptroller, principal accounting officer, and corporate secretary (or persons performing similar functions).[1] If the securities subject of the registration statement are intended to be listed on an exchange, a copy of the registration statement and all other pertinent documents (including amendments thereto) must be filed with that exchange. Two copies of the listing application must also be filed with the SEC.[2]

2. *Payment of Filing Fee*—The issuer pays to the SEC a filing fee of not more than 1/10 of 1% of the maximum aggregate price at which the securities are to be offered to the public.[3]

3. *Publication of Notice*—A notice of the filing of the registration statement must be immediately published by the issuer, at its own expense, once a week for two consecutive weeks, in two newspapers of general circulation. The notice must state that the filed registration statement (together with its attachments) is open to inspection at the SEC during business hours, and copies thereof may be given to interested parties at reasonable charge.[4]

4. *Declaration of Effectivity*—If the SEC finds an unamended registration statement and its attachments to be complete and compliant with SEC requirements, the SEC will enter an order declaring the registration statement to be effective, subject to such

---

[Section PH:10]

[1] *See* SEC Form 12-1.

[2] *See* SRC Rule 8.1.1.4.

[3] SRC Subsec. 12.5(a).

[4] SRC Subsec. 12.5(b).

terms and conditions as the SEC may impose for the protection of the investors. The SEC is to decide within 45 days from the date of filing of the registration statement, or such later date to which the issuer has consented.[5]

5. *Issuer's Oath*—Upon the effectivity of the registration statement, the issuer must state under oath in every prospectus that all registration requirements have been satisfied and all information in the registration statement and the prospectus are true and correct.[6]

6. *Sale of Securities*—The sale of the securities must be commenced within ten business days from the date of the effectivity of the registration statement and continued until the end of the offering period or until the sale is terminated by action of the issuer. If the sale is not commenced within that period, the registration statement will be cancelled and all fees paid thereon forfeited.[7]

7. *Notice of Offering Completion or Termination*—Within three business days from the completion or termination of the offering, a written notice thereof (with an indication of the number of securities sold) must be filed by the registrant with the SEC.[8]

8. *Shelf Registration*—Securities may be registered for an offering to be made on a continuous or delayed basis in the future, for a period not exceeding five years from the effective date of the registration statement, subject to certain requirements.[9]

The SEC promulgated its Memorandum Circular No. 14 (Series of 2019), which governs the operation and use of equity-based and lending-based crowdfunding by registered persons such as brokers, investment houses and funding portals, as well as issuers and investors participating in crowdfunding through an online platform. Crowdfunding is defined by the SEC as "the offer or sale of securities of a limited scale usually for start-ups, micro, small and medium enterprises (MSMEs) done through an online electronic platform." Crowdfunding through means or a medium other than an online electronic platform is not covered by the Memorandum Circular but will be subject to the usual requirements under the SRC.

The SEC's Enforcement and Investor Protection Department issued an Advisory on initial coin offerings (ICOs) in respect of virtual currencies or cryptocurrencies that can be classified as investment contracts under the SRC.

The regulatory approach to digital assets in the Philippines continues to develop alongside innovations in financial technology and evolving market practices. The SEC has maintained its position that

[5]SRC Subsec. 12.6.

[6]SRC Subsec. 12.7.

[7]SRC Rule 8.1.1.5.

[8]SRC Rule 8.1.1.6.

[9]SRC Rule 8.1.2 as amended.

certain digital tokens, including those issued through ICOs, may be classified as securities where they meet the characteristics of an investment contract under the SRC, applying principles analogous to the Howey Test in the United States. In such instances, issuers are required to register the offering with the SEC unless an exemption is available, and intermediaries may be subject to licensing and compliance requirements.

The SEC has also issued draft rules on Digital Asset Exchanges and ICOs, proposing a regulatory framework that would require the registration of platforms facilitating the trading of digital assets that qualify as securities. While these rules remain in draft form, they reflect the SEC's intent to establish a comprehensive regime governing the issuance, trading, and custody of digital assets.

Concurrently, the BSP regulates virtual asset service providers or VASPs, particularly with respect to anti-money laundering, counter-terrorism financing, and operational risk management. The BSP strengthened the regulatory framework by imposing licensing requirements and enhanced compliance obligations on entities engaged in virtual asset activities.

Recent regulatory actions indicate increased scrutiny over crypto-related activities, including advisories against unregistered investment schemes and coordination with law enforcement agencies to address fraudulent practices. The Philippine approach remains functional and risk-based, relying on existing regulatory frameworks to address the multifaceted nature of digital assets.

In line with global trends in sustainable finance, the SEC has enhanced its framework on Environmental, Social, and Governance (ESG) disclosures. In 2024, the SEC introduced updated sustainability reporting guidelines applicable to publicly listed companies, requiring more comprehensive and standardized disclosures of ESG risks, governance structures, and performance metrics.

These requirements align Philippine disclosure practices with internationally recognized standards, including those developed by the International Sustainability Standards Board (ISSB) and the Global Reporting Initiative (GRI). Companies are expected to identify and disclose material ESG factors, including climate-related risks and opportunities, thereby improving transparency and enabling more informed investment decisions. This initiative reflects the SEC's recognition of the growing importance of ESG considerations in capital markets and aims to enhance comparability, accountability, and investor confidence. It also supports the broader objective of integrating the Philippine capital markets into the global sustainable finance ecosystem.

Complementing these disclosure initiatives, the Philippines has actively participated in regional sustainable finance efforts through the adoption of the ASEAN Green Bond Standards (ASEAN GBS), developed by the ASEAN Capital Markets Forum. The ASEAN GBS provide a harmonized framework for the issuance of green bonds

across ASEAN member states and are largely based on the Green Bond Principles of the International Capital Market Association, with additional safeguards tailored to regional priorities. Under this framework, green bonds are defined as debt securities whose proceeds are exclusively used to finance or refinance eligible environmentally beneficial projects, such as renewable energy, energy efficiency, pollution control, sustainable water management, clean transportation, and climate change adaptation. The standards are structured around core principles relating to the use of proceeds, project evaluation and selection, management of proceeds, and ongoing reporting, and are designed to ensure transparency and prevent greenwashing, including through the exclusion of fossil fuel-related activities. The SEC adopted the ASEAN GBS through its Guidelines on the Issuance of Green Bonds, thereby integrating the regional framework into the domestic regulatory regime and enabling Philippine issuers to access global pools of sustainable capital.

The adoption of the ASEAN Cross-Border Offering Framework by the SEC represents a key milestone in regional capital market integration. The framework facilitates the cross-border offering of qualified collective investment schemes among participating ASEAN jurisdictions, subject to a streamlined authorization process. Under this regime, fund managers in a home jurisdiction may offer their funds in host jurisdictions, including the Philippines, provided that they comply with harmonized standards relating to disclosure, governance, and investor protection. The SEC, acting as host regulator, relies in part on the supervision exercised by the home regulator while ensuring compliance with local requirements. This framework enhances efficiency in fund distribution, broadens investor access to diversified investment products, and promotes the development of the regional asset management industry. It also strengthens regulatory cooperation and contributes to the long-term goal of ASEAN capital market harmonization.

The SEC's issuance of Memorandum Circular No. 12, Series of 2026 establishes a regulatory framework for the issuance and disclosure of Sukuk, or Shariah-compliant bonds, marking a significant development in the diversification of the Philippine capital markets. Sukuk are defined as certificates representing proportional ownership or beneficial interests in underlying assets, usufructs, or investment activities structured in accordance with Islamic law. Unlike conventional debt securities, Sukuk are structured to comply with Shariah principles, typically involving asset-based or asset-backed arrangements rather than interest-bearing obligations.

The Memorandum Circular implements policy objectives under the Islamic Banking Act of 2019 and aligns the Philippine regulatory regime with international Islamic finance standards. It prescribes registration requirements, disclosure obligations, and continuing compliance standards applicable to Sukuk issuers, including corporations and special purpose entities. Key elements of the framework include requirements for Shariah compliance and governance,

enhanced transparency in disclosure of transaction structures and risks, and regulatory treatment broadly consistent with conventional securities offerings under the SRC. The framework is also designed to facilitate both domestic and cross-border issuances, thereby expanding funding sources and attracting participation from global Islamic finance markets. The introduction of Sukuk regulations underscores the SEC's broader strategy of fostering innovation, inclusivity, and internationalization in the Philippine capital markets.

§ PH:11 Public offerings and exempt offerings—Restrictions on advertising and other publicity

Under SRC Rule 24.1(d), all communications by broker dealers or associated persons or salesmen of broker dealers (hereinafter "registered persons"), with the public must be based on principles of fair dealing and good faith and should provide a sound basis for evaluating the facts in regard to any particular security or securities or type of security, industry discussed, or service offered. No material fact or qualification must be omitted if the omission, in the light of the context of the material presented, would cause the advertising or sales literature to be misleading.[1]

Exaggerated, unwarranted or misleading statements or claims are prohibited in all public communications of registered persons. In preparing such literature, it must be borne in mind by registered persons that inherent in investment are the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield, and no registered person is to, directly or indirectly, publish, circulate or distribute any public communication that he knows, or had reason to know, contains any untrue statement of a material fact or is otherwise false or misleading.[2]

Communications with the public must not contain promises of specific results, exaggerated or unwarranted claims, or unwarranted superlatives, unfounded opinions for which there is no basis, or forecasts of future events which are unwarranted, or which are not clearly labeled as forecasts.[3]

No broker dealer, or associated person or salesman of a broker dealer, can publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind that purports to report any transaction as a purchase or sale of any security, unless he believes that such transaction was a *bona fide* purchase or sale of such security; or that it purports to quote the bid price or asked price for any

---

[Section PH:11]

[1]SRC Rule 24.1(d).1.

[2]SRC Rule 24.1(d).2.

[3]SRC Rule 24.1(d).3.

security, unless he believes that such quotation represents a *bona fide* bid for, or offer of, such security.[4]

No broker dealer is to, directly or indirectly, give, permit to be given, or offer to give, anything of value to any person for the purpose of influencing or rewarding the action of such person in connection with the publication or circulation in any newspaper, investment service, or similar publication, of any matter which has, or is intended to have, an effect upon the market price of any security, provided that this rule will not be construed to apply to a matter which is clearly identifiable as paid advertising.[5]

§ PH:12 Ongoing disclosure requirements of public companies

Chapter V of the SRC subjects to periodic reporting obligations a company whose securities are publicly traded. A company becomes subject to these requirements either (i) by having a class of securities listed on an exchange, or (ii) by having both (x) a class of equity securities held by not less than 200 persons each holding at least 100 shares *and* (y) assets in excess of P50,000,000.00, or (iii) by selling securities to the public pursuant to a registration statement. Company (i), (ii) or (iii) is known as a "reporting company."[1] Company (i) or (ii) is also known as a "public company."[2]

The continuing reporting requirements are pursuant to the state policies declared in SRC Section 2 of protecting investors and ensuring full and fair disclosure of information about securities and, for that matter, their issuer.

In a nutshell, there are two types of continuing disclosure requirements: structured and unstructured. Structured continuing disclosure requirements mainly consist of the annual report to stockholders on SEC Form 17-A and the quarterly reports on SEC Form 17-Q. Unstructured continuing disclosures are the communications to the investing public on SEC Form 17-C of material corporate developments as they occur. For example, the following events are to be promptly disclosed to the SEC and the PSE in case of listed shares: changes in the company's corporate purpose, resignation or removal of officers or senior management and their replacements, loss of a significant part of the company's net worth, dissolution, creation of mortgages or pledges on assets comprising a significant part of the company's net worth, merger or consolidation, holding of stockholders' meeting, tender officer, significant borrowing, etc.

---

[4]SRC Rule 30.2.11.

[5]SRC Rule 30.2.12.

[Section PH:12]

[1]SRC Rule 3.1.19.

[2]SRC Rule 3.1.16.

§ PH:13 Ongoing disclosure requirements of public companies—Disclosure of interest in shares

Persons acquiring beneficial ownership of 5% of any class of equity securities of a reporting company must file a report on Form 18-A to the SEC, the issuer and the exchange concerned, within five business days after acquisition.[1] In certain cases, a short-form report on SEC Form 18-AS may be filed in lieu of SEC Form 18-A.

Similarly, a person acquiring 10% or more of any class of equity securities of a reporting company will, as a "principal stockholder," be required to file a report with the SEC and the exchange concerned, using SEC Form 23-A, within ten calendar days after becoming a principal stockholder.[2]

§ PH:14 Ongoing disclosure requirements of public companies—Proxy solicitation

In the area of proxy solicitation, the thrust is to foster and facilitate democracy in public companies by requiring an extensive disclosure of information to the stockholders, in the form of an "information statement" (using SEC Form 20-IS) and a management report. The aim is to enable the stockholders to make an informed decision on whom to give their proxies.

A broker or dealer, acting as proxy for at least 10% of the outstanding shares of a reporting company, must submit a report identifying the beneficial owners of such shares, within ten days from the receipt of the proxy or proxies for its own account or the account of its customers.[1]

§ PH:15 Ongoing disclosure requirements of public companies—Penalties for non-compliance with disclosure requirements

Under SRC Subsection 57.2, any person, who has made or caused to be made any false or misleading statements with regard to a material fact in any report or document filed pursuant to the SRC or the SRC Rules, is liable for damages to one who, relying upon such statements and not knowing them to be false or misleading, has purchased or sold securities at a price affected by such statements. The person sued, however, can avoid liability by proving that he acted in good faith and did not know that such statements were false or misleading.

The above cause of action is available to any investor who, after having read the material misstatements or omissions of fact in the

---

[Section PH:13]

[1]SRC Subsec. 18.1; SRC Rule 18.1.

[2]SRC Subsec. 23.1; SRC Rule 23.

[Section PH:14]

[1]SRC Subsec. 20.5.

document filed pursuant to the SRC and not knowing them to be false or misleading, actually relies upon them and is thereby injured.

SRC Subsection 57.2 not only imposes liability upon the issuer filing the document but also upon "any person who shall make or cause to be made" any misstatement or omission in "any report or document filed pursuant to [the SRC] or any rule or regulation thereunder." This means that liability will extend to the responsible officers and directors of the issuer, especially those signing the filed documents.

An action for damages may be brought by the plaintiff, within two years from the discovery of the untruth or omission.[1]

The penalties for violation of any provision of the SRC or the SRC Rules (including the making of any untrue statement of a material fact in a registration statement filed under the SRC, or omitting to state any material fact required to be stated in such registration statement) are a fine and/or imprisonment. The fine is at least P50,000.00 but not more than P5,000,000.00, while the prison term is at least 7 years but not more than 21 years. It is up to the court whether to impose both penalties or only one of them. If the offender is a corporation, partnership, or other juridical entity, the penalty may be imposed upon the officer or officers responsible for the violation. If such an officer is an alien, he will be deported after serving his sentence.[2]

Apart from criminal liabilities, the SRC provides for civil liabilities, such as for false registration statement, prospectus, communication or report, as well as for fraud in connection with securities transactions and manipulation of security prices, including insider trading.

The court is authorized to award actual damages up to triple the amount of the transaction plus actual damages. Exemplary damages may also be awarded in cases of bad faith, fraud, malevolence or wantonness in the violation of the SRC and its rules. Further, the court may grant attorney's fees up to 30% of the award.[3]

§ PH:16 Fraud, manipulation and insider trading—Insider trading

"Insider" means: "(a) the issuer; (b) a director or officer (or person performing similar functions) of, or a person controlling the issuer; (c) a person whose relationship or former relationship to the issuer gives or gave him access to material information about the issuer or the security that is not generally available to the public; (d) a government employee, or director, or officer of an exchange, clearing agency and/or self-regulatory organization who has access to material information about an issuer or a security that is not generally available to the

---

[Section PH:15]

[1]SRC Subsec. 62.1.

[2]SRC Sec. 73.

[3]SRC Subsec. 63.1.

public; or (e) a person who learns such information by a communication from any of the foregoing insiders."[1]

The SRC obligates insiders to disclose to the public material information about the securities of the issuer or the issuer itself, with a view to preventing the unfair use of such information by such insiders, who could exploit the same to make a profit or avoid a loss by dealing in the securities whose price would have been materially altered had the information been disclosed in the first place. To forestall such unfairness and maintain investors' confidence in the market, access to material information about the issuer and its securities must be symmetrical, that is to say, such information must be available to the public not just to insiders. Thus, as succinctly put by the heading of SRC Section 27, an insider has a "duty to disclose when trading;" otherwise, he may be guilty of "insider trading." More to the point, SRC Subsection 27.1 declares that it is unlawful for an insider to sell or buy securities of the issuer, while in possession of material information not known to or by the public, or what is simply called "material nonpublic information" (as defined in SRC Subsection 27.2), unless (a) such insider proves that such information was not gained from his relationship with the issuer (*e.g.,* the information is generally available to the public), or (b) if the other party selling to or buying from the insider (or his agent) is identified, the insider proves that (i) he disclosed the information to the other party, or (ii) he had reason to believe that the other party otherwise was also in possession of the information.

It is not sufficient that the material information has been disclosed to the public. That information is still deemed "nonpublic" after disclosure, until the lapse of a reasonable time for the market to absorb such information.

Any purchase or sale of securities made by an insider (including such insider's spouse or relatives by affinity or consanguinity within the second degree, legitimate or common-law), during the period from the time the material information came into existence up to its disclosure and the lapse of a reasonable time for the market to absorb it, will be presumed to be an "insider trading" prohibited under SRC Subsection 27.1. This presumption shifts the burden of proof to the insider. It is up to the insider (as purchaser or seller) to rebut the presumption by showing that such insider "was not aware of the material nonpublic information at the time of the purchase or sale."[2]

Assuming that there is proper disclosure of the material information to the public, an insider can buy or sell the securities in question, subject to the possible application of (a) the reporting requirements under SRC Subsection 23.1; (b) the "short-swing profit" provisions of SRC Subsection 23.2 (as qualified by SRC Subsection 23.4); and (c)

[Section PH:16]

[1]SRC Subsec. 3.8.

[2]SRC Subsec. 27.1.

the provisions of SRC Subsection 23.3 (as qualified by SRC Subsection 23.4) on "short sales" and "sales against the box."

Under SRC Subsection 27.2, the fact or information is required only to be "material nonpublic." As defined therein, it is sufficient if the information, "*after* being disseminated to the public and *the lapse of a reasonable time for the public to absorb the information,*" would "likely affect the market price of the security."

The recipient (or the "tippee") of material nonpublic information about an issuer or a security becomes an insider himself under SRC Subsection 3.8(e). The insider communicating such information (or the "tipper") in turn violates SRC Subsection 27.3, if he knows or has reason to believe that the tippee will likely buy or sell such security while in possession of such information. If, in fact, the tippee buys or sells such security, the tippee violates SRC Subsection 27.1 and may be sued by any investor who contemporaneously purchased or sold the same class of securities, unless the tippee proves that such investor knew the information or would have purchased or sold at the same price regardless of disclosure of the information to such investor.[3] The tipper will be jointly and liable with, and to the same extent as, the tippee.[4]

SRC Subsection 23.2 covers the so-called "short-swing profit." Any profit made by a director, an officer, or a 10% beneficial owner (hence, principal stockholder) of a reporting company, in the purchase and sale, or sale and purchase, of an equity security of such company, within any period of less than six months, belongs to such company, as the issuer. In the language of SRC Subsection 23.2, this is "for the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to the issuer." It is not required that there be "insider trading" as contemplated by SRC Section 27. It is sufficient that there be a purchase and sale, or sale and purchase, of an equity security within a period of less than six months. It is immaterial that there be an intention to hold the security purchased for more than six months, or not to repurchase the security sold for a period exceeding six months.

§ PH:17 Fraud, manipulation and insider trading—Insider trading—Penalties for insider trading

The criminal penalties for insider trading are a fine and/or imprisonment. The fine is at least P50,000.00 but not more than P5,000,000.00, while the prison term is at least 7 years but not more than 21 years. It is up to the court whether to impose both penalties or only one of them. If the offender is a corporation, partnership, or other juridical entity, the penalty may be imposed upon the officer or

[3] *See* SRC Subsec. 61.1

[4] *See* SRC Subsec. 61.2.

officers responsible for the violation. If such an officer is an alien, he will be deported after serving his sentence.[1]

SRC Subsection 61.1 authorizes a civil action by any investor against an insider who violates SRC Subsection 27.1 by purchasing or selling securities while in possession of a material nonpublic information. A civil action may also be brought by any investor against any person (other than the tender offeror) who violates SRC Subsection 27.4(a)(i), by purchasing or selling securities sought by a tender offer that has commenced or is about to commence, while in possession of a material nonpublic information relating to such tender offer. In either case, the suing investor must be able to show that he contemporaneously purchased or sold the same class of securities. However, the civil suit would not prosper if it could be proven that such investor knew the information or would have, in any case, purchased or sold the securities at the same price whether or not the information was disclosed to him.

The court is authorized to award damages up to thrice the transaction amount plus actual damages, as well as exemplary damages in case of bad faith, fraud, malevolence or wantonness in the violation of the rules on insider trading. Further, attorney's fees of up to 30% may be awarded.[2]

If the material nonpublic information was communicated in violation of SRC Subsection 27.3 or 27.4(a), the communicator would be jointly and severally liable with the information recipient who purchased or sold the securities in question in violation of SRC Subsection 61.1. According to the SEC: "Because there could be hundreds of thousands of investors trading contemporaneously in an active market, Subsection 61.2 limits the liability of an insider to the amount of profit derived or loss avoided on his transaction . . . Similar liability is imposed upon persons trading on, or communicating non-public information in connection with, a tender offer."[3]

§ PH:18 Fraud, manipulation and insider trading—Manipulation of security prices

The manipulation of security prices such as through the following means is prohibited:[1]

- Creation of a false or misleading appearance of active trading in a listed security.

[Section PH:17]

[1]SRC Sec. 73.

[2]SRC Subsec. 63.1.

[3]History/Background of the Securities Regulation Code (September 15, 2001) at 88.

[Section PH:18]

[1]*See* SRC Subsec. 24.1; SRC Rule 24.1.

- Trading activities that raise the price of a security to induce its purchase or depress the price of a security to induce its sale.

- Manipulative devices such as marking the close, painting the tape, squeezing the float, hype and dump, and boiler room operations.

- Making a false or misleading statement with respect to a material fact in order to induce the purchase of sale of a listed security if the person knew or had reason to believe the statement was false or misleading.

- Effecting a series of transactions for the purpose of pegging, fixing or stabilizing the price of a security trading on an exchange, except as allowed by the SRC or the SRC Rules.

A member of an exchange may not guarantee the performance of a put, call, straddle, option or privilege in relation to a listed security.[2]

A short sale may only be effected or a stop-loss order executed in connection with the purchase or sale of a security in accordance with the SRC Rules.[3]

§ PH:19 Fraud, manipulation and insider trading—Short-selling

The term "short sale" is defined in SRC Rule 24.2-2.1 as "any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of the seller with the commitment of the seller or securities borrower to return or deliver said securities or their equivalent to the lender on a determined or determinable future date. A person shall be deemed to own a security if: (1) he or his agent has title to it; (2) he has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase it and has not yet received it; (3) he owns a security convertible into or exchangeable for it and has tendered such security for conversion or exchange; (4) he has an option to purchase or acquire it and has exercised such option; or (5) he has rights or warrants to subscribe to it and has exercised such rights or warrants provided, however, that a person shall be deemed to own securities only to the extent he has a net long position in such securities."

No broker or dealer will accept a long sale order from a customer, unless he has made a determination that the customer owns the security and will deliver in good deliverable form within three business days of the execution of the order. The determination must include a notation on the order ticket at the time the order is taken which reflects the conversation with the customer as to the present location

[2]SRC Sec. 25.

[3]SRC Subsec. 24.2.

of the securities, whether they are in good deliverable form, and the customer's ability to make delivery.[1]

No broker or dealer is to use any facility of a securities exchange to effect a short sale of any security unless (1) at a price higher than the last sale or (2) at the price of the sale if and only if that price is above the next preceding different sale price on such day.[2]

Likewise, no person will, directly or indirectly, by the use of any facility of a securities exchange, effect a short sale in a security registered or listed on any securities exchange, where the seller does not intend to make delivery of the securities within the period specified in the contract. Failure on the part of the seller to make delivery on such date will be taken by the SEC as *prima facie* evidence of the lack of intention on his part to make such delivery.[3]

A contract involving a short sale which has not resulted in a delivery by the broker dealer within the settlement period must be closed by the broker dealer by purchasing for cash or guaranteed delivery securities of like kind and quantity on the next business day after settlement date, unless such purchase cannot be effected within said period for justifiable reasons in which case, notification in writing shall be made with the exchange and the SEC.[4]

A director, officer or principal stockholder of a corporation is prohibited from making a short sale in securities of the corporation in which he is a director, officer or principal stockholder.[5]

A broker dealer must maintain and keep up-to-date ledgers and record complete details of all short selling transactions.[6]

The SEC can prohibit short selling in the exchange indefinitely or for such period of time as it may deem necessary or advisable for the protection of investors.[7]

§ PH:20 Tender offers, mergers and acquisitions—Tender offers

Under SRC Rule 19.2.1, any person or group of persons acting in concert, who intends to acquire 15% of equity securities in a public company in one or more transactions within a period of 12 months, must file a declaration to that effect with the SEC.

Any person or group of persons acting in concert, who intends to acquire 35% of the outstanding voting shares in a public company, or

---

[Section PH:19]

[1]SRC Rule 24.2-2.2.

[2]SRC Rule 24.2-2.5.

[3]SRC Rule 24.2-2.6.

[4]SRC Rule 24.2-2.7.

[5]SRC Rule 24.2-2.8.

[6]SRC Rule 24.2-2.9.

[7]SRC Rule 24.2-2.10.

such number of outstanding shares sufficient to gain control of the board in a public company, in one or more transactions within a period of 12 months, must disclose such intention and contemporaneously make a tender offer for the percentage sought to all holders of such shares within such period.[1]

In the event that the tender offer is oversubscribed, the aggregate amount of securities to be acquired at the close of such tender offer must be proportionately distributed across the selling shareholders with whom the acquirer may have been in private negotiations and the other shareholders.[2] The last sale meeting the threshold will not be consummated until the closing and completion of the tender offer.[3]

If any acquisition will result in ownership of over 50% of the total outstanding equity securities of a public company, the acquirer will be required to make a tender offer for all the outstanding equity securities to all remaining stockholders of the said company at a price supported by a fairness opinion provided by an independent financial advisor or equivalent third party. The acquirer in such a tender offer must accept any and all securities thus tendered.[4]

Any person or group of persons acting in concert, who intends to acquire directly from one or more stockholders of a public company 35% of the outstanding voting shares in such company, or such number of outstanding voting shares sufficient to gain control of the board in such company, must make a tender offer for all the outstanding voting shares in such company. The sale of the shares pursuant to the private transaction or block sale must not be completed prior to the closing and completion of the tender offer.[5]

Under SRC Rule 19.2.3, any person or group of persons acting in concert, intending to acquire through the exchange trading system 35% of the outstanding shares in a public company, or such number of outstanding voting shares sufficient to gain control of the board in such company, will not be required to make a tender offer even if such person or group acquire the remainder through a block sale if, after acquisition through the exchange trading system, such person or group fails to acquire 35% or such number of voting shares sufficient to gain control of the board in such company.

The mandatory tender offer requirement will not apply to the following:

i. purchase of shares from the unissued capital stock, provided that the acquisition will not result in a 50% or more ownership of shares by the purchaser or such percentage sufficient to gain control of the board;

[Section PH:20]

[1]SRC Rule 19.2.2.

[2]*Ibid.*

[3]*Ibid*.

[4]SRC Rule 19.2.5.

[5]SRC Rule 19.2.4.

ii. any purchase of shares from an increase in authorized capital stock;

iii. purchase in connection with foreclosure proceedings involving a duly constituted pledge or security arrangement where the acquisition is made by the debtor or creditor;

iv. purchases in connection with privatization undertaken by the Philippine government;

v. purchases in connection with corporate rehabilitation under court supervision;

vi. purchases in the open market at the prevailing market price;

vii. merger or consolidation.[6]

§ PH:21 Tender offers, mergers and acquisitions—Mergers and consolidations

A merger or consolidation must be approved by the constituent corporations. The basic procedural steps are as follows:

1. The constituent corporations must prepare a plan of merger or consolidation.

2. The plan of merger or consolidation is submitted to the board of directors of each constituent corporation for approval.

3. The plan is also submitted to the shareholders of the constituent corporations for approval in a meeting called for that purpose. The affirmative vote of the shareholders holding at least two-thirds of the outstanding shares is necessary to approve the merger or consolidation.

4. The articles of merger or consolidation is then executed by each of the constituent corporations.[1]

Dissenting stockholders may exercise their appraisal right, unless the plan is abandoned.[2] In practice, they may exercise this right only after the plan is approved.

The SEC has to approve the articles of merger or consolidation. In the case of a consolidation, the articles of incorporation and by-laws of the new corporation, and all documents or papers required for incorporation of the new corporation, must be submitted to the SEC for the registration of the new corporation. Once approved, the SEC

---

[6]SRC Rule 19.3.

[Section PH:21]

[1]Secs. 75–77, Revised Corporation Code.

[2]Sec. 76, *Id.*

issues to the new corporation a certificate of merger or consolidation, as the case may be.[3]

Upon approval by the SEC of the articles of merger or consolidation, the merger or consolidation will have the following effects:

(a) The constituent corporations will become a single corporation which, in case of merger, will be the surviving corporation designated in the plan of merger, while in case of consolidation, will be the consolidated corporation designated in the plan of consolidation;

(b) The separate existence of the constituent corporations will cease, except that of the surviving or the consolidated corporation;

(c) The surviving or the consolidated corporation will possess all the rights, privileges, immunities and powers and will be subject to all the duties and liabilities of a corporation organized under the Revised Corporation Code;

(d) The surviving or the consolidated corporation will possess all the rights, privileges, immunities and franchises of each of the constituent corporations; and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporation, will be deemed transferred to and vested in such surviving or consolidated corporation without further act or deed; and

(e) The surviving or consolidated corporation will be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations; and any pending claim, action or proceeding brought by or against any of such constituent corporations may be prosecuted by or against the surviving or consolidated corporation. The rights of creditors or liens upon the property of any such constituent corporations will not be impaired by such merger or consolidation.[4]

Under the Philippine Competition Act, parties to a merger or acquisition agreement whose transaction value exceeds P1,000,000,000.00 are prohibited from consummating their agreement until 30 days after providing notification to the Philippine Competition Commission in the prescribed form. An agreement consummated in breach of this requirement will be considered void and subject the parties to a fine of 1% to 5% of the value of the transaction.

§ PH:22 Examination of accounts

The accounts and other records of specified types of entities, includ-

[3]Sec. 78, *Id.*

[4]Sec. 79, *Id.*

ing every exchange, broker and dealer is subject to reasonable periodic, special or other examinations by the SEC. This power may be exercised by the SEC when it deems such an examination necessary or appropriate in the public interest or for the protection of investors.

§ PH:23 International securities transactions—In general

A foreign company may not carry on business in the Philippines unless it is licensed to do so under the Revised Corporation Code and has obtained a certificate of authority from the appropriate government agency.[1]

There are no restrictions on the licensing of foreign brokers or dealers to carry on business in the Philippines.

§ PH:24 International securities transactions—Stock exchange listing of foreign securities

Foreign securities may be listed on the PSE.

§ PH:25 International securities transactions—Naturalization of companies

Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, granted certain fiscal and non-fiscal incentives to registered foreign-owned companies. These foreign-owned companies must undertake to increase, within 30 years from the date of registration or for such longer period as the Board of Investments may prescribe, their Philippine participation to a minimum of 60% of the outstanding and voting capital stock.

Certain companies, such as those engaged in telecommunications or banking, are required to go partially public after a certain period of time.

§ PH:26 International securities transactions—Foreign investment regulation

Foreign investment regulation in the Philippines is governed by Republic Act No. 7042 (as amended), otherwise known as the Foreign Investments Act of 1991 ("FIA").

Under the FIA, non-Philippine nationals may own up to 100% of the equity of a domestic enterprise, unless foreign participation in the proposed business activity is prohibited or limited by the Negative List.

[Section PH:23]

[1]Sec. 140, *Id.*

The following investments by foreign entities are either prohibited or restricted by the Negative List:[1]

List A: Foreign ownership is limited by mandate of the Constitution and specific laws

Mass Media, except recording	No foreign equity
Practice of certain professions	No foreign equity
Retail trade enterprises with paid-up capital of less than P25,000,000	No foreign equity
Cooperatives	No foreign equity
Private detective, watchmen or security guard agencies	No foreign equity
Small-scale mining	No foreign equity
Utilization of marine resources in archipelagic waters, territorial sea, and exclusive lakes, bays and lagoons	No foreign equity
Ownership, operation and management of cockpits	No foreign equity
Manufacture, repair, stockpiling and/or distribution of nuclear weapons	No foreign equity
Manufacture, repair, stockpiling and/or distribution of biological, chemical and radiological weapons, and anti-personnel mines	No foreign equity
Manufacture of firecrackers and other pyrotechnic devices	No foreign equity
Private recruitment, whether for local or overseas employment	Up to 25% foreign equity
Contracts for construction of defense-related structures	Up to 25% foreign equity
Advertising	Up to 30% foreign equity
Procurement of infrastructure projects pursuant to the Government Procurement Reform Act	Up to 40% foreign equity

---

[Section PH:26]

[1]*See* the Twelfth Regular Foreign Investment Negative List promulgated by Executive Order No. 175 (June 27, 2022).

Exploration, development and utilization of natural resources (N.B.: 100% foreign participation is allowed in certain cases through a technical or financial assistance agreement with the President of the Philippines)	Up to 40% foreign equity
Ownership of private lands	Up to 40% foreign equity
Operation of public utilities	Up to 40% foreign equity
Educational institutions other than those established by religious groups and mission boards for foreign diplomatic personnel and their dependents, and other foreign temporary residents, or for short-term high-level skills development	Up to 40% foreign equity
Culture, production, milling, processing, trading excluding retailing, of rice and corn, and acquiring rice and corn and the by-products thereof	Up to 40% foreign equity
Contracts for the supply of materials, goods and commodities to a government-owned or controlled corporation, company, agency or municipal corporation	Up to 40% foreign equity
Operation of deep-sea commercial fishing vessels	Up to 40% foreign equity
Ownership of condominium corporations	Up to 40% foreign equity
Private radio communications network	Up to 40% foreign equity

List B: Foreign ownership is limited for reasons of security, defense, risk to health and morals, and protection of local small and medium-scale enterprises

Manufacture, repair, storage and/or distribution of products requiring Philippine National Police clearance (e.g., firearms, gunpowder, dynamite, etc.)	Up to 40% foreign equity
Manufacture and distribution of dangerous drugs	Up to 40% foreign equity

Sauna and steam bathhouses, massage clinics and other like activities regulated by law because of risks they may impose to public health and morals	Up to 40% foreign equity
All forms of gambling (other than those authorized by the Philippine Amusement and Gaming Corporation)	Up to 40% foreign equity
Micro and small domestic market enterprises with paid-in equity capital of less than the equivalent of US$200,000	Up to 40% foreign equity
Micro and small domestic market enterprises (i) that involve advance technology as determined by the Department of Science and Technology, (ii) that are endorsed as startup or startup enablers under the Innovative Startup Act, or (iii) with a majority of their direct employees as Filipinos (in no case less than 15) and with minimum paid-in capital of less than the equivalent of US$100,000	Up to 40% foreign equity

The above lists do not apply to banking and other financial institutions, which are governed and regulated by the General Banking Law of 2000 (GBL) and other laws administered by the BSP. Under Section 11 of the GBL (as implemented by Section 122 of the Manual of Regulations for Banks), foreign individuals and foreign non-bank entities collectively cannot own more than 40% of the voting stock of a bank. However, under the Foreign Banks Liberalization Act (as amended by Republic Act No. 10641), a qualified foreign bank is allowed to acquire up to 100% of the voting stock of a domestic bank or form a branch office or a 100%-owned domestic banking subsidiary.

Areas of foreign investments that are included in the Investment Priorities Plan may be granted incentives. These incentives include an income tax holiday for four or six years, additional deductions for labor expenses, tax and duty privileges on imported capital equipment, and tax credits on domestic capital equipment.

§ PH:27 Investment companies

An "investment company" is "any issuer which is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting and trading in securities."[1]

Two types of investment companies are recognized under the Investment Company Act: the open-ended company, which offers for sale or has outstanding redeemable shares of which it is the issuer; and the close-ended company.

Shares of an investment company must be registered with the SEC under the Investment Company Act.

§ PH:28 Broker, dealers and others authorized to trade in securities

One way of protecting the investing public is to require securities market professionals to register with the SEC, so that the SEC can pass upon their qualifications and supervise their activities.

§ PH:29 Broker, dealers and others authorized to trade in securities—Licensing

A person may not engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer, unless registered as such with the SEC.[1]

Brokers and dealers are required to file an application using SEC Form 28-BD. On the other hand, an application for registration as a salesman or an associated person must be filed on SEC Form 28-S or Form 28-AP, as the case may be.

Those found to be qualified to act as a broker, dealer, salesman or an associated person are recorded in the Register of Securities Market Professionals. The Register is kept in the offices of the SEC, and is open to public inspection.[2]

§ PH:30 Broker, dealers and others authorized to trade in securities—Restrictions on Brokers and Dealers

No broker or dealer is to deal in or otherwise buy or sell, for its own account or for the account of customers, securities listed on an exchange issued by any corporation where any stockholder, director, associated person or salesman, or authorized clerk of said broker or dealer and all the relatives of the foregoing within the fourth civil

---

[Section PH:27]

[1]Sec. 4(a), Republic Act No. 2629.

[Section PH:29]

[1]SRC Subsec. 28.1.

[2]SRC Subsec. 28.9.

degree of consanguinity or affinity, is at the time holding office in said issuer corporation as a director, president, vice-president, manager, treasurer, comptroller, secretary or any office of trust and responsibility, or is a controlling person of the issuer.[1]

A broker or dealer also cannot effect any transaction in securities or induce or attempt to induce the purchase or sale of any security except in compliance with such rules and regulations as the SEC may prescribe to ensure fair and honest dealings in securities and provide financial safeguards and other standards for the operation of brokers and dealers, including the establishment of minimum net capital requirements, the acceptance of custody and use of securities of customers, and the carrying and use of deposits and credit balances of customers.[2]

The guiding principle in the conduct of business of a broker or dealer is to "observe high standards of commercial honor and just and equitable principles of trade." In this connection, SRC Rule 30.2.1.2 sets forth certain principles and requirements that incorporate standards of the International Organization of Securities Commissions. In summary fashion, they refer to:

- Honesty and fairness—A registered person should act honestly, fairly and in the best interest of his client and for the integrity of the market.

- Diligence—He should act with due skill, care and diligence, in the best interest of his client and for the integrity of the market.

- Capabilities—He should have and employ effectively the resources and procedures that are needed for the proper performance of his business activities.

- Information about clients—He should seek from his clients information about their financial situation, investment experience and objectives relative to the services to be provided, pursuant to the Customer Account Information Rule (SRC Rule 52.1.6) and other applicable laws.

- Information for clients—He should make adequate disclosure of material information in his dealings with his client. A written agreement complying with SRC Rule 30.2.12.5, must be signed with his client before the provision of any service.

- Conflicts of interest—He should avoid conflicts of interest and, when they cannot be avoided, should ensure that his clients are fairly treated and properly informed of such conflicts.

- Compliance—He should comply with all regulatory requirements applicable to the conduct of his business activities so as to promote the best interest of clients and the integrity of the market.

[Section PH:30]

[1]SRC Subsec. 30.1.

[2]SRC Subsec. 30.2.

A member-broker is generally prohibited from engaging in "proprietary trading" on an exchange, *i.e.,* dealing for his own account, the account of his associated person, or an account wherein he or his associated person has investment discretion.[3]

Under SRC Rule 48.1, a broker or dealer must not extend to a customer credit in excess of 50% of the current value of the security at the time of the transaction, and no new or additional credit can be extended if the equity in an account is less than P50,000. The margin must not be less than (i) 25% of the current value of all securities "long" in the account and (ii) 30% of the current value of all securities "short" in the account.

The SEC issued Memorandum Circular No. 7 (Series of 2024) removing the minimum amount of commission charged by stockbrokers to their customers for each transaction.

§ PH:31 Broker, dealers and others authorized to trade in securities—Disciplinary proceedings

The SEC may revoke the registration of a broker or dealer, or his salesmen and associated persons, if, after reasonable notice and hearing, the SEC determines that, among other things:

- There was a violation of any provision of the SRC or the SRC Rules.
- A materially false or misleading statement was made in the application for registration or report filed with the SEC or a self-regulatory organization.
- The registrant has been convicted of an offense involving moral turpitude, fraud, embezzlement, forgery, bribery, perjury or a violation of securities, commodities, banking, real estate or insurance laws.
- The registrant has been judicially declared insolvent.[1]

The SEC may order the suspension of the registration pending the hearing. The suspension is to be kept confidential, unless the order of suspension has been violated after notice.[2]

§ PH:32 Civil and criminal liability—Civil liability

The following persons may be held civilly liable for making material misstatements or omissions in a registration statement:

- The issuer and every person who signed the registration statement.

---

[3]SRC Subsec. 34.1.

[Section PH:31]

[1]SRC Subsec. 29.1.

[2]SRC Subsec. 29.2(b).

- A director of the issuer at the time of the filing of the registration statement.

- A person named in the registration statement as about to become a director and whose written consent thereto is filed with the registration statement.

- Each auditor or auditing firm named as having certified the financial statements used in connection with the registration statement or prospectus.

- Each of the underwriters.

- Any person who, with his written consent, has been named as having prepared or certified any part of the registration statement or any report or valuation used in connection with the registration statement.

- Every selling shareholder who contributed to and certified as to the accuracy of a portion of the registration statement, with respect to that portion.[1]

Any buyer who was unaware of the material misstatement or omission made in connection with the purchase or sale of such security may sue. Reliance on the registration statement is not required, unless the issuer has made available to its security holders an income statement covering at least a period of 12 months from the effectivity of the registration statement, and the suing party acquired the securities after such income statement became available. Privity of contract with the issuer is not necessary.[2]

The buyer may recover an amount of damages up to triple the amount of the transaction plus actual damages. In addition, exemplary damages may be awarded in cases of bad faith, fraud, malevolence or wantonness, and attorney's fees may be awarded in an amount not exceeding 30% of the award.[3]

A person who offers to sell or sells a security, whether or not exempted by the SRC, by means of a prospectus or oral communication that includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements actually made, in the light of the circumstances under which they were made, not misleading, and who fails to prove he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission, is liable to a purchaser of the security if the purchaser did not know of the untruth or omission. The amount recoverable is the consideration paid for the security, with interest, less the amount

---

[Section PH:32]

[1]SRC. Subsec. 56.1.

[2]SRC Subsecs. 56.1 and 56.2.

[3]SRC Subsec. 63.1.

of any income received, upon the tender of the security, or for damages if the purchaser no longer owns the security.[4]

A person similarly may be liable for a false or misleading statement in a report or other document filed under the SRC to a purchaser or seller of a security who relied on the false or misleading statement to the extent of the damages caused by the reliance. The person sued can, however, avoid liability by proving that he acted in good faith and did not know that such statement was false or misleading.[5]

The SRC also provides for civil liability for fraud in connection with securities transactions, the manipulation of security prices, and insider trading.[6]

§ PH:33 Civil and criminal liability—Criminal liability

Any person who violates any of the provisions of the SRC or the SRC Rules or who, in a registration statement filed under the SRC, makes any untrue statement of a material fact or omits to state any material fact required to be stated or necessary to make the statements in the registration statement not misleading is liable for a fine of at least P50,000 and not more than P5,000,000 or imprisonment of between 7 and 21 years, or both. If the offender is a corporation, partnership, association or other entity, the penalty may be imposed on the entity and on its officers.[1]

V. RECENT TRENDS

§ PH:34 Generally

The SEC has been seriously implementing the provisions of the SRC, in line with the following state policies declared in SRC Section 2: (i) establishment of a socially conscious, free market that regulates itself, (ii) encouragement of the widest participation of ownership in enterprises, (iii) enhancement of the democratization of wealth, (iv) promotion of capital market development, (v) protection of investors, (vi) ensuring full and fair disclosure about securities, and (vii) minimization, if not total elimination, of insider trading and other fraudulent or manipulative devices and practices that create distortions in the free market.

In this connection, the SEC promulgated the Rules and Regulations on Alternative Trading System (March 4, 2004), pursuant to its mandate "to encourage competitiveness in the market, promote the development of capital market and to ensure the protection of investors." An ATS seeks to provide an electronic market place or fa-

---

[4]SRC Subsec. 57.1.

[5]SRC Subsec. 57.2.

[6]SRC Subsec. 58, 59 and 61.

[Section PH:33]

[1]SRC Subsec. 73.

cility for bringing together, among others, "secondary market sellers and buyers of securities of SEC-registered small, medium, growth, venture enterprises, and technology-based ventures."[1] The SEC also issued the Rules Governing the Over-the-Counter Market (October 27, 2006), the Rules on Securities Borrowing and Lending (June 9, 2009), and the 2015 Implementing Rules and Regulations of the Securities Regulation Code (August 4, 2015).

It is noteworthy that the SRC addresses the three objectives of securities regulation, as articulated by the International Organization of Securities Commissions, namely: the protection of investors; ensuring that markets are fair, efficient and transparent; and the reduction of systemic risks. In fact, a joint mission of the World Bank and the International Monetary Fund conducted a Financial Sector Assessment Program in respect of the Philippines in 2001, "to assess the effectiveness of securities regulation, soundness of market intermediaries, and development prospects for the capital markets, including observance of the IOSCO Objectives and Principles of Securities Regulation." It appears from the report of the mission that: "Overall, the Philippines scores very well against the IOSCO Principles thanks to the conscious efforts having been made in the recent past. Some improvements are needed in the areas of collective investment schemes and the secondary market regulation. Remaining issues in other areas are either currently being addressed or relatively minor."[2]

[Section PH:34]

[1]*See* SRC Section 37.

[2]*See* Paragraph 45, IMF Country Report No. 04/62, entitled "Philippines: Financial Sector Assessment Program—IOSCO Objectives and Principles of Securities Regulation."

APPENDIX PH-1

The Securities Regulation Code

Table of Contents

CHAPTER I—Title and Definitions
SEC. 1. Title
SEC. 2. Declaration of State Policy
SEC. 3. Definition of Terms

CHAPTER II—Securities and Exchange Commission
SEC. 4. Administrative Agency
SEC. 5. Powers and Functions of the Commission
SEC. 6. Indemnification and Responsibilities of Commissioners
SEC. 7. Reorganization

CHAPTER III—Registration of Securities
SEC. 8. Requirement of Registration of Securities
SEC. 9. Exempt Securities
SEC. 10. Exempt Transactions
SEC. 11. Commodity Futures Contracts
SEC. 12. Procedure for Registration of Securities
SEC. 13. Rejection and Revocation of Registration of Securities
SEC. 14. Amendments to the Registration Statement
SEC. 15. Suspension of Registration

CHAPTER IV—Regulation of Pre-Need Plans
SEC. 16. Pre-Need Plans

CHAPTER V—Reportorial Requirements
SEC. 17. Periodic and Other Reports of Issuers
SEC. 18. Reports by Five per centum (5%) Holders of Equity Securities

CHAPTER VI—Protection of Shareholder Interests
SEC. 19. Tender Offers
SEC. 20. *Proxy Solicitations*
SEC. 21. Fees for Tender Offers and Certain Proxy Solicitations
SEC. 22. Internal Record Keeping and Accounting Controls
SEC. 23. Transactions of Directors, Officers and Principal Stockholders

CHAPTER VII—Prohibitions on Fraud, Manipulation and Insider Trading
SEC. 24. Manipulation of Security Prices; Devices and Practices
SEC. 25. Regulation of Option Trading
SEC. 26. Fraudulent Transactions
SEC. 27. Insider's Duty to Disclose When Trading

CHAPTER VIII—Regulation of Securities Market Professionals
SEC. 28. Registration of Brokers, Dealers, Salesmen and Associated Persons
SEC. 29. Revocation, Refusal or Suspension of Registration of Brokers, Dealers, Salesmen and Associated Persons
SEC. 30. Transactions and Responsibility of Brokers and Dealers
SEC. 31. Development of Securities Market Professionals

CHAPTER IX—Exchanges and Other Securities Trading Markets

SEC. 32. Prohibition on Use of Unregistered Exchange; Regulation of Over-the-Counter Markets

SEC. 33. Registration of Exchanges

SEC. 34. Segregation and Limitation of Functions of Members, Brokers and Dealers

SEC. 35. Additional Fees of Exchanges

SEC. 36. Powers with Respect to Exchanges and Other Trading Market

SEC. 37. Registration of Innovative and Other Trading Markets

SEC. 38. Independent Directors

CHAPTER X—Registration, Responsibilities and Oversight of Self-Regulatory Organizations

SEC. 39. Associations of Securities Brokers, and Dealers, and Other Securities Related Organizations

SEC. 40. Powers with Respect to Self-Regulatory Organizations

CHAPTER XI—Acquisition and Transfer of Securities and Settlement of Transactions in Securities

SEC. 41. Prohibition on Use of Unregistered Clearing Agency

SEC. 42. Registration of Clearing Agencies

SEC. 43. Uncertificated Securities

SEC. 44. Evidentiary Value of Clearing Agency Record

SEC. 45. Pledging a Security or Interest Therein

SEC. 46. Issuer's Responsibility for Wrongful Transfer to Registered Clearing Agency

SEC. 47. Power of the Commission With Respect to Securities Ownership

CHAPTER XII—Margin and Credit

SEC. 48. *Margin Requirements*

SEC. 49. Restrictions on Borrowings by Members, Brokers, and Dealers

SEC. 50. Enforcement of Margin Requirements and Restrictions on Borrowing

CHAPTER XIII—General Provisions

SEC. 51. Liabilities of Controlling Persons, Aider and Abettor and Other Secondary Liability

SEC. 52. Accounts and Records, Reports, Examination of Exchanges, Members, and Others

SEC. 53. Investigations, Injunctions and Prosecution of Offenses

SEC. 54. Administrative Sanctions

SEC. 55. Settlement Offers

SEC. 56. Civil Liabilities on Account of False Registration Statement

SEC. 57. Civil Liabilities Arising in Connection With Prospectus, Communications and Reports

SEC. 58. Civil Liability For Fraud in Connection With Securities Transactions

SEC. 59. Civil Liability For Manipulation of Security Prices

SEC. 60. Civil Liability With Respect to Commodity Futures Contracts and Pre-need Plans

SEC. 61. Civil Liability on Account of Insider Trading

SEC. 62. Limitation of Actions

SEC. 63. Amount of Damages to be Awarded

SEC. 64. Cease and Desist Order

SEC. 65. Substituted Service Upon the Commission
SEC. 66. Revelation of Information Filed with the Commission
SEC. 67. Effect of Action of Commission and Unlawful Representations with Respect Thereto
SEC. 68. Special Accounting Rules
SEC. 69. Effect on Existing Law
SEC. 70. Judicial Review of Commission Orders
SEC. 71. Validity of Contracts
SEC. 72. Rules and Regulations; Effectivity
SEC. 73. Penalties
SEC. 74. Transitory Provisions
SEC. 75. Partial Use Of Income
SEC. 76. Repealing Clause
SEC. 77. Separability Clause
SEC. 78. Effectivity

CHAPTER I TITLE AND DEFINITIONS

SEC. 1. Title.

This shall be known as "The Securities Regulation Code".

SEC. 2. Declaration of State Policy.

The State shall establish a socially conscious, free market that regulates itself, encourage the widest participation of ownership in enterprises, enhance the democratization of wealth, promote the development of the capital market, protect investors, ensure full and fair disclosure about securities, minimize if not totally eliminate insider trading and other fraudulent or manipulative devices and practices which create distortions in the free market.

To achieve these ends, this Securities Regulation Code is hereby enacted.

SEC. 3. Definition of Terms.

3.1. "*Securities*" are shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instrument, whether written or electronic in character. It includes:

a) Shares of stock, bonds, debentures, notes, evidences of indebtedness, asset-backed securities;

b) Investment contracts, certificates of interest or participation in a profit sharing agreement, certificates of deposit for a future subscription;

c) Fractional undivided interests in oil, gas or other mineral rights;

d) Derivatives like option and warrants;

e) Certificates of assignments, certificates of participation, trust certificates, voting trust certificates or similar instruments;

f) Proprietary or non proprietary membership certificates in corporations; and

g) Other instruments as may in the future be determined by the Commission.

3.2. "*Issuer*" is the originator, maker, obligor, or creator of the security.

3.3. "*Broker*" is a person engaged in the business of buying and selling securities for the account of others.

3.4. "*Dealer*" means any person who buys and sells securities for his/her own account in the ordinary course of business.

3.5. "*Associated person of a broker or dealer*" is an employee thereof who, directly exercises control of supervisory authority, but does not include a salesman, or an agent or a person whose functions are solely clerical or ministerial.

3.6. "*Clearing Agency*" is any person who acts as intermediary in making deliveries upon payment to effect settlement in securities transactions.

3.7. "*Exchange*" is an organized marketplace or facility that brings together buyers and sellers and executes trades of securities and/or commodities.

3.8. "*Insider*" means: (a) the issuer; (b) a director or officer (or person performing similar functions) of, or a person controlling the issuer; (c) a person whose relationship or former relationship to the issuer gives or gave him access to material information about the issuer or the security that is not generally available to the public; (d) a government employee, or director, or officer of an exchange, clearing agency and/or self-regulatory organization who has access to material information about an issuer or a security that is not generally available to the public; or (e) a person who learns such information by a communication from any of the foregoing insiders.

3.9. "*Pre-Need Plans*" are contracts which provide for the performance of future services or the payment of future monetary considerations at the time of actual need, for which planholders pay in cash or installment at stated prices, with or without interest or insurance coverage and includes life, pension, education, interment, and other plans which the Commission may from time to time approve.

3.10. "*Promoter*" is a person who, acting alone or with others, takes initiative in founding and organizing the business or enterprise of the issuer and receives consideration therefore.

3.11. "*Prospectus*" is the document made by or on behalf of an issuer, underwriter or dealer to sell or offer securities for sale to the public through a registration statement filed with the Commission.

3.12. "*Registration statement*" is the application for the registration of securities required to be filed with the Commission.

3.13. "*Salesman*" is a natural person, employed as such or as an agent, by a dealer, issuer or broker to buy and sell securities.

3.14. "*Uncertificated security*" is a security evidenced by electronic or similar records.

3.15. "*Underwriter*" is a person who guarantees on a firm commitment and/or declared best effort basis the distribution and sale of securities of any kind by another company.

CHAPTER II SECURITIES AND EXCHANGE COMMISSION

SEC. 4. Administrative Agency.

4.1. This Code shall be administered by the Securities and Exchange Commission (hereafter the "Commission") as a collegial body, composed of a Chairperson and four (4) Commissioners, appointed by the President for a term of seven (7) years each and who shall serve as such until their successor shall have been appointed and qualified. A Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his/her predecessor was appointed, shall serve only for the unexpired portion of such term. The incumbent Chairperson and Commissioners at the effectivity of this Code, shall serve the unexpired portion of their terms under Presidential Decree No. 902-A. Unless the context indicates otherwise, the term "Commissioner" includes the Chairperson.

4.2. The Commissioners must be natural-born citizens of the Philippines, at least forty (40) years of age for the Chairperson and at least thirty-five (35) years of age for the Commissioners, of good moral character, of unquestionable integrity, of known probity and patriotism, and with recognized competence in social and economic disciplines: *Provided*, That the majority of Commissioners, including the Chairperson, shall be members of the Philippine Bar.

4.3. The Chairperson is chief executive officer of the Commission. The Chairperson shall execute and administer the policies, decisions, orders and resolutions approved by the Commission and shall have the general executive direction and supervision of the work and operation of the Commission and of its members, bodies, boards, offices, personnel and all its administrative business.

4.4. The salary of the Chairperson and the Commissioners shall be fixed by the President of the Philippines based on an objective classification system, at a sum comparable to the members of the Monetary Board and commensurate to the importance and responsibilities attached to the position.

4.5. The Commission shall hold meetings at least once a week for the conduct of business or as often as may be necessary upon call of the Chairperson or upon the request of three (3) Commissioners. The notice of the meeting shall be given to all Commissioners and the presence of

three (3) Commissioners shall constitute a quorum. In the absence of the Chairperson, the most senior Commissioner shall act as presiding officer of the meeting.

4.6. The Commission may, for purposes of efficiency, delegate any of its functions to any department or office of the Commission, an individual Commissioner or staff member of the Commission except its review or appellate authority and its power to adopt, alter and supplement any rule or regulation. The Commission may review upon its own initiative or upon the petition of any interested party any action of any department or office, individual Commissioner, or staff member of the Commission.

SEC. 5. Powers and Functions of the Commission.

5.1. The Commission shall act with transparency and shall have the powers and functions provided by this Code, Presidential Decree No. 902-A, the Corporation Code, the Investment Houses Law, the Financing Company Act and other existing laws. Pursuant thereto the Commission shall have, among others, the following powers and functions:

(a) Have jurisdiction and supervision over all corporations, partnerships or associations who are the grantees of primary franchises and/or a license or permit issued by the Government;

(b) Formulate policies and recommendations on issues concerning the securities market, advise Congress and other government agencies on all aspects of the securities market and propose legislation and amendments thereto;

(c) Approve, reject, suspend, revoke or require amendments to registration statements, and registration and licensing applications;

(d) Regulate, investigate or supervise the activities of persons to ensure compliance;

(e) Supervise, monitor, suspend or take over the activities of exchanges, clearing agencies and other SROs;

(f) Impose sanctions for the violation of laws and the rules, regulations and orders issued pursuant thereto;

(g) Prepare, approve, amend or repeal rules, regulations and orders, and issue opinions and provide guidance on and supervise compliance with such rules, regulations and orders;

(h) Enlist the aid and support of and/or deputize any and all enforcement agencies of the Government, civil or military as well as any private institution, corporation, firm, association or person in the implementation of its powers and functions under this Code;

(i) Issue cease and desist orders to prevent fraud or injury to the investing public;

(j) Punish for contempt of the Commission, both direct and indirect, in accordance with the pertinent provisions of and penalties prescribed by the Rules of Court;

(k) Compel the officers of any registered corporation or association to call meetings of stockholders or members thereof under its supervision;

(l) Issue *subpoena duces tecum* and summon witnesses to appear in any proceedings of the Commission and in appropriate cases, order the examination, search and seizure of all documents, papers, files and records, tax returns, and books of accounts of any entity or person under investigation as may be necessary for the proper disposition of the cases before it, subject to the provisions of existing laws;

(m) Suspend, or revoke, after proper notice and hearing the franchise or certificate of registration of corporations, partnerships or associations, upon any of the grounds provided by law; and

(n) Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws.

5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: *Provided*, that the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed.

SEC. 6. Indemnification and Responsibilities of Commissioners.

6.1. The Commission shall indemnify each Commissioner and other officials of the Commission, including personnel performing supervision and examination functions for all costs and expenses reasonably incurred by such persons in connection with any civil or criminal actions, suits or proceedings to which they may be or made a party by reason of the performance of their functions or duties, unless they are finally adjudged in such actions or proceedings to be liable for gross negligence or misconduct.

In the event of settlement or compromise, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Commission is advised by external counsel that the persons to be indemnified did not commit any gross negligence or misconduct.

The costs and expenses incurred in defending the aforementioned action, suit or proceeding may be paid by the Commission in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Commissioner, officer or employee to repay the amount advanced should it ultimately be determined by the Commission that he/she is not entitled to be indemnified as provided in this subsection.

6.2. The Commissioners, officers and employees of the Commission who willfully violate this Code or who are guilty of negligence, abuse or

acts of malfeasance or fail to exercise extraordinary diligence in the performance of their duties shall be held liable for any loss or injury suffered by the Commission or other institutions as a result of such violation, negligence, abuse, malfeasance, or failure to exercise extraordinary diligence.

Similar responsibility shall apply to the Commissioners, officers and employees of the Commission for (1) the disclosure of any information, discussion or resolution of the Commission of a confidential nature, or about the confidential operations of the Commission, unless the disclosure is in connection with the performance of official functions with the Commission or with prior authorization of the Commissioners; or (2) the use of such information for personal gain or to the detriment of the government, the Commission or third parties: *Provided, however*, That any data or information required to be submitted to the President and/or Congress or its appropriate committee, or to be published under the provisions of this Code shall not be considered confidential.

SEC. 7. Reorganization.

7.1. To achieve the goals of this Code, consistent with Civil Service laws, the Commission is hereby authorized to provide for its reorganization, to streamline its structure and operations, upgrade its human resource component and enable it to more efficiently and effectively perform its functions and exercise its powers under this Code.

7.2. All positions of the Commission shall be governed by a compensation and position classification systems and qualification standards approved by the Commission based on a comprehensive job analysis and audit of actual duties and responsibilities. The compensation plan shall be comparable with the prevailing compensation plan in the *Bangko Sentral ng Pilipinas* and other government financial institutions and shall be subject to periodic review by the Commission no more than once every two (2) years without prejudice to yearly merit reviews or increases based on productivity and efficiency. The Commission shall, therefore, be exempt from laws, rules, and regulations on compensation, position classification and qualification standards. The Commission shall, however, endeavor to make its system conform as closely as possible with the principles under the Compensation and Position Classification Act of 1989 (Republic Act No. 6758, as amended).

CHAPTER III REGISTRATION OF SECURITIES

SEC. 8. Requirement of Registration of Securities.

8.1. Securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission. Prior to such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser.

8.2. The Commission may conditionally approve the registration statement under such terms as it may deem necessary.

8.3. The Commission may specify the terms and conditions under which any written communication, including any summary prospectus, shall be deemed not to constitute an offer for sale under this Section.

8.4. A record of the registration of securities shall be kept in a Register of Securities in which shall be recorded orders entered by the Commission with respect to such securities. Such register and all documents or information with respect to the securities registered therein shall be open to public inspection at reasonable hours on business days.

8.5. The Commission may audit the financial statements, assets and other information of a firm applying for registration of its securities whenever it deems the same necessary to insure full disclosure or to protect the interest of the investors and the public in general.

SEC. 9. Exempt Securities.

9.1. The requirement of registration under Subsection 8.1 shall not as a general rule apply to any of the following classes of securities:

a) Any security issued or guaranteed by the Government of the Philippines, or by any political subdivision or agency thereof, or by any person controlled or supervised by, and acting as an instrumentality of said Government.

b) Any security issued or guaranteed by the government of any country with which the Philippines maintains diplomatic relations, or by any state, province or political subdivision thereof on the basis of reciprocity: *Provided*, That the Commission may require compliance with the form and content of disclosures the Commission may prescribe.

c) Certificates issued by a receiver or by a trustee in bankruptcy duly approved by the proper adjudicatory body.

d) Any security or its derivatives the sale or transfer of which, by law, is under the supervision and regulation of the Office of the Insurance Commission, Housing and Land Use Regulatory Board, or the Bureau of Internal Revenue.

e) Any security issued by a bank except its own shares of stock.

9.2. The Commission may, by rule or regulation after public hearing, add to the foregoing any class of securities if it finds that the enforcement of this Code with respect to such securities is not necessary in the public interest and for the protection of investors.

SEC. 10. Exempt Transactions.

10.1. The requirement of registration under Subsection 8.1 shall not apply to the sale of any security in any of the following transactions:

a) At any judicial sale, or sale by an executor, administrator, guardian or receiver or trustee in insolvency or bankruptcy.

b) By or for the account of a pledge holder, or mortgagee or any other similar lien holder selling or offering for sale or delivery in the ordinary course of business and not for the purpose of avoiding the provisions of this Code, to liquidate a *bona fide* debt, a security pledged in good faith as security for such debt.

c) An isolated transaction in which any security is sold, offered for sale, subscription or delivery by the owner thereof, or by his representative for the owner's account, such sale or offer for sale, subscription or delivery not being made in the course of repeated and successive transactions of a like character by such owner, or on his account by such representative and such owner or representative not being the underwriter of such security.

d) The distribution by a corporation, actively engaged in the business authorized by its articles of incorporation, of securities to its stockholders or other security holders as a stock dividend or other distribution out of surplus.

e) The sale of capital stock of a corporation to its own stockholders exclusively, where no commission or other remuneration is paid or given directly or indirectly in connection with the sale of such capital stock.

f) The issuance of bonds or notes secured by mortgage upon real estate or tangible personal property, where the entire mortgage together with all the bonds or notes secured thereby are sold to a single purchaser at a single sale.

g) The issue and delivery of any security in exchange for any other security of the same issuer pursuant to a right of conversion entitling the holder of the security surrendered in exchange to make such conversion: *Provided*, That the security so surrendered has been registered under this Code or was, when sold, exempt from the provisions of this Code, and that the security issued and delivered in exchange, if sold at the conversion price, would at the time of such conversion fall within the class of securities entitled to registration under this Code. Upon such conversion the par value of the security surrendered in such exchange shall be deemed the price at which the securities issued and delivered in such exchange are sold.

h) Broker's transactions, executed upon customer's orders, on any registered Exchange or other trading market.

i) Subscriptions for shares of the capital stock of a corporation prior to the incorporation thereof or in pursuance of an increase in its authorized capital stock under the Corporation Code, when no expense is incurred, or no commission, compensation or remuneration is paid or given in connection with the sale or disposition of such securities, and only when the purpose for soliciting, giving or taking of such subscriptions is to comply with the requirements of such law as to the percentage of the capital stock of a corporation which should be subscribed before it can be registered and duly incorporated, or its authorized capital increased.

j) The exchange of securities by the issuer with its existing security holders exclusively, where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange.

k) The sale of securities by an issuer to fewer than twenty (20) persons in the Philippines during any twelve-month period.

l) The sale of securities to any number of the following qualified buyers:

(i) Bank;

(ii) Registered investment house;

(iii) Insurance company;

(iv) Pension fund or retirement plan maintained by the Government of the Philippines or any political subdivision thereof or managed by a bank or other persons authorized by the *Bangko Sentral* to engage in trust functions;

(v) Investment company; or

(vi) Such other person as the Commission may by rule determine as qualified buyers, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial and business matters, or amount of assets under management.

10.2. The Commission may exempt other transactions, if it finds that the requirements of registration under this Code is not necessary in the public interest or for the protection of the investors such as by reason of the small amount involved or the limited character of the public offering.

10.3. Any person applying for an exemption under this Section, shall file with the Commission a notice identifying the exemption relied upon on such form and at such time as the Commission by rule may prescribe and with such notice shall pay to the Commission a fee equivalent to one-tenth (1/10) of one percent (1%) of the maximum aggregate price or issued value of the securities.

SEC. 11. Commodity Futures Contracts.

No person shall offer, sell or enter into commodity futures contracts except in accordance with rules, regulations and orders the Commission may prescribe in the public interest. The Commission shall promulgate rules and regulations involving commodity futures contracts to protect investors to ensure the development of a fair and transparent commodities market.

SEC. 12. Procedure for Registration of Securities.

12.1. All securities required to be registered under Subsection 8.1 shall be registered through the filing by the issuer in the main office of the Commission, of a sworn registration statement with respect to such securities, in such form and containing such information and documents as the Commission shall prescribe. The registration statement shall include any prospectus required or permitted to be delivered under Subsections 8.2, 8.3 and 8.4.

12.2. In promulgating rules governing the content of any registration statement (including any prospectus made a part thereof or annexed thereto), the Commission may require the registration statement to contain such information or documents as it may, by rule, prescribe. It may dispense with any such requirement, or may require additional information or documents, including written information from an expert, depending on the necessity thereof or their applicability to the class of securities sought to be registered.

12.3. The information required for the registration of any kind, and all securities, shall include, among others, the effect of the securities issue on ownership, on the mix of ownership, especially foreign and local ownership.

12.4. The registration statement shall be signed by the issuer's executive officer, its principal operating officer, its principal financial officer, its comptroller, principal accounting officer, its corporate secretary or persons performing similar functions accompanied by a duly verified resolution of the board of directors of the issuer corporation. The written consent of the expert named as having certified any part of the registration statement or any document used in connection therewith shall also be filed. Where the registration statement includes shares to be sold by selling shareholders, a written certification by such selling shareholders as to the accuracy of any part of the registration statement contributed to by such selling shareholders shall also be filed.

12.5. a) Upon filing of the registration statement, the issuer shall pay to the Commission a fee of not more than one-tenth (1/10) of one *per centum* (1%) of the maximum aggregate price at which such securities are proposed to be offered. The Commission shall prescribe by rule diminishing fees in inverse proportion to the value of the aggregate price of the offering.

b) Notice of the filing of the registration statement shall be immediately published by the issuer, at its own expense, in two (2) newspapers of general circulation in the Philippines, once a week for two (2) consecutive weeks, or in such other manner as the Commission by rule shall prescribe, reciting that a registration statement for the sale of such security has been filed, and that the aforesaid registration statement, as well as the papers attached thereto are open to inspection at the Commission during business hours, and copies thereof, photostatic or otherwise, shall be furnished to interested parties at such reasonable charge as the Commission may prescribe.

12.6. Within forty-five (45) days after the date of filing of the registration statement, or by such later date to which the issuer has consented, the Commission shall declare the registration statement effective or rejected, unless the applicant is allowed to amend the registration statement as provided in Section 14 hereof. The Commission shall enter an order declaring the registration statement to be effective if it finds that the registration statement together with all the other papers and documents attached thereto, is on its face complete and that the requirements have been complied with. The Commission may impose such terms and conditions as may be necessary or appropriate for the protection of the investors.

12.7. Upon effectivity of the registration statement, the issuer shall state under oath in every prospectus that all registration requirements have been met and that all information are true and correct as represented by the issuer or the one making the statement. Any untrue statement of fact or omission to state a material fact required to be stated therein or necessary to make the statement therein not misleading shall constitute fraud.

SEC. 13. Rejection and Revocation of Registration of Securities.

13.1. The Commission may reject a registration statement and refuse registration of the security thereunder, or revoke the effectivity of a registration statement and the registration of the security thereunder after due notice and hearing by issuing an order to such effect, setting forth its findings in respect thereto, if it finds that:

a) The issuer:

(i) Has been judicially declared insolvent;

(ii) Has violated any of the provisions of this Code, the rules promulgated pursuant thereto, or any order of the Commission of which the issuer has notice in connection with the offering for which a registration statement has been filed;

(iii) Has been or is engaged or is about to engage in fraudulent transactions;

(iv) Has made any false or misleading representation of material facts in any prospectus concerning the issuer or its securities;

(v) Has failed to comply with any requirement that the Commission may impose as a condition for registration of the security for which the registration statement has been filed; or

b) The registration statement is on its face incomplete or inaccurate in any material respect or includes any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading; or

c) The issuer, any officer, director or controlling person of the issuer, or person performing similar functions, or any underwriter has been convicted, by a competent judicial or administrative body, upon plea of guilty, or otherwise, of an offense involving moral turpitude and/or fraud or is enjoined or restrained by the Commission or other competent judicial or administrative body for violations of securities, commodities, and other related laws.

For purposes of this subsection, the term "competent judicial or administrative body" shall include a foreign court of competent jurisdiction as provided for under the Rules of Court.

13.2. The Commission may compel the production of all the books and papers of such issuer, and may administer oaths to, and examine the officers of such issuer or any other person connected therewith as to its business and affairs.

13.3. If any issuer shall refuse to permit an examination to be made by the Commission, its refusal shall be ground for the refusal or revocation of the registration of its securities.

13.4. If the Commission deems it necessary, it may issue an order suspending the offer and sale of the securities pending any investigation. The order shall state the grounds for taking such action, but such order of suspension although binding upon the persons notified thereof, shall be deemed confidential, and shall not be published. Upon the issuance of the suspension order, no further offer or sale of such security shall be

made until the same is lifted or set aside by the Commission. Otherwise, such sale shall be void.

13.5. Notice of issuance of such order shall be given to the issuer and every dealer and broker who shall have notified the Commission of an intention to sell such security.

13.6. A registration statement may be withdrawn by the issuer only with the consent of the Commission.

SEC. 14. Amendments to the Registration Statement.

14.1. If a registration statement is on its face incomplete or inaccurate in any material respect, the Commission shall issue an order directing the amendment of the registration statement. Upon compliance with such order, the amended registration statement shall become effective in accordance with the procedure mentioned in Subsection 12.6 hereof.

14.2. An amendment filed prior to the effective date of the registration statement shall recommence the forty-five (45) day period within which the Commission shall act on a registration statement. An amendment filed after the effective date of the registration statement shall become effective only upon such date as determined by the Commission.

14.3. If any change occurs in the facts set forth in a registration statement, the issuer shall file an amendment thereto setting forth the change.

14.4. If, at any time, the Commission finds that a registration statement contains any false statement or omits to state any fact required to be stated therein or necessary to make the statements therein not misleading, the Commission may conduct an examination, and, after due notice and hearing, issue an Order suspending the effectivity of the registration statement. If the statement is duly amended, the suspension order may be lifted.

14.5. In making such examination the Commission or any officer or officers designated by it may administer oaths and affirmations and shall have access to, and may demand the production of, any books, records or documents relevant to the examination. Failure of the issuer, underwriter, or any other person to cooperate, or his obstruction or refusal to undergo an examination, shall be a ground for the issuance of a suspension order.

SEC. 15. Suspension of Registration.

15.1. If, at any time, the information contained in the registration statement filed is or has become misleading, incorrect, inadequate or incomplete in any material respect, or the sale or offering for sale of the security registered thereunder may work or tend to work a fraud, the Commission may require from the issuer such further information as may in its judgment be necessary to enable the Commission to ascertain whether the registration of such security should be revoked on any ground specified in this Code. The Commission may also suspend the right to sell and offer for sale such security pending further investigation, by entering an order specifying the grounds for such action, and by notifying the issuer, underwriter, dealer or broker known as participating in such offering.

15.2. The refusal to furnish information required by the Commission may be a ground for the issuance of an order of suspension pursuant to Subsection 15.1. Upon the issuance of any such order and notification to the issuer, underwriter, dealer or broker known as participating in such offering, no further offer or sale of any such security shall be made until the same is lifted or set aside by the Commission. Otherwise, such sale shall be void.

15.3. Upon issuance of an order of suspension, the Commission shall conduct a hearing. If the Commission determines that the sale of any security should be revoked, it shall issue an order prohibiting sale of such security. Until the issuance of a final order, the suspension of the right to sell, though binding upon the persons notified thereof, shall be deemed confidential, and shall not be published, unless it shall appear that the order of suspension has been violated after notice. If, however, the Commission finds that the sale of the security will neither be fraudulent nor result in fraud, it shall forthwith issue an order revoking the order of suspension, and such security shall be restored to its status as a registered security as of the date of such order of suspension.

CHAPTER IV REGULATION OF PRE-NEED PLANS

SEC. 16. Pre-Need Plans.

No person shall sell or offer for sale to the public any pre-need plan except in accordance with rules and regulations which the Commission shall prescribe. Such rules shall regulate the sale of pre-need plans by, among other things, requiring the registration of pre-need plans, licensing persons involved in the sale of pre-need plans, requiring disclosures to prospective plan holders, prescribing advertising guidelines, providing for uniform accounting system, reports and record keeping with respect to such plans, imposing capital, bonding and other financial responsibility, and establishing trust funds for the payment of benefits under such plans.

CHAPTER V REPORTORIAL REQUIREMENTS

SEC. 17. Periodic and Other Reports of Issuers.

17.1. Every issuer satisfying the requirements in Subsection 17.2 hereof shall file with the Commission:

a) Within one hundred thirty-five (135) days, after the end of the issuer's fiscal year, or such other time as the Commission may prescribe, an annual report which shall include, among others, a balance sheet, profit and loss statement and statement of cash flows, for such last fiscal year, certified by an independent certified public accountant, and a management discussion and analysis of results of operations; and

b) Such other periodical reports for interim fiscal periods and current reports on significant developments of the issuer as the Commission

may prescribe as necessary to keep current information on the operation of the business and financial condition of the issuer.

17.2. The reportorial requirements of Subsection 17.1 shall apply to the following:

a) An issuer which has sold a class of its securities pursuant to a registration under Section 12 hereof: *Provided, however*, That the obligation of such issuer to file reports shall be suspended for any fiscal year after the year such registration became effective if such issuer, as of the first day of any such fiscal year, has less than one hundred (100) holders of such class of securities or such other number as the Commission shall prescribe and it notifies the Commission of such;

b) An issuer with a class of securities listed for trading on an Exchange; and

c) An issuer with assets of at least Fifty million pesos (P50,000,000.00) or such other amount as the Commission shall prescribe, and having Two hundred (200) or more holders each holding at least One hundred (100) shares of a class of its equity securities: *Provided, however*, That the obligation of such issuer to file reports shall be terminated ninety (90) days after notification to the Commission by the issuer that the number of its holders holding at least one hundred (100) shares is reduced to less than One hundred (100).

17.3. Every issuer of a security listed for trading on an Exchange shall file with the Exchange a copy of any report filed with the Commission under Subsection 17.1 hereof.

17.4. All reports (including financial statements) required to be filed with the Commission pursuant to Subsection 17.1 hereof shall be in such form, contain such information and be filed at such times as the Commission shall prescribe, and shall be in lieu of any periodical or current reports or financial statements otherwise required to be filed under the Corporation Code.

17.5. Every issuer which has a class of equity securities satisfying any of the requirements in Subsection 17.2 shall furnish to each holder of such equity security an annual report in such form and containing such information as the Commission shall prescribe.

17.6. Within such period as the Commission may prescribe preceding the annual meeting of the holders of any equity security of a class entitled to vote at such meeting, the issuer shall transmit to such holders an annual report in conformity with Subsection 17.5.

SEC. 18. Reports by Five per centum (5%) Holders of Equity Securities.

18.1. In every case in which an issuer satisfies the requirements of Subsection 17.2 hereof, any person who acquires directly or indirectly the beneficial ownership of more than five *per centum* (5%) of such class or in excess of such lesser per centum as the Commission by rule may prescribe, shall, within ten (10) days after such acquisition or such reasonable time as fixed by the Commission, submit to the issuer of the secu-

rity, to the Exchange where the security is traded, and to the Commission a sworn statement containing the following information and such other information as the Commission may require in the public interest or for the protection of investors:

a) The personal background, identity, residence, and citizenship of, and the nature of such beneficial ownership by, such person and all other persons by whom or on whose behalf the purchases are effected; in the event the beneficial owner is a juridical person, the lines of business of the beneficial owner shall also be reported;

b) If the purpose of the purchases or prospective purchases is to acquire control of the business of the issuer of the securities, any plans or proposals which such persons may have that will effect a major change in its business or corporate structure;

c) The number of shares of such security which are beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly, by: (i) such person, and (ii) each associate of such person, giving the background, identity, residence, and citizenship of each such associate; and

d) Information as to any contracts, arrangements, or understanding with any person with respect to any securities of the issuer including but not limited to transfer, joint ventures, loan or option arrangements, puts or calls, guarantees or division of losses or profits, or proxies naming the persons with whom such contracts, arrangements, or understanding have been entered into, and giving the details thereof.

18.2. If any change occurs in the facts set forth in the statements, an amendment shall be transmitted to the issuer, the Exchange and the Commission.

18.3. The Commission, may permit any person to file in lieu of the statement required by Subsection 17.1 hereof, a notice stating the name of such person, the shares of any equity securities subject to Subsection 17.1 which are owned by him, the date of their acquisition and such other information as the Commission may specify, if it appears to the Commission that such securities were acquired by such person in the ordinary course of his business and were not acquired for the purpose of and do not have the effect of changing or influencing the control of the issuer nor in connection with any transaction having such purpose or effect.

CHAPTER VI PROTECTION OF SHAREHOLDER INTERESTS

SEC. 19. Tender Offers.

19.1. a) Any person or group of persons acting in concert who intends to acquire at least fifteen per cent (15%) of any class of any equity security of a listed corporation or of any class of any equity security of a corporation with assets of at least Fifty Million Pesos (P50,000,000.00) and having two hundred (200) or more stockholders with at least one hundred (100) shares each or who intends to acquire at least thirty per cent (30%) of such equity over a period of twelve (12) months shall

make a tender offer to stockholders by filing with the Commission a declaration to that effect; and furnish the issuer, a statement containing such of the information required in Section 17 of this Code as the Commission may prescribe. Such person or group of persons shall publish all requests or invitations for tender, or materials making a tender offer or requesting or inviting letters of such a security. Copies of any additional material soliciting or requesting such tender offers subsequent to the initial solicitation or request shall contain such information as the Commission may prescribe, and shall be filed with the Commission and sent to the issuer not later than the time copies of such materials are first published or sent or given to security holders.

b) Any solicitation or recommendation to the holders of such a security to accept or reject a tender offer or request or invitation for tenders shall be made in accordance with such rules and regulations as the Commission may prescribe.

c) Securities deposited pursuant to a tender offer or request or invitation for tenders may be withdrawn by or on behalf of the depositor at any time throughout the period that the tender offer remains open and if the securities deposited have not been previously accepted for payment, and at any time after sixty (60) days from the date of the original tender offer or request or invitation, except as the Commission may otherwise prescribe.

d) Where the securities offered exceed that which a person or group of persons is bound or willing to take up and pay for, the securities that are subject of the tender offer shall be taken up as nearly as may be *pro rata*, disregarding fractions, according to the number of securities deposited by each depositor. The provisions of this subsection shall also apply to securities deposited within ten (10) days after notice of an increase in the consideration offered to security holders, as described in paragraph (e) of this subsection, is first published or sent or given to security holders.

e) Where any person varies the terms of a tender offer or request or invitation for tenders before the expiration thereof by increasing the consideration offered to holders of such securities, such person shall pay the increased consideration to each security holder whose securities are taken up and paid for whether or not such securities have been taken up by such person before the variation of the tender offer or request or invitation.

19.2. It shall be unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive, or manipulative acts or practices, in connection with any tender offer or request or invitation for tenders, or any solicitation of security holders in opposition to or in favor of any such offer, request, or invitation. The Commission shall, for the purposes of this subsection, define and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative.

SEC. 20. Proxy Solicitations.

20.1. Proxies must be issued and proxy solicitation must be made in accordance with rules and regulations to be issued by the Commission;

20.2. Proxies must be in writing, signed by the stockholder or his duly authorized representative and filed before the scheduled meeting with the corporate secretary.

20.3. Unless otherwise provided in the proxy, it shall be valid only for the meeting for which it is intended. No proxy shall be valid and effective for a period longer than five (5) years at one time.

20.4. No broker or dealer shall give any proxy, consent or authorization, in respect of any security carried for the account of a customer, to a person other than the customer, without the express written authorization of such customer.

20.5. A broker or dealer who holds or acquires the proxy for at least ten *per centum* (10%) or such percentage as the Commission may prescribe of the outstanding share of the issuer, shall submit a report identifying the beneficial owner within ten (10) days after such acquisition, for its own account or customer, to the issuer of the security, to the Exchange where the security is traded and to the Commission.

SEC. 21. Fees for Tender Offers and Certain Proxy Solicitations.

At the time of filing with the Commission of any statement required under Section 19 for any tender offer or Section 72.2 for issuer repurchases, or Section 20 for proxy or consent solicitation, the Commission may require that the person making such filing pay a fee of not more than one-tenth (1/10) of one *percentum* (1%) of:

21.1. The proposed aggregate purchase price in the case of a transaction under Sections 20 or 72.2; or

21.2. The proposed payment in cash, and the value of any securities or property to be transferred in the acquisition, merger or consolidation, or the cash and value of any securities proposed to be received upon the sale or disposition of such assets in the case of a solicitation under Section 20. The Commission shall prescribe by rule diminishing fees in inverse proportion to the value of the aggregate price of the offering.

SEC. 22. Internal Record Keeping and Accounting Controls.

Every issuer which has a class of securities that satisfies the requirements of Subsection 17.2 shall:

22.1. Make and keep books, records, and accounts which, in reasonable detail accurately and fairly reflect the transactions and dispositions of assets of the issuer;

22.2. Devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (a) Transactions and access to assets are pursuant to management authorization; (b) Financial statements are prepared in conformity with generally accepted accounting principles that are adopted by the Accounting Standards Council and

the rules promulgated by the Commission with regard to the preparation of financial statements; and (c) Recorded assets are compared with existing assets at reasonable intervals and differences are reconciled.

SEC. 23. Transactions of Directors, Officers and Principal Stockholders.

23.1. Every person who is directly or indirectly the beneficial owner of more than ten *per centum* (10%) of any class of any equity security which satisfies the requirements of Subsection 17.2, or who is a director or an officer of the issuer of such security, shall file, at the time either such requirement is first satisfied or within ten days after he becomes such a beneficial owner, director, or officer, a statement with the Commission and, if such security is listed for trading on an Exchange, also with the Exchange, of the amount of all equity securities of such issuer of which he is the beneficial owner, and within ten (10) days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file with the Commission, and if such security is listed for trading on an Exchange, shall also file with the Exchange, a statement indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

23.2. For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to the issuer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such issuer within any period of less than six (6) months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the issuer, irrespective of any intention of holding the security purchased or of not repurchasing the security sold for a period exceeding six (6) months. Suit to recover such profit may be instituted before the Regional Trial Court by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer shall fail or refuse to bring such suit within sixty (60) days after request or shall fail diligently to prosecute the same thereafter, but no such suit shall be brought more than two (2) years after the date such profit was realized. This subsection shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the Commission by rules and regulations may exempt as not comprehended within the purpose of this subsection.

23.3. It shall be unlawful for any such beneficial owner, director, or officer, directly or indirectly, to sell any equity security of such issuer if the person selling the security or his principal: (a) Does not own the security sold; or (b) If owning the security, does not deliver it against such sale within twenty (20) days thereafter, or does not within five (5) days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this subsection if he proves that notwithstanding the exercise of good faith he was unable to

make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

23.4. The provisions of Subsection 23.2 shall not apply to any purchase and sale, or sale and purchase, and the provisions of Subsection 23.3 shall not apply to any sale, of an equity security not then or thereafter held by him in an investment account, by a dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market, otherwise than on an Exchange, for such security. The Commission may, by such rules and regulations as it deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

CHAPTER VII PROHIBITIONS ON FRAUD, MANIPULATION AND INSIDER TRADING

SEC. 24. Manipulation of Security Prices; Devices and Practices.

24.1. It shall be unlawful for any person acting for himself or through a dealer or broker, directly or indirectly:

a) To create a false or misleading appearance of active trading in any listed security traded in an Exchange or any other trading market (hereafter referred to purposes of this Chapter as "Exchange"):

(i) By effecting any transaction in such security which involves no change in the beneficial ownership thereof;

(ii) By entering an order or orders for the purchase or sale of such security with the knowledge that a simultaneous order or orders of substantially the same size, time and price, for the sale or purchase of any such security, has or will be entered by or for the same or different parties; or

(iii) By performing similar act where there is no change in beneficial ownership.

b) To effect, alone or with others, a series of transactions in securities that:

(i) Raises their price to induce the purchase of a security, whether of the same or a different class of the same issuer or of a controlling, controlled, or commonly controlled company by others;

(ii) Depresses their price to induce the sale of a security, whether of the same or a different class, of the same issuer or of a controlling, controlled, or commonly controlled company by others; or

(iii) Creates active trading to induce such a purchase or sale through manipulative devices such as marking the close, painting the tape, squeezing the float, hype and dump, boiler room operations and such other similar devices.

c) To circulate or disseminate information that the price of any security listed in an Exchange will or is likely to rise or fall because of

manipulative market operations of any one or more persons conducted for the purpose of raising or depressing the price of the security for the purpose of inducing the purchase or sale of such security.

d) To make false or misleading statement with respect to any material fact, which he knew or had reasonable ground to believe was so false or misleading, for the purpose of inducing the purchase or sale of any security listed or traded in an Exchange.

e) To effect, either alone or others, any series of transactions for the purchase and/or sale of any security traded in an Exchange for the purpose of pegging, fixing or stabilizing the price of such security, unless otherwise allowed by this Code or by rules of the Commission.

24.2. No person shall use or employ, in connection with the purchase or sale of any security any manipulative or deceptive device or contrivance. Neither shall any short sale be effected nor any stop-loss order be executed in connection with the purchase or sale of any security except in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

24.3. The foregoing provisions notwithstanding, the Commission, having due regard to the public interest and the protection of investors, may, by rules and regulations, allow certain acts or transactions that may otherwise be prohibited under this Section.

SEC. 25. Regulation of Option Trading.

No member of an Exchange shall, directly or indirectly endorse or guarantee the performance of any put, call, straddle, option or privilege in relation to any security registered on a securities exchange.

The terms “put”, “call”, “straddle”, “option”, or “privilege” shall not include any registered warrant, right or convertible security.

SEC. 26. Fraudulent Transactions.

It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of any securities to:

26.1. Employ any device, scheme, or artifice to defraud;

26.2. Obtain money or property by means of any untrue statement of a material fact of any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

26.3. Engage in any act, transaction, practice or course of business which operates or would operate as a fraud or deceit upon any person.

SEC. 27. Insider’s Duty to Disclose When Trading.

27.1. It shall be unlawful for an insider to sell or buy a security of the issuer, while in possession of material information with respect to the issuer or the security that is not generally available to the public, unless: (a) The insider proves that the information was not gained from such re-

lationship; or (b) If the other party selling to or buying from the insider (or his agent) is identified, the insider proves: (i) that he disclosed the information to the other party, or (ii) that he had reason to believe that the other party otherwise is also in possession of the information. A purchase or sale of a security of the issuer made by an insider defined in Subsection 3.8, or such insider's spouse or relatives by affinity or consanguinity within the second degree, legitimate or common-law, shall be presumed to have been effected while in possession of material non-public information if transacted after such information came into existence but prior to dissemination of such information to the public and the lapse of a reasonable time for the market to absorb such information: *Provided, however,* That this presumption shall be rebutted upon a showing by the purchaser or seller that he was not aware of the material non-public information at the time of the purchase or sale.

27.2. For purposes of this Section, information is "material non-public" if: (a) It has not been generally disclosed to the public and would likely affect the market price of the security after being disseminated to the public and the lapse of a reasonable time for the market to absorb the information; or (b) would be considered by a reasonable person important under the circumstances in determining his course of action whether to buy, sell or hold a security.

27.3. It shall be unlawful for any insider to communicate material non-public information about the issuer or the security to any person who, by virtue of the communication, becomes an insider as defined in Subsection 3.8, where the insider communicating the information knows or has reason to believe that such person will likely buy or sell a security of the issuer while in possession of such information.

27.4. a) It shall be unlawful where a tender offer has commenced or is about to commence for:

(i) Any person (other than the tender offeror) who is in possession of material non-public information relating to such tender offer, to buy or sell the securities of the issuer that are sought or to be sought by such tender offer if such person knows or has reason to believe that the information is non-public and has been acquired directly or indirectly from the tender offeror, those acting on its behalf, the issuer of the securities sought or to be sought by such tender offer, or any insider of such issuer; and

(ii) Any tender offeror, those acting on its behalf, the issuer of the securities sought or to be sought by such tender offer, and any insider of such issuer to communicate material non-public information relating to the tender offer to any other person where such communication is likely to result in a violation of Subsection 27.4 (a)(i).

b) For purposes of this subsection the term "securities of the issuer sought or to be sought by such tender offer" shall include any securities convertible or exchangeable into such securities or any options or rights in any of the foregoing securities.

CHAPTER VIII REGULATION OF SECURITIES MARKET PROFESSIONALS

SEC. 28. Registration of Brokers, Dealers, Salesmen and Associated Persons.

28.1. No person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission.

28.2. No registered broker or dealer shall employ any salesman or any associated person, and no issuer shall employ any salesman, who is not registered as such with the Commission.

28.3. The Commission, by rule or order, may conditionally or unconditionally exempt from Subsections 28.1 and 28.2 any broker, dealer, salesman, associated person of any broker or dealer, or any class of the foregoing, as it deems consistent with the public interest and the protection of investors.

28.4. The Commission shall promulgate rules and regulations prescribing the qualifications for registration of each category of applicant, which shall, among other things, require as a condition for registration that:

a) If a natural person, the applicant satisfactorily pass a written examination as to his proficiency and knowledge in the area of activity for which registration is sought;

b) In the case of a broker or dealer, the applicant satisfy a minimum net capital as prescribed by the Commission, and provide a bond or other security as the Commission may prescribe to secure compliance with the provisions of this Code; and

c) If located outside of the Philippines, the applicant files a written consent to service of process upon the Commission pursuant to Section 65 hereof.

28.5. A broker or dealer may apply for registration by filing with the Commission a written application in such form and containing such information and documents concerning such broker or dealer as the Commission by rule shall prescribe.

28.6. Registration of a salesman or of an associated person of a registered broker or dealer may be made upon written application filed with the Commission by such salesman or associated person. The application shall be separately signed and certified by the registered broker or dealer to which such salesman or associated person is to become affiliated, or by the issuer in the case of a salesman employed, appointed or authorized solely by such issuer. The application shall be in such form and contain such information and documents concerning the salesman or associated person as the Commission by rule shall prescribe. For purposes of this Section, a salesman shall not include any employee of an issuer whose compensation is not determined directly or indirectly on sales of securities of the issuer.

28.7. Applications filed pursuant to Subsections 28.5 and 28.6 shall be accompanied by a registration fee in such reasonable amount prescribed by the Commission.

28.8. Within thirty (30) days after the filing of any application under this Section, the Commission shall by order: (a) Grant registration if it determines that the requirements of this Section and the qualifications for registration set forth in its rules and regulations have been satisfied; or (b) Deny said registration.

28.9. The names and addresses of all persons approved for registration as brokers, dealers, associated persons or salesmen and all orders of the Commission with respect thereto shall be recorded in a Register of Securities Market Professionals kept in the office of the Commission which shall be open to public inspection.

28.10. Every person registered pursuant to this Section shall file with the Commission, in such form as the Commission shall prescribe, information necessary to keep the application for registration current and accurate, including in the case of a broker or dealer changes in salesmen, associated persons and owners thereof.

28.11. Every person registered pursuant to this Section shall pay to the Commission an annual fee at such time and in such reasonable amount as the Commission shall prescribe. Upon notice by the Commission that such annual fee has not been paid as required, the registration of such person shall be suspended until payment has been made.

28.12. The registration of a salesman or associated person shall be automatically terminated upon the cessation of his affiliation with said registered broker or dealer, or with an issuer in the case of a salesman employed, appointed or authorized by such issuer. Promptly following any such cessation of affiliation, the registered broker or dealer, or issuer, as the case may be, shall file with the Commission a notice of separation of such salesman or associated person.

SEC. 29. Revocation, Refusal or Suspension of Registration of Brokers, Dealers, Salesmen and Associated Persons.

29.1. Registration under Section 28 of this Code may be refused, or any registration granted thereunder may be revoked, suspended, or limitations placed thereon, by the Commission if, after due notice and hearing, the Commission determines the applicant or registrant:

a) Has willfully violated any provision of this Code, any rule, regulation or order made hereunder, or any other law administered by the Commission, or in the case of a registered broker, dealer or associated person has failed to supervise, with a view to preventing such violation, another person who commits such violation;

b) Has willfully made or caused to be made a materially false or misleading statement in any application for registration or report filed with the Commission or a self-regulatory organization, or has willfully omitted to state any material fact that is required to be stated therein;

c) Has failed to satisfy the qualifications or requirements for registration prescribed under Section 28 and the rules and regulations of the Commission promulgated thereunder;

d) Has been convicted, by a competent judicial or administrative body of an offense involving moral turpitude, fraud, embezzlement,

counterfeiting, theft, estafa, misappropriation, forgery, bribery, false oath, or perjury, or of a violation of securities, commodities, banking, real estate or insurance laws;

e) Is enjoined or restrained by a competent judicial or administrative body from engaging in securities, commodities, banking, real estate or insurance activities or from willfully violating laws governing such activities;

f) Is subject to an order of a competent judicial or administrative body refusing, revoking or suspending any registration, license or other permit under this Code, the rules and regulations promulgated there under, any other law administered by the Commission;

g) Is subject to an order of a self-regulatory organization suspending or expelling him from membership or participation therein or from association with a member or participant thereof;

h) Has been found by a competent judicial or administrative body to have willfully violated any provisions of securities, commodities, banking, real estate or insurance laws, or has willfully aided, abetted, counseled, commanded, induced or procured such violation; or

i) Has been judicially declared insolvent.

For purposes of this subsection, the term "competent judicial or administrative body" shall include a foreign court of competent jurisdiction and a foreign financial regulator.

29.2. a) In cases of charges against a salesman or associated person, notice thereof shall also be given the broker, dealer or issuer employing such salesman or associated person.

b) Pending the hearing, the Commission shall have the power to order the suspension of such broker's, dealer's, associated person's or salesman's registration: *Provided*, That such order shall state the cause for such suspension. Until the entry of a final order, the suspension of such registration, though binding upon the persons notified thereof, shall be deemed confidential, and shall not be published, unless it shall appear that the order of suspension has been violated after notice.

29.3. The order of the Commission refusing, revoking, suspending or placing limitations on a registration as herein above provided, together with its findings, shall be entered in the Register of Securities Market Professionals. The suspension or revocation of the registration of a dealer or broker shall also automatically suspend the registration of all salesmen and associated persons affiliated with such broker or dealer.

29.4. It shall be sufficient cause for refusal, revocation or suspension of a broker's or dealer's registration, if any associated person thereof or any juridical entity controlled by such associated person has committed any act or omission or is subject to any disability enumerated in paragraphs (a) through (i) of Subsection 29.1 hereof.

SEC. 30. Transactions and Responsibility of Brokers and Dealers.

30.1. No broker or dealer shall deal in or otherwise buy or sell, for its own account or for the account of customers, securities listed on an

Exchange issued by any corporation where any stockholder, director, associated person or salesman, or authorized clerk of said broker or dealer and all the relatives of the foregoing within the fourth civil degree of consanguinity or affinity, is at the time holding office in said issuer corporation as a director, president, vice-president, manager, treasurer, comptroller, secretary or any office of trust and responsibility, or is a controlling person of the issuer.

30.2. No broker or dealer shall effect any transaction in securities or induce or attempt to induce the purchase or sale of any security except in compliance with such rules and regulations as the Commission shall prescribe to ensure fair and honest dealings in securities and provide financial safeguards and other standards for the operation of brokers and dealers, including the establishment of minimum net capital requirements, the acceptance of custody and use of securities of customers, and the carrying and use of deposits and credit balances of customers.

SEC. 31. Development of Securities Market Professionals.

The Commission, in joint undertaking with self regulatory organizations, organizations and associations of finance professionals as well as private educational and research institutions shall undertake or facilitate/ organize continuing training, conferences/ seminars, updating programs, research and development as well as technology transfer at the latest and advanced trends in issuance and trading of securities, derivatives, commodity trades and other financial instruments, as well as securities markets of other countries.

CHAPTER IX EXCHANGES AND OTHER SECURITIES TRADING MARKETS

SEC. 32. Prohibition on Use of Unregistered Exchange; Regulation of Over-the-Counter Markets.

32.1. No broker, dealer, salesman, associated person of a broker or dealer, or Exchange, directly or indirectly, shall make use of any facility of an Exchange in the Philippines to effect any transaction in a security, or to report such transaction, unless such Exchange is registered as such under Section 33 of this Code.

32.2. a) No broker, dealer, salesman or associated person of a broker or dealer, singly or in concert with any other person, shall make, create or operate, or enable another to make, create or operate, any trading market, otherwise than on a registered Exchange, for the buying and selling of any security, except in accordance with rules and regulations the Commission may prescribe.

b) The Commission may promulgate rules and regulations governing transactions by brokers, dealers, salesmen or associated persons of a broker or dealer, over any facilities of such trading market and may require such market to be administered by a self-regulatory organization determined by the Commission as capable of insuring the

protection of investors comparable to that provided in the case of a registered Exchange. Such self-regulatory organization must provide a centralized marketplace for trading and must satisfy requirements comparable to those prescribed for registration of Exchanges in Section 33 of this Code.

SEC. 33. Registration of Exchanges.

33.1. Any Exchange may be registered as such with the Commission under the terms and conditions hereinafter provided in this Section and Section 40 hereof, by filing an application for registration in such form and containing such information and supporting documents as the Commission by rule shall prescribe, including the following:

a) An undertaking to comply and enforce compliance by its members with the provisions of this Code, its implementing rules or regulations and the rules of the Exchange;

b) The organizational charts of the Exchange, rules of procedure, and a list of its officers and members;

c) Copies of the rules of the Exchange; and

d) An undertaking that in the event a member firm becomes insolvent or when the Exchange shall have found that the financial condition of its member firm has so deteriorated that it cannot readily meet the demands of its customers for the delivery of securities and/or payment of sales proceeds, the Exchange shall, upon order of the Commission, take over the operation of the insolvent member firm and immediately proceed to settle the member firm's liabilities to its customers.

33.2. Registration of an Exchange shall be granted upon compliance with the following provisions:

a) That the applicant is organized as a stock corporation: *Provided*, That any registered Exchange existing prior to the effectivity of this Code shall within one (1) year reorganize as a stock corporation pursuant to a demutualization plan approved by the Commission;

b) That the applicant is engaged solely in the business of operating an exchange: *Provided, however*, That the Commission may adopt rules, regulations or issue an order, upon application, exempting an Exchange organized as a stock corporation and owned and controlled by another juridical person from this restriction.

c) Where the Exchange is organized as a stock corporation, that no person may beneficially own or control, directly or indirectly, more than five percent (5%) of the voting rights of the Exchange and no industry or business group may beneficially own or control, directly or indirectly, more than twenty percent (20%) of the voting rights of the Exchange: *Provided, however*, That the Commission may adopt rules, regulations or issue an order, upon application, exempting an applicant from this prohibition where it finds that such ownership or control will not negatively impact on the exchange's ability to effectively operate in the public interest.

d) The expulsion, suspension, or disciplining of a member and

persons associated with a member for conduct or proceeding inconsistent with just and equitable principles of fair trade, and for violations of provisions of this Code, or any other Act administered by the Commission, the rules, regulations and orders thereunder, or the rules of the Exchange;

e) A fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking to be a member, the barring of any person from association with a member, and the prohibition or limitation of any person from access to services offered by the Exchange;

f) That the brokers in the board of the Exchange shall comprise of not more than forty-nine percent (49%) of such board and shall proportionately represent the Exchange membership in terms of volume/value of trade and paid up capital, and that any natural person associated with a juridical entity that is a member shall himself be deemed to be a member for this purpose: *Provided*, That any registered Exchange existing prior to the effectivity of this Code shall immediately comply with this requirement;

g) For the board of the Exchange to include in its composition (i) the president of the Exchange, and (ii) no less than fifty one percent (51%) of the remaining members of the board to be comprised of three (3) independent directors and persons who represent the interests of issuers, investors, and other market participants, who are not associated with any broker or dealer or member of the Exchange for a period of two (2) years prior to his/her appointment. No officer or employee of a member, its subsidiaries or affiliates or related interests shall become an independent director: *Provided, however*, That the Commission may by rule, regulation, or order upon application, permit the exchange organized as a stock corporation to use a different governance structure: *Provided, further*, That the Commission is satisfied that the Exchange is acting in the public interest and is able to effectively operate as a self-regulatory organization under this Code: *Provided, finally*, That any registered exchange existing prior to the effectivity of this Code shall immediately comply with this requirement.

h) The president and other management of the Exchange to consist only of persons who are not members and are not associated in any capacity, directly or indirectly with any broker or dealer or member or listed company of the Exchange: *Provided*, That the Exchange may only appoint, and a person may only serve, as an officer of the exchange if such person has not been a member or affiliated with any broker, dealer, or member of the Exchange for a period of at least two (2) years prior to such appointment;

i) The transparency of transactions on the Exchange;

j) The equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls;

k) Prevention of fraudulent and manipulative acts and practices, promotion of just and equitable principles of trade, and, in general, protection of investors and the public interest; and

l) The transparent, prompt and accurate clearance and settlement of transactions effected on the Exchange.

33.3. If the Commission finds that the applicant Exchange is capable of complying and enforcing compliance by its members, and persons associated with such members, with the provisions of this Code, its rules and regulations, and the rules of the Exchange, and that the rules of the Exchange are fair, just and adequate, the Commission shall cause such Exchange to be registered. If, after notice due and hearing, the Commission finds otherwise, the application shall be denied.

33.4. Within ninety (90) days after the filing of the application the Commission may issue an order either granting or denying registration as an Exchange, unless the Exchange applying for registration shall withdraw its application or shall consent to the Commission's deferring action on its application for a stated longer period after the date of filing. The filing with the Commission of an application for registration by an Exchange shall be deemed to have taken place upon the receipt thereof. Amendments to an application may be made upon such terms as the Commission may prescribe.

33.5. Upon the registration of an Exchange, it shall pay a fee in such amount and within such period as the Commission may fix.

33.6. Upon appropriate application in accordance with the rules and regulations of the Commission and upon such terms as the Commission may deem necessary for the protection of investors, an Exchange may withdraw its registration or suspend its operations or resume the same.

SEC. 34. Segregation and Limitation of Functions of Members, Brokers and Dealers.

34.1. It shall be unlawful for any member-broker of an Exchange to effect any transaction on such Exchange for its own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion: *Provided, however*, That this section shall not make unlawful—

a) Any transaction by a member-broker acting in the capacity of a market maker;

b) Any transaction reasonably necessary to carry on an odd-lot transactions;

c) Any transaction to offset a transaction made in error; and

d) Any other transaction of a similar nature as may be defined by the Commission.

34.2. In all instances where the member-broker effects a transaction on an Exchange for its own account or the account of an associated person or an account with respect to which it exercises investment discretion, it shall disclose to such customer at or before the completion of the transaction it is acting for its own account: *Provided, further*, That this fact shall be reflected in the order ticket and the confirmation slip.

34.3. Any member-broker who violates the provisions of this Section shall be subject to the administrative sanctions provided in Section 54 of this Code.

SEC. 35. Additional Fees of Exchanges.

In addition to the registration fee prescribed in Section 33 of this Code, every Exchange shall pay to the Commission, on a semestral basis on or before the tenth day of the end of every semester of the calendar year, a fee in such an amount as the Commission shall prescribe, but not more than one-hundredth of one *per centum* (1%) of the aggregate amount of the sales of securities transacted on such Exchange during the preceding calendar year, for the privilege of doing business, during the preceding calendar year or any part thereof.

SEC. 36. Powers with Respect to Exchanges and Other Trading Market.

36.1. The Commission is authorized, if in its opinion such action is necessary or appropriate for the protection of investors and the public interest so requires, summarily to suspend trading in any listed security on any Exchange or other trading market for a period not exceeding thirty (30) days or, with the approval of the President of the Philippines, summarily to suspend all trading on any securities Exchange or other trading market for a period of more than thirty (30) but not exceeding ninety (90) days: *Provided, however*, That the Commission, promptly following the issuance of the order of suspension, shall notify the affected issuer of the reasons for such suspension and provide such issuer with an opportunity for hearing to determine whether the suspension should be lifted.

36.2. Wherever two or more Exchanges or other trading markets exist, the Commission may require and enforce uniformity of trading regulations in and/or between or among said Exchanges or other trading markets.

36.3. In addition to the existing Philippine Stock Exchange, the Commission shall have the authority to determine the number, size and location of stock Exchanges, other trading markets and commodity Exchanges and other similar organizations in the light of national or regional requirements for such activities with the view to promote, enhance, protect, conserve or rationalize investment.

36.4. The Commission, having due regard to the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers, dealers, clearing agencies, and transfer agents, shall promulgate rules and regulations for the prompt and accurate clearance and settlement of securities transactions.

36.5. a) The Commission may establish or facilitate the establishment of trust funds which shall be contributed by Exchanges, brokers, dealers, underwriters, transfer agents, salesmen and other persons transacting in securities, as the Commission may require, for the purpose of compensating investors for the extraordinary losses or damage they may suffer due to business failure or fraud or mismanagement of the persons with whom they transact, under such rules and regulations as the Commission may from time to time prescribe or approve in the public interest.

b) The Commission may, having due regard to the public interest or the protection of investors, regulate, supervise, examine, suspend or otherwise discontinue such and other similar funds under such rules and regulations which the Commission may promulgate, and which may include taking custody and management of the fund itself as well as investments in and disbursements from the funds under such forms of control and supervision by the Commission as it may from time to time require. The authority granted to the Commission under this subsection shall also apply to all funds established for the protection of investors, whether established by the Commission or otherwise.

SEC. 37. Registration of Innovative and Other Trading Markets.

The Commission, having due regard for national economic development, shall encourage competitiveness in the market by promulgating within six (6) months upon the enactment of this Code, rules for the registration and licensing of innovative and other trading markets or Exchanges covering, but not limited to, the issuance and trading of innovative securities, securities of small, medium, growth and venture enterprises, and technology-based ventures pursuant to Section 33 of this Code.

SEC. 38. Independent Directors.

Any corporation with a class of equity securities listed for trading on an Exchange or with assets in excess of Fifty million pesos (P50,000,000.00) and having two hundred (200) or more holders, at least of two hundred (200) of which are holding at least one hundred (100) shares of a class of its equity securities or which has sold a class of equity securities to the public pursuant to an effective registration statement in compliance with Section 12 hereof shall have at least two (2) independent directors or such independent directors shall constitute at least twenty percent (20%) of the members of such board, whichever is the lesser. For this purpose, an "independent director" shall mean a person other than an officer or employee of the corporation, its parent or subsidiaries, or any other individual having a relationship with the corporation, which would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

CHAPTER X REGISTRATION, RESPONSIBILITIES AND OVERSIGHT OF SELF-REGULATORY ORGANIZATIONS

SEC. 39. Associations of Securities Brokers, and Dealers, and Other Securities Related Organizations.

39.1. The Commission shall have the power to register as a self-regulatory organization, or otherwise grant licenses, and to regulate, supervise, examine, suspend or otherwise discontinue, as a condition for the operation of organizations whose operations are related to or connected with the securities market such as but not limited to associations

of brokers and dealers, transfer agents, custodians, fiscal and paying agents, computer services, news disseminating services, proxy solicitors, statistical agencies, securities rating agencies, and securities information processors which are engaged in the business of: (a) Collecting, processing, or preparing for distribution or publication, or assisting, participating in, or coordinating the distribution or publication of, information with respect to transactions in or quotations for any security; or (b) Distributing or publishing, whether by means of a ticker tape, a communications network, a terminal display device, or otherwise, on a current and continuing basis, information with respect to such transactions or quotations. The Commission may prescribe rules and regulations which are necessary or appropriate in the public interest or for the protection of investors to govern self-regulatory organizations and other organizations licensed or regulated pursuant to the authority granted in Subsection 39.1 including the requirement of cooperation within and among, and electronic integration of the records of, all participants in the securities market to ensure transparency and facilitate exchange of information.

39.2. An association of brokers and dealers may be registered as a securities association pursuant to Subsection 39.3 by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the association and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

39.3. An association of brokers and dealers shall not be registered as a securities association unless the Commission determines that:

a) The association is so organized and has the capacity to be able to carry out the purposes of this Code and to comply with, and to enforce compliance by its members and persons associated with its members, with the provisions of this Code, the rules and regulations thereunder, and the rules of the association.

b) The rules of the association, notwithstanding anything in the Corporation Code to the contrary, provide that:

(i) Any registered broker or dealer may become a member of the association;

(ii) There exist a fair representation of its members to serve on the Board of Directors of the association and in the administration of its affairs, and that any natural person associated with a juridical entity that is a member shall himself be deemed to be a member for this purpose;

(iii) The Board of Directors of the association includes in its composition: (a) The president of the association and (b) Persons who represent the interests of issuers and public investors and are not associated with any broker or dealer or member of the association; that the president and other management of the association not be a member or associated with any broker, dealer or member of the association;

(iv) For the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls;

(v) For the prevention of fraudulent and manipulative acts and practices, the promotion of just and equitable principles of trade, and, in general, the protection of investors and the public interest;

(vi) That its members and persons associated with its members shall be appropriately disciplined for violation of any provision of this Code, the rules or regulations thereunder, or the rules of the association;

(vii) That a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the association of any person with respect to access to services offered by the association or a member thereof.

39.4. a) A registered securities association shall deny membership to any person who is not a registered broker or dealer.

b) A registered securities association may deny membership to, or condition the membership of, a registered broker or dealer if such broker or dealer:

(i) Does not meet the standards of financial responsibility, operational capability, training, experience, or competence that are prescribed by the rules of the association; or

(ii) Has engaged, and there is a reasonable likelihood it will again engage, in acts or practices inconsistent with just and equitable principles of fair trade.

c) A registered securities association may deny membership to a registered broker or dealer not engaged in a type of business in which the rules of the association require members to be engaged: *Provided, however*, That no registered securities association may deny membership to a registered broker or dealer by reason of the amount of business done by the broker or dealer.

A registered securities association may examine and verify the qualifications of an applicant to become a member in accordance with procedures established by the rules of the association.

d) A registered securities association may bar a salesman or person associated with a broker or dealer from being employed by a member or set conditions for the employment of a salesman or associated if such person:

(i) Does not meet the standards of training, experience, or competence that are prescribed by the rules of the association; or

(ii) Has engaged, and there is a reasonable likelihood he will again engage, in acts or practices inconsistent with just and equitable principles of fair trade.

A registered securities association may examine and verify the qualifications of an applicant to become a salesman or associated person employed by a member in accordance with procedures established by the rules of the association. A registered association also may require a salesman or associated person employed by a member to be registered with the association in accordance with procedures prescribed in the rules of the association.

39.5. In any proceeding by a registered securities association to determine whether a person shall be denied membership, or barred from association with a member, the association shall provide notice to the person under review of the specific grounds being considered for denial, afford him an opportunity to defend against the allegations, and keep a record of the proceedings. A determination by the association to deny membership shall be supported by a statement setting forth the specific grounds on which the denial is based.

SEC. 40. Powers with Respect to Self-Regulatory Organizations.

40.1. Upon the filing of an application for registration as an Exchange under Section 33, a registered securities association under Section 39, a registered clearing agency under Section 42, or other self-regulatory organization under this Section, the Commission shall have ninety (90) days within which to either grant registration or institute a proceeding to determine whether registration should be denied. In the event proceedings are instituted, the Commission shall have two hundred seventy (270) days within which to conclude such proceedings at which time it shall, by order, grant or deny such registration.

40.2. Every self-regulatory organization shall comply with the provisions of this Code, the rules and regulations thereunder, and its own rules, and enforce compliance therewith, notwithstanding any provision of the Corporation Code to the contrary, by its members, persons associated with its members or its participants.

40.3. a) Each self-regulatory organization shall submit to the Commission for prior approval any proposed rule or amendment thereto, together with a concise statement of the reason and effect of the proposed amendment.

b) Within sixty (60) days after submission of a proposed amendment, the Commission shall, by order, approve the proposed amendment. Otherwise, the same may be made effective by the self-regulatory organization.

c) In the event of an emergency requiring action for the protection of investors, the maintenance of fair and orderly markets, or the safeguarding of securities and funds, a self-regulatory organization may put a proposed amendment into effect summarily: *Provided, however*, That a copy of the same shall be immediately submitted to the Commission.

40.4. The Commission is further authorized, if after making appropriate request in writing to a self-regulatory organization that such organization effect on its own behalf specified changes in its rules and practices and, after due notice and hearing it determines that such changes have not been effected, and that such changes are necessary, by rule or regulation or by order, may alter, abrogate or supplement the rules of such self-regulatory organization in so far as necessary or appropriate to effect such changes in respect of such matters as:

a) Safeguards in respect of the financial responsibility of members and adequate provision against the evasion of financial responsibility through the use of corporate forms or special partnerships;

b) The supervision of trading practices;

c) The listing or striking from listing of any security;

d) Hours of trading;

e) The manner, method, and place of soliciting business;

f) Fictitious accounts;

g) The time and method of making settlements, payments, and deliveries, and of closing accounts;

h) The transparency of securities transactions and prices;

i) The fixing of reasonable rates of fees, interest, listing and other charges, but not rates of commission;

j) Minimum units of trading;

k) Odd-lot purchases and sales;

l) Minimum deposits on margin accounts; and

m) The supervision, auditing and disciplining of members or participants

40.5. The Commission, after due notice and hearing, is authorized, in the public interest and to protect investors:

a) To suspend for a period not exceeding twelve (12) months or to revoke the registration of a self-regulatory organization, or to censure or impose limitations on the activities, functions, and operations of such self-regulatory organization, if the Commission finds that such a self-regulatory organization has willfully violated or is unable to comply with any provision of this Code or of the rules and regulations thereunder, or its own rules, or has failed to enforce compliance therewith by a member of, person associated with a member, or a participant in such self-regulatory organization;

b) To expel from a self-regulatory organization any member thereof or any participant therein who is subject to an order of the Commission under Section 29 of this Code or is found to have willfully violated any provision of this Code or suspend for a period not exceeding twelve (12) months for violation of any provision of this Code or any other laws administered by the Commission, or the rules and regulations thereunder, or effected, directly or indirectly, any transaction for any person who, such member or participant had reason to believe, was violating in respect of such transaction any of such provisions; and

c) To remove from office or censure any officer or director of a self-regulatory organization if it finds that such officer or director has violated any provision of this Code, any other law administered by the Commission, the rules or regulations thereunder, or the rules of such self-regulatory organization, abused his authority, or without reasonable justification or excuse has failed to enforce compliance with any of such provisions.

40.6. a) A self-regulatory organization is authorized to discipline a member of or participant in such self-regulatory organization, or any person associated with a member, including the suspension or expulsion of such member or participant, and the suspension or bar from be-

ing associated with a member, if such person has engaged in acts or practices inconsistent with just and equitable principles of fair trade or in willful violation of any provision of the Code, any other law administered by the Commission, the rules or regulations thereunder, or the rules of the self-regulatory organization. In any disciplinary proceeding by a self-regulatory organization (other than a summary proceeding pursuant to paragraph (b) of this subsection) the self-regulatory organization shall bring specific charges, provide notice to the person charged, afford the person charged with an opportunity to defend against the charges, and keep a record of the proceedings. A determination to impose a disciplinary sanction shall be supported by a written statement of the offense, a summary of the evidence presented and a statement of the sanction imposed.

b) A self-regulatory organization may summarily: (i) Suspend a member, participant or person associated with a member who has been or is expelled or suspended from any other self-regulatory organization; or (ii) Suspend a member who the self-regulatory organization finds to be in such financial or operating difficulty that the member or participant cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, participants or the self-regulatory organization: *Provided*, That the self-regulatory organization immediately notifies the Commission of the action taken. Any person aggrieved by a summary action pursuant to this paragraph shall be promptly afforded an opportunity for a hearing by the association in accordance with the provisions of paragraph a) of this subsection. The Commission, by order, may stay a summary action on its own motion or upon application by any person aggrieved thereby, if the Commission determines summarily or after due notice and hearing (which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that a stay is consistent with the public interest and the protection of investors.

40.7. A self-regulatory organization shall promptly notify the Commission of any disciplinary sanction on any member thereof or participant therein, any denial of membership or participation in such organization, or the imposition of any disciplinary sanction on a person associated with a member or a bar of such person from becoming so associated. Within thirty (30) days after such notice, any aggrieved person may appeal to the Commission from, or the Commission on its own motion within such period, may institute review of, the decision of the self-regulatory organization, at the conclusion of which, after due notice and hearing (which may consist solely of review of the record before the self-regulatory organization), the Commission shall affirm, modify or set aside the sanction. In such proceeding the Commission shall determine whether the aggrieved person has engaged or omitted to engage in the acts and practices as found by the self-regulatory organization, whether such acts and practices constitute willful violations of this Code, any other law administered by the Commission, the rules or regulations thereunder, or the rules of the self-regulatory organization as specified by such organization, whether such provisions were applied in a manner consistent with

the purposes of this Code, and whether, with due regard for the public interest and the protection of investors the sanction is excessive or oppressive.

40.8. The powers of the Commission under this section shall apply to organized exchanges and registered clearing agencies.

CHAPTER XI ACQUISITION AND TRANSFER OF SECURITIES AND SETTLEMENT OF TRANSACTIONS IN SECURITIES

SEC. 41. Prohibition on Use of Unregistered Clearing Agency.

It shall be unlawful for any broker, dealer, salesman, associated person of a broker or dealer, or clearing agency, directly or indirectly, to make use of any facility of a clearing agency in the Philippines to make deliveries in connection with transactions in securities or to reduce the number of settlements of securities transactions or to allocate securities settlement responsibilities or to provide for the central handling of securities so that transfers, loans and pledges and similar transactions can be made by bookkeeping entry or otherwise to facilitate the settlement of securities transactions without physical delivery of securities certificates, unless such clearing agency is registered as such under Section 42 of this Code or is exempted from such registration upon application by the clearing agency because, in the opinion of the Commission, by reason of the limited volume of transactions which are settled using the clearing agency, it is not practicable and not necessary or appropriate in the public interest or for the protection of investors to require such registration.

SEC. 42. Registration of Clearing Agencies.

42.1. Any clearing agency may be registered as such with the Commission under the terms and conditions hereinafter provided in this Section, by filing an application for registration in such form and containing such information and supporting documents as the Commission by rule shall prescribe, including the following:

a) An undertaking to comply and enforce compliance by its participants with the provisions of this Code, and any amendment thereto, and the implementing rules or regulations made or to be made thereunder, and the clearing agency's rules;

b) The organizational charts of the Exchange, its rules of procedure, and a list of its officers and participants;

c) Copies of the clearing agency's rules.

42.2. No registration of a clearing agency shall be granted unless the rules of the clearing agency include provision for:

a) The expulsion, suspension, or disciplining of a participant for violations of this Code, or any other Act administered by the Commission, the rules, regulations, and orders thereunder, or the clearing agency's rules;

b) A fair procedure for the disciplining of participants, the denial of

participation rights to any person seeking to be a participant, and the prohibition or limitation of any person from access to services offered by the clearing agency;

c) The equitable allocation of reasonable dues, fees, and other charges among participants;

d) Prevention of fraudulent and manipulative acts and practices, promotion of just and quitable principles of trade, and, in general, protection of investors and the public interest; and

e) The transparent, prompt and accurate clearance and settlement of transactions in securities handled by the clearing agency.

f) The establishment and oversight of a fund to guarantee the prompt and accurate clearance and settlement of transactions executed on an exchange, including a requirement that members each contribute an amount based on their volume and a relevant percentage of the daily exposure of the four (4) largest trading brokers which adequately reflects trading risks undertaken or pursuant to another formula set forth in Commission rules or regulations or order, upon application: *Provided, however*, That a clearing agency engaged in the business of a securities depository shall be exempt from this requirement.

42.3. In the case of an application filed pursuant to this Section, the Commission shall grant registration if it finds that the requirements of this Code and the rules and regulations thereunder with respect to the applicant have been satisfied, and shall deny registration if it does not make such finding.

42.4. Upon appropriate application in accordance with the rules and regulations of the Commission and upon such terms as the Commission may deem necessary for the protection of investors, a clearing agency may withdraw its registration or suspend its operation or resume the same.

42.5. Section 32 of this Code shall apply to every registered clearing agency.

SEC. 43. Uncertificated Securities.

Notwithstanding Section 63 of the Corporation Code of the Philippines:

43.1. A corporation whose securities are registered pursuant to this Code or listed on a securities Exchange may:

a) If so resolved by its Board of Directors and agreed by a shareholder, investor or securities intermediary, issue shares to, or record the transfer of some or all of its shares into the name of said shareholders, investors or, securities intermediary in the form of uncertificated securities. The use of uncertificated securities in these circumstances shall be without prejudice to the rights of the securities intermediary subsequently to require the corporation to issue a certificate in respect of any shares recorded in its name; and

b) If so provided in its articles of incorporation and by-laws, issue all of the shares of a particular class in the form of uncertificated securities and subject to a condition that investors may not require the

corporation to issue a certificate in respect of any shares recorded in their name.

43.2. The Commission by rule may allow other corporations to provide in their articles of incorporation and by-laws for the use of uncertificated securities.

43.3. Transfers of securities, including an uncertificated securities, may be validly made and consummated by appropriate book-entries in the securities accounts maintained by securities intermediaries, or in the stock and transfer book held by the corporation or the stock transfer agent and such bookkeeping entries shall be binding on the parties to the transfer. A transfer under this subsection has the effect of the delivery of a security in bearer form or duly indorsed in blank representing the quantity or amount of security or right transferred, including the unrestricted negotiability of that security by reason of such delivery. However, transfer of uncertificated shares shall only be valid, so far as the corporation is concerned, when a transfer is recorded in the books of the corporation so as to show the names of the parties to the transfer and the number of shares transferred.

However, nothing in this Code shall preclude compliance by banking and other institutions under the supervision of the *Bangko Sentral ng Pilipinas* and their stockholders with the applicable ceilings on shareholdings prescribed under pertinent banking laws and regulations.

SEC. 44. Evidentiary Value of Clearing Agency Record.

The official records and book entries of a clearing agency shall constitute the best evidence of such transactions between clearing agency and its participants and members, without prejudice to the right of participants' or members' clients to prove their rights, title and entitlement with respect to the book-entry security holdings of the participants or members held on behalf of the clients. However, the corporation shall not be bound by the foregoing transactions unless the corporate secretary is duly notified in such manner as the Commission may provide.

SEC. 45. Pledging a Security or Interest Therein.

In addition to other methods recognized by law, a pledge of, or release of a pledge of, a security, including an uncertificated security, is properly constituted and the instrument proving the right pledged shall be considered delivered to the creditor under Articles 2093 and 2095 of the Civil Code if a securities intermediary indicates by book-entry that such security has been credited to a specially designated pledge account in favor of the pledgee. A pledge under this subsection has the effect of the delivery of a security in bearer form or duly indorsed in blank representing the quantity or amount of such security or right pledged. In the case of a registered clearing agency, the procedures by which, and the exact time at which, such book-entries are created shall be governed by the registered clearing agency's rules. However, the corporation shall not be bound by the foregoing transactions unless the corporate secretary is duly notified in such manner as the Commission may provide.

SEC. 46. Issuer's Responsibility for Wrongful Transfer to Registered Clearing Agency.

The registration of a transfer of a security into the name of and by a registered clearing agency or its nominee shall be final and conclusive unless the clearing agency had notice of an adverse claim before the registration was made. The above provision shall be without prejudice to any rights which the claimant may have against the issuer for wrongful registration in such circumstances.

SEC. 47. Power of the Commission With Respect to Securities Ownership.

The Commission is authorized, having due regard to the public interest and the protection of investors, to promulgate rules and regulations which:

47.1. Validate the transfer of securities by book-entries rather than the delivery of physical certificates;

47.2. Establish when a person acquires a security or an interest therein and when delivery of a security to a purchaser occurs;

47.3. Establish which records constitute the best evidence of a person's interests in a security and the effect of any errors in electronic records of ownership;

47.4. Codify the rights of investors who choose to hold their securities indirectly through a registered clearing agency and/or other securities intermediaries;

47.5. Codify the duties of securities intermediaries (including clearing agencies) who hold securities on behalf of investors; and

47.6. Give first priority to any claims of a registered clearing agency against a participant arising from a failure by the participant to meet its obligations under the clearing agency's rules in respect of the clearing and settlement of transactions in securities, in a dissolution of the participant, and any such rules and regulations shall bind the issuers of the securities, investors in the securities, any third parties with interests in the securities, and the creditors of a participant of a registered clearing agency.

CHAPTER XII MARGIN AND CREDIT

SEC. 48. Margin Requirements.

48.1. For the purpose of preventing the excessive use of credit for the purchase or carrying of securities, the Commission, in accordance with the credit and monetary policies that may be promulgated from time to time by the Monetary Board of the *Bangko Sentral ng Pilipinas*, shall prescribe rules and regulations with respect to the amount of credit that may be extended on any security. For the extension of credit, such rules and regulations shall be based upon the following standard:

An amount not greater than whichever is the higher of—

a) Sixty-five *per centum* (65%) of the current market price of the security, or

b) One hundred *per centum* (100%) of the lowest market price of the security during the preceding thirty-six (36) calendar months, but not more than seventy-five *per centum* (75%) of the current market price.

However, the Monetary Board may increase or decrease the above percentages, in order to achieve the objectives of the Government with due regard for promotion of the economy and prevention of the use of excessive credit.

Such rules and regulations may make appropriate provision with respect to the carrying of undermargined accounts for limited periods and under specified conditions; the withdrawal of funds or securities; the transfer of accounts from one lender to another; special or different margin requirements for delayed deliveries, short sales, arbitrage transactions, and securities to which letter (b) of the second paragraph of this subsection does not apply; the bases and the methods to be used in calculating loans, and margins and market prices; and similar administrative adjustments and details.

48.2. No member of an Exchange or broker or dealer shall, directly or indirectly, extend or maintain credit or arrange for the extension or maintenance of credit to or for any customer:

a) On any security unless such credit is extended and maintained in accordance with the rules and regulations which the Commission shall prescribe under this Section including rules setting credit in relation to net capital of such member, broker or dealer;

b) Without collateral or on any collateral other than securities, except (i) to maintain a credit initially extended in conformity with the rules and regulations of the Commission and (ii) in cases where the extension or maintenance of credit is not for the purpose of purchasing or carrying securities or of evading or circumventing the provisions of paragraph (a) of this subsection.

48.3. Any person not subject to Subsection 48.2 hereof shall extend or maintain credit or arrange for the extension or maintenance of credit for the purpose of purchasing or carrying any security, only in accordance with such rules and regulations as the Commission shall prescribe to prevent the excessive use of credit for the purchasing or carrying of or trading in securities in circumvention of the other provisions of this Section. Such rules and regulations may impose upon all loans made for the purpose of purchasing or carrying securities limitations similar to those imposed upon members, brokers, or dealers by Subsection 48.2 and the rules and regulations thereunder. This subsection and the rules and regulations thereunder shall not apply: (a) To a credit extension made by a person not in the ordinary course of business; (b) To a loan to a dealer to aid in the financing of the distribution of securities to customers not through the medium of an Exchange; or (c) To such other credit extension as the Commission shall exempt from the operation of this subsection and the rules and regulations thereunder upon specified terms and conditions or for stated period.

SEC. 49. Restrictions on Borrowings by Members, Brokers, and Dealers.

It shall be unlawful for any registered broker or dealer, or member of an Exchange, directly or indirectly:

49.1. To permit in the ordinary course of business as a broker or dealer his aggregate indebtedness including customers' credit balances, to exceed such percentage of the net capital (exclusive of fixed assets and value of Exchange membership) employed in the business, but not exceeding in any case two thousand *per centum* (2,000%), as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors.

49.2. To pledge, mortgage, or otherwise encumber or arrange for the pledge, mortgage or encumbrance of any security carried for the account of any customer under circumstances: (a) That will permit the commingling of his securities, without his written consent, with the securities of any customer; (b) That will permit such securities to be commingled with the securities of any person other than a *bona fide* customer; or (c) That will permit such securities to be pledged, mortgaged or encumbered, or subjected to any lien or claim of the pledgee, for a sum in excess of the aggregate indebtedness of such customers in respect of such securities. However, the Commission, having due regard to the protection of investors, may, by rules and regulations, allow certain transactions that may otherwise be prohibited under this subsection.

49.3. To lend or arrange for the lending of any security carried for the account of any customer without the written consent of such customer or in contravention of such rules and regulations as the Commission shall prescribe.

SEC. 50. Enforcement of Margin Requirements and Restrictions on Borrowing.

To prevent indirect violations of the margin requirements under Section 48, the broker or dealer shall require the customer in non-margin transactions to pay the price of the security purchased for his account within such period as the Commission may prescribe, which shall in no case exceed the prescribed settlement date. Otherwise, the broker shall sell the security purchased starting on the next trading day but not beyond ten (10) trading days following the last day for the customer to pay such purchase price, unless such sale cannot be effected within said period for justifiable reasons. The sale shall be without prejudice to the right of the broker or dealer to recover any deficiency from the customer. To prevent indirect violation of the restrictions on borrowings under Section 49, the broker shall, unless otherwise directed by the customer, pay the net sales price of the securities sold for a customer within the same period as above prescribed by the Commission: *Provided*, That the customer shall be required to deliver the instruments evidencing the securities as a condition for such payment upon demand by the broker.

CHAPTER XIII GENERAL PROVISIONS

SEC. 51. Liabilities of Controlling Persons, Aider and Abettor and Other Secondary Liability.

51.1. Every person who, by or through stock ownership, agency, or otherwise, or in connection with an agreement or understanding with one or more other persons, controls any person liable under this Code or the rules or regulations of the Commission thereunder, shall also be liable jointly and severally with and to the same extent as such controlled persons to any person to whom such controlled person is liable, unless the controlling person proves that, despite the exercise of due diligence on his part, he has no knowledge of the existence of the facts by reason of which the liability of the controlled person is alleged to exist.

51.2. It shall be unlawful for any person, directly or indirectly, to do any act or thing which it would be unlawful for such person to do under the provisions of this Code or any rule or regulation thereunder.

51.3. It shall be unlawful for any director or officer of, or any owner of any securities issued by, any issuer required to file any document, report or other information under this Code or any rule or regulation of the Commission thereunder, without just cause, to hinder, delay or obstruct the making or filing of any such document, report, or information.

51.4. It shall be unlawful for any person to aid, abet, counsel, command, induce or procure any violation of this Code, or any rule, regulation or order of the Commission thereunder.

51.5. Every person who substantially assists the act or omission of any person primarily liable under Sections 57, 58, 59 and 60 of this Code, with knowledge or in reckless disregard that such act or omission is wrongful, shall be jointly and severally liable as an aider and abettor for damages resulting from the conduct of the person primarily liable: *Provided, however*, That an aider and abettor shall be liable only to the extent of his relative contribution in causing such damages in comparison to that of the person primarily liable, or the extent to which the aider and abettor was unjustly enriched thereby, whichever is greater.

SEC. 52. Accounts and Records, Reports, Examination of Exchanges, Members, and Others.

52.1. Every registered Exchange, broker or dealer, transfer agent, clearing agency, securities association, and other self-regulatory organization, and every other person required to register under this Code, shall make, keep and preserve for such periods, records, furnish such copies thereof, and make such reports, as the Commission by its rules and regulations may prescribe. Such accounts, correspondence, memoranda, papers, books, and other records shall be subject at any time to such reasonable periodic, special or other examinations by representatives of the Commission as the Commission may deem necessary or appropriate in the public interest or for the protection of investors.

52.2. Any broker, dealer or other person extending credit, who is subject to the rules and regulations prescribed by the Commission pursu-

ant to this Code, shall make such reports to the Commission as may be necessary or appropriate to enable it to perform the functions conferred upon it by this Code.

52.3. For purposes of this Section, the term "records" refers to accounts, correspondence, memoranda, tapes, discs, papers, books and other documents or transcribed information of any type, whether written or electronic in character.

SEC. 53. Investigations, Injunctions and Prosecution of Offenses.

53.1. The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this Code, any rule, regulation or order thereunder, or any rule of an Exchange, registered securities association, clearing agency, other self-regulatory organization, and may require or permit any person to file with it a statement in writing, under oath or otherwise, as the Commission shall determine, as to all facts and circumstances concerning the matter to be investigated. The Commission may publish information concerning any such violations, and to investigate any fact, condition, practice or matter which it may deem necessary or proper to aid in the enforcement of the provisions of this Code, in the prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this Code relates: *Provided, however*, That any person requested or subpoenaed to produce documents or testify in any investigation shall simultaneously be notified in writing of the purpose of such investigation: *Provided, further*, That all criminal complaints for violations of this Code, and the implementing rules and regulations enforced or administered by the Commission shall be referred to the Department of Justice for preliminary investigation and prosecution before the proper court: *Provided, furthermore*, That in instances where the law allows independent civil or criminal proceedings of violations arising from the same act, the Commission shall take appropriate action to implement the same: *Provided, finally*, That the investigation, prosecution, and trial of such cases shall be given priority.

53.2. For the purpose of any such investigation, or any other proceeding under this Code, the Commission or any officer designated by it is empowered to administer oaths and affirmations, *subpoena* witnesses, compel attendance, take evidence, require the production of any book, paper, correspondence, memorandum, or other record which the Commission deems relevant or material to the inquiry, and to perform such other acts necessary in the conduct of such investigation or proceedings.

53.3. Whenever it shall appear to the Commission that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this Code, any rule, regulation or order thereunder, or any rule of an Exchange, registered securities association, clearing agency or other self-regulatory organization, it may issue an order to such person to desist from committing such act or practice: *Provided, however*, That the Commission shall not charge any person with violation of the rules of an Exchange or other self regulatory organi-

zation unless it appears to the Commission that such Exchange or other self-regulatory organization is unable or unwilling to take action against such person. After finding that such person has engaged in any such act or practice and that there is a reasonable likelihood of continuing, further or future violations by such person, the Commission may issue *ex-parte* a cease and desist order for a maximum period of ten (10) days, enjoining the violation and compelling compliance with such provision. The Commission may transmit such evidence as may be available concerning any violation of any provision of this Code, or any rule, regulation or order thereunder, to the Department of Justice, which may institute the appropriate criminal proceedings under this Code.

53.4. Any person who, within his power but without cause, fails or refuses to comply with any lawful order, decision or *subpoena* issued by the Commission under Subsection 53.2 or Subsection 53.3 or Section 64 of this Code, shall after due notice and hearing, be guilty of contempt of the Commission. Such person shall be fined in such reasonable amount as the Commission may determine, or when such failure or refusal is a clear and open defiance of the Commission's order, decision or *subpoena*, shall be detained under an arrest order issued by the Commission, until such order, decision or *subpoena* is complied with.

SEC. 54. Administrative Sanctions.

54.1. If, after due notice and hearing, the Commission finds that: (a) There is a violation of this Code, its rules, or its orders; (b) Any registered broker or dealer, associated person thereof has failed reasonably to supervise, with a view to preventing violations, another person subject to supervision who commits any such violation; (c) Any registrant or other person has, in a registration statement or in other reports, applications, accounts, records or documents required by law or rules to be filed with the Commission, made any untrue statement of a material fact, or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading; or, in the case of an underwriter, has failed to conduct an inquiry with reasonable diligence to insure that a registration statement is accurate and complete in all material respects; or (d) Any person has refused to permit any lawful examinations into its affairs, it shall, in its discretion, and subject only to the limitations hereinafter prescribed, impose any or all of the following sanctions as may be appropriate in light of the facts and circumstances:

(i) Suspension, or revocation of any registration for the offering of securities;

(ii) A fine of no less than Ten thousand pesos (P10,000.00) nor more than One million pesos (P1,000,000.00) plus not more than Two thousand pesos (P2,000.00) for each day of continuing violation;

(iii) In the case of a violation of Sections 19.2, 20, 24, 26 and 27, disqualification from being an officer, member of the Board of Directors, or person performing similar functions, of an issuer required to file reports under Section 17 of this Code or any other act, rule or regulation administered by the Commission;

(iv) In the case of a violation of Section 34, a fine of no more than three (3) times the profit gained or loss avoided as a result of the purchase, sale or communication proscribed by such Section; and

(v) Other penalties within the power of the Commission to impose.

54.2. The imposition of the foregoing administrative sanctions shall be without prejudice to the filing of criminal charges against the individuals responsible for the violation.

54.3. The Commission shall have the power to issue writs of execution to enforce the provisions of this Section and to enforce payment of the fees and other dues collectible under this Code.

SEC. 55. Settlement Offers.

55.1. At any time, during an investigation or proceeding under this Code, parties being investigated and/or charged may propose in writing an offer of settlement with the Commission.

55.2. Upon receipt of such offer of settlement, the Commission may consider the offer based on timing, the nature of the investigation or proceeding, and the public interest.

55.3. The Commission may only agree to a settlement offer based on its findings that such settlement is in the public interest. Any agreement to settle shall have no legal effect until publicly disclosed. Such decision may be made without a determination of guilt on the part of the person making the offer.

55.4. The Commission shall adopt rules and procedures governing the filing, review, withdrawal, form of rejection and acceptance of such offers.

SEC. 56. Civil Liabilities on Account of False Registration Statement.

56.1. Any person acquiring a security, the registration statement of which or any part thereof contains on its effectivity an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make such statements not misleading, and who suffers damage, may sue and recover damages from the following enumerated persons, unless it is proved that at the time of such acquisition he knew of such untrue statement or omission:

a) The issuer and every person who signed the registration statement;

b) Every person who was a director of, or any other person performing similar functions, or a partner in, the issuer at the time of the filing of the registration statement or any part, supplement or amendment thereof with respect to which his liability is asserted;

c) Every person who is named in the registration statement as being or about to become a director of, or a person performing similar functions, or a partner in, the issuer and whose written consent thereto is filed with the registration statement;

d) Every auditor or auditing firm named as having certified any

financial statements used in connection with the registration statement or prospectus.

e) Every person who, with his written consent, which shall be filed with the registration statement, has been named as having prepared or certified any part of the registration statement, or as having prepared or certified any report or valuation which is used in connection with the registration statement, with respect to the statement, report, or valuation, which purports to have been prepared or certified by him.

f) Every selling shareholder who contributed to and certified as to the accuracy of a portion of the registration statement, with respect to that portion of the registration statement which purports to have been contributed by him.

g) Every underwriter with respect to such security.

56.2. If the person who acquired the security did so after the issuer has made generally available to its security holders an income statement covering a period of at least twelve months beginning from the effective date of the registration statement, then the right of recovery under this subsection shall be conditioned on proof that such person acquired the security relying upon such untrue statement in the registration statement or relying upon the registration statement and not knowing of such income statement, but such reliance may be established without proof of the reading of the registration statement by such person.

SEC. 57. Civil Liabilities Arising in Connection With Prospectus, Communications and Reports.

57.1. Any person who:

a) Offers to sell or sells a security in violation of Chapter III, or

b) Offers to sell or sells a security, whether or not exempted by the provisions of this Code, by the use of any means or instruments of transportation or communication, by means of a prospectus or other written or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall fail in the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission, shall be liable to the person purchasing such security from him, who may sue to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security.

57.2. Any person who shall make or cause to be made any statement in any report, or document filed pursuant to this Code or any rule or regulation thereunder, which statement was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, shall be liable to any person who, not knowing that such statement was false or misleading, and relying upon such statements shall have purchased or sold a security at a price which was

affected by such statement, for damages caused by such reliance, unless the person sued shall prove that he acted in good faith and had no knowledge that such statement was false or misleading.

SEC. 58. Civil Liability For Fraud in Connection With Securities Transactions.

Any person who engages in any act or transaction in violation of Sections 19.2, 20 or 26, or any rule or regulation of the Commission thereunder, shall be liable to any other person who purchases or sells any security, grants or refuses to grant any proxy, consent or authorization, or accepts or declines an invitation for tender of a security, as the case may be, for the damages sustained by such other person as a result of such act or transaction.

SEC. 59. Civil Liability For Manipulation of Security Prices.

Any person who willfully participates in any act or transaction in violation of Section 24 shall be liable to any person who shall purchase or sell any security at a price which was affected by such act or transaction, and the person so injured may sue to recover the damages sustained as a result of such act or transaction.

SEC. 60. Civil Liability With Respect to Commodity Futures Contracts and Pre-need Plans.

60.1. Any person who engages in any act or transaction in willful violation of any rule or regulation promulgated by the Commission under Section 11 or 16, which the Commission denominates at the time of issuance as intended to prohibit fraud in the offer and sale of pre-need plans or to prohibit fraud, manipulation, fictitious transactions, undue speculation, or other unfair or abusive practices with respect to commodity future contracts, shall be liable to any other person sustaining damage as a result of such act or transaction.

60.2. As to each such rule or regulation so denominated, the Commission by rule shall prescribe the elements of proof required for recovery and any limitations on the amount of damages that may be imposed.

SEC. 61. Civil Liability on Account of Insider Trading.

61.1. Any insider who violates Subsection 27.1 and any person in the case of a tender offer who violates Subsection 27.4 (a)(i), or any rule or regulation thereunder, by purchasing or selling a security while in possession of material information not generally available to the public, shall be liable in a suit brought by any investor who, contemporaneously with the purchase or sale of securities that is the subject of the violation, purchased or sold securities of the same class unless such insider, or such person in the case of a tender offer, proves that such investor knew the information or would have purchased or sold at the same price regardless of disclosure of the information to him.

61.2. An insider who violates Subsection 27.3 or any person in the

case of a tender offer who violates Subsection 27.4 (a), or any rule or regulation thereunder, by communicating material non-public information, shall be jointly and severally liable under Subsection 61.1 with, and to the same extent as, the insider, or person in the case of a tender offer, to whom the communication was directed and who is liable under Subsection 61.1 by reason of his purchase or sale of a security.

SEC. 62. Limitation of Actions.

62.1. No action shall be maintained to enforce any liability created under Section 56 or 57 of this Code unless brought within two (2) years after the discovery of the untrue statement or the omission, or, if the action is to enforce a liability created under Subsection 57.1(a), unless brought within two (2) years after the violation upon which it is based. In no event shall any such action be brought to enforce a liability created under Section 56 or Subsection 57.1 (a) more than five (5) years after the security was *bona fide* offered to the public, or under Subsection 57.1 (b) more than five (5) years after the sale.

62.2. No action shall be maintained to enforce any liability created under any other provision of this Code unless brought within two (2) years after the discovery of the facts constituting the cause of action and within five (5) years after such cause of action accrued.

SEC. 63. Amount of Damages to be Awarded.

63.1. All suits to recover damages pursuant to Sections 56, 57, 58, 59, 60 and 61 shall be brought before the Regional Trial Court, which shall have exclusive jurisdiction to hear and decide such suits. The Court is hereby authorized to award damages in an amount not exceeding triple the amount of the transaction plus actual damages.

Exemplary damages may also be awarded in cases of bad faith, fraud, malevolence or wantonness in the violation of this Code or the rules and regulations promulgated thereunder.

The Court is also authorized to award attorney's fees not exceeding thirty *percentum* (30%) of the award.

63.2. The persons specified in Sections 56, 57, 58, 59, 60 and 61 hereof shall be jointly and severally liable for the payment of damages. However, any person who becomes liable for the payment of such damages may recover contribution from any other person who, if sued separately, would have been liable to make the same payment, unless the former was guilty of fraudulent representation and the latter was not.

63.3. Notwithstanding any provision of law to the contrary, all persons, including the issuer, held liable under the provisions of Sections 56, 57, 58, 59, 60 and 61 shall contribute equally to the total liability adjudged herein. In no case shall the principal stockholders, directors and other officers of the issuer or persons occupying similar positions therein, recover their contribution to the liability from the issuer. However, the right of the issuer to recover from the guilty parties the amount it has contributed under this Section shall not be prejudiced.

SEC. 64. Cease and Desist Order.

64.1. The Commission, after proper investigation or verification, *motu proprio*, or upon verified complaint by any aggrieved party, may issue a cease and desist order without the necessity of a prior hearing if in its judgment the act or practice, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public.

64.2. Until the Commission issues a cease and desist order, the fact that an investigation has been initiated or that a complaint has been filed, including the contents of the complaint, shall be confidential. Upon issuance of a cease and desist order, the Commission shall make public such order and a copy thereof shall be immediately furnished to each person subject to the order.

64.3. Any person against whom a cease and desist order was issued may, within five (5) days from receipt of the order, file a formal request for a lifting thereof. Said request shall be set for hearing by the Commission not later than fifteen (15) days from its filing and the resolution thereof shall be made not later than ten (10) days from the termination of the hearing. If the Commission fails to resolve the request within the time herein prescribed, the cease and desist order shall automatically be lifted.

SEC. 65. Substituted Service Upon the Commission.

Service of summons or other process shall be made upon the Commission in actions or legal proceedings against an issuer or any person liable under this Code who is not domiciled in the Philippines. Upon receipt by the Commission of such summons, the Commission shall within ten (10) days thereafter, transmit by registered mail a copy of such summons and the complaint or other legal process to such issuer or person at his last known address or principal office. The sending thereof by the Commission, the expenses for which shall be advanced by the party at whose instance it is made, shall complete such service.

SEC. 66. Revelation of Information Filed with the Commission.

66.1. All information filed with the Commission in compliance with the requirements of this Code shall be made available to any member of the general public, upon request, in the premises and during regular office hours of the Commission, except as set forth in this Section.

66.2. Nothing in this Code shall be construed to require, or to authorize the Commission to require, the revealing of trade secrets or processes in any application, report, or document filed with the Commission.

66.3. Any person filing any such application, report or document may make written objection to the public disclosure of information contained therein, stating the grounds for such objection, and the Commission may hear objections as it deems necessary. The Commission may, in such cases, make available to the public the information contained in any such application, report, or document only when a disclosure of such informa-

tion is required in the public interest or for the protection of investors; and copies of information so made available may be furnished to any person having a legitimate interest therein at such reasonable charge and under such reasonable limitations as the Commission may prescribe.

66.4. It shall be unlawful for any member, officer, or employee of the Commission to disclose to any person other than a member, officer or employee of the Commission or to use for personal benefit, any information contained in any application, report, or document filed with the Commission which is not made available to the public pursuant to Subsection 66.3.

66.5. Notwithstanding anything in Subsection 66.4 to the contrary, on request from a foreign enforcement authority of any country whose laws grant reciprocal assistance as herein provided, the Commission may provide assistance in accordance with this subsection, including the disclosure of any information filed with or transmitted to the Commission, if the requesting authority states that it is conducting an investigation which it deems necessary to determine whether any person has violated, is violating, or is about to violate any laws relating to securities or commodities matters that the requesting authority administers or enforces. Such assistance may be provided without regard to whether the facts stated in the request would also constitute a violation of law of the Philippines.

SEC. 67. Effect of Action of Commission and Unlawful Representations with Respect Thereto.

67.1. No action or failure to act by the Commission in the administration of this Code shall be construed to mean that the Commission has in any way passed upon the merits of or given approval to any security or any transaction or transactions therein, nor shall such action or failure to act with regard to any statement or report filed with or examined by the Commission pursuant to this Code or the rules and regulations thereunder to be deemed a finding by the Commission that such statements or report is true and accurate on its face or that it is not false or misleading. It shall be unlawful to make, or cause to be made, to any prospective purchaser or seller of a security any representation that any such action or failure to act by the Commission is to be so construed or has such effect.

67.2. Nothing contained in Subsection 67.1 shall, however, be construed as an exemption from liability of an employee or officer of the Commission for any nonfeasance, misfeasance or malfeasance in the discharge of his official duties.

SEC. 68. Special Accounting Rules.

The Commission shall have the authority to make, amend, and rescind such accounting rules and regulations as may be necessary to carry out the provisions of this Code, including rules and regulations governing registration statements and prospectuses for various classes of securities and issuers, and defining accounting, technical and trade terms used in

this Code. Among other things, the Commission may prescribe the form or forms in which required information shall be set forth, the items or details to be shown in the balance sheet and income statement, and the methods to be followed in the preparation of accounts, appraisal or valuation of assets and liabilities, determination of depreciation and depletion, differentiation of recurring and non-recurring income, differentiation of investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with, the issuer.

SEC. 69. Effect on Existing Law.

The rights and remedies provided by this Code shall be in addition to any and all other rights and remedies that may now exist. However, except as provided in Sections 56 and 63 hereof, no person permitted to maintain a suit for damages under the provisions of this Code shall recover, through satisfaction of judgment in one or more actions, a total amount in excess of his actual damages on account of the act complained of: *Provided*, That exemplary damages may be awarded in cases of bad faith, fraud, malevolence or wantonness in the violation of this Code or the rules and regulations promulgated thereunder.

SEC. 70. Judicial Review of Commission Orders.

Any person aggrieved by an order of the Commission may appeal the order to the Court of Appeals by petition for review in accordance with the pertinent provisions of the Rules of Court.

SEC. 71. Validity of Contracts.

71.1. Any condition, stipulation, provision binding any person to waive compliance with any provision of this Code or of any rule or regulation thereunder, or of any rule of an Exchange required thereby, as well as the waiver itself, shall be void.

71.2. Every contract made in violation of any provision of this Code or of any rule or regulation thereunder, and every contract, including any contract for listing a security on an Exchange heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this Code, or any rule or regulation thereunder, shall be void:

a) As regards the rights of any person who, in violation of any such provision, rule or regulation, shall have made or engaged in the performance of any such contract, and

b) As regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision, rule or regulation.

71.3. Nothing in this Code shall be construed:

a) To affect the validity of any loan or extension of credit made or of any lien created prior or subsequent to the effectivity of this Code, unless at the time of the making of such loan or extension of credit or the creating of such lien, the person making such loan or extension of credit or acquiring such lien shall have actual knowledge of the facts by reason of which the making of such loan or extension of credit or the acquisition of such lien is a violation of the provisions of this Code or any rules or regulations thereunder; or

b) To afford a defense to the collection of any debt, obligation or the enforcement of any lien by any person who shall have acquired such debt, obligation or lien in good faith, for value and without actual knowledge of the violation of any provision of this Code or any rule or regulation thereunder affecting the legality of such debt, obligation or lien.

SEC. 72. Rules and Regulations; Effectivity.

72.1. This Code shall be self-executory. To effect the provisions and purposes of this Code, the Commission may issue, amend, and rescind such rules and regulations and orders necessary or appropriate, including rules and regulations defining accounting, technical, and trade terms used in this Code, and prescribing the form or forms in which information required in registration statements, applications, and reports to the Commission shall be set forth. For purposes of its rules or regulations, the Commission may classify persons, securities, and other matters within its jurisdiction, prescribe different requirements for different classes of persons, securities, or matters, and by rule or order, conditionally or unconditionally exempt any person, security, or transaction, or class or classes of persons, securities or transactions, from any or all provisions of this Code.

Failure on the part of the Commission to issue rules and regulations shall not in any manner affect the self-executory nature of this Code.

72.2. The Commission shall promulgate rules and regulations providing for reporting, disclosure and the prevention of fraudulent, deceptive or manipulative practices in connection with the purchase by an issuer, by tender offer or otherwise, of and equity security of a class issued by it that satisfies the requirements of Subsection 17.2. Such rules and regulations may require such issuer to provide holders of equity securities of such dates with such information relating to the reasons for such purchase, the source of funds, the number of shares to be purchased, the price to be paid for such securities, the method of purchase and such additional information as the Commission deems necessary or appropriate in the public interest or for the protection of investors, or which the Commission deems to be material to a determination by holders whether such security should be sold.

72.3. For the purpose of Subsection 72.2, a purchase by or for the issuer or any person controlling, controlled by, or under common control with the issuer, or a purchase subject to the control of the issuer or any such person, shall be deemed to be a purchased by the issuer. The

Commission shall have the power to make rules and regulations implementing this subsection, including exemptive rules and regulations covering situations in which the Commission deems it unnecessary or inappropriate that a purchase of the type described in this subsection shall be deemed to be a purchase by the issuer for the purpose of some or all of the provisions of Subsection 72.2.

72.4. The rules and regulations promulgated by the Commission shall be published in two (2) newspapers of general circulation in the Philippines, and unless otherwise prescribed by the Commission, the same shall be effective fifteen (15) days after the date of the last publication.

SEC. 73. Penalties.

Any person who violates any of the provisions of this Code, or the rules and regulations promulgated by the Commission under authority thereof, or any person who, in a registration statement filed under this Code, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall, upon conviction, suffer a fine of not less than Fifty thousand pesos (P50,000.00) nor more than Five million pesos (P5,000,000.00) or imprisonment of not less than seven (7) years nor more than twenty- one (21) years, or both in the discretion of the court. If the offender is a corporation, partnership or association or other juridical entity, the penalty may in the discretion of the court be imposed upon such juridical entity and upon the officer or officers of the corporation, partnership, association or entity responsible for the violation, and if such officer is an alien, he shall in addition to the penalties prescribed, be deported without further proceedings after service of sentence.

SEC. 74. Transitory Provisions.

The Commission, as organized under existing laws, shall continue to exist and exercise its powers, functions and duties under such laws and this Code: *Provided*, That until otherwise mandated by a subsequent law, the Commission shall continue to regulate and supervise commodity futures contracts as provided in Section 11 and pre-need plans and the pre-need industry as provided in Section 16 of this Code.

All further requirements herein shall be complied with upon approval of this Code: *Provided, however*, That compliance may be deferred for such reasonable time as the Commission may determine but not to exceed one (1) year from approval of this Code: *Provided, further*, That securities which are being offered at the time of effectivity of this Code pursuant to an effective registration and permit, may continue to be offered and sold in accordance with the provisions of the Revised Securities Act in effect immediately prior to approval of this Code:

All unexpended funds for the calendar year, properties, equipment and records of the Securities and Exchange Commission are hereby retained by the Commission as reorganized under this Code and the amount of Two

hundred million (P200,000,000.00) or such amount necessary to carry out the reorganization provided in this Code is hereby appropriated.

All employees of the Commission who voluntarily retire or are separated from the service with the Commission and whose retirement or separation has been approved by the Commission, shall be paid retirement or separation benefits and other entitlements granted under existing laws.

SEC. 75. Partial Use Of Income.

To carry out the purposes of this Code, the Commission is hereby authorized, in addition to its annual budget, to retain and utilize an amount equal to one hundred million pesos (P100,000,000.00) from its income.

The use of such additional amount shall be subject to the auditing requirements, standards and procedures under existing laws.

SEC. 76. Repealing Clause.

The Revised Securities Act (Batas Pambansa Blg. 178), as amended, in its entirety, and Sections 2, 4 and 8 of Presidential Decree 902-A as amended, are hereby repealed. All other laws, orders, rules and regulations, or parts thereof, inconsistent with any provision of this Code are hereby repealed or modified accordingly.

SEC. 77. Separability Clause.

If any portion or provision of this Code is declared unconstitutional or invalid, the other portions or provisions hereof, which are not affected thereby shall continue in full force and effect.

SEC. 78. Effectivity.

This Code shall take effect fifteen (15) days after its publication in the *Official Gazette* or in two (2) newspapers of general circulation.

Approved,

MANUEL B. VILLAR, JR.

Speaker of the House of Representatives (Original Signed)

FRANKLIN M. DRILON

President of the Senate (Original Signed)

This Act, which is a consolidation of Senate Bill No. 1220 and House Bill No. 8015 was finally passed by the Senate and the House of Representatives on July 17, 2000 and July 18, 2000, respectively.

ROBERTO P. NAZARENO

Secretary General House of Representatives (Original Signed)

EMMA LIRIO-REYES

Acting Secretary of the Senate (Original Signed)

Approved: JUL 19 2000

JOSEPH E. ESTRADA

President of the Philippines (Original Signed)

APPENDIX PH-2

The Securitization Act of 2004

Congress of the Philippines

Metro Manila

Twelfth Congress

Third Regular Session

Begun and held in Metro Manila, on Monday, the twenty-eighth day of July, two thousand and three.

An Act Providing the Regulatory Framework for Securitization and Granting for the Purpose Exemptions from the Operation of Certain Laws

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

ARTICLE 1 GENERAL PROVISIONS

SECTION 1. *Short Title.*—This Act shall be known as "The Securitization Act of 2004"

SEC. 2. *Declaration of Policy*—It is the policy of the State to promote the development of the capital market by supporting securitizaiton, by providing a legal and regulatory framework for securitization and by creating a favorable market environment for a range of asset-backed securities. For this purpose, the State shall rationalize the rules, regulations, and laws that impact upon the securitization process, particularly on matters of taxation and sale of real estate on installment. Furthermore, the State shall pursue the development of a secondary market, particularly for residential mortgage-backed securities and other housing-related financial instruments, as essential to its goal of generating investment and accelerating the growth of the housing finance sector, especially for socialized and low-income housing. The State shall likewise pursue the development of a secondary market for other types of asset-backed securities (ABS).

SEC. 3. *Definition of Terms.*—For purpose of this Act, the term:

a. "Securitization" means the process by which assets are sold on a

without recourse basis by the Seller to a Special Purpose Entity (SPE) and the issuance of asset-backed securities (ABS) by the SPE which depend, for their payment, on the cash flow from the assets so sold and in accordance with the Plan.

b. Asset-backed securities (ABS)″ refer to the certificates issued by an SPE, the repayment of which shall be derived from the cash flow of the assets in accordance with the Plan.

c. "Assets", whether used alone or in the term "Asset-backed securities," refer to loans or receivables or other similar financial assets with an expected cash payment stream. The term "Assets" shall include, but shall not be limited to, receivables, mortgage loans and other debt instruments: *Provided*, That receivables that are to arise in the future and other receivables of similar nature shall be subject to approval by the Securities and Exchange Commission (SEC) or the Bangko Sentral ng Pilipinas (BSP), as the case may be: *Provided, further*, That the term "Assets" shall exclude receivables from future expectation of revenues by government, national or local, arising from royalties, fees or imposts.

d. "Asset Pool" means the group of identified, homogeneous assets underlying the ABS.

e. "Commission" refers to the Securities and Exchange Commission (SEC).

f. "Credit Enhancement" means any legally enforceable scheme intended to improve the marketability of the ABS and increase the probability that the holders of the ABS receive payment of amounts due them under the ABS in accordance with the Plan.

g. "Originator" means the person or entity which was the original obligee of the Assets, such as financial institution that grants a loan or a corporation in the books of which the Assets were created in accordance with the Plan.

h. "Plan" means the plan for securitizations as approved by the Commission

i. "Secondary Mortgage Institution (SMI)" means an entity created for the purpose of enhancing a secondary market for residential mortgages and housing-related ABS.

j. "Seller" means the person or entity which conveys to the SPE the Assets forming the Asset Pool in accordance with the Plan. In most instances, the Seller may itself be the Originator.

k. "Servicer" refers to the entity designated by the SPE to collect and record payments received on the assets, to remit such collections to the SPE, and perform such other services as may be specifically required by the SPE, excluding asset management or administration.

l. "Special Purpose Entity (SPE)" means either a Special Purpose Corporation (SPC) or a Special Purpose Trust (SPT).

m. "Special Purpose Corporation (SPC)" refers to a juridical person created in accordance with the Corporation Code of the Philippine solely for the purpose of securitization and to which the Seller makes a true and absolute sale of assets.

n. "Special Purpose Trust (SPT)" means a trust administered by an entity duly licensed to perform trust functions under the General Banking Law, and created solely for the purpose of securities and to which the Seller makes a true and absolute sale of assets

SEC. 4. *Declaration of Principles.*—The Commissions shall exercise the powers provided for in this Act in consonance with the principle of full disclosure, transparency and accountability. The Commission shall include in its annual report the list of SPEs with the corresponding types and amounts of assets scrutinized.

ARTICLE II SPECIAL PURPOSE ENTITY

SEC. 5. *Special Purpose Entity (SPE).*—The SPE in the form of an SPC shall be a stock corporation established in accordance with the Corporation Code of the Philippines and the rules promulgated by the Commission solely for the purpose of securitization and registered as such with the Commission. An SPE constituted as an SPT shall be a trust administered by an entity duly licensed to perform trust functions under the General Banking Law and need not be registered as such with the Commission. In any event, the SPE, whether in the form of an SPT or SPC, shall be solely organized and operated for purposes of securitization in accordance with this Act. The Commission and the BSP shall, from time to time, determine the required capitalization for the SPCs and SPTs, respectively.

SEC. 6. *Approval of the Plan.*—After the establishment of an SPE pursuant to Section 5 hereof, the proposed Plan shall be submitted to the Commission for approval, which shall include the following:

a. The nature and mechanics of the sale of assets from the Seller to the SPE, including the terms, conditions and circumstances specified in the Plan wherein the assets may be reverted to the Seller:

b. The credit enhancements or liquidity supports for the ABS which may be provided in the following manner:

i. standby letter of credit issued by a commercial bank or universal bank other than the trustee bank or the Originator or Seller or its subsidiary/affiliate, its parent company or the parent company's subsidiary/affiliate;

ii. surety bond issued by any insurance company other than the Originator or Seller or its subsidiary or affiliate, its parent company or the parent company's subsidiary or affiliate, or the parent or subsidiary of the trustee bank;

iii. guarantee issued by any entity other than the Originator or Seller or its subsidiary/affiliate, its parent company or the parent company's subsidiary/affiliate, or the trustee bank or its parent or subsidiary;

iv. over-collateralization provided by the Seller wherein the assets conveyed to the SPC or SPT exceed the amount of ABS to be issued;

v. subordinated securities issued by an SPE to any entity including those issued to the Seller that are lower ranking, or junior to

other obligation, and are paid after claims to holders of senior are satisfied; and

vi. other credit enhancements as may be approved by the Commission.

a. The identities and qualifications of the Originator, Seller, Servicer, underwriter an dealer of the ABS. and description of any compensation the issuer, seller or any underwriter has received or will receive in the future in connection with the ABS;

b. The identity, qualifications and compensation of the trustee that will administer the assets conveyed to the SPE for the benefit of the ABS holders of the ABS holders which trustee shall not be related directly or indirectly to the Originator or Sellers;

c. The aggregate principal amount of the value of ABS to be issued, the principal amount of each class within the ABS, and the denominations which shall not be lower than Five thousand pesos (P5,000.00) in which the ABS will be issued;

d. The structure of the ABS to be registered, including the structure and payment priorities of each class of certificates within the ABS, anticipated payments and yields for each class, and the circumstances under which the ABS may be redeemed or retired;

e. A full description of the assets contained, or to be contained, in the asset pool supporting the ABS;

f. The rating agency/agencies for the ABS, the criteria used or to be used to rate the ABS, and any limitation, qualifications or material risks not addressed by the rating agency/agencies;

g. A full description of how the issuer will collect and maintain remittances from the assets pending distribution to holders of the ABS, including the issuer's investment policies and the identity of the issuer's investment advisor, if any;

h. The plan for the management and administration of the assets, asset pool and the ABS, including the disposition of the foreclosed properties, if any; and

i. The manner of disposal of any residual value or asset with the SPE after all obligations to holders of ABS shall have been settled.

SEC. 7. *Registration of Asset-Backed Securities (ABS).*—All ABS shall be registered with the Commission in accordance with Sections 8 and 12 of the Securities Regulation Code and its implementing rules and regulations: *Provided, however,* That issuers of ABS falling under Sections 9 and 10 thereof shall be required to file with the Commission, a notice, with a disclosure statement.

SEC. 8. *Approval.*—The commission shall issue to an SPC or SPT the corresponding order and permit to sell ABS only after compliance with all the registration requirements and the approval of the Plan by the Commission.

SEC. 9. *Originator is a Bank; Special Purpose Trust.*—In case the originator of the assets is a bank or any other financial intermediary which under special laws is subject to the supervision of the BSP, or an

entity directly related to said bank or other financial intermediary, or in the event the SPE is constituted in the form of an SPT. an endorsement by the BSP of the Plan shall be required before it s approval by the Commission.

SEC. 10. *Powers of the SPE.*—Each SPE shall have the power to:

a. Accept the sale or transfer of assets;

b. Issue and offer the ABS for sale to investors;

c. Undertake on its own or through contracts with any person, such activities as contained in the approved Plan;

d. Create any indebtedness or encumbrances to defray administrative or other necessary expenses as specified in the Plan; and

e. Pay out or invest its funds in accordance with the Plan or as approved by the Commission.

SEC. 11. *Restriction.*—the SPE shall not undertake any activity other than that contained in the approved Plan except upon a written approval of the Commission and the written consent of the holders of the ABS representing at least two-thirds (2/3) of the outstanding amount of the ABS: *Provided*, That in case the originator of the assets is a bank or nay other financial intermediary which under special laws is subject to the supervision of the BSP, or an entity directly or indirectly related to said bank or other financial intermediary, or in the event the SPE is constituted in the form of an SPT, prior endorsement by the BSP is necessary.

SEC. 12. *Transfer of Assets and Security.*—The transfer of the assets from the Originator or Seller to the SPE shall be deemed to be a "true sale" when it results in the following:

a. The transferred Assets are legally isolated and put beyond the reach of the Originator or Seller and its Creditors;

b. The transferee SPE has the right to pledge, mortgage or exchange those transferred Assets;

c. The transferor relinquishes effective control over the transferred assets;

d. The transfer shall be effected by either a sale, assignment or exchange, in any event on a without recourse basis to the Originator or Seller;

e. The transferee shall have the right to profits and disposition with respect to the assets;

f. The transferor shall have the right to recover the assets and the transferee shall not have the right to reimbursement of the price or other consideration paid for the assets; and

g. The transferee shall undertake the risks associated with the assets. This shall not, however, prevent the transferor from giving normal representations or warranties of the assets sold.

SEC. 13. *Withdrawal of Registration.*—If the Commission finds that the Originator or Seller has undertaken the securitization so as to seek the benefits of this Act without a true intention to carry it out, the Commission shall withdraw or cancel the registration of the ABS and the

registration of the SPE as issuer, and cause the dissolution of the SPC or termination of the SPT. The Originator or Seller and as the case may be, the trustees, shall pay as fine an amount equal to the taxes from which the SPE has been exempted plus a surcharge of twenty-five percent (25%) of the face value of the ABS issued, without prejudice to the penalties under this law and the National Internal Revenue Code of 1997.

SEC. 14. *Inheritance and Donor's Tax Evasion.*—It shall be unlawful for any person, whether or not it contemplation of death, to cause directly, the issuance, for the benefit of another or others, of ABS and avail of the tax incentives granted by this Act for the purpose of evading the payment of donor's or estate taxes.

SEC. 15. *Dissolution of the Special Purpose Entity (SPE).*—The SPE shall be dissolved in the following cases:

(a) It fail to accept the transfer of assets or issue ABS to investors within six (6) months from the date of approval of the Plan unless extended by the Commission;

(b) Holders of at least two third (2/3) of the total amount of its ABS still outstanding have resolved to dissolve the SPE and the approval of the Commission has been obtained; in case the Originator of the assets is a bank or any other financial intermediary which under special laws, is subject to supervision of the BSP, or an entity directly or indirectly related to said bank or other financial intermediary, or in the event the SPE is constituted in the form of an SPT, an endorsement by the BSP shall be required prior to approval of the Commission;

(c) Conditions for dissolution that are specified in the Plan occur; or

(d) The Commission orders dissolution in accordance with Section 13 and 19.

SEC. 16. *Effects of Dissolution of SPE.—The* SPE and the registration of the ABS shall be terminated, cancelled withdrawn in any of the cases provided for under the last preceding section.

SEC. 17. *Appointment of an Interim Representative.*—If the Commission finds that an SPE has no authorized representative to act on its behalf or such persons cannot act for any reason resulting in the interruption of its activities pursuant to the approved Plan, the Commission shall have the power to appoint any person or persons to act as interim representative for the SPE. The interim representative shall have the full and exclusive authority to implement the approved Plan.

In the event of an appointment of replacement of an interim representative, the Commission shall post the notice at the Commission's office and other its publication in at least two (2) newspapers of national circulation.

SEC. 18. *Delivery of Property and Records it Interim Representative*.—Where an interim representative has been appointed in accordance with Section 17.

(a) The directors, officers, or any employees of the SPE shall take all appropriate steps to safeguard the property and the benefits of the holders of the ABS of the SPE and shall deliver the property accounts, documents, and seals of the SPE to the interim representative; and

(b) Any person who possesses property or documents of the SPE shall notify the representative of such possession.

SEC. 19. *Failure to Continue Business.*—The Commission shall order the dissolution of an SPE upon finding that the SPE cannot continue to undertake its business, and shall proceed to liquidate the SPE in accordance with the Corporation Code.

SEC. 20. *Power of Inspection.*—The Commission shall have the power to inspect or order the Production of the records of the SPE.

ARTICLE III THE SERVICER

SEC. 21. *Duties.*—The Service shall perform its duties pursuant to the terms and conditions of the servicing agreement and such other written instructions as the SPE, the trustees or its interim representative may issue or in case-to-case basis. Collections made by the Servicer shall be remitted promptly to the SPE or as may be agreed upon the parties in the servicing agreement, but in no case shall be remittance period be longer than one (1) month.

SEC. 22. *Reports.*—The Servicer shall prepare periodic reports as may be required by the SPE, the trustee or its interim representative within thirty (30) days, including reports of any borrower or obligator which fails to pay its debt or obligation at maturity date or any adverse development that may be affect the collectibility of any loan account or receivable comprising the asset pool.

SEC. 23. *Extent of Authority.*—The Servicer shall have such authority as is expressly stated in the servicing agreement and unless otherwise specifically provided therein, such authority shall encompass the general powers of administration. The Servicer shall have no authority to waive penalties and charges except with the written authority from the Board of SPE, the trustee or the interim representative, should one be appointed

SEC. 24. *Qualifications.* The Servicer shall be a corporation duly incorporated under Philippine law, with a minimum authorized capitalization of Ten million pesos (P10,000,00.00) or such higher amounts as the Commission may prescribe. It shall be independent of the SPC or the trustee and shall not share common ownership, officers, or directors with the SPC or the trustees. The Originator or Seller may act as the Servicer as may be approved by the Commission or the BSP, as the case may be.

SEC. 25. *Standard of Conduct.*—The Servicer shall act with utmost good faith and shall perform its obligations under the servicing agreement with the due diligence of a good father of a family.

SEC. 26. *Penalties.*—Breach by the Servicer of its obligations arising from the failure to abide by the standard of conduct set forth in the preceding section shall subject the Servicer to the penalty of revocation of its corporate registration and a fine of not less than One Million pesos (P1,000,000.00) and shall subject its officers and employees responsible for such noncompliance with the standard of conduct referred to above, to a penalty of imprisonment for not more than five (5) years and a fine of not less than One Hundred Thousand pesos (100,000.00). Breach arising

from bad faith or gross negligence shall subject the Servicer to revocation of its corporate registration and a fine of not less than Five million pesos (P5,000,000.00) and shall subject the officers and employees responsible for such breach to a penalty of imprisonment for not more than six (6) years and one (1) day up to a maximum of twenty (20) years and a fine of not less than Five hundred thousand pesos (P500,000.00).

ARTICLE IV TAX AND OTHER RELATED ISSUES

SEC. 27. *Income Taxation of Special Purpose Entity.*—The SPE in the form of an SPC shall be subject to income tax under Section 27(a), Chapter IV of the National Internal Revenue Code of 1997. An SPE constituted as an SPT shall be subject to income tax in accordance with the provisions of Section 61, Chapter X of the same Code.

SEC. 28. *Transfer of Assets.*—The sale or transfer of assets to the SPE, which includes sale or transfer of any and all security interest thereto, it made in accordance with the Plan shall be exempted from value-added tax (VAT) and documentary stamp tax (DST), or any other taxes imposed in lieu thereof. Except for registration fees with the Commission, all applicable registration and annotation fees to be paid, related or incidental to the transfer of assets, or the security interest thereto, shall be fifty percent (50%) of the applicable registration and annotation fees. The transfer of assets by dation in payment (*dacion en pago*) by the obligor in favor of an SPE shall not be subject to capital gains tax as provided under Section 27 (d)(5) of the National Internal Revenue Code of 1997.

SEC. 29. *Issuance and Transfer of Securities.*—The original issuance of ABS and other securities related solely to such securitization transaction, such as, but not limited to, seller's equity, subordinated debt instruments purchased by the originator, and other related forms of credit enhancement shall be exempt from VAT, or any other taxes imposed in lieu thereof, but subject to DST. All secondary trades and subsequent transfers of ABS, including all forms of credit enhancement in such instruments, shall be exempt from DST and VAT, or any other taxes imposed in lieu thereof.

SEC. 30. *Non-Classification of SPE as a Bank, Quasi-Bank or Financial Intermediary.*—The SPE, created pursuant to a Plan, shall not be classified as a ban, quasi-bank or financial intermediary under the provisions of the New Central Bank Act, the General Banking Law and the National Internet Revenue Code of 1997, and shall not be subject to the gross receipts tax (GRT) or any other tax imposed in lieu thereof.

SEC. 31. *Securities not to be Categorized as Deposit Substitutes.*—The ABS issued by an SPE pursuant to the Plan approved by the Commission shall not be considered as deposit substitutes under the laws mentioned in Section 30 hereof: *Provided, however*, That for purposes of taxation, the yield for the ABS shall be subject to a twenty percent (20%) final withholding tax, except those held by tax-exempt investors.

SEC. 32. *Re-transfer of Assets.*—Where the implementation of the Plan or the provision of this Act requires or provides a transfer of the as-

sets and collateral back to the Originator or Seller, then the provisions of Section 28 shall apply to such transfer.

SEC. 33. *Incentives for Securitization.*—In order to promote the securitization of the mortgage and housing related receivables of the government housing agencies as may be determined by the Housing and Urban Development Coordinating Council (HUDCC) and the Department of Finance (DOF), the yield or income of the investor from any low-cost or socialized housing-related ABS shall be exempt from income tax.

SEC. 34. *Waiver of Rights.*—For purposes of securitization pursuant to this Act, the buyer of real estate on installment payments may agree to waive his rights under Republic Act No. 6552, the provision of Section 7 of the said notwithstanding.

ARTICLE V SECONDARY MORTGAGE INSTITUTION

SEC. 35. *Registration of Secondary Mortgage Institution (SMI)*—An SMI, which shall be primarily responsible in providing liquidity mechanism to primary mortgage lenders/holders as well as in developing a secondary market for mortgage and housing-related ABS, shall also be registered with the Commission.

SEC. 36. *Registration of Business and Operational Plan*—The SMI shall also register its business and operational plan with the Commission and shall, as a minimum, be subject to the same disclosure requirements as SPCs.

SEC. 37. *Promulgation of Rules.*—The Commission, in consultation with the BSP and the Insurance Commission (IC), shall promulgate rule regarding the ownership, organization, capitalization and operation of the SMI.

In promulgating such rules, the Commission shall consider the size of the asset pools to be held by the SMI, the amount of debt to be issued by it, the extent of its operation and the powers of the SMI specified under this Act.

SEC. 38. Powers of the SMI.—For purposes of securitization under this Act and pursuant to the Plan submitted to the Commission, the SMI may perform any or all of the following:

a. Wholesale purchase of residential mortgages and housing-related contract receivables;

b. Buy and sell residential mortgage and housing-related ABS;

c. Provide loans to primary lending institutions against residential mortgages;

d. Issue housing-related ABS through an SPE, and issue bonds and other debt instruments;

e. Perform ancillary functions including, but not limited to, title insurance, through a subsidiary, wholly or partially owned by an SMI, and loan servicing; and

f. Perform such other functions as the Commission may determine necessary to mobilize and channel funds from the capital markets to the mortgage and housing finance sector.

SEC. 39. *SMI Capitalization and Organizational Requirements.*—Any SMI established for the housing sector shall be a stock corporation and shall have a minimum initial paid-up capital of Two billion pesos (P2,000,000,000.00): *Provided*, That the total obligation of the SMI, including both actual and contingent obligations, shall not exceed fifteen (15) times its paid-up capital: *Provided, further*, That the actual obligations of the SMI shall not exceed ten (10) times its paid-up capital: *Provided, furthermore*, That the ratios indicated herein may be adjusted by the Commission with approval of the DOF and BSP upon a showing that the conditions of the secondary and primary markets and the financial viability of the SMI warrant such adjustment: *Provided. Finally*, That the investment of financial entities in the SMI shall be subjected to and be made to comply with rules and regulations of the appropriate regulatory agency.

Government financial institutions and government-owned or-controlled corporations, may collectively hold and own up to a maximum of thirty percent (30%) of the SMI's capital: *Provided*, That such investment does not conflict with their existing charters.

A government financial institution may invest up to a maximum of ten percent (10%) of its total investible funds in housing-related assets or five percent (5%) in non-housing related assets: *Provided*, That such investment does not exceed five percent (5%) of the total amount of each ABS issue.

Within ten (10) years of its incorporation, the SMI shall offer and list at least twenty percent (20%) of its common shares in the stock exchange, which period shall be extendible only upon approval of the Commission in instances where the lace of financial viability of the SMI warrants such extension.

SEC. 40. *Prohibited Activities of the SMI*,—The SMI shall be prohibited from:

a. Originating or financing individual mortgage loans;

b. Providing loans to other parties engaged in a business other than that approved in the Plan submitted to the Commission: and

c. Providing capital equity to other companies.

SEC. 41. *Extension of Benefits to the SMI.*—The benefits provided to the transactions entered into by the SPCs under Sections 28 to 33 of this Act shall also be granted to the same transactions entered into by the SMIs for purposes of securitzation in accordance with the provisions of this Act.

SEC. 42. Dissolution of the SMI.—The Commission shall order the dissolution and liquidation of the SMI upon a finding that it:

a. Cannot continue to undertake its business; or

b. Is not operation actively; or

c. Is engaging in activities that conflict with its objectives as an SMI; or

d. Has fulfilled a condition for dissolution specified in its Articles of Incorporation.

ARTICLE VI Rating System

SEC. 43. *Rating ABS.*—No ABS shall be issued unless such ABS has been rated by a duly accredited credit rating agency.

SEC. 44. *Credit Rating Agency.*—Every credit rating agency which now exists or which may hereafter be formed shall be subject to the provisions of this Act.

SEC. 45. *Accreditation of Credit Rating Agency.*—No credit rating agency shall commence rate-making operations pursuant to this Act until it shall have obtained an accreditation from the Commission under such rules and regulations as the Commission may deem appropriate.

SEC. 46. *Examination of Credit Rating Agencies.*—Credit rating agencies shall be subject to examination by the Commission as the latter may deem warranted: Provided, That the Commission shall conduct an examination of the credit rating agencies at least once every three (3) years.

SEC. 47. *Noncompliance of Accredited Rating Agencies.*—The Commission may suspend or revoke the accreditation given to any credit rating agency which fails to comply with the Commission's lawful order within the time limited by such order, or any extension thereof which the Commission may grant.

ARTICLE VII Penal Provisions

SEC. 48. *Penalties.*—Any person who violates any of the provisions of this Act, or the rules and regulations promulgated by the Commission under authority hereof, or any person who, in a registration statement, notice, or Plan filed under this Act, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall, upon conviction, suffer a fine of not less than Fifty thousand pesos (P50,000.00) nor more than Five million pesos (P5,000.00) or imprisonment of not less than six (6) years and one (1) day nor more than twenty-one (21) years, or both in the discretion of the court. If the offender is corporation partnership or association or other juridical entity, the penalty may in the discretion of the court be imposed upon such juridical entity upon the officer or officers of the corporation, partnership, association or entity responsible fro the violation, and if such officer is an alien, he shall in addition to the penalties prescription prescribed, be deported without further proceedings after service of sentence.

ARTICLE VIII Miscellaneous Provisions

SEC. 49. *Implementing Rules and Regulations (IRR).*—The Commission, in coordination with the BSP, DOF and the IC, shall promulgate the implementing rules and regulations which shall be submitted to the Congressional Oversight Committee which shall review, revise and approve the same: Provided, That the Commission BSP, DOF and the IC may continue to issue separate regulations that will apply exclusively to the institutions under their respective jurisdiction, consistent with the IRR as approved by the Congressional Oversight Committee.

SEC. 50. *Congressional Oversight Committee.*—There is hereby created a Congressional Oversight Committee composed of seven (7) members from the Senate and seven (7) members from the House of the Representatives. The members from the Senate shall be appointed by the Senate President with at least two (2) Senators representing the Minority. The members from the House of Representatives shall also appointed by the Speaker with at least two (2) members representing the Minority. After the Oversight Committee has approved the IRR, it shall thereafter become functus officio, and therefore cease to exist.

SEC. 51. *Repeating Clause.*—All laws, executive orders, rules and regulations, and parts thereof which are inconsistent with this Act are hereby repealed or amended accordingly.

SEC. 52. *Separability Clause.*—If for any reason any article or provision of this Act or any portion therefore or application of such article, provision, or portion thereof to any person, group, or circumstance is declared invalid or unconstitutional, the remainder of this Act shall not be affected by such decision.

SEC. 53. *Effectivity Clause.*—This Act shall take effect fifteen (15) days after its complete publication in the *Official Gazette* or in at least two (2) newspapers of general circulation, whichever comes earlier.

Approved,

(Sgd.) **FRANKLIN M. DRILON**
President of the Senate

(Sgd.) **JOSE DE VENECIA JR.**
Speaker of the House of Representatives

This Act which is a consolidation of House Bill No. 4453 and Senate Bill No. 2095 was finally passed by the House of Representatives and the Senate on January 28, 2004 and January 29, 2004, respectively.

(Sgd.) **OSCAR G. YABES**
Secretary of Senate

(Sgd.) **ROBERTO P. NAZARENO**
Secretary General House of Representatives

Approved: March 19, 2004

(Sgd.)GLORIA MACAPAGAL—ARROYO

President of the Philippines

APPENDIX PH-3

2015 Implementing Rules and Regulations of the Securities Regulation Code

[Text can be downloaded from the SEC website.]

APPENDIX PH-4

Securities and Exchange Commission SRC Rule 68, as amended [Part I – General Financial Reporting Requirements; Part II—Additional Requirements for Issuers of Securities to the Public]

[Text can be downloaded from the SEC website.]

Table of Contents

CHAPTER 1
GENERAL INSTRUCTIONS

Instruction No. 1.0	Use of Electronic Devices and Research Prohibited
Instruction No. 1.1	Explanation to Jury Panel of Voir Dire
Instruction No. 1.2	Oath on Voir Dire
Instruction No. 1.2A	Introductory Instructions—Juror Questionnaires
Instruction No. 1.3	Oath Administered to Jury
Instruction No. 1.4	Jury's Duties—Cautionary Instructions—To Be Given After Jury Is Sworn
Instruction No. 1.5	Jury's Duties—Cautionary Instructions—Bias on Account of Race, Religion, etc.
Instruction No. 1.6	Jury's Duties—Cautionary Instructions—Corporation As Party
Instruction No. 1.7	Cautionary Instruction—Note Taking by Jurors
Instruction No. 1.8	Jury's Duties—Introduction to Instructions—To Be Given after the Evidence
Instruction No. 1.8A	Closing Instruction—To be Given After the Evidence
Instruction No. 1.9	Jury's Duties—To Be Given Prior to Deliberation
Instruction No. 1.10	Note Taking by Jurors—To Be Given Prior to Deliberation
Instruction No. 1.10A	Support Animal
Instruction No. 1.12	Verdict Form One Plaintiff, One Defendant
Instruction No. 1.12A	Directions for Verdict Form for One Plaintiff, One Defendant
Instruction No. 1.13	Verdict Form, Counterclaim
Instruction No. 1.13A	Directions for Verdict Form for Counterclaim
Instruction No. 1.14	Deadlocked Jury Charge
Instruction No. 1.20	Statute of Limitations—Affirmative Defense
Instruction No. 1.21	Statute of Limitations—Exception

CHAPTER 2
STATEMENT OF ISSUES

Instruction No. 2.1	The Issues in the Case—No Counterclaim
Instruction No. 2.2	The Issues in the Case—Counterclaim

Instruction No. 2.3 The Issues in the Case—Admitted Liability
Instruction No. 2.4 The Issues in the Case—Uninsured Motorists Coverage
Instruction No. 2.5 The Issues In The Case—Cautionary Instruction

CHAPTER 3
BURDEN OF PROOF—EVIDENCE

Instruction No. 3.1 Burden of Proof—Greater Weight of the Evidence
Instruction No. 3.2 Burden of Proof—Clear and Convincing Evidence
Instruction No. 3.3 No Speculation
Instruction No. 3.4 Presumption-Defined—Use
Instruction No. 3.5 Presumption of Knowledge Based on Duty to Inquire
Instruction No. 3.6 Presumption of Due Care
Instruction No. 3.7 Decedent—Presumption of Due Care
Instruction No. 3.8 Accident Raises No Presumption
Instruction No. 3.9 Flight from Accident As Evidence of Negligence
Instruction No. 3.10 Inference—Permitted—Defined
Instruction No. 3.11 Inference from Failure to Produce Evidence or Witness
Instruction No. 3.11A Inference From Spoliation of Evidence
Instruction No. 3.12 Inference from Failure of Party to Testify
Instruction No. 3.13 Determining Credibility [Believability] of Witness
Instruction No. 3.14 Impeachment of Witness: Prior Conviction
Instruction No. 3.15 Witness Need Not Be Believed
Instruction No. 3.16 Inherently Improbable Testimony
Instruction No. 3.17 Witness Willfully False
Instruction No. 3.18 Party Competent as Witness
Instruction No. 3.19 One Witness Against a Number
Instruction No. 3.20 Credibility of Special Categories of Witnesses
Instruction No. 3.21 Expert Witness
Instruction No. 3.22 Expert Witness—Hypothetical Question
Instruction No. 3.23 Stipulation—Defined—Use
Instruction No. 3.24 Judicial Notice—Defined—Use
Instruction No. 3.25 Direct and Indirect [Circumstantial] Evidence—Defined—Use
Instruction No. 3.26 Presentation of Animations as Visual Aids

CHAPTER 4
INJURY TO PERSON OR PROPERTY

Instruction No. 4.1	Personal Injuries—Adults
Instruction No. 4.2	Personal Injuries—Minor Child
Instruction No. 4.3	Personal Injuries—Minor Child—Measure of Parent's or Guardian's Damages
Instruction No. 4.4	Personal Injuries—Minor Child—Loss of Earnings
Instruction No. 4.5	Loss of Spousal Consortium—Elements of Liability
Instruction No. 4.6	Measure of Damages—Loss of Spousal Consortium
Instruction No. 4.7	Loss of Parental Consortium—Elements of Liability
Instruction No. 4.8	Measure of Damages—Loss of Parental Consortium
Instruction No. 4.9	Measure of Damages—Injury to Spouse
Instruction No. 4.10	Measure of Damages—Aggravations of Pre-existing Conditions
Instruction No. 4.11	Measure of Damages—Medical Malpractice—Loss of Chance
Instruction No. 4.12	Personal Property—Market Value—Not Repairable
Instruction No. 4.13	Personal Property—No Market Value
Instruction No. 4.14	Personal Property—Cost of Repairs—Loss of Use
Instruction No. 4.15	Personal Property—Loss of Use
Instruction No. 4.16	Personal Property—Conversion
Instruction No. 4.17	Effect of Income Tax on Award of Damages
Instruction No. 4.18	Fair Market Value—Definition

CHAPTER 5
DAMAGES

Instruction No. 5.1	Damages Not to Be Inferred
Instruction No. 5.2	Uncertainty As to Amount of Damage
Instruction No. 5.3	Duty to Mitigate Damages—Personal Injury
Instruction No. 5.4	Duty to Mitigate Damages—Property
Instruction No. 5.5	Exemplary or Punitive Damages (Prior Law)
Instruction No. 5.6	Exemplary or Punitive Damages—First Stage
Instruction No. 5.7	Verdict Form, for Plaintiff, Punitive Damages, First Stage
Instruction No. 5.8	Verdict Form, for Defendant, First Stage

Instruction No. 5.9 Exemplary or Punitive Damages—Second Stage
Instruction No. 5.10 Verdict Form, for Plaintiff, Punitive Damages, Second Stage
Instruction No. 5.11 Verdict Form, for Defendant (Second Stage)
Instruction No. 5.12 Mortality Tables—Explanation

CHAPTER 6
LEGAL RELATIONSHIPS

Instruction No. 6.1 Minor—Defined—Right to Sue or Defend
Instruction No. 6.2 Agency—Defined
Instruction No. 6.3 Disclosed, Partially Disclosed or Undisclosed Principal—Defined
Instruction No. 6.4 Employer and Employee—Defined
Instruction No. 6.5 Loaned Employee
Instruction No. 6.6 Loaned Employee—Determination of
Instruction No. 6.7 Scope of [Agency/Employment]
Instruction No. 6.8 Scope of Authority—Defined
Instruction No. 6.9 Incidental or Implied Authority—Defined
Instruction No. 6.10 Implied Authority Based on Business Usage
Instruction No. 6.11 Apparent Authority—Definition and Effect
Instruction No. 6.12 Scope of Authority or Employment—Departure
Instruction No. 6.13 Ratification—Definition and Effect
Instruction No. 6.14 Knowledge of Agent Imputable to Principal
Instruction No. 6.15 Termination of Agent's Authority
Instruction No. 6.16 Employer Liability — Substantial Certainty Test

CHAPTER 7
RESPONDEAT SUPERIOR

Instruction No. 7.1 Principal and Agent or Employer and Employee—Both Parties Sued—Issue As to Relationship and Scope of Authority or Employment—Acts of Agent or Employee As Act of Principal or Employer
Instruction No. 7.2 Principal and Agent or Employer and Employee—Only Principal or Employer Sued—No Issue As to Relationship—Acts of Agent or Employee As Acts of Principal or Employer
Instruction No. 7.3 Principal Employer and Employee—Only Principal or Employer Sued—Issue As to Relationship or Scope of Authority or

Employment—Acts of Agent or Employee As Acts of Principal or Employer
Instruction No. 7.4 Principal and Agent or Employer and Employee—Both Parties Sued—Liability When No Issue As to Relationship or Scope of Authority or Employment
Instruction No. 7.5 Principal and Agent or Employer and Employee—Both Parties Sued—Liability When Issue as to Relationship or Scope of Authority or Employment
Instruction No. 7.6 Joint Venturers—Imputing Negligence Between
Instruction No. 7.7 Act of Corporate Officer or Employee As Act of Corporation

CHAPTER 8
WRONGFUL DEATH

Instruction No. 8.1 Damages for Wrongful Death of an Adult
Instruction No. 8.2 Damages for Wrongful Death of a Minor Child

CHAPTER 9
NEGLIGENCE—COMPARATIVE NEGLIGENCE

Instruction No. 9.1 Negligence—Elements of Liability
Instruction No. 9.2 Negligence Defined
Instruction No. 9.3 Ordinary Care—Defined
Instruction No. 9.4 Child's Capacity for Negligence
Instruction No. 9.4A Children—Standard of Care
Instruction No. 9.5 Volunteer—Duty of Care
Instruction No. 9.6 Direct Cause—Definition
Instruction No. 9.7 Concurrent Causes
Instruction No. 9.8 Intervening Cause—Definition
Instruction No. 9.8A Liability for Additional Injuries By Other Persons
Instruction No. 9.8B Liability for Increased Harm—Products Liability
Instruction No. 9.8C Liability for Increased Harm—Negligence
Instruction No. 9.9 Rescue Doctrine
Instruction No. 9.10 Negligence Per Se—Violation of Statute or Ordinance
Instruction No. 9.11 Conduct in Compliance with Statute or Ordinance
Instruction No. 9.12 Unknowing Violation of Statute or Ordinance

Instruction No. 9.13	Res Ipsa Loquitur—Inference of Negligence
Instruction No. 9.14	Assumption of Risk
Instruction No. 9.15	Negligence of Driver Not Imputable to Passenger
Instruction No. 9.16	Negligence of Parent Not Imputable to Children
Instruction No. 9.17	Comparative Negligence Not a Defense to Willful and Wanton or Intentional Conduct
Instruction No. 9.18	Comparative Negligence: One Defendant—Definition
Instruction No. 9.19	Comparative Negligence: Multiple Defendants—Definition
Instruction No. 9.20	Comparative Negligence; Counterclaim Plead—Definition
Instruction No. 9.21	Comparative Negligence: Non-party Involved—Definition
Instruction No. 9.22	Advice Concerning Color-Coded Verdict Forms
Instruction No. 9.23	Blue Verdict Form, for Plaintiffs—Directions
Instruction No. 9.24	Blue Verdict Form, for Plaintiff—Multiple Defendants—Directions
Instruction No. 9.25	Blue Verdict Form, for Plaintiff: Counterclaim Plead—Directions
Instruction No. 9.26	Blue Verdict Form, for Plaintiff; Non-party Involved—Directions
Instruction No. 9.27	Pink Verdict Form, for One Defendant—Directions
Instruction No. 9.28	Pink Verdict Form, for Multiple Defendants—Directions
Instruction No. 9.29	Pink Verdict Form, for Defendant; Non-party Involved—Directions
Instruction No. 9.30	Pink Verdict Form, for Defendant on Counterclaim—Directions
Instruction No. 9.31	Green Verdict Form, for Neither Plaintiff Nor Defendant—Counterclaim—Directions
Instruction No. 9.32	White Verdict Form, Comparative, One Defendant—Directions
Instruction No. 9.33	White Verdict Form, Comparative, Two Defendants—Directions
Instruction No. 9.34	White Verdict Form, Comparative, Multiple Defendants—Directions
Instruction No. 9.35	White Verdict Form, Comparative, Counterclaim—Directions
Instruction No. 9.36	White Verdict Form, Comparative, Non-party Involved—Directions
Instruction No. 9.37	Blue Verdict Form, for Plaintiff
Instruction No. 9.38	Blue Verdict Form, for Plaintiff; Counterclaim Involved

Instruction No. 9.39	Blue Verdict Form, for Plaintiff; Multiple Defendants
Instruction No. 9.40	Pink Verdict Form, for One Defendant
Instruction No. 9.41	Pink Verdict Form, for Multiple Defendants
Instruction No. 9.42	Pink Verdict Form, for Defendant on Counterclaim
Instruction No. 9.43	Green Verdict Form, for Neither Plaintiff Nor Defendant
Instruction No. 9.44	White Verdict Form, Comparative, One Defendant
Instruction No. 9.45	White Verdict Form, Comparative, Two Defendants
Instruction No. 9.46	White Verdict Form, Comparative, Multiple Defendants
Instruction No. 9.47	White Verdict Form, Comparative, Counterclaim
Instruction No. 9.48	White Verdict Form, Comparative, Non-party Involved
Instruction No. 9.49	White Verdict Form, Medical Malpractice, Loss of Chance
Instruction No. 9.50	Comparative Negligence—One Defendant—Directions
Instruction No. 9.51	Willful and Wanton Conduct—Definition

CHAPTER 10
MOTOR VEHICLES

Instruction No. 10.1	General Duty of Drivers and Pedestrians
Instruction No. 10.2	Duty to Maintain Lookout
Instruction No. 10.3	Duty of Care of Driver Having Right-of-way
Instruction No. 10.4	Duty of Care of Pedestrian or Bicycle Operator Having Right-of-Way
Instruction No. 10.5	Care Required for Safety of Child
Instruction No. 10.6	Duty of Care of Minor Operating Motor Vehicle
Instruction No. 10.7	Duty of Care of Physically Handicapped Driver
Instruction No. 10.8	Right to Assume Others Will Obey the Law
Instruction No. 10.9	Unavoidable Accident
Instruction No. 10.10	Sudden Emergency
Instruction No. 10.11	Rear-End Accident—Presumption of Negligence
Instruction No. 10.12	Brake or Other Equipment Failure
Instruction No. 10.13	Duty of Passenger
Instruction No. 10.14	Dram Shop—Duty of Care
Instruction No. 10.15	Defendant Not Insurer
Instruction No. 10.16	Negligent Entrustment

Instruction No. 10.17 Evidence Of Nonuse Of Seat Belt

CHAPTER 11
PREMISES LIABILITY

Instruction No. 11.1 Duty of Municipality to Maintain Public Ways
Instruction No. 11.2 Duty of Care by User of Public Way
Instruction No. 11.3 Invitee—Defined
Instruction No. 11.4 Duty to Trespasser to Maintain Premises—Elements of Liability
Instruction No. 11.5 Duty to Children—Attractive Nuisance
Instruction No. 11.6 Duty to Children—Attractive Nuisance Doctrine—Ability of Child
Instruction No. 11.7 Duty to Children—In Absence of Attractive Nuisance
Instruction No. 11.8 Licensee—Defined
Instruction No. 11.9 Landlord's Duty to Tenant—In General
Instruction No. 11.9A Lessor's Liability for Injury from a Latent Defect
Instruction No. 11.10 Duty to Invitee to Maintain Premises—Generally
Instruction No. 11.11 Hidden Danger—Definition
Instruction No. 11.12 Open and Obvious Danger
Instruction No. 11.13 Duty to Licensee to Maintain—Premises—Generally
Instruction No. 11.14 Lessor's Liability As Affected by [His/her] Promise to Make Specific Repairs to Premises
Instruction No. 11.15 Liability of Lessor Who Undertakes Repair of Premises

CHAPTER 12
PRODUCTS LIABILITY

Instruction No. 12.1 Manufacturers'/Products Liability—Elements
Instruction No. 12.2 Defective—Defined
Instruction No. 12.3 Unreasonably Dangerous—Defined
Instruction No. 12.4 Direct Cause—Definition
Instruction No. 12.5 Product Defective If No Warning Given
Instruction No. 12.6 Adequacy of Warnings
Instruction No. 12.7 Liability for Injury from Food or Beverage
Instruction No. 12.8 Definition of Substance Which Could Be "Reasonably Expected" to Be Present in a Food or Beverage

Instruction No. 12.9 Affirmative Defense of Misuse of Product
Instruction No. 12.10 Affirmative Defense of Voluntary Assumption of the Risk of a Known Defect
Instruction No. 12.11 Affirmative Defense of Unavoidably Unsafe Product
Instruction No. 12.12 Products Liability—Punitive Damages

CHAPTER 13
LIABILITY FOR DANGEROUS ACTIVITIES AND ANIMALS

Instruction No. 13.1 Ultrahazardous Activities
Instruction No. 13.2 Strict Liability—Wild Animals
Instruction No. 13.3 Negligence—Abnormally Dangerous Animals
Instruction No. 13.4 Dog Bites
Instruction No. 13.5 Animals Running at Large

CHAPTER 14
PROFESSIONAL LIABILITY

Instruction No. 14.1 Standard of Care—Non-specialist
Instruction No. 14.2 Standard of Care—Specialist
Instruction No. 14.3 Alternative Methods of Diagnosis or Treatment
Instruction No. 14.4 Referral of Patient to Another Physician
Instruction No. 14.5 Physician's Liability for Patient Abandonment
Instruction No. 14.6 Joint Duty of Physicians
Instruction No. 14.7 Duty of Patient to Follow Instructions
Instruction No. 14.8 Treatment without Consent of Patient
Instruction No. 14.9 Consent of Patient
Instruction No. 14.10 Informed Consent Required
Instruction No. 14.11 Informed Consent—Physician's Duty
Instruction No. 14.12 Informed Consent—Exceptions to Duty
Instruction No. 14.13 Informed Consent—Causation
Instruction No. 14.14 Res Ipsa Loquitur—Presumption of Negligence—Medical Malpractice
Instruction No. 14.15 Duty of Hospital
Instruction No. 14.16 Standard of Care of Architect—Negligence
Instruction No. 14.17 Standard of Care of Accountant—Negligence
Instruction No. 14.18 Standard of Care of Attorney—Negligence

CHAPTER 15
BAILOR AND BAILEE

Instruction No. 15.1 Bailment—Bailor—Bailee—Defined

Instruction No. 15.2 Bailor Not Liable to Third Persons for Negligence of Bailee
Instruction No. 15.3 Indemnity of Bailee by Bailor—Duty of
Instruction No. 15.4 Gratuitous Bailment—Defined
Instruction No. 15.5 Involuntary Bailment—Defined
Instruction No. 15.6 Involuntary Bailment Is Gratuitous
Instruction No. 15.7 Gratuitous Bailee—Duty of Care
Instruction No. 15.8 Gratuitous Bailee—Voluntary or Involuntary Bailee—When Duties Cease
Instruction No. 15.9 Bailment for Hire—Defined
Instruction No. 15.10 Bailee for Hire—Ordinary Care Required
Instruction No. 15.11 Bailments—Measure of Damages of Bailee to Bailor

CHAPTER 16
MALICIOUS PROSECUTION

Instruction No. 16.1 Malicious Prosecution—Criminal Action—Elements of Liability
Instruction No. 16.2 Malicious Prosecution—Civil Action—Elements of Liability
Instruction No. 16.3 Malicious Prosecution—Probable Cause Defined
Instruction No. 16.4 Merchant's Reasonable Grounds or Probable Cause Defense to Malicious Prosecution/False Imprisonment
Instruction No. 16.5 Malice—Defined
Instruction No. 16.6 Malice—Express or Actual
Instruction No. 16.7 Inferred Malice
Instruction No. 16.8 Lack of Probable Cause Not to Be Inferred from Malice Alone
Instruction No. 16.9 Affirmative Defense—Advice of Counsel
Instruction No. 16.10 Affirmative Defense—Advice of Prosecuting Attorney
Instruction No. 16.11 Actual Damages—Malicious Prosecution

CHAPTER 17
TRESPASS

Instruction No. 17.1 Trespass—Defined

CHAPTER 18
DECEIT

Instruction No. 18.1 False Representation—Elements of Liability

Instruction No. 18.2 Nondisclosure or Concealment—Elements of Liability
Instruction No. 18.3 False Representation—Defined
Instruction No. 18.4 Material Fact—Defined
Instruction No. 18.5 Nondisclosure—Duty to Disclose
Instruction No. 18.6 Deceit Defined and Classified
Instruction No. 18.7 Statements of Future Intentions or Promises
Instruction No. 18.8 Statements About the Future As False Representations
Instruction No. 18.9 Statements of Law As False Representations
Instruction No. 18.10 Statements of Opinion or "Puffing" As False Representation
Instruction No. 18.11 Affirmative Defense—Waiver by Plaintiff Prior to [His/Her] Complete Performance
Instruction No. 18.12 Actual Damages for Deceit

CHAPTER 19
ASSAULT AND BATTERY

Instruction No. 19.1 Assault: Elements of Liability
Instruction No. 19.2 Assault: Apprehension—Defined
Instruction No. 19.3 Intent to Place Another in Apprehension—Defined
Instruction No. 19.4 Assault: Damages
Instruction No. 19.5 Assault: Punitive Damages
Instruction No. 19.6 Battery: Elements of Liability
Instruction No. 19.7 Contact—Defined
Instruction No. 19.8 Intent—Defined
Instruction No. 19.9 Transferred Intent
Instruction No. 19.10 Battery: Damages
Instruction No. 19.11 Battery: Punitive Damages
Instruction No. 19.12 Words Alone Do Not Justify
Instruction No. 19.13 Consent
Instruction No. 19.14 Self-Defense
Instruction No. 19.15 Self-Defense—Force Calculated to Inflict Death or Serious Bodily Injury
Instruction No. 19.16 Right to Use Force

CHAPTER 20
EMOTIONAL DISTRESS

Instruction No. 20.1 Elements of Liability—Intentional Infliction of Emotional Distress

Instruction No. 20.1A Elements of Liability—Negligent Infliction of Emotional Distress
Instruction No. 20.2 Intentionally or Recklessly—Defined
Instruction No. 20.3 Emotional Distress or Pain or Anguish—Defined
Instruction No. 20.4 Actual Damages—Emotional Distress

CHAPTER 21
WRONGFUL DISCHARGE

PART A
PUBLIC POLICY AND BREACH OF EMPLOYMENT CONTRACT

Instruction No. 21.1 Employment at Will
Instruction No. 21.2 Wrongful Discharge—Public Policy Exception—Refusal to Violate Public Policy
Instruction No. 21.3 Wrongful Discharge—Public Policy Exception—Consistent with Public Policy
Instruction No. 21.4 Wrongful Discharge—Public Policy Exception—Employment Discrimination
Instruction No. 21.5 Employee Discharged for Refusing to Violate Public Policy
Instruction No. 21.6 Employee Discharged for Performing Act Consistent with Public Policy
Instruction No. 21.7 Employee Discharged Because of Discrimination
Instruction No. 21.8 Constructive Discharge
Instruction No. 21.9 Significant Factor for Discharge
Instruction No. 21.10 Contractual Limitations on Discharge
Instruction No. 21.11 Wrongful Discharge—Damages
Instruction No. 21.12 Breach of Employment Contract—Damages
Instruction No. 21.13 Duty to Mitigate Damages

PART B
EMPLOYMENT DISCRIMINATION

Instruction No. 21.21 Employment Based Discrimination—Elements
Instruction No. 21.22 Employment Based Discrimination—Retaliation
Instruction No. 21.23 Employment Based Discrimination—Damages

CHAPTER 22
LIABILITY OF INSURERS

Instruction No. 22.1	Insurance Company's Obligation of Good Faith and Fair Dealing
Instruction No. 22.2	Bad Faith—First Party Insurance—Failure to Pay Claim of Insured
Instruction No. 22.3	Bad Faith—Liability Insurer—Failure to Deal Fairly and Act in Good Faith
Instruction No. 22.4	Bad Faith—Damages
Instruction No. 22.5	Exemplary or Punitive Damages—First Stage
Instruction No. 22.6	Verdict Form, for Plaintiff, Punitive Damages (First Stage)
Instruction No. 22.7	Exemplary or Punitive Damages—Second Stage

CHAPTER 23
CONTRACTS

Instruction No. 23.1	Elements of a Claim for Breach of Contract

PART 1
FORMATION OF CONTRACTS

Instruction No. 23.2	Formation of a Contract
Instruction No. 23.3	Form of Contracts
Instruction No. 23.4	Definition of Offer
Instruction No. 23.5	Definition of Acceptance
Instruction No. 23.6	Acceptance (Sale of Goods)
Instruction No. 23.7	Acceptance of Benefits
Instruction No. 23.8	The Requirement of Consideration
Instruction No. 23.9	Modification of Contracts
Instruction No. 23.10	Quasi-contract (Quantum Meruit or Quantum Valebant)

PART 2
INTERPRETATION

Instruction No. 23.11	Interpretation of Contracts—In General
Instruction No. 23.12	Entire Contract
Instruction No. 23.13	Meaning of Words
Instruction No. 23.14	Construction in Favor of Promises
Instruction No. 23.15	Implication of Terms
Instruction No. 23.15A	Workmanlike Manner

Instruction No. 23.16 Construction Against Drafter

PART 3
BREACH

Instruction No. 23.21 Breach of Contract
Instruction No. 23.22 Performance of Conditions Precedent
Instruction No. 23.23 Substantial Performance
Instruction No. 23.24 Excuse of Condition
Instruction No. 23.25A Performance to Satisfaction of Other Party
Instruction No. 23.25B Performance to Satisfaction of Third Party
Instruction No. 23.26 Tender of Performance
Instruction No. 23.27 Divisible Contract
Instruction No. 23.28 Anticipatory Repudiation

PART 4
DEFENSES

Instruction No. 23.31 Lack of Capacity
Instruction No. 23.32 Duress
Instruction No. 23.33 Fraud
Instruction No. 23.34 Undue Influence
Instruction No. 23.35 Mistake
Instruction No. 23.36 Impossibility
Instruction No. 23.37 Commercial Impracticability
Instruction No. 23.38 Prevention of Performance
Instruction No. 23.39 Waiver
Instruction No. 23.40 Release; Substituted Contract; Accord and Satisfaction
Instruction No. 23.41 Rescission

PART 5
REMEDIES

Instruction No. 23.51 General Measure of Damages
Instruction No. 23.52 Uncertainty As to Fact or Amount of Damages
Instruction No. 23.53 Foreseeability of Special Damages
Instruction No. 23.54 Unnecessary Losses (Mitigation)
Instruction No. 23.55 Remedy: Rescission
Instruction No. 23.56 Measure of Damages: Substantial Performance

CHAPTER 24
INTERFERENCE WITH CONTRACT

Instruction No. 24.1 Interference with Contract—Elements

Instruction No. 24.2 Interference with [Prospective] Business Relationship—Elements
Instruction No. 24.3 Interference with Contract—Improper or Unfair Means
Instruction No. 24.4 Intent—Definition
Instruction No. 24.5 Interference with Contract—Damages

CHAPTER 25
CONDEMNATION AND SURFACE DAMAGES ACT

Instruction No. 25.1 Condemnation—Introduction
Instruction No. 25.2 Condemnation—Just Compensation—Full Taking
Instruction No. 25.3 Condemnation—Just Compensation—Partial Taking
Instruction No. 25.4 Condemnation—Just Compensation—Easement
Instruction No. 25.5 Condemnation—Fair Market Value—Definition
Instruction No. 25.6 Condemnation—Evidence of Comparable Sales
Instruction No. 25.7 Condemnation—Verdict—Single Sum Only
Instruction No. 25.11 Surface Damages—Introduction
Instruction No. 25.12 Surface Damages—Measure of Damages

CHAPTER 26
BREACH OF FIDUCIARY DUTY

Instruction No. 26.1 Breach of Fiduciary Duty—Elements of Liability
Instruction No. 26.2 Breach of Fiduciary Duty—Existence of Fiduciary Relationship
Instruction No. 26.3 Breach of Fiduciary Duty—Fiduciary Duty Owed
Instruction No. 26.4 Breach of Fiduciary Duty—Breach Defined
Instruction No. 26.5 Breach of Fiduciary Duty—Damages

CHAPTER 27
CONVERSION

Instruction No. 27.1 Conversion—Elements
Instruction No. 27.2 Conversion—Damages

CHAPTER 28
DEFAMATION AND INVASION OF PRIVACY

Instruction No. 28.1 Defamation—Introductory Instruction

Instruction No. 28.2 Defamation—Elements (Public Figure Plaintiff)
Instruction No. 28.3 Defamation—Elements (Private Figure Plaintiff)
Instruction No. 28.4 Defamation—Affirmative Defense of Fair Comment
Instruction No. 28.5 Defamation—Affirmative Defense of Fair Reporting
Instruction No. 28.6 Defamation—Affirmative Defense of Good Faith
Instruction No. 28.7 Defamation—Affirmative Defense For Statement Made by Another Person
Instruction No. 28.8 Defamation—Affirmative Defense of Qualified Privilege
Instruction No. 28.9 Defamation—Measure of Damages
Instruction No. 28.11 Invasion of Privacy—Introductory Instruction
Instruction No. 28.12 Invasion of Privacy—Elements (Intrusion Upon Seclusion)
Instruction No. 28.13 Invasion of Privacy—Elements (Appropriation of Right of Publicity)
Instruction No. 28.14 Invasion of Privacy—Elements (Publication of Private Facts)
Instruction No. 28.15 Invasion of Privacy—Elements (False Light)
Instruction No. 28.16 Invasion of Privacy—Measure of Damages

CHAPTER 29
TRADE SECRETS

Instruction No. 29.1 Misappropriation of Trade Secrets—Elements
Instruction No. 29.2 Trade Secret—Definition
Instruction No. 29.3 Misappropriation—Definition
Instruction No. 29.4 Improper Means—Definition
Instruction No. 29.5 Misappropriation of Trade Secrets—Measure of Damages

CHAPTER 30
RESIDENTIAL REAL PROPERTY CONDITION DISCLOSURE ACT

Instruction No. 30.1 Residential Real Property—Introduction
Instruction No. 30.2 Residential Real Property—Definition of Defect
Instruction No. 30.3 Residential Real Property—Elements
Instruction No. 30.4 Residential Real Property—Measure of Damages

CHAPTER 31
CONTEMPT OF COURT

Instruction No. 31.1 Contempt of Court—Introduction
Instruction No. 31.2 Contempt of Court—Definition of Willfully
Instruction No. 31.3 Contempt of Court—Burden of Proof
Instruction No. 31.4 Contempt of Court—Closing Instruction
Instruction No. 31.5 Contempt Of Court—Verdict Form

CHAPTER 32
CIVIL FORFEITURE

Instruction No. 32.1 Civil Forfeiture—Introduction
Instruction No. 32.2 Civil Forfeiture—Property Subject to Forfeiture
Instruction No. 32.3 Civil Forfeiture—Presumption that Money is Subject to Forfeiture
Instruction No. 32.4 Civil Forfeiture—Innocent Owner Defense

CHAPTER 33
NUISANCE

Instruction No. 33.1 Nuisance—Introduction
Instruction No. 33.2 Nuisance—Elements
Instruction No. 33.3 Nuisance—Public Nuisance

Index

Table of Contents

CHAPTER 1
GENERAL INSTRUCTIONS

PART A
—PRELIMINARY INSTRUCTIONS

Juvenile Instruction No. 1.0	Use of Electronic Devices and Research Prohibited
Juvenile Instruction No. 1.1	Purpose of Termination Proceeding
Juvenile Instruction No. 1.2	Explanation To Jury Panel Of Voir Dire
Juvenile Instruction No. 1.3	Oath On Voir Dire
Juvenile Instruction No. 1.4	Oath Administered To Jury
Juvenile Instruction No. 1.5	Jury's Duties—Cautionary Instructions—To Be Given After Jury Is Sworn
Juvenile Instruction No. 1.6	Jury's Duties—Cautionary Instructions—Bias On Account Of Race, Religion, Etc.
Juvenile Instruction No. 1.7	Cautionary Instruction—Note Taking By Jurors

PART B
—CONCLUDING INSTRUCTIONS

Juvenile Instruction No. 1.8	Jury's Duties—Introduction To Instructions—To Be Given After The Evidence
Juvenile Instruction No. 1.9	Jury's Duties—To Be Given Prior to Deliberation
Juvenile Instruction No. 1.10	Note Taking By Jurors—To Be Given Prior to Deliberation
Juvenile Instruction No. 1.11	Mandatory Instruction Upon Discharge

CHAPTER 2
GENERAL TERMINATION INSTRUCTIONS

Juvenile Instruction No. 2.1	Duties Of Jurors—To Be Given Prior To Deliberation
Juvenile Instruction No. 2.2	Statement Of The Case

Juvenile Instruction No. 2.3	Expert Witnesses
Juvenile Instruction No. 2.4	Effect Of Termination Of Parental Rights
Juvenile Instruction No. 2.5	Burden Of Proof For Termination Of Parental Rights
Juvenile Instruction No. 2.6	Child Has Been Adjudicated To Be Deprived
Juvenile Instruction No. 2.6A	Reasonable Efforts
Juvenile Instruction No. 2.7	Instructions for Verdict Forms
Juvenile Instruction No. 2.7A	Instructions for Verdict Forms for Failure to Correct Conditions
Juvenile Instruction No. 2.8	Verdict Form—Termination Of Parental Rights
Juvenile Instruction No. 2.8A	Verdict Form—Termination Of Parental Rights for Failure to Correct Conditions
Juvenile Instruction No. 2.9	Verdict Form — No Termination of Parental Rights

CHAPTER 3
GROUNDS FOR TERMINATION OF PARENTAL RIGHTS

Juvenile Instruction No. 3.1	Abandonment
Juvenile Instruction No. 3.2	Abandoned Infant
Juvenile Instruction No. 3.3	Noncompliance With Placement Agreement
Juvenile Instruction No. 3.4	Failure to Correct Conditions
Juvenile Instruction No. 3.5	Failure To Correct Conditions—The Individualized Service Plan
Juvenile Instruction No. 3.6	Previous Termination of Rights to Another Child
Juvenile Instruction No. 3.7	Failure To Contribute To Support Of Child
Juvenile Instruction No. 3.8	Conviction For Certain Crimes
Juvenile Instruction No. 3.9	Heinous And Shocking Abuse
Juvenile Instruction No. 3.10	Definition Of Abuse
Juvenile Instruction No. 3.11	Definition Of Heinous And Shocking Abuse
Juvenile Instruction No. 3.12	Heinous And Shocking Neglect
Juvenile Instruction No. 3.13	Definition of Neglect
Juvenile Instruction No. 3.14	Definition Of Heinous And Shocking Neglect

Juvenile Instruction No. 3.15	Failure To Protect Child From Heinous And Shocking Abuse
Juvenile Instruction No. 3.16	Failure To Protect Child From Heinous And Shocking Neglect
Juvenile Instruction No. 3.17	Heinous And Shocking Abuse Or Failure To Protect Child From Heinous And Shocking Abuse
Juvenile Instruction No. 3.18	Heinous And Shocking Neglect Or Failure to Protect Child From Heinous And Shocking Neglect
Juvenile Instruction No. 3.19	Abuse Subsequent To Previous Abuse Or Neglect
Juvenile Instruction No. 3.19A	Definition of Failure to Protect
Juvenile Instruction No. 3.20	Child Conceived As A Result Of Rape
Juvenile Instruction No. 3.21	Incarceration Of Parent
Juvenile Instruction No. 3.22	Cognitive Disorder, Incapacity, Or Medical Condition
Juvenile Instruction No. 3.23	Conditions From Previous Deprived Adjudication Have Occurred Again
Juvenile Instruction No. 3.24	Substantial Erosion of Parent-Child Relationship
Juvenile Instruction No. 3.25	Child (4 Years or Older) in Foster Care for Fifteen Months
Juvenile Instruction No. 3.26	Child (Less Than 4 Years Old) in Foster Care for at Least Six Months

CHAPTER 4
MINOR IN NEED OF TREATMENT

Juvenile Instruction No. 4.1	Duties of Jurors—To Be Given Prior To Deliberation
Juvenile Instruction No. 4.2	Statement Of The Case
Juvenile Instruction No. 4.3	Definition Of "Minor In Need of Treatment"
Juvenile Instruction No. 4.4	Definition Of "Mental Illness"
Juvenile Instruction No. 4.5	Definition Of "Inpatient Treatment"
Juvenile Instruction No. 4.6	Expert Witnesses
Juvenile Instruction No. 4.7	Elements Required For Finding That Minor Is In Need Of Treatment
Juvenile Intruction No. 4.8	Burden of Proof—Clear And Convincing Evidence
Juvenile Instruction No. 4.9	Verdict Form—Minor Is In Need Of Treatment
Juvenile Instruction No. 4.10	Verdict Form—Minor Is Not In Need Of Treatment

CHAPTER 5
INDIAN CHILD WELFARE ACT

Juvenile Instruction No. 5.1	Purpose Of Termination Proceeding
Juvenile Instruction No. 5.2	Two Standards For Burden Of Proof For Termination Of Parental Rights
Juvenile Instruction No. 5.3	Grounds For Termination Of Parental Rights
Juvenile Instruction No. 5.4	Instructions For Verdict Forms

Index

Table of Contents

CHAPTER 1
GENERAL INSTRUCTIONS

Instruction No. 1.0	Use of Electronic Devices and Research Prohibited
Instruction No. 1.1	Explanation to Jury Panel of Voir Dire
Instruction No. 1.2	Oath on Voir Dire
Instruction No. 1.2A	Introductory Instructions—Juror Questionnaires
Instruction No. 1.3	Oath Administered to Jury
Instruction No. 1.4	Jury's Duties—Cautionary Instructions—To Be Given After Jury Is Sworn
Instruction No. 1.5	Jury's Duties—Cautionary Instructions—Bias on Account of Race, Religion, etc.
Instruction No. 1.6	Jury's Duties—Cautionary Instructions—Corporation As Party
Instruction No. 1.7	Cautionary Instruction—Note Taking by Jurors
Instruction No. 1.8	Jury's Duties—Introduction to Instructions—To Be Given after the Evidence
Instruction No. 1.8A	Closing Instruction—To be Given After the Evidence
Instruction No. 1.9	Jury's Duties—To Be Given Prior to Deliberation
Instruction No. 1.10	Note Taking by Jurors—To Be Given Prior to Deliberation
Instruction No. 1.10A	Support Animal
Instruction No. 1.12	Verdict Form One Plaintiff, One Defendant
Instruction No. 1.12A	Directions for Verdict Form for One Plaintiff, One Defendant
Instruction No. 1.13	Verdict Form, Counterclaim
Instruction No. 1.13A	Directions for Verdict Form for Counterclaim
Instruction No. 1.14	Deadlocked Jury Charge
Instruction No. 1.20	Statute of Limitations—Affirmative Defense
Instruction No. 1.21	Statute of Limitations—Exception

CHAPTER 2
STATEMENT OF ISSUES

Instruction No. 2.1	The Issues in the Case—No Counterclaim
Instruction No. 2.2	The Issues in the Case—Counterclaim

Instruction No. 2.3 The Issues in the Case—Admitted Liability
Instruction No. 2.4 The Issues in the Case—Uninsured Motorists Coverage
Instruction No. 2.5 The Issues In The Case—Cautionary Instruction

CHAPTER 3
BURDEN OF PROOF—EVIDENCE

Instruction No. 3.1 Burden of Proof—Greater Weight of the Evidence
Instruction No. 3.2 Burden of Proof—Clear and Convincing Evidence
Instruction No. 3.3 No Speculation
Instruction No. 3.4 Presumption-Defined—Use
Instruction No. 3.5 Presumption of Knowledge Based on Duty to Inquire
Instruction No. 3.6 Presumption of Due Care
Instruction No. 3.7 Decedent—Presumption of Due Care
Instruction No. 3.8 Accident Raises No Presumption
Instruction No. 3.9 Flight from Accident As Evidence of Negligence
Instruction No. 3.10 Inference—Permitted—Defined
Instruction No. 3.11 Inference from Failure to Produce Evidence or Witness
Instruction No. 3.11A Inference From Spoliation of Evidence
Instruction No. 3.12 Inference from Failure of Party to Testify
Instruction No. 3.13 Determining Credibility [Believability] of Witness
Instruction No. 3.14 Impeachment of Witness: Prior Conviction
Instruction No. 3.15 Witness Need Not Be Believed
Instruction No. 3.16 Inherently Improbable Testimony
Instruction No. 3.17 Witness Willfully False
Instruction No. 3.18 Party Competent as Witness
Instruction No. 3.19 One Witness Against a Number
Instruction No. 3.20 Credibility of Special Categories of Witnesses
Instruction No. 3.21 Expert Witness
Instruction No. 3.22 Expert Witness—Hypothetical Question
Instruction No. 3.23 Stipulation—Defined—Use
Instruction No. 3.24 Judicial Notice—Defined—Use
Instruction No. 3.25 Direct and Indirect [Circumstantial] Evidence—Defined—Use
Instruction No. 3.26 Presentation of Animations as Visual Aids

CHAPTER 4
INJURY TO PERSON OR PROPERTY

Instruction No. 4.1	Personal Injuries—Adults
Instruction No. 4.2	Personal Injuries—Minor Child
Instruction No. 4.3	Personal Injuries—Minor Child—Measure of Parent's or Guardian's Damages
Instruction No. 4.4	Personal Injuries—Minor Child—Loss of Earnings
Instruction No. 4.5	Loss of Spousal Consortium—Elements of Liability
Instruction No. 4.6	Measure of Damages—Loss of Spousal Consortium
Instruction No. 4.7	Loss of Parental Consortium—Elements of Liability
Instruction No. 4.8	Measure of Damages—Loss of Parental Consortium
Instruction No. 4.9	Measure of Damages—Injury to Spouse
Instruction No. 4.10	Measure of Damages—Aggravations of Pre-existing Conditions
Instruction No. 4.11	Measure of Damages—Medical Malpractice—Loss of Chance
Instruction No. 4.12	Personal Property—Market Value—Not Repairable
Instruction No. 4.13	Personal Property—No Market Value
Instruction No. 4.14	Personal Property—Cost of Repairs—Loss of Use
Instruction No. 4.15	Personal Property—Loss of Use
Instruction No. 4.16	Personal Property—Conversion
Instruction No. 4.17	Effect of Income Tax on Award of Damages
Instruction No. 4.18	Fair Market Value—Definition

CHAPTER 5
DAMAGES

Instruction No. 5.1	Damages Not to Be Inferred
Instruction No. 5.2	Uncertainty As to Amount of Damage
Instruction No. 5.3	Duty to Mitigate Damages—Personal Injury
Instruction No. 5.4	Duty to Mitigate Damages—Property
Instruction No. 5.5	Exemplary or Punitive Damages (Prior Law)
Instruction No. 5.6	Exemplary or Punitive Damages—First Stage
Instruction No. 5.7	Verdict Form, for Plaintiff, Punitive Damages, First Stage
Instruction No. 5.8	Verdict Form, for Defendant, First Stage

Instruction No. 5.9 Exemplary or Punitive Damages—Second Stage
Instruction No. 5.10 Verdict Form, for Plaintiff, Punitive Damages, Second Stage
Instruction No. 5.11 Verdict Form, for Defendant (Second Stage)
Instruction No. 5.12 Mortality Tables—Explanation

CHAPTER 6
LEGAL RELATIONSHIPS

Instruction No. 6.1 Minor—Defined—Right to Sue or Defend
Instruction No. 6.2 Agency—Defined
Instruction No. 6.3 Disclosed, Partially Disclosed or Undisclosed Principal—Defined
Instruction No. 6.4 Employer and Employee—Defined
Instruction No. 6.5 Loaned Employee
Instruction No. 6.6 Loaned Employee—Determination of
Instruction No. 6.7 Scope of [Agency/Employment]
Instruction No. 6.8 Scope of Authority—Defined
Instruction No. 6.9 Incidental or Implied Authority—Defined
Instruction No. 6.10 Implied Authority Based on Business Usage
Instruction No. 6.11 Apparent Authority—Definition and Effect
Instruction No. 6.12 Scope of Authority or Employment—Departure
Instruction No. 6.13 Ratification—Definition and Effect
Instruction No. 6.14 Knowledge of Agent Imputable to Principal
Instruction No. 6.15 Termination of Agent's Authority
Instruction No. 6.16 Employer Liability — Substantial Certainty Test

CHAPTER 7
RESPONDEAT SUPERIOR

Instruction No. 7.1 Principal and Agent or Employer and Employee—Both Parties Sued—Issue As to Relationship and Scope of Authority or Employment—Acts of Agent or Employee As Act of Principal or Employer
Instruction No. 7.2 Principal and Agent or Employer and Employee—Only Principal or Employer Sued—No Issue As to Relationship—Acts of Agent or Employee As Acts of Principal or Employer
Instruction No. 7.3 Principal Employer and Employee—Only Principal or Employer Sued—Issue As to Relationship or Scope of Authority or

Employment—Acts of Agent or Employee As Acts of Principal or Employer
Instruction No. 7.4 Principal and Agent or Employer and Employee—Both Parties Sued—Liability When No Issue As to Relationship or Scope of Authority or Employment
Instruction No. 7.5 Principal and Agent or Employer and Employee—Both Parties Sued—Liability When Issue as to Relationship or Scope of Authority or Employment
Instruction No. 7.6 Joint Venturers—Imputing Negligence Between
Instruction No. 7.7 Act of Corporate Officer or Employee As Act of Corporation

CHAPTER 8
WRONGFUL DEATH

Instruction No. 8.1 Damages for Wrongful Death of an Adult
Instruction No. 8.2 Damages for Wrongful Death of a Minor Child

CHAPTER 9
NEGLIGENCE—COMPARATIVE NEGLIGENCE

Instruction No. 9.1 Negligence—Elements of Liability
Instruction No. 9.2 Negligence Defined
Instruction No. 9.3 Ordinary Care—Defined
Instruction No. 9.4 Child's Capacity for Negligence
Instruction No. 9.4A Children—Standard of Care
Instruction No. 9.5 Volunteer—Duty of Care
Instruction No. 9.6 Direct Cause—Definition
Instruction No. 9.7 Concurrent Causes
Instruction No. 9.8 Intervening Cause—Definition
Instruction No. 9.8A Liability for Additional Injuries By Other Persons
Instruction No. 9.8B Liability for Increased Harm—Products Liability
Instruction No. 9.8C Liability for Increased Harm—Negligence
Instruction No. 9.9 Rescue Doctrine
Instruction No. 9.10 Negligence Per Se—Violation of Statute or Ordinance
Instruction No. 9.11 Conduct in Compliance with Statute or Ordinance
Instruction No. 9.12 Unknowing Violation of Statute or Ordinance

Instruction No. 9.13	Res Ipsa Loquitur—Inference of Negligence
Instruction No. 9.14	Assumption of Risk
Instruction No. 9.15	Negligence of Driver Not Imputable to Passenger
Instruction No. 9.16	Negligence of Parent Not Imputable to Children
Instruction No. 9.17	Comparative Negligence Not a Defense to Willful and Wanton or Intentional Conduct
Instruction No. 9.18	Comparative Negligence: One Defendant—Definition
Instruction No. 9.19	Comparative Negligence: Multiple Defendants—Definition
Instruction No. 9.20	Comparative Negligence; Counterclaim Plead—Definition
Instruction No. 9.21	Comparative Negligence: Non-party Involved—Definition
Instruction No. 9.22	Advice Concerning Color-Coded Verdict Forms
Instruction No. 9.23	Blue Verdict Form, for Plaintiffs—Directions
Instruction No. 9.24	Blue Verdict Form, for Plaintiff—Multiple Defendants—Directions
Instruction No. 9.25	Blue Verdict Form, for Plaintiff: Counterclaim Plead—Directions
Instruction No. 9.26	Blue Verdict Form, for Plaintiff; Non-party Involved—Directions
Instruction No. 9.27	Pink Verdict Form, for One Defendant—Directions
Instruction No. 9.28	Pink Verdict Form, for Multiple Defendants—Directions
Instruction No. 9.29	Pink Verdict Form, for Defendant; Non-party Involved—Directions
Instruction No. 9.30	Pink Verdict Form, for Defendant on Counterclaim—Directions
Instruction No. 9.31	Green Verdict Form, for Neither Plaintiff Nor Defendant—Counterclaim—Directions
Instruction No. 9.32	White Verdict Form, Comparative, One Defendant—Directions
Instruction No. 9.33	White Verdict Form, Comparative, Two Defendants—Directions
Instruction No. 9.34	White Verdict Form, Comparative, Multiple Defendants—Directions
Instruction No. 9.35	White Verdict Form, Comparative, Counterclaim—Directions
Instruction No. 9.36	White Verdict Form, Comparative, Non-party Involved—Directions
Instruction No. 9.37	Blue Verdict Form, for Plaintiff
Instruction No. 9.38	Blue Verdict Form, for Plaintiff; Counterclaim Involved

Instruction No. 9.39	Blue Verdict Form, for Plaintiff; Multiple Defendants
Instruction No. 9.40	Pink Verdict Form, for One Defendant
Instruction No. 9.41	Pink Verdict Form, for Multiple Defendants
Instruction No. 9.42	Pink Verdict Form, for Defendant on Counterclaim
Instruction No. 9.43	Green Verdict Form, for Neither Plaintiff Nor Defendant
Instruction No. 9.44	White Verdict Form, Comparative, One Defendant
Instruction No. 9.45	White Verdict Form, Comparative, Two Defendants
Instruction No. 9.46	White Verdict Form, Comparative, Multiple Defendants
Instruction No. 9.47	White Verdict Form, Comparative, Counterclaim
Instruction No. 9.48	White Verdict Form, Comparative, Non-party Involved
Instruction No. 9.49	White Verdict Form, Medical Malpractice, Loss of Chance
Instruction No. 9.50	Comparative Negligence—One Defendant—Directions
Instruction No. 9.51	Willful and Wanton Conduct—Definition

CHAPTER 10
MOTOR VEHICLES

Instruction No. 10.1	General Duty of Drivers and Pedestrians
Instruction No. 10.2	Duty to Maintain Lookout
Instruction No. 10.3	Duty of Care of Driver Having Right-of-way
Instruction No. 10.4	Duty of Care of Pedestrian or Bicycle Operator Having Right-of-Way
Instruction No. 10.5	Care Required for Safety of Child
Instruction No. 10.6	Duty of Care of Minor Operating Motor Vehicle
Instruction No. 10.7	Duty of Care of Physically Handicapped Driver
Instruction No. 10.8	Right to Assume Others Will Obey the Law
Instruction No. 10.9	Unavoidable Accident
Instruction No. 10.10	Sudden Emergency
Instruction No. 10.11	Rear-End Accident—Presumption of Negligence
Instruction No. 10.12	Brake or Other Equipment Failure
Instruction No. 10.13	Duty of Passenger
Instruction No. 10.14	Dram Shop—Duty of Care
Instruction No. 10.15	Defendant Not Insurer
Instruction No. 10.16	Negligent Entrustment

Instruction No. 10.17 Evidence Of Nonuse Of Seat Belt

CHAPTER 11
PREMISES LIABILITY

Instruction No. 11.1 Duty of Municipality to Maintain Public Ways
Instruction No. 11.2 Duty of Care by User of Public Way
Instruction No. 11.3 Invitee—Defined
Instruction No. 11.4 Duty to Trespasser to Maintain Premises—Elements of Liability
Instruction No. 11.5 Duty to Children—Attractive Nuisance
Instruction No. 11.6 Duty to Children—Attractive Nuisance Doctrine—Ability of Child
Instruction No. 11.7 Duty to Children—In Absence of Attractive Nuisance
Instruction No. 11.8 Licensee—Defined
Instruction No. 11.9 Landlord's Duty to Tenant—In General
Instruction No. 11.9A Lessor's Liability for Injury from a Latent Defect
Instruction No. 11.10 Duty to Invitee to Maintain Premises—Generally
Instruction No. 11.11 Hidden Danger—Definition
Instruction No. 11.12 Open and Obvious Danger
Instruction No. 11.13 Duty to Licensee to Maintain—Premises—Generally
Instruction No. 11.14 Lessor's Liability As Affected by [His/her] Promise to Make Specific Repairs to Premises
Instruction No. 11.15 Liability of Lessor Who Undertakes Repair of Premises

CHAPTER 12
PRODUCTS LIABILITY

Instruction No. 12.1 Manufacturers'/Products Liability—Elements
Instruction No. 12.2 Defective—Defined
Instruction No. 12.3 Unreasonably Dangerous—Defined
Instruction No. 12.4 Direct Cause—Definition
Instruction No. 12.5 Product Defective If No Warning Given
Instruction No. 12.6 Adequacy of Warnings
Instruction No. 12.7 Liability for Injury from Food or Beverage
Instruction No. 12.8 Definition of Substance Which Could Be "Reasonably Expected" to Be Present in a Food or Beverage

Instruction No. 12.9 Affirmative Defense of Misuse of Product
Instruction No. 12.10 Affirmative Defense of Voluntary Assumption of the Risk of a Known Defect
Instruction No. 12.11 Affirmative Defense of Unavoidably Unsafe Product
Instruction No. 12.12 Products Liability—Punitive Damages

CHAPTER 13
LIABILITY FOR DANGEROUS ACTIVITIES AND ANIMALS

Instruction No. 13.1 Ultrahazardous Activities
Instruction No. 13.2 Strict Liability—Wild Animals
Instruction No. 13.3 Negligence—Abnormally Dangerous Animals
Instruction No. 13.4 Dog Bites
Instruction No. 13.5 Animals Running at Large

CHAPTER 14
PROFESSIONAL LIABILITY

Instruction No. 14.1 Standard of Care—Non-specialist
Instruction No. 14.2 Standard of Care—Specialist
Instruction No. 14.3 Alternative Methods of Diagnosis or Treatment
Instruction No. 14.4 Referral of Patient to Another Physician
Instruction No. 14.5 Physician's Liability for Patient Abandonment
Instruction No. 14.6 Joint Duty of Physicians
Instruction No. 14.7 Duty of Patient to Follow Instructions
Instruction No. 14.8 Treatment without Consent of Patient
Instruction No. 14.9 Consent of Patient
Instruction No. 14.10 Informed Consent Required
Instruction No. 14.11 Informed Consent—Physician's Duty
Instruction No. 14.12 Informed Consent—Exceptions to Duty
Instruction No. 14.13 Informed Consent—Causation
Instruction No. 14.14 Res Ipsa Loquitur—Presumption of Negligence—Medical Malpractice
Instruction No. 14.15 Duty of Hospital
Instruction No. 14.16 Standard of Care of Architect—Negligence
Instruction No. 14.17 Standard of Care of Accountant—Negligence
Instruction No. 14.18 Standard of Care of Attorney—Negligence

CHAPTER 15
BAILOR AND BAILEE

Instruction No. 15.1 Bailment—Bailor—Bailee—Defined

Instruction No. 15.2 Bailor Not Liable to Third Persons for Negligence of Bailee
Instruction No. 15.3 Indemnity of Bailee by Bailor—Duty of
Instruction No. 15.4 Gratuitous Bailment—Defined
Instruction No. 15.5 Involuntary Bailment—Defined
Instruction No. 15.6 Involuntary Bailment Is Gratuitous
Instruction No. 15.7 Gratuitous Bailee—Duty of Care
Instruction No. 15.8 Gratuitous Bailee—Voluntary or Involuntary Bailee—When Duties Cease
Instruction No. 15.9 Bailment for Hire—Defined
Instruction No. 15.10 Bailee for Hire—Ordinary Care Required
Instruction No. 15.11 Bailments—Measure of Damages of Bailee to Bailor

CHAPTER 16
MALICIOUS PROSECUTION

Instruction No. 16.1 Malicious Prosecution—Criminal Action—Elements of Liability
Instruction No. 16.2 Malicious Prosecution—Civil Action—Elements of Liability
Instruction No. 16.3 Malicious Prosecution—Probable Cause Defined
Instruction No. 16.4 Merchant's Reasonable Grounds or Probable Cause Defense to Malicious Prosecution/False Imprisonment
Instruction No. 16.5 Malice—Defined
Instruction No. 16.6 Malice—Express or Actual
Instruction No. 16.7 Inferred Malice
Instruction No. 16.8 Lack of Probable Cause Not to Be Inferred from Malice Alone
Instruction No. 16.9 Affirmative Defense—Advice of Counsel
Instruction No. 16.10 Affirmative Defense—Advice of Prosecuting Attorney
Instruction No. 16.11 Actual Damages—Malicious Prosecution

CHAPTER 17
TRESPASS

Instruction No. 17.1 Trespass—Defined

CHAPTER 18
DECEIT

Instruction No. 18.1 False Representation—Elements of Liability

Instruction No. 18.2 Nondisclosure or Concealment—Elements of Liability
Instruction No. 18.3 False Representation—Defined
Instruction No. 18.4 Material Fact—Defined
Instruction No. 18.5 Nondisclosure—Duty to Disclose
Instruction No. 18.6 Deceit Defined and Classified
Instruction No. 18.7 Statements of Future Intentions or Promises
Instruction No. 18.8 Statements About the Future As False Representations
Instruction No. 18.9 Statements of Law As False Representations
Instruction No. 18.10 Statements of Opinion or "Puffing" As False Representation
Instruction No. 18.11 Affirmative Defense—Waiver by Plaintiff Prior to [His/Her] Complete Performance
Instruction No. 18.12 Actual Damages for Deceit

CHAPTER 19
ASSAULT AND BATTERY

Instruction No. 19.1 Assault: Elements of Liability
Instruction No. 19.2 Assault: Apprehension—Defined
Instruction No. 19.3 Intent to Place Another in Apprehension—Defined
Instruction No. 19.4 Assault: Damages
Instruction No. 19.5 Assault: Punitive Damages
Instruction No. 19.6 Battery: Elements of Liability
Instruction No. 19.7 Contact—Defined
Instruction No. 19.8 Intent—Defined
Instruction No. 19.9 Transferred Intent
Instruction No. 19.10 Battery: Damages
Instruction No. 19.11 Battery: Punitive Damages
Instruction No. 19.12 Words Alone Do Not Justify
Instruction No. 19.13 Consent
Instruction No. 19.14 Self-Defense
Instruction No. 19.15 Self-Defense—Force Calculated to Inflict Death or Serious Bodily Injury
Instruction No. 19.16 Right to Use Force

CHAPTER 20
EMOTIONAL DISTRESS

Instruction No. 20.1 Elements of Liability—Intentional Infliction of Emotional Distress

Instruction No. 20.1A Elements of Liability—Negligent Infliction of Emotional Distress
Instruction No. 20.2 Intentionally or Recklessly—Defined
Instruction No. 20.3 Emotional Distress or Pain or Anguish—Defined
Instruction No. 20.4 Actual Damages—Emotional Distress

CHAPTER 21
WRONGFUL DISCHARGE

PART A
PUBLIC POLICY AND BREACH OF EMPLOYMENT CONTRACT

Instruction No. 21.1 Employment at Will
Instruction No. 21.2 Wrongful Discharge—Public Policy Exception—Refusal to Violate Public Policy
Instruction No. 21.3 Wrongful Discharge—Public Policy Exception—Consistent with Public Policy
Instruction No. 21.4 Wrongful Discharge—Public Policy Exception—Employment Discrimination
Instruction No. 21.5 Employee Discharged for Refusing to Violate Public Policy
Instruction No. 21.6 Employee Discharged for Performing Act Consistent with Public Policy
Instruction No. 21.7 Employee Discharged Because of Discrimination
Instruction No. 21.8 Constructive Discharge
Instruction No. 21.9 Significant Factor for Discharge
Instruction No. 21.10 Contractual Limitations on Discharge
Instruction No. 21.11 Wrongful Discharge—Damages
Instruction No. 21.12 Breach of Employment Contract—Damages
Instruction No. 21.13 Duty to Mitigate Damages

PART B
EMPLOYMENT DISCRIMINATION

Instruction No. 21.21 Employment Based Discrimination—Elements
Instruction No. 21.22 Employment Based Discrimination—Retaliation
Instruction No. 21.23 Employment Based Discrimination—Damages

CHAPTER 22
LIABILITY OF INSURERS

Instruction No. 22.1	Insurance Company's Obligation of Good Faith and Fair Dealing
Instruction No. 22.2	Bad Faith—First Party Insurance—Failure to Pay Claim of Insured
Instruction No. 22.3	Bad Faith—Liability Insurer—Failure to Deal Fairly and Act in Good Faith
Instruction No. 22.4	Bad Faith—Damages
Instruction No. 22.5	Exemplary or Punitive Damages—First Stage
Instruction No. 22.6	Verdict Form, for Plaintiff, Punitive Damages (First Stage)
Instruction No. 22.7	Exemplary or Punitive Damages—Second Stage

CHAPTER 23
CONTRACTS

Instruction No. 23.1	Elements of a Claim for Breach of Contract

PART 1
FORMATION OF CONTRACTS

Instruction No. 23.2	Formation of a Contract
Instruction No. 23.3	Form of Contracts
Instruction No. 23.4	Definition of Offer
Instruction No. 23.5	Definition of Acceptance
Instruction No. 23.6	Acceptance (Sale of Goods)
Instruction No. 23.7	Acceptance of Benefits
Instruction No. 23.8	The Requirement of Consideration
Instruction No. 23.9	Modification of Contracts
Instruction No. 23.10	Quasi-contract (Quantum Meruit or Quantum Valebant)

PART 2
INTERPRETATION

Instruction No. 23.11	Interpretation of Contracts—In General
Instruction No. 23.12	Entire Contract
Instruction No. 23.13	Meaning of Words
Instruction No. 23.14	Construction in Favor of Promises
Instruction No. 23.15	Implication of Terms
Instruction No. 23.15A	Workmanlike Manner

Instruction No. 23.16 Construction Against Drafter

PART 3
BREACH

Instruction No. 23.21 Breach of Contract
Instruction No. 23.22 Performance of Conditions Precedent
Instruction No. 23.23 Substantial Performance
Instruction No. 23.24 Excuse of Condition
Instruction No. 23.25A Performance to Satisfaction of Other Party
Instruction No. 23.25B Performance to Satisfaction of Third Party
Instruction No. 23.26 Tender of Performance
Instruction No. 23.27 Divisible Contract
Instruction No. 23.28 Anticipatory Repudiation

PART 4
DEFENSES

Instruction No. 23.31 Lack of Capacity
Instruction No. 23.32 Duress
Instruction No. 23.33 Fraud
Instruction No. 23.34 Undue Influence
Instruction No. 23.35 Mistake
Instruction No. 23.36 Impossibility
Instruction No. 23.37 Commercial Impracticability
Instruction No. 23.38 Prevention of Performance
Instruction No. 23.39 Waiver
Instruction No. 23.40 Release; Substituted Contract; Accord and Satisfaction
Instruction No. 23.41 Rescission

PART 5
REMEDIES

Instruction No. 23.51 General Measure of Damages
Instruction No. 23.52 Uncertainty As to Fact or Amount of Damages
Instruction No. 23.53 Foreseeability of Special Damages
Instruction No. 23.54 Unnecessary Losses (Mitigation)
Instruction No. 23.55 Remedy: Rescission
Instruction No. 23.56 Measure of Damages: Substantial Performance

CHAPTER 24
INTERFERENCE WITH CONTRACT

Instruction No. 24.1 Interference with Contract—Elements

Instruction No. 24.2 Interference with [Prospective] Business Relationship—Elements
Instruction No. 24.3 Interference with Contract—Improper or Unfair Means
Instruction No. 24.4 Intent—Definition
Instruction No. 24.5 Interference with Contract—Damages

CHAPTER 25
CONDEMNATION AND SURFACE DAMAGES ACT

Instruction No. 25.1 Condemnation—Introduction
Instruction No. 25.2 Condemnation—Just Compensation—Full Taking
Instruction No. 25.3 Condemnation—Just Compensation—Partial Taking
Instruction No. 25.4 Condemnation—Just Compensation—Easement
Instruction No. 25.5 Condemnation—Fair Market Value—Definition
Instruction No. 25.6 Condemnation—Evidence of Comparable Sales
Instruction No. 25.7 Condemnation—Verdict—Single Sum Only
Instruction No. 25.11 Surface Damages—Introduction
Instruction No. 25.12 Surface Damages—Measure of Damages

CHAPTER 26
BREACH OF FIDUCIARY DUTY

Instruction No. 26.1 Breach of Fiduciary Duty—Elements of Liability
Instruction No. 26.2 Breach of Fiduciary Duty—Existence of Fiduciary Relationship
Instruction No. 26.3 Breach of Fiduciary Duty—Fiduciary Duty Owed
Instruction No. 26.4 Breach of Fiduciary Duty—Breach Defined
Instruction No. 26.5 Breach of Fiduciary Duty—Damages

CHAPTER 27
CONVERSION

Instruction No. 27.1 Conversion—Elements
Instruction No. 27.2 Conversion—Damages

CHAPTER 28
DEFAMATION AND INVASION OF PRIVACY

Instruction No. 28.1 Defamation—Introductory Instruction

Instruction No. 28.2 Defamation—Elements (Public Figure Plaintiff)
Instruction No. 28.3 Defamation—Elements (Private Figure Plaintiff)
Instruction No. 28.4 Defamation—Affirmative Defense of Fair Comment
Instruction No. 28.5 Defamation—Affirmative Defense of Fair Reporting
Instruction No. 28.6 Defamation—Affirmative Defense of Good Faith
Instruction No. 28.7 Defamation—Affirmative Defense For Statement Made by Another Person
Instruction No. 28.8 Defamation—Affirmative Defense of Qualified Privilege
Instruction No. 28.9 Defamation—Measure of Damages
Instruction No. 28.11 Invasion of Privacy—Introductory Instruction
Instruction No. 28.12 Invasion of Privacy—Elements (Intrusion Upon Seclusion)
Instruction No. 28.13 Invasion of Privacy—Elements (Appropriation of Right of Publicity)
Instruction No. 28.14 Invasion of Privacy—Elements (Publication of Private Facts)
Instruction No. 28.15 Invasion of Privacy—Elements (False Light)
Instruction No. 28.16 Invasion of Privacy—Measure of Damages

CHAPTER 29
TRADE SECRETS

Instruction No. 29.1 Misappropriation of Trade Secrets—Elements
Instruction No. 29.2 Trade Secret—Definition
Instruction No. 29.3 Misappropriation—Definition
Instruction No. 29.4 Improper Means—Definition
Instruction No. 29.5 Misappropriation of Trade Secrets—Measure of Damages

CHAPTER 30
RESIDENTIAL REAL PROPERTY CONDITION DISCLOSURE ACT

Instruction No. 30.1 Residential Real Property—Introduction
Instruction No. 30.2 Residential Real Property—Definition of Defect
Instruction No. 30.3 Residential Real Property—Elements
Instruction No. 30.4 Residential Real Property—Measure of Damages

CHAPTER 31
CONTEMPT OF COURT

Instruction No. 31.1 Contempt of Court—Introduction
Instruction No. 31.2 Contempt of Court—Definition of Willfully
Instruction No. 31.3 Contempt of Court—Burden of Proof
Instruction No. 31.4 Contempt of Court—Closing Instruction
Instruction No. 31.5 Contempt Of Court—Verdict Form

CHAPTER 32
CIVIL FORFEITURE

Instruction No. 32.1 Civil Forfeiture—Introduction
Instruction No. 32.2 Civil Forfeiture—Property Subject to Forfeiture
Instruction No. 32.3 Civil Forfeiture—Presumption that Money is Subject to Forfeiture
Instruction No. 32.4 Civil Forfeiture—Innocent Owner Defense

CHAPTER 33
NUISANCE

Instruction No. 33.1 Nuisance—Introduction
Instruction No. 33.2 Nuisance—Elements
Instruction No. 33.3 Nuisance—Public Nuisance

Index

Table of Contents

CHAPTER 1
GENERAL INSTRUCTIONS

PART A
—PRELIMINARY INSTRUCTIONS

Juvenile Instruction No. 1.0	Use of Electronic Devices and Research Prohibited
Juvenile Instruction No. 1.1	Purpose of Termination Proceeding
Juvenile Instruction No. 1.2	Explanation To Jury Panel Of Voir Dire
Juvenile Instruction No. 1.3	Oath On Voir Dire
Juvenile Instruction No. 1.4	Oath Administered To Jury
Juvenile Instruction No. 1.5	Jury's Duties—Cautionary Instructions—To Be Given After Jury Is Sworn
Juvenile Instruction No. 1.6	Jury's Duties—Cautionary Instructions—Bias On Account Of Race, Religion, Etc.
Juvenile Instruction No. 1.7	Cautionary Instruction—Note Taking By Jurors

PART B
—CONCLUDING INSTRUCTIONS

Juvenile Instruction No. 1.8	Jury's Duties—Introduction To Instructions—To Be Given After The Evidence
Juvenile Instruction No. 1.9	Jury's Duties—To Be Given Prior to Deliberation
Juvenile Instruction No. 1.10	Note Taking By Jurors—To Be Given Prior to Deliberation
Juvenile Instruction No. 1.11	Mandatory Instruction Upon Discharge

CHAPTER 2
GENERAL TERMINATION INSTRUCTIONS

Juvenile Instruction No. 2.1	Duties Of Jurors—To Be Given Prior To Deliberation
Juvenile Instruction No. 2.2	Statement Of The Case

Juvenile Instruction No. 2.3	Expert Witnesses
Juvenile Instruction No. 2.4	Effect Of Termination Of Parental Rights
Juvenile Instruction No. 2.5	Burden Of Proof For Termination Of Parental Rights
Juvenile Instruction No. 2.6	Child Has Been Adjudicated To Be Deprived
Juvenile Instruction No. 2.6A	Reasonable Efforts
Juvenile Instruction No. 2.7	Instructions for Verdict Forms
Juvenile Instruction No. 2.7A	Instructions for Verdict Forms for Failure to Correct Conditions
Juvenile Instruction No. 2.8	Verdict Form—Termination Of Parental Rights
Juvenile Instruction No. 2.8A	Verdict Form—Termination Of Parental Rights for Failure to Correct Conditions
Juvenile Instruction No. 2.9	Verdict Form — No Termination of Parental Rights

CHAPTER 3
GROUNDS FOR TERMINATION OF PARENTAL RIGHTS

Juvenile Instruction No. 3.1	Abandonment
Juvenile Instruction No. 3.2	Abandoned Infant
Juvenile Instruction No. 3.3	Noncompliance With Placement Agreement
Juvenile Instruction No. 3.4	Failure to Correct Conditions
Juvenile Instruction No. 3.5	Failure To Correct Conditions—The Individualized Service Plan
Juvenile Instruction No. 3.6	Previous Termination of Rights to Another Child
Juvenile Instruction No. 3.7	Failure To Contribute To Support Of Child
Juvenile Instruction No. 3.8	Conviction For Certain Crimes
Juvenile Instruction No. 3.9	Heinous And Shocking Abuse
Juvenile Instruction No. 3.10	Definition Of Abuse
Juvenile Instruction No. 3.11	Definition Of Heinous And Shocking Abuse
Juvenile Instruction No. 3.12	Heinous And Shocking Neglect
Juvenile Instruction No. 3.13	Definition of Neglect
Juvenile Instruction No. 3.14	Definition Of Heinous And Shocking Neglect

Juvenile Instruction No. 3.15	Failure To Protect Child From Heinous And Shocking Abuse
Juvenile Instruction No. 3.16	Failure To Protect Child From Heinous And Shocking Neglect
Juvenile Instruction No. 3.17	Heinous And Shocking Abuse Or Failure To Protect Child From Heinous And Shocking Abuse
Juvenile Instruction No. 3.18	Heinous And Shocking Neglect Or Failure to Protect Child From Heinous And Shocking Neglect
Juvenile Instruction No. 3.19	Abuse Subsequent To Previous Abuse Or Neglect
Juvenile Instruction No. 3.19A	Definition of Failure to Protect
Juvenile Instruction No. 3.20	Child Conceived As A Result Of Rape
Juvenile Instruction No. 3.21	Incarceration Of Parent
Juvenile Instruction No. 3.22	Cognitive Disorder, Incapacity, Or Medical Condition
Juvenile Instruction No. 3.23	Conditions From Previous Deprived Adjudication Have Occurred Again
Juvenile Instruction No. 3.24	Substantial Erosion of Parent-Child Relationship
Juvenile Instruction No. 3.25	Child (4 Years or Older) in Foster Care for Fifteen Months
Juvenile Instruction No. 3.26	Child (Less Than 4 Years Old) in Foster Care for at Least Six Months

CHAPTER 4
MINOR IN NEED OF TREATMENT

Juvenile Instruction No. 4.1	Duties of Jurors—To Be Given Prior To Deliberation
Juvenile Instruction No. 4.2	Statement Of The Case
Juvenile Instruction No. 4.3	Definition Of "Minor In Need of Treatment"
Juvenile Instruction No. 4.4	Definition Of "Mental Illness"
Juvenile Instruction No. 4.5	Definition Of "Inpatient Treatment"
Juvenile Instruction No. 4.6	Expert Witnesses
Juvenile Instruction No. 4.7	Elements Required For Finding That Minor Is In Need Of Treatment
Juvenile Intruction No. 4.8	Burden of Proof—Clear And Convincing Evidence
Juvenile Instruction No. 4.9	Verdict Form—Minor Is In Need Of Treatment
Juvenile Instruction No. 4.10	Verdict Form—Minor Is Not In Need Of Treatment

CHAPTER 5
INDIAN CHILD WELFARE ACT

Juvenile Instruction No. 5.1	Purpose Of Termination Proceeding
Juvenile Instruction No. 5.2	Two Standards For Burden Of Proof For Termination Of Parental Rights
Juvenile Instruction No. 5.3	Grounds For Termination Of Parental Rights
Juvenile Instruction No. 5.4	Instructions For Verdict Forms

Index

Table of Contents

CHAPTER 1
INTRODUCTORY INSTRUCTIONS

A
VOIR DIRE

OUJI-CR 1-1 Role of the Juror
OUJI-CR 1-2 Voir Dire Oath
OUJI-CR 1-3 Charge
OUJI-CR 1-4 Fair and Impartial Jury
OUJI-CR 1-5 Examination by the Court
OUJI-CR 1-6 Examination by the Attorneys

B
PRELIMINARY REMARKS

OUJI-CR 1-7 Oath to the Jury
OUJI-CR 1-8 Opening Instruction
OUJI-CR 1-8A Opening Instruction—Duty of Jurors
OUJI-CR 1-9 Notetaking by Jurors
OUJI-CR 1-10 Introductory Instructions—Juror Questionnaires
OUJI-CR 1-11 Defendant's Self Representation

CHAPTER 2
ATTEMPT, CONSPIRACY, PARTIES, ETC.

A
ACCESSORY

OUJI-CR 2-1 Accessory—Introduction
OUJI-CR 2-2 Accessory—Elements
OUJI-CR 2-3 Accessory—Elements of Underlying Crime
OUJI-CR 2-4 Accessory—Definitions

B
AIDING AND ABETTING

OUJI-CR 2-5 Aiding and Abetting—Introduction

OUJI-CR 2-6 Aiding and Abetting—Principal Defined
OUJI-CR 2-7 Aiding and Abetting—Defense of Abandonment
OUJI-CR 2-8 Aiding and Abetting, Defense of Abandonment—Burden of Proof
OUJI-CR 2-9 Aiding and Abetting—Definition

C
ATTEMPT

OUJI-CR 2-10 Attempt—Introduction
OUJI-CR 2-11 Attempt—Elements
OUJI-CR 2-12 Attempt—Perpetrating Act Defined
OUJI-CR 2-13 Attempt—Elements of Underlying Crime
OUJI-CR 2-14 Attempt—Definition
OUJI-CR 2-15 Attempt—Impossibility Unavailable as a Defense

D
CONSPIRACY

OUJI-CR 2-16 Conspiracy—Introduction
OUJI-CR 2-17 Conspiracy—Elements
OUJI-CR 2-18 Conspiracy—Overt Act Defined
OUJI-CR 2-19 Conspiracy—Elements of Underlying Crime
OUJI-CR 2-19A Conspiracy—Co-conspirators Are Jointly Liable
OUJI-CR 2-20 Conspiracy—Defense of Withdrawal
OUJI-CR 2-21 Conspiracy, Defense of Withdrawal—Burden of Proof
OUJI-CR 2-22 Conspiracy—Definitions

E
SOLICITING ANOTHER TO COMMIT MURDER IN THE FIRST DEGREE

F
ATTEMPT OR THREATEN VIOLENCE

OUJI-CR 2-23 Attempt Act of Violence — Elements
OUJI-CR 2-24 Threaten Act of Violence — Elements
OUJI-CR 2-25 Plan to Cause (Serious Bodily Injury)/Death — Elements

TABLE OF CONTENTS

CHAPTER 3
CRIMES AGAINST PUBLIC JUSTICE

A
BRIBERY

OUJI-CR 3-1 Bribery—Introduction

1
OFFERING, GIVING, OR PROMISING

OUJI-CR 3-2 Bribery of Executive Officer—Elements
OUJI-CR 3-3 Bribery of Legislator—Elements
OUJI-CR 3-4 Bribery of Legislator—Elements (Alternate)
OUJI-CR 3-5 Bribery of Public Official—Elements
OUJI-CR 3-6 Bribery of Adjudicatory Official—Elements
OUJI-CR 3-7 Bribery of Athletic Personnel—Elements
OUJI-CR 3-8 Bribery of Witness—Elements
OUJI-CR 3-9 Bribery of Fiduciary—Elements

2
ASKING FOR, AGREEING TO RECEIVE, OR RECEIVING

OUJI-CR 3-10 Bribery by Executive Officer—Elements
OUJI-CR 3-11 Bribery by Legislator—Elements
OUJI-CR 3-12 Bribery by Public Official—Elements
OUJI-CR 3-13 Bribery by Adjudicatory Official—Elements
OUJI-CR 3-14 Bribery by Athletic Personnel—Elements
OUJI-CR 3-15 Bribery by Fiduciary—Elements
OUJI-CR 3-16 Bribery—Definitions

B
PERJURY

OUJI-CR 3-17 Perjury—Introduction
OUJI-CR 3-18 Perjury—Elements
OUJI-CR 3-19 Perjury by Contradictory Statements—Elements
OUJI-CR 3-19A False Statement During Internal Investigation—Elements

C
SUBORNATION OF PERJURY

OUJI-CR 3-20 Subornation of Perjury—Introduction
OUJI-CR 3-21 Subornation of Perjury—Elements
OUJI-CR 3-22 Subornation of Perjury—Perjury Defined

D
CONTEMPT

OUJI-CR 3-23 Contempt (Indirect—Penal)
OUJI-CR 3-24 Violation of Protective Order—Elements
OUJI-CR 3-25 Violation of Protective Order (Enhanced)—Elements
OUJI-CR 3-26 Violation of Protective Order—Degree of Injury

E
REMOVAL OF PUBLIC OFFICER

OUJI-CR 3-27 Removal of Public Officer

F
RACKETEERING

OUJI-CR 3-28 Racketeering—Elements (Conducting or Participating)
OUJI-CR 3-29 Racketeering—Elements (Acquiring or Maintaining an Interest in)
OUJI-CR 3-30 Racketeering—Elements (Investment of Proceeds)
OUJI-CR 3-31 Pattern of Racketeering Activity—Definition
OUJI-CR 3-32 What Constitutes Racketeering Activity
OUJI-CR 3-33 Collection of an Unlawful Debt—Definition
OUJI-CR 3-34 Racketeering—Definitions

G
OTHER CRIMES AGAINST PUBLIC JUSTICE

OUJI-CR 3-35 False Claim against the State
OUJI-CR 3-36 Destruction of Public Records
OUJI-CR 3-37 Destruction of Evidence—Elements
OUJI-CR 3-38 Filing a False/Forged Instrument—Elements
OUJI-CR 3-39 Witness Intimidation—Elements

H
SEX OFFENDERS

OUJI-CR 3-40 Failure to Register as a Sex Offender
OUJI-CR 3-41 Failure to Register as a Violent Offender

CHAPTER 4
CRIMES AGAINST THE PERSON

A
ASSAULT AND BATTERY

OUJI-CR 4-1 Assault and Battery—Introduction
OUJI-CR 4-2 Assault Defined
OUJI-CR 4-3 Battery Defined
OUJI-CR 4-4 Assault and Battery, Shooting with Intent to Kill—Elements
OUJI-CR 4-5 Assault and Battery, Use of Vehicle (Drive by Shooting)—Elements
OUJI-CR 4-6 Assault and Battery—Assault and Battery with a Deadly Weapon—Elements
OUJI-CR 4-6A —Domestic Assault and Battery with a Deadly Weapon—Elements
OUJI-CR 4-7 Assault and Battery by Means or Force Likely to Produce Death—Elements
OUJI-CR 4-8 Any Other Attempt to Kill—Elements
OUJI-CR 4-9 Assault and Battery Resisting the Execution of Legal Process—Elements
OUJI-CR 4-10 Assault with Intent to Kill—Elements
OUJI-CR 4-11 Assault—Definition of Transferred Intent
OUJI-CR 4-12 Assault, Battery, or Assault and Battery with a Dangerous Weapon—Elements
OUJI-CR 4-12A Assault and Battery—Domestic Assault/(Assault and Battery) with a Dangerous Weapon—Elements
OUJI-CR 4-13 Assault and Battery with a Dangerous Weapon by Use of a Firearm—Elements
OUJI-CR 4-14 Assault with Intent to Commit a Felony—Elements
OUJI-CR 4-15 Aggravated Assault and Battery Upon Police or Other State Peace Officer—Elements
OUJI-CR 4-15A Aggravated Assault and Battery upon Police or Other State Peace Officer that Results in Maiming—Elements
OUJI-CR 4-16 Assault or Battery Upon Police or Other State Peace Officer—Elements

OUJI-CR 4-17	Assault and Battery upon Referee, Etc.—Elements
OUJI-CR 4-17A	Assault and Battery upon (School Employee)/Student—Elements
OUJI-CR 4-17B	Aggravated Battery upon School Employee—Elements
OUJI-CR 4-18	Aggravated Assault and Battery upon Department Of (Human Services) Employee—Elements
OUJI-CR 4-18A	Assault and Battery upon Department of Corrections Employee—Elements
OUJI-CR 4-18B	Assault and Battery upon an Employee of a (Facility for Delinquent Children)/(Juvenile Detention Center)/(Juvenile Bureau)—Elements
OUJI-CR 4-18C	Throwing/Transferring/Placing Body Wastes/Fluids upon Government Employee/Contractor—Elements
OUJI-CR 4-19	Assault and Battery upon Court Officer, Etc.—Elements
OUJI-CR 4-20	Assault and Battery upon Emergency Medical Care Provider—Elements
OUJI-CR 4-21	Aggravated Assault and Battery upon Emergency Medical Care Provider—Elements
OUJI-CR 4-22	Interfering with an Emergency Medical Care Provider—Elements
OUJI-CR 4-23	Aggravated Assault and Battery Great Bodily Injury Inflicted—Elements
OUJI-CR 4-23A	Obscene, Threatening, or Harassing Electronic Communications—Elements
OUJI-CR 4-24	Aggravated Assault and Battery Aged or Decrepit Victim—Elements
OUJI-CR 4-25	Assault—Elements
OUJI-CR 4-26	Assault and Battery—Elements
OUJI-CR 4-26A	Assault and Battery—Domestic Abuse—Elements
OUJI-CR 4-26B	Assault and Battery—Domestic Abuse—with Great Bodily Injury—Elements
OUJI-CR 4-26C	— —In Presence of Child—Elements
OUJI-CR 4-26D	— —Strangulation—Elements
OUJI-CR 4-26E	—Domestic Abuse Against Pregnant Woman-Elements
OUJI-CR 4-27	Assault and Battery—Defense of Consent
OUJI-CR 4-28	Assault, Battery, Assault and Battery—Definitions
OUJI-CR 4-29	Stalking—Elements
OUJI-CR 4-30	Stalking in Violation of Court Order—Elements
OUJI-CR 4-31	Stalking—Definitions
OUJI-CR 4-32	Malicious Intimidation or Harassment—Elements
OUJI-CR 4-33	Inciting Imminent Violence—Elements

B
BEATING OR INJURING CHILDREN

OUJI-CR 4-34	Crimes against Children—Introduction
OUJI-CR 4-35	Child Abuse—Elements
OUJI-CR 4-35A	Child Abuse—Use of Ordinary Force by Parent for Discipline
OUJI-CR 4-35B	Child Abuse/Neglect—Affirmative Defense—Use of Prayer for Treatment of Child
OUJI-CR 4-36	Enabling Child Abuse—Elements
OUJI-CR 4-37	Neglect of Child—Elements
OUJI-CR 4-37A	Neglect of Child—Activities Not Constituting Neglect
OUJI-CR 4-38	Enabling Child Neglect—Elements (Causing/Procuring)
OUJI-CR 4-39	Sexual Abuse of Children—Elements
OUJI-CR 4-39A	Sexual Exploitation of Children—Elements
OUJI-CR 4-40	Enabling the Sexual Abuse/Exploitation of Children—Elements
OUJI-CR 4-40A	Omission to Provide for Child—Elements
OUJI-CR 4-40B	Child Endangerment—Elements
OUJI-CR 4-40C	Child Endangerment—Statutory Affirmative Defense
OUJI-CR 4-40D	Crimes against Children—Definitions
OUJI-CR 4-41	Failure to Pay Child Support—Elements
OUJI-CR 4-42	Leaving State to Avoid Child Support—Elements
OUJI-CR 4-43	Neglect of Drug (Alcohol) Dependent Child—Elements
OUJI-CR 4-44	Violation of Child Custody Order—Elements
OUJI-CR 4-45	Violation of Child Custody Order—Defenses—Burden of Proof
OUJI-CR 4-46	Contributing to Delinquency of a Minor—Elements
OUJI-CR 4-47	Contributing to Commission of Felony by a Minor—Elements
OUJI-CR 4-48	Encouraging Street Gang Activity—Elements
OUJI-CR 4-49	Encouraging Minor to Commit Drug-Related Crime—Elements
OUJI-CR 4-50	Encouraging Minor to Be in Need of Supervision—Elements
OUJI-CR 4-51	Contributing to Delinquency of Minors—Definitions
OUJI-CR 4-52	Procuring Minor for Prostitution, Etc.—Elements
OUJI-CR 4-53	Permitting the Procuring of a Minor for Prostitution, Etc.—Elements
OUJI-CR 4-54	Keeping Minor for Prostitution—Elements

OUJI-CR 4-55	Permitting the Keeping of a Minor for Prostitution—Elements
OUJI-CR 4-56	Procuring and Keeping Minor for Prostitution—Definitions
OUJI-CR 4-56A	Loitering by a Person Required to Register as a Sex Offender—Elements
OUJI-CR 4-56B	Aggravated/Habitual Sex Offender in a Park — Elements

[See OUJI-CR 4-147 and OUJI-CR 4-148 for instructions formerly numbered OUJI-CR 4-57 and OUJI-CR 4-58]

OUJI-CR 4-57	Crimes Against Unborn Children—Definition and Limitations
OUJI-CR 4-57A	Limitations on (Injuries to)/(Death of) Unborn Child
OUJI-CR 4-57B	No Prosecution of Mother for Causing Death of Unborn Child
OUJI-CR 4-58	[Reserved]
OUJI-CR 4-58A	Trafficking in Children—Elements (Compensation for Adoptions)
OUJI-CR 4-58A-1	Trafficking in Children—Affirmative Defense for Court Approved Costs and Expenses (Compensation for Adoptions)
OUJI-CR 4-58B	Trafficking in Children—Elements (Accepting Compensation by Others Besides Child-Placing Agencies and Attorneys)
OUJI-CR 4-58B-1	Trafficking in Children—Affirmative Defense for Child-Placing Agencies and Attorneys (Accepting Compensation for Adoptions)
OUJI-CR 4-58C	Trafficking in Children—Elements (Bringing Child Into State or Sending Out of State)
OUJI-CR 4-58C-1	Trafficking in Children—Affirmative Defense for Parents and Guardians (Bringing Child Into State or Sending Out of State)
OUJI-CR 4-58D	Trafficking in Children—Elements (Receiving Money for Adoption with No Intent to Consent to Adoption)
OUJI-CR 4-58E	Trafficking in Children—Elements (Receiving Money for Adoption When Not Pregnant)
OUJI-CR 4-58F-1	Trafficking in Children—Elements (Receiving Money for Adoption Without Disclosure to Other Persons)
OUJI-CR 4-58F-2	Trafficking in Children—Elements (Receiving Money From More Than one Adoptive Family)
OUJI-CR 4-58G	Trafficking in Children—Elements (Advertising for Adoptions)

OUJI-CR 4-58H Trafficking in Children—Elements (Advertising for Placing Child for Adoption)
OUJI-CR 4-58H-1 Trafficking in Children—Affirmative Defense for Favorable Preplacement Home Study Recommendation

C
HOMICIDE

OUJI-CR 4-59 Homicide—Introduction
OUJI-CR 4-60 Homicide—Causation

1
MURDER IN THE FIRST DEGREE

OUJI-CR 4-61 Murder in the First Degree with Malice Aforethought—Elements
OUJI-CR 4-62 Murder in the First Degree—Definition and Explanation of Malice Aforethought
OUJI-CR 4-63 Murder in the First Degree—Proof of Malice Aforethought
OUJI-CR 4-64 Murder in the First Degree by Felony Murder—Elements
OUJI-CR 4-65 Murder in the First Degree by Felony Murder—In the Commission of Defined
OUJI-CR 4-65A Murder in the First Degree Involving Death of Child—Elements
OUJI-CR 4-66 Death Penalty Proceedings—Return of Verdict (First Stage)
OUJI-CR 4-67 Death Penalty Proceedings—Verdict Form (First Stage)
OUJI-CR 4-68 Death Penalty Proceedings—Introduction
OUJI-CR 4-68A Death Penalty—Mental Retardation
OUJI-CR 4-69 Death Penalty Proceedings—Bill of Particulars
OUJI-CR 4-70 Death Penalty Proceedings—Presumption of Innocence
OUJI-CR 4-71 Death Penalty Proceedings—Felony Murder
OUJI-CR 4-72 Death Penalty Proceedings—Aggravating Circumstances
OUJI-CR 4-73 Death Penalty Proceedings—Heinous, Atrocious, Cruel Defined
OUJI-CR 4-74 Death Penalty Proceedings—Continuing Threat to Society Defined
OUJI-CR 4-75 Death Penalty Proceedings—Avoiding Lawful Arrest or Prosecution Defined

OUJI-CR 4-76	Death Penalty Proceedings—Jury's Determination of Aggravating Circumstances
OUJI-CR 4-77	Death Penalty Proceedings—Circumstantial Evidence
OUJI-CR 4-78	Death Penalty Proceedings—Jury's Determination of Mitigating Circumstances
OUJI-CR 4-79	Death Penalty Proceedings—Circumstances Which May Be Mitigating
OUJI-CR 4-80	Death Penalty Proceedings—Weighing Aggravating and Mitigating Circumstances
OUJI-CR 4-81	Death Penalty Proceedings—Aggravating Circumstances Reduced to Writing
OUJI-CR 4-82	Death Penalty Proceedings—Closing Charge
OUJI-CR 4-83	Death Penalty Proceedings—Deadlocked Jury
OUJI-CR 4-83A	Death Penalty—Alternative Responses to Juror Questions About Life Without Possibility of Parole
OUJI-CR 4-84	Death Penalty Proceedings—Verdict Form for Aggravating Circumstances
OUJI-CR 4-85	Death Penalty Proceedings—Death Verdict Form
OUJI-CR 4-86	Death Penalty Proceedings—Life Imprisonment without the Possibility of Parole Verdict Form
OUJI-CR 4-87	Death Penalty Proceedings—Life Imprisonment with the Possibility of Parole Verdict Form
OUJI-CR 4-87A	Death Penalty—Mental Retardation Verdict Form
OUJI-CR 4-87B	Life Without Parole Proceedings — Juveniles
OUJI-CR 4-87B-1	Life Without Parole Proceedings—Juvenile Offender Verdict Form
OUJI-CR 4-87C	Life Without Parole Proceedings—Juvenile Offender—Closing Charge
OUJI-CR 4-87C-1	Life Without Parole Proceedings—Juveniles—Definitions

2
SOLICITING ANOTHER TO COMMIT FIRST-DEGREE MURDER

OUJI-CR 4-88	Soliciting Another to Commit Murder in the First Degree—Introduction
OUJI-CR 4-89	Soliciting Another to Commit Murder in the First Degree—Elements
OUJI-CR 4-90	Soliciting Defined

3
MURDER IN THE SECOND DEGREE

OUJI-CR 4-91 Murder in the Second Degree by Imminently Dangerous Conduct—Elements
OUJI-CR 4-92 Murder in the Second Degree by Felony Murder—Elements
OUJI-CR 4-93 Murder in the Second Degree by Felony Murder—In the Commission of Defined

4
MANSLAUGHTER

OUJI-CR 4-94 Manslaughter in the First Degree by Misdemeanor-Manslaughter—Elements
OUJI-CR 4-95 Manslaughter in the First Degree by Heat of Passion—Elements
OUJI-CR 4-95A Murder in the First Degree—Defense of Heat of Passion
OUJI-CR 4-96 Manslaughter in the First Degree by Dangerous Weapon—Elements
OUJI-CR 4-97 Manslaughter in the First Degree—Requirement for Heat of Passion
OUJI-CR 4-98 Manslaughter in the First Degree—Adequate Provocation Defined
OUJI-CR 4-99 Manslaughter in the First Degree—Passion Defined
OUJI-CR 4-100 Manslaughter in the First Degree—Cooling Time Defined
OUJI-CR 4-101 Manslaughter in the First Degree—Causal Connection Defined
OUJI-CR 4-102 Manslaughter in the First Degree by Resisting Criminal Attempt—Elements
OUJI-CR 4-103 Manslaughter in the Second Degree—Elements
OUJI-CR 4-104 Manslaughter in the Second Degree—Culpable Negligence Defined

5
NEGLIGENT HOMICIDE

OUJI-CR 4-105 Negligent Homicide—Elements
OUJI-CR 4-106 Negligent Homicide—Highway Defined
OUJI-CR 4-107 Negligent Homicide—Reckless Disregard Defined
OUJI-CR 4-108 Homicide—Definitions

D
KIDNAPPING, ABDUCTION, CHILD STEALING

OUJI-CR 4-109	Kidnapping, Abduction, Child Stealing—Introduction
OUJI-CR 4-110	Kidnapping—Elements
OUJI-CR 4-111	Kidnapping for Extortion—Elements
OUJI-CR 4-112	Abduction—Elements
OUJI-CR 4-113	Child Stealing—Elements
OUJI-CR 4-113A	Human Trafficking for Labor—Elements
OUJI-CR 4-113B	Human Trafficking for Commercial Sex—Elements
OUJI-CR 4-113C	Human Trafficking of A Minor for Commercial Sex—Elements
OUJI-CR 4-113D	Human Trafficking—Definitions
OUJI-CR 4-114	Kidnapping, etc.—Definitions

E
MAIMING

OUJI-CR 4-115	Maiming—Introduction
OUJI-CR 4-116	Maiming—Elements
OUJI-CR 4-117	Self-Maiming—Elements
OUJI-CR 4-118	Maiming—Definitions

F
RAPE AND OTHER SEX CRIMES

OUJI-CR 4-119	Rape and Other Sex Crimes—Introduction
OUJI-CR 4-120	Rape in the First Degree—Elements
OUJI-CR 4-121	Spousal Rape in the First Degree—Elements
OUJI-CR 4-122	Rape—Sexual Intercourse Defined
OUJI-CR 4-123	Rape—Whether Victim Was Capable of Giving Legal Consent
OUJI-CR 4-124	Rape in the Second Degree—Elements
OUJI-CR 4-125	Rape by Instrumentation in the First Degree—Elements
OUJI-CR 4-128	Forcible Sodomy—Elements
OUJI-CR 4-129	[Lewd Acts (Molestation) With]/[Indecent Proposals to] a Child under Sixteen—Elements
OUJI-CR 4-130	Sexual Battery—Elements
OUJI-CR 4-131	Indecent Exposure—Elements
OUJI-CR 4-132	Procuring Lewd Exhibition—Elements

OUJI-CR 4-133 Distribution of Pornography—Elements
OUJI-CR 4-134 Solicitation of Minor—Elements
OUJI-CR 4-135 Exhibition of Obscene Material to Minor—Elements
OUJI-CR 4-135A Buying/Possessing/Procuring Child Sexual Abuse Material—Elements
OUJI-CR 4-135B Procurement of Minor for (Child Sexual Abuse)/ Obscene Material—Elements
OUJI-CR 4-135C Possession/Procurement of Child for (Sexual Abuse)/Obscene Material—Elements
OUJI-CR 4-136 Peeping Tom—Elements
OUJI-CR 4-136A Taking Clandestine Photos—Elements
OUJI-CR 4-137 Incest—Elements
OUJI-CR 4-138 Consent
OUJI-CR 4-138A Rape and Sex Crimes—Consent of Minor
OUJI-CR 4-139 Rape and Sex Crimes—Definitions

G
ROBBERY

OUJI-CR 4-140 Robbery—Introduction
OUJI-CR 4-141 Robbery in the First Degree—Elements
OUJI-CR 4-142 Robbery in the Second Degree—Elements
OUJI-CR 4-143 Conjoint Robbery—Elements
OUJI-CR 4-144 Robbery with a Dangerous Weapon—Elements
OUJI-CR 4-145 Attempted Robbery with a Dangerous Weapon—Elements
OUJI-CR 4-146 Robbery—Definitions

H
OTHER CRIMES AGAINST PERSONS

OUJI-CR 4-147 Abuse [By Caretaker] of a Person Entrusted to One's Care—Elements
OUJI-CR 4-147A Verbal Abuse of a Person Entrusted to One's Care—Elements
OUJI-CR 4-148 Abuse by Caretaker/(Other Person)—Definitions

CHAPTER 5
CRIMES AGAINST HABITATION AND PROPERTY

A
ARSON

OUJI-CR 5-1 Arson—Introduction

OUJI-CR 5-2 Arson in the First Degree—Elements
OUJI-CR 5-3 Arson in the First Degree—Inhabited or Occupied Defined
OUJI-CR 5-4 Arson in the Second Degree—Elements
OUJI-CR 5-5 Arson in the Second Degree—Uninhabited or Unoccupied Defined
OUJI-CR 5-6 Arson in the Third Degree (1403(A))—Elements
OUJI-CR 5-7 Arson in the Third Degree (Insurance, Section 1403(B))—Elements
OUJI-CR 5-8 Arson in the Fourth Degree (1404(A))—Elements
OUJI-CR 5-9 Arson in the Fourth Degree (1404(B))—Elements
OUJI-CR 5-9A Endangerment of Life by Arson—Elements
OUJI-CR 5-10 Arson—Definitions

B
BURGLARY AND ILLEGAL ENTRY

OUJI-CR 5-11 Burglary—Introduction
OUJI-CR 5-12 Burglary in the First Degree—Elements
OUJI-CR 5-13 Burglary in the Second Degree—Elements
OUJI-CR 5-14 Burglary in the Second Degree (Vending Machines)—Elements
OUJI-CR 5-14A Burglary in the Third Degree—Elements
OUJI-CR 5-15 Burglary by the Use of Explosives—Elements
OUJI-CR 5-16 Illegal Entry—Elements
OUJI-CR 5-17 Breaking and Entering without Permission—Elements
OUJI-CR 5-18 Burglary—Definitions

C
CONCEALING STOLEN PROPERTY (SEE RECEIVING STOLEN PROPERTY)

D
EMBEZZLEMENT

OUJI-CR 5-19 Embezzlement—Introduction
OUJI-CR 5-20 Embezzlement (Appropriating)—Elements
OUJI-CR 5-21 Embezzlement (Secreting)—Elements
OUJI-CR 5-22 Embezzlement (Appropriating, Section 1453)—Elements
OUJI-CR 5-23 Embezzlement (Appropriating, Section 1454)—Elements

OUJI-CR 5-24 Embezzlement (Secreting, Section 1454)—Elements
OUJI-CR 5-25 Embezzlement (Appropriating, Section 1455)—Elements
OUJI-CR 5-26 Embezzlement (Secreting, Section 1455)—Elements
OUJI-CR 5-27 Embezzlement (Appropriating, Section 1456)—Elements
OUJI-CR 5-28 Embezzlement (Secreting, Section 1456)—Elements
OUJI-CR 5-29 Embezzlement by Public Officer—Elements
OUJI-CR 5-30 Embezzlement—Definitions

E
EXTORTION

OUJI-CR 5-31 Extortion—Introduction
OUJI-CR 5-32 Felony Extortion/(Attempted Extortion)—Elements
OUJI-CR 5-33 Extortion—Threat Defined
OUJI-CR 5-34 Misdemeanor Extortion—Elements
OUJI-CR 5-35 Felony Extortion by Letter—Elements
OUJI-CR 5-36 Extortion—Definition

F
FALSE PRETENSE, OBTAINING PROPERTY BY

OUJI-CR 5-37 False Pretense—Introduction
OUJI-CR 5-38 False Pretense (Felony, Section 1541.2)—Elements
OUJI-CR 5-39 Attempted False Pretense (Felony, Section 1541.2)—Elements
OUJI-CR 5-40 False Pretense (Felony, Section 1541.3)—Elements
OUJI-CR 5-41 False Pretense (Misdemeanor, Section 1541.1)—Elements
OUJI-CR 5-42 Attempted False Pretense (Misdemeanor, Section 1541.1)—Elements
OUJI-CR 5-43 False or Bogus Check Defined
OUJI-CR 5-44 False Pretense (Felony, Section 1542)—Elements
OUJI-CR 5-45 False Pretense (Felony, Section 1542, Alternate)—Elements
OUJI-CR 5-46 False Pretense for Alleged Charitable Purposes (Felony)—Elements
OUJI-CR 5-47 False Pretense for Alleged Charitable Purposes (Felony, Alternate)—Elements
OUJI-CR 5-48 False Pretense by False Negotiable Paper (Felony)—Elements

OUJI-CR 5-49 False Pretense by False Negotiable Paper (Felony, Alternate)—Elements
OUJI-CR 5-50 False Personation—Elements
OUJI-CR 5-51 Assault While Masked—Elements
OUJI-CR 5-52 False Claim for Insurance—Elements
OUJI-CR 5-53 Home Repair Fraud—Elements
OUJI-CR 5-54 Credit/Debit Card Theft—Elements
OUJI-CR 5-55 Possession of Credit/Debit Card of Another—Elements
OUJI-CR 5-56 False Pretense—Definitions

G
FORGERY

OUJI-CR 5-57 Forgery—Introduction

1
FORGERY IN THE FIRST DEGREE

OUJI-CR 5-58 Forgery in the First Degree (Wills, Deeds)—Elements
OUJI-CR 5-59 Forgery in the First Degree (Public Securities)—Elements

2
FORGERY IN THE SECOND DEGREE

OUJI-CR 5-60 Forgery in the Second Degree (Seals)—Elements
OUJI-CR 5-61 Forgery in the Second Degree (Court Documents, Etc.)—Elements
OUJI-CR 5-62 Forgery in the Second Degree (Public Transportation Tickets)—Elements
OUJI-CR 5-63 Forgery in the Second Degree (Stock Certificates)—Elements
OUJI-CR 5-64 Forgery in the Second Degree (Evidence of Debt)—Elements
OUJI-CR 5-65 Forgery in the Second Degree (Counterfeiting Coins, Section 1583)—Elements
OUJI-CR 5-66 Forgery in the Second Degree (Counterfeiting Coins, Section 1584)—Elements
OUJI-CR 5-67 Forgery in the Second Degree (Counterfeiting Stamps)—Elements
OUJI-CR 5-68 Forgery in the Second Degree (Counterfeiting Bank Note Plates)—Elements

TABLE OF CONTENTS

OUJI-CR 5-69	Forgery in the Second Degree (Uttering Notes, Etc.)—Elements
OUJI-CR 5-70	Forgery in the Second Degree (Uttering Public Transportation Tickets)—Elements
OUJI-CR 5-71	Forgery in the Second Degree (Uttering Stamps)—Elements
OUJI-CR 5-72	Forgery in the Second Degree (Uttering in General)—Elements
OUJI-CR 5-73	Forgery in the Second Degree (Uttering Stock Certificates)—Elements
OUJI-CR 5-74	Forgery in the Second Degree (Uttering Canceled Stock Certificates)—Elements
OUJI-CR 5-75	Forgery in the Second Degree (Uttering an Evidence of Debt)—Elements
OUJI-CR 5-76	Forgery in the Second Degree (Possession of Bank Note Plates)—Elements
OUJI-CR 5-77	Forgery in the Second Degree (Possession of Bank Note Plate Impressions)—Elements
OUJI-CR 5-78	Forgery (Possession of Evidence of a Debt)—Elements
OUJI-CR 5-79	Forgery (Possession in General)—Elements
OUJI-CR 5-80	Forgery in the Second Degree (Possession of Counterfeit Coins)—Elements
OUJI-CR 5-81	Forgery in the Second Degree (Falsifying Records)—Elements
OUJI-CR 5-82	Forgery in the Second Degree (Falsifying Entries to Recorded Documents)—Elements
OUJI-CR 5-83	Forgery in the Second Degree (Falsifying by Abstracter)—Elements
OUJI-CR 5-84	Forgery in the Second Degree (Falsifying Entries in Book of Accounts)—Elements
OUJI-CR 5-85	Forgery in the Second Degree (Falsifying Entries in Corporate Book of Accounts)—Elements
OUJI-CR 5-86	Forgery in the Second Degree (Falsifying Entries in Book of Accounts by Officer, Member, Employee)—Elements
OUJI-CR 5-87	Forgery in the Second Degree (Falsifying by Making Entries in Book of Accounts by Officer, Member, Employee)—Elements
OUJI-CR 5-88	Forgery in the Second Degree (Falsifying by Keeping False Account)—Elements
OUJI-CR 5-89	Forgery in the Second Degree (False Certification)—Elements
OUJI-CR 5-90	Forgery in the Second Degree (Falsely Obtaining Signatures)—Elements
OUJI-CR 5-90A	Determination of Value

OUJI-CR 5-91 Forgery—Definitions

H
LARCENY

OUJI-CR 5-92 Larceny—Introduction
OUJI-CR 5-93 Grand Larceny—Elements
OUJI-CR 5-94 Petit Larceny—Elements
OUJI-CR 5-95 Grand Larceny in a Dwelling or Vessel—Elements
OUJI-CR 5-96 Grand Larceny in the Nighttime—Elements
OUJI-CR 5-97 Larceny from the House—Elements
OUJI-CR 5-98 Larceny of (Domestic Animals)/(An Implement of Husbandry)—Elements
OUJI-CR 5-99 Larceny of Domestic Fowls—Elements
OUJI-CR 5-100 Larceny of Automotive Driven Vehicle—Elements
OUJI-CR 5-101 Grand Larceny of Oil Products—Elements
OUJI-CR 5-102 Petit Larceny of Oil Products—Elements
OUJI-CR 5-103 Larceny of Merchandise—Elements
OUJI-CR 5-104 [Reserved]
OUJI-CR 5-105 Entering with the Intent to Steal Copper—Elements
OUJI-CR 5-105A [Grand] Larceny of Lost Property—Elements
OUJI-CR 5-106 Larceny—Definitions

I
MALICIOUS MISCHIEF

OUJI-CR 5-107 Malicious Mischief—Introduction
OUJI-CR 5-108 Malicious Mischief (Section 1760)—Elements
OUJI-CR 5-109 Malicious Mischief—Definitions

J
RECEIVING/CONCEALING STOLEN PROPERTY

OUJI-CR 5-110 Receiving/Concealing Stolen Property—Introduction
OUJI-CR 5-111 Receiving Stolen Property—Elements
OUJI-CR 5-112 Receiving Stolen Property—Explanation of Possession
OUJI-CR 5-113 Concealing Stolen Property—Elements
OUJI-CR 5-114 Receiving/Concealing Stolen Property—Definitions
OUJI-CR 5-114A Receiving Unlawful Proceeds—Elements

K
ROBBERY

[See OUJI-CR 4-140 through OUJI-CR 4-146]

L
UNLAWFUL POSSESSION OR USE OF A VEHICLE

OUJI-CR 5-115	Unlawful Possession or Use of Vehicle—Introduction
OUJI-CR 5-116	Unauthorized Use of Vehicle—Elements
OUJI-CR 5-116A	Unauthorized Use of Implement of Husbandry—Elements
OUJI-CR 5-117	Possession of Stolen Vehicle—Elements
OUJI-CR 5-117A	Possession of Stolen Implement of Husbandry—Elements
OUJI-CR 5-118	Tampering with Vehicle—Elements
OUJI-CR 5-119	Interfering with Vehicle—Elements
OUJI-CR 5-120	Joyriding—Elements
OUJI-CR 5-121	Unauthorized Use of Vehicle—Definition

M
AUTOMOBILE TITLE CRIMES

OUJI-CR 5-122	Removing Vehicle Identification Numbers—Elements
OUJI-CR 5-123	Giving Wrong Description of Vehicle in Application for Registration—Elements
OUJI-CR 5-124	Possession of a Vehicle with a Removed/Falsified Identification Number—Elements
OUJI-CR 5-125	Making False Statement in an Application for a Certificate of Title—Elements
OUJI-CR 5-126	Transfer of Stolen Vehicle—Elements

N
SECURITIES ACT

OUJI-CR 5-127	Offering/Sale of Unregistered Securities—Elements
OUJI-CR 5-128	The Defense of Exemption
OUJI-CR 5-129	Burden of Investigation

O
COMPUTER CRIMES

OUJI-CR 5-130 Computer Crimes—Elements

CHAPTER 6
DRUG AND PUBLIC SAFETY OFFENSES

A
DRUG OFFENSES

OUJI-CR 6-1 Drug Offenses—Introduction, General
OUJI-CR 6-2 Drug Offenses: Distributing—Elements
OUJI-CR 6-3 Drug Offenses: Manufacturing—Elements
OUJI-CR 6-3A Drug Offenses: Possession of Precursor Substances with Intent to Manufacture
OUJI-CR 6-3B Drug Offenses: Endeavoring to Manufacture—Elements
OUJI-CR 6-3C Drug Offenses: Aggravated Manufacturing—Elements
OUJI-CR 6-4 Drug Offenses: Possession with Intent to Manufacture/Distribute—Elements
OUJI-CR 6-5 Drug Offenses: Distributing/Manufacturing under Sec. 2-401(F)—Elements
OUJI-CR 6-6 Drug Offenses: Possession—Elements
OUJI-CR 6-7 Drug Offenses: Drug Paraphernalia—Elements
OUJI-CR 6-8 Drug Offenses—Defense of Possession for Religious Use
OUJI-CR 6-9 Drug Offenses: Cultivation—Elements
OUJI-CR 6-10 Drug Offenses—Marijuana Defined
OUJI-CR 6-11 Drug Offenses—Drug Possession Defined
OUJI-CR 6-12 Maintaining a Place Where Drugs Are Kept—Elements
OUJI-CR 6-13 Trafficking in Illegal Drugs—Elements
OUJI-CR 6-14 Drug Offenses: Public Drunkenness/Intoxication—Introduction
OUJI-CR 6-15 (Public Drunkenness/Intoxication)/(Disturbing the Peace)—Elements
OUJI-CR 6-16 Drug Offenses—Definitions

B
VEHICLE RELATED OFFENSES

1
DRIVING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE, ETC.

OUJI-CR 6-17	Driving a Motor Vehicle While under the Influence, Etc.—Introduction
OUJI-CR 6-18	Driving a Motor Vehicle (While under the Influence of Alcohol)/(with Alcohol Concentration of .08 or More)—Elements
OUJI-CR 6-18A	Aggravated Driving Under the Influence—Elements
OUJI-CR 6-19	Driving a Motor Vehicle While under the Influence of an Intoxicating Substance—Elements
OUJI-CR 6-20	Being in Actual Physical Control of a Motor Vehicle While under the [Combined] Influence of Alcohol/(an Intoxicating Substance)—Elements
OUJI-CR 6-21	Being Involved in Accident While under the Influence of Alcohol/(An Intoxicating Substance)—Elements
OUJI-CR 6-22	Causing Accident While under the Influence of Alcohol/(an Intoxicating Substance)—Elements
OUJI-CR 6-23	Driving a Motor Vehicle with Impaired Ability—Elements
OUJI-CR 6-24	Driving **(under the Influence)/(While Impaired)**—Chemical Test Evidence Defined
OUJI-CR 6-25	Leaving the Scene of an Accident with (Personal Injury)/Death—Elements
OUJI-CR 6-26	Failure to Submit to Drug and Alcohol Testing After an Accident Involving Immediate Death—Elements
OUJI-CR 6-27	Driving under Suspension/Revocation—Elements

2
ELUDING/(ATTEMPTING TO ELUDE) A (PEACE OFFICER)/(GAME RANGER)

OUJI-CR 6-28	Eluding/(Attempting to Elude) a (Peace Officer)/(Game Ranger)—Introduction
OUJI-CR 6-29	Eluding/(Attempting to Elude) a (Peace Officer)/(Game Ranger)—Elements
OUJI-CR 6-30	Causing an Accident (Endangering Another) While Eluding/(Attempting to Elude) an Officer—Elements

3
RECKLESS DRIVING

OUJI-CR 6-31 Reckless Driving—Introduction
OUJI-CR 6-32 Reckless Driving—Elements

4
SPEEDING

OUJI-CR 6-33 Speeding—Introduction
OUJI-CR 6-34 Speeding—Elements
OUJI-CR 6-35 Vehicle Related Offenses—Definitions

C
WEAPONS OFFENSES

1
UNLAWFUL POSSESSION OF A FIREARM

OUJI-CR 6-36 Unlawful Possession of a Firearm—Introduction
OUJI-CR 6-37 Unlawful Possession of a Firearm—Elements
OUJI-CR 6-37A Transporting a Loaded Firearm—Elements
OUJI-CR 6-38 Possessing a Weapon While Committing or Attempting to Commit a Felony—Elements
OUJI-CR 6-39 Possessing a Firearm after a Felony Conviction—Elements
OUJI-CR 6-39A Possession of a Firearm/Weapon by a Child—Elements
OUJI-CR 6-39B Possession of a Firearm by a Child—Defense
OUJI-CR 6-40 Possessing a Firearm after a Felony Conviction—Defense of Lack of Knowledge

2
POINTING/DISCHARGING A FIREARM

OUJI-CR 6-41 Pointing a Firearm—Introduction
OUJI-CR 6-42 Pointing a Firearm—Elements
OUJI-CR 6-43 Pointing a Firearm—Lawful Cause Defined
OUJI-CR 6-44 Reckless Conduct with a Firearm—Elements
OUJI-CR 6-44A Discharging a Firearm At/Into a Building
OUJI-CR 6-45 Weapons Offenses—Definitions

D
RESISTING AND ESCAPE

1
RESISTING A/AN PEACE/EXECUTIVE OFFICER

OUJI-CR 6-46 Resisting a Peace or Executive Officer—Introduction
OUJI-CR 6-47 Resisting a/an Peace/Executive Officer—Elements
OUJI-CR 6-48 Obstructing an Officer in the Performance of His/Her Official Duties—Elements
OUJI-CR 6-49 Resisting a Peace or Executive Officer—Definitions

2
ESCAPE FROM LAWFUL CUSTODY

OUJI-CR 6-50 Escape from Lawful Custody—Introduction
OUJI-CR 6-51 Escape from a Peace Officer—Elements
OUJI-CR 6-52 Attempted Escape from a Peace Officer—Elements
OUJI-CR 6-53 Escape from Penal Institution—Elements
OUJI-CR 6-53A Escape from Juvenile Detention Facility—Elements
OUJI-CR 6-54 Unauthorized Entry into Penal Institution—Elements
OUJI-CR 6-55 (Possession of)/Bringing Contraband in/Into Prison/Jail—Elements
OUJI-CR 6-56 Jumping Bail—Elements
OUJI-CR 6-56A Removal of Electronic Monitoring Device—Elements

3
RIOT

OUJI-CR 6-57 Riot—Introduction
OUJI-CR 6-58 Participating in Riot—Elements
OUJI-CR 6-58A Participating in Riot—Punishment
OUJI-CR 6-59 Incitement to Riot—Elements
OUJI-CR 6-60 Terrorism—Elements
OUJI-CR 6-61 Terrorism Hoax—Elements
OUJI-CR 6-62 Terrorism—Definitions

CHAPTER 7
OTHER CRIMES

A
HARMING ANIMALS

OUJI-CR 7-1 Harming Animals—Introduction
OUJI-CR 7-2 Cruelty to Animals—Elements
OUJI-CR 7-3 Cruelty to Animals—Defense
OUJI-CR 7-4 (Mistreatment of)/(Interference with) Police Dog/Horse—Elements
OUJI-CR 7-5 (Mistreatment of)/(Interference with) Police Dog/Horse During Commission of Crime—Elements
OUJI-CR 7-6 Killing/Beating/Torturing Etc. Police Dog/Horse—Elements
OUJI-CR 7-7 Killing/Beating/Torturing Etc. Police Dog/Horse During Commission of Crime—Elements

B
OPERATING POLICE FREQUENCY RADIO

OUJI-CR 7-8 Operating Police Frequency Radio—Introduction
OUJI-CR 7-9 Operating Police Frequency Radio—Elements
OUJI-CR 7-10 [Reserved]

C
USING A COMMUNICATIONS FACILITY TO COMMIT A FELONY

OUJI-CR 7-11 Using a Communications Facility to Commit a Felony—Introduction
OUJI-CR 7-12 Using a Communications Facility to Commit a Felony—Elements

CHAPTER 8
DEFENSES

A
DEFENSE OF ANOTHER

OUJI-CR 8-1 Defense of Another—Introduction
OUJI-CR 8-2 Defense of Another—Justifiable Use of Deadly Force

OUJI-CR 8-3 Defense of Another—Justifiable Use of Force to Prevent Offense
OUJI-CR 8-4 Defense of Another—Justifiable Use of Nondeadly Force
OUJI-CR 8-5 Defense of Another—Burden of Proof
OUJI-CR 8-6 Defense of Another—When Defense Not Available
OUJI-CR 8-7 Defense of Another—Defense Reestablished
OUJI-CR 8-8 Defense of Another—When Defense Available
OUJI-CR 8-9 Defense of Another—Aggressor Defined
OUJI-CR 8-10 Defense of Another—When Person Aided Is a Trespasser
OUJI-CR 8-11 Defense of Another—Trespasser Defined
OUJI-CR 8-12 Defense of Another—Definitions

B
DEFENSE OF PROPERTY

OUJI-CR 8-13 Defense of Property—Introduction
OUJI-CR 8-14 Defense of Property—Justifiable Use of Deadly Force in Defense of Habitation
OUJI-CR 8-15 Defense of Person—Justifiable Use of Deadly Force Against Intruder
OUJI-CR 8-15A Defense of Person—Right to Stand Your Ground
OUJI-CR 8-16 Defense of Property—Justifiable Use of Nondeadly Force
OUJI-CR 8-17 Defense of Property—Burden of Proof
OUJI-CR 8-18 Defense of Property—Definitions

C
DEFENSE OF DURESS

OUJI-CR 8-19 Defense of Duress—Introduction
OUJI-CR 8-20 Defense of Duress—Duress Defined
OUJI-CR 8-21 Defense of Duress—Limitation on Defense
OUJI-CR 8-22 Defense of Duress—Burden of Proof
OUJI-CR 8-23 Defense of Duress—Definition

D
DEFENSE OF ENTRAPMENT

OUJI-CR 8-24 Defense of Entrapment—Introduction
OUJI-CR 8-25 Defense of Entrapment—Requirements
OUJI-CR 8-26 Defense of Entrapment—Burden of Proof

E
DEFENSE OF EXCUSABLE HOMICIDE

OUJI-CR 8-27 Defense of Excusable Homicide—Introduction
OUJI-CR 8-28 Defense of Excusable Homicide—Accident and Misfortune—Lawful Act
OUJI-CR 8-29 Defense of Excusable Homicide—Accident and Misfortune—No undue Advantage Taken
OUJI-CR 8-30 Defense of Excusable Homicide—Burden of Proof

F
DEFENSE OF MENTAL ILLNESS

OUJI-CR 8-31 Defense of Mental Illness—Introduction
OUJI-CR 8-31A Defense of Mental Illness — Guilty with Mental Defect
OUJI-CR 8-32 Defense of Mental Illness—Requirements
OUJI-CR 8-33 Defense of Mental Illness—Guilty With Mental Defect
OUJI-CR 8-33A Defense of Mental Illness — Consideration
OUJI-CR 8-33B Defense of Mental Illness—Burden of Proof
OUJI-CR 8-33C Defense of Mental Illness—Explanation of Consequences of Verdict of Not Guilty by Reason of Mental Illness and Guilty with Mental Defect
OUJI-CR 8-33D Defense of Mental Illness—Definitions
OUJI-CR 8-34 Defense of Mental Illness—Form of Verdict

G
DEFENSE OF VOLUNTARY INTOXICATION

OUJI-CR 8-35 Defense of Voluntary Intoxication—Introduction
OUJI-CR 8-36 Defense of Voluntary Intoxication—Requirements
OUJI-CR 8-37 Defense of Voluntary Intoxication by Narcotics, Drugs, Hallucinogenic Substances
OUJI-CR 8-38 Defense of Voluntary Intoxication—Burden of Proof
OUJI-CR 8-39 Defense of Voluntary Intoxication—Definitions

H
DEFENSE OF INVOLUNTARY INTOXICATION

OUJI-CR 8-40 Defense of Involuntary Intoxication—Introduction
OUJI-CR 8-41 Defense of Involuntary Intoxication—Requirements

OUJI-CR 8-42 Involuntary Intoxication Defined
OUJI-CR 8-43 Defense of Involuntary Intoxication by Narcotics, Drugs, Hallucinogenic Substances
OUJI-CR 8-44 Defense of Involuntary Intoxication—Burden of Proof

I
DEFENSE OF SELF-DEFENSE

OUJI-CR 8-45 Defense of Self-Defense—Introduction
OUJI-CR 8-46 Defense of Self-Defense—Justifiable Use of Deadly Force
OUJI-CR 8-47 Defense of Self-Defense—Battered Women Cases
OUJI-CR 8-48 Defense of Self-Defense Justifiable Use of Nondeadly Force
OUJI-CR 8-49 Defense of Self-Defense—Burden of Proof
OUJI-CR 8-50 Defense of Self-Defense—When Defense Not Available
OUJI-CR 8-51 Defense of Self-Defense—Defense Reestablished
OUJI-CR 8-52 Defense of Self-Defense—No Duty to Retreat
OUJI-CR 8-53 Defense of Self-Defense—Aggressor Defined
OUJI-CR 8-54 Defense of Self-Defense—Availability to a Trespasser
OUJI-CR 8-55 Defense of Self-Defense—Trespasser Defined
OUJI-CR 8-56 Defense of Self-Defense—Definitions

J
DEFENSE OF ALIBI

OUJI-CR 8-57 Defense of Alibi—Requirements

K
DEFENSE OF CONSENT

OUJI-CR 8-58 Burglary—Defense of Consent
OUJI-CR 8-59 Kidnapping—Defense of Consent
OUJI-CR 8-60 [Reserved]

L
DEFENSE OF VICTIM OF HUMAN TRAFFICKING

OUJI-CR 8-61 Defense—Victim of Human Trafficking

CHAPTER 9
EVIDENCE

OUJI-CR 9-1 Evidence—Inferences

OUJI-CR 9-2	Direct Evidence Defined
OUJI-CR 9-3	Circumstantial Evidence Defined
OUJI-CR 9-4	Direct and Circumstantial Evidence—Weight
OUJI-CR 9-5	CIRCUMSTANTIAL EVIDENCE
OUJI-CR 9-6	Evidence—Separate Consideration for Each Defendant
OUJI-CR 9-6A	Evidence—Separate Consideration for Each Charge
OUJI-CR 9-7	Separate Defendants
OUJI-CR 9-8	Evidence—Flight
OUJI-CR 9-9	Evidence—Proof of other Crimes
OUJI-CR 9-10	Evidence—Evidence of Defendant's Character
OUJI-CR 9-10A	Evidence—Evidence of Defendant's Prior Sex Crimes
OUJI-CR 9-11	Evidence—Evidence of Deceased's Character
OUJI-CR 9-12	Evidence—Voluntary Statement by Defendant
OUJI-CR 9-13	Evidence—Necessity for Corroboration of Confessions
OUJI-CR 9-14	Evidence—Necessity for Corroboration in Homicide Case
OUJI-CR 9-15	Evidence—Exculpatory Statement of Fact of the Defendant
OUJI-CR 9-16	Evidence—Use of Confession or Admission with Multiple Defendants
OUJI-CR 9-17	Evidence—Statements and Acts of Coconspirators
OUJI-CR 9-18	Evidence—Dying Declarations
OUJI-CR 9-19	Evidence—Eyewitness Identifications
OUJI-CR 9-20	Evidence—Impeachment by Prior Inconsistent Statements
OUJI-CR 9-21	Evidence—Impeachment by Prior Bad Acts
OUJI-CR 9-22	Evidence—Impeachment of a Witness by former Conviction
OUJI-CR 9-23	Evidence—Impeachment of a Defendant by former Conviction
OUJI-CR 9-24	Evidence—Right of Attorney to Interview Witnesses
OUJI-CR 9-25	Evidence—Use of Accomplice Testimony
OUJI-CR 9-26	Evidence—Accomplice Defined
OUJI-CR 9-27	Evidence—Corroborating Evidence Defined
OUJI-CR 9-28	Evidence—Corroborating Evidence Needed for Accomplice Testimony
OUJI-CR 9-29	Evidence—Determination of Accomplice Status by Jury
OUJI-CR 9-30	Evidence—Necessity of Corroboration Where Court Determines Witness is an Accomplice
OUJI-CR 9-31	Evidence—When Corroboration by Accomplice is Insufficient
OUJI-CR 9-32	Evidence—Determining When Corroboration by Accomplice is Sufficient

OUJI-CR 9-33 Evidence—Use of Coconspirator Testimony
OUJI-CR 9-34 Evidence—Coconspirator Defined
OUJI-CR 9-35 Evidence—Corroborative Evidence Needed for Coconspirator Testimony
OUJI-CR 9-36 Evidence—Determination of Coconspirator Status by Jury
OUJI-CR 9-37 Evidence—Necessity of Corroboration When Court Determines Witness Is a Coconspirator
OUJI-CR 9-38 Evidence—When Corroboration by Coconspirator Is Insufficient
OUJI-CR 9-39 Evidence—Determining When Corroboration by Coconspirator Is Sufficient
OUJI-CR 9-40 Evidence—Corroboration of Testimony in Rape Prosecution
OUJI-CR 9-41 Evidence—Credibility of Defendant as a Witness
OUJI-CR 9-42 Evidence—Credibility of Opinion Witnesses
OUJI-CR 9-42A Evidence—Use of Information Relied Upon by Opinion Witnesses
OUJI-CR 9-43 Evidence—Credibility of Informers
OUJI-CR 9-43A Evidence—Credibility Of Jailhouse Informant Testimony
OUJI-CR 9-44 Evidence—Defendant's Right Not to Testify
OUJI-CR 9-45 Victim Impact Evidence—Capital Cases
OUJI-CR 9-46 Reenactment Evidence
OUJI-CR 9-47 Evidence—Refusal to Take Blood/Breath Alcohol Test

CHAPTER 10
CLOSING INSTRUCTIONS AND MISCELLANEOUS

A
GENERAL CLOSING CHARGE

OUJI-CR 10-1 General Closing Charge—Introduction
OUJI-CR 10-2 General Closing Charge—Function of the Jury
OUJI-CR 10-3 General Closing Charge—Charging Instruction
OUJI-CR 10-4 General Closing Charge—Presumption of Innocence
OUJI-CR 10-5 General Closing Charge—Definition of Evidence
OUJI-CR 10-6 General Closing Charge—Information or Indictment Not Evidence
OUJI-CR 10-7 General Closing Charge—Judicial Rulings
OUJI-CR 10-8 General Closing Charge—Credibility of Witnesses
OUJI-CR 10-8A General Closing Charge—Notetaking by Jurors
OUJI-CR 10-9 General Closing Charge—Objections

OUJI-CR 10-10 General Closing Charge—Closing Instruction
OUJI-CR 10-10A General Closing Charge—Closing Instruction—Nonunanimous Verdict
OUJI-CR 10-10B General Closing Charge—Closing Instruction—Partly Unanimous and Partly Nonunanimous Verdict

B
DEADLOCKED JURY CHARGE

OUJI-CR 10-11 Deadlocked Jury Charge

C
DISCHARGE OF JURY

OUJI-CR 10-12 Instruction Upon Discharge

D
SENTENCING

OUJI-CR 10-13 Return of Verdict—Basic Instruction
OUJI-CR 10-13A Required Service of Percentage of Sentence
OUJI-CR 10-13B Required Service of 85% of Sentence Where Life Imprisonment is an Option
OUJI-CR 10-13C Mandatory Post-Imprisonment Supervision
OUJI-CR 10-13D Return of Verdict—Driving Under the Influence of Alcohol/(An Intoxicating Substance)
OUJI-CR 10-13E —Aggravated Driving Under the Influence
OUJI-CR 10-13F —Child Sexual Abuse/Exploitation
OUJI-CR 10-14 Verdict Form (Basic)
OUJI-CR 10-14A Verdict Form—Child Sexual Abuse/Exploitation
OUJI-CR 10-15 Return of Verdict—Prior Convictions (First Stage)
OUJI-CR 10-16 Verdict Form—Prior Convictions (First Stage)
OUJI-CR 10-17 Return of Verdict—Prior Convictions Admitted (Single Stage)
OUJI-CR 10-18 Verdict Form—Prior Convictions (Single Stage)
OUJI-CR 10-19 Return of Verdict—Prior Convictions Admitted (Second Stage)
OUJI-CR 10-20 Verdict Form—Prior Convictions Stipulated (Second Stage)
OUJI-CR 10-21 Return of Verdict—Prior Convictions Contested (Second Stage)
OUJI-CR 10-21A Prior Convictions Admitted as Propensity Evidence During First Stage

OUJI-CR 10-22 Verdict Form—Prior Convictions Contested (Second Stage)

E
LESSER INCLUDED OFFENSES

OUJI-CR 10-23 Lesser Included Offenses—Introduction
OUJI-CR 10-24 Lesser Included Offenses—As Appropriate
OUJI-CR 10-25 Verdict Form—Lesser Included Offenses
OUJI-CR 10-26 Lesser Included Offenses—Attempts
OUJI-CR 10-27 Lesser Included Offenses—Reasonable Doubt

CHAPTER 11
COMPETENCY

OUJI-CR 11-1 Competency—Introduction
OUJI-CR 11-2 Presumption of Competence
OUJI-CR 11-3 Competency—Definitions
OUJI-CR 11-4 Loss of Memory
OUJI-CR 11-5 Explanation of Form
OUJI-CR 11-6 Competency—Closing Instructions
OUJI-CR 11-7 Competency—Verdict Form

CHAPTER 12
GRAND JURIES

OUJI-CR 12-1 Grand Jury—Introductory Instruction
OUJI-CR 12-2 Grand Jury—General Procedure
OUJI-CR 12-3 Grand Jury—General Powers and Duties
OUJI-CR 12-4 Grand Jury—Evidence
OUJI-CR 12-5 Grand Jury—Indictments and Accusations
OUJI-CR 12-6 Grand Jury—Inquiry Into Acts of Public Officers
OUJI-CR 12-7 Grand Jury—Secrecy of Proceedings
OUJI-CR 12-8 Grand Jury—Final Report
OUJI-CR 12-9 Grand Jury—Length of Session
OUJI-CR 12-10 Grand Jury—Final Admonition

CHAPTER 13
JUVENILE DELINQUENCY

A
INTRODUCTORY INSTRUCTIONS

OUJI-CR 13-1 Role of the Juror

OUJI-CR 13-2 Voir Dire Oath
OUJI-CR 13-3 Purpose of Proceeding
OUJI-CR 13-4 Charge
OUJI-CR 13-5 Fair and Impartial Jury
OUJI-CR 13-6 Examination by the Court
OUJI-CR 13-7 Examination by the Attorneys
OUJI-CR 13-8 Oath to the Jury
OUJI-CR 13-9 Opening Instruction

B
CLOSING INSTRUCTIONS

OUJI-CR 13-10 Introduction to Closing Instructions
OUJI-CR 13-11 Function of the Jury
OUJI-CR 13-12 Charging Instruction
OUJI-CR 13-13 Presumption of Innocence
OUJI-CR 13-14 Definition of Delinquent Child
OUJI-CR 13-15 Elements of Offense
OUJI-CR 13-16 Definition of Evidence
OUJI-CR 13-17 Petition Not Evidence
OUJI-CR 13-18 Judicial Rulings
OUJI-CR 13-19 Credibility of Witnesses
OUJI-CR 13-20 Testimony of Child
OUJI-CR 13-21 Credibility of Opinion Witnesses
OUJI-CR 13-22 Evidence—Inferences
OUJI-CR 13-23 Direct Evidence Defined
OUJI-CR 13-24 Circumstantial Evidence Defined
OUJI-CR 13-25 Direct and Circumstantial Evidence—Weight
OUJI-CR 13-26 Circumstantial Evidence
OUJI-CR 13-27 Objections
OUJI-CR 13-28 Closing Instruction
OUJI-CR 13-29 Verdict Form
OUJI-CR 13-30 Instruction Upon Discharge

Index