SECURITIES BILL, 2021

EXPLANATORY NOTES

This Bill seeks to repeal the Securities Act CAP. 299A and replace it with an enhanced framework that provides for the protection of investors in securities in and from within the Currency Union by—

(a) regulating the securities market, exchanges and persons engaged in securities business,

(b) regulating the public issue of securities.

This Bill is divided into 15 Parts and contains 177 clauses with 2 schedules.

Part I provides for preliminary matters and contains **clauses 1 - 2**.

Part II provides for licensing of marketplaces and ancillary facilities. Part II is subdivided into 4 divisions and contains **clauses 3 – 30**. This Part constitutes the provisions from Part III (Securities Exchanges) and Part IV (Clearing Agencies and Securities Registries) of the current Securities Act. Additionally, it contains provisions for the regulation and supervision of alternative trading systems and other types of electronic trading platforms that have emerged from the increased use of the internet and information technology in capital market activities.

Part III provides for licensing of intermediaries and individuals and contains **clauses 31 – 40**. This Part outlines the categories of market intermediaries that must be licenced to participate in the ECSM and the conditions that are to be satisfied for the grant of a licence by the Commission.

Part IV provides for conduct of business by licensees and contains **clauses 41 – 53**. This Part contains provisions regarding the expected standards of conduct of licensed intermediaries in undertaking securities business. The provisions also place the responsibility on the licensee, for breaches of these standards by persons acting on its behalf in the conduct of securities business. This Part also requires licensees to keep and maintain books and records, adequate financial resources and to contribute to a contingency fund established by a licenced securities exchange or clearing facility.

Part V provides for registration and distributions of securities and contains **clauses 54 – 69**. Whereas the current Securities Act only allowed for the registration of issuers of securities, this Part sets out provisions requiring that offers of securities must be registered and that the offer and sale of securities must be made via a prospectus filed with and approved by the Commission. Permissible activities prior to and during a distribution of securities are also

included. A list of exemptions from the requirements to file a prospectus has also been included, but this list is not exhaustive.

Part VI provides for continuing obligations of reporting issuers and contains **clauses 70 – 83**. This Part addresses the continuing obligations of reporting issuers. This includes the requirement to file financial statements and annual reports, the notification of material changes and the adoption of proper accounting and auditing standards. This Part also addresses exemptions for certain foreign issuers in relation to satisfying the requirements under this Part.

Part VII provides for governance of reporting issuers and contains **clause 84**. This Part briefly sets out governance arrangements to which reporting issuers must adhere.

Part VIII provides for takeover bids and contains **clauses 85 and 86.** This Part allows for the prescribing of the requirements to regulate corporate takeovers.

Part IX provides for disclosure of shareholdings of directors, officers and significant security holders and contains **clauses 87 – 90**. This Part provides for the notification to the relevant parties (Commission, securities exchange) of the interests of directors, officers and significant security holders as well as any changes to their interests in a reporting issuer.

Part X provides for uncertificated securities and contains **clause 91**. This Part makes provision for the transfer of securities in a dematerialised environment.

Part XI provides for market misconduct and contains **clauses 92 – 109**. This Part prohibits various types of misconduct such as market manipulation, misleading conduct, insider trading, front running and other fraudulent and deceptive conduct. Under section 109 (1), a person who contravenes a provision under this Part commits an offence and is liable on conviction to a fine not exceeding $500,000 in the case of an individual and $1,000,000 in the case of a company. This Part also sets out defence mechanisms for alleged offences committed under this Part.

Part XII provides for Listing and Trading Foreign Securities Licensing and Exchange Membership of Foreign Market Participants and contains **clause 110**. This Part provides for the prescribing of requirements for the listing and trading of foreign securities, licensing and exchange membership of foreign persons.

Part XIII provides for investigations, inspections and enforcement. This Part is subdivided into 4 divisions and contains **clauses 111 – 144**, dealing with investigations, inspections, assistance to domestic and foreign regulatory authorities and enforcement.

Part XIV provides for civil liability for misrepresentation and contains **clauses 145 – 152**. The provisions in this Part set out the cause of action for misrepresentations in prospectuses and list the parties that are potentially liable for these misrepresentations. The parties liable are the issuers, the underwriter, the directors, the Chief Executive Officer of the issuer, any expert who consented to the use of their expert opinion in the prospectus and anyone who signed the opinion.

Part XV provides for miscellaneous provisions and contains **clauses 153 – 177**. This Part addresses administrative procedures and other matters not addressed elsewhere in this Bill. This Part also contains the Repeal and Transitional provisions.

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Dia Forrester
ATTORNEY-GENERAL

SECURITIES BILL, 2021

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SECURITIES BILL, 2021

GRENADA

ACT NO. OF 2021

AN ACT to provide for the protection of investors in securities in and from within the Currency Union; by regulating the securities market, exchanges and persons engaged in securities business, by regulating the public issue of securities; to reduce systemic risk and to provide for related matters.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Grenada, and by the authority of the same as follows—

PART I
PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the

SECURITIES ACT, 2021.

(2) This Act shall come into force on such date as the Minister shall appoint by Notice published in the *Gazette.*

Interpretation

2. In this Act—

"accountant" means a person who has qualified as an accountant by examination of an Institute of Chartered Accountants or Certified Accountants in England and Wales, Ireland or Scotland or the Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants, or as prescribed;

"accredited investor" means a person who comes within any of the following categories, at the time of the sale of securities to that person—

(a) the Eastern Caribbean Central Bank;

(b) a bank licensed under the Banking Act, or licensed and operating under a similar legislation in a jurisdiction outside of the Currency Union, whether acting for its own accounts or in a fiduciary capacity;

(c) a licensed intermediary or securities firm operating in a jurisdiction outside of the Currency Union, acting for its own account or in a fiduciary capacity;

(d) an insurance company registered under the Insurance Act, or licensed and operating under a similar legislation in a jurisdiction outside of the Currency Union, whether acting for its own account or in a fiduciary capacity;

(e) an investment fund licensed or registered under this Act or regulated and operating in a jurisdiction outside of the Currency Union;

(f) an employee benefit plan if the investment decision is made by a plan fiduciary, which is a bank licensed under the Banking Act, a trust company registered under the Companies Act, Chapter 58A, an insurance company registered under the Insurance Act, Chapter 150, or a licensed securities firm, or if the employee benefit plan has total assets in excess of the prescribed amount;

(g) a senior officer or general partner of the issuer of securities being offered or sold;

(h) an individual whose individual net worth at the time of the purchase exceeds EC$500,000 and/or individual annual income has been in excess of EC$200,000 in each of the two most recent years, and has reasonable expectation of reaching the same income level in the current year;

(i) an individual whose joint net worth with that individual's spouse, at the time of the purchase exceeds EC$1,000,000 or whose joint income with that individual's spouse has been in excess of EC$600,000 in each of the two most recent years, and has a reasonable expectation of reaching the same income level in the current year;

(j) a person, other than an individual, with total assets in excess of EC$5,000,000, not formed for the specific purpose of acquiring the securities;

(k) an entity in which all of the equity owners are accredited investors;

(l) the government of a member country or a public authority established in a member country;

(m) the government of any foreign jurisdiction, or an agency of that government;

(n) a person purchasing on behalf of an account that is managed on a fully discretionary basis by that person, if that person is registered or authorised to carry on business as an adviser managing securities on a discretionary basis under the laws of a member country, or foreign jurisdiction; or

(o) a person residing outside of the Currency Union who qualifies as an accredited investor (however defined) under similar securities legislation of that person's country of residence, or an individual resident outside the Currency Union who meets the criteria specified in paragraph (h) or (i) and is otherwise lawfully entitled to purchase securities under similar securities laws applicable to such purchase;

"**advertisement**" includes every form of advertising, whether in a publication, by the display of notices, signs, labels or showcards, by means of circulars or other documents, by an exhibition of pictures or photographic or cinematographic films, by way of sound broadcasting or television, by the distribution of recordings, by computer output, or in any other manner, and "advertising" shall be construed accordingly;

"affiliate" when used to indicate a relationship, means—

(a) one entity is affiliated with another entity if one of them is the subsidiary of the other or both are subsidiaries of the same entity, or each of them is controlled by the same person;

(b) if two entities are affiliated with the same entity at the same time, they are affiliated with each other;

(c) an entity is the holding entity of another if that other entity is its subsidiary; and

(d) a person that is not a body corporate or an individual is considered to be an affiliated person of another person, including a body corporate, if it is controlled by that other person, provided that a person is controlled by another person where—

(i) in the case of a partnership, the second-mentioned person owns or holds more than 50 per cent of the voting interest in the partnership; and

(ii) in the case of the first-mentioned person other than a body corporate, an individual, or a partnership, securities of the first-mentioned person carrying 50 per cent or more of the voting rights in such person, are held or owned, by or for the benefit of the second-mentioned person.

"**Agreement**" means the Agreement establishing the Eastern Caribbean Securities Regulatory Commission made on the 24th day of November 2000, and any revisions thereto;

"**alternative trading system**" means a company that—

(a) constitutes, maintains or provides a market or facility for bringing together buyers and sellers of securities;

(b) brings together the orders for securities of multiple buyers and sellers;

(c) uses established, non-discretionary methods under which the orders interact with each other, and the buyers and sellers entering the orders agree to the terms of a trade; and

(d) does not—

(i) require an issuer to enter into an agreement to have its securities traded on the system;

(ii) provide, directly, or through one or more subscribers, a guarantee of a two-sided market for a security on a continuous or reasonably continuous basis;

(iii) set requirements governing the conduct of subscribers, other than conduct in respect of the trading by those subscribers on the system; or

(iv) discipline subscribers other than by exclusion from participation in the system;

"**ancillary facility**" means a person providing services to a marketplace, clearing facility, licensee, or to a reporting issuer with securities listed or traded on a marketplace where the services facilitate or are ancillary to the operations of a marketplace;

"**approved auditor**" means an individual auditor or audit firm recognised by the Commission;

"**approved foreign issuer**" means a foreign issuer that—

(a) is a reporting issuer, or equivalent, under similar securities legislation of a foreign jurisdiction recognised by the Commission or other appropriate named entity for this purpose; and

(b) meets the criteria prescribed under regulations;

"**asset-backed security**" means security that is primarily serviced by the cash flows of a distinct pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, together with any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders;

"**associate**" when used to indicate a relationship with a person, means—

(a) an entity of which that person beneficially owns or controls, directly or indirectly, either shares or securities currently convertible into shares, and carries 10 per cent or more of the voting rights;

(b) within a partnership, the partner of the person who acts on behalf of the partnership;

(c) a trust or estate, in which that person has significant beneficial interest or in respect of which he or she serves as a trustee, legal representative or in a similar capacity; or

(d) a relative of that person;

"**beneficial owner**" in relation to a security, means a person who has beneficial ownership of the security although that person may not be the registered owner of the security;

"**beneficial ownership**" in relation to a security, means entitlement to the benefits of ownership of the security and includes direct ownership, ownership through a trustee, legal representative, agent or other

licensee, and a person shall be deemed to have beneficial ownership of a security, including an unissued security, if the person is the beneficial owner of a security convertible into the underlying security, or has an option or right to purchase the underlying security or securities convertible into the underlying security—

(a) under all circumstances; or

(b) by reason of the occurrence of an event that has occurred and is continuing;

"**broker-dealer**" means a person engaging in, or holding itself out as engaging in, the business of—

(a) dealing in securities;

(b) managing securities, for others, on terms under which the person may hold property belonging to the other persons; or

(c) such other activities prescribed under the regulations;

"**business combination**" means an amalgamation, merger, arrangement, or similar transaction between two or more entities;

"business day" means any day on which institutions licensed under the Banking Act are open for the conduct of business in a member country;

"**clearing facility**" means—

(a) a person that—

(i) maintains records of trades of securities for the purpose of settling claims for money and securities;

(ii) maintains records of transfers and pledges of securities for the purpose of permitting securities to be transferred by record entry;

(iii) holds security certificates deposited with it for the purpose of permitting securities to be transferred by record entry;

(iv) performs any combination of two or more functions referred to in subparagraphs (i) to (iii), or

(v) operates a centralised facility for the settlement of trades and other activities regularly undertaken by persons referred to in subparagraphs (i) to (v); and

(b) does not include a licensee or financial institution acting exclusively in the ordinary course of its customary business;

"closed-end fund" means a company, unit trust or partnership where the holder of an equity interest does not have the option to redeem his or her equity interest or require the fund to repurchase his or her equity interest;

"**Commission**" means the Eastern Caribbean Securities Regulatory Commission established by Article 3 of the Schedule to the Agreement Act;

"company" includes a body corporate, limited partnership, financial institution or other business entity, which is incorporated, registered or otherwise established under the laws of a member country or foreign jurisdiction;

"connected" for the purposes of Part IX means;

(a) a person who—

(i) is a senior officer of a reporting issuer;

(ii) is a senior officer of—

(A) an affiliate of a reporting issuer; or

(B) a person who beneficially owns or exercises control over voting securities of a reporting issuer, or a combination of both, carrying more than 10 per cent of the votes attached to all voting securities of the reporting issuer;

(iii) beneficially owns or exercises control over voting securities of the reporting issuer or a combination of both, carrying 10 per cent or more of the votes attached to all voting securities of the reporting issuer;

(iv) is an entity that is controlled by a person referred to in subparagraph (i) or (ii); or

(v) is a relative of a senior officer of a reporting issuer; and

(b) a person connected to a reporting issuer is deemed to continue to be connected to a reporting issuer up to six months after the day the person otherwise ceases to be connected to a reporting issuer;

"contingency fund" means a fund established by a securities exchange or self-regulatory organisation under section 27 created for the purpose of compensating customers for losses resulting from the insolvency, bankruptcy or default of a member of the stock exchange;

"**control block holder**" means a person that—

(a) holds more than 30 per cent of the voting rights attached to all of an issuer's outstanding voting securities; or

(b) is able to affect materially the control of the issuer, whether alone or by acting in concert with others;

"Currency Union" refers collectively to the member countries of Anguilla, Antigua and Barbuda, The Commonwealth of Dominica, Grenada, Montserrat, Saint Christopher and Nevis, Saint Lucia and Saint Vincent and the Grenadines which use the Eastern Caribbean currency as their official currency;

"custodian" means a person to whom securities are entrusted for safekeeping;

"**decision**" means—

(a) if used in relation to the Commission or a person to whom a power of the Commission is delegated, a direction, decision, order, ruling or requirement made under this Act; or

(b) if used in relation to a marketplace, self-regulatory organisation or clearing facility, a direction, decision, order, ruling or requirement made by that person;

"**default proceedings**" means any proceedings or other action taken by a clearing facility licensed under Part II under its default rules;

“default rules”, for a clearing facility, means the rules of the clearing facility required by section 12 (1);

“**defaulter**”, under Part II, means a participant who is the subject of any default proceedings;

“**derivative**” means an option, swap, futures contract, forward contract, or other financial or commodity contract or instrument whose market price, value, delivery obligations, payment obligations or settlement obligations are derived from, referenced to, or based on an underlying interest (including a value, price, rate, variable, index, event, probability or thing;

“**designated third party**”, in relation to a foreign jurisdiction, means—

(a) a person or body responsible for supervising the foreign regulatory authority in question;

(b) an authority of the foreign jurisdiction responsible for carrying out the supervision, investigation or enforcement in question; or

(c) an authority of the foreign jurisdiction, other than the foreign regulatory authority, exercising a function that corresponds to a regulatory function of the Commission under this Act;

“**director**” means a director of a company, or an individual performing a similar function or occupying a similar position for or in relation to a company;

“**distribution**” means—

(a) a trade in a security of an issuer that has not been previously issued;

(b) a trade, by or on behalf of an issuer, in a previously issued security of that issuer that has been redeemed, purchased by or donated to that issuer;

(c) a trade in a previously issued security of an issuer by a control block holder;

(d) a trade within a prescribed class of trades; or

(e) a trade described in an order made by the Commission;

"**distribution period**" means the period specified under section 67;

"**document**" includes—

(a) information recorded in any form; and

(b) in relation to information recorded otherwise than in hard copy, references to its production include references to producing a copy of the information in hard form;

"**domestic regulatory authority**" means an authority in a member country that exercises regulatory, supervisory, enforcement or similar functions and includes—

(a) authorities that regulate or supervise banks, insurance companies, or other prescribed institutions;

(b) securities exchanges;

(c) self-regulatory organisations;

(d) law enforcement agencies;

(e) government or regulatory agencies not mentioned in paragraphs (a) to (d); and

(f) any other authority in a member country of the Currency Union as prescribed;

"**expert**" means an attorney-at-law, engineer, accountant, valuator or any other person whose profession gives authority to a statement made by him or her;

"**financial institution**" means a company engaged in business of a financial nature, including general finance, credit union, merchant bank, commercial bank, mortgage, trust company, unit trust, credit card business, financial services, insurance;

"foreign company" includes a company, limited partnership, trust, financial institution or other business entity, which is incorporated or otherwise established under the laws of a foreign jurisdiction;

"foreign government" means a government or political subdivision of a government of a foreign jurisdiction;

"**foreign issuer**" means an issuer that is organised under the laws of a foreign jurisdiction;

"foreign jurisdiction" means a jurisdiction outside of a member country;

"**foreign disclosure requirements**" means the requirements a foreign issuer is subject to concerning disclosure to a foreign regulatory authority, which disclosure is made publicly available;

"**foreign regulatory authority**" means an authority in a foreign jurisdiction that exercises regulatory, supervisory, enforcement or similar functions and includes—

(a) authorities that regulate or supervise banks, insurance companies, or other prescribed institutions;

(b) securities exchanges;

(c) self-regulatory organisations;

(d) law enforcement agencies;

(e) government or regulatory agencies not mentioned in paragraphs (a) to (d); and

(f) any other authority in a member country as prescribed;

"foreign securities exchange" means a securities exchange, incorporated in and governed by the laws of a foreign jurisdiction;

"**form of proxy**" means a written or printed form that, upon completion and signing by or on behalf of a security holder, becomes a proxy;

"**former Act**" means the Securities Act, Chapter 299A;

"futures contract" means—

(a) rights under a contract for the sale or purchase of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed upon when the contract is made, other than a contract made for commercial and not investment purposes and for the purposes of this definition—

(i) a contract is deemed to be made for investment purposes if—

(A) it is made or traded on a recognised securities exchange, or is made otherwise than on a recognised securities exchange, but is expressed to be traded on such an exchange or on the same terms as those on which an equivalent contract would be made on such an exchange;

(B) it is expressed to be as traded on a securities exchange;

(C) performance of the contract is ensured by a securities exchange; or

(D) there are arrangements for the payment or provisions of margin.

(ii) a contract is deemed to be made for commercial purposes if—

(A) the terms of the contract delivery are made within seven business days;

(B) one or more of the parties is a producer of the commodity or other property or uses it in business;

(C) if the prices, the lot, the delivery date or other terms are determined by the parties for the purposes of the particular contract and not by reference, or not solely by reference, to regularly published prices, to standard lots or delivery dates or the standard terms; or

(D) the seller delivers or intends to deliver the property or the purchaser takes or intends to take delivery of it,

and the absence of them is an indication that it is made for investment purposes;

(iii) it is an indication that a contract is made for commercial purposes that the prices, the lot, the delivery date or other terms are determined by the parties for the purposes of the particular contract and not by reference, or not solely by reference, or regularly published prices, to standard lots or delivery dates or the standard terms;

(iv) the following are indications that a contract is made for investment purposes—

(A) it is expressed to be as traded on a securities exchange;

(B) performance of the contract is ensured by a securities exchange or a clearinghouse; or

(C) there are arrangements for the payment or provisions of margin; and

(b) for the purposes of the definition of "futures contract", a price is taken to be agreed on when a contract is made—

(i) notwithstanding that it is left to be determined by reference to the price at which a contract is to be entered into at a time and place specified in the contract; and

(ii) in a case where the contract is expressed to be by reference to a standard lot and quality, notwithstanding that provision is made for a variation in the price to take account of any variation in quantity or quality on delivery;

"**generally accepted accounting principles**" means the standards promulgated by the International Accounting Standards Board or as prescribed;

"**generally accepted auditing standards**" means the International Standards on Auditing issued by the International Auditing and Assurance Standards Board or as prescribed;

"**hold**" in relation to property includes the control of its disposal but does not include the mere receipt and dispatch or delivery of a cheque or other order made payable to another person;

"**individual"** means a compliance officer, representative or principal;

"**inside information"** means material information that has not been generally disclosed;

"**insider**" means with respect to an issuer—

(a) a director or senior officer of the issuer;

(b) a person who has been a director or senior officer of the issuer within 12 months of the date of the commencement of the relevant take-over or merger transaction;

(c) a director or senior officer of a person that is itself an insider of the issuer or a subsidiary of the issuer;

(d) a person that has beneficial ownership of or control or direction over, directly or indirectly (including through ownership by an associate) of securities of the issuer carrying 10 per cent or more of the voting rights attached to all the issuer's outstanding securities;

(e) an associate of a person specified in any of paragraphs (a) to (d); and

(f) a person acting jointly or in concert with any of the above;

"intermediary" means a broker-dealer, custodian or investment adviser;

"**investment advice**" means—

(a) advice with respect to an investment in, or the purchase, sale or holding of a security;

(b) management of a portfolio of securities for another person without holding property of the other person and on terms that preclude him or her from doing so; and

(c) conduct of analysis or preparation of or reports concerning specific securities;

"**investment adviser**" means a person engaging in, or holding himself or herself out as engaging in, the business of providing investment advice, and includes a person that provides investment advice to an investment fund or manager of an investment fund;

"**investment contract**" includes any contract, transaction, plan, scheme, instrument or writing, where a person invests money or other property in a common enterprise with the expectation of profit or gain based on the expertise, management or effort of others, and such money or other property is subject to the risks of the common enterprise;

"**investment decision**" means a decision to purchase, transfer, hold or sell securities;

"investment fund" means—

(a) a company or any other body, partnership or unit trust that is incorporated, formed or organised, whether under the laws of a member country or the laws of any other country, that—

(i) collects and pools investor funds for the purpose of collective investment; and

(ii) issues securities interests that entitle the holder to receive on demand or within a specified period after demand an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets of the company, or other body, partnership or unit trust, as the case may be;

(b) a company, or other body, partnership or unit trust prescribed as an investment fund for the purposes of securities laws, including a closed-end fund,

but does not include an issuer of a type or description that has been prescribed not to be an investment fund;

"**issuer**" means a person that—

(a) has a security outstanding; or

(b) proposes to issue or distribute, a security;

"**issuer bid**" means an offer to acquire or redeem securities of an offeree issuer made by the offeree issuer to any security holder of the offeree issuer and includes a purchase, redemption or other acquisition of securities of the offeree issuer by the offeree issuer from any such person, but does not include an offer to acquire or redeem debt securities that are not convertible into securities other than debt securities;

"**licensee**" means a person licensed under this Act;

"**limited offering**" means a distribution by a government entity or private issuer where—

(a) following the completion of such distribution, the number of security holders who participated in the offering is fifty or less persons not including senior officers and employees or former senior officers and employees of the issuer and its affiliates;

(b) the constituent documents of the distribution contain provisions restricting the aggregate number of security holders of the issue to fifty persons or less not including senior officers and employees or former senior officers and employees of the issuer and its affiliates;

(c) no selling or promotional expenses are paid or incurred in connection with the distribution except for professional services; and

(d) no general solicitation or advertising to market the securities is used;

"**market charge**", means a charge granted in favour of a clearing facility—

(a) over property, specified in section 11 (1), held by or deposited with the clearing facility; and

(b) to secure liabilities arising directly with the clearing facility facilitating the settlement of a market contract;

"**market collateral**", means property specified in section 11(1) held by or deposited with a clearing facility to secure liabilities arising directly with the clearing facility facilitating the settlement of a market contract;

"market contract" under Part II means a contract subject to the rules of a clearing facility entered into by the clearing facility with a participant under a novation which is both in accordance with those rules and for the purpose of the clearing and settlement of transactions in securities effected on, or subject to the rules of a securities exchange;

"**market participant**" means—

(a) a licensee;

(b) a person exempted under this Act from the requirement to be licensed or file a prospectus;

(c) a reporting issuer;

(d) senior officer, or promoter of a reporting issuer;

(e) a custodian, trustee, sponsor, manager, administrator or such other persons performing similar functions for an investment fund;

(f) a recognised rating organisation;

(g) a transfer agent for securities of a reporting issuer;

(h) a securities registry of a reporting issuer;

(i) a general partner or a partner, director, officer or significant security holder of a person referred to in this definition;

(j) a contingency fund required under Part II;

(k) a marketplace;

(l) an investment fund; or

(m) any other person or member of a class of persons prescribed by the regulations;

"**marketplace**" means—

(a) a securities exchange, a quotation and trade reporting system, or an Alternative Trading System;

(b) a person not included in paragraph (a) that—

(i) constitutes, maintains or provides a market or facility for bringing together buyers and sellers of securities;

(ii) brings together the orders for securities of multiple buyers and sellers; and

(iii) uses established, non-discretionary methods under which the orders interact with each other, and the buyers and sellers entering the orders agree to the terms of a trade; or

(c) a person described in an order made under section 173 (2) (b),

but does not include a person described in an order made under section 173 (1) (b);

"**material change**" when used in relation to an issuer means, a change in the business, operations, assets or ownership of an issuer, the disclosure of which would be considered important to a reasonable investor in making an investment decision and includes a decision to implement such a change made by the directors of the issuer or other persons acting in a similar capacity;

"material fact", when used in relation to securities issued or proposed to be issued, means a fact that would reasonably be expected to have a significant effect on the market price or value of the securities;

"**member**", in relation to a securities exchange, means a broker-dealer which is admitted to membership of the exchange;

"**member country**" means a State or territory of a Participating Government;

"**Minister**" means the Minister responsible for Finance;

"**misrepresentation**" means—

(a) an untrue statement of a material fact or material change;

(b) an omission to state a material fact or material change that is required to be stated or is necessary to prevent a statement that is made from being false or misleading in the circumstances in which it is made; or

(c) in any other circumstance, a statement about something that a reasonable investor would consider important—

(i) in making a decision to trade a security; or

(ii) in relation to a trading or advising relationship with a person,

if the statement is untrue or omits information necessary to prevent that statement from being false or misleading in the circumstances;

"**Monetary Council**" means the Monetary Council established under *Article 7* of the Eastern Caribbean Central Bank Agreement Act done at Port-of-Spain on the 5th day of July 1983;

"**offering document**" means a document, together with any amendments to that document, purporting to describe the business and affairs of an issuer that has been prepared primarily for delivery to and review by a prospective purchaser so as to assist the prospective purchaser to make an investment decision regarding securities being sold in a distribution;

"**offer to acquire**" includes—

(a) an offer to purchase, or a solicitation of an offer to sell securities;

(b) an acceptance of an offer to sell securities, whether or not such offer to sell has been solicited; or

(c) a combination thereof,

and the person accepting an offer to sell shall be deemed to be making an offer to acquire from the person that made the offer to sell;

"**participant**", under Part II, means a person who, under the rules of a clearing facility, may participate in one or more of the services provided by the clearing facility in its capacity as a clearing facility;

"**Participating Government**" means the government of the member country of the Currency Union;

"**person**" includes a company, partnership, licensed financial institutions, association and any other legal entity, organised or incorporated group of persons, and the personal or other legal representative of any person to whom the context can apply;

"**prescribed**" means prescribed by regulations or rules and "prescribe" shall be construed accordingly;

"**principal**" means an individual designated by a licensee to be responsible for the supervision of the securities business undertaken by the licensee to ensure it is carried out in compliance with the law;

"**private issuer**" means an issuer—

(a) that is not a reporting issuer;

(b) whose securities, other than non-voting debt securities—

(i) are subject to restriction on transfer; and

(ii) are beneficially owned by no more than fifty persons, not including senior officers and employees or former senior officers and former employees of the issuer and its affiliates;

(c) that does not distribute securities in the securities market on a frequent basis; and

(d) that meets such other requirements under the regulations;

"**promoter**" means a person that takes the initiative in founding, organising or substantially reorganizing an issuer;

"prospectus" means a notice, circular, advertisement or document inviting applications or offers to subscribe for or purchase securities, or offering securities for subscription or purchase;

"proxy" means a completed and signed form of proxy by which a holder of voting securities of an issuer appoints a person to attend and act on the security holder's behalf at a meeting of security holders;

"**publication**" includes any information disclosed, circulated or disseminated, whether—

(a) in a newspaper, magazine, journal or other publication;

(b) by the display of posters or notices;

(c) by means of circulars, brochures or pamphlets;

(d) by way of sound or broadcasting, including television or radio broadcasting;

(e) by any information system or electronic device; or

(f) by any other means, whether mechanically, electronically, magnetically, optically, manually, or by way of production or transmission of light, image or sound, or by any other medium;

"**published**" in relation to the disclosure of a material fact, material change or material information, means—

(a) published in two newspapers of general circulation, in all member countries; or

(b) made available to the public in such manner as approved by the Commission;

"**purchase**" includes—

(a) an acquisition of a security for valuable consideration, whether the terms of payment are on margin, instalment or otherwise; and

(b) an act, advertisement, conduct or negotiation, directly or indirectly, done in furtherance of paragraph (a),

but does not include a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a bona fide debt;

"**qualified report**" means a statement issued after an audit is completed by an auditor, suggesting that the information provided is limited in scope and/or the person being audited has not maintained generally accepted accounting principles;

"**quotation and trade reporting system**" means a facility that disseminates price quotations for the purchase and sale of securities and reports of completed transactions in securities for the exclusive use of subscribers, but does not include a securities exchange or Alternative Trading System;

"**rating organisation**" means an organisation that issues ratings in relation to the creditworthiness of an entity or the financial obligations issued by an entity by employing either a quantitative or qualitative model or both;

"**recognised foreign jurisdiction**" means a foreign jurisdiction as designated by the Commission under section 173 (3);

"**recognised foreign securities exchange**" means a securities exchange located in a foreign jurisdiction as designated by the Commission under section 173 (3);

"**records**" means—

(a) books of account, bank accounts and other customer bank records, correspondence, notes, memoranda, beneficial and ownership control records, and any other books, accounts, documents, data or information relating to the property or affairs of a person; or

(b) data or information prepared or maintained in a bound or loose-leaf form or in a photographic film form or entered or recorded by any system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written or other visual form, within a reasonable time, relating to the property or affairs of a person;

"**regulated persons**" means a licensee, an investment fund, an investment fund administrator;

"**regulations**" means the regulations made under securities laws and, unless the context otherwise indicates, includes the rules made under securities laws;

"**relative**", in respect of any individual, means the spouse, parent, grandparent, brother, sister, children, adopted children and step-children of the person;

"**relevant office-holder**" under Part II means—

(a) the official receiver or liquidator appointed under the Bankruptcy and Insolvency Act, 2016;

(b) a person acting in relation to a company as its liquidator, provisional liquidator, receiver or manager;

(c) a person acting in relation to an individual as his or her trustee in bankruptcy or interim receiver of his or her property; or

(d) a person appointed under an order for the administration in bankruptcy of an insolvent estate of a deceased person;

"**reporting issuer**" means an issuer—

(a) that has filed a prospectus—

(i) for which the Commission has issued a receipt under securities laws; or

(ii) that was approved under the former Act;

(b) whose existence continues or who comes into existence following a takeover, business combination or other reorganisation involving an exchange of securities in which one of the parties was a reporting issuer at the time of the transaction;

(c) that has issued a security that—

(i) was listed for trading on a securities exchange licensed by the Commission at the time this Act comes into force;

(ii) at any time after this Act comes into force, has been traded on a marketplace licensed under this Act; or

(iii) any of whose issued shares or debentures are or were part of a distribution*;*

(d) registered under the former Act,

but does not include a government entity or international agency;

"**representation"** means a statement made to influence opinion or action;

"**representative**" means an individual in the employment of, or acting for or by arrangement with an intermediary, who acts on behalf of that intermediary with respect to its securities business whether that individual is paid a salary, wages, commission or otherwise;

"**right to acquire a security**" means—

(a) a security convertible or exchangeable into another security;

(b) a security carrying a warrant or right to acquire another security; or

(c) a currently exercisable option, warrant or right to acquire another security or security specified in paragraph (a) or (b);

"**sale**" includes—

(a) disposition of a security for valuable consideration, whether the terms of payment are on margin, instalment, or otherwise; and

(b) an act, advertisement, conduct or negotiation directly or indirectly done in furtherance of paragraph (a),

but does not include a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a bona fide debt;

"securities business" for the purposes of this Act, refers to the following activities—

(a) dealing in securities—

(i) by buying or selling securities as agent for the account of others;

(ii) by buying or selling securities for his or her own account and who holds himself or herself out at all normal times as willing to buy and sell securities at prices specified by him or her; or

(iii) by underwriting securities as principal or agent;

(b) managing securities belonging to another person in circumstances involving the exercise of discretion by the manager;

(c) providing investment advice—

(i) by advising others concerning investment in securities, including the advice on the merits of buying, selling, subscribing for or exercising any right conferred by a security to buy, sell, or subscribe for a security; or

(ii) by issuing analyses or reports concerning specific securities;

(d) acting as a custodian by taking securities into custody for safekeeping;

"**securities exchange**" means an entity which maintains or provides—

(a) physical facilities where persons may meet to execute trades in securities; or

(b) a mechanical, electronic or other system that facilitates execution of trades in securities by matching offers of purchase and sale,

and includes the Stock Exchange;

"securities laws" means this Act and the Investments Funds Act, 2021;

"securities registry" means a person who, on behalf of an issuer, engages in—

(a) countersigning securities upon issue by the issuer;

(b) monitoring the issue of such securities to prevent unauthorised issue;

(c) registering the transfer of such securities; or

(d) exchanging or converting such securities; or

(e) transferring ownership of securities by bookkeeping entry without physical issuance of securities certificates,

but does not include an issuer that performs one or more of these functions for itself;

"**security**" includes any document, instrument or writing evidencing ownership of, or any interest in, the capital, debt, property, profits, earnings or royalties of any person and without limiting the generality of the foregoing, extends to—

(a) a bond, debenture, note or other evidence of indebtedness;

(b) a share, stock, unit, unit certificate, participation certificate, certificate of share or other interest;

(c) a document, instrument or writing commonly known as a security;

(d) a document, instrument or writing evidencing an option, subscription or other interest in or to a security;

(e) an investment contract;

(f) an asset-backed security;

(g) a document, instrument or writing constituting evidence of any interest or participation in—

(i) a profit-sharing arrangement or agreement;

(ii) a trust; or

(iii) an oil, natural gas or mining lease, claim or royalty or other mineral right;

(h) an agreement under which the interest of the purchaser is valued for the purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets;

(i) a derivative;

(j) a right to acquire or dispose of anything specified in paragraphs (a) to (i); and

(k) any other instruments prescribed under the regulations,

but does not include—

(i) currency;

(ii) a cheque, bill of exchange, or bank letter of credit;

(iii) a certificate or document constituting evidence of any interest in a deposit account with—

(A) a financial institution;

(B) a credit union;

(C) a licensee under the Insurance Act, Chapter 150; or

(iv) a contract of insurance;

"**self-regulatory organisation**" means—

(a) a clearing facility;

(b) securities exchange;

(c) an association of market participants licensed or required to be licensed under this Act; or

(d) such other entity that sets standards for, or monitors the conduct of, its members or participants relating to trading in or advising on securities;

"**senior officer**" means any member of the board of directors of an entity, any managing director, chief executive officer, chief operating officer, deputy managing director, president, vice-president, secretary, treasurer, chief financial officer, financial controller, general manager, deputy general manager, corporate secretary, chief accountant, chief auditor, chief investment officer, chief compliance officer and chief risk officer of an entity or any other individual who performs functions for an entity similar to those normally performed by an individual occupying any such office;

"settlement", references in Part II to settlement in relation to a market contract are references to the discharge of the rights and liabilities of the parties to the contract, whether by performance, compromise or otherwise and includes partial settlement;

"settlement assurance fund" means a fund established by a clearing facility under section 27 to ensure continuity in securities clearing and settlement in the event of the failure to settle transaction by a participant of a clearing facility;

"**significant security holder**", in relation to a person, means a security holder that—

(a) beneficially owns, directly or indirectly, or exercises control or direction over voting securities of the reporting issuer, or a

combination of both, carrying more than 10 per cent of the votes attached to all voting securities of the reporting issuer outstanding; or

(b) is able to affect materially the control of the person, whether alone or by acting in concert with another person;

"**Stock Exchange**" means the Eastern Caribbean Securities Exchange Limited;

"**subscriber**" when used in relation to an Alternative trading System means any person that has entered into a contractual agreement with an Alternative trading System to access such Alternative trading System for the purpose of effecting transactions in securities or submitting, disseminating or displaying orders on such Alternative trading System, including a client, member user or participant in the Alternative trading System;

"**subsidiary**" means an entity that is controlled by another entity;

"**trade**" includes—

(a) a sale or purchase of a security;

(b) participation as a licensee or agent in any transaction in a security; or

(c) an act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any activity referred to in paragraph (a) or (b),

but does not include a transfer, pledge or encumbrance of securities for the purposes of giving collateral for a bona fide debt;

"**underwriter**" means a person who—

(a) as principal, agrees to purchase a security for the purposes of a distribution;

(b) as agent, offers for sale or sells a security in connection with a distribution; or

(c) participates directly or indirectly in a distribution described in paragraph (a) or (b) for valuable consideration,

but does not include—

(i) a person whose interest in the transaction is limited to receiving the usual and customary distribution or sales commission payable by an underwriter or issuer; or

(ii) a company that purchases shares of its own issue and resells them;

"**underwriting**" includes the purchase of newly issued securities for the purpose of public resale on behalf of the issuer, and the guaranteeing to an issuer that the unsold residue of the issuer's public issue or sale will be taken up as regards the issuer's public issue.

PART II
LICENSING OF MARKETPLACES AND ANCILLARY FACILITIES

DIVISION I
LICENSING

Licensing

3. (1) No person shall carry on business as a marketplace or ancillary facility in or from within the Currency Union, or hold himself or herself out as, or engage in any act, action or course of conduct in connection with or incidental to the business of—

(a) a marketplace; or

(b) ancillary facility,

unless licensed by the Commission to do so under this Part.

(2) If the Commission considers it in the public interest to do so, the Commission may require a clearing facility and self-regulatory organisation to apply for a licence under this Part.

(3) An application for a licence under this Part shall be made to the Commission in the prescribed form and shall be accompanied by such fees and documents as may be prescribed.

(4) At any time after receiving an application the Commission may require the applicant to furnish additional information in support of its application

Grant of application for licensing

4. (1) On application, the Commission may grant a licence to an applicant if the Commission is satisfied that all prescribed requirements have been fulfilled and to do so would be in the public interest.

(2) If the Commission refuses to grant, renew or reinstate a licence, it shall notify the applicant, in writing, of such refusal and the reason for such refusal.

(3) Following receipt of the Commission's decision in subsection (1), the applicant may apply for a review under section 143.

Conditions for grant of licence

5. (1) The Commission may grant a licence subject to such conditions as it considers appropriate.

(2) It shall be a condition of every licence granted under this Part that—

(a) the licence is personal to the applicant and is not transferable; and

(b) a person to whom a licence is granted shall not, when conducting business for which a licence is required, use a name other than the name specified in the licence.

(3) The Commission may, by notice in writing vary or revoke a condition of a licence.

Renewal or reinstatement of licence

6. (1) The Commission may renew or reinstate a licence under this Part, where the applicant—

(a) is considered by the Commission to be fit and proper;

(b) complies with the prescribed requirements;

(c) pays the prescribed fee.

(2) The commission shall refuse to renew or reinstate a licence where such grant, licence, renewal or reinstatement is not in the public interest.

Revocation of licence

7. A licence is effective until—

(a) it is revoked by the Commission;

(b) it expires;

(c) the conditions for continuing the licence have not been met; or

(d) the Commission accepts a surrender of the licence.

DIVISION II
SECURITIES EXCHANGE

Delisting of securities

8. Where a securities exchange proposes to delist a security, it shall file with the Commission a concise statement of the substance and purpose of the proposal.

Disciplinary action over members of a securities exchange

9. Any disciplinary action taken by a securities exchange against a member in accordance with its rules shall be without prejudice to the power of the Commission to take such action as it sees fit with regard to the member or the licence held by the member.

Closure of securities exchange in emergency

10 (1) The Commission may, after consulting the holder of a securities exchange licence, direct it to close its market for a period not exceeding five trading days.

(2) The Commission may give a direction under subsection (1) if it is satisfied that the orderly transaction of business on the securities exchange is being, or is likely to be, prevented because—

(a) of an impending emergency, or an impending or actual natural disaster in Grenada; or

(b) there exists an economic or financial crisis, in the Currency Union or elsewhere, or any other circumstance, which is likely to prevent orderly trading on the securities exchange.

(3) The Commission may, in consultation with the Monetary Council, extend the direction issued under section 10 (1) for a further period.

DIVISION III
CLEARING FACILITY

Market charge or collateral

11. (1) Property which may be subject to a market charge, or provided as market collateral, is—

(a) money and other similar negotiable instruments;

(b) securities; and

(c) futures contracts, and any similar financial contracts.

(2) Where a charge is issued to secure liabilities arising directly with the clearing facility facilitating the settlement of a market contract and partly for other purposes, the charge shall be a market charge in so far as it has effect for that specified purpose.

(3) Where collateral is granted partly to secure liabilities arising directly with the clearing agency facilitating the settlement of a market contract and partly for other purposes, the collateral is market collateral in so far as it has been provided for that specified purpose.

(4) References in this Part to the law on insolvency include references to every provision made by or under—

(a) the Bankruptcy and Insolvency Act, 2016;

(b) the Companies Act, Chapter 58A; and

(c) any other enactment which is concerned with or in any way related to the insolvency of a person.

Rules of clearing facility

12. (1) The rules of a clearing facility shall include provisions—

(a) where a participant appears to be unable, or appears to be likely to become unable, to meet the obligations in respect of one or more market contracts, to enable action to be taken to close out the participant's position in relation to all unsettled market contracts to which the participant is a party;

(b) where the clearing facility determines that the activities of a participant presents or is likely to present unreasonable risk to the clearance and settlement systems, to cease to act for the participant;

(c) to enable the settlement of all of the contracts by providing for payment of money in relation to each contract by or to the participant, if that is required after taking into account all the rights and liabilities of the participant under or in respect of the contract concerned;

(d) to enable all sums of money payable by or to the participant as determined in accordance with paragraph (b) to be aggregated or

set-off so as to produce a net sum, if any, payable by or to the participant;

(e) if any net sum referred to in paragraph (c) is payable by the participant, to provide for that net sum to be set-off against all property of the participant which is either subject to a market charge or which has been provided as market collateral (or set-off against the proceeds of the realisation of such property) so as to produce a further net sum, if any, payable by or to the participant;

(f) if any net sum referred to in paragraph (c) is payable to the participant, to provide that all property of the participant which is either subject to a market charge or which has been provided as market collateral shall cease to be subject to the market charge (but without prejudice to any other form of charge to which it may be subject) or to be market collateral (but without prejudice to its provision as any other form of collateral), as the case may be; and

(g) for the certification, by the clearing facility, of any net sum referred to in paragraph (c) payable to the participant, or of any further net sum referred to in paragraph (d) payable by or to the participant, as the case may be, or if there is no such sum, the certification by the clearing facility of that fact.

(2) Where a clearing facility takes default proceedings, all subsequent action taken under its rules for settlement of market contracts to which the defaulter is a party shall be treated as taken under the default rules.

Validity of default proceedings of clearing facility in insolvency

13. (1) On insolvency, bankruptcy or winding up, or on the appointment of a receiver over any of the assets of a person,

(a) a market contract;

(b) the rules of a clearing facility for the settlement of a market contract;

(c) proceedings or other action taken under the rules of a clearing facility for the settlement of a market contract;

(d) a market charge;

(e) the default rules of a clearing facility; or

(f) default proceedings,

shall not be invalid at law, for inconsistency with the law for distributing the assets of a person.

(2) A person acting under the laws of insolvency, may not exercise any power to prevent or interfere with—

(a) the settlement of a market contract under the rules of a clearing facility; or

(b) default proceedings.

Duty to report on completion of default proceedings

14. A clearing facility shall, upon the completion of default proceedings, prepare a report to the Commission on such proceedings containing such information as prescribed and stating in respect of each defaulter—

(a) the net sum, if any, certified by the clearing facility payable by or to the defaulter; or

(b) that no sum is payable.

Net sum payable on completion of default proceedings

15. (1) Notwithstanding any of the provisions of the Bankruptcy and Insolvency Act, 2016, where a receiving or winding-up order has been made, or a resolution for voluntary winding up has been passed, any net sum shall be—

(a) provable in the bankruptcy or winding up; or

(b) payable to the relevant office-holder under the Bankruptcy and Insolvency Act, 2016 or in the case of a winding-up order under the Companies Act, Chapter 58A or securities laws.

(2) This section applies to any net sum certified under section 14 by a clearing facility, payable by or to a defaulter upon the completion by it of any default proceedings.

Enforcement of judgments over property subject to market charge

16. (1) Where property is subject to a market charge or has been provided as market collateral, no execution or other legal process for the enforcement of a judgment or order may be commenced or continued, and no distress may be levied, against that property by a person not seeking to enforce any interest in or security over the property, except with the consent of the clearing facility concerned.

(2) Where by virtue of this section a person would not be entitled to enforce a judgment or order against any property, any injunction or other remedy

granted with a view to facilitating the enforcement of any such judgment or order shall not extend to that property.

Participants to be party to certain transactions as principal

17. Where a participant—

(a) in his or her capacity as such enters into any transaction with a clearing facility; and

(b) but for this paragraph, would be a party to that transaction as agent, then as between the clearing facility and any other person, the participant is for all purposes—

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

(ii) deemed to be a party to that transaction as principal,

notwithstanding any other enactment or rule of law.

Securities deposited with clearing facility

18. (1) A civil action, claim or demand, for a right, title or interest held by any person in securities or futures contracts deposited by a participant with a clearing facility in accordance with the rules of the clearing facility, does not lie, and may not be commenced or allowed, against the clearing facility or its nominees, notwithstanding any other enactment or rule of law.

(2) The operation of subsection (1) in respect of securities deposited with a clearing facility is subject to any modifications and exclusions provided in the rules of the clearing facility.

Preservation of rights

19. (1) Except to the extent that it expressly provides, this Part does not operate to limit, restrict or otherwise affect—

(a) a right, title, interest, privilege, obligation or liability of a person;

(b) an investigation, legal proceeding or remedy in respect of the right, title, interest, privilege, obligation or liability.

DIVISION IV
GENERAL

Rules of a marketplace and ancillary facility

20. Subject to the approval of the Commission, a marketplace or ancillary facility licensed under this Part shall make rules for the proper and efficient regulation, operation, management and control of the marketplace or ancillary facility.

Duties of holders of marketplace and ancillary facility licence

21. (1) A holder of a marketplace or ancillary facility licence shall ensure, so far as is reasonably practicable, an orderly and fair market in the securities that are traded through its facilities.

(2) In performing its duties under subsection (1), the holder of a marketplace or ancillary facility licence shall—

(a) act in the interests of the investing public; and

(b) ensure that such interests prevail where they conflict with any other interests the company is required to serve under any other law.

(3) The holder of a marketplace or ancillary facility licence shall ensure that its members comply with its rules, this Act and regulations made under this Act.

Amendment of rules

22. (1) A person licensed under this Part that wishes to make an amendment to its rules or propose a new rule shall submit a draft of the proposed rule or amendment to the Commission for approval.

(2) Immediately following the receipt of a proposed rule or amendment under subsection (1) the Commission shall—

(a) publish in a newspaper of general circulation, in each member country, a notice inviting any interested person to submit written comments on the proposed rule or amendment; and

(b) posting on the website of the Commission a notice inviting any interested person to submit written comments on the proposed rule or amendment,

and the reasonable cost of the publication shall be borne by the securities exchange.

(3) The Commission may, by written notice, approve the rule or amendment or disapprove the whole or any specified part of the rule or amendment in question and, until such notice is given, the rule or amendment shall not have force and effect.

Power to order amendment of rules

23. Where the Commission considers it necessary for the protection of investors or otherwise for the purposes of this Act, it may, by notice in writing, require the holder of a licence under this Part to make, amend or repeal any proposed rule or amendment to a rule, and, on the Commission delivering the notice, the person licensed under this Part shall comply with the requirement as soon as practicable after receipt of the notice from the Commission.

Commission power to supervise

24. If the Commission considers it in the public interest to do so, the Commission may make a decision about a person licensed under this Part, including a decision about—

(a) the person's regulatory instruments;

(b) the person's procedures or practices;

(c) the services provided by the person;

(d) trading or quotation activity on a marketplace;

(e) a security or class of securities traded or quoted on a marketplace;

(f) an issuer whose securities are traded or quoted on a marketplace;

(g) any other matter that the Commission considers necessary for the effective administration of this Act; or

(h) such other matter as may be prescribed.

Assistance to the Commission

25. The holder of a licence under this Part shall provide such assistance to the Commission as the Commission reasonably requires for the performance of the Commission's functions, including the furnishing of returns and providing information in respect of dealings in securities or any other specified information as the Commission may require for the proper administration of this Act.

Appointment of auditor

26. (1) Every person licensed under this Part shall appoint an approved auditor who shall conduct an audit of the person's financial statements in

accordance with generally accepted auditing standards, and shall provide the Commission with the prescribed reports on the financial affairs of the person, within one hundred and twenty days business days after the end of its financial year.

(2) The Commission may impose all or any of the following duties on the auditor of a person licensed under this part—

(a) to submit to the Commission such additional information in relation to the audit as the Commission considers necessary;

(b) to enlarge or extend the scope of the audit of the business and affairs of the person licensed under this Part;

(c) to carry out any other examination or establish any procedure in any particular case;

(d) to submit a report to the Commission on any of the matters referred to in paragraph (b) or (c),

and the auditor shall carry out such additional duty or duties.

(3) The person licensed under this Part shall remunerate the auditor in respect of the discharge of such additional duties imposed under subsection (2).

Contingency and assurance fund

27. (1) A securities exchange or self-regulatory organisation may establish and maintain a contingency fund in the prescribed manner.

(2) A clearing facility shall establish and maintain a settlement assurance fund, in the prescribed manner, to address the failure by any of its participants to deliver securities or monies required by the rules of the clearing facility.

(3) The securities exchange, clearing facility or self-regulatory organisation shall file with the Commission the constituent documents of a fund required by this section and such other documents as may be prescribed.

(4) Where, after consultation with the securities exchange, clearing facility or self-regulatory organisation—

(a) the Commission reasonably believes that a fund established under this section does not contain sufficient assets to meet its purpose; and

(b) the securities exchange, clearing facility or self-regulatory organization fails to contribute to the fund established under this section, an increased amount sufficient to maintain the assets of the fund at a level that the Commission believes to be reasonably necessary to pay claims against the fund,

the Commission may make an order requiring the securities exchange, clearing facility or self-regulatory organisation to contribute to such fund such amount required to attain the level that the Commission believes to be reasonably necessary to pay the claims.

(5) The securities exchange, clearing facility or self-regulatory organisation shall at any time—

(a) permit a person authorised by the Commission in writing, to inspect the records and assets of any fund referred to in this section;

(b) produce and furnish to the person authorised by the Commission in writing any document or record which the person reasonably requests; and

(c) answer any questions that the person authorised by the Commission in writing, may ask concerning those records or assets.

(6) The securities exchange, clearing facility or self-regulatory organisation shall appoint an approved auditor to audit the financial statements of a fund established under this section.

(7) The securities exchange, clearing facility or self-regulatory organisation that establishes a fund under this section shall, within one hundred and twenty business days, after the end of the financial year of the fund, file with the Commission the report of the approved auditors appointed under subsection (6) together with the financial statements of the fund in such form and containing such information as may be prescribed.

(8) Monies held in a fund in accordance with this section shall not be made available for payment of the debts or expenses or other obligations of any person other than as prescribed.

Delegation

28. (1) The Commission may, by written order, delegate to a person licensed under this Part, any of the powers conferred on it by this Act regarding the adoption and enforcement of rules of a securities exchange, clearing facility or self-regulatory organisation for the conduct of their members and the

responsibility to regulate their members' compliance with the provisions of those rules and of this Act.

(2) The Commission shall publish any order of delegation issued under subsection (1).

(3) The Commission may withdraw, add or vary any powers delegated under subsection (1) as it deems necessary.

(4) Despite any delegation under subsection (1), the Commission shall continue to have full authority to regulate the activities of persons licensed under this Part and any of its clients, participants and subscribers.

Voluntary surrender

29. (1) A person licensed under this Part may make an application to the Commission in the prescribed form to surrender its licence, accompanied by documents as may be prescribed.

(2) At any time after receiving an application, the Commission may require the applicant to furnish additional information in support of its application.

(3) If a person licensed under this Part applies to the Commission to surrender its licence, the Commission may accept the surrender, unless the Commission considers it prejudicial to the public interest to do so.

Offences

30. (1) A person may not establish or maintain, or assist in establishing or maintaining a marketplace or an ancillary facility in or from within the Currency Union without a licence or without being licensed in accordance with this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to—

(a) in the case of an individual, to a fine not exceeding $100,000 or to imprisonment for a term not exceeding two years or to both;

(b) in the case of a company, to a fine not exceeding $200,000,

and if the offence is a continuing offence, the individual or company is liable to a further fine not exceeding $1000.00 for every day that the offence continues after conviction.

(3) A person convicted of an offence under this section shall, following an assessment by the Commission, be liable to pay to the Commission, any profits earned as a result of carrying on securities without a licence.

PART III
LICENSING OF INTERMEDIARIES AND INDIVIDUALS

Licensing

31. (1) Subject to the provisions of this Part, no person shall carry on securities business, in or from within the Currency Union, or hold himself or herself out as, or engage in any act, action, or course of conduct, in connection with or incidental to securities business as—

(a) a broker-dealer;

(b) a custodian;

(c) an investment adviser;

(d) a principal of a broker-dealer or investment adviser;

(e) a representative of a broker-dealer or investment adviser;

(f) a compliance officer of a broker-dealer or investment adviser; or

(g) such other persons as may be prescribed,

unless that person is licensed to do so by the Commission under this Part, or is otherwise exempted from the requirements to be licensed.

(2) A licence granted under this Part shall specify the securities business activity that the intermediary is permitted to undertake and shall be restricted to such business as so specified.

(3) An application for a licence under this Part, shall be made to the Commission in the prescribed form and shall be accompanied by such fees and documents as may be prescribed.

(4) At any time after receiving an application the Commission may require the applicant to furnish additional information in support of its application.

Grant of application for licensing

32. (1) On application, the Commission may grant a licence to an applicant if the Commission is satisfied that all the prescribed requirements have been fulfilled and to do so would be in the public interest.

(2) If the Commission refuses to grant, renew or reinstate a licence it shall notify the applicant, in writing, of the refusal and the reason for such refusal.

(3) Following receipt of the Commission's decision, the applicant may apply for a review under section 143.

Conditions for grant of licence

33. (1) The Commission may grant an application for licensing subject to such conditions as it considers appropriate.

(2) The Commission may, by notice in writing vary or revoke a condition of a licence.

Compliance function

34. The Commission may require—

(a) a holder of a licence under this Part to establish and maintain a compliance function, responsible for ensuring that the holder complies with its obligations under this Act; and

(b) a holder of a licence under this Part, other than a person required to be licensed as a principal, representative or compliance officer, to effect policies of insurance on terms as may be ordered by the Commission for the purpose of indemnifying such holder against any liability that may be incurred as a result of any act or omission of the holder or any of its directors, officers or employees.

Offices and branches deemed one licensed intermediary

35. All offices and branches of a licensed intermediary in the Currency Union shall be deemed to be one licensed intermediary.

Authorisation of location and approval of new business premises

36. (1) Any licence granted under this Part shall authorise the licensee to carry on securities business in or from within the Currency Union at the place of business designated in the licence and at such other place as the Commission may in writing authorise.

(2) A person to whom a licence is granted shall not, when conducting business for which a licence is required, use a name other than the name specified in the licence.

(3) A licensed intermediary shall not open a new place of business or change the location of an existing place of business in the Currency Union without the prior approval of the Commission.

(4) A licensed intermediary shall not close an existing place of business in the Currency Union without having given ninety business days notification to the Commission.

(5) Where a licensed intermediary—

(a) opens a place of business or changes the location of an existing place of business in the Currency Union without the prior approval of the Commission under subsection (3);

(b) closes an existing place of business in the Currency Union without giving notice under subsection (4),

it is liable to a penalty of fifty-five thousand dollars.

Renewal or reinstatement of licence

37. (1) The Commission may renew or reinstate a licence under this Part if the applicant—

(a) is considered by the Commission to be fit and proper for renewal or reinstatement in the category applied for;

(b) complies with the prescribed requirements; and

(c) pays the prescribed fee.

(2) The Commission shall refuse to renew or reinstate a licence where such renewal or reinstatement is not in the public interest.

Revocation of licence

38. A licence is effective until—

(a) it is revoked by the Commission;

(b) it expires;

(c) the conditions for continuing the licence have not been met; or

(d) the Commission accepts a surrender of the licence.

Exemptions

39. A person is not required to be licensed under section 31, if that person is—

(a) carrying on business as a clearing facility;

(b) dealing in securities for his or her own account but not by way of business;

(c) dealing in securities only through a licensed broker-dealer in a member country;

(d) gives advice on securities as an incident to the person's practice as an attorney-at-law or professional accountant;

(e) gives advice on securities only in a newspaper, magazine, journal or other periodical publication—

(i) which is generally available to the public; and

(ii) which does not have as its principal or only object the provision of advice, or the issue of analyses or reports, concerning securities.

Offences

40. (1) Any person who carries on business requiring a licence under this Part without holding such a licence, or other than in accordance with the person's licence, commits an offence and is liable on summary conviction—

(a) in the case of an individual, to a fine not exceeding $100,000 or to imprisonment for a term not exceeding two years or to both;

(b) in the case of a company, to a fine not exceeding $200,000,

and if the offence is a continuing offence, the individual or company is liable to a further fine not exceeding 10 per cent of the maximum fine above for every day that the offence continues after conviction.

(2) A person convicted of an offence under this section shall, following an assessment by the Commission, be liable to pay to the Commission, any profits earned as a result of carrying on securities business without a licence.

PART IV
CONDUCT OF BUSINESS BY LICENSEES

Standards of conduct

41. (1) In the conduct of securities business, an intermediary and its licensed principal and representative shall at all times act according to the principles of best practice in relation to securities business and, in particular, shall—

(a) observe a high standard of integrity and fair dealing;

(b) act with due skill, care and diligence;

(c) observe high standards of market conduct;

(d) seek from customers, information about their circumstances and investment objectives which might reasonably be expected to be relevant in enabling an intermediary and its principals and representative to fulfil the licensee's responsibilities to the customer;

(e) ensure that the interests of the customers are placed first;

(f) take reasonable steps to give every customer, the licensee advises, in a comprehensible way, any information needed to enable the customer to make a balanced and informed investment decision;

(g) avoid any conflict of interest with customers and, where such a conflict unavoidably arises, ensure fair treatment of the customer by complete disclosure and obtaining the customer's consent, or by declining to act;

(h) deal with the Commission in an open and co-operative manner.

(2) In the conduct of securities business, an intermediary shall act according to the principles of best practice and, in particular, shall—

(a) protect, by way of segregation and identification or otherwise as prescribed, the customer assets for which the licensee is responsible;

(b) maintain adequate financial resources and insurance cover to meet the business commitments of the licensee and withstand all the risks to which the business is subject;

(c) have appropriate and sufficient systems and controls in place to perform its functions and manage its risks prudently;

(d) have adequate arrangements to ensure that all staff employed are suitable, adequately trained and properly supervised, and establish and maintain well-defined compliance procedures; and

(e) deal with the Commission in an open and cooperative manner.

Responsibility for actions of persons acting on behalf of licensee

42. A licensee is responsible for an act and omission of a director, officer, principal, representative, employee and agent acting on the licensee's behalf in the conduct of securities business.

Business conduct regulations

43. Where any contract for the sale or purchase of securities is entered into in contravention of the standards in section 41 or as prescribed by the regulations, the contravention is actionable at the suit of any customer who suffers loss as a result of the contravention.

Issue of contract notes

44. (1) A broker-dealer shall, in respect of every contract for the purchase, sale or exchange of securities entered into by it (whether as principal or agent), not later than the end of the next trading day after the contract was entered into, make out a contract note which contains the prescribed information and deliver the original contract note to the person on whose behalf it entered into the contract.

(2) The contract note shall state whether it is in respect of a purchase, sale or exchange of securities and shall include—

(a) the name of the licensee and the address of the principal place at which it carries on business;

(b) where the licensee is acting as principal, a statement that it is so acting;

(c) the name and address of the person (if any) to whom the licensee is required to give the contract note and (where different) the name of the person for whom the transaction was undertaken;

(d) the date of the contract, and the date on which the contract note is made out;

(e) the quantity and description of the securities that are the subject of the contract;

(f) the price per unit of the securities;

(g) the amount of consideration under the contract or, in the case of an exchange, sufficient particulars of the securities exchanged to identify them;

(h) the rate or amount of commission payable in respect of the contract;

(i) the amount of stamp duty (if any), payable in connection with the contract and, where applicable, in respect of the transfer;

(j) the date of settlement;

(k) such other information as may be prescribed.

Customer's property

45. (1) Money or other property held by a licensee on account of a customer shall not be available for payment of the debts of the licensee or liable to be paid or taken in execution under an order or process of any court against the licensee.

(2) A licensee shall ensure the segregation and safekeeping of customers' money or securities held on behalf of customers.

(3) A licensee who holds securities or assets for other persons shall account for them in the manner prescribed.

Books and records – general standard

46. (1) A licensee shall—

(a) make and keep information and documents in such form and for such periods—

(i) as are reasonably necessary in the conduct of its business and operations, including to record compliance with all requirements imposed by statute or regulation on the licensee; and

(ii) as may be prescribed; and

(b) file with or deliver to the Commission any prescribed document or report.

(2) The Commission may require a licensee to disseminate to the public any report filed with the Commission under subsection (1) (b).

(3) The information in the report shall include the—

(a) name, address, telephone number and occupation of the person, or other particulars that are capable of establishing the identity of the person, from, to or through whom, or on whose behalf, the securities were acquired, disposed of, or were or are held;

(b) quantity of securities so acquired, disposed of or held;

(c) price of the transaction;

(d) instructions given to or by the person referred to in paragraph (a) in relation to the securities;

(e) date and time of the transaction;

(f) name of the individual, bank or brokerage house that dealt with the transaction; and

(g) name of the person authorised to transact the business.

(4) A licensee shall deliver to the Commission a copy of, or an extract from, any information or document kept under this section upon receipt of a written request from the Commission.

(5) A licensee shall preserve all records that it is required to keep for at least 7 years from the date on which they are made.

(6) The records required to be maintained under this section shall at all reasonable times be open to inspection by the Commission or by an auditor or investigator appointed by the Commission.

Financial resources requirements

47. (1) A licensee shall maintain adequate financial resources to—

(a) meet its business requirements;

(b) withstand the risks to which its business is subject; and

(c) meet the prescribed requirements.

(2) The Minister may, on the recommendation of the Commission make regulations requiring licensees to have and maintain, in respect of the activities for which they are licensed, the financial resources set by the regulations.

(3) Without limiting the general effect of subsection (2), regulations may—

(a) impose requirements which are absolute or which vary from time to time by reference to factors which either are specified in, or are to be determined in accordance with, the regulations;

(b) impose requirements which apply differently to different classes of business for which licensees are licensed, and which take account of all businesses carried on by the licensee;

(c) provide for the assets, liabilities and other matters to be taken into account under the regulations to determine a person's financial

resources and the extent to which, and the manner in which, they are to be taken into account for that purpose; or

(d) require licensees to submit to the Commission, returns of their financial resources in the prescribed manner.

Notices

48. (1) A licensee under Part II or III shall notify the Commission in writing, of the occurrence of an event relating to any matter under this Part, within the time periods specified.

(2) Upon receipt of a notice under subsection (1), the Commission may review the licensee's licence and may take any action the Commission deems appropriate.

(3) A licensee who fails to comply with this section commits an offence and is liable on summary conviction to a fine not exceeding $5,000.

Auditor to be appointed

49. (1) Every licensee, other than a principal, representative or compliance officer, shall appoint an approved auditor who shall conduct an audit of the annual financial statements of the licensee within one hundred and twenty business days after the end of its financial year, in accordance with generally accepted auditing standards, and shall provide the Commission with the prescribed reports on the financial affairs of the person.

(2) The Commission may impose all or any of the following duties on the auditor of a licensee, other than a principal, representative or compliance officer—

(a) to submit to the Commission such additional information in relation to the audit as the Commission considers necessary;

(b) to enlarge or extend the scope of the audit of the business and affairs of the person licensed under Part II or III;

(c) to carry out any other examination or establish any procedure in any particular case;

(d) to submit a report to the Commission on any of the matters referred to in paragraph (b) or (c),

and the auditor shall carry out such additional duties.

(3) The licensee, other than a principal, representative or compliance officer, shall remunerate the auditor in respect of the discharge of such additional duty or duties as the Commission may impose under subsection (2).

Auditor to report to Commission in certain cases

50. If, during the performance of his or her duties as auditor for a licensee, an auditor—

(a) becomes aware of any matter which in his or her opinion adversely affects the financial position of the licensee being audited to a material extent; or

(b) discovers evidence of a contravention of regulations made under section 45, contravention of section 46 or 47 or such other provisions as may be prescribed,

the auditor shall, as soon as is practicable, and in any event within seven business days, report the matter in writing to the Commission and to the licensee.

Power to require reports

51. The Commission may, by notice require a licensee to provide the Commission with a report, in such form as may be specified in the notice, by the licensee's approved auditor, or by an accountant or other person with relevant professional skill, on, or on any aspect of, any matter about which the Commission has required or could require the regulated person to provide information under securities laws.

Reporting to the Commission

52. (1) Within the prescribed periods, a licensee under Part II or III shall deliver to the Commission—

(a) annual financial statements in respect of the current year, along with the report of the auditor;

(b) interim financial statements and other information as may be prescribed; and

(c) all reports or other information and documents as the Commission may prescribe.

(2) When requested to do so by the Commission, a licensee shall provide a report on whether or not the business of the licensee has been conducted in accordance with the provisions of this Act relating to the prescribed requirements of this Act and the financial affairs of a licenced firm.

Continuing licensing requirement
53. Throughout the period of licensing under this Act, all holders of a licence under Part II or III shall continue to meet the requirements for licensing set out in securities laws.

PART V
REGISTRATION AND DISTRIBUTIONS OF SECURITIES

Registration of reporting issuers
54. (1) A person, who is not a reporting issuer and proposes to make a distribution, shall register with the Commission as a reporting issuer by filing a registration statement in the prescribed form and paying the prescribed fee.

(2) This section shall not apply to any issuer which is a government entity, international agency or such other person as may be prescribed.

(3) Subsection (1) shall not apply where the distribution is a limited offering made to a person who—

(a) is a senior officer or partner of the issuer;

(b) is directly involved in the business of the issuer;

(c) is an associate or relative of the issuer; or

(d) is a shareholder of the issuer.

(4) Where a limited offering is made to a person listed under subsection (3), the issuer shall—

(a) notify the Commission in writing of the proposed commencement date of the distribution within ten business days of the first distribution of securities; and

(b) files a post-distribution statement in accordance with section 68.

Registration of securities
55. (1) No security shall be—

(a) distributed; or

(b) listed with any securities exchange,

unless it is registered with the Commission.

(2) Registration of a security may be made by filing a distribution statement with the Commission in the prescribed form.

(3) A distribution statement shall be effective only as to the securities set out in that statement or as otherwise prescribed.

(4) At the time of filing a distribution statement pursuant to subsection (2), the applicant shall pay to the Commission such fees as may be prescribed.

(5) The effective date of a distribution statement shall be determined by the Commission.

(6) Securities that were registered under the former Act and outstanding immediately before the coming into force of this Act, shall be deemed to be registered under this Act.

(7) Subsection (1) shall not apply where the distribution is a limited offering made to a person who—

(a) is a senior officer or partner of the issuer;

(b) is directly involved in the business of the issuer;

(c) is an associate or relative of the issuer;

(d) is a shareholder of the issuer; or

(e) meets such other conditions as may be prescribed.

(8) Where a limited offering is made to a person listed under subsection (7), the issuer shall—

(a) notify the Commission in writing of the proposed commencement date of the distribution within ten business days of the first distribution of securities; and

(b) file a post-distribution statement in accordance with section 68.

(9) Notwithstanding subsection (7), the Commission may determine that it is in the public interest that a limited offering described in subsection (7) be subject to the registration requirements of this Part.

Prospectus required

56. (1) Subject to section 63, no person shall trade in a security on that person's own account or on behalf of any other person where the trade would be a distribution of the security requiring registration pursuant to section (55)

(1), unless a prospectus has been filed with the Commission with the prescribed fee and a receipt evidencing payment of the fee has been issued by the Commission.

(2) A prospectus shall be valid only for the period of time for distribution as determined under section 67.

Advertising

57. (1) A person shall not solicit a trade in a security by way of advertisement or any other means in connection with a distribution of a security, unless a receipt has been issued by the Commission under this Act for a prospectus offering the security, and the advertisement—

(a) identifies the security proposed to be distributed and contains all other prescribed information;

(b) states that a receipt has been issued by the Commission; and

(c) identifies a person from whom a document containing the information specified in paragraph (a) may be obtained, and a person through whom orders are to be executed.

(2) A person may solicit an expression of interest from an accredited investor with respect to a proposed distribution if the person—

(a) notifies the Commission in writing that he or she intends to do so and identifies the security proposed to be distributed; and

(b) notifies the accredited investor that—

(i) either the securities are being distributed pursuant to a limited offering or a prospectus related to the proposed distribution has been filed with the Commission but the receipt has not been issued;

(ii) no offer to buy the securities can be accepted and no part of the purchase price can be recovered until the prospectus for the proposed distribution has been approved by the Commission; and

(iii) such expression of interest shall not be binding on either party.

Delivery of prospectus

58. (1) An issuer or a licensee acting as agent for the issuer, who receives an order or subscription for a security offered in a distribution, shall send or

deliver to a person, a prospectus, or amended prospectus, as the case may be, within two business days after the order or subscription is received.

(2) An agreement of purchase and sale in relation to an order or subscription referred to in subsection (1) is not binding on a purchaser if the issuer, or the licensee acting as agent for the issuer, receives not later than two business days after the day the purchaser received a prospectus or amended prospectus under subsection (1), written notice that the purchaser intends not to be bound by the agreement.

(3) A person who files a prospectus with the Commission pursuant to section 56 during the distribution period, shall furnish to any licensee a reasonable number of copies of the prospectus upon request and without charge.

(4) For the purposes of this section, the date of receipt of a prospectus by a person who acts solely as agent of the purchaser with respect to the purchase of a security referred to in subsection (1), is deemed to be the date of receipt by the principal purchaser.

Contents of prospectus

59. A prospectus shall disclose all material information concerning the issuer and the securities to be distributed and shall comply with the prescribed requirements.

Amendments

60. (1) If there is a material change during the distribution period of a prospectus, the issuer shall file with the Commission an addendum containing the material change or material fact as the case may be, together with the prescribed fee as soon as practicable and in any event within ten business days and every prospectus sent after ten business days or delivered to any person shall include a copy of the addendum.

(2) Where an addendum is required to be prepared and filed with the Commission under subsection (1), the Commission may require the cessation of the distribution of securities under the prospectus until such time as the Commission has issued a receipt for the addendum.

(3) An issuer or licensee who sent a prospectus to a person under section 58 shall send to each such person an amended prospectus immediately after it has been filed.

Certificates

61. A prospectus or amended prospectus filed with the Commission shall contain certificates in the prescribed form signed by the prescribed persons.

Expert's consent

62. (1) A receipt shall not be issued by the Commission for a prospectus that includes a report, opinion, valuation or statement purporting to be made by an expert unless—

(a) that expert has given, and has not before delivery of a copy of the prospectus withdrawn, his or her consent to the inclusion of the statement in the form and context in which it is included in the prospectus; and

(b) there appears in the prospectus a statement that the expert has given and has not withdrawn his or her consent.

(2) The written consent of an expert under subsection (1) shall be filed in the prescribed manner.

Exemptions

63. (1) The requirement to file a prospectus under section 56 does not apply to a distribution of securities—

(a) issued by the Eastern Caribbean Central Bank;

(b) issued or guaranteed by a Participating Government;

(c) by an issuer where the purchaser is an affiliate of the issuer acting as principal;

(d) by an issuer of a security that is distributed to holders of its securities as a dividend or a distribution out of earnings, surplus, capital or other sources;

(e) by an issuer of a security to holders of its securities incidental to a reorganisation or winding up or to a distribution of its assets for the purpose of winding up its affairs;

(f) by an issuer of a security pursuant to the exercise of a right to acquire a security of its own issue, which right was previously granted by the issuer, if no commission or other remuneration is paid or given in respect of the distribution except for administrative or professional services or for services other than the solicitation of investors performed by a licensee;

(g) by an issuer of a right, transferable or otherwise, granted by it to holders of its securities to purchase additional securities of its own issue, and of securities pursuant to the exercise of such a right if the issuer—

(i) files with the Commission a notice in the prescribed form that is to be sent to its security holders and the Commission does not inform the issuer in writing within ten business days of the filing that it objects to the distribution; and

(ii) sends to its security holders information relating to the securities that is satisfactory to the Commission.

(h) by an issuer of a security that is exchanged by or for the account of the issuer with another issuer or the security holders of another issuer on—

(i) a statutory amalgamation or arrangement; or

(ii) a statutory procedure by which one issuer takes title to the assets of another issuer that loses its existence by operation of law or by which the existing issuers merge into a new issuer;

(i) by an issuer of securities of its own issue or that of an affiliate to its senior officers or employees, or senior officers or employees of an affiliate, if—

(i) in the case of employees, the employees are not induced to purchase the securities by expectation of employment or continued employment with the issuer; and

(ii) no commission or other remuneration is paid or given in respect of the distribution except for professional services or for services, other than the solicitation of employees, performed by a licensee;

(j) where the Commission makes an order that the cost of providing a prospectus outweighs the resulting protection to investors, the Commission may make the order subject to any conditions it considers appropriate;

(k) by a reporting issuer to accredited investors where—

(i) the distribution is not accompanied by an advertisement other than an announcement, on prescribed terms, of its completion;

(ii) no selling or promotional expenses are paid in connection with the trade except for professional services or services performed by an intermediary; and

(iii) the accredited investor is a person other than as described in paragraph (b) or (d) of the definition of accredited investor under section 2 (1), and the person has obtained investment advice in respect of the distribution from—

(A) a licensee; or

(B) any prescribed person who receives no remuneration from the issuer or selling security holder in connection with the distribution;

(l) that is a limited offering;

(m) where the Commission, being satisfied that to do so would not be prejudicial to the public interest, makes an order exempting the distribution, and such order may be subject to any condition the Commission considers appropriate; or

(n) in such other circumstances as may be prescribed.

(2) An asset-backed security may only be distributed pursuant to an exemption in subsection (1) if a risk disclosure statement in the prescribed form was delivered to each purchaser of the asset-backed security.

(3) The securities certificate or other proof of ownership of a security acquired under an exemption in subsection (1) shall contain a statement regarding any resale restrictions where prescribed.

Exemptions for approved foreign issuers

64. (1) An issuer that is an approved foreign issuer may satisfy the requirements of section 54,55, 56, 58, 59, 60 and 62 by—

(a) filing with the Commission—

(i) a certificate signed by a senior officer of the issuer certifying that it is an approved foreign issuer;

(ii) a copy of the receipt or other evidence that the prospectus or offering document to be used in connection with a distribution of securities has

become final for the purposes of a distribution of securities in a recognised foreign jurisdiction;

(iii) a copy of all documents incorporated or deemed incorporated by reference in the prospectus or offering document;

(iv) a copy of all reports or valuations, or other documents filed in the recognised foreign jurisdiction in connection with the distribution;

(v) a form of submission to the Commission's jurisdiction and appointment of an agent for service of process of the issuer in such form as the Commission may determine; and

(vi) a copy of the prospectus or offering document, and each supplement or amendment thereto, including a certificate of a senior officer of the issuer certifying that the prospectus or offering document constitutes full and true disclosure in plain English language of all the material facts relating to the issuer and the securities being distributed; and

(b) delivering to each purchaser within the Currency Union—

(i) the offering document or prospectus, and each supplement or amendment to the offering document or prospectus; and

(ii) an addendum to the offering document or prospectus containing the prescribed information.

(2) Subsection (1) does not apply to an approved foreign issuer where—

(a) following the distribution, the number of voting securities of the issuer held, beneficially and of record, directly or indirectly, by the residents of the Currency Union would amount to 20 per cent or more in the aggregate of the total number of securities outstanding of the issuer;

(b) the approved foreign issuer is an investment fund; or

(c) the documents required to be filed by the issuer under subsection (1) are not in English.

(3) Subject to subsection (2), where an approved foreign issuer files with the Commission the documents required under subsection (1), the Commission shall issue a receipt for such prospectus or offering document unless the Commission determines it is not in the public interest to do so.

Resale restrictions

65. (1) The first trade in securities previously acquired pursuant to a prescribed exemption contained in paragraph (c), (f), (k), or (l) of section 63 (1), other than a further trade exempted by this Act, is deemed to be a distribution, unless—

(a) the issuer whose securities are being traded is and has been a reporting issuer for the twelve months immediately preceding the date of the trade;

(b) no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade;

(c) no extraordinary commission or consideration is paid to a person in respect of the trade;

(d) if the seller is a person connected to a reporting issuer within the meaning of Part IX, such seller has no reasonable grounds to believe that such issuer is in default under this Act; or

(e) at least six months have elapsed from the date of the initial distribution with the exception of securities previously acquired pursuant to an exemption contained in section 63 (1) (f).

(2) A person who purchases a security pursuant to an exemption from the prospectus requirement that is available under this Act at the time when the condition under subsection (1) (e) has not been satisfied, shall be in the same position as the seller for the remainder of the period specified in subsection (1) (e).

(3) Where a security of an issuer is distributed on conversion or exchange of another security of the same issuer at a time when the condition under subsection (1) (e) has not been satisfied in respect of the convertible or exchangeable security, a person who takes such security distributed on conversion or exchange shall be in the same position for the remainder of the period specified in subsection (1) (e) as if such conversion or exchange had not occurred.

Receipt for prospectus

66. (1) Subject to subsections, (2), (3) and (4), the Commission shall issue a receipt for a prospectus within thirty business days after the date of the filing of the prospectus.

(2) The Commission shall refuse to issue a receipt for a prospectus if—

(a) the prospectus or any document filed with the prospectus—

(i) contains a misrepresentation;

(ii) contains any statement, promise, estimate or forecast that is misleading, false or deceptive;

(iii) fails to disclose any information which may be required under this Act or the regulations; or

(iv) fails to comply with any requirement of this Act or the regulations;

(b) the distribution in connection with which it is filed is deceptive;

(c) an extraordinary commission or consideration has been or is intended to be given for promotional purposes or for the acquisition of the security;

(d) in the opinion of the Commission, the past conduct of—

(i) the issuer;

(ii) a senior officer of the issuer;

(iii) the promoter of the distribution;

(iv) a person holding securities sufficient to materially affect the control of the issuer; or

(v) any other person who exercises, or is reasonably considered by the Commission as likely to exercise, influence over the issuer's management or policies,

suggests that the business or affairs of the issuer are likely to be conducted in a manner that is not honest, or financially responsible, or that may be unfair to holders of its securities;

(e) the proceeds that the issuer will receive from the distribution, together with its other resources, are not sufficient to accomplish the purpose of the distribution stated in the prospectus;

(f) a recognised expert who has prepared or certified a part of the prospectus or report used in connection with it, or who has filed a consent with the Commission is not accepted by the Commission;

(g) the issuer is in default in filing or delivering any document to the Commission required under this Act or under any other enactment by or under which it is incorporated or organised;

(h) a broker-dealer or investment adviser named in the prospectus is not licensed as such under this Act or authorised to perform equivalent functions under the laws of a recognised foreign jurisdiction;

(i) where a minimum amount of funds is required by an issuer, the prospectus does not indicate that the distribution will cease if the minimum amount of funds is not subscribed within ninety business days of the commencement of the distribution; or

(j) the Commission considers that the distribution would be prejudicial to the public interest.

(3) Where the Commission refuses to issue a receipt for a prospectus, the Commission shall provide the issuer with notice in writing of the reasons for the refusal and the issuer may apply for a review under section 143.

(4) The Commission may, in connection with the issue of a receipt for a prospectus, impose any condition that, in the opinion of the Commission is necessary for the protection of investors including one of the following conditions—

(a) outstanding securities of the issuer be held in escrow upon such terms as the Commission may specify;

(b) the proceeds of a distribution which are payable to the issuer be held in trust until such amounts, as may be specified by the Commission, are to be released to the issuer,

and no sales pursuant to the distribution may be completed before such time as may be specified by the Commission.

Commencement and cessation of distribution

67. (1) For the purposes of this Part, a distribution commences on the date that the receipt for the prospectus is issued.

(2) Where the prospectus states that a minimum amount of funds is required to be raised by an issuer, and such minimum amount of funds is not raised by the issuer in the first ninety business days following the commencement of the distribution, the distribution shall cease and the funds shall be returned to subscribers until such time as a new prospectus is filed and a receipt thereof issued by the Commission.

(3) Subject to subsection (5), a distribution shall not continue longer than one year from the commencement date in subsection (1).

(4) The Commission may determine that the period specified in subsection (4) be reduced to not less than 6 months.

Post distribution statement

68. A person who distributes a security, other than a security which is issued by an investment fund—

(a) under a prospectus which has been filed with the Commission and receipt obtained under this Act; or

(b) pursuant to an exemption from the requirement to file a prospectus with the Commission,

shall within ten business days of the completion of the distribution, file a post-distribution statement in respect of the securities distributed with the Commission in such form as the Commission may determine.

Offence

69. If a distribution is carried out other than in compliance with this Part, the issuer and every person who is knowingly a party to the distribution is liable on summary conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding six months or to both, and in the case of a continuing offence, to a fine not exceeding $50,000 for every day, or part of a day, from the date of the first solicitation in connection with the distribution until a receipt has been issued for a prospectus, by the Commission.

PART VI
CONTINUING OBLIGATIONS OF REPORTING ISSUERS

Disclosure to the public

70. (1) A reporting issuer shall disclose to the public all material facts and any other prescribed information about the issuer.

(2) The information disclosed to the public by a reporting issuer under subsection (1) shall—

(a) include all information required to be disclosed under this Part;

(b) not contain any misrepresentation; and

(c) present a balanced view of the issuer's activities.

(3) The Commission may prescribe the method to be used by the reporting issuer to disclose information to the public.

Fair treatment of security holders

71. A reporting issuer shall treat all its security holders in a fair and equitable manner.

Duties of directors and officers

72. Every director and officer of a reporting issuer, in exercising their powers and discharging their duties shall—

(a) act honestly and in good faith for the best interest of the issuer; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Timely disclosure of material changes

73. (1) Subject to subsection (2), where a material change occurs in the affairs of a reporting issuer, the reporting issuer shall immediately, and in any event within seven business days of the material change—

(a) publish a notice of the substance of the change, authorised by a senior officer of the reporting issuer, in each member country in a newspaper of general circulation; and

(b) file a report with the Commission in the prescribed form, along with a copy of the published notice, disclosing the nature and substance of the material change, the contents of which shall be certified by a senior officer of the reporting issuer.

(2) If the reporting issuer is of the opinion that the immediate disclosure required by subsection (1) would be unduly detrimental to its interests, it shall immediately give the Commission notice in writing of the information relating to the reporting issuer, including information on any significant new developments in the issuer's business or affairs which is not public knowledge and the reasons that the issuer is of the opinion that public disclosure should be withheld.

(3) Where the Commission receives a notice under subsection (2), the Commission may, after giving the reporting issuer an opportunity to be heard—

(a) require disclosure to the public of the material change in accordance with subsection (1), if the Commission is of the opinion that the disclosure would not be unduly detrimental to the interests of the reporting issuer; or

(b) permit non-disclosure of the material change by the reporting issuer provided non-disclosure does not continue beyond the time set out in subsection (5).

(4) A decision of the Commission under subsection (3) is final and no appeal from such a decision shall be available.

(5) Notwithstanding any permitted non-disclosure under subsection (3) (b), the reporting issuer shall disclose to the public such material change no later than thirty business days or in any event on a date to be determined by the Commission.

(6) The reporting issuer shall, notwithstanding a notice has been given to the Commission under subsection (2), promptly disclose the material change in the manner referred to in subsection (1) upon the reporting issuer becoming aware or having reasonable grounds to believe that persons are purchasing or selling securities of the issuer with knowledge of the undisclosed material change.

(7) The Commission or a securities exchange licensed under this Act may make a cease trading order in the trading of securities of a reporting issuer for a period of time, to allow for the disclosure of a material change if the Commission is of the opinion that such cease trade order is appropriate to ensure orderly trading in the securities.

Auditors and audits

74. Every reporting issuer shall appoint an approved auditor who shall conduct an audit of the annual financial statements of the issuer in accordance

with generally accepted auditing standards and shall provide the Commission with the prescribed reports on the financial affairs of the issuer.

Filing of annual audited financial statements

75. (1) Every reporting issuer shall, within one hundred and twenty business days after the end of the issuer's financial year or such other prescribed period, file with the Commission annual audited financial statements prepared in accordance with generally accepted accounting principles.

(2) Every financial statement referred to in subsection (1) shall be accompanied by a report of the auditor of the reporting issuer.

(3) The Commission may, where the report of the auditor required by subsection (2) is qualified in any respect, take any action that it deems necessary until the matters giving rise to the qualified audit report are resolved.

(4) Where in the course of performing the duty required by subsection (2), the auditor determines that a matter that could give rise to a qualification in the audit report on the financial statements is present, the auditor shall—

(a) immediately provide notice to the Commission in the prescribed form; and

(b) immediately deliver a copy of the notice under paragraph (a) to the reporting issuer.

Interim financial statements

76. Every reporting issuer shall file with the Commission interim financial statements prepared in accordance with generally accepted accounting principles within thirty business days or such other prescribed period after the end of the financial period to which it relates.

Annual reports

77. Every reporting issuer shall, within one hundred and twenty business days after the end of its financial year, file with the Commission—

(a) a copy of its annual report containing such information as the Commission may specify; and

(b) all reports or other information and documents as the Commission may specify.

Delivery of continuous disclosure documents to security holders

78. (1) As soon as practicable after filing with the Commission, a reporting issuer shall send to each security holder, at the address provided to the reporting issuer as the preferred delivery address of the security holder or at the last address of the security holder shown on the securities register of the reporting issuer or by electronic mail or other electronic means and at no cost to the security holder, the following documents—

(a) the annual financial statements and the report of the auditor;

(b) the annual report; and

(c) any other prescribed report or document.

(2) The obligation to send documents to security holders under subsection (1) does not apply—

(a) in relation to documents published under section 73; or

(b) if a security holder has informed the reporting issuer that the security holder does not wish to receive the documents.

Failure to file

79. Where a reporting issuer fails to file a report or statement required to be filed under this Part, it is liable to a penalty of one thousand dollars for every day from the day of the default except when an extension to the period has been granted by the Commission pursuant to section 169.

Proxies and proxy solicitation

80. (1) For the purpose of this section, **"solicit"** and **"solicitation"** include—

(a) a request for a proxy, whether or not accompanied by or included in a form of proxy;

(b) a request to execute or not to execute a form of proxy or to revoke a proxy;

(c) the sending of a form of proxy or other communications to a security holder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy; and

(d) the sending of a form of proxy to a security holder under subsection (2), but does not include—

(i) the sending of a form of proxy in response to an unsolicited request made by or on behalf of a security holder;

(ii) the performance of administrative acts or professional services on behalf of a person soliciting a proxy;

(iii) the sending by a registrant of documents to a beneficial owner;

(iv) the solicitation by a person in respect of securities of which the person is the beneficial owner; or

(v) other prescribed activities.

(2) A reporting issuer shall, concurrently with the giving of notice of a meeting of its security holders, send a prescribed form of proxy and any other prescribed document to each holder of voting securities who is entitled to receive notice of the meeting at the preferred address or at the last address of the security holder shown on the securities register of the reporting issuer or by electronic mail or other electronic means and at no cost to the security holder.

(3) A person shall not solicit proxies under subsection (1) unless each security holder whose proxy is solicited is sent all prescribed documents concurrently with the solicitation.

(4) A person soliciting proxies shall, concurrently with sending the proxy document required in subsection (2), file with the Commission a copy of each document sent to security holders.

(5) The Commission may—

(a) require a reporting issuer to file with the Commission, within such time limit as may be prescribed, draft copies of any documents that the issuer intends to send to security holders under this section prior to any sending; and

(b) review any proxy documents any other communications to security holders and require modifications to the documents or delay any mailing or security holder meeting as a result of its review.

Exemptions for certain foreign issuers

81. (1) A reporting issuer that is an approved foreign issuer is exempt from the requirements of this Part, if the reporting issuer—

(a) complies in all respects with the foreign disclosure requirements of its recognised foreign jurisdiction regarding—

(i) the disclosure of material changes on a timely basis;

(ii) the preparation, filing and delivery of annual audited financial statements; and

(iii) the preparation, filing and delivery of interim financial statements;

(b) files with the Commission all such documents that it files with the foreign regulatory authority in the recognised foreign jurisdiction in respect of the items described under paragraph (a); and

(c) delivers to each security holder resident in the Currency Union, at the security holder's preferred delivery address or at the last address of the security holder shown on the securities register of the approved foreign issuer or by electronic mail or other electronic means and at no cost to the security holder, the documents that such security holder would be entitled to receive under the laws governing securities in the recognised foreign jurisdiction if such security holder were resident in that foreign jurisdiction.

(2) Subsection (1) is not applicable to an approved foreign issuer if, as at the end of the last financial year of the approved foreign issuer, the number of securities of the approved foreign issuer held beneficially and of record, directly or indirectly, by residents in the Currency Union is 20 per cent or more of the outstanding voting securities of the issuer on such date or such other ownership threshold as may be prescribed.

(3) A reporting issuer that is an approved foreign issuer shall certify annually to the Commission in writing, concurrently with the filing of its annual financial statements, that it is an approved foreign issuer and is permitted to rely on the exemption provided by this section.

Ceasing to be a reporting issuer

82. The Commission may on its own motion or on an application by a reporting issuer, make an order declaring, subject to such conditions as it considers appropriate, that the issuer is no longer a reporting issuer.

Offences

83. (1) A reporting issuer who—

(a) contravenes this Part; or

(b) makes a misrepresentation in any document required to be filed with the Commission or delivered to security holders under this Part,

commits an offence and is liable on conviction on indictment—

(i) in the case of an individual, to a fine not exceeding $100,000 or to imprisonment for a term not exceeding three years or to both;

(ii) in the case of a company, to fine not exceeding $200,000.

(2) Where a reporting issuer is convicted of an offence under subsection (1), each senior officer of the reporting issuer, who knowingly or recklessly authorised, permitted or acquiesced in the commission of the offence is also liable on conviction on indictment for such offence to a fine not exceeding $50,000 or to imprisonment for a term not exceeding two years, or to both.

(3) Notwithstanding subsection (2), the defence available to a senior officer under section 147 is also available to a senior officer in respect of this section.

(4) Where a senior officer is convicted of an offence under subsection (2), the Commission may order, that the individual be prohibited from being a senior officer of a reporting issuer or licensee for a period not exceeding five years, if it is in the public interest, and may do so in addition to any other order that the Commission may make.

(5) An auditor of a reporting issuer that knowingly makes or provides a false or misleading audit report in respect of the financial statements of a reporting issuer commits an offence and is liable on summary conviction to a fine not exceeding $100,000.

(6) Where an auditor is convicted of an offence under subsection (5), the Commission may order that the auditor be prohibited from being an approved auditor for a period not exceeding five years if it is in the public interest and may do so in addition to any other order that the Commission may make.

PART VII
GOVERNANCE OF REPORTING ISSUERS

Compliance with prescribed requirements

84. A reporting issuer shall comply with all prescribed requirements regarding the governance of reporting issuers, including requirements relating to—

(a) the composition of its board of directors and qualifications for membership on the board, including matters respecting the independence of members;

(b) the establishment of specified types of committees of the board of directors, the mandate, functioning and responsibilities of each committee, the composition of each committee and the qualifications for membership on the committee, including matters respecting the independence of members;

(c) the establishment and enforcement of a code of business conduct and ethics applicable to its directors, officers and employees and applicable to persons or companies that are in a special relationship with the reporting issuer, including the minimum requirements for such a code; and

(d) procedures to regulate conflicts of interest between the interests of the reporting issuer and those of a director or officer of the reporting issuer.

PART VIII
TAKEOVER BIDS

Takeover bids

85. A person shall not make a takeover bid or issuer bid for a reporting issuer except in accordance with the prescribed requirements.

Offence

86. A person who contravenes any provision made under this Part commits an offence and is liable on summary conviction —

(i) in the case of an individual, to a fine not exceeding $100,000 or to imprisonment for a term not exceeding three years or to both;

(ii) in the case of a company, to fine not exceeding $150,000

and in the case of a continuing offence, to a fine not exceeding ten per cent of the maximum fine for each day that the offence continues.

PART IX
DISCLOSURE OF SHAREHOLDINGS OF DIRECTORS, OFFICERS AND SIGNIFICANT SECURITY HOLDERS

Reports by certain connected persons

87. (1) A person who is connected to a reporting issuer shall, within five business days of the day that he or she becomes connected to the reporting issuer, file a report with the Commission in the prescribed form disclosing any beneficial ownership of or control over, securities of the reporting issuer.

(2) A person—

(a) who is connected to a reporting issuer; and

(b) who changes his or her beneficial ownership of, or control or direction over, securities of the reporting issuer,

shall within five business days from the day on which the change takes place, file in such form as the Commission may determine, a report of any change in beneficial ownership of, or control or direction over, securities of the reporting issuer by him or her as of the day on which the change took place.

(3) No person to whom this section applies shall transfer or cause to be transferred any securities of the reporting issuer to which he or she is connected into the name of an agent, nominee or custodian, other than a clearing facility, without filing with the Commission a report in such form as the Commission may determine, of such transfer except for a transfer for the purpose of giving collateral for a genuine debt.

(4) Notwithstanding subsection (1), a person is not required to file a report under this section where the person does not beneficially own, or exercise control or direction over, any securities of the reporting issuer.

(5) For the purposes of this section, a person's beneficial ownership of, or control or direction over, securities of a reporting issuer, includes—

(a) securities that are convertible or exchangeable for securities of a reporting issuer, whether or not on condition; or

(b) rights to acquire or to subscribe for, or otherwise receive securities of a reporting issuer,

whether or not such securities are securities issued by the reporting issuer.

(6) A person who files a report with the Commission under this section shall deliver a copy of the report that he or she has filed with the Commission under this section to the reporting issuer.

Register of interest of directors and significant shareholders

88. (1) A reporting issuer shall keep, in the form and manner specified by the Commission, a register of senior officers' and significant security holders' interests.

(2) The register shall be held at the reporting issuer's registered office and shall, during usual office hours, be open to inspection by members of the public free of charge.

(3) The register shall be produced at the commencement of the reporting issuer's annual general meeting and be kept open and available throughout the meeting to any person attending.

Notification to securities exchange and Commission

89. (1) Where a reporting issuer is notified by a senior officer or significant security holder of any matter relating to securities which the reporting issuer is required to enter in its register, the reporting issuer shall inform the securities exchange on which the securities of the reporting issuer are listed, and the Commission, before the end of the day following the day of the notification or entry, as the case may be.

(2) The securities exchange or the Commission shall publish, in such manner as it may determine, any information it receives under this section.

Offences

90. A person who contravenes any provision of this Part commits an offence and is liable on summary conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding two years, and in the case of a continuing offence, to a fine not exceeding 10 percent of the maximum fine for each day that the offence continues.

PART X
UNCERTIFICATED SECURITIES

Transfer of uncertificated securities

91. Notwithstanding the provisions of the Companies Act, the ownership of securities, issued by reporting issuers may subject to the prescribed provisions, be evidenced and transferred without a written instrument.

PART XI
MARKET MISCONDUCT

Market manipulation

92. A person shall not take part in or carry out, whether directly or indirectly and whether within the Currency Union or elsewhere, a transaction or series of transactions that has or is likely to have the effect of—

(a) creating an artificial price for trading in securities on a marketplace licensed under this Act; or

(b) maintaining a price for trading in securities on a marketplace licensed under this Act at a level that is artificial, whether or not it was previously artificial.

False trading and market rigging – creating a false or misleading appearance of active trading

93. (1) A person shall not do, or omit to do, an act, whether in or from within the Currency Union or elsewhere, if that act or omission has or is likely to have the effect of creating, or causing the creation of, a false or misleading appearance—

(a) of active trading in securities on a marketplace licensed under this Act; or

(b) with respect to the marketplace for, or the price for trading in securities on a marketplace licensed under this Act.

(2) For the purpose of subsection (1), a person is deemed to have created a false or misleading appearance of active trading in particular securities on a licensed marketplace if the person—

(a) enters into, or carries out, either directly or indirectly, any transaction of purchase or sale of any of those securities that does not involve any change in the beneficial ownership of the securities;

(b) makes an offer to sell any of those securities at a specified price and has made or proposes to make, or knows, that an associate of the person has made or proposes to make, an offer to purchase the same number, or substantially the same number, of those securities at a price that is substantially the same as the price specified in the offer to sell; or

(c) makes an offer to purchase any of those securities at a specified price and has made or proposes to make, an offer to sell the same

number, or substantially the same number, of those securities at a price that is substantially the same as the price specified in the offer to purchase.

(3) The circumstances in which a person creates a false or misleading appearance of active trading in particular securities on a marketplace are not limited to the circumstances set out in subsection (2).

(4) For the purposes of subsection (2) (a), a purchase or sale of securities does not involve a change in the beneficial ownership if—

(a) a person who had an interest in the securities before the purchase or sale; or

(b) an associate of a person under paragraph (a),

has an interest in the securities after the purchase or sale.

(5) The reference in subsection (2) (a) to a transaction of purchase or sale of securities includes—

(a) a reference to the making of an offer to purchase or sell securities; and

(b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to buy or sell securities.

False trading and market rigging – artificially maintaining etc. trading price

94. (1) A person shall not, whether in or from within the Currency Union or elsewhere, enter into, or engage in, a fictitious or artificial transaction or device if that transaction or device results in—

(a) the price for trading in securities on a licensed marketplace being maintained, inflated or depressed; or

(b) fluctuations in the price for trading in securities on a licensed marketplace.

(2) In determining whether a transaction is fictitious or artificial for the purposes of subsection (1), the fact that the transaction is, or was at any time, intended by the parties who entered into it to have effect according to its terms is not conclusive.

Misleading or deceptive conduct

95. (1) No person shall engage in conduct, in or from within the Currency Union**,** in relation to securities business or a security, that is misleading or deceptive or is likely to mislead or deceive.

(2) The reference in subsection (1) to engaging in conduct in relation to a security includes any of the following—

(a) trading in a security;

(b) issuing a security

(c) publishing a notice or advertisement in relation to a security;

(d) making, or making an evaluation of, an offer under a take-over bid or a recommendation relating to such an offer; or

(e) carrying on negotiations, or making arrangements, or doing any other act, preparatory to, or in any way related to, an activity covered by any of paragraphs (b) to (d).

Misleading the Commission

96. No person shall, in purported compliance with any requirement imposed by or under securities laws, knowingly or recklessly provide the Commission or the public with information that—

(a) is false;

(b) is misleading in a material particular; or

(c) fails to state a fact that is required to be stated or that is necessary to make the statement not misleading.

Dissemination of information about illegal transactions

97. No person shall, whether in or from within the Currency Union or elsewhere, circulate or disseminate, or be involved in the circulation or dissemination of any statement or information to the effect that the price for the trading in securities on a licensed marketplace will, or is likely to rise or fall or be maintained, because of a transaction, or other act or thing done, in relation to those securities, if—

(a) the transaction or thing done, constitutes or would constitute a contravention of section 92, 93, 94 or 95; and

(b) the person, or an associate of the person—

(i) has entered into such a transaction or done such an act or thing; or

(ii) has received, or may receive, directly or indirectly, a consideration or benefit for circulating or disseminating or authorising the circulation or dissemination of, the statement or information.

False or misleading statements

98. No person shall, whether in the Currency Union or elsewhere, make a statement, or disseminate information, if—

(a) the statement or information is false in a material particular or is materially misleading;

(b) the statement or information is likely—

(i) to induce persons in the Currency Union to trade securities; or

(ii) to have the effect of increasing, reducing, maintaining or stabilising the price for trading in securities on a licensed marketplace; and

(c) when the person makes the statement, or disseminates the information—

(i) the person does not care whether the statement or information is true or false; or

(ii) the person knows, or ought reasonably to have known, that the statement or information is false in a material particular or is materially misleading.

Inducing persons to deal

99. No person shall, in or from within the Currency Union, induce another person to trade in securities by—

(a) making or publishing a statement, promise or forecast if the person knows, or is reckless as to whether, the statement is misleading, false or deceptive;

(b) a dishonest concealment of material information; or

(c) recording or storing information that the person knows to be false or misleading in a material particular or materially misleading if—

(i) the information is recorded or stored in, or by means of, a mechanical, electronic or other device; and

(ii) when the information was so recorded or stored, the person had reasonable grounds for expecting that it would be available to others.

Dishonest Conduct

100. No person shall, in the course of carrying on securities business in or from within the Currency Union, engage in dishonest conduct in relation to securities business or a security.

Prohibited representations

101. (1) Except as prescribed, no person, for the purpose of inducing another person to trade in a security, other than a security that carries an obligation of the issuer to redeem or purchase, or a right of the owner to require redemption or purchase, shall make any representation, written or oral, that any person will—

(a) resell or repurchase such security; or

(b) refund all or any of the purchase price of such security.

(2) No person, for the purpose of inducing another person to trade in a security, shall make any representation, written or oral, relating to the future value or price of such security.

(3) Except as prescribed, no person, for the purpose of inducing another person to trade in a security, shall make any representation, written or oral, that such security will be listed on any licensed marketplace.

Prohibition on purchasing or selling of securities by certain persons

102. (1) In this section, "**person in a special relationship**" in relation to a reporting issuer means—

(a) an insider, officer, employee, affiliate or associate of the reporting issuer;

(b) an associate or affiliate of an insider;

(c) a person that is making or proposing to make a take-over bid for the securities of the reporting issuer;

(d) a person that is proposing to—

(i) become a party to a reorganisation or business combination with the reporting issuer; or

(ii) acquire a substantial portion of the property of the reporting issuer;

(e) a person engaging in or proposing to engage in any business or professional activity with or on behalf of the reporting issuer or with or on behalf of a person referred to in paragraph (c) or (d);

(f) an insider, officer, employee, affiliate or associate of a person referred to in paragraph (c), (d) or (e);

(g) a person with inside information, if the information was obtained at a time when the person was a person in a special relationship under paragraph (a), (b), (c), (d), (e) or (f); or a person that obtained inside information from another person;

(h) a person who, at the time, was a person in a special relationship,

and whom the person knew or reasonably should have known, was a person in a special relationship.

(2) A person that—

(a) is in a special relationship with the reporting issuer; and

(b) has inside information about the reporting issuer, shall not—

(i) trade any security of the reporting issuer; or

(ii) enter into a transaction involving a security the value of which is derived from or varies materially with the value or market price of a security of the reporting issuer.

(3) No reporting issuer, or person in a special relationship with a reporting issuer, shall inform another person of inside information about the reporting issuer, unless it is necessary in the course of the reporting issuer's or the person's business.

(4) A reporting issuer, or the person in a special relationship with a reporting issuer, with inside information about the reporting issuer, shall not recommend or encourage another person to—

(a) trade a security of the reporting issuer; or

(b) enter into a transaction involving a security the value of which is derived from or varies materially with the value or market price of a security of the reporting issuer.

Front running

103. (1) In this section, "**material order information**" means—

(a) information that relates to—

(i) the intention of a person responsible for making decisions about an investment portfolio to trade a security on behalf of the investment portfolio;

(ii) the intention of a licensee trading on behalf of an investment portfolio to trade a security on behalf of the investment portfolio; or

(iii) an unexecuted order, or the intention of any person to place an order, to trade a security; and

(b) information that if disclosed, would reasonably be expected to affect the market price of the security.

(2) If a person knows of material order information, the person shall not—

(a) trade a security that is the subject of the information;

(b) enter into a transaction involving a security the value of which is derived from or varies materially with the value or market price of the security referred to in paragraph (a);

(c) inform another person of the material order information, unless it is necessary in the course of the person's business; or

(d) recommend or encourage another person to—

(i) trade the security referred to in paragraph (a); or

(ii) enter into a transaction involving a security the value of which is derived from or varies materially with the value or market price of the security referred to in paragraph (a).

Defence – belief that other party knows information

104. (1) A person does not contravene section 102 (2), 103 (2) (a) or 91 (2) (b) if, at the time the person trades the security, the person reasonably believes that the purchaser or seller of the security knows the inside information or material order information.

(2) A person does not contravene section 102 (3), 102 (4), 103 (2) (c) or 103 (2) (d) if, the person reasonably believes that the other person knows the information at the time the person

(a) informs the other person of the inside information or material order information; or

(b) recommends or encourages the other person to trade the security.

Defence of automatic or pre-determined trade

105. A person does not contravene section 102 (2) 103 (2) (a) or 103 (2) (b) if the person—

(a) trades the security under a written automatic dividend reinvestment plan, written automatic purchase plan or other similar written automatic plan, in which the person agreed to participate before obtaining the information or material order information; or

(b) trades the security as a result of a written legal obligation—

(i) imposed on the person; or

(ii) that the person entered into before obtaining the inside information or material order information.

Defence – trading as agent

106. A person does not contravene section 102 (2), 103 (2) (a) or 103 (2) (b), if the person trades—

(a) as agent under the specific, unsolicited instructions of the principal;

(b) as agent under specific instructions that the agent solicited from the principal before obtaining the inside information or material order information;

(c) as agent or trustee for another person because of that other person's participation in a written automatic reinvestment plan, written automatic purchase plan or other similar written automatic plan; or

(d) as agent or trustee for another person to fulfil a written legal obligation of the other person.

Defences – trade or recommendation by individual with no inside or material order information

107. A person does not contravene section 102 (2), 102 (4), 103 (2) (a), 103 (2) (b) or 103 (2) (d), if—

(a) the person is not an individual; and

(b) the individual making the trade or recommendation on behalf of the person does not have inside information or material order information and is not acting on the advice or recommendation of an individual who has that information.

Exemptions, modifications and application to securities issued by investment funds

108. (1) The Commission may order that—

(a) a person or class of persons is exempt from all or specified provisions of this Part;

(b) a security or a class of securities are exempt from all or specified provisions of this Part; or

(c) this Part applies as if specified provisions were omitted, modified or varied as prescribed.

(2) Sections 92, 93, 94, 96, 102 and 103 do not apply to conduct relating to securities issued by investment funds.

Offences

109. (1) A reporting issuer who—

(a) contravenes this Part; or

(b) makes a misrepresentation in any document required to be filed with the Commission or delivered to security holders under this Part,

commits an offence and is liable on summary conviction—

(i) in the case of an individual, to a fine not exceeding $100,000 or to imprisonment for a term not exceeding three years or both;

(ii) in the case of a company, to a fine not exceeding $300,000.

(2) In addition to any penalty under subsection (1), any person who commits an offence under this Part, shall pay a minimum penalty of any gains made or loss avoided from contravention of the sections and, if the court so directs, pay a penalty not exceeding twice the amount of the unlawful gains or loss avoided.

PART XII
LISTING AND TRADING FOREIGN SECURITIES, REGISTRATION AND MARKETPLACE MEMBERSHIP OF FOREIGN PARTICIPANTS

Listing and trading foreign securities, registration and marketplace membership of foreign participants

110. A person shall not list and trade foreign securities or be registered as a foreign member of a marketplace in the Currency Union except in accordance with the prescribed requirements.

PART XIII
INVESTIGATION, INSPECTION AND ENFORCEMENT

DIVISION I
INVESTIGATION AND INSPECTION

Power to investigate

111. (1) The Commission may conduct investigations as it considers necessary or expedient, for any of the following purposes—

(a) to determine whether any person has contravened, is contravening, or is about to contravene securities laws;

(b) to determine whether a person may have committed a breach of trust, fraud or misconduct, in carrying out securities business;

(c) to determine whether the manner in which a person has engaged, or is engaging, in any securities business is not in the public interest;

(d) for the administration of securities laws; or

(e) to assist in the administration of the securities legislation of another jurisdiction.

(2) For the purposes of subsection (1), the Commission may conduct the investigation or may, in writing, appoint another person for that purpose.

(3) Notwithstanding the provisions of any enactment or any requirement imposed thereunder or any rule of law, the Commission may exercise any of its powers under this Division for the purposes of conducting an investigation under subsection (1).

Power to obtain information

112. (1) Where the Commission considers that a person is or may be able to give information or produce a document which is or may be relevant to an investigation, it may—

(a) require the person to attend before it at a specified time and place to answer questions, including under oath or affirmation;

(b) enter, during reasonable hours, the business premises of the person for the purposes of—

(i) inspecting and copying information or documents stored in any form on such premises; or

(ii) seizing and taking possession of any information or documents; and

(c) require the person to give, or procure the giving of, specified information or information of a specified description in such form as the Commission may reasonably require.

(2) Where the Commission does not regulate the person identified at subsection (1), the Commission shall, at any time if the circumstances so require, apply to a judge of the High Court for an order authorising the Commission or a person appointed under section 111 (2) to enter the premises of the person at any time to conduct an examination.

(3) Without limiting the generality of subsection (1), the material with which the Commission may order to be furnished under subsection (1) includes—

(a) auditing information including, but not limited to, audit working papers, communications, and other information relating to the audit or review of financial statements;

(b) subscriber records held or maintained by telephone service providers located in the Currency Union that include the identity of subscribers (name and address), payment details and incoming and outgoing communications with date, time, duration and

identification of phone numbers from which communications are made or received, and such other details as prescribed; and

(c) subscriber records held or maintained by internet service providers or other electronic communication providers located in the Currency Union that includes the identity of subscribers (name and address), payment details, length of service, type of service utilised, network address, session times, dates and durations, and such other details as prescribed.

Compliance inspection of licenses

113. (1) At any time, the Commission may conduct an on-site or off-site inspection of the business of a regulated person for the purpose of—

(a) determining whether the person is complying with—

(i) securities laws; or

(ii) any other prescribed statute that is administered by the Commission; or

(b) assisting in the administration of the securities legislation of another jurisdiction.

(2) The Commission may, in writing, appoint another person to conduct the inspection under subsection (1).

(3) The Commission may, by notice in writing, require a person under inspection to produce information or documents, or a class of information or documents that reasonably relates to the inspection.

(4) After receiving a notice under subsection (3), a person shall, within a reasonable period as specified in the notice, provide to the Commission the information or documents described in the notice that are in the custody, possession or control of the person.

(5) The Commission may enter, during reasonable hours, the business premises of a person under inspection for the purposes of—

(a) inspecting and copying information or documents stored in any form on such premises; or

(b) seizing and taking possession of any information or documents.

(6) The Commission may require a person under inspection to give an explanation of, or further particulars regarding, any information or document produced under subsection (4) or obtained under subsection (5).

(7) If a person acting on behalf of the Commission, enters premises under subsection (5), the person shall present proof of his or her authority to do so.

(8) Any information or document seized under subsection (5) shall be returned to the person from whom, or premises from which, it was taken as soon as possible.

Power to require reports

114. (1) The Commission may by notice require a regulated person to provide the Commission with a report, in such form as may be specified in the notice, by the person's approved auditor, or by an accountant or other person with relevant professional skill, on, or on any aspect of, any matter about which the Commission has required or could require the regulated person to provide information under securities laws.

(2) The report shall be prepared at the expense of the regulated person.

(3) No person shall be appointed to make a report required under this section unless the Commission gives prior approval to the appointment of the person.

(4) The person appointed to make the report under this section shall immediately give written notice to the Commission of—

(a) every fact or matter of which that person becomes aware which indicates that any of the minimum criteria is not or has not been fulfilled, or may not be or may not have been fulfilled, in respect of the regulated person; and

(b) every fact or matter of which that person becomes aware which indicates that the matters are likely to be of material significance for the exercise, in relation to such person, of the Commission's functions under this Act.

Compliance inspection of other market participants

115. (1) The Commission may inspect the business of a market participant, other than a regulated person, for the purposes of—

(a) determining if the person is complying with—

(i) securities laws;

(ii) or any other prescribed statute that is administered by the Commission; or

(b) assisting in the administration of the securities legislation of another jurisdiction.

(2) The Commission may in writing appoint another person to conduct the inspection under subsection (1).

(3) The Commission may, by notice in writing, require a person under inspection to produce information or documents, or a class of information or documents that reasonably relates to the inspection.

(4) After receiving a notice under subsection (3), a person shall, within a reasonable period as specified in the notice, provide to the Commission the information or document that is described in the notice and that is in the custody, possession or control of the person.

Provision of information relating to transactions

116. (1) The Commission may, for the purposes of assisting in the performance of any of its functions or the exercise of any of its powers under this Act, require—

(a) a person registered as the holder of securities in a register, kept by or on behalf of an issuer;

(b) a person that the Commission has reasonable cause to believe holds any securities;

(c) a person that the Commission has reasonable cause to believe has acquired or disposed of any securities, whether directly or through a nominee, trustee or agent, and whether as beneficial owner, nominee, trustee, agent or otherwise; or

(d) a regulated person through which the Commission has reasonable cause to believe any securities have been acquired, disposed of, dealt with or traded,

to furnish to the Commission any of the information specified in subsection (2) within the time and in the form specified.

(2) The information for the purposes of subsection (1) is—

(a) particulars that are reasonably capable of establishing the identity of the person on whose behalf, or by, from, to or through whom the

securities in question are held, or have been acquired, disposed of, dealt with or traded (as the case may be);

(b) the instructions given to or by the person referred to in paragraph (a) or any officer, employee or agent of such person, in relation to the holding, acquisition, disposal, dealing, or trading of or in respect of the securities;

(c) the particulars of the securities and the consideration given or received; and

(d) any other information in the possession of the person as the Commission may specify.

Inspection reports and costs

117. (1) After the conclusion of an inspection of a regulated person or a market participant, the Commission may require that a report be prepared setting out the findings of that inspection.

(2) The Commission shall consider and make recommendations on any information or report prepared under this Part.

(3) The Commission may charge a fee as prescribed for an inspection conducted under this Part.

(4) Upon application, the Commission may grant an exemption regarding the payment of costs where the Commission considers it appropriate.

Participation of other regulatory authorities in inspections under this Division

118. (1) Subject to subsection (2), the Commission may, upon the request of a domestic regulatory authority or foreign regulatory authority, permit the regulatory authority to take part in a compliance inspection undertaken by the Commission under this Part.

(2) The Commission shall not permit a domestic regulatory authority or foreign regulatory authority to take part in a compliance inspection under subsection (1), unless it is of the opinion that the participation of the regulatory authority is reasonably required—

(a) for the effective supervision of a regulated person; or

(b) for the purposes of the regulatory functions of the regulatory authority.

(3) In deciding whether to permit a domestic regulatory authority or foreign regulatory authority to take part in a compliance inspection under subsection

(1), the Commission may take into account, whether the regulatory authority is subject to adequate legal restrictions on further disclosure, whether the authority is legally empowered to take part in a compliance inspection of that regard, and, in particular, whether it is likely, without the written permission of the Commission—

(a) to disclose information obtained or documents examined or obtained during the compliance inspection to any person other than an officer or employee of the authority engaged in supervision; or

(b) to take any action on information obtained or documents examined or obtained during the compliance inspection.

Restrictions on withholding or concealing

119. A person who without reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which has been required to be produced in accordance with securities laws or any regulation thereunder, or which he or she is liable to be so required to produce, commits an offence and is liable on summary conviction to a fine not exceeding $100,000 and to imprisonment for a term not exceeding five years.

Protection of persons providing information

120. (1) No person shall be required to disclose information or to produce a document which the person would be entitled to refuse to disclose or to produce on the grounds of legal professional privilege in court proceedings.

(2) For the purposes of this section, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to the legal adviser—

(a) by, or by a representative of the person who is a client of the legal adviser in connection with obtaining legal advice from that adviser;

(b) by, or by a representative of, a person seeking legal advice from the adviser; or

(c) by any person in contemplation of, or in connection with, legal proceedings, and for the purpose of those proceedings.

(3) For the purposes of this section, no information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.

DIVISION II
ASSISTANCE TO DOMESTIC REGULATORY AUTHORITIES

Assistance to domestic regulatory authorities

121. (1) At the request of a domestic regulatory authority, the Commission may, where it considers it appropriate, exercise its powers under securities laws for the purpose of assisting the domestic regulatory authority with the performance of its regulatory functions.

(2) Notwithstanding Article 24 of the Agreement, the Commission may provide information that it has acquired in the course of its duties or in the exercise of its functions under securities laws to any other domestic regulatory authority where the Commission considers such information may be relevant to the functions of such other domestic regulatory authority or as a necessary part of a framework for consolidated supervision, oversight or regulation of the financial services sector.

DIVISION III
ASSISTANCE TO FOREIGN REGULATORY AUTHORITIES

Conditions for provision of assistance

122. (1) In determining whether to grant assistance referred to in section 123 the Commission may consider the following factors—

(a) whether the assistance is intended to enable the foreign regulatory authority, or any designated third party, to carry out the supervision, investigation or enforcement for which the request relates;

(b) whether the foreign regulatory authority has given a written undertaking that any document obtained pursuant to its request shall not be used for any other purpose not approved by the Commission;

(c) whether the foreign regulatory authority has given a written undertaking not to disclose to a third party any document received pursuant to the request without the approval of the Commission and in accordance with any conditions imposed by the Commission; and

(d) whether the rendering of assistance would not be contrary to the public interest of the Currency Union, the interest of the investing public, or the interest of the general public.

(2) In deciding whether to grant a request for assistance referred to in section 123 from a foreign regulatory authority, the Commission may also have regard to the following—

(a) whether the foreign regulatory authority has given or is willing to give an undertaking to the Commission to comply with a future request by the Commission to the foreign regulatory authority for similar assistance; and

(b) whether the foreign regulatory authority has given or is willing to give an undertaking to the Commission to contribute towards the costs of providing the assistance that the foreign regulatory authority has requested.

(3) Where a regulatory authority fails to comply with a requirement of the Commission in subsection (1) or (2), the Commission may refuse to provide the assistance sought.

Assistance that may be rendered

123. (1) Notwithstanding Article 24 of the Agreement; the provisions of any written law or any rule of law, the Commission may, in relation to a request for assistance by a foreign regulatory authority—

(a) transmit to the foreign regulatory authority any document in the possession of the Commission that is requested by the authority;

(b) order any person to furnish to the Commission any document that is requested by the foreign regulatory authority, that the Commission may then transmit to that authority;

(c) order any person to give the Commission assistance in connection with a request made by a foreign regulatory authority; or

(d) order any person to make an oral statement to the Commission on any information requested by the foreign regulatory authority, record such statement, and transmit the recorded statement to the authority.

(2) Without limiting the generality of subsection (1), the material with which the Commission may order to be furnished under subsection (1) includes—

(a) auditing information including, but not limited to, audit working papers, communications, and other information relating to the audit or review of financial statements;

(b) subscriber records held or maintained by telephone service providers located in the Currency Union that include the identity of subscribers (name and address), payment details and incoming and outgoing communications with date, time, duration and identification of phone numbers from which communications are made or received, and such other details as prescribed; and

(c) subscriber records held or maintained by internet service providers or other electronic communication providers located in the Currency Union that includes the identity of subscribers.

(3) A person shall not be required to disclose information or to produce a document which the person would be entitled to refuse to disclose or to produce on the grounds of legal professional privilege in court proceedings.

(4) For the purpose of this section, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to the legal adviser—

(a) by, or by a representative of that person who is a client of the legal adviser in connection with obtaining legal advice from that adviser;

(b) by, or by a representative of, a person seeking legal advice from the adviser; or

(c) by any person in contemplation of, or in connection with, legal proceedings and for the purpose of those proceedings.

(5) For the purposes of this section, no information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances, if it is communicated or given with a view to furthering any criminal purpose.

(6) Where the person in possession of any document required to be produced under this Part, claims a lien on the document—

(a) the requirements to produce the document shall not be affected by the lien;

(b) no fees shall be payable for or in respect of the production; and

(c) the production shall be without prejudice to the lien.

Authority to enter into Memoranda of Understanding

124. The Commission may, in exercise of its co-operative functions, enter into memoranda of understanding with foreign regulatory authorities for—

(a) the purposes of assisting a foreign regulatory authority, or any designated third party, to carry out its supervision, investigation or enforcement functions,

(b) the purposes of assisting in consolidated supervision with such foreign regulatory authority or any designated third party; or

(c) such other purposes as the Commission may deem fit.

(2) The Commission shall notify the Minister of Finance of each memorandum of understanding and promptly publish the memorandum of understanding in the *Gazette*.

Offences under this Division

125. (1) Any person who—

(a) without reasonable excuse, refuses or fails to comply with an order under this Part;

(b) in purported compliance with an order under this Part, furnishes to the Commission any document known to the person to be false or misleading in a material particular; or

(c) in purported compliance with an order under this Part, makes a statement to the Commission that is false or misleading in a material particular,

commits an offence and is liable on summary conviction to a fine not exceeding $100,000.

(2) If the offence is a continuing offence, the individual or company is liable to a further fine not exceeding $50,000 for every day that the offence continues after conviction.

DIVISION IV
ENFORCEMENT

Power of the Commission to issue directions

126. (1) In addition to all other powers given to the Commission under this Act, the Commission may, by notice in writing, give a direction where it appears to the Commission that—

(a) it is desirable for the protection of investors;

(b) a person is contravening, has contravened or is about to contravene any provision of or requirement under this Act;

(c) a person has failed to comply with any provision of or requirement under this Act; or

(d) a person, in purported compliance with any provision or requirement, has furnished the Commission with information that is false, inaccurate or misleading.

(2) A direction under this section may contain one or more of the following prohibitions or requirements—

(a) to require a person to cease and desist from the contravention;

(b) to require a person to comply with the prohibitions or requirements;

(c) to prohibit a person from entering into transactions of a class or description specified in the notice or prohibit entering into these transactions otherwise than in the specified circumstances or to the extent specified;

(d) to prohibit a person from soliciting business from a person of a class or description specified or from persons other than persons of such a class or description;

(e) to prohibit a person from carrying on business in a specified manner or otherwise than in a specified manner;

(f) as regards any assets, whether in the Currency Union or elsewhere and whether they are the assets of the person or not—

(i) to prohibit the person from disposing of such assets or prohibit the person from dealing with them other than, in a manner specified in the notice: or

(ii) to require a person to deal with such assets in, and only in, a manner specified in the notice;

(g) to require a person to maintain in the Currency Union, assets of such value as appears to the Commission to be desirable with a view to ensuring that the person will be able to meet its liabilities in respect of its securities business; or

(h) to require a person to transfer control of assets of a specified class or description to a trustee approved by the Commission.

(3) A direction under this section shall be for such specified period as the Commission considers necessary (which may be extended as deemed necessary), except that a direction issued by the Commission containing any prohibition or requirement under paragraph (f), (g) or (h) of subsection (2) shall be for a period not exceeding thirty business days.

(4) A person who fails to comply with a direction of the Commission commits an offence.

(5) The Commission may, by written notice either on its own motion or on the application of a licensee on whom a prohibition or requirement has been imposed under this section, rescind or vary the prohibition or requirement if it appears to the Commission that it is no longer necessary for the prohibition or requirement to take effect or continue in force or, as the case may, that it should take effect or continue in force in a different form.

Orders in the public interest

127. (1) If the Commission considers it in the public interest to do so, the Commission may, upon a settlement with the person or after a hearing—

(a) order a person to comply with—

(b) order a person, a class of persons or all persons to cease trading a security, a class of securities or all securities;

(c) order that any or all of the exemptions in securities laws do not apply to a person;

(d) prohibit a person from—

(i) acting as a partner, director or officer of another person;

(ii) acting as a regulated person;

(iii) acting as a party related to an investment fund as defined in the Investment Funds Act;

(iv) acting as an auditor of a market participant;

(v) acting in a management or consultative capacity in connection with activities in the securities market; or

(vi) promoting the trading of a security or of securities generally;

(e) issue a censure or reprimand;

(f) impose conditions or restrictions on a licence, or suspend or revoke a licence;

(g) restrict the trading or advising activities of a licensee or a person exempt from licensing;

(h) order a person to change a document;

(i) order a person to publish information or a document;

(j) order a person not to publish information or a document;

(k) order a person that is a market participant to make changes to its practices and procedures;

(l) appoint a person to advise a regulated person on the proper conduct of its affairs and to report to the Commission thereon;

(m) appoint a person to assume control of a regulated person's affairs who shall, subject to necessary modifications, have all the powers of a person appointed as a receiver or manager of a business appointed under the law governing bankruptcy or winding up;

(n) apply to the court for an order to take such actions as it considers necessary to protect the interests of—

(i) clients or creditors of a regulated person;

(ii) investors or creditors of an investment fund;

(o) apply to the court for an order that the person be wound up by the court;

(p) order that a distribution of securities cease and that any subscription funds collected be repaid to subscribers;

(q) order the disgorgement of profits or other unjust enrichment plus a penalty not to exceed twice the amount of such profits or unjust enrichment;

(r) order restitution; or

(s) impose any other sanctions or remedies as the justice of the case may require.

(2) The licence of a representative or principal is deemed suspended or revoked on the date of notification of the suspension or revocation of the licence of the licensee to whom the licensed representative or principal is accredited.

(3) The suspension or revocation of a licence does not operate so as to—

(a) avoid or affect any agreement, transaction or arrangement relating to a dealing in securities entered into by the person whose licence has been suspended or revoked, whether the agreement, transaction or arrangement was entered into before or after the suspension or revocation of the licence, except that the licensee shall not be allowed to retain any benefits charged or payable thereto; or

(b) affect any right, obligation, or liability arising under any such agreement, transaction or arrangement.

(4) Notwithstanding subsection (1), the Commission may make an order under subsection (1) (a) to (g) against a person, without a hearing, if the person—

(a) has been convicted in any jurisdiction of a criminal offence arising from a transaction, business or course of conduct related to securities;

(b) has been found by a court to have contravened the securities laws of any jurisdiction; or

(c) has been found by a foreign regulatory authority to have contravened the securities laws of that jurisdiction.

(5) Notwithstanding subsection (1), if the Commission considers it necessary and in the public interest to do so, the Commission may, without providing an opportunity to be heard, make an order under subsection (1), other than an order under subsection (1), (h), (i) or (j), that is effective for not more than 15 business days.

(6) If the Commission considers it necessary and in the public interest to do so, the Commission may, without providing an opportunity to be heard, extend an order made under subsection (5) until the Commission makes a final decision after—

(a) a hearing under subsection (1) is held; or

(b) an opportunity to be heard under subsection (1) is provided.

(7) Where the Commission makes an order under this section, the Commission shall send the order to each person named in the order.

(8) Where the Commission sends an order made under subsection (5) or (6), the Commission shall send a notice of hearing, or a notice of opportunity to be heard, with the order.

(9) A person appointed under subsection (1) (l) or (m) is appointed at the expense of the relevant regulated person and any expenses reasonably incurred by the Commission by virtue of the appointment is an amount due to the Commission payable by the regulated person.

(10) A person appointed under subsection (1) (m) has all the powers necessary, to the exclusion of any other person other than a liquidator or receiver, to administer the affairs of the relevant regulated person in the best interest of the clients, investors and creditors of the regulated person.

(11) The powers referred to in subsection (10) include the power to terminate the business of the regulated person if it is judged to be insolvent.

(12) A person appointed in respect of a regulated person under subsection (1) (l) or (m) shall—

(a) supply the Commission with such information in respect of the regulated person, when requested to do so by the Commission;

(b) within three months of the person's appointment, or within such other period as the Commission may specify, prepare and supply to the Commission a report on the affairs of the regulated person and where appropriate make recommendations in respect of the regulated person; and

(a) if the person's appointment is not terminated after supplying the report referred to in paragraph (b), subsequently supply to the Commission such other information, reports and recommendations as the Commission shall require.

(13) If a person appointed under subsection (1) (l) or (m)—

(a) fails to comply with an obligation under subsection (12); or

(b) in the Commission's opinion, is not carrying out the person's obligations in respect of the relevant regulated person satisfactorily,

the Commission, may revoke the appointment and appoint some other person in the person's place, and may assess the charges payable to such appointed person up to the date of the revocation of the appointment, and any expenses reasonably incurred by the Commission by virtue of the revocation and reappointment is an amount due to the Commission payable by the appointed person.

(14) On receipt of any information or report pursuant to subsection (12) in respect of a regulated person, the Commission may—

(a) require the regulated person to reorganise its affairs in a manner specified by the Commission;

(b) apply to the Court for an order to wind up, dissolve, liquidate or otherwise terminate, as appropriate, the regulated person upon such terms and conditions as the Court thinks fit; or

(c) take such action in respect of the appointment or continued appointment of the person appointed under subsection (1) (l) or (m) as the Commission considers appropriate.

(15) Where the Commission takes action under subsection (14) it may—

(a) apply to the court for an order to take such other action as it considers necessary to protect the interest of clients or creditors of, or investors in, the regulated person; or

(b) take any other action provided for in subsection (1) or (2).

Application to the Court

128. Notwithstanding any other provision, if the Commission considers it in the public interest to do so, the Commission may, at any time and without a hearing, apply to the court for an order—

(a) to enforce a directive or order made by the Commission under securities laws;

(b) for a market participant to be wound up, dissolved, liquidated, or otherwise terminated, as appropriate; or

(c) to take any other action as the Commission considers necessary.

Administrative penalty

129. (1) If the Commission considers it in the public interest to do so, the Commission may, upon a settlement or after a hearing, order a person that has breached any provision of securities laws to pay the Commission an administrative penalty of $50,000 for each contravention.

(2) Any person in breach of any provision of securities law solely by reason of failing to file with or deliver to the Commission a document within the required time period shall be subject to an automatic penalty of $1,000, for every day from the day the document was required to be filed or delivered to the day the document was filed or delivered.

(3) A person who files a document or instrument with the Commission after the expiration of the period set out in this Act or as prescribed, may in writing request an opportunity to make representations to the Commission.

Administrative fines may be imposed for certain offences

130. (1) In addition to the powers set out in section 129, the Commission may issue to any person who, there is reasonable cause to believe, has committed an offence referred to in Schedule I, a notice in the form set out in Schedule II offering the person the opportunity to discharge any liability to conviction in respect of that offence by payment of an administrative fine in accordance with the Schedule for that offence.

(2) Where a person is given a notice under subsection (1), criminal proceedings shall not be taken against him or her for the offence specified in the notice until the expiration of twenty-one business days commencing from the day after which the notice was served.

(3) Where a person fails to pay the administrative fine referred to in subsection (1), or where he or she continues to commit the offence, after the expiration of twenty-one business days following the date of receipt of the notice referred to in subsection (1) that person is liable on conviction for the original offence committed.

(4) A notice under subsection (1) shall—

(a) specify the offence alleged;

(b) give such particulars of the offence as are necessary for giving reasonable information of the allegation; and

(c) state—

(i) that criminal proceedings shall not be laid until the expiration of twenty-one days from the date of receipt

of the notice where payment of the administrative fine is made and the commission of the offence is discontinued; and

(ii) the amount of the administrative fine and the fact that it is to be paid into the Reserve Fund established under Article 26 of the Agreement.

(5) In any proceedings for an offence to which this section applies, no reference shall be made to the giving of any notice or to the payment or non-payment of any administrative fine under this section, nor shall these be referred to in any document which is before the Court in connection with the proceedings, unless reference has been made by, or on behalf of the accused to the giving of such a notice, or, as the case may be, to such payment.

Removal of benefits

131. If the Commission considers it in the public interest to do so, the Commission may, after a hearing, order a person to pay to the Commission any amount obtained, or payment or loss avoided, as a result of a contravention of securities laws, plus a penalty of twice the amount obtained or payment or loss avoided.

Payment received under sections 129 and 130

132. Every administrative fine imposed by the Commission in the exercise of its powers under this Act shall be payable into the Reserve Fund established under Article 26 of the Agreement.

Payment of costs

133. (1) The Commission shall order a person subject to a hearing to pay the costs of the Commission's investigation, the hearing and related costs.

(2) The Commission may grant an exemption regarding the payment of costs where the Commission considers it appropriate.

(3) For the purposes of this section, the costs that the Commission may order the person to pay include—

(a) costs incurred in respect of services provided by persons appointed or engaged under section 111(2) or Article 23 (5) and (6) of the Agreement;

(b) costs of matters preliminary to the hearing;

(c) costs for time spent by the Commission or the staff of the Commission;

(d) any fee paid to and costs of a witness; and

(e) costs of legal services provided to the Commission.

Order to freeze property

134. (1) If the Commission considers it in the public interest to do so, the Commission may, for the administration of securities laws, or to assist in the administration of the securities legislation of another jurisdiction, by order, for a period not exceeding thirty business days, direct a person—

(a) having, on deposit, under control or for safekeeping, any funds, securities or other property of the person named in the order, to hold them;

(b) not to withdraw any funds, securities or other property from any person having them on deposit, under control or for safekeeping; or

(b) to hold all funds, securities or other property of a client of that person, or of others, in the person's possession or control in trust for a receiver, receiver-manager, trustee or liquidator appointed under an enactment of a member country.

(2) An aggrieved person may apply to a judge in chambers to discharge an order made under subsection (1) and shall serve notice on the Commission to join in the proceedings, but the Commission's order shall remain in effect until the judge determines otherwise.

(3) Unless expressly stated, an order made under subsection (1) does not apply to funds, securities or other property at a clearing facility, or to securities in the process of transfer by a transfer agent.

Liability of senior officers

135. (1) Notwithstanding any other provision of securities laws, where a company has been convicted of an offence, under securities laws, any senior officer who knowingly or recklessly authorised, permitted or acquiesced in the offence also commits the offence and is liable to the penalty specified for it.

(2) Notwithstanding any other provision of securities laws, where a person has been convicted of an offence under securities laws, any supervisor of that person who knowingly or recklessly authorised, permitted or acquiesced in the offence also commits the offence and is liable to the penalty specified for it.

(3) Reasonable reliance, including reliance on the advice of an attorney-at-law, in good faith upon a statement of the law contained in—

(a) the securities laws;

(b) a judgment or declaration by a Court;

(c) an order or publication of the Commission; or

(d) is a defence in a proceeding under this section.

General offences

136. A person who contravenes any provision of the securities laws, other than one to which a specific offence applies, commits an offence and is liable on summary conviction to a fine not exceeding $100,000 and to imprisonment for a term not exceeding ten years.

Limitation periods

137. No proceedings against any person for a breach of any of the provisions of securities laws, or for a failure to comply with any of the provisions, may be commenced after the expiration of six years from the day upon which the breach or non-compliance was or ought to have been discovered.

Referral of matters to the Director of Public Prosecutions

138. Nothing in securities laws prevents the Commission from referring any matter to the Director of Public Prosecutions.

Disciplinary and enforcement authority of the Commission

139. The Commission may, where it appears that a person has breached a provision of securities laws or failed to comply with a requirement, directive or order given by the Commission, appoint an independent Disciplinary Committee to—

(a) conduct regulatory hearings; and

(b) impose one or more of the sanctions remedies, or other relief as may be prescribed in securities laws.

Conduct of hearings

140. (1) At a hearing the Disciplinary Committee shall provide a reasonable opportunity for each person directly affected to be heard and shall give reasonable notice to each such person and may give notice to any interested market participant, and such notice shall include—

(a) a statement of the time, place and purpose of the hearing;

(b) a reference to the authority under which the hearing is to be held;

(c) a concise statement of the allegations of fact and law; and

(d) a statement that if the person fails to attend at the hearing, the Commission may proceed without giving him or her further notice.

(2) The Disciplinary Committee may—

(a) issue a *subpoena* or other request or summons requiring a person to attend at a hearing, to testify to all matters relating to the subject of the hearing, and to produce all records relating to the subject of the hearing that are in his or her possession or under his or her control, whether they are located in the Currency Union or elsewhere; and

(b) require a person to give evidence orally or in writing on oath or affirmation as it thinks necessary.

(3) Notwithstanding subsection (2), no person giving evidence before the Disciplinary Committee shall be compellable to incriminate himself or herself, and every such person shall, in respect of any evidence given by him or her before the Disciplinary Committee, be entitled to all privileges to which a witness giving evidence before the High Court is entitled in respect of evidence given by him or her before the High Court.

(4) On application by the Disciplinary Committee to the court, a person summoned under subsection (1) is liable to be committed for contempt, as if in breach of an order or judgment of the court, if the person neglects or refuses to—

(a) attend;

(b) give evidence; or

(c) produce a document in the custody, possession or control of the person.

(5) A hearing under subsection (1) shall be open to the public unless the Commission directs otherwise in order to protect the interests of the persons affected.

(6) A person who is entitled to notice of a hearing under subsection (1) may be represented by an attorney-at-law and, subject to any rules made under securities laws, may present evidence and cross-examine witnesses at the hearing.

(7) A witness at a hearing under subsection (1) may be advised by an attorney-at-law.

(8) The Disciplinary Committee may admit as evidence at a hearing under subsection (1) any testimony or exhibit that it considers relevant to the subject-matter of the proceedings and may take notice of any fact that may be judicially noticed and of any generally recognised scientific or technical fact, information or opinion within its area of expertise.

(9) The Disciplinary Committee shall make provision for all oral evidence presented at a hearing under subsection (1) to be transcribed.

(10) The Disciplinary Committee—

(a) shall make a final decision in writing and state the findings of fact on which it is based and the reasons for it;

(b) shall send a copy of the final decision and reasons to each person entitled to notice under subsection (1) who appeared at the hearing; and

(c) may publish a summary of the final decision and reasons therefor in accordance with subsection (13).

(11) Subsection (1) does not apply to—

(a) an order that is essentially procedural;

(b) an order that does not adversely affect the rights or interests of any person;

(c) an interim order or other order that the Commission may make under securities laws without holding a hearing; or

(d) an appointment that is made under section 111 (2).

(12) Notwithstanding subsection (10) (c), where an order is made pursuant to section 127 (1), the Commission shall publish a summary of the order and reasons for the order.

(13) The Commission may satisfy the publication requirement under subsection (10) (c) by publishing in the *Gazette* and—

(a) publishing in a newspaper of general circulation in each member country; or

(b) posting on the website of the Commission and issuing a notice in a newspaper of general circulation in each member country notifying the public of such posting.

Conditions on decisions
141. The Disciplinary Committee may impose terms, conditions, requirements and restrictions on any decision it makes, as the Committee deems fit.

Discretion to revoke or vary decision
142. The Disciplinary Committee may, at any time by notice in writing—

(a) vary any term, condition, requirement or restriction imposed in any Commission decision; or

(b) may revoke a Commission decision,

as it deems fit.

Appeals for review
143. (1) The Commission may—

(a) on its own motion; or

(b) on an application from an aggrieved person,

review any decision made pursuant to authority delegated under Article 21 (1) of the Agreement or under Part II, III or V of this Act and shall provide a reasonable opportunity to make representations and give reasonable notice to each person directly affected by the decision.

(2) The Commission shall, within thirty business days of a request for review under this section notify the parties of the date, time and venue of the hearing to review the decision.

(3) The Commission may set aside, vary or confirm the decision under review or make such decisions as it considers appropriate.

(4) A decision that is subject to review under this section takes effect immediately unless the Commission grants a stay pending the completion of a review under this section.

Appeals to the High Court
144. (1) A person directly affected by an adverse decision, finding or order of the Commission may appeal to the High Court within fifteen business days of the person's receipt of the notification of the adverse decision, finding or order.

(2) No appeal of a decision of a person licensed under Part II may be made under this section unless the person affected has taken all reasonable steps available to appeal or obtain a review of the decision pursuant to section 143.

(3) An order that is subject to appeal under this section takes effect immediately, but the High Court may grant a stay pending the hearing of the appeal.

(4) The Commission is entitled to appear and be heard on the merits of an appeal under this section or on any other application to the High Court relating to the exercise by the Commission of its powers.

(5) Notwithstanding subsection (4), the procedure for determining appeals shall be in accordance with the Civil Procedure Rules 2000 of the Eastern Caribbean Supreme Court.

(6) On appeal under this section, the High Court may make, or may direct the Commission to make, any order that the Commission is authorised to make and which the High Court considers just and proper, or it may remand the case to the Commission for further proceedings subject to any conditions which, in the opinion of the High Court, are just.

PART XIV
CIVIL LIABILITY FOR MISREPRESENTATION

Liability for misrepresentation in prospectus, damages

145. (1) Subject to this section, a purchaser who purchases a security distributed under a prospectus during its distribution period has the right of action for damages for any loss or damage sustained by the purchaser by reason of any misrepresentation in the prospectus, against each of the following persons—

(a) the issuer or the selling security holder on whose behalf the distribution is made;

(b) a person who is a director of the issuer at the date of filing of the prospectus;

(c) a person who authorised or caused himself or herself to be named, and is named, in the prospectus as a director or as having agreed to become a director, either immediately preceding the date of filing of the prospectus or after an interval of time thereafter;

(d) where the issuer is not a reporting issuer prior to the distribution, any person who was a promoter of the issuer within the twenty-four-month period immediately preceding the date of filing of the prospectus;

(e) a person whose consent has been filed as required by section 62(2) but only with respect to a misrepresentation in a prospectus derived from, or based on, reports, opinions, valuations, or statements that have been made by such person; and

(f) any other person who signed a certificate in the prospectus other than a person referred to in paragraphs (a) to (e).

(2) No person, other than the reporting issuer or the selling security holder on whose behalf the distribution is made, is liable under subsection (1) if—

(a) having consented to become a director of the issuer, he or she withdrew his or her consent before the filing of the prospectus and the prospectus was filed without his or her authority or consent;

(b) the prospectus was filed without his or her knowledge or consent, he or she gave reasonable public notice of that fact forthwith after becoming aware of it; or

(c) after the filing of the prospectus and before the sale of securities under it, he or she became aware of a misrepresentation, withdrew his or her consent, and gave reasonable public notice of the withdrawal of the consent and the reason for it.

(3) No person is liable under subsection (1)—

(a) where, as regards a misrepresentation in a prospectus made by an expert or based on a report, opinion, valuation, or statement made or prepared by an expert—

(i) the misrepresentation fairly represented and was a correct and fair copy of, or extract from, the report, opinion, valuation, or statement of the expert; and

(ii) that person had reasonable grounds to believe and did believe, up to the time of the filing of the prospectus, that the expert making the statement or preparing the report, opinion, or valuation was competent to make it, had given his or her consent as required under section 62 and had not withdrawn that consent before delivery of a copy of the prospectus for filing, nor had the expert, to the knowledge of the person, withdrawn that consent before the sale of any securities under the prospectus;

(b) if the purchaser bringing the action knew of the misrepresentation at the time of the purchase; or

(c) if, as regards a misrepresentation purporting to be a statement made by a public official or contained in what purports to be a copy of, or extract from, a public official document, the misrepresentation was a correct and fair representation of the statement or a copy of, or extract from, the document.

(4) The liability of all persons referred to in subsection (1) is joint and several as between themselves with respect to the same cause of action.

(5) A person who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person who is jointly and severally liable under this section to make the same payment in the same cause of action unless, in all the circumstances of the case, the court is satisfied that it would not be just and equitable.

(6) Notwithstanding subsections (4) and (5), no underwriter is liable for more than the portion of the total public offering price represented by the distribution of securities underwritten by that underwriter at the time of making the purchase.

(7) In an action brought under this section, the purchaser bringing such action need not prove that he or she was in fact influenced by the misrepresentation or that he or she relied on the misrepresentation in purchasing the security.

Action by purchasers for rescission for misrepresentation in a prospectus

146. (1) Subject to this section, a purchaser who, during the distribution period, purchases a security distributed under a prospectus that contains a misrepresentation has a right of action against the issuer or the underwriter that sold securities to such purchaser under such prospectus for the rescission of the sale and the repayment to such purchaser of the price that was paid in respect of the security, provided that if the purchaser elects to exercise a right of action for rescission against the issuer or underwriter under this section, such purchaser shall have no right of action for damages against such issuer or underwriter under section 145.

(2) In an action brought under this section, the purchaser bringing such action need not prove that he or she was in fact influenced by the misrepresentation or that he or she relied on the misrepresentation in purchasing the security.

(3) The right of rescission under this section also applies to securities sold under a prospectus that offers them for subscription in consideration of the

transfer or surrender of other securities, whether with or without the payment of cash by, or to the issuer, as though the issue price of the securities offered for subscription were the fair value, as ascertained by the Court, of the securities to be transferred or surrendered, plus the amount of cash, if any, to be paid by the issuer.

Due diligence defence

147. A person is not liable under section 145 or 146 for a misrepresentation in a prospectus or offering document if the person proves that the person—

(a) made all inquiries that were reasonable in the circumstances; and

(b) after doing so, believed on reasonable grounds that the statement was not a misrepresentation.

Liability for misrepresentation in other offering document

148. (1) Subject to this section, where an offering document, other than a prospectus, contains a misrepresentation, a purchaser who purchased a security offered by the offering document has a right of action for damages against the issuer and the selling security holder on whose behalf the distribution is made.

(2) In this section, a purchaser who receives an offering document whether prior to or following the purchase of a security shall be deemed to have relied on the offering document in making his or her investment decision.

Civil liability for trading contrary to Part XI

149. (1) Subject to this section, a purchaser of a security has—

(a) a right of action for damages against the seller and such seller shall be liable for any losses or damages sustained; or

(b) a right of action for rescission against the seller for rescission of the transaction,

where the seller has made the sale to the purchaser contrary to market misconduct under Part XI.

(2) Subject to this section, a seller of security has—

(a) a right of action for damages against the purchaser and such purchaser shall be liable for any losses or damages sustained; or

(b) a right of action for rescission against the purchaser for rescission of the transaction,

where the purchaser has made the purchase from the seller contrary to market misconduct under Part XI.

(3) A person may bring an action under subsection (1) or (2) in respect of a contravention referred to in subsection (1) or (2) even though the person against whom the action is brought has not been charged with or convicted of an offence by reason of the contravention.

(4) Every person who is a senior officer or employee of a reporting issuer that trades contrary to section 102 is accountable to the reporting issuer for any benefit or advantage received or receivable by the person or company as a result of the contravention of section 102, unless the person proves that he or she reasonably believed that the inside information had been published.

(5) No person shall be liable under this section if the person who is bringing the action violated section 102 in respect of the trade that is the subject of the action.

Liability for damages

150. (1) Subject to this section—

(a) a person who contravenes section 92, 93, 94, 95, 96, 97, 98, 99 or 100, whether or not he or she also incurs any other liability, shall be liable to pay compensation by way of damages to any other person as a result of the contravention, whether or not the loss arises from the other person having entered into a transaction or trading at a price affected by the contravention; and

(b) each person who sustained a loss as a result of the contravention by a person of section 92, 93, 94, 95, 96,97, 98, or 100 whether or not the loss arises from the other person having entered into a transaction, has a right of action under paragraph (a) against the contravening person.

(2) A person may bring an action under subsection (1) even though the person against whom the action is brought has not been charged with or convicted of an offence by reason of the contravention.

Commission may seek leave to appear or intervene in an action

151. (1) The Commission may apply to a judge of the High Court for leave to bring an action under this Part in the name and on behalf of an issuer or security holder and the judge may grant leave on any terms that he or she considers proper if the judge is satisfied that—

(a) the Commission has reasonable grounds for believing that a cause of action exists under this Part;

(b) the issuer or security holder has failed or is unable to commence an action; and

(c) the Commission has given sixty business days written notice to the issuer or security holder who has refused or failed to commence an action.

(2) The Commission may apply to a judge of the High Court for leave to appear or intervene in an action under this Part and the judge may grant leave on such terms as he or she considers appropriate.

(3) The Commission may publish a summary of the terms of any settlement of an action commenced or intervened in by publishing in the *Gazette* and—

(a) publishing in a newspaper of general circulation in each member country; or

(b) posting on the website of the Commission and issuing a notice in a newspaper of general circulation in each member country notifying the public of such posting.

Non-derogation of rights

152. The right of action for damages conferred by this Part shall not affect any other right a person may have.

PART XV
MISCELLANEOUS PROVISIONS

Guidelines

153. (1) The Commission may issue guidelines on any matter it considers necessary to—

(a) give effect to securities laws;

(b) enable the Commission to perform its functions;

(c) aid compliance with any other written law which may be administered or supervised by the Commission which may be in force from time to time; or

(d) regulate the market conduct of market participants.

(2) A guideline issued under this section shall not be regarded as a statutory instrument.

(3) Contravention of a guideline referred to in subsection (1) shall not constitute an offence, but this shall not prevent the Commission from taking action under Part XIII.

Consultation on proposed Guidelines

154. (1) Before making or amending guidelines referred to in section 153, the Commission shall publish draft guidelines or draft amendments and shall consult with relevant stakeholders.

(2) Where, in the opinion of the Commission, any matter proposed to be dealt with in guidelines or by an amendment has become urgent, the Commission shall proceed to issue the guidelines or amendments, without following the process referred to in subsection (1), which guidelines shall be effective for ninety business days, unless replaced by guidelines made pursuant to subsection (1).

Regulations

155. (1) In addition to any specific provisions elsewhere in securities laws the Minister may, on the recommendation of the Commission, make regulations necessary or expedient for carrying out the purposes of securities laws and giving effect to the functions and responsibilities of the Commission.

(2) Without limiting subsection (1) the Minister may make regulations—

(a) regarding any matter in relation to which the Commission may make a rule;

(b) specifying a provision of the regulations the contravention of which constitutes an offence;

(c) governing the procedures that are to be followed by the Commission in making and repealing rules made by the Commission; and

(c) repealing or amending a rule made by the Commission.

Publication of proposed regulations

156. (1) The Commission shall publish in accordance with subsection (2), at least thirty business days before the proposed effective date thereof—

(a) a copy of any regulations that it proposes to recommend to the Minister;

(b) a concise statement of the substance and purpose of the proposed regulations; and

(c) a reference to the authority under which the regulation is proposed.

(2) The Commission shall satisfy the requirements of subsection (1) by publishing in the *Gazette* and—

(a) publishing in a newspaper of general circulation in each member country; or

(b) posting on the website of the Commission and issuing a notice in a newspaper of general circulation in each member country notifying the public of such posting.

(3) After a proposed regulation is published in accordance with subsection (2), the Commission shall afford a reasonable opportunity to interested persons to make representations with respect to the proposed regulation.

(4) The Commission is not required to comply with subsections (1), (2) and (3) if—

(a) every person who will be subject to the regulations is named and the documents required by subsection (1) (a) to (c) are sent to each of them;

(b) the regulations only grant an exemption or relieve a restriction and are not likely to have a substantial impact on the interests of persons other than those who benefit under it;

(c) the regulations make no material substantive change in an existing regulation;

(d) the Commission for good cause finds that compliance with subsections (1), (2) and (3) is impracticable or unnecessary and publishes the finding and a concise statement of the reasons for it; or

(e) the Commission makes regulations, where the Commission believes that there is an urgent need for the proposed rule and that the delay involved in complying with subsections (1), (2) and (3) would be prejudicial to the public interest.

(5) A person may petition the Commission to recommend the making, amendment or revocation of regulations.

Rules

157. (1) In carrying out the purpose of securities laws and its functions and responsibilities under securities laws, the Commission may make rules providing for such matters as may be necessary or expedient for giving effect to such purposes, functions and responsibilities.

(2) Without limiting subsection (1), rules may vary the application of securities laws generally or with respect to their application to—

(a) a person or class of persons;

(b) a security or class of securities; or

(c) a trade or class of trades.

Rule-making process

158. (1) The Commission shall publish, in accordance with subsection (2), at least thirty business days before the proposed effective date—

(a) a copy of any rule that it proposes to make;

(b) a concise statement of the substance and purpose of the proposed rule; and

(c) a reference to the authority under which the rule is made.

(2) The Commission shall satisfy the requirements of subsection (1) by publishing in the Gazette and—

(a) publishing in a newspaper of general circulation in each member country; or

(b) posting on the website of the Commission and issuing a notice in a newspaper of general circulation in each member country notifying the public of such posting.

(3) After a proposed rule is published in accordance with subsection (2), the Commission shall afford a reasonable opportunity to make written representations with respect to the proposed rule.

(4) The Commission shall publish each final rule, with any amendments that the Commission deems appropriate to make as a result of the public comment process under this section, as prescribed on or before its effective date.

(5) The Commission is not required to comply with subsections (1), (2) and (3) if—

(a) every person who will be subject to the rule is named and the documents required by subsections (1) (a) to (c) are sent to every such person;

(b) the rule only grants an exemption or relieves a restriction and is not likely to have substantial impact on the interests of persons other than those who benefit under it;

(c) the rule makes no material substantive change in an existing rule;

(d) the Commission for good cause finds that compliance with subsections (1), (2) and (3) is impracticable or unnecessary and publishes the finding and a concise statement of the reasons for it; or

(e) the Commission believes that there is an urgent need for the proposed rule and that the delay involved in complying with subsections (1) and (2) would be prejudicial to the public interest.

(6) Where the Commission alters or revokes a rule, it shall—

(a) publish notice of the alteration or revocation; and

(b) include in such a notice details of the alteration or revocation.

Regulation prevails over rule

159. Where a rule made by the Commission conflicts with regulations made by the Minister, the regulations made by the Minister shall prevail.

Power to vary Commission rules

160. If the Commission considers it not prejudicial to the public interest to do so, the Commission may by order vary a rule made under section 157 as it applies to a person, trade, or security, or a class of persons, trades or securities.

Power to remove exemption contained in Commission rule

161. If the Commission considers it in the public interest to do so, the Commission may order that an exemption in a rule made under section 157 does not apply to a person, trade or security, or a class of persons, trade or securities.

Forms

162. The Commission may specify forms that may be used under securities laws and shall publish these forms on its website.

Appointment of receiver or receiver-manager

163. (1) Where the Commission considers that it is in the public interest or necessary for the protection of investors to prevent—

(a) a person who is or has been in breach of, or has contravened securities laws; or

(b) a licensee whose licence under securities laws has been suspended or revoked,

from dealing with property under his, her or its control or direction, the Commission may apply to the High Court for an order under subsection (2).

(2) The High Court may appoint a receiver or receiver-manager for the person or regulated person referred to under subsection (1) if it is satisfied that such order is in the interests of the customers, creditors, investors or other affected parties.

(3) Where the Commission intends to apply to the High Court to appoint a receiver or receiver-manager in respect of the property of a licensee that is a financial institution regulated by the Eastern Caribbean Central Bank, the Commission shall, before making the application, consult with the Eastern Caribbean Central Bank with regard to the proposed application.

(4) The High Court may make an order under subsection (1) on an *ex parte* application by the Commission for a period not exceeding fifteen business days.

(5) The High Court may order a receiver or receiver-manager appointed under this section to receive such remuneration to cover its charges and expenses from the person, or regulated person referred to in subsection (1), and such remuneration shall be in such order of priority, in relation to existing charges, as the High Court sees fit.

(6) The receiver or receiver-manager shall—

(a) conduct its duties with the greatest economy compatible with efficiency and as soon as possible after its appointment; and

(b) file with the High Court, and with a copy to the Commission, a report stating its recommended course of action in the circumstances.

(7) The receiver or receiver-manager, the Commission or any interested person may at any time apply to the High Court for the cancellation of an order made under subsection (1) or (4).

(8) The provisions of the Companies Act relating to a receiver or receiver-manager shall apply to a receiver or receiver-manager appointed under this section.

Appointment of liquidator

164. (1) The High Court may order the winding up of a licensee or self-regulatory organisation, and appoint a liquidator in accordance with the Companies Act, subject to the modification that the licensee or self-regulatory organisation may also be ordered to be wound up on the petition of the Commission.

(2) A petition made by the Commission under subsection (1) shall not be presented except with leave of the High Court.

(3) In any case where a petition is made by the Commission to the High Court for the winding up of a licensee or self-regulatory organisation—

(a) the licensee or self-regulatory organisation shall remain in suspension and shall not carry on business during the pendency of the petition unless it is authorised to do so by the High Court and except in accordance with conditions, if any, as may be specified by the High Court;

(b) the High Court, may permit the licensee or the self-regulatory organisation to resume business either unconditionally or subject to such conditions as the High Court may consider necessary in the public interest of the clients, investors and other creditors of the licensee or self-regulatory organisation if after such inquiry as it may consider necessary, it is of the opinion, that the licensee or self-regulatory organisation—

(i) is not insolvent;

(ii) is able to meet the requirements for licensing under this Act; and

(iii) its continuation in business is not likely to involve a loss to its clients, investors or members; and

(c) if the conditions of paragraph (b) are not fulfilled, the High Court may order that the registrant or self-regulatory organisation be wound up.

(4) Notwithstanding the provisions of any other law, where an order of the High Court is made, for the winding up of any licensee or self-regulatory organisation or for the appointment of a receiver or receiver-manager, whether in pursuance of any petition made under this section or otherwise, such person as may be nominated by the Commission may be appointed as liquidator, receiver or receiver-manager, as the case may be.

(5) No licensee or self-regulatory organisation shall pass a resolution for a voluntary winding up or commence a voluntary winding up without first obtaining written approval of the Commission, upon an application in writing accompanied by such documents and information as may be required by the Commission.

(6) The Commission shall not grant the approval referred to in subsection (5), unless it is satisfied that—

(a) the voluntary winding up will be affected in a manner that would not pose undue risks to customers, investors or members of the licensee or self-regulatory organisation; or

(b) adversely affect public confidence in the securities industry in the Currency Union, and such approval may be subject to such terms and conditions as the Commission determines.

(7) Where the Commission intends to apply to the High Court to appoint a liquidator in respect of the property of a financial institution that is licenced by the Eastern Caribbean Central Bank, the Commission shall, before making the application, consult with the Eastern Caribbean Central Bank with regard to the proposed application.

(8) The provisions of the Companies Act relating to a liquidator shall apply to a liquidator appointed under this section.

Lien

165. Where the person in possession of any document required to be produced under the security laws claims a lien on the document—

(a) the requirement to produce the document shall not be affected by the lien;

(b) no fees shall be payable for or in respect of the production; and

(c) no production shall be without prejudice to the lien.

Secrecy
166. An order under securities laws shall have effect notwithstanding any obligations as to secrecy or other restrictions upon the disclosure of information imposed by any written law or any requirement imposed, any rule of law, any contract or any rule of professional conduct.

International identification numbers
167. A licensed Depository is authorised to issue international identification numbers for any securities listed on any marketplace licensed under securities laws.

Filing of documents and public availability
168. (1) All documents or information required to be filed with, delivered to or provided to the Commission shall be submitted to the Commission in the prescribed manner.

(2) Subject to subsection (3), the Commission—

(a) shall make all documents or information required to be filed with it available for public inspection; and

(b) may make all documents or information filed with it available to the public by posting such documents to the website of the Commission.

(3) The Commission may hold in confidence all or part of a document or information referred to in subsection (1) if it considers that—

(a) a person whose information appears in the document or information would be unduly prejudiced by disclosure of the information; and

(b) the person's privacy interest outweighs the public interest in having the information disclosed.

(4) Where a document or information is not expressly required to be filed but is required to be delivered or provided to the Commission by securities laws, the document or information shall not be disclosed under subsection (2), unless the Commission determines that such disclosure is in the public interest.

Extension of period for providing information
169. At the request of a person or an affiliate, the Commission may extend, any period within which the person or affiliate is, in accordance with the provisions of securities laws, obliged to furnish any document or information.

Verification
170. The Commission may by notice in writing require the person furnishing any information to the Commission to verify, within a reasonable period as specified in the notice, the information by oath or affirmation.

Register as evidence
171. Where it is provided in securities laws that—

(a) a register be established and maintained or kept;

(b) a book of accounts be kept;

(c) a list be prepared or published,

any entry in such register, book of account or list, or the production of any licence or certificate issued under securities laws, shall be prima facie evidence of the contents.

Discretionary exemptions
172. (1) If the Commission considers it not prejudicial to the public interest to do so, the Commission may exempt a person, trade or security, or a class of persons, trades or securities, from provisions in Parts II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV or XV.

(2) Exemptions granted under subsection (1) shall be published by the Commission on its website.

Designation orders
173. (1) If the Commission considers it not prejudicial to the public interest to do so, the Commission may, without providing an opportunity to be heard, order that—

(a) an issuer, or an issuer within a class of issuers, is not a reporting issuer;

(b) a person, or a person within a class of persons, is not a market participant or a marketplace; or

(c) a right or obligation, or a right or obligation within a class of rights or obligations, is not a security.

(2) If the Commission considers it in the public interest to do so, the Commission may, without providing an opportunity to be heard, order that—

(a) an issuer, or an issuer within a class of issuers, is a reporting issuer;

(b) a person, or a person within a class of persons, is a market participant or a marketplace; or

(c) a trade, or a trade within a class of trades, is a distribution.

(3) If the Commission considers it in the public interest to do so, the Commission may, without providing an opportunity to be heard, order—

(a) a foreign jurisdiction to be a recognised foreign jurisdiction;

(b) a rating organisation to be a recognised rating organisation;

(c) a person to be an international agency;

(d) a person to be an exempt purchaser, if the person purchases as principal or as a trustee for accounts fully managed by it; and

(e) a foreign securities exchange established and operated in a recognised foreign jurisdiction to be a recognised foreign securities exchange.

Commission to keep register

174. (1) The Commission shall maintain a register that shall contain the prescribed information about current and former licensees, reporting issuers and other persons required to be licensed with or otherwise approved by the Commission under securities laws.

(2) The Commission may make the register available to the public on the prescribed terms.

Amendment of schedules

175. The Minister, on the recommendation of the Commission, may by Order published in the *Gazette* amend the schedules.

Repeal

176. (1) The Securities Act, Chapter 299A is repealed.

(2) In any other enactment, wherever applicable, reference to "the Securities Act, Chapter 299A" shall be construed as reference to this Act.

Transitional provisions

177. (1) Notwithstanding section 176, any statutory instrument made under the Securities Act, Chapter 299A which is in force immediately before the commencement of this Act, shall remain in force until repealed.

(2) Every person licensed with the Commission under the former Act as a broker-dealer, or investment adviser is deemed to be licensed under this Act with effect from the commencement date of this Act.

(3) The Eastern Caribbean Securities Exchange licensed with the Commission under the former Act is deemed to be licensed as a securities exchange under this Act with effect from the commencement date of this Act.

(4) The Eastern Caribbean Central Securities Depository Limited licensed with the Commission under the former Act is deemed to be licensed as a securities depository under this Act with effect from the commencement date of this Act.

(5) The obligations on a reporting issuer to prepare and file—

(a) interim financial statements under section 76; and

(b) annual reports with the Commission under section 77 and to send interim financial statements,

and annual reports to the issuer's security holders shall not take effect until the issuer's first financial year that begins after the transition date of this Act.

(6) The reporting obligations of persons connected to reporting issuers under Part IX shall take effect 90 days after the commencement date.

(7) Any authority, approval or exemption granted by the Commission under the former Act which is in force immediately before the commencement date—

(a) shall be deemed to continue as if granted by the Commission under this Act; and

(b) in the case of a grant of an authority, approval or exemption for a specified period, shall be deemed to remain in force for so much of that period as falls after the commencement date.

SCHEDULE I

(section 130 (1))

OFFENCES DISCHARGABLE BY PAYMENT OF A FIXED PENALTY

Section	General Description of Offence	Fixed Penalty
30 (2)	Failure to have a licence	$75,000
40 (1)	Failure to have licence	$75,000
69	Failure to carry out a distribution other than in compliance with Part V.	$75,000
83	Failure to disclose material facts about the issuer or the making of any misrepresentation in any document required to be filed with the Commission or delivered to security holders by the issuer	$25,000
86	Failure to comply with provisions of the Take-over regulation	$75,000
90	Failure to disclose to the Commission any connection to a reporting issuer of any direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer	$5000
109	Failure to comply with sections 92 to 103 of Part XI;	$200,000
125	Failure to comply with an order for the provision of assistance	$75,000

SCHEDULE II

(section 130 (1))

NOTICE OF OPPORTUNITY TO DISCHARGE LIABILITY

The Eastern Caribbean Securities Regulatory Commission has reason to believe that [name of person] has committed an offence under section of the Securities Act having [particulars of offence]; and hereby gives the [name of person] the opportunity to discharge liability for this offence by payment of the sum [insert fixed penalty listed in Schedule I in words and figures] to the Commission on or before the day of , 20 and before that date no proceedings in respect of this offence will be taken.

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Chairman
Eastern Caribbean Securities Regulatory Commission

Passed by the House of Representatives this 21st day of May, 2021.

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Clerk to the House of Representatives

Passed by the Senate this day of , 2021.

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Clerk to the Senate