

SECURITIES INDUSTRY LAW, 1993

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IN pursuance of the Provisional National Defence Council (Establishment)
Proclamation 1981, this Law is hereby made:

PART I - SECURITIES AND EXCHANGE COMMISSION

Establishment of
the Commission.

1. (1) There is hereby established a Commission to be known as the Securities and Exchange Commission (hereafter referred to as "the Commission").
- (2) The Commission shall be a body corporate with perpetual succession and a common seal, and may sue and be sued in its corporate name.
- (3) The Commission may for the discharge of its functions under this Law acquire, hold and dispose of movable and immovable property and may enter into any contract or other transaction.

Composition of
the Commission.

2. (1) The Commission shall consist of -
 - (a) a Chairman;
 - (b) the Executive Director;
 - (c) the two Deputies of the Executive Director;
 - (d) one High Court Judge;
 - (e) a representative of Bank of Ghana;
 - (f) a representative of Ministry of Finance and Economic Planning;
 - (g) the Registrar-General or his representative;
 - (h) four other persons including a lawyer qualified to be appointed a High Court Judge being persons who by reason of their ability, experience or specialised knowledge of securities and investment matters or of business or professional attainments would in the opinion of the P.N.D.C. be capable of making useful contributions to the work of the Commission.
- (2) All members of the Commission, including the Chairman, shall be appointed by the P.N.D.C.

Terms of
membership.

3. (1) The Chairman and the other members of the Commission shall hold office for three years but shall be eligible for re-appointment.
- (2) A member of the Commission may resign his membership by notice in writing addressed to the P.N.D.C.
- (3) A member may be removed from membership of the Commission where he -
 - (a) becomes a person of unsound mind;
 - (b) is absent from three consecutive meetings of the Commission without permission or reasonable cause;
 - (c) is proved guilty of grave misconduct in relation to his duties as a member of the Commission;

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- (d) is sentenced to death or to imprisonment for a term exceeding 12 months without the option of a fine or is convicted of an offence involving dishonesty;
- (e) is declared bankrupt under any law in force in Ghana or in any other country; or
- (f) in the case of a person possessed of professional qualifications, he is disqualified or suspended, otherwise than at his own request, from practicing his profession in Ghana or in any other country by an order of any competent authority made in respect of him personally.

Meetings of the
Commission.

4. (1) The Commission shall ordinarily meet for despatch of business at such times and places as the Chairman may decide but shall meet at least once in every two months.
- (2) The Chairman shall at the request in writing of not less than four members of the Commission, call an extraordinary meeting of the Commission at such time and place as he may determine.
- (3) The Chairman shall preside at every meeting of the Commission and in his absence any member of the Commission designated by the Chairman shall preside at the meeting.
- (4) If no member of the Commission is so designated the members of the Commission present shall elect one of their number to preside at the meeting.
- (5) The quorum at every meeting of the Commission shall be five including the Chief Executive of the Commission or in his absence a Deputy Chief Executive.
- (6) All questions proposed at a meeting of the Commission shall be determined by a simple majority of the members present and voting and where the votes are equal the Chairman or the person presiding shall have a second or casting vote.
- (7) The Commission may request the attendance of any person to act as adviser at any of its meetings but such person shall not vote on any matter for decision by the Commission.
- (8) The validity of any act or proceedings of the Commission shall not be affected by any vacancy among its members or any defect in the appointment of a member.
- (9) Subject to this section the Commission shall regulate its own procedure.

Chief Execu-
tive and other
staff of the
Commission.

5. (1) There shall be appointed by the PNDC a Director-General of the Commission who shall be the chief executive of the Commission and shall hold office on such terms and conditions as may be specified in his letter of appointment.
- (2) There shall be appointed by the PNDC two Deputy Executive Directors of the Commission on such terms and conditions as the PNDC shall determine.
- (3) The Deputy Directors shall assist the Executive Director in the performance of his duties and perform such functions as the Commission may direct.

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- (4) The Commission may employ such officers and staff as may be necessary for the proper discharge of its functions under this Law and on such terms and conditions as the Commission in consultation with the Secretary may determine.
- (5) Public officers may be transferred or seconded to the Commission.
- (6) The Commission may also engage the services of such consultants, advisers and other persons upon such conditions as the Commission may, in consultation with the Secretary determine.

Funds of the
Commission.

- 6. (1) The funds of the Commission shall include-
 - (a) grants received from the Government by the Commission for the discharge of its functions;
 - (b) any loans granted to the Commission by the Government or any other body or person;
 - (c) any money accruing to the Commission in the course of the performance of its functions under this Law; and
 - (d) any grants made by donors approved by the Secretary.
- (2) All moneys received by or on behalf of the Commission shall be deposited to the credit of the Commission in a bank approved by the Commission.

Accounts and
Audit.

- 7. (1) The Commission shall keep proper books of accounts and prepare proper records in relation to the accounts; all the accounts of the Commission shall be in such form as the Auditor-General may approve.
- (2) The books and accounts of the Commission shall be audited by the Auditor-General within six months after the end of every financial year.
- (3) The Auditor-General shall make a report on the accounts to the Commission.
- (4) The Commission shall on receipt of the report forward the report to the Secretary who shall submit the report with his comments thereon to the PNDC.
- (5) The Commission shall submit to the Secretary such other report on the Commission's financial affairs as the Secretary may request.

Allowances for
members of the
Commission.

- 8. The members of the Commission other than the Executive Director and the two Deputy Executive Directors shall be paid such allowances as the Secretary may determine.

PART II - FUNCTIONS OF THE COMMISSION

General func-
tions of the
Commission.

- 9. The functions of the Commission are -
 - (a) to advise the Secretary on all matter relating to the securities industry;
 - (b) to maintain surveillance over activities in securities to ensure orderly, fair and equitable dealings in securities;

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- (c) to register, licence, authorise or regulate, in accordance with this Law or any regulations made under it, stock exchanges, investment advisers, unit trust schemes, mutual funds, securities dealers, and their agents and to control and supervise their activities with a view to maintaining proper standards of conduct and acceptable practices in the securities business;
- (d) to formulate principles for the guidance of the industry;
- (e) to monitor the solvency of licence holders and take measures to protect the interest of customers where the solvency of any such licence holder is in doubt;
- (f) to protect the integrity of the securities market against any abuses arising from the practice of insider trading;
- (g) to adopt measures to minimize and supervise any conflict of interests that may arise for dealers;
- (h) to review, approve and regulate takeovers, mergers, acquisitions and all forms of business combinations in accordance with any law or code of practice requiring it to do so;
- (i) to create the necessary atmosphere for the orderly growth and development of the capital market;
- (j) to perform the functions referred to in section 279 of the Companies Code 1963;
- (k) to undertake such other activities as are necessary or expedient for giving full effect to the provisions of this Law; and
- (l) to perform other functions specified under this Law.

Power of the Commission to require production of books by a stock exchange and certain persons.

- 10. (1)** The Commission may by notice in writing, at any time where it considers that there is sufficient cause to do so, give directions to –
- (a) a stock exchange;
 - (b) a member of the council of a stock exchange;
 - (c) a manager of a unit trust scheme or a mutual fund;
 - (d) a person who is or has been, either alone or together with another person a dealer or an investment adviser or is or has been a dealer's representative;
 - (e) a nominee controlled by a person referred to in paragraph (S) or (d) jointly controlled by two or more persons at least one of whom is a person referred to in these paragraphs;
 - (f) a person who is or has been an officer or an employee of, or an agent, lawyer, auditor or other person acting in any capacity for or on behalf of, a stock exchange or a person referred to in paragraph (b), (c), (d), or (e);
 - (g) any other person who is or has been a party to any dealing in securities; or
 - (h) any person,
- to produce to a person authorised by the Commission such books, subject to subsection (2), as may be specified in the direction.
- (2)** For the purposes of subsection (1), books in respect of which a request to produce may be made shall relate to –

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- (a) the business or affairs of a stock exchange;
 - (b) any dealing in securities;
 - (c) any dealing in unit trusts and mutual funds;
 - (d) any advice concerning securities or the issuing or publication of a report or analysis concerning securities;
 - (e) the character or financial position of, or any business carried on by, a person referred to in paragraph (c), (d) or (e) of subsection (1); or
 - (f) an audit of, or any report of an auditor concerning a dealing in securities or any accounts or records of a dealer or of an investment adviser.
- (3) No direction to produce shall be made to any person under section 10 (1) (h) unless the Commission believes that the person has in his custody or under his control books which relate to a matter specified under subsection (2) of this section.
 - (4) No books shall be directed to be produced by any person under section 10 (1) (h) at a time or place that may unduly interfere with the proper conduct of the normal daily business of that person.
 - (5) The Commission may in writing authorise a person possessed of such qualification as it considers adequate to exercise the power to request for the production of books conferred on it under this section.
 - (6) A reference in subsection (1) to a dealing in securities or to a business carried on by a person includes a reference to a dealing in securities by a person as a trustee.
 - (7) An authorisation from the Commission to any person under subsection (5) may be of general application or may be limited to making requirements of a particular stock exchange, manager of a unit trust scheme or manager of a mutual fund or other person.
 - (8) Where the Commission, or a person authorised by the Commission, requires the production of any books under this section and a person has a lien on the books, the production of the books shall not prejudice the lien.
 - (9) An authorised officer shall where required to do so produce evidence of his authorisation.
 - (10) No action shall lie against any person for complying with a direction or requirement made or given under this section to produce books.
 - (11) A power conferred by this section to make a requirement of a person extends if the person is a body corporate, to making that requirement of any person who is or has been an officer of the body corporate whether that body corporate is in the course of being wound up or has been dissolved.

Action on
production of
the books or
when books are
not produced.

- 11. (1) Where the required books are produced under section 10, the person to whom they are produced –
 - (a) may take possession of them, make copies of them, or take extracts from them;

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- (b) may require the other person or any person who was party to the compilation of the books to make a statement providing an explanation of any of the books;
 - (c) may retain possession of the books for as long as the Commission considers necessary to enable the books to be inspected and copies of or extracts from the books to be made or taken by or on behalf of the Commission; and
 - (d) shall permit the person who produced them, upon giving a reasonable notice and specification of the books, to have access to them.
- (2) Where the books are not produced, the Commission or the authorised person may require the person who should have produced the books -
- (a) to state, to the best of his knowledge and belief, where the books may be found;
 - (b) to identify the person who, to the best of his knowledge and belief, last had custody of the books and where he may be found; or
 - (c) to state the reasons why the books cannot be produced.

Order by
magistrate to
search premises.

- 12.** (1) Where it appears to a District Magistrate, upon written information on oath, and after any enquiry he may think necessary, that there are reasonable grounds for suspecting that there are on any premises books the production of which has been directed and have not been produced in compliance with the direction, the magistrate may issue a warrant authorising the Commission or any other person named in it -
- (a) to search the premises and to break open and search any cupboard, drawer, container or other receptacle, whether a fixture or not, in the premises; and
 - (b) to take possession of, or secure against interference, any books that appear to be books the production of which was so directed.
- (2) The powers conferred under subsection (1) are in addition to, and not in derogation of, any other powers conferred by the Criminal Code 1960 (Act 29) relating to search of premises.
- (3) In this section "premises" includes any structure, building, place, aircraft, vehicle or vessel.

Incriminating
statement.

- 13.** (1) It is no excuse for any person to fail to provide a statement explaining any matter relating to the compilation of any books or any matter requested of him under section 10 on the grounds that the statement might tend to incriminate him.
- (2) Where the person claims before making a statement required of him that the statement might tend to incriminate him, the statement provided in answer to the request shall not be admissible in evidence against him in any criminal proceedings other than proceedings under section 10, 11 or 12 of this Law.

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- (3) Subject to subsection (2) of this section, a statement made by a person in compliance with a requirement under section 10 may be used in evidence in any criminal or civil proceedings against the person.

Penalties.

- 14.** A person who-
- (a) without reasonable excuse, refuses or fails to comply with a direction given under section 10, 11 or 12; or
 - (b) furnishes information or makes a statement that is false or misleading in a material particular for the purposes of section 10, 11 or 12; or
 - (c) without reasonable excuse, obstructs or hinders the Commission or any person in the exercise of a power under section 10, 11 or 12
- commits an offence and is liable on conviction to a fine not exceeding 1 million cedis or to imprisonment for a term not exceeding one year or to both.

Copies or extracts of books to be admitted in evidence.

- 15.** (1) Subject to this section and section 17, a copy of or extract from a book relating to a matter specified in subsection (1) or (2) of section 10 is admissible in evidence as if it were the original book.
- (2) A copy of or extract from a book is not admissible in evidence under subsection (1) unless it is proved that the copy or extract is a true copy of the book or of the relevant part of the book.
- (3) For the purposes of subsection (2), evidence that a copy of or extract from a book is a true copy of the book or of a part of the book may be given by a person who has compared the copy or extract with the book or the relevant part of the book and may be given orally or by an affidavit or statutory declaration.

Savings for lawyers.

- 16.** Nothing in section 10, 11 or 12 shall compel a legal practitioner to produce a document that contains privileged communication made by or to him in his professional capacity or authorise the taking of possession of any such document which is in his possession but if the legal practitioner refuses to produce the document he shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom or by or on whose behalf the communication was made.

Secrecy of information from books.

- 17.** (1) No information obtained from any books that have been produced under section 10, 11 or 12 shall, without the previous consent in writing of the person who has custody or control of the books, be published or disclosed, except to the Commission and its officers and employees, unless the publication or disclosure is required -
- (a) with a view to the institution of or for the purposes of, criminal proceedings; or
 - (b) for the purpose of proceedings under section 10, 11 or 12 of this Law.

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- (2) A person who publishes any information in contravention of this section commits an offence and is liable on conviction to a fine not exceeding 1 million cedis or to imprisonment for a term not exceeding one year or to both.

Disclosure to
the Commission

- 18.** (1) The Commission may, where it considers it necessary for the protection of investors, require a dealer or an exempt dealer to disclose to it, in relation to any acquisition or disposal of securities, the name of the person from or through whom or on whose behalf the securities were acquired or disposed of and the nature of the instructions given to the dealer in respect of the acquisition or disposal.
- (2) The Commission may require a person who has acquired, held or disposed of securities to disclose to it –
- (a) whether he acquired, held or disposed of securities as a trustee for or on behalf of another person or as a nominee;
 - (b) the name of that person; and
 - (c) the nature of any instruction given to him as trustee or nominee in respect of the acquisition, holding or disposal.
- (3) The Commission may require a stock exchange to disclose to it, in relation to an acquisition or disposal of securities on the stock market of that stock exchange, the names of the members of that stock exchange who acted in the acquisition or disposal.

Where the
Commission
suspects breach
of specified
provisions.

- 19.** (1) where the Commission considers -
- (a) that it may be necessary to prohibit trading in securities of, or made available by a body corporate pursuant to section 31; or
 - (b) that a person may have contravened the provisions of Part X in relation to securities of, or made available by a body corporate; or
 - (c) that a person may have contravened a provision of Part F of Chapter II of the Companies Code, 1963 (Act 179) in relation to securities in body corporate;

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

- (2) For the purposes of paragraph (a), (b) or (c) of subsection (1) the Commission may require a person whom the Commission believes on reasonable grounds to be capable of giving information concerning –
- (a) any dealing in relevant securities;
 - (b) any advice given by a dealer, an investment adviser, a dealer's representative or an investment representative concerning securities;

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- (c) the issuing or publication of a report or analysis by a dealer, an investment adviser, a dealer's representative concerning relevant securities;
- (d) the financial position of any business carried on by a person who is or has been (either alone or together with other persons) a dealer or an investment adviser and has dealt in, or given advice concerning relevant securities;
- (e) the financial position of any business carried on by a nominee controlled by a person referred to in paragraph (c) or jointly controlled by two or more persons at least one of whom is a person referred to in that paragraph; or
- (f) an audit of, or any report of an auditor concerning any accounts or records of a dealer or of an investment adviser, being accounts or records relating to dealings in relevant securities,

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

- (3) "Relevant securities" in subsection (2) means securities of, or made available by, the body corporate referred to in subsection (1).
- (4) A person is not excused from disclosing information to the Commission pursuant to a requirement made of him under subsection (1) and (2) on the ground that the disclosure of the information might tend to incriminate him.
- (5) Where a person claims, before making an oral statement disclosing information which he is required to disclose under subsection (1) or (2), that the statement might tend to incriminate him, the statement provided in answer to the request is not admissible in evidence against him in criminal proceedings other than proceedings under this section.
- (6) A person who or stock exchange which, without reasonable excuse, refuses or fails to comply with a requirement of the Commission under subsection (1), (2) or (3) of section 18 or subsections (1) or (2) of this section commits an offence and is liable on conviction to a fine not exceeding 1 million cedis or to imprisonment not exceeding one year or to both.
- (7) A person who, for the purposes of subsection (1), (2) or (3) of section 18 or subsection (1) or (2) of this section, discloses information, or makes a statement, that is false or misleading in a material particular commits an offence and is liable on conviction to a fine not exceeding 1 million cedis or to imprisonment not exceeding one year or to both.
- (8) It is a defence to a prosecution for an offence under subsection (7) for the defendant to prove that he believed on reasonable grounds that the information or statement was true and was not misleading.
- (9) In this section a reference to disclosing information includes, in relation to information that is contained in a document, the furnishing of the document.

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(10) A person shall not be subject to any liability by reason that he complied with a requirement made or purported to have been made under this section.

Investigation of certain matters.

20. Where the Commission has reason to suspect that a person has committed an offence under this Law or the Companies Code, 1963 (Act 179) or has been guilty of fraud or dishonesty in relation to dealing in securities, it may make such investigations as it thinks proper in pursuance of this Law.

Inspection by the Commission.

21.(1) The Commission may, inspect the books, accounts, documents and transactions of a stock exchange, a unit trust scheme, a mutual fund, a dealer or an investment adviser.

(2) The Commission may appoint a person possessed of such qualification as it considers adequate to exercise the power of the Commission under subsection (1).

(3) For the purposes of an inspection under this section, the stock exchange or any of the persons referred to in subsection (1), shall afford the Commission access to, and shall produce books, accounts and documents and shall give such information facilities as may be required to conduct the inspection.

(4) A person appointed by the Commission shall have the power to copy or take possession of the books, accounts and other documents of a stock exchange, the manager of a unit trust scheme or mutual fund, a dealer or investment adviser.

(5) A person who or stock exchange or unit trust scheme, or mutual fund which fails, without reasonable excuse, to produce any book, account or document, information or facilities in accordance with subsection (3) commits an offence and is liable on conviction to a fine not exceeding 1 million cedis or to imprisonment for a term not exceeding one year or to both.

Power of court to make certain orders.

22. (1) Where -

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

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

the court may, without prejudice to any other orders it may make, make one or more of the following orders -

(i) in the case of persistent or continuing breaches of this Law, or of the conditions or restriction of a licence, or of the conditions or restriction of a licence, or of the rules or listing rules of a stock exchange, an order restraining the person from carrying on a

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- business of dealing in securities, acting as an investment adviser or as a dealer's representative or investment representative, or from holding himself out as carrying on such business or so acting;
- (ii) an order restraining a person from acquiring, disposing of or otherwise dealing with any securities that are specified in the order;
 - (iii) an order appointing a receiver of the property of a dealer or of property that is held by a dealer for or on behalf of another person whether on trust or otherwise;
 - (iv) an order declaring a contract relating to securities to be void or voidable;
 - (v) for the purposes of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act; or
 - (vi) any order ancillary to any of the orders specified in this paragraph considered necessary.
- (2) The court may, before making an order under subsection (1), direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.
- (3) A person appointed by order of the court under subsection (1) as a receiver of the property of a dealer may –
- (a) require the dealer to deliver to the receiver any property of which the latter has been appointed receiver or to give to the receiver all information concerning that property that may reasonably be required;
 - (b) acquire and take possession of any property of which he has been appointed receiver;
 - (c) deal with any property that he has acquired or of which he has taken possession in any manner in which the dealer might lawfully have dealt with the property; and
 - (d) exercise such other powers in respect of the property as are specified in the order.
- (4) In subsection (1) and (3), "property" in relation to a dealer, includes moneys, securities and documents of title to securities or other property entrusted to or received on behalf of any other person by the dealer or another person in the course of or in connection with a business of dealing in securities carried on by the dealer.
- (5) Any person who, without reasonable excuse, contravenes or fails to comply with –
- (a) an order under subsection (1) applicable to him; or
 - (b) a requirement of a receiver appointed by order of the court under subsection (1),

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commits an offence and is liable on conviction to a fine not exceeding 1 million cedis or to imprisonment for a term not exceeding one year or to both.

- (6) Subsection (5) does not affect the powers of the court to punish for contempt of court.
- (7) The court may rescind, vary or discharge an order made by it under this section or suspend the operation of an order.

Statements
of principle.

- 23.** (1) The Commission may issue statements of principle with respect to the conduct and financial standing expected of persons licensed under this Law.
- (2) The conduct expected may include compliance with a code or standard issued with the permission of the Commission by a person or body other than the Commission.
 - (3) Failure to comply with a statement of principle under this section is grounds for the taking of disciplinary action or the exercise of powers of intervention, but does not constitute an offence or give rise to any right of action by investors or other persons affected or affect the validity of any transaction.
 - (4) The exercise of disciplinary action under subsection (3) includes the exercise of any power under section 57 or 62 and those sections shall be construed accordingly.
 - (5) Where a statement of principle relates to compliance with a code or standard issued by a person or body other than the Commission, the statement of principle may provide -
 - (a) that failure to comply with the code or standard shall be a ground for taking disciplinary action or exercising any power under section 57 or 62, only in such cases and to such extent as may be specified; and
 - (b) that no such action shall be taken, or any such power exercised, except at the request of the person or authority by whom the code or standard in question was issued.
 - (6) The Commission shall exercise its power in such manner as appears to it appropriate to secure compliance with statements of principle under this section.

PART III - STOCK EXCHANGES

Establishment
etc., of stock
markets.

- 24.** (1) No person shall establish or assist in establishing or maintain or hold himself out as providing or maintaining a stock market unless it is authorised under this Law.

Power of
Commission to
approve a stock
exchange

- 25.** (1) Application for approval as a stock exchange may be made to the Commission in the prescribed form.
- (2) No approval shall be granted to any person to operate a stock exchange other than a body corporate.

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- (3) The Commission may in consultation with the Secretary approve a body corporate as a stock exchange if it is satisfied -
- (a) that at least 3 members of the body corporate will carry on the business of dealing in securities independently of and in competition with each other;
 - (b) that the rules of the body corporate will make satisfactory provision –
 - (i) for the exclusion from membership of persons who are not of good character and high business integrity;
 - (ii) for the expulsion, suspension or disciplining of members for conduct inconsistent with just, and equitable principles in the transaction of business or for a contravention of or failure to comply with the rules of the stock exchange or the provisions of this Law;
 - (iii) for the making of a report to the Commission by the body corporate whenever it rejects any application for membership or where it suspends or expels a member;
 - (iv) for the terms and conditions of the chief executive officer of the body corporate, including a term that the chief executive officer shall not be liable to dismissal or removal from his office without the prior approval of the Commission;
 - (v) with respect to the conditions under which securities may be listed for trading in the market proposed to be conducted by the body corporate;
 - (vi) with respect to the conditions governing dealing in securities by members.
 - (vii) with respect to the class of securities that may be dealt in by members;
 - (viii) with respect to a fair representation of persons in the selection of its council members and administration of its affairs and provided that one or more council members shall be representative of listed companies, investors, and the professions relevant to securities trading and not be associated with a stock broker, or dealer; and
 - (ix) generally, for the carrying on of the business of the stock exchange with due regard to the interest of the public; and
 - (c) that the interests of the public will be served by the granting of the approval.
- (4) Nothing in this section shall preclude the Commission from appointing any person who is knowledgeable in the securities industry and who is not associated with a stockbroker or dealer, to be on the council of a stock exchange to represent the public interest; and the person so appointed -

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- (a) shall have the same rights, powers, duties and obligations, liberties and privileges as any other member of the council of the stock exchange; and
- (b) shall hold office for a period specified by the Commission which may at any time revoke such an appointment.

- (5) The Commission shall publish in the Gazette notice of approval for the establishment of a stock exchange and every cancellation or suspension of any approval.
- (6) Where the Commission is of the opinion that an approval granted to a stock exchange under subsection (3) should be withdrawn in the public interest, it may serve on the council of that stock exchange a written notice that it is considering the withdrawal of the approval for the reasons stated in the notice and after giving an opportunity to the council to be heard on the matter, it may cancel the approval made under subsection (3).
- (7) A cancellation under subsection (6) shall not take effect until after the expiration of three months from the date on which the cancellation is published in the Gazette.
- (8) With effect from the date on which a notice of cancellation of approval under subsection (7) is published in the Gazette, the council shall ensure that trading on the stock exchange ceases. During the three months between the said publication and the effective date of the cancellation, the council shall take steps to wind up the business of the stock exchange.

Commission
to approve
amendments to
rules.

- 26.** (1) Where an amendment is made, whether by way of rescission, alteration or addition, to the rules of a stock exchange or the listing rules of a stock exchange, the council of the stock exchange shall forward a written notice of it to the Commission for approval.
- (2) The Commission may give notice in writing to the stock exchange concerned that it approves the amendment or that it disapproves the whole or any specified part of the amendment in question and until such notice is given the amendment shall not have any effect.
 - (3) Nothing in this section shall preclude the Commission, after consultation with the council of stock exchange, from amending the rules of an approved stock exchange by written notice specifying the amendments and the dates those amendments shall come into force, but the Commission may dispense with such consultation if it considers it necessary to do so for the protection of investors.
 - (4) Any notice under this section may be served personally or by post.

Stock ex change
to provide
assistance to the
Commission.

- 27.** (1) A stock exchange shall provide such assistance to the Commission as the Commission reasonably requires for the performance of its functions and duties, including the furnishing of returns and providing such information relating to the exchange's business or in respect of its dealing in securities or any other specified information as the Commission may require for the proper administration of this Law.

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

Disciplinary
power of the
Commission.

- 28.** (1) The Commission may review any disciplinary action taken by a stock exchange under subsection (2) of section 27 and may affirm or set aside a stock exchange decision after giving the member and the stock exchange an opportunity to be heard.
- (2) Nothing in this section precludes the Commission, in a case where a stock exchange fails to act against a member of the stock exchange, from suspending, expelling or otherwise disciplining a member of the exchange but before doing so the Commission shall give the member and the stock exchange an opportunity to be heard.
- (3) Any person who is aggrieved by the decision of a stock exchange or the Commission under this section may, within one month after he is notified of the decision, appeal to the Secretary whose decision on it shall be final.

Power of court
to order obser-
vance or en-
forcement of rules
of a stock exchange.

- 29.** (1) Where a person who is under an obligation to comply with, observe, enforce or give effect to the rules or regulations of a stock exchange fails in performing the duty, the court, on the application of the Commission, a stock exchange or a person aggrieved by the failure, and after giving to the person against whom the order is sought an opportunity of being heard, may make an order giving directions to that person to perform the duty.
- (2) For the purpose of subsection (1) -
- (a) a body corporate that has been admitted to any official list of a stock exchange and has not been removed from that official list; or
- (b) a person associated with a body corporate that has been admitted to any official list of a stock exchange and has not been removed from that official list,

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

Power to Issue
directions to a
stock exchange.

- 30.** (1) The Commission may, where it appears to be in the public interest, issue directions to a stock exchange -
- (a) with respect to trading on or through the facilities of that stock exchange or with respect to any security listed on that stock exchange; or
- (b) with respect to the manner in which a stock exchange carries on its business, including the manner of reporting off-market purchases; or

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

and the stock exchange shall comply with any such direction.

- (2) A stock exchange which, without reasonable excuse, fails or refuses to comply with a direction given under subsection (1), commits an offence and is liable on conviction to a fine of ₦200,000.00 and to a further fine of ₦5,000.00 for each day the non-compliance continues after conviction.
- (3) A stock exchange that is aggrieved by any direction of the Commission under subsection (1) may appeal to the Secretary within 30 days of the date of the direction.
- (4) In any appeal under subsection (3), the decision of the Secretary shall be final.
- (5) Where the Commission is satisfied that an executive officer of a stock exchange -
 - (a) has wilfully contravened this Law or any regulations made under it or the rules of a stock exchange; or
 - (b) has without reasonable justification or excuse, failed to enforce compliance with such provisions by a member of the stock exchange or a person associated with that member;

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

Power of the Commission to prohibit trading in particular securities.

31. (1) Without prejudice to the generality of section 30, where the Commission is of the opinion that it is necessary to prohibit trading in particular securities of, or made available by, a body corporate on the stock market of a stock exchange in order to protect the interest of the public, the Commission may give notice in writing to the stock exchange stating that it has formed that opinion and setting out its reasons.
- (2) If, after the receipt of the notice, the stock exchange does not take action to prevent trading in the securities to which the notice relates on the stock market of the stock exchange and the Commission is still of the opinion that it is necessary to prohibit trading in those securities on that stock market, the Commission may, by notice in writing to the stock exchange, prohibit trading in those securities on that stock market during such period, not exceeding 14 days, as may be specified in the notice.
- (3) Where the Commission gives a notice to a stock exchange under subsection (2) the Commission shall -
 - (a) at the same time send a copy of the notice to the body corporate together with a statement setting out the reasons for the giving of the notice; and

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- (b) as soon as practicable furnish to the Secretary a written report setting out the reasons for the giving of the notice and send a copy of the report to the stock exchange.
- (4) Where the Commission gives a notice to a stock exchange under subsection (2), the stock exchange may request the Commission in writing to refer the matter to the Secretary.
- (5) Where such a request is made, the Commission shall forthwith refer the matter to the Secretary, who may, if he thinks fit, direct the Commission to revoke the notice or confirm the prohibition imposed by the Commission; and the decision of the Secretary shall be final.
- (6) A stock exchange which permits trading in securities on the stock market of the stock exchange in contravention of a notice under subsection (2) commits an offence and is liable on conviction to a fine of not more than ₦100,000.00 for each day the contravention continues.

Part IV of P.N.D.C.L. 333 Substituted

10. The principal enactment is amended by the substitution for Part IV of the following:

“PART IV - UNIT TRUST AND MUTUAL FUND

Sub-part I - Unit Trust

Prohibition to
operate unit
trust without
licence.

- 32.** (1) No person shall -
- (a) establish or operate a unit trust;
 - (b) issue any invitation to the public to acquire any units in any unit trust;
 - or
 - (c) maintain or hold himself out as carrying on the business of dealing in units of a unit trust

unless the person is licensed by the Commission.

- (2) No licence shall be granted to any person to operate a unit trust unless it is a company incorporated under the Companies Code 1963 (Act 179).
- (3) Any person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of not less than 500 penalty units or imprisonment for a term not exceeding two years or to both and where the contravention is by a body corporate, the body corporate shall on conviction be liable to a fine of not less than 500 penalty units.

Manager and
trustee.

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

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- Trust deed. **32^B.** (1) A unit trust is constituted by a document made under seal between the manager of the unit trust and the trustee and the document shall be the trust deed.
- (2) The trust deed shall be in such form and contain such particulars as may be prescribed by Regulations made under this Law.
- Application for licence to operate a unit trust. **33.** (1) An application for a licence for a unit trust shall be made to the Commission and shall be in such form as the Commission may determine.
- (2) The applicant manager shall also submit to the Commission
- (a) the names and qualifications of its directors and other principal officers and those of the trustee;
 - (b) its certificate of incorporation;
 - (c) a copy of the trust deed; and
 - (d) such particulars as may be prescribed by Regulations under this Law.
- Licence to operate a unit trust. **33^A.** (1) The Commission may licence a unit trust if it is satisfied that –
- (a) the manager and trustee are qualified to act in that capacity;
 - (b) the manager is a company incorporated in Ghana;
 - (c) the trustee is either a bank, an insurance company or a financial institution or a wholly owned subsidiary of any of them approved by the Commission;
 - (d) the trustee has the minimum paid up capital required by the Commission;
 - (e) the business of the manager in relation to the unit trust is administered independently of the trustee; and
 - (f) the trust deed complies with the provisions of this Law and Regulations made under this Law.
- (2) The Commission shall within ninety days of receipt of an application for a licence communicate its decision on it in writing to the applicant.
- (3) A licence granted under subsection (1) shall be subject to such conditions as may be specified in it or in relation to it.
- Prohibition of activities in unlicensed unit trust. **33^B.** (1) No person shall undertake any activity in or related to a unit trust either directly or indirectly unless
- (a) the units are those of a unit trust licensed by the Commission; and
 - (b) the particulars of the unit trust have been approved by the Commission.
- (2) A person who acts contrary to subsection (1) commits an offence and is liable on summary conviction to a fine of not less than 500 penalty units or to a term of imprisonment not exceeding two years or to both and where the person is a body corporate to a fine of not less than 500 penalty units.

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Interest of investors in unit trust and pricing of unit.

- 34.** (1) The interest of a unit holder in a unit trust consists of units including fractions of a unit.
 (2) The calculation of prices at which units of any unit trust may be bought or sold shall be in accordance with provisions to be prescribed by the Commission.

Scheme particulars.

- 34^A.** (1) Any letter, notice, circular, document or prospectus prepared by a manager of a unit trust for the purpose of offering its units to the public shall be approved by the trustee of the scheme and the Commission before publication.
 (2) There shall be included in a document of the kind referred to in subsection (1), information in relation to such matters as may be prescribed or specified from time to time by the Commission.

Redemption of units.

- 34^B.** (1) The manager of a licensed unit trust shall, if requested by a holder of units of the unit trust, buy from the holder any number of units the holder may specify at the price at which the manager buys the units of the unit trust.
 (2) Where the licence of a unit trust has been revoked, the manager shall buy all the units under the scheme at the last bid price at which the manager bought units of the unit trust before the revocation.

Duties and powers of a manager of a unit trust.

- 35.** (1) The manager of a unit trust shall manage the assets of the unit trust on a day to day basis and shall select the investments to be made on behalf of the trust in the best interest of the unit holders.
 (2) The manager shall act in accordance with the trust deed and comply with its investment objectives and policy under the directions given by the trustee.
 (3) The manager shall provide such information on the management and administration of the unit trust as any trustee may request.
 (4) The manager of a unit trust shall maintain such minimum capital requirement as the Commission may determine.
 (5) The manager shall ensure that its directors or other persons concerned with the management of its business have such qualifications and experience as are specified by the Commission.

Duties and powers of trustee.

- 35^A.** (1) The trustee of a unit trust shall comply with the provisions of this Law, Regulations made under it, the terms of the trust deed and all prescribed particulars of the unit trust.
 (2) The trustee shall take into its custody or under its control the property of the unit trust and hold it in trust for the investors in accordance with this Law, Regulations made under it, the trust deed and any other applicable enactment.
 (3) The trustee shall ensure that an asset attributable to a particular unit trust is separately identified.
 (4) The trustee shall

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- (a) ensure that the method used by the manager in the calculation of prices at which interest is issued and redeemed is within the limits determined by the Commission; and
 - (b) maintain the minimum paid up capital determined by the Commission.
- (5) The trustee may execute documents to secure acquisitions, disposals and loans made by the manager in accordance with this Law or Regulations made under it and the trust deed.
- (6) Subject to subsection (7), this Law or Regulations made under it and the terms of the trust deed, the trustee shall carry out the instructions of the manager in respect of investments which constitute the property of the scheme.
- (7) The trustee may give notice to the manager that it is unwilling to accept the transfer of any property which contravenes this Law or Regulations made under it or the trust deed.
- (8) The manager may, with the approval of the trustee, determine that each unit shall be sub divided into two or more units or that two or more units shall be consolidated.

Prohibited
transactions by
manager.

- 35^B.** (1) No company that is a manager of a unit trust or is a subsidiary or holding company of the manager shall
- (a) borrow money on behalf of the unit trust for the purpose of acquiring securities or other property for the unit trust;
 - (b) lend money that is subject to the unit trust to a person to enable him to purchase units of the unit trust;
 - (c) mortgage, charge or impose any other encumbrance on any securities or other property subject to the unit trust; or
 - (d) engage in any transaction which in the opinion of the Commission is not in the interest of the holders of the units of the unit trust,
- provided that paragraphs (a) and (c) shall not apply to borrowings made on behalf of the trust solely for the purpose of meeting obligations to redeem units from the holders when requested and provided further that the borrowings shall be subject to such conditions and restrictions as the Commission shall prescribe.
- (2) A company that contravenes subsection (1) commits an offence and every officer of the company who acted in breach of the provision shall also be liable on summary conviction
- (a) in the case of the company to a fine of not less than 500 penalty units; and
 - (b) in the case of an officer to a fine not exceeding 250 penalty units or to a term of imprisonment of not less than six months or to both.

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Sub-part II - Mutual Fund

- Prohibition of operation of mutual fund without licence.
- 36.** (1) No person shall
- (a) establish or operate a mutual fund.
 - (b) issue any invitation to the public to acquire any shares in a mutual fund; or
 - (c) maintain or hold himself out as carrying on the business of dealing in a mutual fund
- unless the mutual fund is licensed by the Commission.
- (2) Any person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of not less than 500 penalty units or imprisonment for a term not exceeding two years or to both and where the contravention is by a body corporate, the body corporate is liable upon summary conviction to a fine of not less than 500 penalty units.
- Appointment of a manager and custodian.
- 36^A.** (1) The directors of a company applying to operate as a mutual fund shall appoint for the mutual fund
- (a) a manager which shall be a company incorporated in Ghana and independent of the mutual fund company; and
 - (b) a custodian which shall be independent of the mutual fund company and be a bank, an insurance company or any other financial institution approved by the Commission or a wholly owned subsidiary of any of them approved by the Commission.
- (2) The custodian shall have and maintain such minimum capital requirement as shall be determined by the Commission.
- Application for a mutual fund licence.
- 36^B.** (1) The Commission may on an application made to it by
- (a) a public company incorporated under the Companies Code, 1963 (Act 179); or
 - (b) an external company with a place of business in Ghana within the meaning of Chapter V of the Companies Code, 1963 (Act 179)
- license the company as a mutual fund company.
- (2) The company referred to in subsection (1) must have been incorporated solely to hold and manage securities or other financial assets.
- (3) The application shall be in such form and contains such particulars as are specified by or under this Law and as may be directed by the Commission.
- (4) The Commission shall within ninety days of receipt of the application communicate its decision on it in writing to the applicant.
- Licence for operation of mutual fund.
- 37.** (1) The Commission shall not grant a licence to any company to operate as a mutual fund company unless the Commission is satisfied that

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- (a) if an invitation is made to the public to subscribe for its shares, the price at which the shares will be offered will be based on the net value of the company's assets at the time of the offer with no addition except for a reasonable service charge;
- (b) the company will at all times repurchase the shares from the holder at a price based on the net value of its assets at the time of the repurchase without any deduction other than a reasonable service charge, provided that where the shares of the mutual fund company are to be listed on an approved stock exchange, the Commission may waive or modify the requirements of this paragraph;
- (c) a manager and custodian for the scheme have been appointed by the directors;
- (d) the manager is a company incorporated in Ghana and is separate from and independent of the custodian ; and
- (e) the custodian being a bank or an insurance company or a wholly owned subsidiary of either of them has and maintains the required minimum paid up capital.

(2) The licence may be subject to such other conditions as the Commission may specify.

Interest of an investor in a mutual fund.

37^A. (1) The interest of an investor in a mutual fund consists of shares in the company.

Exemption from specific provisions of the Companies Code.

37^B. (1) The following provisions of the Companies Code shall not affect the mutual fund company unless otherwise specified in writing by the Registrar of Companies acting in consultation with the Commission

- (a) section 59 (acquisition by a company of its own shares);
- (b) section 60 (redemption of redeemable preference shares);
- (c) section 61 (purchase by company of its own shares);
- (d) section 62 (limit on number of shares acquired);
- (e) section 63 (opening of share deals account);
- (f) section 66 (stated capital);
- (g) section 67 (reduction of stated capital);
- (h) section 275 to 279 (relating to invitation to the public and prospectus);
- (i) section 281 to 284 (relating to waiting periods after publication of prospectus; withdrawal of application for shares; invitations in respect of securities to be dealt in on a stock exchange and minimum subscription); and
- (j) section 314 (control of public invitations relating to external companies).

Regulations of a mutual fund.

37^C. A mutual fund shall make regulations which shall be in such form and contain such matters as are prescribed by Regulations made under this Law or as may be directed by the Commission.

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Directions by directors of a mutual fund.

- 38.** (1) Subject to the Companies Code the directors of a mutual fund shall determine the investment and general policies of the company and shall give directions to the manager accordingly.
- (2) No director shall give any directions which are likely to make the manager act in contravention of this Law and Regulations made under it; and the directors shall act in accordance with the terms of the regulations or the constitution of the mutual fund and any management agreement.
- (3) Any director who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding five million cedis or imprisonment for a term not exceeding one year or to both.

Custodian of mutual fund and its duties.

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

Duties of directors of mutual fund.

- 38^B.** (1) The directors of a mutual fund shall take reasonable care
- (a) to ensure that the property of the mutual fund is managed by the manager in accordance with this Law, Regulations made under it and the constitution or regulations of the mutual fund;
- (b) that the manager performs its functions and discharges its duties under this Law and Regulations made under it; and
- (c) that the methods used by the manager to calculate prices at which shares are issued and redeemed are legal; and shall carry out periodic checks to verify whether the manager has determined prices within those limits.

Duties of a manager of a mutual fund company.

- 38^C.** (1) The manager shall manage the mutual fund on a day to day basis, select investments to be owned by the company and carry out any other functions assigned to it under contract from the mutual fund.
- (2) The manager shall be subject to the directions of the directors of the mutual fund and shall perform the normal functions carried out by the managing director of a company.
- (3) Where the directions given to the manager by the directors of the mutual fund contravene this Law or any other enactment, the manager shall refer the matter to the Commission for guidance.
- (4) The manager of a mutual fund shall maintain such minimum paid up capital and have the amount and type of financial and material resources as may be directed by the Commission.

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- (5) The manager shall not allow the property of the company to be used or invested contrary to the investment restrictions under this Law or Regulations made under this Law.
- (6) The Manager shall ensure that its directors or other persons concerned with the management of its business have the necessary qualifications and experience required by the Commission.
- (7) The manager shall act in accordance with investment policies laid down by its directors and the provisions of this Law.

Sub-part III - Spread of Investment and General Provisions on Unit Trust and Mutual Fund

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|--|---|
| Spread of investments. | <p>39. (1) The value of a scheme's holding of securities issued by a single issuer shall not exceed twenty per cent at book value or 25 per cent at market value.</p> <p>(2) No scheme shall hold more than ten per cent of any class of securities issued by a single issuer.</p> |
| Unlisted securities. | <p>39^A. The value of a scheme's holding of securities not listed or quoted on a stock exchange may not exceed fifteen per cent of its total net asset value.</p> |
| Government securities. | <p>39^B. Up to thirty per cent of a scheme's total net assets value may be invested in government securities of the same issue.</p> |
| Futures and Commodities. | <p>39^C. No scheme shall enter into any future financial contract or hold any physical commodities.</p> |
| Investment in other schemes. | <p>40. (1) The value of a scheme's holding of units or shares in other collective investment schemes shall not in aggregate exceed ten per cent of its total net value.</p> <p>(2) No increase in the total of initial charges, the manager's annual fee or any other costs and charges borne by the investors or by the scheme shall be made, if the scheme is managed by the same manager or by his agent.</p> |
| Restriction on real estate investment. | <p>40^A. No scheme shall invest more than ten per cent of its net asset value in any type of real estate including building or interests in real estate except in shares of real estate companies.</p> |
| Amendment of limits of spread of investment. | <p>40^B. The provisions on the level and spread of investments of unit trust and mutual fund and the prohibited investment of unit trust and mutual fund specified in sections 39 to 40A may be waived or modified by the Minister on the advice of the Commission in appropriate circumstances.</p> |

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- Unit trust and mutual fund company annual fee for licence.
- 40^C.** There shall be paid in respect of a licence issued under this Part such application fee and annual licence fee as the Commission may determine.
- Inconsistency with this Law and Regulations made under it.
- 40^D.** If any provision in a trust deed establishing a unit trust or any provision in the regulations or constitution of a mutual fund is inconsistent with a provision of this Law or Regulations made under this Law, that provision shall be of no effect to the extent of the inconsistency.
- Changes in unit trust and mutual fund.
- 41.** (1) A proposal for change in a unit trust or mutual fund shall be subject to approval by a special resolution of holders of interests in the unit trust or mutual fund.
- (2) The manager of a unit trust or mutual fund shall submit the proposal to the Commission for approval and the Commission shall acknowledge receipt in writing within seven days of receipt.
- (3) If the Commission does not take a decision on the proposal within a period of sixty days after its submission, the manager may assume that it has been approved.
- Change and retirement of trustee or custodian.
- 41^A.**(1) The manager of a unit trust or the directors of a mutual fund shall give written notice to the Commission of any proposal to replace the trustee or custodian of the scheme and seek the approval of the Commission and the Commission shall acknowledge in writing the receipt of the proposal within seven days of receipt.
- (2) Any proposal for a change of a trustee or custodian shall be subject to approval by a special resolution of holders of interest in the scheme.
- (3) If the Commission does not indicate its decision on the proposal within a period of sixty days after its submission, it may be assumed that the proposal has been approved.
- (4) A trustee or a custodian may be replaced by a person who satisfied the requirements of this Law.
- (5) A trustee or a custodian may retire upon giving notice of not less than ninety days.
- Change of manager of unit trusts and mutual funds.
- 41^B.**(1) A trustee, or directors of a mutual fund, shall give written notice to the Commission of any proposal to replace a manager of the scheme and seek the approval of the Commission and the Commission shall acknowledge receipt in writing within seven days of receipt.
- (2) If the Commission does not indicate its decision on the proposal within a period of sixty days after its submission it may be assumed that there has been approval.
- (3) The manager shall be replaced by a person who satisfies the requirements of this Law.
- (4) The manager shall cease to hold office if
- (a) it goes into liquidation, except a voluntary liquidation to reconstruct or amalgamate on terms previously approved in writing by the trustee or directors;

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- (b) a receiver is appointed in respect of the unit trust or mutual fund;
- (c) the unitholders or shareholders take a decision to remove the manager in terms of this Law; or
- (d) the trustee of a unit trust or directors of a mutual fund states in writing giving reasons that a change of manager is desirable in the interest of the investors and the Commission approves.

- (5) If the name of the scheme makes reference to the name of the former manager, the former manager may require the new manager to propose a change in the name of the scheme.
- (6) Where the manager ceases to act as a manager, the trustee of a unit trust or the directors of the mutual fund shall appoint a person eligible under this Law to be the manager of the scheme subject to that person entering into an agreement with the trustee of the unit trust or the directors of the mutual fund to secure the due performance of its duties as manager.

Retirement of manager.

- 41^C.** (1) The manager may retire in favour of another eligible person upon the written approval of the trustee or the directors of the mutual fund if
- (a) in the case of a unit trust, the appointment is made under the seal of the retiring manager;
 - (b) the rights and duties of the retiring manager have been assigned to the new manager; and
 - (c) any other act required to be done for the assumption of duty as manager has been done.
- (2) The retiring manager shall be absolved from any obligation upon retirement but this shall be without prejudice to the rights of any person for any act or omission of the retiring manager prior to its retirement.
- (3) Upon assumption of office as the new manager, the manager shall enjoy the rights and exercise the powers as manager and also be subject to the duties and obligations of a manager.

Liability of manager, director, trustee and custodian.

- 42.** The manager of a unit trust, the trustee of a unit trust or the director, the manager or custodian of a mutual fund shall be liable to an investor for any loss suffered by the investor by reason of failure to perform the duties of office under this Law or Regulations made under this Law.

Prohibited transactions under mutual fund.

- 42^A.** A manager or custodian of a mutual fund shall not
- (a) borrow money on behalf of the mutual fund for the purpose of acquiring securities or other property for the mutual fund;
 - (b) lend money that is subject to the mutual fund to a person to enable that person acquire an interest in the mutual fund or for any purpose;
 - (c) mortgage, charge or impose any other encumbrance on any securities or other property subject to the mutual fund; or

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- (d) engage in any transaction which in the opinion of the Commission is not in the interest of the shareholders of the mutual fund,

provided that paragraphs (a) and (c) shall not apply to borrowings made on behalf of the fund solely for the purpose of meeting obligations to redeem shares from the holders when requested, and provided further that the borrowings shall be subject to such restrictions as the Commission shall prescribe.

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| Limitation on securities in which officers have Interest. | 42^B. No scheme shall invest in any securities of a class in a company or other body if an officer or collectively, officers of the manager own more than such per cent of the total nominal amount of the issued securities of that class as the Commission may determine. |
| Limitation on nil-aid or partly paid securities. | 42^C. (1) The portfolio of a scheme shall not include any securities where a call is made for any sum unpaid on that security unless that call can be met in full out of cash by the scheme's portfolio.
(2) Subject to subsection (1), the portfolio of a scheme shall include any security where a call is to be made for a sum unpaid on that security if the issue has been allotted under the terms of a rights issue or an existing holding. |
| Unlimited liability. | 43. No scheme shall acquire any asset which involves the assumption of any liability which is unlimited. |
| Register of investors. | 43^A. (1) The manager of a scheme shall keep at a prescribed place a register of persons who hold interest in the scheme containing such particulars as may be prescribed by Regulations.
(2) Regulations shall provide for inspection of the registers of the licensed schemes. |
| Commission to keep register of unit trust and mutual fund. | 43^B. (1) The Commission shall keep a register of licensed unit trusts and mutual fund companies.
(2) Any person who so wishes may inspect the register and upon payment of a fee obtain a copy of or extract from the register. |
| Court may rectify. | 43^C. The court may on an application order
(a) that a register be rectified if it is just to do so; or
(b) the manager to pay for any loss or damage if it is satisfied that a person has suffered loss or damage by an error or defect in the register of investors. |
| Court may order appointment of temporary manager of a scheme | 44. (1) The court may, on application, order the appointment of a person as a temporary manager of a scheme.
(2) The application may be made by
(a) the Commission;
(b) the manager; |

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- (c) the directors of a mutual fund;
- (d) the trustee or custodian; or
- (e) an investor in the scheme.

- (3) The appointment shall be for not more than ninety days but the court may, on application by the temporary scheme manager, extend the appointment.
- (4) A temporary scheme manager shall, before the end of the appointment, report to the court recommending a course of action to be taken in relation to the scheme.
- (5) The court may make such orders as are just, including orders to call an investors' meeting to consider a proposed resolution to nominate a replacement scheme manager or for the termination of the scheme.
- (6) A temporary scheme manager shall have the same powers and rights in respect of the property of the scheme as the manager of the scheme.

Termination of scheme in accordance with constitution of the scheme

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

Scheme manager may terminate scheme.

- 44^B.** (1) The manager of a scheme may, in writing and with the approval of the Commission, terminate the scheme on the ground that the purpose of the scheme has been, or cannot be, accomplished.
- (2) No manager shall terminate a scheme unless he has given notice as required under subsection (3) and a period of 60 days has passed.
- (3) The notice shall include
- (a) an explanation of the proposal;
 - (b) a statement of the circumstances under which the purpose of the scheme has been, or cannot be, accomplished; and
 - (c) a statement of the right of the investors to requisition a meeting of investors.

Court may terminate scheme.

- 45.** The court may, on an application by the manager of a scheme or by
- (a) the Commission;
 - (b) an investor in the scheme;
 - (c) a director of the manager; or
 - (d) a temporary scheme manager,

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

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Winding up of
a unit of scheme.

- 45^A.** (1) The trustee shall after the termination of the scheme realise the assets and after the payment from it of all liabilities and costs of the winding up, distribute the proceeds of the realisation to the manager and the investors upon the production by the manager and investors of evidence as to the proportion of their entitlement or interest in the scheme.
- (2) The trustee shall pay into court any unclaimed net proceeds or other cash held by the trustee after the expiration of twelve months after the day on which the net proceeds became payable.
- (3) The trustee may deduct any reasonable expenses incurred by him in making that payment into court from the unclaimed net proceeds.
- (4) The trustee shall notify the Commission after the completion of the winding up.

Revocation of
licence of a
scheme.

- 45^B.** (1) The Commission may, subject to the provisions of this Law and upon notification revoke the licence of a scheme if
- (a) in the opinion of the Commission the interests of the holders of the units or shares created or held under the scheme require that; or
- (b) the Commission is satisfied that the scheme as operating no longer qualifies as provided under this Law.
- (2) The Commission shall before revoking the licence notify the manager and trustee of the unit trust or the directors of the mutual fund of its intention to revoke the licence.
- (3) The manager of the unit trust or the directors of the mutual fund may within twenty-one days of the notification make representations in writing in respect of the proposed revocation to the Commission.
- (4) The Commission shall consider the representations made before deciding whether to revoke the licence or not.
- (5) The Commission shall communicate its decision to revoke the licence of the scheme within thirty days after representations have been made or if none is made, within thirty days after the last day for making the representation.

Suspension of
licence of unit
trusts and
mutual funds.

- 46.** (1) Nothing in this Part prevents the Commission from suspending the licence of any unit trust or mutual fund subject to such conditions as the Commission shall specify in writing.
- (2) The Commission shall
- (a) before suspending a licence notify the unit trust or mutual fund of its intentions; and
- (b) by the notice, invite the unit trust or mutual fund to make, within a period of not more than thirty days from the date of the service of the notice, any representations it may desire to make in respect of the suspension of the licence.

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- (3) The Commission may revoke the licence of the unit trust or mutual fund if
- (a) after the expiration of the period the unit trust or mutual fund has not made any representations; or
 - (b) it is not satisfied with representation made by the unit trust or mutual fund.
- Winding up of a mutual fund company. **46^A.** A mutual fund shall be wound up in accordance with the provisions of the Companies Code 1963 (Act 179).
- Cancellation of licence. **46^B.** The Commission shall cancel the licence of a scheme upon the termination of the scheme in accordance with the law.
- General penalty. **47.** Any person who does any act which constitutes a contravention of a provision of this Part commits an offence and except specifically provided in this Part in respect of that provision the person shall be liable upon summary conviction to a fine not exceeding 500 penalty units or imprisonment for a term not exceeding two years or to both.
- Unauthorised schemes. **47^A.** No person shall operate any other form of collective investment scheme unless it is licensed by the Commission.

PART V - LICENCES

- Dealer's licence. **48. (1)** No person shall carry on a business of dealing in securities or hold himself out as carrying on such a business unless he is the holder of a dealer's licence issued under this Part.
- Dealer's representative's licence. **49.** No person shall act as a dealer's representative unless he is the holder of a dealer's representative's licence issued under this Part.
- Investment adviser's licence. **50.** No person shall act as an investment adviser or hold himself out to be an investment adviser unless he is the holder of an investment adviser's licence issued under this Part.
- Investment representative's licence. **51.** No person shall act as an investment representative unless he is the holder of an investment representative's licence issued under this Part.
- Applications for licence or renewal . **52. (1)** An application for a licence or for the renewal of a licence shall be made to the Commission in the prescribed form and shall be accompanied by the prescribed fee and, in the case of an application for renewal of a licence, shall be made not later than one month before the expiry of the licence.
- (2) The Commission may require an applicant to supply it with such further information as it considers necessary in relation to the application.

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- (3) The Commission shall not refuse to grant or renew a licence without first giving the applicant or the holder of the licence an opportunity of being heard.
- (4) Where the Commission rejects an application for a licence or the renewal of a licence, the prescribed fee shall be refundable to the applicant but the fee shall not be refundable on the withdrawal of an application.

Grant of
dealer's licence
or investment
adviser's licence.

- 53.** (1) A dealer's licence shall only be granted to a body corporate including an incorporated private partnership.
- (2) A dealer's licence shall only be granted if the dealer meets and continues to meet the minimum financial requirements determined by the Commission either generally or specifically, or as are provided in the rules of a stock exchange approved by the Commission.
- (3) Subject to section 52 (3) and the regulations made under this Law, where an application is made for the grant or renewal of an investment adviser's licence, the Commission shall refuse the application if in the case of an applicant who is a natural person -
- (a) the applicant has been adjudged bankrupt anywhere;
 - (b) the applicant has been convicted, either within Ghana or elsewhere, within the period of 10 years immediately preceding the date on which the application is made, of an offence involving fraud or dishonesty punishable on conviction with imprisonment for a term of 3 months or more;
 - (c) the Commission is not satisfied as to the educational qualifications or experience of the applicant having regard to the nature of the duties of a holder of an investment adviser's licence;
 - (d) the Commission has reason to believe that the applicant is not of good reputation or character; or
 - (e) the Commission has reason to believe that the applicant will not perform the duties of a holder of an investment adviser's licence efficiently, honestly and fairly.
- (4) Subject to section 52 (3) and regulations made under this Law, where an application is made for the grant or renewal of a dealer's licence or for an investment adviser's licence by a body corporate including an incorporated private partnership the Commission shall refuse the application if -
- (a) the body corporate or the partnership is in the course of being wound up under the Companies Code, 1963 (Act 179); or Incorporated Private Partnership Act, 1962 (Act 152);
 - (b) the body corporate is one in respect of which a receiver, or a receiver and manager, has been appointed under the Companies Code, 1963 (Act 179);
 - (c) the body corporate or partnership has, whether within or outside Ghana, entered into a compromise or scheme of arrangement with its creditors, which is still in operation;

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- (d) the Commission is not satisfied as to the educational qualifications or experience of the officers of, or partners of the applicant who are to perform duties in connection with the dealer's licence or investment adviser's licence, as the case may be; or
- (e) the Commission has reason to believe that the applicant will not perform the duties of a holder of a dealer's licence, efficiently, honestly and fairly.

Grant of
representa-
tive's licence.

- 54.** Subject to section 52 (3) and regulations made under this Law, the Commission shall grant or renew a dealer's representative's licence or investment representative's licence if after consideration of the application it considers that the applicant will perform the duties efficiently, honestly and fairly.

False statements.

- 55.** A person who, in connection with an application for a licence or for the renewal of a licence, willfully and knowingly makes a statement which is false or misleading in a material particular or willfully omits to state any matter or thing without which the application is misleading in respect of a material particular commits an offence and is liable on conviction to a fine not exceeding 1 million cedis or to imprisonment for a term not exceeding one year or to both.

Power of the
Commission to
enquire into
securities trans-
actions in relation
to the holding
of a licence.

- 56.** (1) In deciding whether a dealer or his representative or an investment adviser or his representative shall hold a licence under this Law, the Commission may enquire into any transactions involving the purchase or sale of securities entered into by that person, whether directly or indirectly, during any period of 12 months preceding the application for the licence or renewal of the licence, (referred to in this section as the relevant period) to ascertain if that person has in such transaction or series of transactions used dishonest, unfair or unethical methods or trading practices, whether such method or trading practices constitute an offence under this Law or not.
- (2) For the purpose of subsection (1), the Commission may, in such form and within such time as it may specify by notice in writing, require a dealer or his representative or an investment adviser or his representative to submit detailed information of all or any transactions involving the purchase or sale of securities, whether such transactions were completed during the relevant period before or after the commencement of this Law.
- (3) Any person who, without reasonable excuse, fails or refuses to submit information to the Commission within the time specified in the notice referred to in subsection (2) or who gives false or misleading information shall, in addition to any other penalty that may be imposed under this Law, be liable in the case of an application for renewal of a licence to have his licence revoked under section 62 and in the case of first application for a licence to have his application refused.

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Power of the Commission to impose conditions or restrictions.

- 57.** (1) The Commission may grant or renew a licence subject to such conditions or restrictions as it thinks fit and the Commission may, at any time by written notice to a licence holder, vary any condition or restriction in relation to the licence.
- (2) Without limiting the generality of subsection (1), the Commission may in granting or renewing an investment adviser's licence impose a condition or restriction as to the class of business that the investment adviser may carry on including a condition or restriction that –
- (a) he shall only carry on the class of business of advising others concerning securities; or
 - (b) he shall only carry on the class of business of issuing or promulgating analyses in reports concerning securities; or
 - (c) he shall only carry on a class of business involving the management of a portfolio of securities on behalf of clients for investment purposes; or
 - (d) he shall carry on any of the classes of business in paragraphs (a), (b) and (c) in combination with each other.
- (3) The Commission may also by written notice to a licence holder suspend, cancel, restrict or impose terms and conditions on the right of the licence holder to -
- (a) call at any residence; or
 - (b) telephone any residence in Ghana for the purpose of dealing in any securities.
- (4) A person who contravenes or fails to comply with any condition of or restriction in his licence shall be guilty of an offence.
- (4) In this section "residence" includes any building or part of a building where the occupant resides either permanently or temporarily.

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

- 58.** (1) The Commission shall not grant a dealer's licence unless there is lodged with the Commission, at the time of the application for the licence, a deposit in the sum of 5 million cedis or such greater sum as the Commission may determine in respect of the licence.
- (2) A deposit required under subsection (1) shall be in cash or in such other form as the Commission may in any particular case direct.
- (3) All amounts paid under this section shall be deposited in an account at the Bank of Ghana by the Commission.
- (4) A deposit lodged under subsection (1) shall be applied by the Commission subject to and in accordance with regulations made under this Law.

Period of licence.

- 59.** (1) Subject to subsection (2), a licence shall expire one year from the date of issue.
- (2) A licence that has been renewed in accordance with the provisions of this Part shall continue in force for a period of one year from the date of the renewal.

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Notification
of change of
particulars.

- 60. (1)** Where -
- (a) the holder of a dealer's licence or investment adviser's licence ceases to carry on the business to which the licence relates; or
 - (b) the holder of a representative's licence ceases to be a representative of the dealer or investment adviser in relation to whom the representative's licence was issued; or
 - (c) a change occurs in any matter, particulars of which are required by section 61 to be entered in the register of licence holders in relation to the holder of a licence,
- the holder of the licence shall, not later than 14 days after the occurrence of the event give to the Commission, in the prescribed form, particulars in writing of the event.

Register of
licence holders.

- 61. (1)** The Commission shall keep in such form as it thinks fit a register of the holders of current licences, specifying –
- (a) in relation to each holder of a dealer's or investment adviser's licence -
 - (i) his name;
 - (ii) the address of the principal place of business at which he carries on the business;
 - (iii) where the business is carried on under a name or style other than the name of the holder of the licence, the name or style under which the business is carried on; and
 - (b) in relation to each holder of a representative's licence –
 - (i) his name;
 - (ii) the name of the dealer or investment adviser in relation to whom the licence was issued; and
 - (iii) where the business of that dealer or investment adviser is carried on under a name or style other than the name of the dealer or investment adviser, the name or style under which that business is carried on.

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

Revocation or
suspension of
licences.

- 62. (1)** A licence shall be deemed to be revoked in the case of -
- (a) an individual, if the individual dies; or
 - (b) a body corporate or incorporated private partnership, if it is wound up.
- (2) The Commission may revoke a licence -
- (a) in the case of a licensed person who is an individual -
 - (i) if a levy of execution in respect of him has not been satisfied;
 - (ii) if he ceases to carry on business for which he was licensed;
 - (iii) if he has been adjudged bankrupt in any jurisdiction;

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- (iv) if, in the case of a representative, the licence of the dealer or investment adviser, in relation to whom the licence was granted, is revoked;
 - (v) if the Commission has reason to believe that the licensed person has not performed his duties efficiently, honestly or fairly;
 - (vi) if he is convicted of an offence involving fraud or dishonesty punishable by imprisonment for a term of not less than 3 months; or
 - (vii) if the licensed person contravenes or fails to comply with any condition or restriction applicable in respect of the licence or any other provision of this Law;
- (b) in the case of a body corporate or an incorporated private partnership-
- (i) if it is being or will be wound up;
 - (ii) if a levy of execution in respect of it has not been satisfied;
 - (iii) if a receiver or a receiver and manager have been appointed whether by a court or creditors in respect of its property;
 - (iv) if it has entered into any composition or arrangement with its creditors;
 - (v) if it ceases to carry on the business for which it was licensed;
 - (vi) if the Commission has reason to believe that the licensed body or any of its directors or employees, has not performed its or his duties efficiently, honestly or fairly; or
 - (vii) if the licensed body contravenes or fails to comply with any conditions or restrictions applicable in respect of the licence or any other provision of this Law.
- (3) In a case to which subsection (2) applies, the Commission, may instead of revoking a licence, suspend the licence for a specific period and may at any time remove the suspension.
- (4) The Commission shall not revoke or suspend a licence under subsection (2) or (3) without first giving the licence holder an opportunity of being heard.
- (5) A person whose licence is revoked under this section shall, for the purpose of this Part, be deemed not to be licensed from the date that the Commission revokes or suspends the licence.
- (6) A revocation or suspension of a licence of a person shall not operate so as to –
- (a) avoid or affect any agreement, transaction or arrangement relating to the trading in securities entered into by the person, whether the agreement, transaction or arrangement was entered into before or after the revocation or suspension of the licence; or
 - (b) affect any right, obligation or liability arising under any agreement, transaction or arrangement.

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- Operation pending renewal etc. of licence.
- 63.** Where a person who holds a licence issued under this Law has before the expiration of the licence applied for a renewal of the licence and the licence has not been issued, he shall not, until the licence is renewed or his application for the licence is refused or withdrawn, be held liable for not holding a licence.
- Appeals.
- 64.** (1) Any person who is aggrieved by the refusal of the Commission to grant or renew a licence may appeal to the Secretary within 30 days of the Commission's decisions.
- (2) Any person aggrieved by the revocation of a licence by the Commission may appeal to the Court, within 30 days of the Commission's decision.
- (3) The Court may confirm the revocation or give such directions in the matter as seems just.
- (4) An appeal against the decision of the Secretary or the Commission shall lie to the Court of Appeal.
- Exempt dealers.
- 65.** The following specified persons or bodies corporate shall be exempt Dealers -
- (a) any person acting in the capacity of manager or trustee under a unit trust scheme or mutual fund;
- (b) any bank as defined in section 48 of the Banking Law, 1989 (PNDCL.225); except that no employee of a bank shall advise others concerning securities unless he is qualified in terms of criteria prescribed by the Commission for holders of an investment adviser's licence under section 50 of this Law;
- (c) any merchant bank approved by the Bank of Ghana, if the main business carried on by the merchant bank is a business other than the dealing in securities, and if the dealing is by way of -
- (i) making or offering to make with any person an agreement for or with a view to the underwriting of securities;
- (ii) making an invitation to persons to subscribe for securities or to purchase securities on the first sale;
- (iii) issuing any document which is or is deemed to be a prospectus within the meaning of the Companies Code;
- (iv) acquiring or disposing of securities only through the holder of a dealer's licence; or
- (v) such other way as the Commission may from time to time decide.

PART VI – REGISTERS OF INTERESTS IN SECURITIES

- Application of this Part.
- 66.** (1) This Part applies to a person who is -
- (a) a dealer;
- (b) a dealer's representative;
- (c) an investment representative; or
- (d) a financial journalist.

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- (2) In this Part, "financial journalist" means a person who contributes advice concerning securities or prepares analysis or reports concerning securities for publication in a bona fide newspaper or periodical.
- (3) In this Part, a reference to securities is a reference to securities of a body that is a public company within the meaning of the Companies Code, 1963 (Act 179) or securities which are quoted on a stock exchange in Ghana.

Register of securities.

- 67.** (1) A person to whom this Part applies shall maintain a register in the prescribed form of the securities in which he has an interest.
- (2) Particulars of the securities in which a person to whom this Part applies has an interest and particulars of his interest in them shall be entered in the register within 7 days of the acquisition of the interest.

Notice of particulars to the Commission.

- 68.** (1) A person to whom this Part applies shall notify the Commission in the prescribed form of such particulars as are prescribed including the place at which he will keep the register.
- (2) The notice shall be given-
- (a) in the case of a person who is required by this Law to hold a licence, as part of his application for the licence; or
 - (b) in the case of any other person, if the person becomes a person to whom this Part applies, within 14 days after becoming such a person.
- (3) The notice shall be given notwithstanding that the person has ceased to be a person to whom this Part applies before the expiration of the period referred to in subsection (2).
- (4) Where a person ceases to be a person to whom this Part applies he shall, within 14 days of his ceasing to be such a person, give notice of the fact to the Commission.
- (5) A person who fails or neglects to give notice as required by this section commits an offence and is liable on conviction to a fine of ₵100,000.

Defence to prosecution.

- 69.** (1) It is a defence to a prosecution for failing to comply with section 67 or 68 if the defendant proves that his failure was due to his not being aware of a fact or an occurrence the existence of which constitutes the offence and that -
- (a) he was not aware of the date of the summons; or
 - (b) he became aware not less than 14 days before the date of the summons and complied with the relevant section within 14 days after becoming aware.
- (2) For the purposes of subsection (1), a person shall, in the absence of proof to the contrary, be conclusively presumed to have been aware of a fact or occurrence at the time when an employee or agent of his, who has duties or acts in relation to his employer's or principal's interest in the securities concerned, became aware.

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Production of register.

- 70.** (1) The Commission or any person authorised by it may require any person to whom this Part applies to produce for inspection the register required to be kept under section 67 and the Commission or any person authorised may make extracts from the register.
- (2) Any person who fails to produce a register for inspection or fails to allow any person authorised under subsection (1) to make a copy or extracts from the register commits an offence.

Particulars of financial journalists.

- 71.** (1) The Commission or any person authorised by it may by notice in writing require the proprietor or publisher of a newspaper or periodical to supply it or him with the name and address of the financial journalist who has contributed any advice or prepared any analysis or report that has been published in a newspaper or periodical owned or published by that proprietor or publisher or with names and addresses of all the financial journalists who have contributed advice or prepared any analysis or report within a period specified in the notice.
- (2) A proprietor or publisher of a newspaper or periodical who, without reasonable excuse, fails to comply with a notice under subsection (1) shall be guilty of an offence.

Extract of register.

- 72.** The Commission may supply a copy of the extract of a register obtained under Section 70 to a person who in the opinion of the Commission, would, in the public interest, be informed of the dealing in securities disclosed in the register.

PART VII-CONDUCT OF SECURITIES BUSINESS

Certain representations prohibited.

- 73.** (1) No person who is the holder of a licence shall represent or imply or knowingly permit it to be represented or implied to any person that his abilities or qualifications have in any respect been approved by the Commission.
- (2) A statement that a person is the holder of a licence under this Law is not a contravention of subsection (1).

Issue of contract notes.

- 74.** (1) A dealer shall, in respect of transaction of sale or purchase of securities, give a contract that complies with subsection (2) of this section to -
- (a) the person for whom the dealer entered into the transaction where the transaction took place in the ordinary course of business at a stock exchange and the dealer entered into the transaction otherwise than as a principal;
- (b) the person for whom the dealer entered into the transaction and the person with whom the dealer entered into the transaction where the transaction does not take place in the ordinary course of business at a stock exchange and the dealer entered into the transaction otherwise than as principal;

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- (c) the person with whom the dealer entered into the transaction where the transaction did not take place in the ordinary course of business at a stock exchange and the dealer entered into the transaction as principal.
- (2) A contract note given by a dealer under subsection (1) shall include-
- (a) the name or style under which the dealer carries on his business as a dealer and the address of the principal place at which he carries on business;
 - (b) where the dealer is dealing as principal with a person who is not the holder of a dealer's licence, a statement that he is so acting;
 - (c) the name and address of the person to whom the dealer gives the contract note;
 - (d) the day on which the transaction took place and, if the transaction did not take place in the ordinary course of business at a stock exchange, a statement to that effect;
 - (e) the number, or amount and description, of the securities that are the subject of the contract;
 - (f) the price per unit of the securities;
 - (g) the amount of the consideration;
 - (h) the rate and amount of commission (if any) charged;
 - (i) the amounts of all stamp duties or other duties and taxes payable in connection with the contract; and
 - (j) if an amount is to be added or deducted from the settlement amount in respect of the right to a benefit purchased or sold together with the securities, the amount and the nature of the benefit.
- (3) A dealer shall not include in a contract note given under subsection (1), as the name of the person with or for whom he has entered into the transaction, a name that he knows, or could reasonably be expected to know, is not the name by which that person is ordinarily known.
- (4) A reference in this section to a dealer dealing, or entering into a transaction, as principal includes a reference to a person -
- (a) dealing or entering into a transaction on behalf of a person associated with him;
 - (b) dealing in securities on behalf of a body corporate in which he has a controlling interest; or
 - (c) where he carries on business as a dealer on behalf of a body corporate in which is interest and the interest of his directors together constitute a controlling interest.
- (5) For the purposes of this section -
- (a) a dealer who is a member of a stock exchange shall not be taken to have entered into a transaction as principal by reason only that the transaction was entered into with another dealer who is a member of a stock exchange; and
 - (b) a transaction takes place in the ordinary course of business at a stock exchange if it takes place in prescribed circumstances or is a

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transaction that is a prescribed transaction for the purpose of this section.

- (6) Notwithstanding section 144, a person is not associated with another person for the purposes of this section by reason only that he is a director of a body corporate of which the other person is also a director, whether or not the body corporate carries on a business of dealing in securities.

Certain persons
to disclose
certain interests
in securities.

- 75.** (1) Where a person who is a dealer, investment adviser, dealer's representative or investment representative sends circulars or other similar written communications in which he makes a recommendation, whether expressly or by implication, with respect to securities or a class of securities, he shall cause to be included in each circular or communication, in type, not less legible than that used in the remainder of the circular or communication, a concise statement of the nature of any interest in, or any interest in the acquisition or disposal of those securities, or securities included in that class, that he or a person associated with him has, at the date on which the circular or communication is sent.
- (2) It is a defence to a prosecution for contravention of subsection (1) in relation to a failure to include in a circular or other communication a statement of the nature of an interest as provided in subsection (1), for the defendant to establish that, at the time when the circular or communication was sent, he was not aware and could not reasonably be expected to have been aware -
- (a) that he had an interest in, or an interest in the acquisition or disposal of those securities or securities included in that class; or
 - (b) that the person associated with him had an interest in, or an interest in the acquisition or disposal of, those securities or securities included in that class.
- (3) For the purposes of subsections (1) and (2) -
- (a) an interest of a person in the disposal of securities includes any financial benefit or advantage that will, or is likely to accrue directly or indirectly of the person upon or arising out of the disposal of the securities;
 - (b) without limiting the generality of paragraph (a), a person who has entered into an underwriting agreement in respect of securities shall be deemed to have an interest in the acquisition or disposal of those securities; and
 - (c) notwithstanding section 144, a person is not associated with another person by reason only that he is a director of a body corporate of which the other person is also a director, whether or not the body corporate carries on a business of dealing in securities unless they are acting jointly or together or in accordance with an arrangement made between them, in relation to the sending of the circular or communication or the making of the recommendation.

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- (4) Where -
- (a) a person has subscribed for or purchased securities for purchase; and
 - (b) he offers any of those securities for purchase, he shall not make a recommendation, whether orally or in writing and whether expressly or by implication, with respect to the securities offered for purchase unless he has informed each person to whom the recommendation is made that he acquired the securities for that purpose.
- (5) Where -
- (a) securities have been offered for subscription or purchase; and
 - (b) a person has subscribed for or purchased or will or may be required to subscribe for or purchase, any of those securities under an underwriting or sub-underwriting agreement
- the person shall not, during the period of 90 days after the close of the offer, make an offer to sell those securities, otherwise than in the ordinary course of trading on a stock exchange, or make a recommendation with respect to those securities unless the offer or recommendation contains or is accompanied by a statement to the effect that the offer or recommendation relates to securities that he has acquired, or will or may be required to acquire, under an underwriting or sub-underwriting agreement because some or all of the securities have not been subscribed for or purchased.
- (6) A person who is a dealer, investment adviser, dealer's representative or investment representative shall not send to any person a circular or other communication or written offer or recommendation to which subsection (1), (4) or (5) applies unless the circular or communication or the offer or recommendation is signed by -
- (a) that person if he is a natural person;
 - (b) a director, executive officer or secretary of the body corporate if the person is a company; or
 - (c) by a partner if the person is an incorporated private partnership.
- (7) When a person who is a dealer, investment adviser, dealer's representative or investment representative, sends to another person a circular, communication, a written offer or recommendation to which subsection (1), (4) or (5) applies, he shall preserve a copy of the circular, communication, the written offer or recommendation, duly signed as specified in subsection (6) for 7 years from the date of signing.
- (8) Reference in this section to an offer of securities shall be construed to include a reference to statement, however, expressed, that is not an offer but expressly or impliedly invites a person to whom it is made to offer to acquire securities.
- (9) For the purposes of this section, a circular, communication, a written offer or recommendation sent to a person shall, if it is signed by a director, executive officer or secretary of a body corporate, be deemed to have been sent by the body corporate and if it is signed by a partner in an

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incorporated private partnership be deemed to have been sent by the partnership.

- (10) The Commission may, if it is in the public interest, exempt a security or any class of securities from the application of this section.
- (11) Any person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding 1 million cedis or to imprisonment for a term not exceeding one year or to both.

Recommendations
by adviser.

- 76.** (1) An adviser shall not make a recommendation with respect to securities or a class of securities to a person who may reasonably be expected to rely on the recommendation unless he has a reasonable basis for making the recommendation to the person.
- (2) For the purposes of subsection (1), an adviser does not have a reasonable basis for making a recommendation to a person unless -
- (a) the adviser has, for the purposes of ascertaining that the recommendation is appropriate, given consideration to, and conducted investigation on the subject matter of the recommendation as is reasonable in all the circumstances and having regard to the information possessed by him concerning the investment objectives, financial situation and particular needs of the person; and
 - (b) the recommendation is based on that consideration and investigation.
- (3) An adviser who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding 1 million cedis or imprisonment for a term not exceeding one year.
- (4) Where-
- (a) an adviser contravenes subsection (1) by making a recommendation to a person; and
 - (b) the person relying on the recommendation does any particular act or refrains from doing any particular act; and
 - (c) it is reasonable, having regard to the recommendation and all other relevant circumstances for the person relying on the recommendation to have done that act or to have refrained from doing that act; and
 - (d) the person suffers loss or damage as a result of doing that act or refraining from doing that act, the adviser is liable to pay damages to the person in respect of that loss or damage.
- (5) In this section -
- (a) a reference to an adviser is a reference to a person who is a dealer, investment adviser, dealer's representative or investment representative; and
 - (b) a reference to the making of a recommendation may be express or by implication.

Dealings as
principal.

- 77.** (1) Subject to subsection (4), a dealer shall not deal in any securities as principal with a person, who is not a dealer, unless he first informs the

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person with whom he is dealing that he is acting in the transaction as principal and not as agent.

- (2) A reference in this section to a dealer dealing or entering into a transaction, as principal includes a reference to a person -
 - (a) dealing or entering into a transaction on behalf of a person associated with him;
 - (b) dealing in securities on behalf of a body corporate in which he has a controlling interest; or
 - (c) where he carries on business as a dealer on behalf of a body corporate in which his interest and the interests of his directors together constitute a controlling interest.
- (3) A dealer who, as principal, enters into a transaction of sale or purchase of securities with a person who is not a dealer shall state in the contract note that he is acting in the transaction as principal and not as agent.
- (4) Subsection (1) shall not apply in relation to a transaction entered into by a dealer who is a member of a stock exchange and specializes in transactions relating to odd lot of securities, being a transaction of sale or purchase of an odd lot of securities.
- (5) Where a dealer fails to comply with subsection (1) or (3) in respect of a contract for the sale of securities by him, the purchaser of the securities may, if he has not disposed of them, rescind the contract by a notice of rescission in writing given to the dealer not later than 30 days after the receipt of the contract note; and, where a dealer fails to comply with subsection (1) or (3) in respect of a contract for the purchase of securities by him, the vendor of the securities may, in like manner, rescind the contract.
- (6) Nothing in subsection (5) affects any right that a person has apart from that provided under the subsection.
- (7) A person who contravenes or fails to comply with any of the provisions of this section commits an offence and is liable on conviction to a fine not exceeding ₱500,000 or to imprisonment for a term not exceeding six months or to both.

Dealings by
employees of
holders of
licences.

- 78.** (1) A dealer or an investment adviser shall not give unsecured credit to his employee or to a person whom he knows is associated with such employee where –
- (a) the unsecured credit is given for the purpose of enabling or assisting the person to whom the unsecured credit is given to purchase or subscribe for securities; or
 - (b) the person giving the unsecured credit knows or has reason to believe that the unsecured credit will be used to purchase or subscribe for securities.
- (2) A person who contravenes or fails to comply with any of the provisions of subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding ₱500,000 or to imprisonment for a term not exceeding six months or to both.

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Dealer to give
priority to
client's orders.

- 79.** (1) A dealer shall not, except as permitted by subsection (3), enter, as principal or on behalf of a person associated with him, into a transaction of purchase or sale of securities that are permitted to be traded on the stock market of a stock exchange if a client of the dealer, who is not associated with the dealer, has instructed the dealer to purchase or sell, respectively, securities of the same class and the dealer has not complied with the instruction.
- (2) A dealer who contravenes this section is guilty of an offence and liable on conviction to a fine of ₦500,000 or to imprisonment for a term not exceeding six months or both.
- (3) Subsection (1) does not apply in relation to the entering into of a transaction by a dealer as principal or on behalf of a person associated with him where-
- (a) the instructions from the client of the dealer required the purchase or sale of securities on behalf of the client to be effected only on specified conditions at which the securities were to be purchased or sold and the dealer has been unable to purchase or sell the securities because of those conditions; or
 - (b) the transaction is entered into in the prescribed circumstances.

Use by dealer
of client's
money.

- 80.** (1) Where a client deposits money with or lends money to a dealer, the dealer shall -
- (a) deposit the money in an account in a bank, not later than the next day on which the bank is open for business after the receipt of the money and the account shall not contain any money other than money deposited with or lent to the dealer;
 - (b) furnish the client a document, in the prescribed form, setting out the terms and conditions on which the deposit or loan is made and accepted, including the purpose for which and the manner in which the money is to be used by the dealer;
 - (c) retain the money in the bank account until the client gives him a written statement acknowledging that the client has received the document referred to in paragraph (b); and
 - (d) use the money only -
 - (i) for the purpose and in the manner set out in the document referred to in paragraph (b); or
 - (ii) for a purpose or in a manner agreed to by the client in writing after the document referred to in paragraph (b) was furnished to the client.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 1 million cedis or to imprisonment for a term not exceeding one year or to both; and shall in addition be liable to refund the money together with interest at the prevailing commercial bank rate to the client.

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Right to vest securities through sale.

- 81.** (1) Subject to this section and regulations made under it, a person shall not sell securities to a purchaser unless, at the time when he sells them -
- (a) he has or, where he is selling as agent, his principal has; or
 - (b) he believes on reasonable grounds that he has, or where he is selling as agent, that his principal has,
- an existing exercisable and unconditional right to vest the securities in the purchaser.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding ₵500,000 or to imprisonment for a term not exceeding six months or to both.
- (3) For the purpose of this section, where a person –
- (a) implies the sale of securities;
 - (b) offers to sell securities;
 - (c) holds himself out as entitled to sell securities; or
 - (c) instructs a dealer to sell securities,
- he shall be deemed to sell the securities.

PART VIII – ACCOUNTS AND AUDIT

Application of this Part

- 82.** (1) This Part applies to the holder of a dealer's licence and to the business of dealing in securities carried on by the holder of a dealer's licence, whether in Ghana or elsewhere.
- (2) In this Part, unless the contrary intention appears, a reference to a book, security, trust account or business or in relation to a dealer who carries on business in partnership, shall be read as a reference to such a book, security, trust account or business in relation to the partnership.

Accounts to be kept by dealers.

- 83.** (1) A dealer shall -
- (a) keep such accounting records as will correctly record and explain the transactions and financial position of the business of dealing in securities carried on by him;
 - (b) keep his accounting records in such a manner as will enable true and fair profit and loss accounts and balance sheets to be prepared from time to time; and
 - (c) keep his accounting records in such a manner as will enable profit and loss accounts and balance sheets of the business of dealing in securities carried on by him to be conveniently and properly audited.
- (2) A dealer who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one million cedis or to imprisonment for a term not exceeding one year or to both.
- (4) A dealer shall be deemed not to have complied with subsection (1) in relation to records unless those records –

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- (a) are kept in writing in the English Language or in such a manner as will enable them to be readily accessible and readily converted into writing in the English Language;
 - (b) are kept in sufficient detail to show particulars of -
 - (i) all moneys received or paid by the dealer, including moneys paid to, or disbursed from, a trust account;
 - (ii) all purchases and sales of securities made by the dealer, the charges and credits arising from them, and the names of the buyer and seller, respectively, of each of those securities;
 - (iii) all income received from commissions, interests, and other sources, and all expenses, commissions, and interest paid, by dealer;
 - (iv) all the assets and liabilities, including contingent liabilities, of the dealer;
 - (v) all securities that are the property of the dealer, showing by whom the securities, or the documents of title to the securities, are held and, where they are held by some other person, whether or not they are held as security against loans or advances;
 - (vi) all securities that are not the property of the dealer and for which the dealer or any nominee controlled by the dealer is accountable, showing by whom, and for whom, the securities or the documents of title to the securities are held and the extent to which they are either held for safe custody or deposited with a third party as security for loans or advances made to the dealer;
 - (vii) all arbitrage transactions entered into by the dealer; and
 - (viii) all underwriting transactions entered into by the dealer;
 - (c) are kept in sufficient detail to show separately particulars of every transaction by the dealer;
 - (d) specify the day on which or the period during which each transaction by the dealer took place; and
 - (e) contained copies of acknowledgements of the receipt of securities or of documents of title to securities received by the dealer from clients for sale or safe custody clearly showing the name or names in which the particular securities are registered.
- (4) Without prejudice to subsection (3), a dealer shall keep the records in sufficient detail to show separately, particulars of all transactions undertaken by him with or for the accounts of –
- (a) his clients excluding, where the dealer carries on business in partnership, the partners of the firm;
 - (b) the dealer himself, or where the dealer carries on business in partnership, the partners of the firm;
 - (c) other dealers carrying on business in Ghana;
 - (d) dealers outside Ghana; and
 - (e) employees of the dealers.

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- (5) An entry in the accounting and other records of a dealer required to be kept in accordance with this section shall be deemed to have been made by or with the authority of the dealer.
- (6) Where a record required by this section to be kept is not kept in writing in the English Language, the dealer shall, if required to convert the record into writing in the English Language by a person who is entitled to examine the record, comply with the requirement within a reasonable time.
- (7) Notwithstanding any other provision of this section, a dealer shall not be deemed to have failed to keep a record referred to in subsection (1) because the record is kept as a part of, or in conjunction with records that relate to a business other than dealing in securities that is carried on by him.
- (8) Where accounting or other records are kept by a dealer at a place outside Ghana, the dealer shall cause to be sent to and kept at a place in Ghana such particulars with respect to the business dealt with in those records as will enable true and fair profit and loss accounts and balance sheets to be prepared.

Security
documents in
custody of dealer.

- 84.** (1) Where a dealer receives for safe custody documents that are securities or are documents of title to securities of any person (in this sub-section referred to as "the client") and for which the dealer or nominee controlled by the dealer is accountable, the dealer shall -
- (a) if the documents are not registered in the name of the client by the body corporate by whom the securities were issued, or made available and the client does not make a request as mentioned in paragraph (b) or (c) of this sub-section, cause the documents to be registered;
 - (b) if the client requests that the documents be registered by the body corporate by whom the securities were issued or made available in the name of a nominee controlled by the dealer, cause them to be registered; or
 - (c) if the client requests that the documents be deposited in safe custody with the dealer's bankers, cause them to be so deposited.
- (2) A dealer shall not deposit a security for a loan or advance, documents that are securities or are documents of title to securities of a client and for which the dealer or a nominee controlled by the dealer is accountable, unless an amount is owed to the dealer by the client in connection with a transaction entered into on behalf of the client and the dealer-
- (a) gives a written notice to the client identifying the documents and stating that he intends to deposit them as security for a loan or advance made to the dealer; and
 - (b) deposits the documents as security for a loan or advance that does not exceed the amount owed to the dealer on the day of the

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deposit by the client, in connection with a transaction entered into on his behalf by the dealer.

- (3) Where -
- (a) a dealer has given notice to a person mentioned in subsection (2) and has deposited the documents referred to in the notice as security for a loan or advance; and
 - (b) the person pays the amount owed by him to the dealer, the dealer shall withdraw the documents from deposit as soon as practicable after he receives the amount owed to him.
- (4) Where a dealer deposits, as security for a loan or advance made to him, documents that are securities, or are documents of title of another person, and for which the dealer or a nominee controlled by the dealer is accountable, the dealer shall, at the expiration of 6 months after the date on which the documents are deposited, and at the expiration of each subsequent period of 6 months, if the documents are still maintained on deposit, send to the other person written notice to that effect.
- (5) A dealer who fails to comply with subsection (4) commits an offence and is liable on conviction to a fine not exceeding ₵500,000 or to imprisonment for a term not exceeding 6 months or to both.

Dealer's Trust
account.

- 85.** (1) A dealer shall open and maintain with a bank in Ghana an account designated as a trust account.
- (2) A dealer shall pay into such an account all moneys held by him in trust for a client not later than the next day on which the bank is open for business following the day on which the moneys are received by the dealer.
- (3) Notwithstanding subsection (1), where moneys that are required by this section to be paid into a trust account are received by a dealer in a place outside Ghana, the dealer may pay those moneys into a trust account maintained by the dealer in that place.
- (4) For the purposes of subsection (2), all moneys received by a dealer from a client other than -
- (a) moneys received in respect of brokerage and other proper charges;
 - (b) moneys received in payment or part payment for securities delivered to the dealer before the moneys are received; or
 - (c) moneys to which section 80 applies, shall be deemed to be held in trust for the client.
- (5) Subsection (2) does not apply to a cheque, bank draft, money order or postal order made payable to or to the order of a specified person or bearer (not being a cheque, bank draft, money order or postal order in which the payee is the dealer, a partner of the dealer or the firm in which the dealer is a partner) received from or on behalf of a client with instructions, express or implied, that the cheque, bank draft, money order or postal order is to be delivered to the person to whom it is payable.

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- (6) A person who contravenes or fails to comply with a provision of this section that is applicable to him commits an offence and is liable on conviction to a fine not exceeding one million cedis or to a term of imprisonment not exceeding one year or to both.
- (7) A person who, with intent to defraud, contravenes or fails to comply with a provision of this section that is applicable to him commits an offence and is liable on conviction to a fine not exceeding 2 million cedis or to a term of imprisonment not exceeding 2 years or to both and shall be liable to refund the money of the client at the prevailing commercial bank rate of interest.

Purposes for which moneys may be withdrawn from a trust account

- 86.** (1) A dealer who withdraws moneys from a trust account except for the purpose of -
- (a) making a payment to a person entitled to the moneys or in accordance with the written directions of a person entitled to the moneys;
 - (b) defraying brokerage and other proper charges;
 - (c) paying himself moneys to which he the dealer is entitled, being moneys that were not required to be so paid; or
 - (d) making a payment that is otherwise authorized by law,
- commits an offence and is liable on conviction to fine not exceeding one million cedis or to imprisonment for a term not exceeding one year or both.
- (2) A dealer who, with intent to defraud, withdraws moneys from a trust account commits an offence and is liable on conviction to a fine not exceeding 2 million cedis or to imprisonment for a term not exceeding 2 years or to both.
- (3) Except as otherwise provided in this Part, moneys held in a trust account are not available for payment of the debts of a dealer or liable to be paid or taken in execution under the order or process of a court.
- (4) Nothing in this Part takes away or affects a lawful claim or lien that a person has against or on any moneys for a trust account or any moneys received for the purchase of securities or from the sale of securities before those moneys are paid into a trust account.
- (5) A dealer is not guilty of an offence under subsection (1) where he withdraws from a trust account an amount that is the whole or any part of the amount of a cheque that has been deposited into the account but that has not been paid, but has not been refused payment by the banker on whom it is drawn.
- (6) Where a dealer withdraws from trust account an amount that is the whole or any part of the amount of a cheque that has been deposited into the account but that has not been paid by the banker on whom it is drawn and the banker on whom it is drawn refuses payment of the cheque, the dealer shall immediately pay into the trust account by cash or bank cheque an amount equal to the amount withdrawn from the trust.

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- (7) Where a dealer fails to comply with subsection (6) -
- (a) he commits an offence; and
 - (b) where the dealer is a member of a stock exchange the failure shall, for the purposes of Part IX, be deemed to be a defalcation by the dealer.
- (8) A person guilty of an offence under subsection (7) (a) is liable on conviction to a fine not exceeding 2 million cedis or to imprisonment for a term not exceeding 2 years or to both.
- 87.** (1) Within one month after a person becomes the holder of a dealer's licence he shall appoint an auditor to audit his account.
- (2) No person shall consent to be appointed as an auditor of a dealer, act as an auditor of a dealer or prepare a report required to be prepared under this Law by an auditor of a dealer -
- (a) if in the case of a natural person he -
 - (i) is not a qualified company auditor; or
 - (ii) is indebted in an amount exceeding 3 million cedis to the dealer; or
 - (iii) is a partner or employee of the dealer; or
 - (b) in the case of a body corporate unless -
 - (i) at least one member of the body is ordinarily resident in Ghana;
 - (ii) all the members of the body ordinarily resident in Ghana are qualified company auditors;
 - (iii) no member of the body is indebted in an amount exceeding 6 million cedis to the dealer; and
 - (iv) no member of the body is a partner or employee of the dealer.
- (3) The appointment of a company or a firm as auditor of a dealer shall be taken to be the appointment of all persons who are members of the firm or company, whether resident in Ghana or not, at the date of the appointment.
- (4) Where a body corporate contravenes this section, each member of the company or firm shall be guilty of an offence.
- (5) A person shall not if he has been appointed auditor of a dealer wilfully disqualify himself or itself while the appointment continues, from acting as auditor of the dealer.
- (6) An auditor of a dealer shall hold office until he is removed or resigns from office in accordance with section 88 unless he ceases to qualify as auditor under subsection (2) of this section.
- (7) Within 14 days after a vacancy occurs in the office of an auditor of a dealer, if there is no surviving or continuing auditor of the dealer, the dealer shall appoint another to fill the vacancy.

Appointment
and qualification
of an auditor.

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- (8) While a vacancy in the office of an auditor continues, the surviving or continuing auditor (if any) may act.
- (9) A dealer shall not appoint a person as his auditor unless that person has, before the appointment, consented by notice in writing given to the dealer, to act as auditor and has not withdrawn his or its consent by notice in writing given to the dealer.
- (10) A report or notice made or given by a firm or company appointed as auditor of a dealer for the purposes of this Part shall be signed in the name of the firm or company which is a qualified company auditor.
- (11) Where a person is appointed as auditor under subsection (1), not being an appointment made by virtue of subsection (8), the dealer shall within 14 days after the appointment lodge with the Commission a notice in writing stating that he has made the appointment and specifying the name of the person or firm.
- (12) The provisions of this Part relating to auditor shall apply in addition to the provisions applicable to auditors under the Companies Code 1963, (Act 179).

Removal and
Registration
of auditors.

- 88.** (1) A dealer may, with the consent of the Commission, remove his auditor from office.
- (2) An auditor of a dealer may, by notice in writing given to the dealer, resign as auditor of the dealer if -
- (a) he has, by notice in writing given to the Commission, applied for consent to resign and has, at or about the same time as he gave notice to the Commission, notified the dealer in writing of his application the Commission; and
 - (b) he has received the consent of the Commission.
- (3) The Commission shall, as soon as practicable after receiving a notice from an auditor under subsection (2), notify the auditor and the dealer whether it consents to the resignation of the auditor.
- (4) A statement made by an auditor in an application to the Commission under subsection (2) or in answer to an inquiry by the Commission relating to the reasons for the application -
- (a) is not admissible in evidence in any civil or criminal proceedings against the auditor other than proceedings for an offence under section 55; and
 - (b) may not be made the ground of a prosecution other than a prosecution for an offence under section 55, or for an action or suit against the auditor, and a certificate of the Commission that the statement was made in application or in answer to any inquiry by the Commission is conclusive evidence that the statement was so made.
- (5) Subject to subsection (6) and to any order of a court under subsection (8), the resignation of an auditor takes effect -

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- (a) on the date, (if any), specified for the purpose in the notice of resignation; or
 - (b) on the date on which the Commission consents to the resignations; or
 - (c) on the date, (if any) fixed by the Commission for the purpose, whichever last occurs.
- (6) Where, on the retirement or withdrawal from a firm or company of a member, the body will no longer be capable, because of the provisions of section 87 2(b) (i) from acting as auditor of a dealer, the member retiring or withdrawing shall, if not disqualified from acting as auditor of the dealer, be deemed to be the auditor of the dealer until he obtains the consent of the Commission to his retirement or withdrawal.
- (7) Within 14 days after the receipt of a notice of resignation from an auditor or a dealer or, where an auditor of a dealer is removed the dealer shall lodge a notice of the resignation or removal in accordance with the prescribed form with the Commission.
- (8) A person aggrieved by the refusal of consent by the Commission to the removal or resignation of an auditor of a dealer may, within one month after the date of refusal, appeal to the court against the refusal and the court may confirm or reverse the refusal and may make such further order in the matter as it considers proper.

Fees and expenses of auditors.

- 89.** The reasonable fees and expenses of an auditor of a dealer shall be payable by the dealer.

Dealer's account.

- 90.** (1) A dealer shall, in respect of each financial year, other than a financial year that ended before the date of commencement of this Law or ended on or after that date but before the date on which the dealer commenced to carry on business as a dealer prepare a true and fair profit and loss account and balance sheet on the basis of accounting principles and containing such information and matters as are prescribed, and lodge them with the Commission before the prescribed day for that financial year, together with an auditor's report containing the prescribed information matters.
- (2) The Commission may, on application made by a dealer and his auditor before the expiration of the period of 2 months or as the case requires, the period of 3 months referred to in the definition as "prescribed day" in sub-section (4) or, if that period has been extended pursuant to an approval previously given under this subsection, before the expiration of the extended period, approve an execution or further extension of the period, and such an approval may be given subject to such conditions, (if any), as the Commission may impose.
- (3) Where an approval under subsection (2) in relation to a dealer is given subject to conditions, the dealer shall comply with those conditions.
- (4) In this section -

"financial year", in relation to a dealer being a body corporate, means the financial year of the body corporate within the meaning of the

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Companies Code, 1963 (Act 179); and “prescribed day”, in relation to a financial year of a dealer, being a body corporate, means the day that is 3 months after the end of that financial year, or where time is approved under sub-section (2), the day on which the extended time expires.

Auditor to report to the Commission in certain cases etc.

- 91.** (1) Where an auditor, in the performance of his duties as auditor of a dealer, becomes aware of a prescribed matter, he shall, within 7 days after becoming aware of that matter, lodge with the Commission a written report on the matter and send a copy of the report to the dealer and to each stock exchange of which the dealer is a member.
- (2) In this section “prescribed matter” means a matter which, in the opinion of the auditor –
- (a) has adversely affected, is adversely affecting or may adversely affect the ability of the dealer to meet his obligations as a dealer;
 - (b) constitutes or may constitute a breach of section 83, 84, 85 or 86 or Part IX of this Law; or
 - (c) constitutes or may constitute a breach of a condition of a licence issued to the dealer under this Law.

Certain matters to be reported to the Commission.

- 92.** (1) Where, in relation to a dealer who is a member of a stock exchange, the stock exchange becomes aware of a prescribed matter, the stock exchange shall, as soon as practicable after becoming aware of the matter, lodge with the Commission a written report on the matter and send a report to the dealer.
- (2) In this section, “prescribed matter”, in relation to a dealer, means a matter which, in the opinion of the stock exchange concerned -
- (a) has adversely, is adversely affecting or may adversely affect the ability of the dealer to meet his obligation as a dealer;
 - (b) constitutes or may constitute a breach of section 83, 84, 85 or 86 or PART IX ; or
 - (c) constitutes or may constitute a breach of a condition or a licence issued to the dealer under this Law.

Defamation.

- 93.** (1) An auditor is not, in the absence of malice on his part, liable to an action for defamation in respect of a statement, whether oral or written, made or issued by him in the course of his duties as an auditor.
- (2) A person is not, in the absence of malice on his part, liable to an action for defamation in respect of the publication of a document prepared by an auditor in the course of his duties as an auditor and required by or under this Law to be lodged with the Commission, whether or not the document has been lodged.
- (3) Nothing in this section limits or affects any other right, privilege or immunity that an auditor or other person has as a defendant in an action for defamation.

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Right of stock exchange to impose obligation, etc., on members not affected by this Part.

- 94.** Nothing in this Part prevents a stock exchange imposing on members of that stock exchange obligations or requirements, not inconsistent with this Law, that the stock exchange thinks fit with respect to -
- (a) the audit of accounts (including the audit of accounts by an auditor appointed by the stock exchange);
 - (b) the information to be furnished in reports from auditors; or
 - (c) the keeping of books.

Power of court to restrain dealings with dealer's bank.

- 95.** Where the Commission shows to the satisfaction of a court –
- (a) that there are reasonable grounds for believing that there is a deficiency in a trust account, whether kept within or outside Ghana, of a person who is or has been a dealer or in an account kept by virtue of section 80 (1) (a), whether within or outside Ghana, by a person who is or has been a dealer;
 - (b) that there has been undue delay, or unreasonable refusal, on the part of a person who is or has been a dealer, in paying, applying or accounting for trust moneys as required by this Law;
 - (c) that person who is or has been a dealer has not paid moneys into a trust account as provided by section 85 or into an account as provided by the section;
 - (d) that a business of dealing in securities is carried on or was carried on by a person not in partnership;
 - (e) that the dealer's licence of that person under Part V has been revoked or suspended;
 - (f) that the person is incapable, by reason of physical or mental infirmity, of managing his affairs;
 - (g) that the person has ceased to carry on a business of dealing in securities; or
 - (h) that the person has died.

the court may make an order restraining dealing in respect of all or any of the bank accounts of that person, subject to such terms and conditions as the court may impose.

Duty of banker to make full disclosure.

- 96.** Where an order made under section 95 is directed to a banker, the banker shall -
- (a) disclose to the Commission every account kept at the bank in the name of the person to whom the order relates, and any account that the banker reasonably suspects is held or kept at the bank for the benefit of that person; and
 - (b) permit the Commission to make a copy of, or to take an extract from, any account of the person to whom the order relates or any of the banker's books relating to the person.

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Power of court to make further orders and give directions.

97. Where an order is made under section 95, the court may, on the application of the Commission or of a person affected by the order, make further orders.

- (a) dealing with such ancillary matters as the court considered necessary or desirable;
- (b) directing that all or any of the money in an account affected by an order so made shall be paid by the bank to the Commission or to a person nominated by the Commission, on such terms and conditions as the court thinks fit; or
- (c) discharging or varying an earlier order;

Power of court to make order relating to payment of moneys.

98. (1) An order made under section 97 may include directives to the person to whom the moneys are paid directing him –

- (a) to pay the money into a separate trust account; or
- (b) to prepare a scheme for distributing the money during a period of 6 months after the receipt of the money, to persons who claim to be entitled to the money and to the satisfaction of the Commission that they are so entitled; and where the money received is not sufficient to pay all proved claims, to proportion to their proven claims shown in the scheme.

(2) Where a person prepares a scheme for a distribution of money under subsection (1), he shall apply to the court for approval of the scheme and for directions in respect of it.

(3) The court may give such direction as to the money held in a separate trust account under sub section (1), as to the persons to whom and in what amounts the whole or any portion of those money shall be paid, and as to the payment of the balance of the moneys, if any, as the court thinks fit.

PART IX - FIDELITY FUNDS

Establishment of fidelity funds.

- 99.** (1) Every stock exchange shall establish and keep a fidelity fund which shall be administered by its council on behalf of the stock exchange.
- (2) The assets of a fidelity fund shall be the property of the stock exchange but shall be kept separate from all other properties and shall be held in trust for the purposes set out in this Part.

Moneys constituting fidelity fund.

- 100.** The fidelity fund of a stock exchange shall consist of -
- (a) all moneys paid to the stock exchange by member companies and members firms in accordance with the provisions of this Part;
 - (b) the interest and profits accruing from the investment of the fidelity fund;
 - (c) all moneys paid to the fidelity fund by the stock exchange;

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- (d) all moneys recovered by or on behalf of the stock exchange in the exercise of any right of action conferred by this Part;
- (e) all moneys paid by an insurer under a contract of insurance or indemnity entered into by the counsel of the stock exchange under section 119; and
- (f) all other moneys lawfully paid into the fidelity fund.

Fund to be kept
in separate
bank account.

101. All moneys forming part of a fidelity fund shall, pending the investment or application of it in accordance with this Part, be paid or transferred into a bank in Ghana.

Payments out
of fidelity fund.

102. Subject to this Part, there shall be paid out of the fidelity fund of a stock exchange as required and in such order as the council of the stock exchange considers proper -

- (a) the amount of all claims, including costs, allowed by the council or established against the stock exchange under this Part;
- (b) all legal and other expenses incurred in investigating or defending claims made under this Part or incurred in relation to the fidelity fund or in the exercise by the council of the rights, powers and authorities vested in it by this Part in relation to the fund;
- (c) all premiums payable in respect of contracts or insurance or indemnity entered into by the council under section 119;
- (d) the expenses incurred or involved in the administration of the fund including the salaries and wages of persons employed by the council in relation to it; and
- (e) all other moneys payable out of the fund in accordance with the provisions of this Law.

Accounts
of fund.

103. (1) A stock exchange shall establish and keep proper accounts of its fidelity fund and shall within three months after the end of each financial year cause a balance-sheet of the account as at the end of that financial year to be prepared.

(2) The council of the stock exchange shall appoint an auditor to audit the account of the fidelity fund.

(3) The auditor appointed by the council shall regularly and fully audit the accounts of the fidelity fund and shall audit each balance-sheet and cause it to be laid before the council not later than 3 months after the balance-sheet is made out.

Management
Committee.

104. (1) The council of a stock exchange may appoint a management committee of not less than 3 and not more than 5 persons, of whom at least one shall be a member of the council.

(2) The council of a stock exchange may by resolution delegate to the management committee all or any of its powers under this Part other than those under this section, sections 107 and 110 (3), (4), (5) and (6).

(3) Any power, authority or discretion so delegated may be exercised by a majority of the management committee.

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- (4) Any such delegation may at any time in like manner be rescinded or varied.
- (5) The council of a stock exchange may at any time remove any member of the management committee appointed by it under this section and may fill any vacancy in the committee.

Fidelity fund consist of an amount of 5 million cedis.

- 105.** (1) The fidelity fund of a stock exchange shall consist of an amount of not less than 5 million cedis, or such other sum as the Secretary may by legislative instrument direct to be paid to the credit of the fund on the establishment of a stock exchange under this Law.
- (2) The fidelity fund shall be increased by an annual payment into the fund of a sum that is equal to 10% or more of the net income of a stock exchange for any one financial year, but the Secretary may, after consultation with the stock exchange, increase that percentage.

Provisions if fund Is reduced below 5 million cedis.

- 106.** Where the fidelity fund is reduced below the sum of 5 million cedis or such other sum as the Secretary may, by legislative instrument determine, the council shall take steps to make up the deficiency -
- (a) by transferring an amount that is equal to the deficiency from other funds of the stock exchange to the fidelity fund; or
 - (b) in the event that there are insufficient funds to transfer under paragraph (a), by determining the amount which each member company and member firm shall contribute to the fund.

Levy of liabilities.

- 107.** (1) If at any time a fidelity fund is not sufficient to satisfy the liabilities that are ascertained to relate to the stock exchange, the council may impose on every company and member firm a levy of such amount as it thinks fit or, if directed by the Secretary, the council shall impose a levy of such sum which shall in the aggregate be equivalent to the amount so directed.
- (2) The amount of the levy shall be paid within the time and in the manner specified by the council either generally or in relation to any particular case.

Power of stock exchange to make advances to fund.

- 108.** (1) A stock exchange may from its general funds give or advance on such terms as the council thinks fit any sum of money to its fidelity fund.
- (2) Any money advanced under subsection (1) may be repaid from the fidelity fund to the general funds of the stock exchange.
- (3) Any such advance shall not be deemed to be in contravention of any banking or money lending law.

Investment of fund.

- 109.** Any moneys in a fidelity fund that are not immediately required for its purposes may be invested by the council in any manner in which trustees are for the time being authorized by law to invest trust funds.

Application of fund.

- 110.** (1) Subject to this Part, a fidelity fund shall be held and applied for the purpose of compensating persons who suffer pecuniary loss from any defalcation committed by a member company or member firm or any of

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its directors or partners or by any of the employees of such a member company or member firm in relation to money or other property which in the course of or in connection with the business of that company or firm -

- (a) was entrusted to or received by a member company or any of its directors or partners or employees of the company or firm for or on behalf of any other person; or
 - (b) was entrusted to or received by the member entrusted to or received by the member company or member firm or any of the employees of the company or firm as trustees or for or on behalf of the trustees of that money or property.
- (2) Except as otherwise provided in this section, the total amount that may be paid under this Part to persons who suffer loss through defalcations by a member company or member firm or any of its directors or partners or through defalcations by any of the employees of the company or firm shall not, in any event, exceed in respect of that member company or member firm the sum of 2 million cedis, but for the purposes of this subsection any amount paid from a fidelity fund shall to the extent to which the fund is subsequently reimbursed be disregarded.
- (3) Where, after taking into account all ascertained or contingent liabilities of a fidelity fund, the council considers that the assets of the fund so permit, the council may decide to increase the total amount which may be applied from that fund under subsection (2) and shall inform the Commission accordingly.
- (4) The Commission shall then cause notice of the decision to be published in the Gazette; from the date of the publication until the notice is revoked in varied, the amount specified in the notice shall be the total amount which may be applied for compensation for pecuniary loss.
- (5) Where the council decides to revoke or vary the contents of the notice under subsection (4), the council shall inform the Commission which shall then cause notice of such revocation or variation to be published in the Gazette.
- (6) If, in any particular case after taking into account all ascertained or contingent liabilities of a fidelity fund, the council considers that the assets of the fund so permit, the council may apply out of the fund such sum in excess of the total amount limited by or under this section as the council in its discretion thinks fit, towards the compensation of persons who have suffered pecuniary loss as provided in subsection (1).
- (7) Notwithstanding any provision in subsection (2), (3), (4) and (6), the Secretary may, direct the council to increase the total amount which shall be applied from a fidelity fund of a particular member company or member firm in payment to persons who suffer loss through defalcations by that particular member company or member firm or by

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any of its directors or partners or by any of the employees of that company or firm.

- (8) For the purposes of this section, “director of a member company” or “partner of a member firm” includes a person who has been, but at the time of any defalcation in question has ceased to be such director or partner if, at the time of the defalcations, the person claiming compensation has reasonable grounds for believing that the person to be a director of a member company or a partner of a member firm.

Claims against

- 111.** (1) Subject to this Part, every person who suffers pecuniary loss as provided in subsection (1) of section 110 shall be entitled to claim compensation from the fidelity fund and to take proceedings in a court against the stock exchange.
- (2) Subject to subsection (3), a person shall not have any claim against the fidelity fund in respect of a defalcation in respect of money or other property which prior to the commission of the defalcation had in the course of the administration of a trust ceased to be under the sole control of the director of the member company concerned or the partner of the member firm concerned.
- (3) Subject to this Part, the amount which any claimant shall be entitled to claim as compensation from a fidelity fund shall be the amount of the actual pecuniary loss suffered by him, including the reasonable costs of his disbursements incidental to the making of proof of claim, less the amount or value of all moneys or other benefits received or receivable by him from sources other than the fund in reduction of the loss.
- (4) In addition to any compensation payable under this Part, interest shall be paid out of the fidelity fund concerned on the amount of compensation, less any amount attributable to costs and disbursements, at the rate of 5% per annum calculated from the day upon which the defalcation was committed and continuing until the day upon which the claim is satisfied.

Notice calling for claims against fund.

- 112.** (1) The council of a stock exchange may publish in a daily newspaper published and circulating generally in Ghana a notice, in or to the effect of the form prescribed, specifying a date, not being earlier than 3 months after the said publication, on or before which claims for compensation from the fidelity fund, in relation to the person specified in the notice, may be made.
- (2) A claim for compensation from a fidelity fund in respect of a defalcation shall be made in writing to the council -
- (a) where a notice under subsection (1) has been published on or before the date specified in the said notice; or
- (b) where no such notice has been published within 6 months after the claimant becomes aware of the defalcation,
- and any claim which is not so made shall be barred unless the council otherwise determines.

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- (3) No action for damages shall lie against a stock exchange or against any member or employee of a stock exchange or of a council or management committee as a result of any notice published in good faith and without malice for the purposes of this section.

Power of council to settle claims.

- 113.** (1) The council may, subject to this Part, allow and settle any proper claim for compensation from a fidelity fund at any time after the commission of the defalcation in respect of which the claim arose.
- (2) Subject to subsection (3) of this section, a person shall not commence legal proceedings under this Part against a stock exchange without leave of the council unless -
- (a) the council has disallowed his claim; and
 - (b) the claimant has exhausted all relevant rights of action and other legal remedies for recovery of the money or other property, in respect of which the defalcation was committed, available against the member company or member firm in relation to which the claim arose and against all other persons liable in respect of the loss suffered by the claimant.
- (3) A person who has been refused leave by a council may apply for leave to a judge of the High Court who may make such order in the matter as he thinks fit.
- (4) A council after disallowing, whether wholly or partly, a claim for compensation from a detailed fund shall serve notice of the disallowance in the prescribed form on the claimant or his lawyer.
- (5) Notwithstanding the provisions of the Limitations Decree, 1972 (NRCD 54), no proceedings against a stock exchange in respect of a claim which has been disallowed by the council shall be commenced after the expiration of 3 months after service of notice of disallowance under subsection (4).
- (6) In any proceedings brought to establish a claim, evidence of any admission or confession by, or other evidence which would be admissible against, the member company, member firm, or other person by whom it is alleged a defalcation was committed, shall be admissible to prove the commission of the defalcation, notwithstanding that the member company, member firm or other person is not the defendant in or a part to those proceedings, and all defences which would have been available to that member company, member firm or other person shall be available to the stock exchange.
- (7) The council or, where proceedings are brought to establish a claim, the court, if satisfied that the defalcation on which the claim is founded was actually committed, may allow the claim and act accordingly, notwithstanding that the person who committed the defalcation has not been convicted or prosecuted for the act or that the evidence on which the council or court acts would not be

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sufficient to establish the guilt of the person upon a criminal trial in respect of the defalcation.

Orders of court on establishment of claim.

114. Where in any proceedings brought to establish a claim the court is satisfied that the defalcation on which the claim is founded was actually committed and that the claimant has valid claim, the court shall by order -

- (a) declare the fact and the date of the defalcation and the amount of the claim; and
- (b) direct that the council concerned allows the claim as so declared and deal with the claim in accordance with the provisions of this Part.

Power of council to require production of securities, etc.

115. (1) The council may require a person to produce and deliver any securities, documents or statements of evidence necessary -

- (a) to support a claim made by him; or
- (b) for the purpose either of exercising his rights against a member company, a member firm or the director or partners of the stock exchange or any other person concerned; or
- (c) to enable criminal proceedings to be taken against any person in respect of a defalcation.

(2) Where the person fails to deliver any such securities, documents or statements of evidence, the council may disallow any claim by him under this Part.

Entitlement of stock exchange to rights, etc., of claimant upon Payment from fund.

116. On payment out of a fidelity fund of any moneys in respect of a claim under this Part, the stock exchange shall be entitled to the extent of the payment to all the rights and remedies of the claimant in relation to the loss suffered by him from the defalcation.

Payment of claims only from fund.

117. No moneys or other property belonging to a stock exchange, other fidelity fund, shall be available for the payment of any claim under this Part whether the claim is allowed by the council or is made the subject of an order of the court.

Provision where fund insufficient to meet claims or where claims exceed total amount payable.

118. (1) Where the amount at credit in a fidelity fund is insufficient to pay the amount of all claims against it which have been allowed or in respect of which orders of the court have been made, the amount at credit in the fund shall, subject to subsection (2) of this section be apportioned between the claimants in such manner as the Commission thinks equitable, and any claim that then remains unpaid shall be charged against future receipts of the funds and paid out of the fund when moneys are available.

(2) Where the aggregate of all claims made in relation to defalcations by or in connection with a member company or member firm exceeds the total amount which may, under section 110 (2) be paid under this

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Part in respect of that member company or member firm, then the total amount shall be apportioned between the claimants in such manner as the council thinks equitable.

- (3) Upon payment out of the fund of all the claims and all other claims against the fund which may later arise or be made in respect of defalcations by or in connection with the member company or member firm, the member company or firm shall be absolutely discharged.

Power of council to enter into contracts of insurance claims.

- 119.** (1) A stock exchange may enter into any contract with an insurer in Ghana to be insured or indemnified against liability in respect of under this Part.
- (2) Any such contract may be entered into in a relation to member companies and member firms generally, or in relation to any particular member companies generally with the exclusion of any particular member company named in the agreement.
- (3) No action shall lie against a stock exchange or against any member or servant of a stock exchange or its council or against any member of a management committee for injury alleged to have been suffered by any member company or firm by reason of publication in good faith of a statement that a contract entered into under this section does or does not apply with respect to it.

Application of Insurance moneys.

- 120.** (1) No claimant for money from a fidelity fund shall have a right of action against an insurer with whom a contract of insurance or indemnity is made under this Part or have a right or claim on moneys paid by the insurer under such contract.

Interpretation of this Part.

- 121.** In this Part, unless the context otherwise requires –
- “council” in relation to a fidelity fund of a stock exchange, means the council of that stock exchange;
- “court” means the High Court;
- “fidelity fund” or “fund” means a fidelity fund established under section 99;
- “stock exchange”, in relation to a fidelity fund means the stock exchange which established the fidelity fund.

PART X – TRADING IN SECURITIES AND RELATED OFFENCES

False trading and market rigging transactions.

- 122.** (1) A person who creates or causes to be created, or does anything that is calculated to create a false or misleading appearance of active trading in securities on a stock exchange in Ghana or a false or misleading appearance with respect to the market for, or the price of, such securities commits an offence.
- (2) A person who by means of purchases or sales of securities that do not involve a change in the beneficial ownership of those securities,

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or by fictitious transactions or devices, maintains, inflates, depresses, or causes fluctuations in the market price of any securities commits an offence.

- (3) Without prejudice to the general effect of sub-section (1), any person who -
- (a) effects, takes part in, is concerned in or carries out, either directly or indirectly, a transaction of sale or purchase of securities, being a transaction that does not involve a change in the beneficial ownership of the securities; or
 - (b) makes or causes to be made an offer to sell or purchase securities at a specified price where he has made or caused to be made or proposes to make, an offer to sell or purchase the same number, or substantially the same number of securities at a price that is substantially the same as the specified price;

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

- (4) In a prosecution of a person for an act referred to in subsection (3), it is a defence if the defendant establishes that the purpose for which he did the act was not, or did not include, the purpose of creating a false or misleading appearance of active trading in securities on the stock exchange.
- (5) A purchase or sale of securities does not involve a change in the beneficial ownership for the purposes of this section if a person who had an interest in the securities before the purchase or sale, or a person associated with such persons, acquired an interest in the securities after the purchase or sale.
- (6) In a prosecution for an offence under subsection (2) in relation to a purchase or sale of securities that did not involve a change in the beneficial ownership of those securities, it is a defence if the defendant establishes that the purpose for which he purchased or sold the securities was not, or did not include, the purpose of creating a false or misleading appearance with respect to the market for, or the price of, securities;
- (7) The reference in subsection (3) of this section to a transaction of sale or purchase of securities includes –
- (a) a reference to the making of an offer to sell or purchase securities; and
 - (b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to sell or purchase the securities.

Stock market
Manipulation.

- 123.** (1) A person who effects, takes part in, is concerned in or carries out, either directly or indirectly, two or more transactions in securities of a body corporate which are transactions that have, or are likely to have, the effect of raising, lowering, maintaining or stabilizing the price of

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securities of the body corporate on a stock exchange in Ghana with intent to induce other persons to sell, purchase or subscribe for securities of the body corporate or of a related body corporate commits an offence.

- (2) A reference in this section to a transaction in relation to securities of a body corporate, includes-
- (a) a reference to the making of an offer to sell or purchase such securities of the body corporate; and
 - (b) a reference to the making of an invitation, however expressed that expressly or impliedly invites a person to offer to sell or purchase the securities of the body corporate.

False or misleading statements, etc.

124. A person who makes a statement or disseminates information that is false or misleading in a material particular, that is likely to induce the sale or purchase of securities by other persons or is likely to have the effect of raising, lowering, maintaining or stabilizing the market price of securities if, when he makes the statement or disseminate the information -

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

Fraudulently inducing persons to deal in securities.

125. (1) A person who -

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

induces or attempts to induce another person to deal in securities commits an offence.

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

Dissemination of information about illegal transactions.

126. A person who circulates or disseminates or authorizes or is concerned in the circulation of dissemination of any statement or information to the effect that, the price of any securities of a body corporate will or is likely to rise or fall or be maintained by reason of any transaction entered into or other act or thing done in relation to securities of that body corporate,

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or of a body corporate that is related to that body corporate, in contravention of any of the provisions in this Part where -

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

Employment of manipulative and deceptive devices.

127. It is unlawful for a person directly or indirectly in connection with the purchase or sale of securities -

- (a) to employ any device, scheme or artifice to defraud;
- (b) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any other person; or
- (c) to make any untrue statement of a material fact or to omit to state a material fact necessary with the result that the statements made in the light of the circumstances under which they were made, appear truthful.

Prohibition of dealings in securities by insiders.

128. (1) A person who is, or has at any time in the 6 months immediately prior to a dealing in the securities of a body corporate been connected with that body corporate shall not deal in securities of that body corporate if by reason of his association he is in possession of information that is not generally available but, if it were, might materially affect the price of those securities.

(2) A person who is, or has at any time in the 6 months immediately prior to a dealing in the securities of a body corporate been connected with that body corporate shall not deal in securities of any other body corporate if by reason of his being, or having been, connected with the first-mentioned body corporate he is in possession of information that -

- (a) is not generally available but, if it were, would be likely to affect materially the price of those securities; and
- (b) relates to any transaction (actual or expected) involving both those bodies corporate or involving one of them and the securities of the other.

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

- (a) he has obtained the information directly from another person and is aware, or ought reasonably to be aware of the facts of circumstances by virtue of which that other person is himself

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- precluded by subsection (1) or (2) from dealing in those securities; or
- (b) when the information was obtained, he was associated with that other person or had with him an arrangement for the communication of information of a kind to which those subsections apply with a view to dealing in securities by himself or with that other person.
- (4) No person shall at any time when he is precluded by subsection (1), (2) or (3) of this section from dealing in securities -
- (a) cause or procure any other person to deal in those securities; or
- (b) communicate that information to any other person if -
- (i) trading in those securities is permitted on a stock exchange whether within or outside Ghana, and
- (ii) he knows, or ought reasonably to know, that the other person will make use of the information for the purpose of dealing or causing or procuring another person to deal in those securities.
- (5) Without prejudice to subsection (3) but subject to subsections (6) and (7), no body corporate shall deal in securities at a time when an officer of that body corporate is precluded by sub-section (1), (2) or (3) from dealing in those securities.
- (6) A body corporate is not precluded by subsection (5) from entering into a transaction at any time by reason only of information in the possession of an officer of that body corporate if -
- (a) the decision to enter into the transaction was taken on its behalf by a person other than that officer; and
- (b) it had in operation at that time arrangements to ensure that the information was not communicated to any person and that no advice with respect to the transaction was given to him by a person in possession of the information; and
- (c) the information was not communicated and the advice was not so given.
- (7) A body corporate is not precluded by subsection (5) from dealing in securities of another body corporate by reason only of information in possession of its officer which was obtained by the officer in the course of his duties as its officer but relates to proposed dealings by the first-mentioned body corporation in securities of the other body corporate.
- (8) For the purposes of this section, a person is connected with a body corporate if, being a natural person -
- (a) he is an officer of that body corporate or of a related body corporate;

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- (b) he is a substantial shareholder in that body corporate or in a related body corporate; or
 - (c) he occupies a position that may reasonably be expected to give him access to information of a kind to which subsections (1) and (2) apply by virtue of -
 - (i) any professional or business relationship existing between himself or his employer or a body corporate of which he is an officer and that body corporate or a related body corporate; or
 - (ii) his being an officer of a substantial shareholder in that body corporate or in related body corporate.
- (9) This section does not preclude the holder of dealer's licence from dealing in securities or rights or interests in securities of a body corporate, where the securities, rights or interests are permitted by a stock exchange to be traded on the stock market of that stock exchange, if -
- (a) the holder of the licence enters into the transaction concerned as an agent for another person in accordance with a specific instruction to effect that transaction; and
 - (b) the holder of the licence has not given any advice to the other person in relation to dealing in securities, or rights or interests in securities, of that body corporate that are included in the same class as the first-mentioned securities; and
 - (c) the other person is not associated with the holder of the licence.
- (10) Where prosecution is instituted against a person for entering into a transaction whilst in possession of certain information contrary to this section, it is a defence if the person satisfies the court that the other party to the transaction knew, or ought reasonably to have known, of the information before entering into the transaction.
- (11) For the purposes of subsection (7), "officer", in relation to a body corporate, includes
- (a) a director, secretary, executive officer or employee of the body corporate;
 - (b) a receiver or receiver and manager of property of the body corporate;
 - (c) an official manager or a deputy official manager of the body corporate;
 - (d) a liquidator of the body corporate; and
 - (e) a trustee or other person administering a compromise or arrangement made between the body corporate and another person.

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- Penalties. **129.** A person who contravenes any of the provisions of this Part is liable on conviction -
- (a) in the case of a person not being a body corporate, to a fine not exceeding ₦5 million or to imprisonment for a term not exceeding 3 years; or
 - (b) in the case of a person being a body corporate, to a fine not exceeding ₦5 million.
- Convicted persons liable to pay compensation. **130.** (1) A person convicted of an offence under this Part is liable to pay compensation to any person who, in a transaction for the purchase or sale of securities entered into with him or with a person acting for or on his behalf, suffers loss because of the difference between the price at which the securities were dealt in and the price at which they might have been dealt in at the time when the transaction took place if the contravention had not occurred.
- (2) The amount of compensation for which a person is liable under subsection (1) is the amount of the loss sustained by the person claiming the compensation.
- (3) Notwithstanding the provisions of the Limitations Decree 1972 (N.R.C.D. 54) an action under this section for the recovery of a loss shall not be commenced after the expiration of two years after the date of completion of the transaction in which the loss occurred.
- (4) Nothing in subsection (1) affects any other liability that a person may incur under any other law.

PART XI – MISCELLANEOUS PROVISIONS

- Restriction on use of title "stock broker" or "stock exchange". **131.** (1) A person who is not a stockbroker within the meaning of this Law shall not use or by inference adopt the name or title of stockbroker or exhibit at any place a name, title or description implying or tending to create the belief that he is a stockbroker.
- (2) A body corporate that is not a stock exchange shall not use or by inference adopt the name or title of stock exchange or exhibit at any place a name, title or description implying or tending to create the belief that the body corporate is a stock exchange.
- Offences by directors or managers etc. **132.** (1) A director or manager of a stock exchange, unit trust scheme, mutual fund or of a dealer or of an investment adviser, who -
- (a) fails to take all reasonable steps to ensure compliance with the provisions of the Law; or
 - (b) fails to take all reasonable steps to ensure the accuracy and correctness of any statement submitted by him under this Law,
- commits an offence and is liable on conviction to a fine not exceeding ₦500,000 or to imprisonment for a term not exceeding one year or to both.

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- (2) In any proceedings against a person under subsection (1), it shall be a defence for the accused to prove that he had reasonable grounds for believing that another person was charged with the duty of ensuring compliance with the requirements of this Law, or with the duty of ensuring that those statements were accurate, and that person was competent and in a position to discharge that duty.
- (3) A person shall not be sentenced to imprisonment for any offence under subsection (1) unless, in the opinion of the court, he committed the offence wilfully.

Falsification of records by directors, employees and agents.

- 133.** (1) Any director, manager, auditor, employee or agent of stock exchange or of a dealer or of an investment adviser, who -
- (a) wilfully makes, or causes to be made, a false entry ;
 - (b) wilfully omits to make an entry or causes such entry to be omitted; or
 - (c) wilfully alters, abstracts, conceals or destroys an entry or wilfully causes such entry to be altered, abstracted, concealed or destroyed.

in any book or report, slip, document or statement of the business affairs, transactions, conditions, assets or accounts of that stock exchange, dealer or investment adviser, commits an offence and is liable on conviction to a fine not exceeding ₪1 million or to imprisonment for a term not exceeding one year or to both.

False reports to the Commission or stock exchange.

- 134.** Any person who, with intent to deceive makes or furnishes, or knowingly and wilfully authorises or permits the making or furnishing of any false or misleading statement or report to the Commission, a stock exchange or any officers of the Commission, relating to -
- (a) dealing in securities;
 - (b) any matter or thing required by the Commission for the proper administration of this Law; or
 - (c) the enforcement of the rules of a stock exchange,

commits an offence and is liable on conviction to a fine not exceeding ₪1 million or to imprisonment for a term not exceeding one year or to both.

Immunity of the Commission and its Employees, etc.

- 135.** (1) No action or other legal proceedings shall lie against the Commission or an officer or employee of the Commission or a person, including a stock exchange, acting under the direction of the Commission for any act done in good faith in the performance or intended performance, of any duty, or in the exercise of any power under this Law or regulations made under it, or for any neglect or default in the performance or exercise in good faith of such duty or power.

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Offences by body
corporate.

- 136.** Where a body corporate is guilty of an offence under this Law, any director, executive officer, secretary or employee of the body corporate who was in any way, by act or omission, directly or indirectly knowingly concerned in or a party to the commission of the offences shall also be guilty of that offence.

Power of Court to
prohibit payment or
transfer of moneys,
securities or other
property.

- 137.** (1) Where -
- (a) an investigation which constitutes or may constitute an offence under this Law is being carried out in relation to an act or omission by a person; or
 - (b) prosecution has been instituted against a person for an offence under this Law; or
 - (c) civil proceedings have been instituted against a person under this Law,

and the Court considers it necessary or desirable for the purpose of protecting the interests of any persons to whom a person referred to in paragraph (a), (b) or (c) of this subsection, (referred to in this section as the relevant person), is liable or may become liable to pay any moneys whether in respect of a debt or by way of damages or compensation or otherwise account for any securities or other property, the court may, on application by the Commission, make any one or more of the orders specified in subsection (2).

- (2) The court may make -
- (a) an order prohibiting either absolutely or subject to conditions a person who is indebted to the relevant person or to any person associated with the relevant person, from making a payment in total or partial discharge of the debt;
 - (b) an order prohibiting, either absolutely or subject to conditions, a person holding money or securities or other property on behalf of the relevant person or on behalf of any person associated with the relevant person, from paying all or any of the money or transferring or otherwise parting with possession of the securities or other property to any person;
 - (c) an order prohibiting, either absolutely or subject to conditions, the taking or sending out of Ghana of moneys of the relevant person or of any person associated with the relevant person;
 - (d) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer or securities or other property of the relevant person or of any person who is associated with the relevant person from a place in Ghana to a place outside Ghana, including the transfer of securities from a register in Ghana to a register outside Ghana;
 - (e) an order appointing a receiver or receiver and manager with such powers as the court may order of the property or part of the property of the relevant person;

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- (f) an order where the relevant person is a natural person -
 - (i) requiring him to deliver up to the court his passport and such other documents as the court thinks fit; or
 - (ii) prohibiting him from leaving Ghana without the consent of court.
- (3) Where an application is made to a court for an order under subsection (1), the court may, before considering the application, on a further application by the Commission grant an interim order pending the determination of the original application.
- (4) Where the Commission makes an application to the court for an order under subsection (1), the court shall not require the Commission or any other person, as a condition of granting an interim order under subsection (3) to give any undertakings as to damages.
- (5) Where the court has made an order under this section, it may, on application by the Commission or by any person affected by the order, make a further order rescinding or varying the earlier order.
- (6) An order made under this section may be expressed to operate for a period specified in the order or until the order is rescinded by a further order under subsection (5).
- (7) A person who contravenes or fails to comply with an order by the court under this section applicable to him commits an offence and is liable on conviction to a fine not exceeding ₵1 million or to imprisonment for a term not exceeding one year or to both.

General penalty.

- 138.** A person who is guilty of an offence under this Law for which no specific penalty is provided shall be liable on conviction to a fine not exceeding ₵1 million or imprisonment for a term not exceeding one year or to both.

Proceedings, by whom to be taken and power to compound offences.

- 139.** (1) Prosecution for an offence against any provision of this Law may be taken by the Attorney-General or by the Commission.
- (2) The Commission may, without instituting proceedings against any person for an offence punishable by a fine under this Law or the regulations made under it demand the amount of the fine or such reduced amount as it thinks fit from the person liable and -
- (a) where the person pays the amount to the Commission within 14 days of the demand, no proceedings shall be taken against him in relation to the offences;
 - (b) where the person does not pay the amount the Commission may commence proceedings in relation to the offence.
- (3) The powers conferred on the Commission under subsection (2) shall only be exercised where a person admits the offence and

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agrees in writing to the offence being dealt with under that subsection.

Power of Secretary to give directions to the Commission.

140. The Secretary may give to the Commission directions of a general or specific character as to the exercise of the Commission's functions; and it shall be the duty of the Commission to give effect to any such direction.

Regulations.

141. (1) The Secretary may give on the recommendation of the Commission by legislative instrument make regulations prescribing all matters required or permitted by this Law to be prescribed, and for carrying out or giving effect to this Law.
(2) Without prejudice to subsection (1) regulations may provide for -

- (a) the forms to be used for the purposes of this Law;
- (b) the publication of advertisements offering the services of dealers or investment advisers or offering securities for purchase or sale, and the form and content of those advertisements;
- (c) the form of balance sheets and profit and loss accounts required by this Law to be prepared by dealers;
- (d) the furnishing to the Commission of information in addition to, or in variation of, the information contained in a prescribed form lodged with it;
- (e) the times within which information required to be furnished to the Commission under this Law shall be furnished;
- (f) procedures under which and the conditions on which a public company may appeal to the Commission against a refusal of a stock exchange to list its securities.

Interpretation.

142. (1) In this Law; unless the context otherwise requires –
 “agent” in relation to a dealer, includes a person who is or has at any time been a banker or dealer;
 “arbitrage” means profiting from differences in price of the same security traded on two or more markets;
 “auditor” means a company auditor qualified as such under the Companies Code, 1963 (Act 179);
 “body corporate” includes an incorporated body under the Incorporated Private Partnerships Act 1962 (Act 152);
 “book” includes any register, document or other record of information and any account or accounting record, however compiled, recorded or stored whether in written or printed form or microfilm by electronic process or otherwise;
 “chairman” means the chairman of the Commission;
 “Commission” means the Securities and Exchange Commission established by section 1;
 “company” has the same meaning as is assigned to it in the Companies Code, 1963 (Act 179);

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“council” in relation to a stock exchange, means the persons for the time being in whom the management of the stock exchange is vested;

“court” means the Commercial Division of the High Court;

“dealer” means a person who carries on a business of dealing in securities whether he carries on any other business or not.

“dealer’s representative” means a person, in the direct employment of, or acting for, or by arrangement with a dealer, who performs for that dealer any of the functions of a dealer (other than work ordinarily performed by accountants, clerks or cashiers) whether his remuneration is by way of salary, wages, commission or otherwise; and where the dealer is a body corporate, includes any director or officer of the body corporate who performs for the body corporate any of the said functions;

“dealing in securities” means, whether as principal or agent making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into -

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

“director” has the same meaning as is assigned to that expression in section 179 of the Companies Code 1963 (Act 179);

“executive officer”, in relation to a body corporate, means any person by whatever name called who is concerned or takes part in the management of the body corporate whether or not he is a director of the body corporate;

“exempt dealer” means a person specified under section 65;

“investment adviser” means a person who –

- (a) carries on a business of advising others concerning securities;
- (b) as part of a regular business issues or publishes analysis or reports concerning securities; or
- (c) pursuant to a contract or arrangement with a client, undertakes on behalf of the client (whether on a discretionary authority granted by the client or otherwise) the management of a portfolio of securities for the purpose of investment, but does not include –
- (d) a bank as defined in section 48 of the Banking Law, 1989 (PNDCL.225);
- (e) a company registered under the Insurance Law; 1989 (PNDCL.227);

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- (f) a lawyer or accountant in practice whose carrying on of that business is solely incidental to the practice of his profession;
- (g) a dealer or his employee or a dealer's representative whose carrying on of that business is solely incidental to the conduct of his business of dealing in securities; or
- (h) a person who is the proprietor of a newspaper where -
 - (i) in so far as the newspaper is distributed generally to the public, it is distributed only to subscribers to, and purchasers of, the newspaper for value;
 - (ii) the advice is given or the analysis or reports are issued or published only through that newspaper;
 - (iii) that person receives no commission or other consideration for giving the advice or for issuing or publishing the analysis or reports; and
 - (iv) the advice is given and the analysis and reports are issued or published solely as incidental to the conduct of that person's business as a newspaper proprietor;

“investment representative” means a person, in the direct employment of or acting for or by arrangement with an investment adviser, who performs for the investment adviser any of the functions of an investment adviser (other than work ordinarily performed by accountants, clerks or cashiers) whether his remuneration is by way of salary, wages, commission or otherwise and includes a director or officer of a body corporate who performs for the body corporate any of the said functions;

“licence” means -

- (a) a dealer's licence;
- (b) an investment adviser's licence; or
- (c) a representative's licence, issued under Part V;
- (d) licensed “exempt dealers”

“listing rules”, in relation to a body corporate that maintains or provides, a stock market of a stock exchange, means rules made by its council governing or relating to –

- (a) the admission to the official list of the body corporate, of bodies corporate, governments, unincorporated bodies or other persons for the purpose of the quotation on the stock market or made available by bodies corporate, governments, unincorporated bodies or other persons or the removal from that official list and for other purposes; or
- (b) the activities or conduct of bodies corporate, governments, unincorporated bodies and other persons who are admitted to that list,

whether those rules –

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- (i) are made by the body corporate or are contained in any of the constituent documents of the body corporate; or
- (ii) are made by another person and adopted by the body corporate;

“member company” means a company which carries on a business of dealing in securities and is recognised as a dealing member by a stock exchange;

“member firm” means an incorporated private partnership which carries on a business of dealing in securities and is recognised as a dealing member by a stock exchange;

“mutual fund” shall have the same meaning as that provided in section 319 of the Companies Code 1963 (Act 179);

“prescribed interest” means any right to participate or any interest, whether enforceable or not and whether actual, prospective or contingent –

- (a) in any profits, assets or realization of any financial or business undertaking or scheme whether in Ghana or elsewhere;
- (b) in any common enterprise, whether in Ghana or elsewhere, in relation to which the holder of the right or interest is led to expect profits, rent or interest from the efforts of the promoter of the enterprise or a third party;
- (c) in a class or kind of rights of interests, declared by the regulations to be an exempt right or interest; or
- (d) in any investment contract, whether or not the right or interest is evidenced by a formal document and whether or not the right or interest relates to a physical asset,

but does not include -

- (e) any share in, or debenture of a corporation;
- (f) any interest in, or arising out of a policy of life insurance; or
- (g) an interest in a partnership agreement, unless the agreement or proposed agreement –

- (i) relates to an undertaking, scheme, enterprise or investment contract promoted by or on behalf of a person whose ordinary business is or includes the promotion of similar undertakings, schemes, enterprises or investment contracts, whether or not that person is, or is to become, a party to the agreement or proposed agreement; or
- (ii) is or would be an agreement, within a class of agreements, prescribed by the regulations for the purposes of this paragraph;

“relevant authority”-

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- (a) in relation to member company or member firm, means the stock exchange by which the company is recognised; and
- (b) in relation to any other person, means the Commission;

“rules”, in relation to stock exchange, means the rules governing the conduct of the stock exchange or its members and includes regulations made by the council of a stock exchange for the purpose;

“Secretary” means the Secretary responsible for Finance;

“securities” means -

- (a) shares or debentures within the meaning of the Companies Code, 1963 (Act 179);
- (b) bonds or other loan instrument of the Government of Ghana or any other country;
- (c) bonds or other loan instruments of a corporation established under an enactment for the time being in force;
- (d) rights of interests (whether described as units or otherwise) under any trust;
- (e) such other instruments as the Secretary may by notice in the Gazette prescribe;

“share” means the interest of members of a body corporate who are entitled to share in the capital or income of such body corporate;

“stockbroker” means a person who is -

- (a) a director of a member company; or
- (b) a partner of a member firm.

“stock exchange” means any body corporate which has been approved by the Commission under section 25 of this Law;

“stock market” means a market, exchange or other place, at which, or a facility by means of which securities are regularly offered for sale, purchased or exchanged;

“substantial shareholder” means a share holder entitled to exercise or control the exercise of 30% or more of the voting power at general meetings of the company or one who is in a position to control the composition of a majority of the board of directors of a company;

“trust account “ means a trust account opened and maintained under section 85;

“trustee” means the corporate body in which the property for the time being subject to any trust created in pursuance of the scheme is or may be vested in accordance with the terms of the trust deed;

“units” means any portion or division of a unit trust fund (whether described as units or otherwise) into which are divided the beneficial interest in the assets subject to a trust created under the scheme;

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“unit trust scheme” means any arrangement whereby securities or any other charge (other than a charge to secure the debentures of one body corporate) are vested in trustees and the beneficial interest in it is divided into units, sub-units or other interests by whatever name called with a view to an invitation being made to the public to acquire such units or any of

Associated person.

143. (1) A reference in this Law to a person associated with another person shall be construed as follows -

(a) where the other person is a body corporate –

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

(b) where the matter to which the reference relates is the extent of power to exercise or to control the exercise of the voting power attached to voting shares in a body corporate, a person with whom the other person has or proposes to enter into an agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied –

- (i) by reason of which either of those persons may either, directly or indirectly, control the exercise of a substantially influence the exercise of any voting power attached to a share in the body corporate;
- (ii) with a view to controlling or influencing the composition of the board of directors or the conduct of affairs of the body corporate; or
- (iii) under which either of those persons may acquire from each other shares in the body corporate or may be required to dispose of such shares in accordance with the directions of the other body;

(c) a person in concert with whom the other person is acting or proposes to act in relation to the matter to which the reference relates;

(d) where the matter to which the reference relates is a matter, other than the extent of power to exercise or to control the exercise of the voting power attached to voting shares in a body corporate -

- (i) subject to subsection (2), a person who is a director of a body corporate that carried on a business of dealing in securities and of which the other person is also a director;
- (ii) subject to subsection (2), a person who is a director of a body corporate of which the other person is a director, not

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being a body corporate that carried on a business of dealing in securities; or

(iii) a trustee of a trust in relation to which the other person benefits or is capable of benefiting otherwise than by reason of transactions entered into in the ordinary course of business in connection with the lending of money;

(e) a person with whom the other person is, by virtue of any regulation that may be introduced, regarded as associated in respect of the matter to which the reference relates;

(f) a person with whom the other person is, or proposes to become associated, whether formally or informally, in any other way in respect of the matter to which the reference relates; or

(g) where the other person has entered into, or proposes to enter into a transaction or has done, or proposes to do, any other act or thing, with a view to becoming associated with a person as mentioned in paragraph (a), (b), (c) (d), (e) or (f).

(2) where, in proceedings under this Law, it is alleged that a person referred to in subsections (1) (d) (i) and (ii) was associated with another person at a particular time, that person shall be deemed not to have been associated in relation to a matter to which the proceedings relate unless the person alleging the association proves that the first mentioned person at that time knew or ought reasonably to have known the material particulars of that matter.

(3) A person shall not be taken to be associated with another person by virtue of sub-section (1) (b), (c), (e) or (f) by reason only that one of those persons furnishes advice to, or acts on behalf of, the other person in the proper performance of functions that relate to his professional capacity or to his business relationship with the other person.

Interest in securities.

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

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

(a) the right was issued or offered to the public for subscription or purchase;

(b) the public was invited to subscribe for or purchase such right, and the right was subscribed for or purchased; or

(c) such right is held by the management company and was issued for the purpose of an offer to the public within the meaning of section 266 of the Companies Code, 1963 (Act 179).

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

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- (a) the body corporate is, or its directors are under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person in relation to that security;
 - (b) that person has a controlling interest in the body corporate; or
 - (c) that person is, or the associates of that person or all are entitled to exercise or control the exercise of not less than 30% of the votes attached to the voting shares in the body corporate.
- (4) For the purposes of subsection (3) (c) of this section, a person is an associate of another person if the person is –
- (a) a body corporate which, by virtue of section 3 of the Companies Code, is an associated company in relation to the other person;
 - (b) a person in accordance with whose directions, instructions or wishes that other person is accustomed to or is under an obligation, whether formal or informal, to act in relation to the security referred to in subsection (3);
 - (c) a body corporate which is, or the directors of which are accustomed or under an obligation, where formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to that security ; or
 - (d) a body corporate in accordance with the directions, instructions or wishes of which, or the directors which, that other person is accustomed or under an obligation, whether formal or informal, to act in relation to that security.
- (5) A person shall be deemed to have an interest in a security in any one or more of the following circumstances -
- (a) where he has entered into a contract to purchase a security;
 - (b) where he has a right, otherwise than by reason of having an interest under a trust, to have a security transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on the fulfillment of a condition or not;
 - (c) where he has the right to acquire a security or an interest in a security, under an option; or
 - (d) where he is entitled, otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a body corporate or of a class of its members, to exercise or control the exercise of a right attached to a security, not being a security of which he is the registered holder.
- (6) A person shall be deemed to have an interest in a security if that security is held jointly with another person.
- (7) For the purpose of determining whether a person has an interest in a security, it is immaterial that the interest cannot be related to a particular security.

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- (8) There shall be disregarded -
- (a) an interest in a security if the interest is that of a person who holds the security as a bare trustee;
 - (b) an interest in a security of a person whose ordinary business includes the lending of money if he holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;
 - (c) an interest of a person in a security being an interest held by him by reason of his holding a prescribed office; and
 - (d) such interest in securities as may be prescribed.
- (9) An interest in a security shall not be disregarded by reason only of -
- (a) its remoteness;
 - (b) the manner in which it arose; or
 - (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made subject to restraint or restriction.

Consequential
amendment to
companies Code.

- 145.** (1) Section 279 of the Companies Code, 1963 (Act 179) is amended by the insertion immediately after subsection (9) of the following new subsection -

“(9a) In any case not falling within subsection (5) or (6) of this section the Registrar may, for the purpose of reaching an opinion on whether a prospectus -

- (a) does not comply with the provisions of this Code; or
- (b) contains any untrue statement; or
- (c) omits to state any material fact; or
- (d) is otherwise incomplete or misleading,

refer the prospectus to the Securities and Exchange Commission for its opinion and in such a case the Commission shall give its opinion within the period of 21 days, in relation to the prospectus, referred to in subsection (8) of this section”

- (2) Section 280 of the Companies Code, 1963 (Act 179) is amended by the substitution for subsection (1) of the following subsection -

“(1) For the purposes of this Code, “approved stock exchange” means a body corporate approved as a stock exchange under section 25 of the Securities Industry Law, 1993 (P.N.D.C.L. 333)”.

Repeals.

- 146.** The following enactments are hereby repealed section 318 of the Companies Code, 1963 (Act 179); Stock Exchange Act, 1971 (Act 384).

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Savings.

- 147.** (1) Notwithstanding the repeal of the Stock Exchange Act, 1971 (Act 384) any stock exchange authorised under section 1 of that Act shall be deemed to have been approved by the Commission under section 25 of this Law and this Law shall apply accordingly in relation to the stock exchange.
- (2) The regulations and rules governing the conduct of any stock exchange referred to in subsection (1) which are in force immediately before the commencement of this Law shall, after the commencement of this Law, be deemed to be the regulations and rules of the stock exchange and this Law shall apply accordingly in relation to those rules and regulations.

Interim powers of the
Governor of the Bank
of Ghana

- 148.** Until the Commission commences operations, its functions and powers shall be exercised by the Governor of the Bank of Ghana, and any reference in this Law to the Commission shall be construed accordingly.

Made this 5th day of January, 1993.

JERRY JOHN RAWLINGS
Chairman of the Provisional National Defence Council

Date of Gazette notification: 19th November, 1993