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INVESTMENT BUSINESS ACT 2003

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SECOND SCHEDULE

MINIMUM CRITERIA FOR LICENSING

WHEREAS it is expedient to make new provision for the regulation of investment business; to make provision for the regulation of investment exchanges and clearing houses; and for connected matters:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

PART I

PRELIMINARY

Short title and commencement

1. This Act may be cited as the Investment Business Act 2003 and shall come into operation on such day as the Minister may appoint by notice published in the Gazette, and the Minister may appoint different days for different provisions.

Interpretation

2. In this Act —

"Act" includes regulations and orders made thereunder;

"associate" has the meaning given in section 7(9);

"Authority" means the Bermuda Monetary Authority established by the Bermuda Monetary Authority Act 1969;

"business" includes a trade or profession;

"code of conduct" means a code of conduct issued by the Authority pursuant to section 10;

"company" means a company registered or incorporated in Bermuda or elsewhere and includes a partnership which is a body corporate;

"controller" has the meaning given in section 7(3);

"court" means the Supreme Court;

"director" has the meaning given in section 7(2);

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

"exempted person" means a person exempted from the requirement to hold a licence by or under an order made under section 13;

"financial year" in relation to an investment provider, means the period not exceeding fifty-three weeks at the end of which the balance of the accounts is struck or, if no such balance is struck or a period of more than fifty-three weeks is employed for that purpose, means a calendar year;

"firm" means a partnership, or an unincorporated association of persons;

"group" in relation to a person ("A"), means A and any person who is —

(a) a parent undertaking of A;

(b) a subsidiary undertaking of A;

(c) a subsidiary undertaking of a parent undertaking of A;

(d) a parent undertaking of a subsidiary undertaking of A; or

(e) an undertaking in which A or an undertaking mentioned in paragraph (a), (b), (c) or (d) has a participating interest;

"investment" has the meaning given in section 3(1)(a);

"investment activity" has the meaning given in section 3(2);

"investment business" has the meaning given in section 3(1)(b);

"investment provider" means a person licensed under section 17;

"licence" means a licence granted under section 17; and "licensed" shall be construed accordingly ;

" Minister" means the Minister of Finance;

"minimum criteria" means the minimum criteria for licensing specified in the Second Schedule;

"officer" in relation to an undertaking, includes a director, secretary or senior executive of the undertaking by whatever name called;

"parent undertaking" has the meaning given in section 5;

"participating interest" has the meaning given in section 6;

"partnership" includes a partnership constituted under the law of any place outside Bermuda but does not include a partnership which is constituted under the law of any place outside Bermuda and is a body corporate;

"senior executive" has the meaning given in section 7(7);

"share" except as provided in section 6(6), means a share in the capital of a company and includes stock;

"shareholder controller" has the meaning given in section 7(5);

"subsidiary undertaking" has the meaning given in section 5;

"undertaking" means a company, a firm or an individual;

"voting power", in relation to an undertaking which does not have general meetings at which matters are decided by the

exercise of voting rights, means the right under the constitution of the undertaking to direct the overall policy of the undertaking or alter the terms of its constitution.

Investment and investment business

3. (1) In this Act —

(a) "investment" means an asset, right or interest specified in Part 1 of the First Schedule;

(b) "investment business" means engaging in one or more investment activities by way of business.

(2) An activity is an investment activity if —

(a) it is an activity of a kind specified in Part 2 of the First Schedule or one which falls within a class of activity so specified; and

(b) it is not excluded by Part 3 of the First Schedule.

(3) The Minister may, after consultation with the Authority, by order amend the First Schedule by adding new provisions, or by amending or deleting any of the investments specified in Part 1, or the investment activities specified in Part 2, or the excluded activities specified in Part 3, of the First Schedule.

(4) An order made under this section is subject to negative resolution procedure.

Carrying on investment business in or from Bermuda

4. (1) For the purposes of this Act, a person carries on investment business in or from Bermuda if such person —

(a) carries on investment business from a place of business maintained by such person in Bermuda; or

(b) engages in an investment activity the doing of which constitutes the carrying on by such person of investment business in or from Bermuda under an order made under subsection (2).

(2) The Minister may, after consultation with the Authority, make an order specifying the circumstances in which a person who would otherwise not be regarded as carrying on investment business in or from Bermuda is to be regarded for the purpose of this section as carrying on investment business in or from Bermuda.

(3) An order under subsection (2) may be made so as to apply —

(a) generally to all investment activities;

(b) in relation to a specified category of investment activity; or

(c) in relation to a particular investment activity.

(4) An order made under subsection (2) may be made subject to conditions.

(5) For the purpose of this section a person engages in an investment activity if he enters or offers to enter into an agreement the making or performance of which by either party constitutes an investment activity.

(6) For the purpose of this section, a person maintains a place of business ('meaning of maintaining a place of business') —

(a) in the case of an individual who is a sole trader, if he carries on investment business from premises that he occupies for that purpose;

(b) in any other case, if it carries on investment business from premises it occupies for that purpose, at which it employs staff and pays salaries and other expenses in connection with that business.

(7) The Minister may, after consultation with the Authority, make an order amending the meaning of maintaining a place of business for the purposes of this section.

(8) An order made under subsection (7) may include saving and transitional provisions.

(9) An order made under this section is subject to negative resolution procedure.

Meaning of "parent and subsidiary undertakings"

5. (1) The expressions "parent undertaking" and "subsidiary undertaking" in this Act shall be construed as follows.

(2) An undertaking is a parent undertaking in relation to another undertaking, a subsidiary undertaking, if —

(a) it holds a majority of the voting rights in the undertaking;

(b) it is a member of the undertaking and has the right to appoint or remove a majority of its board of directors;

(c) it has the right to exercise a dominant influence over the undertaking by virtue of provisions contained in the undertaking's memorandum of association, articles of association or bye-laws, or by virtue of a control contract; or

(d) it is a member of the undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the undertaking.

(3) For the purposes of subsection (2) an undertaking shall be treated as a member of another undertaking —

(a) if any of its subsidiary undertakings is a member of that undertaking; or

b) if any shares in that other undertaking are held by a person acting on behalf of the undertaking or any of its subsidiary undertakings.

(4) An undertaking is also a parent undertaking in relation to another undertaking, a subsidiary undertaking, if it has a participating interest in the undertaking and —

(a) it actually exercises a dominant influence over it; or

(b) it and the subsidiary undertaking are managed on a unified basis.

(5) A parent undertaking shall be treated as the parent undertaking of undertakings in relation to which any of its subsidiary undertakings are, or are to be treated as, parent undertakings; and references to its subsidiary undertakings shall be construed accordingly.

(6) In subsections (2)(a) and (d) the references to the voting rights in an undertaking are to the rights conferred on shareholders in respect of their shares or, in the case of an undertaking not having a share capital, on members, to vote at general meetings of the undertaking on all, or substantially all, matters.

(7) In relation to an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights, the references to holding a majority of the voting rights in the undertaking shall be construed as references to having the right under the constitution of the undertaking to direct the overall policy of the undertaking or to alter the terms of its constitution.

(8) In subsection (2)(b) the reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or

remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters.

(9) An undertaking shall be treated as having the right to appoint to a directorship if —

(a) a person's appointment to it follows necessarily from his appointment as director of the undertaking; or

(b) the directorship is held by the undertaking itself.

(10) A right to appoint or remove which is exercisable only with the consent or concurrence of another person shall be left out of account unless no other person has a right to appoint or, as the case may be, remove in relation to that directorship.

(11) For the purposes of subsection (2)(c) an undertaking shall not be regarded as having the right to exercise a dominant influence over another undertaking unless it has a right to give directions with respect to the operating and financial policies of that other undertaking which its directors are obliged to comply with whether or not they are for the benefit of that other undertaking.

(12) A "control contract" means a contract in writing conferring such a right which —

(a) is of a kind authorised by the memorandum of association, articles of association or by-laws of the undertaking in relation to which the right is exercisable; and

(b) is permitted by the law under which that undertaking is established.

(13) Subsections (10) and (11) shall not be read as affecting the construction of the expression "actually exercises a dominant influence" in subsection (4)(a).

(14) Rights which are exercisable only in certain circumstances shall be taken into account only—

(a) when the circumstances have arisen, and for so long as they continue to obtain; or

(b) when the circumstances are within the control of the person having the rights.

(15) Rights which are normally exercisable but are temporarily incapable of exercise shall continue to be taken into account.

(16) Rights held by a person in a fiduciary capacity shall be treated as not held by him.

(17) Rights held by a person as nominee for another shall be treated as held by the other.

(18) Rights shall be regarded as held as nominee for another if they are exercisable only on his instructions or with his consent or concurrence.

(19) Rights attached to shares held by way of security shall be treated as held by the person providing the security —

(a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with his instructions; and

(b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in his interests.

(20) Rights shall be treated as held by a parent undertaking if they are held by any of its subsidiary undertakings.

(21) Nothing in subsection (16), (17), (18) or (19) shall be construed as requiring rights held by a parent undertaking to be treated as held by any of its subsidiary undertakings.

(22) For the purposes of subsection (19) rights shall be treated as being exercisable in accordance with the instructions or in the interests of an undertaking if they are exercisable in accordance with the instructions of or, as the case may be, in the interests of any group undertaking.

(23) The voting rights in an undertaking shall be reduced by any rights held by the undertaking itself.

(24) References in any provision of subsections (16) to (23) to rights held by a person include rights falling to be treated as held by him by virtue of any other provision of this section but not rights which by virtue of any such provision are to be treated as not held by him.

Meaning of "participating interest"

6. (1) In this Act, "participating interest" means an interest held by an undertaking in the shares of another undertaking which it holds on a long-term basis for the purpose of securing a contribution to its activities by the exercise of control or influence arising from or related to that interest.

(2) A holding of twenty per cent or more of the shares of an undertaking shall be presumed to be a participating interest unless the contrary is shown.

(3) The reference in subsection (1) to an interest in shares includes —

(a) an interest which is convertible into an interest in shares; and

(b) an option to acquire shares or any such interest;

and an interest or option falls within paragraph (a) or (b) notwithstanding that the shares to which it relates are, until the conversion or the exercise of the option, unissued.

(4) For the purposes of subsection (1) an interest held on behalf of an undertaking shall be treated as held by it.

(5) For the purposes of subsections (1) to (4) as they apply in relation to the expression "participating interest" in section 5(4) —

(a) there shall be attributed to an undertaking any interests held by any of its subsidiary undertakings; and

(b) the references in subsection (1) to the purpose and activities of an undertaking include the purposes and activities of any of its subsidiary undertakings and of the group as a whole.

(6) In section 5 and in this section, "shares" in relation to an undertaking —

(a) with a share capital, means allotted shares;

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

(c) without capital, means interests —

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

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

Meaning of "director", "controller", "senior executive" and "associate"

7. (1) In this Act "director", "controller", "senior executive" and "associate" shall be construed in accordance with the provisions of this section.

(2) "Director" in relation to an undertaking, —

(a) includes any person who occupies the position of director, by whatever name called; and

(b) where it is used in subsections (7) and (8), includes a member of a firm.

(3) "Controller" in relation to an undertaking, means —

(a) in the case of an undertaking which is a company, a managing director of the company, or of its parent undertaking;

(b) in the case of an undertaking which is a firm —

(i) if a partnership, the managing partner;

(i) if an unincorporated association, a member of the firm;

(c) in the case of an undertaking which is neither a company nor a firm, a sole proprietor;

(d) a chief executive of the undertaking or of its parent undertaking;

(e) a person who satisfies the requirements of this paragraph; and

(f) a person in accordance with whose directions or instructions the directors of the undertaking or of its parent undertaking or persons who are controllers of the undertaking by virtue of paragraph (e) (or any of them) are accustomed to act.

(4) A person satisfies the requirements of paragraph (e) of subsection (3) in relation to an undertaking if, either alone or with any associate or associates —

(a) he holds ten per cent or more of the shares in the undertaking which is a company or its parent undertaking;

(b) he is entitled to exercise or control the exercise of ten per cent or more of the voting power in the undertaking or in the parent undertaking; or

(c) he is able to exercise a significant influence over the management of the undertaking or the parent undertaking by virtue of the voting power in the undertaking or the parent undertaking.

(5) A person who is a controller of an undertaking by virtue of paragraph (e) of subsection (3) is in this Act referred to as a "shareholder controller" of the undertaking; and in this Act —

"ten per cent shareholder controller" means a shareholder controller in whose case the percentage referred to in the relevant paragraph is not less than ten; and

"majority shareholder controller" means a shareholder controller in whose case the percentage referred to in the relevant paragraph is fifty or more.

(6) In subsection (5), "the relevant paragraph" in relation to a shareholder controller means whichever one of paragraphs (a) and (b) of subsection (4) gives the greater percentage in his case.

(7) "Senior executive", in relation to an undertaking, means a person (other than a chief executive) who, under the immediate authority of a director or chief executive of the undertaking —

(a) exercises managerial functions; or

(b) is responsible for maintaining accounts or other records of the undertaking.

(8) In this section "chief executive" in relation to an undertaking, means a person who, either alone or jointly with one or more persons, is responsible under the immediate authority of the directors for the conduct of the business of the undertaking.

(9) In this Act "associate" in relation to a person entitled to exercise or control the exercise of voting power in relation to, or holding shares in, an undertaking, means—

(a) if that person is an individual —

(i) the spouse, child, step-child or parent of that person;

(ii) the trustees of any settlement under which that person has a life interest in possession;

(iii) an undertaking of which that person is a director;

(iv) a person who is an employee or partner of that person;

(b) if that person is an undertaking which is a company or a firm —

(i) a director of that undertaking;

(ii) a subsidiary undertaking ;

(iii) a director of a subsidiary of that undertaking;

(c) if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in that undertaking or under which they undertake to act together in exercising their voting power in relation to it, that other person.

(10) For the purpose of subsection (9), "settlement" includes any disposition or arrangement under which property is held in trust.

PART II

THE AUTHORITY

Functions and duties of the Authority

Functions of the Authority

8. (1) The Authority shall have the powers conferred on it by this Act and the duty generally to supervise persons carrying on investment business including investment exchanges and clearing houses.

(2) It shall also be the duty of the Authority to keep under review the operation of this Act and developments in the field of investment business which appear to it to be relevant to the exercise of its powers and the discharge of its duties.

(3) The Authority shall as soon as practicable after the end of each of its financial years, make to the Minister and publish in such manner as it thinks appropriate a report on its activities under this Act in that year.

Authority's statement of principles

9. (1) The Authority shall as soon as practicable after the coming into force of this Act, publish in such manner as it thinks fit a statement of principles in accordance with which it is acting or proposing to act—

(a) in interpreting the minimum criteria and the grounds for revocation of a licence specified in section 21;

(b) in exercising its power to grant, revoke or restrict a licence; and

(c) in exercising its power to obtain information, reports and to require production of documents.

(2) If the Authority makes a material change to the principles it shall publish a statement of the change or the revised statement of principles in the same manner as it published the statement under subsection (1).

Codes of conduct

10. (1) The Authority may issue codes of conduct for the purpose of providing guidance as to the duties, requirements and standards to be complied with, and the procedures (whether as to client identification, record-keeping, internal reporting and training or otherwise) and sound principles to be observed by persons carrying on investment business.

(2) Before issuing a code of conduct, the Authority shall publish a draft of that code in such manner as it thinks fit and shall consider any representations made to it about the draft.

(3) Every investment provider shall in the conduct of its business have regard to any code of conduct issued by the Authority.

(4) A failure on the part of a investment provider to comply with the provisions of such a code shall be taken into account by the Authority in determining whether the business is being conducted in a prudent manner as required by paragraph 5 of the minimum criteria.

Minister to issue directions to Authority

11. The Minister may from time to time give to the Authority general policy directions, not inconsistent with the provisions of this Act, as to the performance of its functions under this Act and the Authority shall give effect to such directions.

PART III

REGULATION OF INVESTMENT PROVIDERS

CHAPTER 1: REQUIREMENTS FOR A LICENCE AND EXEMPTIONS

Licensing

Restriction on carrying on investment business

12. (1) A person shall not carry on, or purport to carry on, investment business in or from Bermuda unless that person is for the time being licensed or is exempted by or under an order made under section 13.

(2) A person who contravenes this section is guilty of an offence and liable —

(a) on summary conviction, to a fine of $100,000 or to imprisonment for a term of two years or to both;

(b) on conviction on indictment, to a fine of $250,000 or to imprisonment for a term of five years or to both.

(3) In proceedings brought against a person for an offence under subsection (1), it shall be a defence for such person to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Exemptions

Exemption from requirement for a licence

13. (1) The Minister acting on the advice of the Authority may by order ("an exemption order") provide for —

(a) a specified person;

(b) persons falling within a specified class;

to be exempt from the requirement to hold a licence.

(2) An exemption order may provide for an exemption to have effect —

(a) in respect of all investment activities;

(b) in respect of one or more specified investment activities;

(c) only in specified circumstances;

(d) subject to conditions.

(3) "Specified" means specified by the exemption order.

(4) An order made under this section is subject to negative resolution procedure.

(5) Where in pursuance of this section, a person is exempted from the requirement to hold a licence but subject to a condition, and the condition is contravened, the exemption shall not have effect, and accordingly proceedings may be brought for an offence under section 12.

Exempted persons may apply to be licensed

14. (1) A person falling within a specified class of persons exempted by or under an order made under section 13 ("exempted person"), may make application under section 16 for a licence.

(2) Upon the issue of a licence to an exempted person —

(a) such person shall cease to be an exempted person; and

(b) the provisions of this Act shall apply to him as a licensed person.

Agreements made by or through unlicensed persons

15. (1) An agreement to which this section applies which is entered into by a person in the course of carrying on investment business in contravention of section 12 shall be enforceable by a party to the agreement against any other party to the agreement.

(2) This section applies to any agreement the making or performance of which by the person seeking to enforce it constitutes an investment activity.

Application for licence

16. (1) Subject to this section, an application for a licence may be made to the Authority in such manner as the Authority may direct.

(2) An applicant shall publish in the Gazette a notice of his intention to apply for a licence.

(3) An application for a licence—

(a) shall be accompanied with—

(i) a copy of the notice published in the Gazette pursuant to subsection (2);

(ii) a business plan setting out the nature and scale of the investment business which is to be carried on by the applicant;

(iii) particulars of the applicant's arrangements for the management of that business;

(iv) such application fee and such other fee as may be prescribed under the Bermuda Monetary Authority Act 1969;

(v) such other information, documents and reports as the Authority may require for the purpose of considering the application; and

(b) shall be made in such form as may be prescribed.

(4) An application may be withdrawn by notice in writing to the Authority at any time before it has determined the application, but in any such case no application fee shall be refunded to the applicant.

Grant and refusal of application for a licence

17. (1) Subject to this section, the Authority may on an application duly made in accordance with section 16, and after being provided with all such information, documents and reports as it may reasonably require under that section, grant or refuse the application for a licence.

(2) The Authority shall not grant an application unless it is satisfied that the minimum criteria are fulfilled with respect to the applicant.

(3) A licence issued under this section may be subject to such limitations on the scope of the investment activity or the manner of operating the investment business as the Authority may determine to be appropriate having regard to the nature and scale of the proposed business.

(4) The Authority may, on application made by an investment provider, vary or remove any limitation imposed on the scope of its licence.

(5) If a firm is licensed —

(a) it is licensed to carry on the investment business concerned in the name of the firm; and

(b) its licensing is not affected by any change in its membership.

(6) If a licensed firm is dissolved, its licence continues to have effect in relation to any firm which succeeds to the business of the dissolved firm.

(7) For the purposes of this section, a firm is to be regarded as succeeding to the business of another firm only if —

(a) the members of the resulting firm are substantially the same as those of the former firm; and

(b) succession is to the whole or substantially the whole of the business of the former firm.

(8) The Minister acting on the advice of the Authority may by order amend the Second Schedule by adding new criteria or by amending or deleting the criteria for the time being specified in the Schedule.

(9) An order made under subsection (8) shall be subject to negative resolution procedure.

Form, display and registration of licences

18. (1) A licence shall be in such form as the Authority may determine.

(2) An investment provider shall at all times keep the licence on display in Bermuda at its principal place of business or at its registered office.

(3) The Authority shall publish in the Gazette a notice of every grant of a licence.

(4) The Authority shall cause to be compiled and maintained a register containing, in respect of each licence, such particulars as may be prescribed; and the register shall, at all reasonable times, be available for inspection by any person.

Fees

19. An investment provider shall pay such fees as may be prescribed under the Bermuda Monetary Authority Act 1969 —

(a) on the grant of the licence; and

(b) on or before 30 April in every year after the year in which the licence was granted;

and different fees may be prescribed having regard to the scope and nature of the business permitted to be conducted under the licence.

CHAPTER 2: SUPERVISION OF INVESTMENT PROVIDERS

Restrictions, revocations and directions

Restriction of licence

20. (1) Subject to section 22, the Authority may restrict a licence —

(a) if it is satisfied of the matters specified in paragraph (a), (b), (d) or (e) of section 21 but it appears to it that the circumstances are not such as to justify revocation;

(b) if it is satisfied that a person has become a controller of an investment provider in contravention of section 28 or has become or remains a controller after being given a notice of objection pursuant to section 29 or 30; or

(c) in connection with the revocation of a licence —

(i) when giving the investment provider notice that it proposes to revoke its licence; or

(ii) at any time after such notice has been given to the investment provider; or

(d) at any time after the investment provider has served a notice surrendering its licence with effect from a later date.

(2) The Authority may restrict a licence by imposing such conditions as it thinks desirable for the protection of the investment provider's clients or potential clients, and may in particular —

(a) require the investment provider to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;

(b) impose limitations on the acceptance of investment business;

(c) prohibit the investment provider from soliciting investment business either generally or from persons who are not already its clients;

(d) prohibit the investment provider from accepting new investment business;

(e) prohibit the investment provider from entering into any other transactions or class of transactions;

(f) require the removal of any controller or officer;

(g) specify requirements to be fulfilled otherwise than by action taken by the investment provider.

(3) Any condition imposed under this section may be varied or withdrawn by the Authority.

(4) The Authority may on the application of an investment provider vary any condition imposed on its licence.

(5) An investment provider which fails to comply with any requirement or contravenes any prohibition imposed on it by a condition under this section shall be guilty of an offence and liable —

(a) on summary conviction to a fine of $25,000;

(b) on conviction on indictment to a fine of $75,000.

(6) The fact that a condition imposed under this section has not been complied with (whether or not constituting an offence under subsection (5)) shall, where the restriction has been imposed pursuant to paragraph (a) or (b) of subsection (1), be a ground for the revocation of the licence in question but shall not invalidate any transaction.

Revocation of licence

21. Subject to section 22, the Authority may revoke the licence of an investment provider if the Authority is satisfied that —

(a) any of the minimum criteria is not or has not been fulfilled, or may not be or may not have been fulfilled, in respect of the investment provider;

(b) the investment provider has failed to comply with any obligation imposed on it by or under this Act or is carrying on business in a manner not authorised by its licence;

(c) a person has become a majority shareholder controller of the investment provider in contravention of section 28 or has become or remains such a controller after being given a notice of objection pursuant to section 29 or 30;

(d) the Authority has been provided with false, misleading or inaccurate information by or on behalf of the investment provider or, in connection with an application for a licence, by or on behalf of a person who is or is to be an officer or controller of the investment provider; or

(e) the interests of the clients or potential clients of the investment provider are in any way threatened.

Notice of restriction or revocation of licence

22. (1) Where the Authority proposes to —

(a) restrict a licence under section 20(1);

(b) vary a restriction imposed on a licence otherwise than with the agreement of the investment provider concerned; or

(c) revoke a licence under section 21;

the Authority shall give to the investment provider concerned written notice of its intention to do so.

(2) If the proposed action is within subsection (1)(a) or (1)(b), the notice under that subsection shall specify the proposed restriction or, as the case may be, the proposed variation.

(3) A notice under subsection (1) shall state the ground or grounds on which the Authority intends to act and give particulars of the investment provider's rights under subsection (5).

(4) Where —

(a) the ground for a proposal to impose or vary a restriction or for a proposed revocation is that it appears to the Authority that the criterion in paragraph 1 of the minimum criteria is not or has not been fulfilled, or may not be or may not have been fulfilled, in the case of any person; or

(b) a proposed restriction consists of or includes a condition requiring the removal of any person as a controller or an officer;

the Authority shall give that person a copy of the notice mentioned in subsection (1), together with a statement of his rights under subsection (5).

(5) An investment provider which is given notice under subsection (1) and a person who is given a copy of it under subsection (4) may make representations in writing to the Authority within the period of fourteen days beginning with the day on which the notice was given (or such other longer period as the Authority may allow).

(6) After giving a notice under subsection (1) and taking into account any representations made under subsection (5), the Authority shall decide whether —

(a) to proceed with the action proposed in the notice;

(b) to take no further action;

(c) if the proposed action was to revoke the investment provider's licence, to restrict its licence instead; or

(d) if the proposed action was to restrict the investment provider's licence or to vary the restrictions on a licence, to restrict it or to vary the restrictions in a different manner.

(7) The Authority shall give the investment provider and any such person as is mentioned in subsection (4), written notice of its decision and, except where the decision is to take no further action, the notice shall state the reasons for the decision and give particulars of the rights conferred by subsection (9) and section 33.

(8) A notice under subsection (7) of a decision to restrict a licence, to vary the restrictions on a licence or to revoke a licence shall, subject to sections 33(4) and (5), have the effect of restricting the licence or varying the restriction in the manner specified in the notice or revoking the licence.

(9) Where the decision notified under subsection (7) is to restrict the licence or to vary the restrictions on a licence otherwise than as stated in the notice given under subsection (1), the investment provider may within the period of seven days beginning with the day on which the notice was given under subsection (7) make written representations to the Authority with respect to the restrictions and the Authority may, after taking those representations into account, alter the restrictions.

(10) A notice under subsection (7) shall be given within the period of twenty-eight days beginning with the day on which the notice under subsection (1) was given; and if no notice under subsection (7) is given within that period, the Authority shall be treated as having at the end of that period given a notice under that subsection to the effect that no further action is to be taken.

(11) Where the Authority varies a restriction on an investment provider's licence with its agreement or withdraws a restriction consisting of a condition, the variation or withdrawal shall be effected by written notice to the investment provider.

(12) The Authority may omit from the copy given to a person under subsection (4) and from a notice given to him under subsection (7) any matter which does not relate to him.

(13) The Authority shall publish in the Gazette, in such form as it thinks fit, notice of every revocation of a licence under this Act.

Restriction in cases of urgency

23. (1) No notice need be given under section 22 in respect of the imposition or variation of a restriction on an investment provider's

licence in any case in which the Authority considers that the restriction should be imposed or varied as a matter of urgency.

(2) In any such case the Authority may by written notice to the investment provider impose or vary the restriction.

(3) Any such notice shall state the reason for which the Authority has acted and particulars of the rights conferred by subsection (5) and section 33.

(4) Section 22(4) shall apply to a notice under subsection (2) imposing or varying a restriction as it applies to a notice under section 22(1) in respect of a proposal to impose or vary a restriction; but the Authority may omit from a copy given to a person by virtue of this subsection any matter which does not relate to him.

(5) An investment provider to which a notice is given under this section of the imposition or variation of a restriction and a person who is given a copy of it by virtue of subsection (4) may within the period of fourteen days beginning with the day on which the notice was given make representations to the Authority.

(6) After giving a notice under subsection (2) imposing or varying a restriction and taking into account any representations made in accordance with subsection (5) the Authority shall decide whether —

(a) to confirm or rescind its original decision; or

(b) to impose a different restriction or to vary the restriction in a different manner.

(7) The Authority shall within the period of twenty-eight days beginning with the day on which the notice was given under subsection (2) give the investment provider concerned written notice of its decision under subsection (6) and, except where the decision is to rescind the original decision, the notice shall state the reason for the decision.

(8) Where the notice under subsection (7) is of a decision to take the action specified in subsection (6)(b), the notice under subsection (7) shall have the effect of imposing the restriction or making the variation specified in the notice and with effect from the date on which it is given.

Directions to protect interests of clients

24. (1) The Authority may give an investment provider directions under this section at any time after its licence is revoked or surrendered.

(2) Directions under this section shall be such as appear to the Authority to be desirable for safeguarding the interests of the investment provider's clients.

(3) No direction shall be given to an investment provider under this section after it has ceased to hold or control client assets; and any such direction which is in force with respect to an investment provider shall cease to have effect when the investment provider ceases to hold or control any such assets.

(4) An investment provider which fails to comply with any requirement or contravenes any prohibition imposed on it by a direction under this section shall be guilty of an offence and liable —

(a) on summary conviction to a fine of $25,000;

(b) on conviction on indictment to a fine of $75,000.

Notification and confirmation of directions

25. (1) A direction under section 24 shall be given by notice in writing and may be varied by a further direction; and a direction may be revoked by the Authority by a notice in writing to the investment provider concerned.

(2) A direction under section 24, except one varying a previous direction with the agreement of the investment provider concerned —

(a) shall state the reasons for which it is given and give particulars of the investment provider's rights under subsection (3) and section 33; and

(b) without prejudice to section 24(3), shall cease to have effect at the end of the period of twenty-eight days beginning with the day on which it is given unless before the end of that period it is confirmed by a further written notice given by the Authority to the investment provider concerned.

(3) An investment provider to which a direction is given which requires confirmation under subsection (2) may, within the period of fourteen days beginning with the day on which the direction is given, make written representations to the Authority; and the Authority shall take any such representations into account in deciding whether to confirm the direction.

Surrender of licence

26. (1) An investment provider may surrender its licence by written notice to the Authority.

(2) A surrender shall take effect on the giving of the notice or, if a later date is specified in it, on that date; and where a later date is specified in the notice the investment provider may by further written

notice to the Authority substitute an earlier date, not being earlier than that on which the first notice was given.

(3) The surrender of a licence shall be irrevocable unless it is expressed to take effect at a later date and before that date the Authority by notice in writing allows it to be withdrawn.

Unsolicited calls

Unsolicited calls

27. (1) Except so far as permitted by regulations made by the Minister, no person shall in the course of or in consequence of an unsolicited call made on an individual by way of business enter into an investment agreement with the person on whom the call is made or procure or endeavour to procure that person to enter into such an agreement.

(2) Subject to subsection (4) —

(a) any investment agreement which is entered into in the course of or in consequence of the unsolicited call in contravention of subsection (1) shall not be enforceable against the person on whom the call was made; and

(b) that person shall be entitled to recover any money or other property paid or transferred by him under the agreement, together with compensation for any loss sustained by him as a result of having parted with it.

(3) The compensation recoverable under subsection (2) shall be such as the parties may agree or as the court may, on the application of either party, determine.

(4) The court may allow an agreement to which subsection (2) applies to be enforced or money and property paid or transferred under it to be retained if it is satisfied —

(a) that the person on whom the call was made was not influenced, or not influenced to any material extent, by anything said or done in the course of or in consequence of the call;

(b) without prejudice to paragraph (a), that the person on whom the call was made entered into the agreement —

(i) following discussions between the parties of such a nature and over such a period that his entering into the agreement can fairly be regarded as a consequence of those discussions rather than the call; and

(ii) was aware of the nature of the agreement and any risks involved in entering into it; or

(c) that the call was not made by —

(i) the person seeking to enforce the agreement or to retain the money or property or a person acting on his behalf ; or

(ii) a person who has received or is to receive, any commission or other inducement in respect of the agreement from a person mentioned in sub-paragraph (i).

(5) Where a person elects not to perform an agreement which by virtue of this section is unenforceable against him or by virtue of this section recovers money paid or other property transferred by him under an agreement he shall repay any money and return any other property received by him under the agreement.

(6) Where any property transferred under an agreement to which this section applies has passed to a third party the references to that property in this section shall be construed as references to its value at the time of its transfer under the agreement.

(7) In this section —

"unsolicited call" means a personal visit or oral communication made without express invitation;

"investment agreement" means an agreement within the meaning of section 15(2).

Objections to controllers

Notification of new or increased control

28. (1) No person shall become a ten per cent or majority shareholder controller of an investment provider unless —

(a) he has served on the Authority a written notice stating that he intends to become such a controller of the investment provider; and

(b) either the Authority has, before the end of the period of ninety days beginning with the date of service of that notice, notified him in writing that there is no objection to his becoming such a controller of the investment provider, or that period has elapsed without the Authority having served him under section 29 a written

notice of objection to his becoming such a controller of the investment provider.

(2) Subsection (1) applies also in relation to a person becoming a member of an investment provider which is a firm.

(3) A notice under subsection (1)(a) shall contain such information as the Authority may direct and the Authority may after receiving such a notice from any person, by notice in writing require him to provide such additional information or documents as the Authority may reasonably require for deciding whether to serve notice of objection.

(4) Where additional information or documents are required from any person by a notice under subsection (2) the time between the giving of the notice and the receipt of the information or documents shall be added to the period mentioned in subsection (1)(b).

Objection to new or increased control

29. (1) The Authority may serve a notice of objection under this section on a person who has given notice under section 28 unless it is satisfied —

(a) that the person concerned is a fit and proper person to become a controller of the description in question of the investment provider;

(b) that the interests of clients or potential clients of the investment provider would not be in any other manner threatened by that person becoming a controller of that description of the investment provider; and

(c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the investment provider as a controller of the description in question the minimum criteria would continue to be fulfilled in the case of the investment provider or, if any of those criteria is not fulfilled, that that person is likely to undertake adequate remedial action.

(2) Before serving a notice of objection under this section the Authority shall serve the person concerned with a preliminary written notice stating that the Authority is considering service on that person of a notice of objection and that notice —

(a) shall specify which of the matters mentioned in subsection (1) the Authority is not satisfied about and, subject to subsection (5), the reasons for which it is not satisfied; and

(b) shall give particulars of the rights conferred by subsection (3).

(3) A person served with a notice under subsection (2) may, within a period of twenty-eight days beginning with the day on which the notice is served, make written representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to serve a notice of objection.

(4) A notice of objection under this section shall —

(a) specify which of the matters mentioned in subsection (1) the Authority is not satisfied about and, subject to subsection (5), the reasons for which it is not satisfied; and

(b) give particulars of the rights conferred by section 33.

(5) Subsections (2)(a) and (4)(a) shall not require the Authority to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

(6) Where a person required to give a notice under section 28 in relation to becoming a controller of any description becomes a controller of that description without having given the notice, the Authority may serve him with notice of objection under this section at any time within three months after becoming aware of his having done so and may, for the purpose of deciding whether to serve him with such a notice, require him by notice in writing to provide such information or documents as the Authority may reasonably require.

(7) The period mentioned in section 28(1)(b) (with any extension under subsection (4) of that section) and the period mentioned in subsection (6) shall not expire, if it would otherwise do so, until fourteen days after the end of the period within which representations can be made under subsection (3).

Objection to existing controller

30. (1) Where it appears to the Authority that a person who is a controller of any description of an investment provider is not or is no longer a fit and proper person to be such a controller of the investment provider it may serve him with a written notice of objection to his being such a controller of the investment provider.

(2) Before serving a notice of objection under this section the Authority shall serve the person concerned with a preliminary written notice stating that the Authority is considering service on that person of a notice of objection and that notice shall —

(a) subject to subsection (5), specify the reasons for which it appears to the Authority that the person in question is not or is no longer a fit and proper person as mentioned in subsection (1); and

(b) give particulars of the rights conferred by subsection (3).

(3) A person served with a notice under subsection (2) may, within a period of twenty-eight days beginning with the day on which the notice is served, make written representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to serve a notice of objection.

(4) A notice of objection under this section shall —

(a) subject to subsection (5), specify the reasons for which it appears to the Authority that the person in question is not or is no longer a fit and proper person as mentioned in subsection (1); and

(b) give particulars of the rights conferred by section 33.

(5) Subsections (2)(a) and (4)(a) shall not require the Authority to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

Contraventions by controller

31. (1) Subject to subsection (2), any person who contravenes section 28 by —

(a) failing to give the notice required by subsection (1)(a) of that section; or

(b) becoming a controller of any description to which that section applies before the end of the period mentioned in subsection (1)(b) of that section in a case where the Authority has not served him with a preliminary notice under section 29(2);

shall be guilty of an offence.

(2) A person shall not be guilty of an offence under subsection (1) if he shows that he did not know of the acts or circumstances by virtue of which he became a controller of the relevant description; but where any person becomes a controller of any such description without such knowledge and subsequently becomes aware of the fact that he has become such a controller he shall be guilty of an offence unless he gives the Authority written notice of the fact that he has become such a controller within fourteen days of becoming aware of the fact.

(3) Any person who —

(a) before the end of the period mentioned in section 28 (1)(b), becomes a controller of any description to which that subsection applies after being served with a preliminary notice under section 29(2);

(b) contravenes section 28 by becoming a controller of any description after being served with a notice of objection to his becoming a controller of that description; or

(c) having become a controller of any description in contravention of that section (whether before or after being served with such notice of objection) continues to be such a controller after such a notice has been served on him;

shall be guilty of an offence.

(4) A person guilty of an offence under subsection (1) or (2) shall be liable on summary conviction to a fine of $25,000.

(5) A person guilty of an offence under subsection (3) shall be liable —

(a) on summary conviction to a fine of $25,000 and in respect of an offence under paragraph (c) of that subsection, to a fine of $500 for each day on which the offence has continued;

(b) on conviction on indictment to a fine of $50,000 or to imprisonment for two years or to both.

Restriction on and sale of shares

32. (1) The powers conferred by this section shall be exercisable where a person —

(a) has contravened section 29 by becoming a controller of any description after being served with a notice of objection to his becoming a controller of that description;

(b) having become a controller of any description in contravention of that section continues to be one after such a notice has been served on him; or

(c) continues to be a controller of any description after being served under section 30 with notice of objection to his being a controller of that description.

(2) The Authority may by notice in writing served on the person concerned direct that any specified shares to which this section applies shall, until further notice, be subject to one or more of the following restrictions —

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

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

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

(d) except in liquidation, no payment shall be made of any sums due from the investment provider on the shares, whether in respect of capital or otherwise.

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

(4) No order shall be made under subsection (3) in a case where the notice of objection was served under section 29 or 30 —

(a) until the end of the period within which an appeal can be brought against the notice of objection;

(b) if such an appeal is brought, until it has been determined or withdrawn.

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

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

(7) This section applies —

(a) to all the shares in the investment provider of which the person in question is a controller of the relevant description which are held by him or any associate of his

and were not so held immediately before he became such a controller of the investment provider; and

(b) where the person in question became a controller of the relevant description as a result of the acquisition by him or any associate of his of shares in another company, to all the shares in that company which are held by him or any associate of his and were not so held before he became such a controller of that investment provider.

(8) A copy of the notice served on the person concerned under subsection (2) shall be served on the investment provider or company to whose shares it relates and, if it relates to shares held by an associate of that person, on that associate.

CHAPTER 3: APPEAL TRIBUNALS

Rights of appeal

33. (1) An investment provider which is aggrieved by a decision of the Authority —

(a) to restrict its licence, to restrict it in a particular manner or to vary any restrictions of its licence;

(b) to refuse an application, made under section 17(4), to vary or remove a limitation imposed on its licence under section 17(3);

(c) to revoke its licence; or

(d) to publish a statement in respect of it pursuant to section 53;

may appeal against the decision to a tribunal constituted in accordance with section 34.

(2) Where —

(a) the ground or a ground for a decision within subsection (1)(a) or (c) is that mentioned in section 22(4)(a); or

(b) the effect of a decision within subsection (1)(a) is to require the removal of a person as a controller or officer of an investment provider;

the controller or officer to whom the ground relates or whose removal is required may appeal to a tribunal constituted as aforesaid against the finding that there is such a ground for the decision or, as the case may be, against the decision to require his removal.

(3) Any person on whom notice of objection is served under section 29 or 30 may appeal to a tribunal constituted as aforesaid against the decision of the Authority to serve the notice; but this subsection does not apply to a person in any case in which he has failed to give a notice or become or continued to be a controller in circumstances in which his doing so constitutes an offence under section 31(1), (2) or (3).

(4) The tribunal may suspend the operation of a restriction or a variation of a restriction pending the determination of an appeal in respect of the decision imposing or varying the restriction.

(5) The revocation of an investment provider's licence pursuant to a decision against which there is a right of appeal under this section shall not have effect —

(a) until the end of the period within which the appeal can be brought; and

(b) if such an appeal is brought, until it is determined or withdrawn.

Constitution of tribunal

34. (1) A tribunal shall consist of a chairman, or, in his absence, a deputy chairman and two other members.

(2) The chairman and the deputy chairman shall be appointed by the Minister for a term not exceeding three years, and shall be barristers and attorneys of at least seven years' standing.

(3) During any period of time when the chairman or deputy chairman is absent from Bermuda or is for any other reason unable to act, the Minister may appoint another person to act in his place for the period of his absence or inability to act.

(4) The Minister shall appoint a panel of not less than five persons with experience of investment business to serve as members of appeal tribunals.

(5) A person shall not be eligible for appointment as chairman, deputy chairman or member of a tribunal if he is or has at any time during the period of two years ending with the date of his appointment been an officer, servant or agent of the Authority or of any investment provider.

Determination of appeals

35. (1) Where an appeal is brought under the provisions of this Act the chairman or as the case may be the deputy chairman shall nominate

two other members from the panel of members, who together with him shall constitute the tribunal which shall determine the appeal.

(2) On an appeal under sections 33(1) and (2) the question for the determination of the tribunal shall be whether, for the reasons adduced by the appellant, the decision was unlawful or not justified by the evidence on which it was based.

(3) On any such appeal the tribunal may confirm or reverse the decision which is the subject of the appeal but shall not have power to vary it except that —

(a) where the decision was to impose or vary any restriction the tribunal may direct the Authority to impose different restrictions or to vary them in a different way; or

(b) where the decision was to revoke a licence the tribunal may direct the Authority to restrict it instead.

(4) Notice of a tribunal's determination, together with a statement of its reasons, shall be given to the appellant and to the Authority; and, unless the tribunal otherwise directs, the determination shall come into operation when the notice is given to the appellant and to the Authority.

Costs, procedure and evidence

36. (1) A tribunal may give such directions as it thinks fit for the payment of costs or expenses by any party to the appeal.

(2) The Minister may make regulations with respect to appeals and those regulations may in particular make provision —

(a) as to the period within which and the manner in which such appeals are to be brought;

(b) as to the manner in which such appeals are to be conducted, including provision for any hearing to be held in private and as to the persons entitled to appear on behalf of the parties;

(c) as to the procedure to be adopted where appeals are brought both by an investment provider and by a person who is to be a controller or officer of an investment provider, including provision for the hearing of the appeals together and for the mutual disclosure of information;

(d) for requiring an appellant or the Authority to disclose or allow the inspection of documents in his or its custody or under his or its control;

(e) for requiring any person, on tender of the necessary expenses of his attendance, to attend and give evidence or produce documents in his custody or under his control and for authorising the administration of oaths to witnesses;

(f) for enabling an appellant to withdraw an appeal or the Authority to withdraw its opposition to an appeal and for the consequences of any such withdrawal;

(g) for taxing or otherwise settling any costs or expenses which the tribunal directs to be paid and for the enforcement of any such direction;

(h) for enabling any preliminary or incidental functions in relation to an appeal to be discharged by the chairman or, as the case may be, the deputy chairman of the tribunal; and

(i) as to any other matter connected with such appeals.

(3) Regulations made under subsection (2) shall be subject to negative resolution procedure.

(4) A person who, having been required in accordance with regulations made under this section to attend and give evidence, fails without reasonable excuse to attend or give evidence, shall be guilty of an offence and liable on summary conviction to a fine of $10,000.

(5) A person who without reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which he has been required to produce in accordance with regulations under this section, or which he is liable to be so required to produce, shall be guilty of an offence and liable —

(a) on summary conviction to a fine of $25,000 or to imprisonment for six months or to both;

(b) on conviction on indictment to a fine of $50,000 or to imprisonment for two years or to both.

Further appeals on a point of law

37. (1) An investment provider or other person who has appealed to a tribunal may appeal to the court on any question of law arising from the decision of the appeal by the tribunal and an appeal on any such question shall also lie at the instance of the Authority; and if the court is of the opinion that the decision was erroneous in point of law it shall remit the matter to the tribunal for re-hearing and determination by it.

(2) No appeal to the Court of Appeal shall be brought from a decision of the court under subsection (1) except with leave of the Court of Appeal.

CHAPTER 4: ACCOUNTS AND AUDIT

Duty to prepare annual financial statements and accounts

38. (1) Every investment provider shall prepare annual financial statements or accounts as required by this section in respect of all transactions and balances relating to his investment business.

(2) An investment provider which is a company shall prepare annual financial statements of its business, and shall cause copies of those statements to be laid before the company in general meeting.

(3) An investment provider which is not a company shall prepare annual accounts in such form and containing such particulars as the Authority may prescribe.

(4) An investment provider where so required by section 41(1) shall cause the financial statements or the accounts of its business to be audited annually, and shall at each of its offices in Bermuda keep a copy of its most recent audited financial statements or accounts together with the auditor's report thereon.

(5) Not later than four months after the close of its financial year every investment provider shall provide the Authority with a copy of its financial statements or its accounts for that year, and, where such statements or accounts have been audited, a report thereon.

Duty to maintain systems and records

39. (1) An investment provider shall maintain such systems and records relating to its investment business as may be prescribed by regulations made by the Minister.

(2) Regulations made under subsection (1) shall require an investment provider to maintain accounts for clients' assets separately from its own.

Clients' money

40. (1) The Minister may, after consultation with the Authority, make regulations with respect to money (in this section referred to as 'clients' money') which investment providers hold in such circumstances as are specified in the regulations.

(2) Without prejudice to the generality of subsection (1), regulations under this section may —

(a) provide that clients' money held by an investment provider is held on trust;

(b) require clients' money to be paid into an account the title of which contains the word 'client' and which is with an institution of a kind specified in the regulations;

(c) make provision with respect to the opening and keeping of clients' accounts, including provision as to the circumstances in which money other than clients' money may be paid into such accounts and the circumstances in which and the persons to whom money held in such accounts may be paid out;

(d) require the keeping of accounts and records in respect of clients' money;

(e) require any such accounts to be examined by an approved auditor and require such auditor to report to the Authority whether in his opinion the provisions of the regulations have been complied with and on such other matters as may be specified in the regulations;

(f) authorise the retention, to such extent and in such cases as may be specified in the regulations, of so much of clients' money as represents interest.

(3) An institution with which an account is kept in pursuance of regulations made under this section does not incur any liability as constructive trustee where money is wrongfully paid from the account unless the institution permits the payment —

(a) in the knowledge that it is wrongful to do so; or

(b) having deliberately failed to make enquiries in circumstances in which a reasonable and honest person would have done so.

(4) In this section, "institution" means a company carrying on deposit-taking business within the meaning of the Banks and Deposit Companies Act 1999 approved by the Authority for the purposes of this section.

Appointment of auditors

41. (1) Every investment provider which under the terms of its licence is authorised to hold clients' money shall appoint annually an approved auditor to audit the financial statements or as the case may be accounts, of the investment provider.

(2) If an investment provider fails to appoint an approved auditor as required by subsection (1) or, at any time, fails to fill a vacancy for such auditor, the Authority may appoint an approved auditor and shall fix the remuneration to be paid by that investment provider to such auditor.

(3) An investment provider shall forthwith give written notice to the Authority if it —

(a) proposes to remove an auditor before the expiration of his term of office; or

(b) proposes to replace an auditor at the expiration of the term of his office with a different auditor.

(4) An investment provider which fails to comply with this section shall be guilty of an offence and shall be liable on summary conviction to a fine of $25,000.

(5) For the purposes of this section, "approved auditor" means an auditor who is a person entitled to practice as a public accountant and is a member of a professional body approved by the Authority for the purposes of this Act.

(6) No person having an interest in any investment provider otherwise than as a client, and no officer, servant or agent of any investment provider shall be eligible for appointment as an approved auditor for that investment provider; and any person appointed as such auditor to any investment provider who subsequently acquires such interest or becomes an officer, servant or agent of that investment provider shall cease to be an approved auditor.

Auditor to communicate certain matters to Authority

42. (1) An auditor of an investment provider shall in the circumstances specified in subsection (2) forthwith give written notice to the Authority of those matters.

(2) The circumstances referred to in subsection (1) are —

(a) his resignation before the expiration of his term of office;

(b) his intention not to seek to be re-appointed;

(c) a decision to include a modification of his report on the investment provider's financial statements and in particular, a qualification or denial of his opinion, or the statement of an adverse opinion;

(d) if he has reasonable cause to believe —

(i) that any of the minimum criteria is not or has not been fulfilled, or may not be or may not have been fulfilled, in respect of the investment provider of which he is an auditor; and

(ii) that the matters are likely to be of material significance for the exercise, in relation to such an investment provider, of the Authority's functions under this Act.

(3) An auditor who fails to comply with this section shall be guilty of an offence and shall be liable on summary conviction to a fine of $25,000.

CHAPTER 5: INFORMATION GATHERING AND INVESTIGATION

Information gathering

Notification of change of controller or officer

43. (1) An investment provider shall give written notice to the Authority of the fact that any person has become or ceased to be a controller or officer of the investment provider.

(2) A notice required to be given under subsection (1) shall be given before the end of the period of fourteen days beginning with the day on which the investment provider becomes aware of the relevant facts.

(3) An investment provider which fails to give a notice required by this section shall be guilty of an offence and liable on summary conviction to a fine of $10,000.

Certificates of compliance

44. (1) Every investment provider shall, within four months from the end of its financial year, deliver to the Authority a certificate signed by an officer of the investment provider, certifying that the investment provider has, with respect to the preceding financial year —

(a) complied with the minimum criteria;

(b) failed to comply with the minimum criteria;

(c) where the licence is issued subject to limitations imposed pursuant to section 17(3), observed such limitations.

(2) Where an investment provider delivers to the Authority a certificate in the terms of subsection (1)(b), it shall, at the time of such delivery, give the Authority particulars of such failure in writing.

(3) An investment provider which fails to deliver a certificate as required by subsection (1) or delivers such a certificate after the end of the period specified therein or fails to give the particulars required by subsection (2), is guilty of an offence and is liable on summary conviction to a fine of $10,000.

Power to obtain information and reports

45. (1) The Authority may by notice in writing served on an investment provider—

(a) require the investment provider to provide the Authority (or such person acting on behalf of the Authority as may be specified in the notice), at such time or times or at such intervals or in respect of such period or periods as may be so specified, with such information as the Authority may reasonably require for the performance of its functions under this Act;

(b) require the investment provider to provide the Authority with a report, in such form as may be specified in the notice, by the investment provider's auditor, or by an accountant, or other person with relevant professional skill on, or on any aspect of, any matter about which the Authority has required or could require the investment provider to provide information under paragraph (a).

(2) The person appointed by an investment provider to make the report required under subsection (1)(b) shall forthwith give written notice to the Authority of any fact or matter of which he becomes aware which indicates to him —

(a) that any of the minimum criteria is not or has not been fulfilled, or may not be or may not have been fulfilled, in respect of the investment provider; and

(b) that the matters are likely to be of material significance for the exercise, in relation to such investment provider, of the Authority's functions under this Act.

Power to require production of documents

46. (1) The Authority may —

(a) by notice in writing served on an investment provider require it to produce, within such time and at such place as may be specified in the notice, such document or documents of such description as may be so specified;

(b) authorise an officer, servant or agent of the Authority on producing such evidence of his authority, to require an investment provider to provide him forthwith with such information, or to produce to him such documents, as he may specify;

being such information or documents as the Authority may reasonably require for the performance of its functions under this Act.

(2) Where, by virtue of subsection (1), the Authority or any officer, servant or agent of the Authority has power to require the production of any documents from an investment provider, the Authority or that officer, servant or agent shall have the like power to require the production of those documents from any person who appears to be in possession of them; but where any person from whom such production is required claims a lien on documents produced by him, the production shall be without prejudice to the lien.

(3) The power under this section to require an investment provider or other person to produce any documents includes power —

(a) if the documents are produced, to take copies of them or extracts from them and to require that investment provider or person, or any other person who is a present or past controller or officer of, or is or was at any time employed by or acting as an employee of, the investment provider in question, to provide an explanation of any of them; and

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

(4) If it appears to the Authority to be desirable in the interests of the clients or potential clients of an investment provider ("A") to do so, it may also exercise the powers conferred by section 45 and subsection (1) of this section in relation to an undertaking which is or has at any relevant time been —

(a) a member of A's group;

(b) a controller of A; or

(c) any other member of a partnership of which A is a member.

(5) The Authority may by notice in writing served on any person who is or is to be a controller or officer of an investment provider require him to provide the Authority, within such time as may be specified in the notice, with such information or documents as the

Authority may reasonably require for determining whether he is a fit and proper person to hold the particular position which he holds or is to hold.

(6) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section shall be guilty of an offence and liable on summary conviction to a fine of $10,000 or to imprisonment for six months or to both.

(7) Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in Bermuda.

Right of entry to obtain information and documents

47. (1) Any officer, servant or agent of the Authority may, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under sections 45(1) and 46(1) for the purpose of obtaining there the information or documents required by that notice and of exercising the powers conferred by section 46(3).

(2) Any officer, servant or agent of the Authority may, on producing if required evidence of his authority, enter any premises occupied by any person on whom a notice could be served under sections 45(1) and 46(1) for the purpose of obtaining there such information or documents as are specified in the authority, but the Authority shall not authorise any person to act under this subsection unless it has reasonable cause to believe that if such a notice were served it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(3) Any person who intentionally obstructs a person exercising rights conferred by this section shall be guilty of an offence and liable on summary conviction to a fine of $10,000 or to imprisonment for six months or to both.

Communication with Authority

48. (1) No duty to which —

(a) an auditor of an investment provider;

(b) an auditor, accountant or other person appointed to make a report under section 45(1)(b);

may be subject shall be regarded as contravened by reason of his communicating in good faith to the Authority, whether or not in response to a request made by the Authority, any information or opinion on a

matter to which this section applies and which is relevant to any function of the Authority under this Act.

(2) In relation to an auditor of an investment provider this section applies to any matter of which he becomes aware in his capacity as auditor and which relates to the business or affairs of the investment provider or any connected person.

(3) In relation to a person appointed to make a report under section 45(1)(b) this section applies to any matter of which he becomes aware in his capacity as the person making the report and which —

(a) relates to the business or affairs of the investment provider in relation to which his report is made or any connected person of that investment provider;

(b) if by virtue of section 46(4) the report relates to a connected person of an investment provider, to the business or affairs of that person.

(4) In this section "connected person", in relation to an investment provider ("A"), means any such person as is mentioned in sections 46(4)(a) to (c).

Investigations

Investigations on behalf of the Authority

49. (1) If it appears to the Authority desirable to do so in the interests of the clients or potential clients of an investment provider the Authority may appoint one or more competent persons to investigate and report to the Authority on —

(a) the nature, conduct or state of the investment provider's business or any particular aspect of it; or

(b) the ownership or control of the investment provider;

and the Authority shall give written notice of any such appointment to the investment provider concerned.

(2) If a person appointed under subsection (1) thinks it necessary for the purposes of his investigation, he may also investigate the business of a person who is or has at any relevant time been a member of the group of which the person under investigation ("A") is part; or a partnership of which A is a member.

(3) Where a person appointed under subsection (1) decides to investigate the business of any person referred to in subsection (2) he shall give that person written notice to that effect.

(4) It shall be the duty of every person who is or was a controller, officer, employee, agent, banker, auditor, accountant or barrister and attorney of an investment provider which is under investigation by virtue of subsection (1) or a person who is under investigation under subsection (2) or any person appointed to make a report in respect of that investment provider under section 45(1)(b) —

(a) to produce to the persons appointed under subsection (1), within such time and at such place as they may require, all documents relating to the person concerned which are in his custody or power;

(b) to attend before the persons so appointed at such time and place as they may require; and

(c) otherwise to give those persons all assistance in connection with the investigation which he is reasonably able to give;

and those persons may take copies of or extracts from any documents produced to them under paragraph (a).

(5) For the purpose of exercising his powers under this section, a person appointed under subsection (1) may enter any premises occupied by an investment provider which is being investigated by him under this section; but he shall not do so without prior notice in writing.

(6) A person exercising powers by virtue of an appointment under this section shall, if so required, produce evidence of his authority.

(7) Any person who —

(a) without reasonable excuse fails to produce any documents which it is his duty to produce under subsection (4);

(b) without reasonable excuse fails to attend before the persons appointed under subsection (1) when required to do so;

(c) without reasonable excuse fails to answer any question which is put to him by persons so appointed with respect to an investment provider which is under investigation or a person who is being investigated by virtue of subsection (2); or

(d) intentionally obstructs a person in the exercise of the rights conferred by subsection (5);

shall be guilty of an offence and liable on summary conviction to a fine of $10,000 or to imprisonment for six months or to both.

(8) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him in criminal proceedings.

(9) Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in Bermuda.

Investigation of suspected contraventions

50. (1) Where the Authority has reasonable grounds for suspecting that —

(a) a person has contravened section 12; or

(b) an exempted person has contravened a condition of an exemption order made under section 13;

the Authority or any duly authorised officer, servant or agent of the Authority may by notice in writing require that or any other person —

(c) to provide, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information as the Authority may reasonably require for the purpose of investigating the suspected contravention;

(d) to produce, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required by the Authority for that purpose;

(e) to attend at such place and time as may be specified in the notice and answer questions relevant for determining whether such a contravention has occurred.

(2) The Authority or a duly authorised officer, servant or agent of the Authority may take copies of or extracts from any documents produced under this section.

(3) Any officer, servant or agent of the Authority may, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under subsection (1) for the purpose of obtaining there the information or documents required by the notice, putting the questions referred to in paragraph (e) of that subsection or exercising the powers conferred by subsection (2).

(4) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section or intentionally obstructs a person in the exercise of the rights conferred by subsection (3) shall be guilty of an offence and liable on summary conviction to a fine of $10,000 or to imprisonment for six months or to both.

(5) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him in criminal proceedings.

(6) Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in Bermuda.

Powers of entry

51. (1) A magistrate may issue a warrant under this section if satisfied on information on oath laid by an officer of the Authority or laid under the Authority's authority that there are reasonable grounds for suspecting that a person is guilty of such a contravention as is mentioned in section 50 and —

(a) that that person has failed to comply with a notice served on him under that section;

(b) that there are reasonable grounds for suspecting the completeness of any information provided or documents produced by him in response to such a notice; or

(c) that there are reasonable grounds for suspecting that if a notice were served on him under that section it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(2) A warrant under this section shall authorise any police officer not below the rank of inspector, together with any other person named in the warrant and any other police officers —

(a) to enter any premises occupied by the person mentioned in subsection (1) which are specified in the warrant, using such force as is reasonably necessary for the purpose;

(b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsection (1)(c) or to take, in relation to any such documents, any other steps which may appear

to be necessary for preserving them or preventing interference with them;

(c) to take copies of or extracts from any such documents;

(d) to require any person named in the warrant to answer questions relevant for determining whether that person is guilty of any such contravention as is mentioned in section 50.

(3) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.

(4) Any documents of which possession is taken under this section may be retained —

(a) for a period of three months; or

(b) if within that period proceedings to which the documents are relevant are commenced against any person for any such contravention as is mentioned in section 50, until the conclusion of those proceedings.

(5) Any person who intentionally obstructs the exercise of any right conferred by a warrant issued under this section or fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (2)(d) shall be guilty of an offence and liable —

(a) on summary conviction, to a fine of $25,000 or to imprisonment for six months or to both;

(b) on conviction on indictment, to a fine of $50,000 or to imprisonment for two years or to both.

Obstruction of investigations

52. (1) A person who knows or suspects that an investigation is being or is likely to be carried out —

(a) into a suspected contravention of section 12 or of a condition imposed by virtue of an exemption order made under section 13; or

(b) under section 49;

shall be guilty of an offence if he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which he knows or suspects are or would be relevant to such an investigation unless he proves that he had

no intention of concealing facts disclosed by the documents from persons carrying out such an investigation.

(2) A person guilty of an offence under this section shall be liable —

(a) on summary conviction, to a fine of $25,000 or to imprisonment for six months or to both;

(b) on conviction on indictment, to a fine of $50,000 or to imprisonment for two years or to both.

CHAPTER 6: DISCIPLINARY MEASURES

Public censure

53. (1) If the Authority considers that an investment provider has contravened a requirement imposed on it by or under this Act, the Authority may publish a statement to that effect.

(2) After a statement under this section is published, the Authority shall send a copy of it to the investment provider.

Proposal to censure publicly

54. (1) If the Authority proposes to publish a statement in respect of an investment provider under section 53, it shall give the investment provider a warning notice.

(2) A warning notice about a proposal to publish a statement shall set out the terms of the statement.

Terms of statement

55. (1) If the Authority decides to publish a statement under section 53 (whether or not in the terms proposed), it shall without delay give the investment provider concerned a decision notice.

(2) The decision notice shall set out the terms of the statement.

(3) If the Authority decides to publish a statement in respect of an investment provider under section 53, the investment provider may appeal the matter to the tribunal under section 33.

Warning notices

56. (1) A warning notice shall —

(a) state the action which the Authority proposes to take;

(b) be in writing; and

(c) give reasons for the proposed action.

(2) The warning notice shall specify a reasonable period (which may not be less than 28 days) within which the person to whom it is given may make representations to the Authority.

(3) The Authority may extend the period specified in the notice.

(4) The Authority shall then decide, within a reasonable period, whether to give the person concerned a decision notice.

Decision notices

57. (1) A decision notice shall —

(a) be in writing;

(b) give the Authority's reasons for the decision to publish a statement under section 53; and

(c) give an indication of —

(i) any right to have the matter appealed to the tribunal which is given by this Act; and

(ii) the procedure on such an appeal.

Notices of discontinuance

58. (1) If the Authority decides not to take —

(a) the action proposed in a warning notice; or

(b) the action to which a decision notice relates;

it shall give a notice of discontinuance to the person to whom the warning notice or decision notice was given.

(2) A notice of discontinuance shall identify the proceedings which are being discontinued.

Final notices

59. (1) If the Authority has given a person a decision notice and the matter was not referred to the tribunal within the period within which appeals are to be brought, the Authority shall, on taking the action to which the decision notice relates, give the person concerned a final notice.

(2) If the Authority has given a person a decision notice and the matter was referred to the tribunal, the Authority shall, on taking action in accordance with any directions given by —

(a) the tribunal; or

(b) the court pursuant to an appeal under section 37;

give that person a final notice.

(3) A final notice shall —

(a) set out the terms of the statement;

(b) give details of the manner in which, and the date on which, the statement will be published.

Publication

60. (1) Neither the Authority nor a person to whom a warning notice or decision notice is given or copied may publish the notice or any details concerning it.

(2) A notice of discontinuance shall state that, if the person to whom the notice is given consents, the Authority may publish such information as it considers appropriate about the matter to which the discontinued proceedings related.

(3) A copy of a notice of discontinuance shall be accompanied by a statement that, if the person to whom the notice is copied consents, the Authority may publish such information as it considers appropriate about the matter to which the discontinued proceedings related, so far as relevant to that person.

(4) The Authority shall publish such information about the matter to which a final notice relates as it considers appropriate.

(5) But the Authority may not publish information under this section if publication of it would, in its opinion, be unfair to the person with respect to whom the action was taken or prejudicial to the interests of clients or potential clients of investment providers.

(7) Information is to be published under this section in such manner as the Authority considers appropriate.

(8) "Notice of discontinuance" means a notice given under section 58.

CHAPTER 7: PROTECTIVE MEASURES

Winding up and dissolution

Winding up or dissolution on petition from the Authority

61. (1) The Authority may present a petition to the court for the winding up of a company or the dissolution of a firm which —

(a) has been a licensed person; or

(b) is carrying on, or has carried on, investment business in contravention of the provisions of this Act.

(2) On such a petition, the court may wind up the company or dissolve the firm if it is of the opinion that it is just and equitable that the company be wound up or the firm dissolved.

(3) Part XIII (Winding Up) of the Companies Act 1981 shall apply to the winding up of a company under this section.

Injunctions and restitutions

Injunctions

62. (1) If, on the application of the Authority, the court is satisfied —

(a) that there is a reasonable likelihood that any person will contravene a relevant requirement; or

(b) that any person has contravened a relevant requirement and that there is a reasonable likelihood that the contravention will continue or be repeated;

the court may make an order restraining the contravention.

(2) If on the application of the Authority the court is satisfied —

(a) that any person has contravened a relevant requirement; and

(b) that there are steps which could be taken for remedying the contravention;

the court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.

(3) If, on the application of the Authority the court is satisfied that any person may have —

(a) contravened a relevant requirement; or

(b) been knowingly concerned in the contravention of such a requirement;

it may make an order restraining him from disposing of, or otherwise dealing with, any assets of his which it is satisfied he is reasonably likely to dispose of or otherwise deal with.

(4) In subsection (2), references to remedying a contravention include references to mitigating its effect.

(5) "Relevant requirement" in relation to an application by the Authority, means a requirement which is imposed by or under this Act.

Restitution orders

63. (1) The court may, on the application of the Authority, make an order under subsection (2) if it is satisfied that a person has contravened a relevant requirement, or been knowingly concerned in the contravention of such a requirement, and —

(a) that profits have accrued to him as a result of the contravention; or

(b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.

(2) The court may order the person concerned to pay to the Authority such sum as appears to the court to be just having regard —

(a) in a case within subsection (1)(a), to the profits appearing to the court to have accrued;

(b) in a case within subsection (1)(b), to the extent of the loss or other adverse effect;

(c) in a case within both subsections, to the profits appearing to the court to have accrued and to the extent of the loss or other adverse effect.

(3) Any amount paid to the Authority in pursuance of an order under subsection (2) shall be paid by it to such qualifying person or distributed by it among such qualifying persons as the court may direct.

(4) On an application under subsection (1) the court may require the person concerned to supply it with such accounts or other information as it may require for any one or more of the following purposes —

(a) establishing whether any and, if so, what profits have accrued to him as mentioned in subsection (1)(a);

(b) establishing whether any person or persons have suffered any loss or adverse effect as mentioned in subsection (1)(b) and, if so, the extent of that loss or adverse effect; and

(c) determining how any amounts are to be paid or distributed under subsection (3).

(5) The court may require any accounts or other information supplied under subsection (4) to be verified in such manner as it may direct.

(6) Nothing in this section affects the right of any person other than the Authority to bring proceedings in respect of the matters to which this section applies.

(7) "Qualifying person" means a person appearing to the court to be someone —

(a) to whom the profits mentioned in subsection (1)(a) are attributable; or

(b) who has suffered the loss or adverse effect mentioned in subsection (1)(b).

(8) "Relevant requirement" in relation to an application by the Authority, means a requirement which is imposed by or under this Act.

Administrators

Appointment of administrator by court

64. (1) The court may, on the application of the Authority, make an order appointing a person with appropriate experience to manage and administer the business of an investment provider if it is satisfied that as a consequence of the matters specified in subsection (2) every person who is a controller of the investment provider is not a fit and proper person to hold the particular position which he holds.

(2) Those matters are —

(a) the Authority has restricted the investment provider's licence so as to require the removal of one or more controllers or the appointment of one or more controllers; and

(b) the investment provider has failed to comply with such requirement.

(3) An administrator appointed under subsection (1) in managing and administering the business of the investment provider, shall take such action as will protect the interests of the clients of the investment provider, but shall not take on any new business.

(4) The court may from time to time give such directions to the administrator as it considers appropriate to the performance of his functions under this section.

(5) With effect from the date of appointment of the administrator, every person —

(a) who is a controller of the investment provider shall cease to hold office; and

(b) the administrator so appointed shall take over and be solely responsible for the management and administration of the investment provider's business.

(6) An administrator appointed under subsection (1) shall receive such remuneration as the court may determine, which shall be charged to, and payable by, the investment provider.

PART IV

REGULATION OF INVESTMENT EXCHANGES AND CLEARING HOUSES

Recognised investment exchanges and clearing houses

Interpretation

65. (1) In this Part —

"application" means an application for a recognition order made under section 68 or 69;

"applicant" means a body corporate or a firm which has applied for a recognition order;

"recognised body" means a recognised investment exchange or a recognised clearing house;

"recognised clearing house" means a clearing house in relation to which a recognition order is in force;

"recognised investment exchange" means an investment exchange in relation to which a recognition order is in force;

"recognition order" means an order made under section 71;

"recognition requirements" has the meaning given in section 67;

"revocation order" has the meaning given in section 76.

(2) References in this Part to rules of an investment exchange or a clearing house are to rules made, or conditions imposed, by the investment exchange or the clearing house with respect to —

(a) recognition requirements;

(b) admission of persons to, or their exclusion from the use of, its facilities; or

(c) matters relating to its constitution.

(3) References in this Part to guidance issued by an investment exchange are references to guidance issued, or any recommendation made, in writing or other legible form and intended to have continuing effect, by the investment exchange to —

(a) all or any class of its members or users; or

(b) persons seeking to become members of the investment exchange or to use its facilities;

with respect to any of the matters mentioned in subsections (2)(a) to (c).

(4) References in this Part to guidance issued by a clearing house are to guidance issued, or any recommendation made, in writing or other legible form and intended to have continuing effect, by the clearing house to —

(a) all or any class of its members; or

(b) persons using or seeking to use its services;

with respect to the provision by it or its members of clearing services.

Exemption for recognised investment exchanges and clearing houses.

66. (1) A recognised investment exchange is exempt from the requirement to hold a licence under this Act in respect of any investment activity —

(a) which is carried on as a part of the exchange's business as an investment exchange; or

(b) which is carried on for the purposes of, or in connection with, the provision of clearing services by the exchange.

(2) A recognised clearing house is exempt from the requirement to hold a licence under this Act in respect of any investment activity which is carried on for the purposes of, or in connection with, the provision of clearing services by the clearing house.

Qualifications for recognition

67. (1) The Minister, acting on the advice of the Authority, may make regulations setting out the requirements —

(a) which shall be satisfied by an investment exchange or clearing house if it is to qualify as a body in respect of

which the Authority may make a recognition order under this Part; and

(b) which, if a recognition order is made, it shall continue to satisfy if it is to remain a recognised body.

(2) Requirements resulting from this section are referred to in this Part as "recognition requirements".

(3) Regulations made under this section are subject to negative resolution procedure.

Application by an investment exchange

68. (1) Any body corporate or a firm may apply to the Authority for an order declaring it to be a recognised investment exchange for the purposes of this Act.

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

(a) a copy of the applicant's constitution;

(b) a copy of the applicant's rules;

(c) a copy of any guidance issued by the applicant;

(d) the required particulars; and

(e) such other information as the Authority may reasonably require for the purpose of determining the application.

(3) The required particulars are —

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

(b) if the applicant proposes to provide clearing services in respect of transactions other than those effected on the exchange, particulars of the criteria which the applicant will apply when determining to whom it will provide those services.

Application by a clearing house

69. (1) Any body corporate or a firm may apply to the Authority for an order declaring it to be a recognised clearing house for the purposes of this Act.

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

(a) a copy of the applicant's constitution;

(b) a copy of the applicant's rules;

(c) a copy of any guidance issued by the applicant;

(d) the required particulars; and

(e) such other information as the Authority may reasonably require for the purpose of determining the application.

(3) The required particulars are —

(a) if the applicant makes, or proposes to make, clearing arrangements with a recognised investment exchange, particulars of those arrangements;

(b) if the applicant proposes to provide clearing services for persons other than recognised investment exchanges, particulars of the criteria which it will apply when determining to whom it will provide those services.

Applications: supplementary

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

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

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

Recognition orders

71. (1) Subject to subsection (6), if it appears to the Authority that the applicant satisfies the recognition requirements applicable in its case, the Authority may make a recognition order declaring the applicant to be —

(a) a recognised investment exchange, if the application is made under section 68;

(b) a recognised clearing house, if it is made under section 69.

(3) In considering an application, the Authority may have regard to any information which it considers is relevant to the application.

(4) A recognition order shall specify a date on which it is to take effect.

(5) Section 77 has effect in relation to a decision to refuse to make a recognition order —

(a) as it has effect in relation to a decision to revoke such an order; and

(b) as if references to a recognised body were references to the applicant.

(6) The Authority shall not make a recognition order under this section in respect of an investment exchange or a clearing house until it has been advised by the Minister that the making of the order is in accordance with the economic and financial policy of the Government.

Liability in relation to recognised body's regulatory functions

72. (1) A recognised body and its officers and staff shall not be liable in damages for anything done or omitted in the discharge of the recognised body's regulatory functions unless it is shown that the act or omission was in bad faith.

(2) In this section "regulatory functions" means the functions of the recognised body so far as relating to, or to matters arising out of, the obligations to which the body is subject under or by virtue of this Act.

Notification requirements

73. (1) The Authority may make rules requiring a recognised body to give it —

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

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

(2) The rules may also require a recognised body to give the Authority, at such times or in respect of such periods as may be specified, such information relating to the body as may be specified.

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

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

(5) If a recognised body —

(a) alters or revokes any of its rules or guidance; or

(b) makes new rules or issues new guidance;

it shall give written notice to the Authority without delay.

(6) If a recognised investment exchange makes a change —

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

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

it shall give written notice to the Authority without delay.

(7) If a recognised clearing house makes a change —

(a) in the recognised investment exchanges for whom it provides clearing services; or

(b) in the criteria which it applies when determining to whom (other than recognised investment exchanges) it will provide clearing services;

it shall give written notice to the Authority without delay.

(8) In this section "specified" means specified in rules made by the Authority.

Modification or waiver of rules

74. (1) The Authority may, on the application or with the consent of a recognised body, direct that rules made under section 73 —

(a) shall not to apply to the body; or

(b) shall apply to the body with such modifications as may be specified in the direction.

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

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

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

(a) compliance by the recognised body with the rules, or with the rules as unmodified, would be unduly burdensome or would not achieve the purpose for which the rules were made; and

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

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

(6) The Authority may —

(a) revoke a direction; or

(b) vary it on the application, or with the consent, of the recognised body to which it relates.

Authority's power to give directions

75. (1) This section applies if it appears to the Authority that a recognised body —

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

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

(2) The Authority may direct the body to take specified steps for the purpose of securing the body's compliance with —

(a) the recognition requirements; or

(b) any obligation of the kind in question.

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

(4) The fact that a rule made by a recognised body has been altered in response to a direction given by the Authority shall not prevent it from being subsequently altered or revoked by the recognised body.

Revoking recognition

76. (1) A recognition order may be revoked by an order made by the Authority at the request, or with the consent, of the recognised body concerned.

(2) If it appears to the Authority that a recognised body —

(a) is failing, or has failed, to satisfy the recognition requirements; or

(b) is failing, or has failed, to comply with any other obligation imposed on it by or under this Act;

it may make an order revoking the recognition order for that body even though the body does not wish the order to be made.

(3) An order under this section ("a revocation order") shall specify the date on which it is to take effect.

(4) In the case of a revocation order made under subsection (2), the specified date shall not be earlier than the end of the period of three months beginning with the day on which the order is made.

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

Directions and revocation: procedure

77. (1) Before giving a direction under section 75, or making a revocation order under section 76(2), the Authority shall —

(a) give written notice of its intention to do so to the recognised body concerned;

(b) take such steps as it considers reasonably practicable to bring the notice to the attention of members (if any) of that body; and

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

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

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

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

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

(a) the recognised body;

(b) any member of that body; and

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

may make representations to the Authority.

(4) The period for making representations is —

(a) two months beginning —

(i) with the date on which the notice is served on the recognised body; or

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

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

(5) In deciding whether to —

(a) give a direction; or

(b) make a revocation order;

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

(6) When the Authority has decided whether to give a direction under section 75 or to make the proposed revocation order, it shall —

(a) give the recognised body written notice of its decision; and

(b) if it has decided to give a direction or make an order, take such steps as it considers reasonably practicable for bringing its decision to the attention of members of the body or of other persons who are, in the Authority's opinion, likely to be affected.

(7) If the Authority considers it essential to do so, it may give a direction under section 75 —

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

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

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

PART V

RESTRICTION ON DISCLOSURE OF INFORMATION

Restricted information

78. (1) Except as provided by sections 79, 80 and 81 —

(a) no person who under or for the purposes of this Act receives information relating to the business or other affairs of any person; and

(b) no person who obtains such information directly or indirectly from a person who has received it as aforesaid;

shall disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was received as aforesaid.

(2) This section does not apply to information which at the time of the disclosure is or has already been made available to the public from other sources or to information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(3) Any person who discloses information in contravention of this section is guilty of an offence and is liable —

(a) on summary conviction to a fine of $50,000 and to imprisonment for two years or to both;

(b) on conviction on indictment to a fine of $100,000 or to imprisonment for five years or to both.

Disclosure for facilitating the discharge of functions of the Authority

79. (1) Section 78 does not preclude the disclosure of information in any case in which disclosure is for the purpose of enabling or assisting the Authority to discharge —

(a) its functions under this Act; and

(b) its functions under the Bermuda Monetary Authority Act 1969.

(2) Without prejudice to the generality of subsection (1), section 78 does not preclude the disclosure of information by the Authority to the auditor or accountant of an investment provider, or the person appointed to make a report under section 45(1)(b) if it appears to the Authority that disclosing the information would enable or assist the Authority to discharge the functions mentioned in that subsection or would otherwise be in the interests of the clients or potential clients.

Disclosure for facilitating the discharge of functions by other authorities

80. (1) Section 78 does not preclude the disclosure of information to the Minister or other authority in Bermuda in any case in which the disclosure is for the purpose of enabling or assisting him to discharge his regulatory functions.

(2) Section 78 does not preclude the disclosure of information for the purpose of enabling or assisting an authority in a country or territory outside Bermuda to exercise functions corresponding to the functions of the Authority under this Act.

(3) Subsection (2) does not apply in relation to disclosures to an authority unless the Authority is satisfied that the authority is subject to restrictions on further disclosure at least equivalent to those imposed by sections 78, 79 and this section.

(4) Section 78 does not preclude the disclosure of information —

(a) for the purpose of enabling or assisting a person to do anything which he is required to do in pursuance of a requirement imposed under section 45 (1)(b);

(b) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, whether under this Act or any other Act;

(c) in connection with any other proceedings arising out of this Act.

(5) Section 78 does not preclude the disclosure by the Authority to the Director of Public Prosecutions or a police officer not below the rank of inspector of information obtained pursuant to section 49, 50 or 51 or of information in the possession of the Authority as to any suspected contravention in relation to which the powers conferred by those sections are exercisable.

(6) Information which is disclosed to a person in pursuance of this section shall not be used otherwise than for the purpose mentioned in this section.

Information supplied to the Authority by relevant overseas authority

81. (1) Section 78 applies to information which has been supplied to the Authority for the purposes of any relevant functions by the relevant supervisory authority in a country or territory outside Bermuda.

(2) Information supplied to the Authority as mentioned in subsection (1) shall not be disclosed except as provided by section 78 or —

(a) for the purpose of enabling or assisting the Authority to discharge its functions under this Act; or

(b) with a view to the institution of, or otherwise for the purpose of, criminal proceedings, whether under this Act or any other Act.

(3) In this section —

"relevant functions" in relation to the Authority means its functions under this Act;

"relevant supervisory authority" means the authority discharging in that country or territory functions corresponding to those of the Authority under this Act.

PART VI

MISCELLANEOUS AND SUPPLEMENTAL

False documents or information

82. (1) Any person who, for any purposes of this Act —

(a) issues a document, or supplies information, which is false or misleading in a material respect; or

(b) signs a document which is false or misleading in a material respect; or

(c) takes part in the preparation or issue of a document, or the supplying of information, which is false in a material respect;

is guilty of an offence and is liable —

(i) on summary conviction to a fine of $25,000 or to imprisonment for two years or to both;

(ii) on conviction on indictment to a fine of $100,000 or to imprisonment for four years or to both.

(2) It shall be a defence for a person charged with an offence under subsection (1) to prove —

(a) if an individual, that he had no knowledge of the falsity or misleading character of the document or information, and took every reasonable precaution to ensure its accuracy; and

(b) if not an individual, that every person acting on his behalf had no such knowledge, and took every such reasonable precaution, as aforesaid.

Offences by companies

83. (1) Where an offence under this Act committed by a company is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, any officer of the company, or any person who was purporting to act in any such capacity, he, as well as the company, shall be guilty of that offence and be liable to be proceeded against and punished accordingly unless such person shows that he took all reasonable steps to avoid the commission of an offence.

(2) Where the affairs of a company are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the company.

Notices

84. (1) This section has effect in relation to any notice, direction or other document required or authorised by or under this Act to be given to or served on any person other than the Authority.

(2) Any such document may be given to or served on the person in question —

(a) by delivering it to him;

(b) by leaving it at his principal place of business; or

(c) by sending it to him at that address by facsimile, electronic mail or other similar means which produce a document containing the text of the communication.

(3) Any such document may in the case of a company be given to or served —

(a) by delivering it to the company's principal place of business or registered office in Bermuda; or

(b) by sending it by registered post addressed to the company's principal place of business or registered office in Bermuda.

Service of notice on Authority

85. (1) No notice required by this Act to be given or served on the Authority shall be regarded as given or served until it is received.

(2) Subject to subsection (1), such notice may be given by facsimile, electronic mail or other similar means which produce a document containing the text of the communication.

Regulations

86. (1) The Minister may, after consultation with the Authority, make regulations prescribing anything which may be prescribed under this Act and generally for the implementation of this Act.

(2) Regulations made under this Act shall be subject to the negative resolution procedure.

Repeal, savings and transitional

87. (1) The Investment Business Act 1998 is repealed ("the repealed Act").

(2) On the commencement of this Act the Authority shall issue to every undertaking licensed under the repealed Act a licence under this Act; and such licence shall contain such restrictions on the scope of the investment activity or the manner of operating the investment business (but not on the duration of the licence), as would correspond to the restrictions, if any, contained in the licence issued under the repealed Act.

(3) Upon the issue of a licence pursuant to subsection (2) the provisions of this Act shall apply to the investment provider as if such licence were issued pursuant to an application made under section 16.

(4) A person who, immediately before the commencement of this Act, was carrying on investment business in or from Bermuda but was exempted by virtue of paragraph 2 of the Schedule to the repealed Act, may continue to carry on investment business without a licence under this Act for a period beginning with the date of commencement of this Act and ending three months thereafter.

(5) Notwithstanding the provisions of Part IV, on the commencement of that Part the Authority shall make a recognition order declaring the Bermuda Stock Exchange Company, a body corporate established by the Bermuda Stock Exchange Act 1992, to be a recognised investment exchange.

(6) On the making of the recognition order, the provisions of Part IV shall apply to the Bermuda Stock Exchange Company as if such order were made pursuant to an application made under section 68.

Consequential amendments

88. (1) The Government Authorities (Fees) Act 1971 is amended in Part B of the First Schedule —

(a) by deleting where it occurs the following item—

"Review Committee - established by section 15 of the Investment Business Act 1998";

and

(b) by inserting in its proper alphabetical position the following item—

"appeal tribunal constituted in accordance with section 34 of the Investment Business Act 2003"."

(2) The Third Schedule to the Bermuda Monetary Authority Act 1969 is amended by deleting "an investment provider licensed under the Investment Business Act 1998" and substituting an investment provider licensed under the Investment Business Act 2003".

(3) Regulation 2(2)(a) of the Proceeds of Crime (Money Laundering Regulations 1998 is amended by deleting paragraph (iia) and substituting the following paragraph.

"(iia) a person licensed under the Investment Business Act 2003;".

FIRST SCHEDULE

(Section 3(1))

INVESTMENTS AND INVESTMENT ACTIVITIES

Part 1

Investments

SHARES, ETC.

1. Shares and stock in the share capital of a company.

DEBENTURES, ETC.

2. Debentures, including debenture stock, loan stock, bonds, certificates of deposit and any other securities issued by a body corporate, government, public authority or other body whether or not constituting a charge on the assets of such body.

INSTRUMENTS GIVING ENTITLEMENT TO INVESTMENTS

3. Warrants or other instruments entitling the holder to subscribe for investments falling within paragraph 1 or 2, except that an investment falling within this paragraph shall not be regarded as falling within paragraph 6, 7 or 9.

UNITS IN COLLECTIVE INVESTMENT SCHEMES

4. Any right to participate in a unit trust scheme within the meaning of the Stamp Duties Act 1976.

CERTIFICATES REPRESENTING INVESTMENTS

5. Certificates or other instruments which confer contractual or property rights —

(a) in respect of any investment held by someone other than the person on whom the rights are conferred by the certificate or other instrument; and

(b) the transfer of which may be effected without requiring the consent of that person.

OPTIONS

6. Options to acquire or dispose of—

(a) any investment falling within any other paragraph of this Part;

(b) any currency;

(c) palladium, platinum, gold or silver;

(d) an option to acquire or dispose of any investment.

FUTURES

7. (1) Rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed upon when the contract is made, except that this paragraph does not apply if the contract is made for commercial and not investment purposes.

(2) A contract shall be regarded as made for investment purposes if it is made or traded on an investment exchange recognised by the Authority, or made otherwise than on such an exchange but expressed to be as traded on such an exchange or on the same terms as those on which an equivalent contract would be made on such an exchange.

(3) A contract not falling within subparagraph (2) shall be regarded as made for commercial purposes if under the terms of the contract delivery is to be made within 30 days.

INTERESTS IN A PARTNERSHIP

8. Instruments which confer an interest in a partnership.

CONTRACTS FOR DIFFERENCES

9. (1) Rights under —

(a) a contract for differences; or

(b) any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in—

(i) the value or price of property of any description; or

(ii) an index or other factor designated for that purpose in the contract;

other than a contract where the parties intend that the profit is to be obtained or the loss avoided by taking delivery of any property to which the contract relates.

(2) This paragraph does not apply to designated investment contracts within the meaning of section 57A(1) of the Insurance Act 1978.

LONG TERM BUSINESS

10. (1) Rights under a contract the effecting and carrying out of which constitutes long-term business within the meaning of the Insurance Act 1978.

(2) This paragraph does not apply to rights under a contract of insurance if —

(a) the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;

(b) no benefits are payable under the contract on a death (other than a death due to accident) unless it occurs within ten years of the date on which the life of the person in question was first insured under the contract, or before that person attains a specified age, not exceeding 70 years;

(c) the contract has no surrender value or the consideration consists of a single premium and the surrender value does not exceed that premium; or

(d) the contract does not make provision for its conversion or extension in a manner that would result in its ceasing to comply with the preceding paragraph.

(3) Where the provisions of a contract of insurance are such that the effecting and carrying out of the contract may constitute both long-term business and general business as defined in section 1 of the Insurance Act 1978, references in this paragraph to rights and benefits are references only to such rights and benefits as are attributable to the provisions of the contract relating to long-term business.

(4) This paragraph does not apply to rights under a reinsurance contract.

(5) Rights falling within this paragraph shall not be regarded as falling within paragraph 9.

RIGHTS AND INTERESTS IN INVESTMENTS

11. Rights to and interests in any investment falling within any of the preceding paragraphs of this Part.

Part 2

Investment Activities

DEALING IN INVESTMENTS

1. (1) Buying, selling, subscribing for, or underwriting, investments, or offering or agreeing to do so, either as principal or agent.

(2) A person does not carry on an activity of the kind specified in subparagraph (1) by accepting or transferring an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he has made, granted or provided.

(3) The reference in subparagraph (2) to a person accepting or transferring an instrument includes a reference to a person becoming a party to an instrument otherwise than as a debtor or a surety.

(4) Subparagraph (1) does not apply to —

(a) any dealings by a company in its own shares or share warrants or in its own debentures or debenture warrants;

(b) any dealings by a unit trust in its own units; and

(c) any dealings by a partnership in its own partnership interests.

(5) This paragraph applies to a transaction which is to be entered into by a person as principal or agent only if —

(a) he continuously holds himself out as willing to enter into transactions of that kind at prices determined by him generally and continuously rather than in respect of each particular transaction; or

(b) he continuously holds himself out as engaging in the business of buying investments with a view to selling them and those investments are or include investments of the kind to which the transactions relate; or

(c) he continuously solicits members of the public for the purpose of inducing them to enter as principals or agents into transactions to which that paragraph applies and the transaction is or is to be entered into as a result of his having solicited members of the public in that matter.

(6) In subparagraph (5) "members of the public" in relation to the person soliciting them (the "relevant person"), means any other person except —

(a) licensed persons or exempted persons;

(b) members of the same group as the relevant person;

(c) persons who are or propose to become, participators with the relevant person in a joint enterprise.

(7) Subparagraph (5) applies only if the investment to which the transaction relates or will relate falls within any of paragraphs 1 to 10 of Part 1 or, so far as relevant to any of those paragraphs, paragraph 11 of Part 1.

ARRANGING DEALS IN INVESTMENTS

2. (1) Making or offering, or agreeing to make —

(a) arrangements with a view to another person buying, selling, subscribing for or underwriting a particular investment, being arrangements which bring about or would bring about the transaction in question;

(b) arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments.

(2) This paragraph does not apply to a person by reason of his making, or offering or agreeing to make, arrangements with a view to a transaction to which he will himself be a party as principal or which will be entered into by him as agent for one of the parties.

(3) This paragraph does not apply to a person by reason of his making, or offering or agreeing to make, arrangements with a view to a person accepting, or with a view to a person transferring, whether as

principal or as agent, an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he or his principal has made, granted or provided or which he or his principal has offered or agreed to make, grant or provide.

(4) Arrangements do not fall within subparagraph (1)(b) by reason of their having as their purpose the provision of finance to enable a person to buy, sell, subscribe for or underwrite investments.

(5) This paragraph does not apply to arrangements for the introduction of persons to another person if —

(a) the person to whom the introduction is made is a licensed or exempted person or is a person whose ordinary business involves him in engaging in an investment activity and who is not unlawfully carrying on investment business in Bermuda; and

(b) the introduction is made with a view to the provision of independent advice or the independent exercise of discretion either —

(i) in relation to investments generally; or

(ii) in relation to any class of investments if the transaction or advice is or is to be with respect to an investment within that class.

(6) The references in subparagraph (3) to a person accepting an instrument include references to a person becoming a party to an instrument otherwise than as a debtor or surety.

MANAGING INVESTMENTS

3. Managing or offering, or agreeing to manage, assets belonging to another person where those assets consist of or include investments.

INVESTMENT ADVICE

4. Giving or offering, or agreeing to give, to persons in their capacity as clients or potential clients, advice on the merits of their purchasing, selling, subscribing for or underwriting an investment, or exercising any right conferred by an investment to acquire, dispose of, underwrite or convert an investment.

SAFEGUARDING AND ADMINISTERING INVESTMENTS

5. (1) Safeguarding and administering or arranging for the safeguarding and administration of assets belonging to another where—

(a) those assets consist of or include investments falling within any of paragraphs 1 to 8 of Part 1; or

(b) the arrangements for their safeguarding and administration are such that those assets may consist of or include investments and the arrangements have at any time been held out as being arrangements under which investments would be safeguarded and administered.

(2) Offering or agreeing to safeguard and administer, or to arrange for the safeguarding and administration of, assets belonging to another where the circumstances fall within subparagraphs (1) (a) and (b).

(3) This paragraph does not apply to a person by reason of his safeguarding and administering assets, or offering or agreeing to do so, under arrangements —

(a) under which another person (the "primary custodian"), who is permitted to provide a service falling within this paragraph, undertakes to the person to whom the assets belong a responsibility in respect of the assets which is no less onerous than the responsibility which the primary custodian would undertake to that person if the primary custodian were safeguarding and administering the assets himself; and

(b) which are operated by the primary custodian in the course of carrying on in Bermuda investment business falling within this paragraph.

(4) None of the following activities constitutes the administration of assets—

(a) providing information as to the number of units or the value of any assets safeguarded;

(b) converting currency;

(c) receiving documents relating to an investment solely for the purpose of onward transmission to, from or at the direction of the person to whom the investment belongs.

(5) For the purposes of this paragraph it is immaterial that the assets safeguarded and administered—

(a) constitute units of a security, title to which is recorded on the relevant register of securities as being held in uncertificated form; or

(b) may be transferred to another person, subject to a commitment by the person safeguarding and administering them, or arranging for their safeguarding and administration, that they will be replaced by equivalent assets at some future date or when so requested by the person to whom they belong.

(6) This paragraph does not apply to arrangements for the introduction of persons to another person if —

(a) the person to whom the introduction is made is permitted to provide a service falling within this paragraph; and

(b) the introduction is made with a view to the provision in Bermuda of a service falling within this paragraph or the making of arrangements operated in Bermuda for the provision of a service falling within this paragraph by a person who is not connected with the person by whom the introduction is made.

(7) For the purposes of subparagraph (6) the person making the introduction shall be regarded as connected with the other person if he is either a body corporate in the same group as that other person or remunerated by that other person.

(8) For the purpose subparagraphs (3) and (6), a person is permitted to provide a service falling within this paragraph if —

(a) he is a licensed person who may provide that service; or

(b) he is an exempted person as respects any investment business which consists of or includes that service.

Part 3

Excluded activities

GROUPS, FIRMS AND JOINT ENTERPRISES

1. (1) Paragraph 1 of Part 2 does not apply to any transaction which is or is to be entered into by a person as principal with another person if —

(a) they are members of the same group or firm; or

(b) they are, or propose to become, participators in a joint enterprise and the transaction is or is to be entered into for the purpose of, or in connection with, that enterprise.

(2) Paragraph 1 of Part 2 does not apply to any transaction which is or is to be entered into by a person as agent for another person in the circumstances mentioned in subparagraphs (1)(a) and (b) if where the investment falls within any of paragraphs 1 to 10 of Part 1, or, so far as relevant to any of those paragraphs, paragraph 11 of Part 1, the agent does not—

(a) hold himself out (otherwise than to other members of the same group or firm or persons who are or propose to become participators with him in a joint enterprise) as engaging in the business of buying investments with a view to selling them and those investments are or include investments of the kind to which the transaction relates; or

(b) regularly solicit members of the public for the purpose of inducing them to enter as principals or agents into transactions to which paragraph 1 of Part 1 applies;

and the transaction is not or is not to be entered into as a result of his having solicited members of the public in that manner;

(3) Paragraph 2 of Part 2 does not apply to arrangements which a person makes or offers or agrees to make if—

(a) that person is a member of a group or firm and the arrangements are with a view to another member in the same group or firm entering into a transaction of the kind mentioned in that paragraph; or

(b) that person is or proposes to become a participator in a joint enterprise and the arrangements are with a view to another person who is or proposes to become a participator in the enterprise entering into such a transaction for the purposes of or in connection with that enterprise.

(4) Paragraph 3 of Part 2 does not apply to a person by reason of his managing or offering or agreeing to manage the investments of another person if —

(a) they are members in the same group or firm; or

(b) they are, or propose to become, a participator in a joint enterprise and the investments are or are to be managed for the purposes of or in connection with, that enterprise.

(5) Paragraph 4 of Part 2 does not apply to advice given by a person to another person if —

(a) they are members of the same group or firm; or

(b) they are, or propose to become, participators in a joint enterprise and the advice is given for the purposes of or in connection with, that enterprise.

(6) Paragraph 5 of Part 2 does not apply to a service which a person provides or offers or agrees to provide or to arrangements which a person makes or offers or agrees to make for the provision of a service if—

(a) that person is a member of the group or firm and the service is or is to be provided to a another member in the same group or firm and relates or will relate to assets which belong to that other member; or

(b) that person is or proposes to become a participator in a joint enterprise and the assets to which the service relates or will relate are or are to be held on behalf of another person who is or proposes to become a participator in the enterprise and are or are to be held for the purposes of or in connection with that enterprise.

(7) The definition in paragraph 1(6) of Part 2 shall apply also for the purposes of subparagraph (2).

SALE OF GOODS AND SUPPLY OF SERVICES

2. (1) This paragraph concerns certain activities carried on for the purposes of or in connection with the sale of goods or supply of services by a supplier to a customer.

(2) Paragraph 1 of Part 2 does not apply to any transaction which is or is to be entered into by the supplier as principal if it is to be entered into by him with the customer for the purposes of or in connection with the sale of goods or supply of services or a related sale or supply.

(3) Paragraph 1 of Part 2 does not apply to any transaction which is or is to be entered into by the supplier as agent for the customer if it is or is to be entered into for the purposes of or in connection with

the sale of goods or supply of services or a related sale or supply, and where the investment falls within any of paragraphs 1 to 3 of Part 1 or so far as relevant to any of those paragraphs, paragraph 11 of Part 1, the supplier does not —

(a) hold himself out (otherwise than to the customer) as engaging in the business of buying investments with a view to selling them and those investments are or include investments of the kind to which the transaction relates; or

(b) regularly solicit members of the public for the purpose of inducing them to enter as principals or agents into transactions to which paragraph 1 of Part 2 applies;

and the transaction is not or is not to be entered into as a result of his having solicited members of the public in that manner.

In this subparagraph "members of the public" has the same meaning as in paragraph 1(6) of Part 2;

(4) Paragraph 2 of Part 2 does not apply to arrangements which the supplier makes with a view to the customer entering into a transaction for the purposes of or in connection with the sale of goods or supply of services or a related sale or supply.

(5) Paragraph 3 of Part 2 does not apply to the supplier by reason of his managing the investments of the customer if they are or are to be managed for the purposes of or in connection with, the sale of goods or supply of services or a related sale or supply.

(6) Paragraph 4 of Part 2 does not apply to advice given by the supplier to the customer for the purposes of or in connection with the sale of goods or supply of services or a related sale or supply or to a person with whom the customer proposes to enter into a transaction for the purposes of or in connection with the sale of goods or supply of services or a related sale or supply.

(7) Where the supplier is a member of a group, subparagraphs (2) to (6) shall apply to any other member of the group as they apply to the supplier; and where the customer is a member of a group, references in those subparagraphs to the customer include references to any other member of the group.

(8) In this paragraph —

"supplier" means a person whose main business is to sell goods or supply services and not to carry on any activities of the kind specified in Part 2 and, where the supplier is a member of a group, also means any other members of that group;

"customer" means a person other than an individual, to whom a supplier sells goods or supplies services, and where the customer is a member of a group, also means any other member of that group;

"related sale or supply" means a sale of goods or supply of services to the customer otherwise than by the supplier, but for or in connection with the sale of goods or supply of services by a supplier to a customer.

EMPLOYEE SHARE SCHEMES

3. (1) A person ("C"), a member of the same group as C or a relevant trustee does not carry on an activity of the kind specified by paragraph 1 of Part 2 by entering as principal or agent into a transaction the purpose of which is to enable or facilitate —

(a) transactions in shares in, or debentures issued by, C between, or for the benefit of, any of the persons mentioned in subparagraph (2); or

(b) the holding of such shares or debentures by, or for the benefit of, such persons.

(2) The persons referred to in subparagraph (1) are —

(a) the bona fide employees or former employees of C or of another member of the same group as C;

(b) the wives, husbands, widows, widowers, or children or step-children under the age of eighteen of such employees or former employees.

(3) There is excluded from paragraph 2 of Part 2 arrangements made by C, a member of the same group as C or a relevant trustee if the arrangements in question are for, or with a view to, a transaction of the kind described in subparagraph (1).

(4) There is excluded from paragraph 5 of Part 2 any activity if the assets in question are, or are to be, safeguarded and administered by C, a member of the same group as C or a relevant trustee for the purpose of enabling or facilitating transactions of the kind described in subparagraph (1).

(6) In this paragraph —

(a) "shares" and "debentures" include —

(i) any investment of the kind specified by paragraph 1 or 2 of Part I;

(ii) any investment of the kind specified by paragraph 3 or 5 of Part I so far as relevant to paragraphs 1 and 2 of Part 1; and

(iii) any investment of the kind specified by paragraph 11 of Part 1 so far as relevant to investments of the kind mentioned in (i) or (ii) above;

(b) "relevant trustee" means a person who, in pursuance of the arrangements made for the purpose mentioned in subparagraph (1), holds, as trustee, shares in or debentures issued by C.

SALE OF BODY CORPORATE

4. (1) Paragraphs 1 and 2 of Part 2 do not apply to the acquisition or disposal of, or to anything done for the purposes of the acquisition or disposal of, shares in a body corporate other than a mutual fund company, and paragraph 4 of Part 2 does not apply to advice given in connection with the acquisition or disposal of such shares if either —

(a) the conditions set out in subparagraph (2) are met; or

(b) those conditions are not met, but the object of the transaction may nevertheless reasonably be regarded as being the acquisition of day to day control of the affairs of the body corporate.

(2) The conditions mentioned in subparagraph (1)(a) are that —

(a) the shares consist of or include shares carrying 50 per cent or more of the voting rights attributable to share capital which are exercisable in all circumstances at any general meeting of the body corporate;

(b) the shares, together with any already held by the person acquiring them, carry not less than that percentage of those voting rights; and

(c) in either case, the acquisition and disposal is, or is to be, between parties each of whom is a body corporate, a firm, a single individual or a group of connected individuals.

(3) In this paragraph—

"group of connected individuals", in relation to the party disposing of the shares, means persons each of whom is, or is

a close relative of, a director or senior executive of the body corporate and, in relation to the party acquiring the shares, means persons each of whom is, or is a close relative of, a person who is or is to be a director or senior executive of the body corporate.

"close relative" means a person's spouse, his children and step-children, his parents and step-parents, his brothers and sisters and his step-brothers and step-sisters.

TRUSTEES AND PERSONAL REPRESENTATIVES

5. (1) Paragraph 1 of Part 2 does not apply to a person by reason of his buying, selling or subscribing for an investment or offering or agreeing to do so if—

(a) the investment is, or as the case may be, is to be held by him as trustee or personal representative; and

(b) he does not hold himself out as providing a service of buying and selling investments;

unless that person is remunerated for what he does in addition to any remuneration he receives for discharging his duties as trustee or personal representative.

(2) Paragraph 2 of Part 2 does not apply to anything done by a person as trustee or personal representative with a view to —

(a) a fellow trustee or personal representative and himself engaging in their capacity as such in an activity falling within paragraph 1 of Part 2; or

(b) a beneficiary under the trust, will or intestacy engaging in any such activity;

unless that person is remunerated for what he does in addition to any remuneration he receives for discharging his duties as trustee or personal representative.

(3) Paragraph 3 of Part 2 does not apply to anything done by a person as trustee or personal representative unless he holds himself out as offering investment management services or is remunerated for providing such services in addition to any remuneration he receives for discharging his duties as trustee or personal representative.

(4) Paragraph 4 of Part 2 does not apply to advice is given by a person as trustee or personal representative to —

(a) a fellow trustee or personal representative for the purposes of the trust or estate; or

(b) a beneficiary under the trust, will or intestacy concerning his interest in the trust fund or estate;

unless that person is remunerated for doing so in addition to any remuneration he receives for discharging his duties as trustee or personal representative.

(5) Paragraph 5 of Part 2 does not apply to anything done by a person as a trustee or personal representative unless—

(a) he holds himself out as providing a service falling within paragraph 5 of Part 2; or

(b) he is remunerated for providing such a service in addition to any remuneration he receives for discharging his duties as trustee or personal representative.

ADVICE GIVEN OR ARRANGEMENTS MADE IN COURSE OF LEGAL PROFESSION

6. (1) Paragraph 2 of Part 2 does not apply to arrangements—

(a) which are made in the course of the carrying on of the profession of a barrister and attorney; and

(b) the making of which may reasonably be regarded as a necessary part of other services provided in the course of carrying on that profession.

(2) Paragraph 4 of Part 2 does not apply to advice —

(a) which is given in the course of the carrying on of the profession of a barrister and attorney; and

(b) the giving of which may reasonably be regarded as a necessary part of other services given in the course of carrying on that profession.

(3) Paragraph 5 of Part 2 does not apply to the provision of a service or to arrangements made for the provision of a service where —

(a) the service is provided or the arrangements are made in the course of the carrying on of the profession of a barrister and attorney; and

(b) the provision of the service or the making of the arrangements may reasonably be regarded as a

necessary part of other services provided in the course of carrying on that profession.

(4) Advice shall not be regarded as falling within sub-paragraph (1)(b), the making of arrangements shall not be regarded as falling within sub-paragraph (2)(b) and the provision of a service or the arranging for the provision of a service shall not be regarded as falling within sub-paragraph (3)(b) if the giving of the advice, the making of the arrangements or the provision, or the arranging for the provision, of the service is remunerated separately from the other advice or services.

ADVICE GIVEN IN NEWSPAPERS AND BROADCASTING SERVICES

7. Paragraph 4 of Part 2 does not apply to advice given—

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

(b) in any programme included, or made for inclusion, in any television broadcasting service or sound broadcasting service;

if the principal purpose of the publication taken as a whole and including any advertisements contained in it, is not to lead persons to invest in any particular investment.

Part 4

Interpretation

1. For the purposes of this Schedule a transaction is entered into through a person if he enters into it as agent or agents for it to be entered into by another person as principal or agent.

2. In this Schedule, a joint enterprise" means an enterprise into which two or more persons ("the participators") enter for commercial purposes related to a business or businesses (other than investment business) carried on by them; and where a participator is a member of a group each other member of the group shall also be regarded as a participator in the enterprise.

SECOND SCHEDULE

(section 17)

MINIMUM CRITERIA FOR LICENSING

Controllers and officers to be fit and proper persons

1 (1) Every person who is, or is to be, a controller or officer of the investment provider is a fit and proper person to hold the particular position which he holds or is to hold.

(2) In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to his probity, to his competence and soundness of judgement for fulfilling the responsibilities of that position, to the diligence with which he is fulfilling or likely to fulfill those responsibilities and to whether the interests of clients or potential clients of the investment provider are, or are likely to be, in any way threatened by his holding that position.

(3) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that he has—

(a) committed an offence involving fraud or other dishonesty or violence;

(b) contravened any provision made by or under any enactment appearing to the Authority to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts;

(c) engaged in any business practices appearing to the Authority to be deceitful or oppressive or otherwise improper (whether lawful or not) or which otherwise reflect discredit on his method of conducting business;

(d) engaged in or has been associated with any other business practices or otherwise conducted himself in

such a way as to cast doubt on his competence and soundness of judgement.

Business to be directed by at least two individuals

2 In the case of an investment provider which is a company or a firm, at least two individuals shall effectively direct the business of the investment provider.

3 In any other case, one person may direct the business if so approved by the Authority having regard to the circumstances of the investment provider and the nature and scale of its operations.

Composition of board of directors

4 In the case of an investment provider which is a company, the directors shall include such number (if any) of directors without executive responsibility for the management of its business as the Authority considers appropriate having regard to the circumstances of the investment provider and the nature and scale of its operations.

Business to be conducted in prudent manner

5 (1) The investment provider conducts, or, in the case of an investment provider which is not yet carrying on investment business, will conduct its business in a prudent manner.

(2) In determining whether an investment provider is conducting its business in a prudent manner, the Authority shall take into account any failure by the investment provider to comply with the provisions of this Act, other provisions of law and any code of practice.

(3) An investment provider shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain minimum net assets of such amount as the Authority may prescribe or as it may require in any particular case.

(4) An institution shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate liquidity, having regard to the relationship between its liquid assets and its actual and contingent liabilities, to the times at which those liabilities will or may fall due and its assets mature, and to any other factors appearing to the Authority to be relevant.

(5) For the purposes of subparagraph (4) the Authority may, to such extent as it thinks appropriate, take into account as liquid assets, assets of the investment provider and facilities available to it which are capable of providing liquidity within a reasonable period.

(6) An investment provider shall not be regarded as conducting its business in a prudent manner unless it makes or, as the case may be, will maintain adequate accounting and other records of its business and adequate systems of control of its business and records.

(7) Those records and systems shall not be regarded as adequate unless they are such as to enable the business of the investment provider to be prudently managed and the investment provider to comply with the duties imposed on it by or under this Act or other provision of law; and in determining whether those systems are adequate the Authority shall have regard to the functions and responsibilities in respect of them of any such directors of the investment provider as are mentioned in paragraph 4.

(8) An investment provider shall not be regarded as conducting its business in a prudent manner unless it has effected a policy of insurance to cover risks inherent in the operation of its business of an amount commensurate with the nature and scale of the investment provider's operations.

(9) Subparagraphs (2) to (8) are without prejudice to the generality of subparagraph (1).

Consolidated supervision

6 The position of the investment provider within the structure of any group to which it may belong shall be such that it will not obstruct the conduct of effective consolidated supervision.

Integrity and skill

7 The business of the investment provider is or, in the case of an investment provider which is not yet carrying on investment business, will be carried on with integrity and the professional skills appropriate to the nature and scale of its activities.