



LAWS OF MALAYSIA

Act A1406

**CAPITAL MARKETS AND SERVICES
(AMENDMENT) ACT 2011**

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LAWS OF MALAYSIA**Act A1406****CAPITAL MARKETS AND SERVICES
(AMENDMENT) ACT 2011**

An Act to amend the Capital Markets and Services Act 2007.

[]

ENACTED by the Parliament of Malaysia as follows:

Short title, commencement and application

1. (1) This Act may be cited as the Capital Markets and Services (Amendment) Act 2011.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*, and the Minister may appoint different dates for the coming into operation of—

(a) different provisions of this Act; or

(b) all or different provisions of this Act in respect of different classes or categories of persons, securities or derivatives.

(3) Subdivision 4 of Division 3 of Part III as introduced by this Act shall come into operation at the expiration of two years or a further period not exceeding one year as the Minister may determine, from the date of the coming into operation of this Act.

Substitution of the words “trading in futures contracts”, “trading in futures contract”, “trade in futures contracts”, “futures contracts”, “futures contract” and “futures”

2. The Capital Markets and Services Act 2007 [*Act 671*], which is referred to as the “principal Act” in this Act, is amended in relation to the words “trading in futures contracts”, “trading in futures contract”, “trade in futures contracts”, “futures contracts”, “futures contract” and “futures” as specified in the Schedule.

Amendment of section 2

3. Subsection 2(1) of the principal Act is amended—

(a) by deleting the definition of “adjustment agreement”;

(b) by inserting after the definition of “borrower” the following definitions:

‘ “capital market” means the securities and derivatives markets;

“capital market products” means any securities, derivatives, units in a unit trust scheme, a private retirement scheme and any other products as the Minister may prescribe as a capital market product;’;

(c) in the definitions of “Capital Markets Services Licence” and “Capital Markets Services Representative’s Licence”, by deleting the words “or renewed”;

(d) by inserting after the definition of “corporation” the following definition:

‘ “dealing in derivatives” has the same meaning as in Part 2 of Schedule 2;’;

(e) by inserting after the definition of “Deputy Chief Executive” the following definitions:

‘ “derivatives” means any contract, either for the purposes of creating an obligation or a right or any

combination of both, of which its market value, delivery or payment obligations are derived from, referenced to or based on, but not limited to, underlying securities or commodities, assets, rates, indices or any of its combination, whether or not a standardized derivative or an over-the-counter derivative, but does not include—

- (a) securities;
- (b) any derivative to which Bank Negara or the Government of Malaysia is a party;
- (c) any over-the-counter derivatives whose market price, value, delivery or payment obligations are solely derived from, referenced to or based on, exchange rates; or
- (d) any agreement, when entered into, is in a class of agreements prescribed not to be derivatives;

“derivatives exchange” means any body corporate in relation to which an approval under subsection 8(2) is in force;

“derivatives market” means a market or other place at which, or a facility by means of which, derivatives are regularly traded;

“derivatives report” means an analysis or report that contains recommendations about dealing in derivatives;’;

- (f) by deleting the definition of “eligible delivery agreement”;
- (g) by deleting the definition of “eligible exchange-traded option”;
- (h) by deleting the definition of “exempt futures market”;

(i) by inserting after the definition of “exchange holding company” the following definition:

‘ “exempt derivatives market” means a derivatives market which is declared to be an exempt derivatives market under paragraph 7(3)(a);’;

(j) by substituting for the definition of “futures contract” the following definition:

‘ “futures contract” means a derivative that is traded on a derivatives exchange which creates an obligation for physical delivery or acceptance of physical delivery of the underlying instrument of such derivative, the quantity and quality of which is determined by that derivatives exchange, at a fixed date in the future at a fixed price, and which may be cash settled in lieu of physical delivery;’;

(k) by deleting the definition of “futures exchange”;

(l) by deleting the definition of “futures market”;

(m) by deleting the definition of “futures option”;

(n) by deleting the definition of “futures report”;

(o) in the definition of ‘licence’, by deleting the words “or renewed”;

(p) by deleting the definition of “long position”;

(q) by inserting after the definition of “official list” the following definition:

‘ “over-the-counter derivative” means a derivative other than a standardized derivative;’;

(r) by deleting the definition of “relevant circumstances”;

(s) by deleting the definition of “relevant time”;

(t) in the definition of “rules”—

(i) by deleting the word “and” at the end of paragraph (e);

(ii) by inserting the word “and” at the end of paragraph (f);
and

(iii) by inserting after paragraph (f) the following paragraph:

“(g) a trade repository, means the memorandum of association and the articles of association, or rules or directions, by whatever name called and wherever contained, governing the membership, management, operations or procedures of a trade repository;”;

(u) in the definition of “securities”, by deleting the words “, but does not include futures contracts”;

(v) by deleting the definition of “short position”;

(w) by inserting after the definition of “specify” the following definition:

‘ “standardized derivative” means a derivative, including a futures contract, that is traded on a derivatives exchange, whose intrinsic characteristics is determined by that derivatives exchange and whose trade is cleared and settled by an approved clearing house;’;

(x) by inserting after the definition of “subsidiary” the following definition:

‘ “trade repository” means a body corporate approved under section 107B that collects and maintains information or records with respect to over-the-counter derivatives transactions or positions entered by any person, including any terms and conditions thereof, for the purpose of providing a centralized record keeping facility for over-the-counter derivatives;’;

- (y) by deleting the definition of “trading in futures contracts”; and
- (z) in the definition of “unit”, by inserting after the words “unit trust scheme” the words “, private retirement scheme”.

Amendment of section 10

4. Section 10 of the principal Act is amended—

(a) in paragraph (1)(a)—

- (i) by deleting the word “and” at the end of subparagraph (i);
- (ii) by substituting for subparagraph (ii) the following subparagraph:
 - “(ii) shall hold office for a period specified by the Minister which shall not exceed a term of three years but shall be eligible for reappointment; and”; and
- (iii) by inserting after subparagraph (ii) the following subparagraph:
 - “(iii) may have his appointment revoked at any time by the Minister;”;

(b) in paragraph (1)(b)—

- (i) by substituting for the words “appointment or election” the words “appointment, reappointment, election or re-election”; and
 - (ii) by substituting for the full stop the words “; and”;
- (c)* by inserting after paragraph (1)(b) the following paragraph:
- “(c) the Minister may, on the recommendation of the Commission, vary the number of public interest directors appointed under paragraph (a).”;

(d) in subsection (2), by substituting for the words “appointment or election” the words “appointment, reappointment, election or re-election”; and

(e) by substituting for subsection (5) the following subsection:

“(5) For the purposes of this section, a director includes a person who is a chief executive.”.

Amendment of section 26

5. Section 26 of the principal Act is amended—

(a) by substituting for subsection (1) the following subsection:

“(1) The Commission may serve a written notice on an exchange holding company, a stock exchange, a derivatives exchange, an approved clearing house, a central depository or a relevant body corporate if the Commission is satisfied that—

(a) a conflict exists or may come into existence between—

(i) the interest of a body corporate that has been approved as an exchange holding company, a stock exchange, a derivatives exchange, an approved clearing house, a central depository or a relevant body corporate, as the case may be; and

(ii) the interest of the proper performance of the functions or duties conferred by this Act or any other law, on the exchange holding company, stock exchange, derivatives exchange, approved clearing house, central depository or the relevant body corporate, as the case may be;

(b) such conflict of interest as set out under paragraph (a) is likely to continue or be repeated; or

(c) it is necessary or expedient for—

(i) ensuring fair and orderly markets;

(ii) the protection of investors, or in the public interest;

(iii) ensuring the integrity of the capital markets; or

(iv) the effective administration of securities laws.”;

(b) by inserting after subsection (1) the following subsection:

“(1A) Where the Commission exercises its powers under subsection (1), the Commission may state the reasons in support of the ground for the notice and direct the person referred to in subsection (1) to forthwith take such actions as are specified in the notice, including steps in relation to any of its affairs, business or property.”; and

(c) by inserting after subsection (5) the following subsections:

“(6) Notwithstanding anything under securities laws, if the Commission thinks it necessary or expedient for the protection of investors or the effective administration of securities laws or in the public interest, the Commission may discharge any of the duties of a stock exchange or derivatives exchange in relation to—

(a) the supervision of the capital market and market participants; or

(b) the enforcement of—

- (i) the rules of the stock exchange governing the quotation of securities on the stock market of the stock exchange and the listing requirements; or
- (ii) the rules governing compliance by participating organisations of the stock exchange or affiliates of the derivatives exchange.

(7) Where the Commission exercises its power under subsection (6), subsection 11(4) shall not apply to the extent of the power exercised by the Commission.

(8) Where the Commission exercises its power under subsection (6), it may levy on the stock exchange or derivatives exchange a regulatory fee of such amount as may be prescribed by the Minister.”.

Amendment of section 28

6. Section 28 of the principal Act is amended—

(a) in subsection (1)—

- (i) by substituting for the words “is satisfied that it is in the public interest, or it is appropriate to do so for the protection of investors, or to maintain fair and orderly market” the words “exercises its power under subparagraph 26(1)(c)(i) or (ii)”;
- (ii) by substituting for the words “may give written notice to a stock exchange, a futures exchange or an approved clearing house, where relevant, to—” the words “shall specify in the notice, such actions that are to be taken, including any of the following:”;

- (iii) by substituting for the comma at the end of paragraph (k) a full stop; and
- (iv) by deleting the words “as the case may be.”;
- (b) by substituting for subsection (2) the following subsection:

“(2) Where the Commission issues a notice pursuant to subparagraph 26(1)(c)(i) or (ii), the Commission shall furnish to the Minister a written report setting out the reasons for the giving of the notice.”; and
- (c) in subsection (5), by substituting for the words “given under subsection (1)” the words “issued pursuant to subparagraph 26(1)(c)(i) or (ii)”.

Amendment of section 60

7. Section 60 of the principal Act is amended—

- (a) in the shoulder note by deleting the words “or renewal”;
- (b) by substituting for subsection (1) the following subsection:

“(1) An application for the grant of a licence shall be made to the Commission in such form and manner as the Commission may specify.”;
- (c) in subsection (4)—
 - (i) by deleting the words “or renewal”; and
 - (ii) by substituting for the words “prescribed fee” the words “non-refundable prescribed fee”;
- (d) by deleting subsection (5); and
- (e) in subsection (6), by deleting the words “or renewal”.

Amendment of section 61

8. Section 61 of the principal Act is amended—

(a) in the shoulder note, by deleting the words “or renewal”;

(b) by substituting for subsection (1) the following subsection:

“(1) Subject to subsection (3), the Commission may grant a licence.”;

(c) by deleting subsection (2); and

(d) by substituting for subsection (3) the following subsection:

“(3) In granting a licence, the Commission may—

(a) specify and describe the regulated activity to which the licence is granted;

(b) specify any condition or restriction of the licence as the Commission thinks fit; or

(c) in the case of a Capital Markets Services Representative’s Licence—

(i) relate the licence to the holder of a Capital Markets Services Licence which supported the application for the licence; and

(ii) restrict the regulated activity of the licence to the regulated activity of the holder of a Capital Markets Services Licence which supported the application for the licence.”.

Substitution of section 62

9. The principal Act is amended by substituting for section 62 the following section:

“Power of Commission to impose conditions or restrictions on licences

62. Without prejudice to section 61, the Commission may at any time, where it deems necessary, vary the conditions or restrictions imposed upon the grant of a licence or impose additional conditions or restrictions on a licence while the licence is in force.”.

Amendment of section 63

10. Section 63 of the principal Act is amended—

(a) in the shoulder note, by substituting for the words “Licence fee” the word “Fees”;

(b) in subsection (1), by substituting for the words “in such manner as may be specified by the Commission” the words “on a yearly basis and on such date as the Commission may specify”;

(c) by inserting after subsection (1) the following subsection:

“(1A) Where a licensed person fails to pay the prescribed licence fee by the date on which such fee is due, the Commission may impose a late payment fee of a prescribed amount for every day that the payment is late, and such fees shall be recoverable by the Commission as a debt due to the Commission.”; and

(d) in subsection (2), by substituting for the words “licence fee” the words “fees”.

Amendment of section 64

11. Section 64 of the principal Act is amended—

(a) in the shoulder note, by deleting the words “or renewal”;

(b) in subsection (1)—

(i) by deleting the words “or renewal”;

(ii) in paragraph (b), by deleting the words “relating to the application”;

(iii) in paragraph (c), by inserting after the word “misleading” the words “or from which there is a material omission”;

(iv) in subparagraph (h)(ii), by inserting after the words “the securities laws” the words “or any law outside Malaysia relating to capital market”;

(v) by inserting after subparagraph (h)(ii) the following subparagraph:

“(iia) has been subjected to any action taken by the Commission under section 354, 355 or 356;”;

(vi) in subparagraph (h)(iii), by inserting after the word “law” the words “whether within or outside Malaysia”; and

(vii) in paragraph (n), by deleting the words “or renew”; and

(c) by deleting subsections (2) and (3).

Amendment of section 65

12. Section 65 of the principal Act is amended—

(a) in the shoulder note, by deleting the words “or renewal”;

(b) in subsection (1)—

(i) by deleting the words “or renewal”;

(ii) in paragraph (b), by deleting the words “relating to the application”;

(iii) in paragraph (c), by inserting after the word “misleading” the words “or from which there is a material omission”;

(iv) in subparagraph (g)(ii), by inserting after the words “the securities laws” the words “or any law outside Malaysia relating to capital market”;

(v) by inserting after subparagraph (g)(ii) the following subparagraph:

“(iia) been subjected to any action taken by the Commission under section 354, 355 or 356;”;

(vi) in subparagraph (g)(iii), by inserting after the word “law” the words “whether within or outside Malaysia”; and

(vii) in paragraph (m), by deleting the words “or renew”; and

(c) by deleting subsections (2) and (3).

Substitution of section 66

13. The principal Act is amended by substituting for section 66 the following section:

“Power of Commission to enquire into transactions in respect of securities and derivatives

66. (1) The Commission may enquire into any transaction involving the purchase or sale of securities or derivatives entered into or caused to be entered into by—

(a) an applicant for grant of a licence, its directors, chief executive, managers or controller, whether directly or indirectly, during any period of twelve months preceding the application for grant of the licence; or

(b) a licensed person, its directors, chief executive, managers or controller, whether directly or indirectly, at any time,

to ascertain if such person has in such transaction used dishonest, unfair or unethical devices or trading practices, whether such devices or trading practices constitute an offence under this Act or otherwise.

(2) The person referred to in subsection (1) shall submit to the Commission, the detailed information of any transaction involving the purchase or sale of securities or derivatives for such period, in such form and manner, and within such time, as the Commission may specify by notice in writing.

(3) In addition to any other penalty that may be imposed under this Act, a person who fails or refuses to submit information to the Commission within the time specified in the notice referred to in subsection (2) or who gives false or misleading information or the information contains an omission of a material particular, is liable to have his application for a grant of licence rejected or his licence revoked under section 72.”.

Deletion of section 68

14. The principal Act is amended by deleting section 68.

Amendment of section 69

15. Section 69 of the principal Act is amended—

(a) in the shoulder note, by inserting after the word “variation” the words “or transfer”;

(b) in subsection (1)—

(i) by deleting the word “or” at the end of paragraph (a);

(ii) by substituting for the full stop at the end of paragraph (b) the words “; or”; and

(iii) by inserting after paragraph (b) the following paragraph:

“(c) a holder of a Capital Markets Services Licence, transfer its licence to any other person, after the holder has obtained a court order under subsection 139(3).”; and

(c) in subparagraph (4)(b), by inserting after the words “65(1)” the words “or on any other grounds as may be specified by the Commission”.

Amendment of section 70

16. Subsection 70(1) of the principal Act is amended by deleting the words “or renewed” and “or renewal”.

Amendment of section 71

17. Section 71 of the principal Act is amended—

(a) by deleting the words “, renewal” in the shoulder note and wherever it appears; and

- (b) by substituting for the words “shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding five years or to both” the words “shall, on conviction, be punished with imprisonment for a term not exceeding five years and shall also be liable to a fine not exceeding one million ringgit”.

Amendment of section 72

18. Section 72 of the principal Act is amended—

(a) in paragraph (2)(a)—

- (i) by deleting the word “or” at the end of subparagraph (iii);
- (ii) by substituting for the colon at the end of subparagraph (iv) the words “; or”;
- (iii) by deleting the proviso; and
- (iv) by inserting after subparagraph (iv) the following subparagraph:

“(v) the holder fails to pay any fee as provided for under section 63; or”;

(b) in paragraph (2)(b)—

- (i) by deleting subparagraph (iii);
- (ii) by substituting for the full stop at the end of subparagraph(2)(b)(iv) the words “; or”; and
- (iii) by inserting after subparagraph (iv) the following subparagraph:

“(v) the holder fails to pay any fee as provided for under section 63.”;

(c) in subsection (3)—

(i) by substituting for the colon at the end of paragraph (b) a full stop; and

(ii) by deleting the proviso;

(d) by deleting subsection (7);

(e) by inserting after subsection (8), the following subsections:

“(8A) Where the Commission has revoked or suspended a Capital Markets Services Licence, the representatives of the licence holder shall cease to be a holder of a Capital Markets Services Representative’s Licence for that Capital Markets Services Licence holder.

(8B) A holder of a Capital Markets Services Representative’s Licence who cease to hold a licence under subsection (8A) may make an application under paragraph 69(1)(b) to vary his licence.”; and

(f) in paragraph (10)(a), by inserting after the word “revoked” the words “or has ceased”.

Amendment of section 73

19. Section 73 of the principal Act is amended—

(a) in the shoulder note, by substituting for the word “expiry” the word “cessation”;

(b) in subsection (1)—

(i) by substituting for the word “expiry” wherever it appears, with the word “cessation”; and

(ii) by inserting after the words “restriction on a licence” the words “under section 72”; and

(c) in subsection (2)—

- (i) by deleting the words “or has expired”;
- (ii) by inserting after the semi colon at the end of paragraph (a), the word “or”;
- (iii) in paragraph (b), by substituting for the word “; or” with a comma; and
- (iv) by deleting paragraph (c).

Amendment of section 74

20. Subsection 74(1) of the principal Act is amended—

- (a) by inserting the word “or” after the semi colon at the end of paragraph (a);
- (b) by substituting for paragraph (b) the following paragraph:

“(b) subsection 72(2),”; and
- (c) by deleting paragraph (c).

Amendment of section 75

21. Section 75 of the principal Act is amended—

- (a) in subsection (1), by substituting for the words “(j) or (k)” the words “(j), (k) or (l)”;
- (b) by substituting for subsection (2) the following subsection:

“(2) A person shall not be appointed as a chief executive of a holder of a Capital Markets Services Licence without the approval of the Commission.”;

(c) by inserting after subsection (2) the following subsection:

“(2A) For the purposes of subsection (2), in approving the appointment of a chief executive, the Commission may take into consideration whether—

(a) any of the grounds set out in paragraph 65(1) (d), (e), (f), (g), (i), (j), (k) or (l) would prevent him from holding such office; or

(b) it would be contrary to the interest of the public to approve such appointment.”;

(d) in subsection (3), by deleting the words “or chief executive”;

(e) in subsection (4)—

(i) by deleting the words “or chief executive”;

(ii) by substituting for the words “subsection (3) and” the words “subsection (3) or a chief executive appointed under subsection (2)”; and

(iii) by inserting after the words “subsection (1)” the words “or (2A)”;

(f) in subsection (5), by inserting after the words “subsection (1)” the words “or (2A)”;

(g) by substituting for subsection (6) the following subsection:

“(6) A person shall be disqualified from holding the office of a director or chief executive of a holder of a Capital Markets Services Licence, if—

(a) any of the grounds set out in paragraph 65(1) (d), (e), (f), (g), (i), (j), (k) or (l) is applicable; or

(b) it would be contrary to the interest of the public for the person to continue to hold the office of a director or chief executive of a holder of a Capital Markets Services Licence.”;

(h) by substituting for subsection (8) the following subsection:

“(8) Notwithstanding anything in this section, the Commission may direct a Capital Market Services Licence holder to remove the director or chief executive within such period as may be specified in such direction, if—

(a) any of the grounds set out in paragraph 65(1) (d), (e), (f), (g), (i), (j), (k) or (l) is applicable; or

(b) it would be contrary to the interest of the public for the person to continue to hold the office of a director or chief executive of a holder of a Capital Markets Services Licence.”; and

(i) in subsection (11), by inserting after the word “or” the words “fails to comply with”.

Amendment of section 76

22. Section 76 of the principal Act is amended—

(a) in subparagraph (6)(c)(i), by inserting after the words “92,” the words “92A,”; and

(b) in subparagraph (6)(c)(iv), by inserting after the words “92,” the words “92A,”.

Amendment of section 78

23. Paragraph 78(1)(a) of the principal Act is amended by substituting for the words “the business to which the licence relates” the words “all or any of the regulated activities to which the licence relates”.

Substitution of section 80

24. The principal Act is amended by substituting for section 80 the following section:

“Appeals

80. (1) Any person who is aggrieved by the decision of the Commission under this Division except on the revocation of a Capital Markets Services Licence for dealing in securities or dealing in derivatives, may within fourteen days after the person has been notified of the decision, appeal in writing to the Commission to review its decision.

(2) A holder of Capital Markets Services Licence for dealing in securities or dealing in derivatives whose licence is revoked by the Commission may within fourteen days after the person has been notified of the decision, appeal to the Minister and the decision of the Minister is final.

(3) Where an appeal is made to the Commission or to the Minister under this section, the decision of the Commission shall not take effect until the appeal is disposed of.

(4) Notwithstanding subsection (3), the Commission may stipulate in the notification under subsection (1), that the decision of the Commission shall take effect immediately on the date when the notification is issued or on any other date as the Commission may specify, if the Commission is of the view that it is necessary in the interest of investors or public interest.”.

Amendment of section 92

25. Section 92 of the principal Act is amended—

(a) in subsection (3), by substituting for the words “does not commit” the word “commits”;

(b) in subsection (5)—

(i) by substituting for the words “could be expected to” the word “would”;

- (ii) by deleting the words “, as the case may be,”; and
 - (iii) by substituting for the word “section” the word “subsection”; and
- (c) in subsection (6)—
- (i) by deleting the words “, when making the recommendation,”; and
 - (ii) by inserting after the words “particular needs” the words “when the licensed person makes the recommendation”.

New section 92A

26. The principal Act is amended by inserting after section 92 the following section:

“Information to be given to a person who invests in capital market product

92A. (1) The Commission may specify the nature and extent of information to be given to a person who invests in any capital market product and such specification may include—

- (a) information that explains the key characteristics of the capital market product;
- (b) information that explains the nature of the obligations assumed by the parties dealing in the capital market product;
- (c) information that sets out the risks associated with the capital market product; and
- (d) details of the essential terms of the capital market product.

(2) Any person who—

- (a) issues or provides false or misleading information;
- (b) makes any false or misleading statement; or
- (c) wilfully omits to state any matter or thing without which the statement or information is misleading in a material aspect,

to a person who invests in a capital market product, commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.

(3) Nothing in this section shall affect any right of action under any other law that is conferred on the person who invests in a capital market product.”.

Amendment of section 98

27. Subsection 98(4) of the principal Act is amended by substituting for the words “in relation to—” the words “in relation to any of the following circumstances:”.

Amendment of subsubheading of Subdivision 3 of Division 3 of Part III

28. The subsubheading of Subdivision 3 of Division 3 of Part III of the principal Act is amended by substituting for the words “Futures contracts” the words “Standardized derivatives”.

Substitution of section 99

29. The principal Act is amended by substituting for section 99 the following section:

“Trading in standardized derivatives on own account

99. (1) A holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives shall not, as principal, trade in any standardized derivative with a person

who is not such a holder unless he first informs the person in writing that he is acting in the transaction as principal and not as agent.

(2) A reference in this section to a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives as principal includes a reference to a person—

- (a) dealing or entering into a transaction on behalf of a person associated with such holder;
- (b) dealing in derivatives on behalf of a corporation in which it has a controlling interest; or
- (c) dealing in derivatives on behalf of a corporation in which its interest and the interests of directors of the corporation together constitute a controlling interest.

(3) Nothing in section 107 shall affect any right of action that is conferred on a purchaser or vendor under any other law in relation to the transaction.”.

Deletion of section 100

30. The principal Act is amended by deleting section 100.

Substitution of section 101

31. The principal Act is amended by substituting for section 101 the following section:

“Trading limits in standardized derivatives

101. (1) The Commission or a derivatives exchange with the approval of the Commission may, by notice in writing from time to time, specify such limits as it considers necessary on the amount of trading which may be done or positions which may be assumed by any person under a standardized derivative.

(2) In determining whether a person has exceeded the limits referred to in subsection (1), the positions assumed and trading done by any persons directly or indirectly controlled by such a person shall be included with the positions assumed and trading done by that person.

(3) The limits referred to in subsection (1) upon positions and trading shall apply to positions assumed, and trading done, by two or more persons acting pursuant to an express or implied agreement or understanding as if the positions were assumed, or the trading done, by a single person.

(4) A person shall not directly or indirectly—

(a) trade or agree to trade in standardized derivatives in excess of the trading limits specified for a period set out by the Commission or the derivatives exchange under this section; or

(b) assume a position under a standardized derivative of any class in excess of any position limit specified by the Commission or the derivatives exchange under this section with respect to that standardized derivative.

(5) This section shall not preclude the Commission or a derivatives exchange from specifying different trading or position limits for different types or classes of standardized derivatives or different limits for the same type or class of standardized derivatives traded for different purposes, different delivery months or different days remaining until the last day of trading in a standardized derivative for the purpose of subsection (4).”.

Deletion of sections 102 and 103

32. The principal Act is amended by deleting sections 102 and 103.

Substitution of section 104

33. The principal Act is amended by substituting for section 104 the following section:

“Sequence of sending and carrying out of orders

104. (1) A holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives shall not instruct another holder to carry out the instructions of the first-mentioned holder’s client unless the consent of that client has been obtained.

(2) Subject to subsection (3), a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives shall send in the sequence in which they are received by the holder all instructions to trade in a class of standardized derivatives at or near the market price for a standardized derivative of that class prevailing immediately before the carrying out of the instructions.

(3) If—

(a) a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives proposes to trade in a class of standardized derivatives on the holder’s own account;

(b) the person by whom or on whose instructions, the instructions for the trading are to be sent is aware of the instructions of a client of the holder to trade in that class of standardized derivatives at or near the market price for a standardized derivative of that class prevailing at that time; and

(c) the client’s instructions have not been sent,

that person shall not send, and shall not give instructions to any other person to send, the instructions to give effect to the proposal of the holder to trade in that class of standardized derivatives before the instructions of the client are sent.

(4) A holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives, or a director, officer, employee or representative of a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives, shall not, except—

- (a) to the extent necessary to carry out the instructions concerned;
- (b) as required by this Act or any other law; or
- (c) as required by the rules of any derivatives exchange of which the holder is an affiliate,

disclose to any other person the instructions of a client to trade in a class of standardized derivatives.

(5) A holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives who is an affiliate of a derivatives exchange and who is concerned in the carrying out, on a derivatives market of the derivatives exchange, of instructions to trade in standardized derivatives shall carry out in the sequence which they are received by the holder all instructions to trade in a class of standardized derivatives at or near the market price for a standardized derivative of that class prevailing immediately before the carrying out of the instructions.

(6) If—

- (a) during a particular period, a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives sends instructions (whether or not those instructions consist of or include instructions giving effect to the proposal of the holder to trade in the class of standardized derivatives concerned on the holder's own account) to trade in a class of standardized derivatives at or near the market price for a standardized derivative of that class prevailing immediately before the carrying out of the instructions; and
- (b) trading in that class of standardized derivative is effected under those instructions,

the holder shall, except so far as the rules of the derivatives exchange of which the holder is an affiliate otherwise provide, allocate trading to those instructions—

- (A) in the sequence in which the trading was effected;
and
- (B) in the sequence in which the holder sent those instructions.

(7) A holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives shall keep, in accordance with the regulations, records that set out the prescribed particulars of—

- (a) the instructions by a client to trade in standardized derivatives;
- (b) the date and time of receipt, sending and carrying out of those instructions;
- (c) the person by whom those instructions are received, the person by whom they are sent and the person by whom they are carried out;
- (d) the date and time of receipt, sending and carrying out of instructions to trade in standardized derivatives on the holder's own account; and
- (e) the person by whom instructions of the kind referred to in paragraph (d) are received, the person by whom they are sent and the person by whom they are carried out,

and shall retain those records for the prescribed period.

(8) If—

- (a) a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives sends, for carrying out on a derivatives market outside Malaysia, instructions to trade in standardized derivatives; and

- (b) it is not reasonably practicable for the holder to set out in the records kept by the holder under subsection (7) the prescribed particulars of the date and time of the carrying out of those instructions,

the holder shall set out those particulars as precisely as is reasonably practicable.

(9) In this section, a reference to the sending of instructions to trade in a class of standardized derivatives by a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives is a reference if the holder has—

- (a) direct access to the derivatives market on which the instructions are to be carried out, to the sending of the instructions to that derivatives market; or
- (b) access to the derivatives market on which the instructions are to be carried out only through another holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives, to the sending of the instructions to that other holder.”.

Substitution of section 105

34. The principal Act is amended by substituting for section 105 the following section:

“Trading in standardized derivatives outside Malaysia

105. (1) A holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives or carries on the business of fund management in relation to derivatives shall not trade in a standardized derivative on any derivatives market outside Malaysia unless—

- (a) the derivatives market is a derivatives market of a Specified Exchange; or
- (b) the standardized derivative is of an approved class of standardized derivatives.

(2) If—

- (a) the Commission has reason to believe that a situation exists which, in the opinion of the Commission, is likely to affect the proper operation of the derivatives market of any Specified Exchange or cause a disruption to the orderly trading of standardized derivatives on such a derivatives market;
- (b) it is shown that a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives or carrying on the business of fund management in relation to derivatives or any of its employees, directors or representatives has acted in any manner, in relation to the operation—
 - (i) of any derivatives market of a derivatives exchange or in respect of which an approved clearing house provides clearing house facilities; or
 - (ii) of any derivatives market of a Specified Exchange,

which is likely to prejudice the public interest;

- (c) a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives or carrying on the business of fund management in relation to derivatives has contravened—
 - (i) securities laws;
 - (ii) the rules of a derivatives exchange or an approved clearing house of which the holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives or carrying on the business of fund management in relation to derivatives is an affiliate; or
 - (iii) any condition applicable in respect of its licence; or

- (d) other prescribed circumstances exist in respect of a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives or fund management in relation to derivatives,

the Commission may direct—

- (A) the holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives or fund management in relation to derivatives to cease trading in standardized derivatives, or in any class of standardized derivatives, on the derivatives market of any Specified Exchange; or
- (B) that trading in standardized derivatives, or in any class of standardized derivatives, by the holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives or fund management in relation to derivatives on the derivatives market of any Specified Exchange be limited to the closing out of standardized derivatives.

(3) For the purposes of this section and section 106—

- (a) a Specified Exchange is such derivatives market as may be provided in the rules of the derivatives exchange as a Specified Exchange; or
- (b) an approved class of standardized derivatives is such class of standardized derivatives of the derivatives market of a Specified Exchange as provided in the rules of the derivatives exchange as an approved class of standardized derivatives.

(4) Any holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives or fund management in relation to derivatives who contravenes subsection (1) or any direction made under subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.”.

Amendment of section 107

35. Section 107 of the principal Act is amended by substituting for the words “sections 99, 100, 101, 102 and 104” in the shoulder note and wherever it appears the words “sections 99, 101 and 104”.

New Subdivision 4 of Division 3 of Part III

36. The principal Act is amended by inserting after Subdivision 3 of Division 3 of Part III the following subdivision:

“Subdivision 4 – Over-the-counter derivatives

Interpretation

107A. For the purposes of this Subdivision, “derivatives” means over-the-counter derivatives.

Approval of trade repository

107B. (1) The Commission may in writing, approve any body corporate to be a trade repository.

(2) The Commission shall not grant the approval under subsection (1) unless the Commission is satisfied that—

- (a) the body corporate will be able to carry out the functions as may be specified;
- (b) the body corporate has sufficient financial, human or other resources to carry out the functions as may be specified; and
- (c) the body corporate has in place rules and procedures to enable it to perform its functions.

Application for granting approval

107C. (1) An application for the grant of approval as a trade repository shall be made to the Commission in such form and manner as may be specified by the Commission.

(2) The Commission may require a body corporate to furnish the Commission with such information or document as the Commission considers necessary for the purpose of the application.

(3) The Commission may in approving the body corporate impose such condition or restriction as the Commission deems fit.

Withdrawal of approval

107D. (1) The Commission may withdraw an approval granted to a trade repository where the Commission is satisfied that—

- (a) the trade repository is not able to perform any of its functions and responsibilities as may be specified by the Commission;
- (b) the trade repository has breached any term and condition imposed under subsection 107c(3);
- (c) the trade repository has breached any provision of the securities laws or any other laws involving fraud or dishonesty;
- (d) the trade repository has failed to comply with any direction issued by the Commission under this Subdivision;
- (e) the trade repository is being wound up or otherwise dissolved;
- (f) the trade repository has not satisfied in whole or in part a judgment debt against it;
- (g) a receiver, a receiver and manager, or equivalent person has been appointed, in relation to any property of the trade repository;
- (h) the trade repository has, whether within or outside Malaysia, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;
or

- (i) any information or document that is furnished by the trade repository for the purposes of this Subdivision was false or misleading or from which there was a material omission.

(2) Subject to subsection (3), the Commission may withdraw an approval granted to a trade repository upon a request in writing by the trade repository to cease its operation as a trade repository.

(3) Where a trade repository has on its own accord made a request for cessation under subsection (2), the Commission may refuse to withdraw the approval if the Commission considers that—

- (a) it is in the interest of the public or the persons referred to under subsection 107J(1) that any matter concerning the trade repository should be investigated before the approval is withdrawn under subsection (2); and
- (b) the withdrawal of approval would not be in the interest of the public or the persons referred to under subsection 107J(1).

(4) The Commission shall not take any action under subsection (1) without giving the trade repository an opportunity to be heard.

Appointment of directors or chief executive officer of an approved trade repository

107E. A trade repository shall obtain the prior approval of the Commission before appointing any director or chief executive officer.

Duty to maintain secrecy

107F. (1) A director, officer, servant or agent of a trade repository shall not disclose any information or document which has been obtained by him in the course of his duties except—

- (a) in the circumstances set out under section 107G; or

(b) to the Commission if the Commission is of the view that such disclosure is necessary in the interest of the public or for the protection of investors.

(2) A person who has any information or document which to his knowledge has been disclosed in contravention of subsection (1) shall not in any manner disclose such information or document to any other person.

(3) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding five years or to both.

Permitted disclosure

107G. A person referred to in subsection 107F(1) shall not refuse to disclose any information or document—

- (a) which any person referred to in subsection 107J(1), has given permission in writing to disclose;
- (b) in the case where any person referred to in subsection 107J(1) is declared a bankrupt within or outside Malaysia;
- (c) for the purpose of instituting, or in the course of, any civil proceedings between a trade repository and any person referred to in subsection 107J(1);
- (d) to any person duly authorized to investigate into any offence under any law, and such disclosure being, in any case, limited to the affairs of any person referred to in subsection 107J(1);
- (e) for the purpose of enabling or assisting the Commission in the discharge of its function under the securities laws or any other written law;
- (f) for the purpose of enabling or assisting Bank Negara in giving effect to its objects or carrying out its functions under the Central Bank of Malaysia Act 2009 and any other written law enforced by Bank Negara;

- (g) for the purpose of risk assessment and monitoring by the Malaysia Deposit Insurance Corporation in the performance of its duties and functions under the Malaysia Deposit Insurance Corporation Act 2011 [Act 720]; or
- (h) for the purpose of enabling or assisting auditors of a trade repository to discharge their function.

Powers of Commission to issue directions

107H. (1) The Commission may give a trade repository such directions whether of a general or specific nature if it thinks it necessary or expedient—

- (a) for the effective administration of the trade repository;
- (b) for ensuring compliance with any conditions or restrictions imposed on the trade repository; or
- (c) in the interest of the public or for the protection of investors.

(2) A trade repository who fails to comply with any directions given under this section commits an offence.

Rules of a trade repository

107I. An amendment to the rules of a trade repository shall only have effect after it has been approved by the Commission.

Reporting obligation

107J. (1) A holder of a Capital Markets Services Licence, registered person or any other person dealing in derivatives shall report information as may be specified by the Commission, including any amendment, modification, variation or changes to the information, to a trade repository.

(2) This section shall not apply to dealing in derivatives where Bank Negara or Government of Malaysia is a party.

(3) For the purposes of subsection (1), the Commission may specify the form and manner in which the information is to be reported to the trade repository.

(4) For the purposes of this section, “derivatives” shall include derivatives whose market price, value, delivery or payment obligations are derived from, referenced to or based on exchange rates.

(5) Any person who—

(a) fails to comply with any requirement of this section;
or

(b) submits false or misleading information or from which there is a material omission to a trade repository,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding three million ringgit or to both.

(6) A trade repository shall, upon the request by the Commission, provide to the Commission the information obtained by it under subsection (1).”.

Amendment of section 111

37. Section 111 of the principal Act is amended by substituting for subsection (2) the following subsection:

“(2) Notwithstanding subsection (1), where a holder of a Capital Markets Services Licence receives payment in a place outside Malaysia, the holder may keep such payment in one or more trust accounts in an institution licensed outside Malaysia to provide banking or financial services.”.

Amendment of section 121

38. Section 121 of the principal Act is amended in the definition of “custodian”—

(a) by deleting the word “or” at the end of paragraph (f);

(b) by inserting after paragraph (f) the following paragraph:

“(fa) any institution licensed or authorized to provide custodian services outside Malaysia; or”; and

(c) in the English language text, in paragraph (g), by substituting for the words “by writing” the words “in writing”.

Amendment of section 122

39. Section 122 of the principal Act is amended—

(a) by inserting after subsection (1) the following subsection:

“(1A) Subsection (1) shall not apply where a client makes his own arrangement for a custodian to maintain a trust account.”; and

(b) in subsection (4), by substituting for the words “it in that place” the words “a custodian outside Malaysia”.

Amendment of subsubheading of Subdivision 5 of Division 4 of Part III

40. The subsubheading of Subdivision 5 of Division 4 of Part III of the principal Act is amended by deleting the words “of licensed persons”.

Amendment of section 125

41. Section 125 of the principal Act is amended—

(a) by substituting for subsection (1) the following subsection:

“(1) This section applies to the following persons:

- (a) a licensed person;
- (b) a trustee approved by the Commission under section 260, section 289 or Part IIIA;
- (c) a custodian as defined under section 121;
- (d) a private retirement scheme administrator approved under Part IIIA;
- (e) any person registered under subsection 76(2) or any registered person referred to in Part 2 of Schedule 4; and
- (f) any person who maintains a trust account for clients’ assets.”;

(b) by substituting for subsection (2) the following subsection:

“(2) Without prejudice to section 354, 355 or 356, where—

- (a) a licensed person or a trustee approved by the Commission under section 260, section 289 or Part IIIA has contravened this Act or guidelines issued under this Act;
- (b) the interests of the clients of the holder of a Capital Markets Services Licence or the interests of debenture holders or unit holders are likely to be jeopardised, or are jeopardised;

- (c) any of the grounds exists for which an approval may not be granted under section 260 or 289;
- (d) any of the grounds exists for which a licence may be revoked or suspended under section 72 or any action which may be taken pursuant to section 262, 290 or 292;
- (e) the interests of the members of a private retirement scheme are likely to be jeopardised, or are jeopardised;
- (f) a private retirement scheme provider approved under section 139Q has contravened this Act or any guidelines issued under this Act;
- (g) any circumstances exists for which an approval granted under Part IIIA of this Act may be withdrawn;
- (h) any circumstances exists for which an action can be taken under this Act to replace or remove a trustee approved under Part IIIA of this Act; or
- (i) any circumstances exists for which the Commission may take action under subsection 76(9),

the Commission may take any one or more of the following actions:

- (A) direct any person in subsection (1)—
 - (i) not to deal with monies and properties of its clients or members in such manner as the Commission thinks appropriate;
 - (ii) to transfer the monies and properties of its clients or members to any other person as may be specified by the Commission; or

- (iii) to transfer any records or documents in relation to monies or properties to any other person as may be specified by the Commission;
 - (B) prohibit any person in paragraphs (1)(a), (d), (e) and (f) from—
 - (i) entering into transactions of a specified description, in specified circumstances or to a specified extent;
 - (ii) soliciting business from persons of a specified description; or
 - (iii) carrying on business in a specified manner;
 - (C) require any person in paragraphs (1)(a), (d), (e) and (f) to carry on business in a specified manner; or
 - (D) direct any person in paragraphs (1)(a), (d), (e) and (f) to maintain property within or outside Malaysia such that—
 - (i) the property maintained is of the value and of the description that appear to the Commission to be necessary to ensure that such person will be able to meet its liabilities; and
 - (ii) the property is maintained in a manner that will enable such person at any time freely to transfer or otherwise dispose of the property.”;
- (c) in subsection (3), by deleting the words “(1) or”;
- (d) in subsection (4), by substituting for the words “Nothing contained in this Act, rules, terms of any contract” the words “Nothing in this Act, any rules, any terms of any contract”; and

(e) by inserting after subsection (6) the following subsection:

“(7) For the purposes of this section, where the person in paragraph (1)(c) or (f) is a licensed institution or an Islamic bank; a direction, condition, prohibition or requirement on such person shall be made through Bank Negara.”.

Amendment of section 126

42. Section 126 of the principal Act is amended by inserting after subsection (3) the following subsection:

“(3A) For the purposes of subsection (3), where the relevant person is a holder of a Capital Markets Services Licence who carries on the business of dealing in securities, dealing in derivatives or fund management, the auditor appointed shall be an auditor registered under section 31o of the Securities Commission Act 1993.”.

Amendment of section 137

43. Section 137 of the principal Act is amended by substituting for the words “trading in futures contracts” the words “dealing in derivatives and who is an affiliate of a derivatives exchange”.

Amendment of section 139

44. Section 139 of the principal Act is amended by substituting for subsection (1) the following subsection:

“(1) Where the Commission has granted its approval for a holder of a Capital Markets Services Licence in relation to an agreement or arrangement—

(a) for the sale, disposal or transfer in any manner of the whole or any part of the business of such holder;

- (b) for the amalgamation or merger of such holder with any other person; or
- (c) for the reconstruction of such holder,

the holder whose business is to be transferred (referred to in this section as “the transferor”) and the entity to whom the transfer is to be made (referred to in this section as “the transferee”) may make a joint application to the court by way of *ex parte* originating summons for such order of the court as may be required by them to facilitate or enable the agreement or arrangement to be given effect to.”.

New Part IIIA

45. The principal Act is amended by inserting after Part III the following Part:

“PART IIIA

PRIVATE RETIREMENT SCHEME INDUSTRY

Division 1

Preliminary

Interpretation

139A. In this Part, unless the context otherwise requires—

“accrued benefits” means the amount of a member’s beneficial interest in a private retirement scheme;

“contribution” means an amount paid by a contributor in respect of a private retirement scheme;

“contributor” means any person who makes contribution into a private retirement scheme and includes a member or an employer who makes contribution into a private retirement scheme on behalf of his employees;

“employer-sponsored retirement scheme” means a retirement scheme established by a corporation for the purpose, or having the effect of providing retirement benefits to employees of that corporation or for its related corporation;

“employer trustee” means a trustee of an employer-sponsored retirement scheme;

“member” means an individual who has a beneficial interest under a private retirement scheme or an employer-sponsored retirement scheme;

“principal officer” means a person who is a director, chief executive officer, chief operation officer or head of compliance of a private retirement scheme provider;

“private retirement scheme” means a retirement scheme governed by a trust, offered or provided to the public for the sole purpose, or having the effect, of building up long term savings for retirement for members where the amount of the benefits is to be determined solely by reference to the contributions made to the scheme and any declared income, gains and losses in respect of such contributions but does not include—

- (a) any pension fund approved under section 150 of the Income Tax Act 1967; or
- (b) any retirement scheme or retirement fund established or provided by the Federal Government, State Government or any statutory body established by an Act of Parliament or a State law;

“private retirement scheme administrator” means a person who is approved under section 139C to perform the function of record keeping, administration and customer service for members and contributors in relation to contributions made in respect of a private retirement scheme and such other duties and functions as may be specified by the Commission;

“private retirement scheme provider” means a person who provides and manages a private retirement scheme;

“rules” means the memorandum of association, the articles of association or any other rules or directions by whatever name called and wherever contained, governing the operation, management or procedures of, or services provided by a private retirement administrator;

“scheme trustee” means a trustee of a private retirement scheme;

“supervisory authority” means any authority, body or agency whether within or outside Malaysia, other than the Commission, which is responsible for the supervision or oversight of any person referred to in section 139ZM;

“terms of reference” means a set of terms which defines the scope, application, operation and procedures of a private retirement scheme administrator.

Division 2

Private retirement scheme

Subdivision 1 – Private retirement scheme administrator

Requirement for approval to establish or operate a private retirement scheme administrator

139B. (1) A person shall not establish, operate, or assist in establishing or operating, or hold himself out as, a private retirement scheme administrator unless the person is approved by the Commission.

(2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to a fine not exceeding ten million ringgit.

Application for approval

139C. (1) The Commission may approve a body corporate to establish, operate or maintain a private retirement scheme administrator.

(2) An application for approval to establish, operate or maintain a private retirement scheme administrator shall be made to the Commission in such form and manner as may be specified by the Commission.

(3) The Commission may require an applicant to furnish the Commission with such information or documents as the Commission considers necessary for the purpose of the application.

(4) The Commission may approve an application under this section, subject to any terms and conditions as the Commission thinks fit.

(5) The Commission may vary, add to or remove any terms and conditions imposed under subsection (4) at any time as the Commission deems necessary.

(6) Any person who contravenes any term or condition imposed under subsection (4) or (5) commits an offence.

Refusal to approve

139D. Where an application is made under section 139C, the Commission may refuse the application on any of the following grounds:

- (a) the application was not made in accordance with section 139C;
- (b) the applicant has failed to comply with any requirement of this Act or any guidelines made under this Act;
- (c) any information or document that is furnished by the applicant to the Commission is false or misleading or from which there is a material omission;
- (d) the applicant is in the course of being wound up or otherwise dissolved;
- (e) execution against the applicant in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (f) a receiver, a receiver and manager or an equivalent person has been appointed within or outside Malaysia, or in respect of any property of the applicant;
- (g) the applicant has, whether within or outside Malaysia, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;

- (h) the applicant or any of its directors, chief executive or managers—
- (i) has been convicted, whether within or outside Malaysia, of an offence involving fraud, dishonesty or violence;
 - (ii) has been convicted of an offence under any securities laws or any law outside Malaysia relating to capital market;
 - (iii) has been subjected to any action taken by the Commission under section 354, 355 or 356;
 - (iv) has contravened any provision made by or under any written law whether within or outside Malaysia appearing to the Commission to be enacted for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or the management of companies;
 - (v) has engaged in any business practices appearing to the Commission to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on its or his method of conducting business;
 - (vi) has engaged in or has been associated with any other business practices or otherwise conducted itself or himself in such a way as to cast doubt on its or his competence and soundness of judgment; or
 - (vii) is an undischarged bankrupt whether within or outside Malaysia;
- (i) the Commission has reason to believe that the applicant or any of its directors, chief executive or managers may not be able to act in the best interest of its members having regard to their reputation, character, financial integrity and reliability;

- (j) there are other circumstances which are likely to—
 - (i) lead to the improper conduct of business by the applicant or by any of its directors, chief executive or managers; or
 - (ii) reflect discredit on the manner of conducting the business of the applicant;
- (k) the applicant does not have sufficient financial, human or other resources to carry out its functions; or
- (l) the Commission has reason to believe that the applicant or any of its directors, chief executive or managers will not be able to act in the interest of the public or the members.

Appointment of directors of a private retirement scheme administrator

139E. (1) No appointment, election or nomination of a director or chief executive of a private retirement scheme administrator can be made without the prior approval of the Commission.

(2) The private retirement scheme administrator shall ensure that at least one-third of the number of directors on its board shall be public interest directors in accordance with such criteria as may be specified by the Commission.

Withdrawal of approval

139F. (1) The Commission may withdraw an approval granted to a private retirement scheme administrator where the Commission is satisfied that—

- (a) there exists a ground on which the Commission may refuse an application under section 139D;
- (b) the private retirement scheme administrator fails to commence operations within six months from the date of approval unless otherwise specified by the Commission;

- (c) the private retirement scheme administrator is not able to perform any of its duties or responsibilities under section 139H;
- (d) the private retirement scheme administrator has contravened any term and condition imposed by the Commission;
- (e) the private retirement scheme administrator has failed to comply with any direction issued by the Commission under this Act; or
- (f) the private retirement scheme administrator has failed to provide assistance to the Commission or to a person acting on behalf of or with the authority of the Commission as required under subsection 139ZL(2).

(2) Subject to subsection (3), the Commission may withdraw an approval upon a request in writing made to the Commission by a private retirement scheme administrator to cease operating as a private retirement scheme administrator.

(3) Where a private retirement scheme administrator made a request for cessation of its operations under subsection (2), the Commission may refuse to withdraw the approval if the Commission considers that—

- (a) it is in the interest of the public or the members that any matter concerning the private retirement scheme administrator should be investigated before the approval is withdrawn under subsection (2); or
- (b) the withdrawal of the approval would not be in the interest of the public or the members.

(4) Notwithstanding the withdrawal of an approval, the Commission may require the private retirement scheme administrator to continue to carry on such activities affected by the withdrawal as the Commission may specify, on or after the date on which the withdrawal takes effect, for the purposes of—

- (a) closing down the operations of the private retirement scheme administrator or ceasing to provide the services; or
- (b) protecting the interest of the public or the members.

(5) Where the Commission requires the private retirement scheme administrator to continue its activities under subsection (4), the private retirement scheme administrator shall not, by reason of its carrying on the activities, be regarded as having contravened section 139B.

(6) The Commission shall not take any action under subsection (1) without giving the private retirement scheme administrator an opportunity to be heard.

Effect of withdrawal

139G. Any withdrawal issued under section 139F shall not operate so as to—

- (a) avoid or affect any agreement, transaction or arrangement entered into the system operated by the private retirement scheme administrator where—
 - (i) the agreement, transaction or arrangement was entered into before the withdrawal of approval; or
 - (ii) the agreement, transaction or arrangement was entered into after the withdrawal of approval under the circumstances provided under subsection 139F(4); or
- (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

Duties and responsibilities of a private retirement scheme administrator

139H. (1) The duties and responsibilities of a private retirement scheme administrator shall include—

- (a) receiving instructions in such form and manner as may be specified by the Commission;
- (b) transmitting such instructions in such form and manner as may be specified by the Commission;

- (c) keeping records of all transactions or monies received or paid out;
- (d) providing information to an approved private retirement scheme provider, scheme trustee, member or any other person as may be specified by the Commission; and
- (e) discharging such other duties and functions as may be specified by the Commission.

(2) A private retirement scheme administrator shall at all times exercise its duties and responsibilities in the public interest, having particular regard to the need for the protection of members.

(3) A private retirement scheme administrator shall immediately notify the Commission if it becomes aware of any matter which adversely affects or is likely to adversely affect the interest of members.

(4) A private retirement scheme administrator shall not impose any fee or charges or vary such fee or charges, on a private retirement scheme provider or a member without the prior approval of the Commission.

(5) A private retirement scheme administrator shall not outsource or delegate any of its duties and responsibilities, systems or operations to any person without the prior approval of the Commission.

Terms of reference and rules of a private retirement scheme administrator

139i. (1) A private retirement scheme administrator shall put in place a set of terms of reference and rules approved by the Commission governing or relating to the proper administration of the private retirement scheme administrator.

(2) No amendment to the terms of reference or rules shall be made without the prior approval of the Commission.

Monies received by a private retirement scheme administrator

139j. (1) All monies received by a private retirement scheme administrator in respect of a private retirement scheme for the benefit of a member shall be paid into a trust account in such form and manner as may be specified by the Commission.

(2) A private retirement scheme administrator shall not withdraw any monies from a trust account except—

(a) in accordance with the written instruction of a person entitled to the monies or for his benefit; or

(b) otherwise authorized by law.

(3) Except as provided in subsection (2), monies held in a trust account shall not be available for payment of the debts of a private retirement scheme administrator or be liable to be paid or taken in execution under an order or process of any court.

(4) A person who contravenes this section commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to a fine not exceeding five million ringgit.

Accounts and reports in respect of a private retirement scheme administrator

139k. The provisions of Subdivision 6 of Division 4 of Part III shall apply to a private retirement scheme administrator.

Power of Commission to take action in respect of private retirement scheme administrator

139l. (1) Where the Commission reasonably believes that the interests of the members are likely to be adversely affected or are adversely affected, the Commission may, by issuing a written direction, take any one or more of the following actions:

(a) require a private retirement scheme administrator to take any action to do or not to do any act or thing, in relation to its business and affairs, or its directors or officers, which the Commission considers necessary;

- (b) notwithstanding any written law or any limitation contained in the rules of the private retirement scheme administrator—
- (i) remove from office any director or chief executive of the private retirement scheme administrator;
 - (ii) appoint any person to the office of director or chief executive of the private retirement scheme administrator and provide in the direction for the person so appointed to be paid by the private retirement scheme administrator;
 - (iii) appoint a person to advise the private retirement scheme administrator in relation to the proper conduct of its business and affairs and provide in the direction for the person so appointed to be paid by the private retirement scheme administrator; or
 - (iv) require the private retirement scheme administrator to furnish the Commission any information or record as the Commission considers necessary.

(2) Where the Commission withdraws an approval under section 139F, the Commission may, by issuing a written direction, take any one or more of the following actions:

- (a) notwithstanding any written law, the Commission or any person appointed by the Commission to act on its behalf, assume control of the whole or such part of any regulated assets, business and affairs of a private retirement scheme administrator and to carry on the whole or such part of business and affairs of the private retirement scheme administrator; or
- (b) subject to subsections (4) and (5), direct a private retirement scheme administrator to transfer any regulated assets to any other person as may be specified by the Commission.

(3) For the purposes of this section, “regulated assets” means—

- (a) all information or records obtained, stored or processed;
and
- (b) systems developed, operated or maintained,

by a private retirement scheme administrator in carrying out its duties and responsibilities.

(4) All information or records obtained, stored or processed by a private retirement scheme administrator shall belong to the Commission at all times.

(5) Where the regulated assets are transferred to such person under paragraph (2)(b), the private retirement scheme administrator shall be entitled to such compensation as may be determined by the Commission for the systems developed, operated or maintained by the private retirement scheme administrator.

(6) Subsection (5) shall not apply where the withdrawal of approval is for the reason set out under subparagraphs 139D(h)(i), (ii), (iii), (iv), (v) or paragraph 139F(1)(e).

Duty to take reasonable security measures

139M. A private retirement scheme administrator shall take all reasonable measures to protect information and documents relating to the affairs or the account of the members against any unauthorized access, alteration, disclosure or dissemination.

Duty to maintain secrecy

139N. (1) A person who has by any means access to any information or document relating to the affairs or the accounts of any contributor shall not give, divulge, reveal or otherwise disclose the information or document to any person except—

- (a) in the circumstances set out under section 139O; or

(b) to the Commission if the Commission is of the view that such disclosure is necessary in the interest of the public or for the protection of investors.

(2) A person who has any information or document which to his knowledge has been disclosed in contravention of subsection (1) shall not in any manner disclose such information or document to any other person.

(3) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding five years or to both.

Permitted disclosure

139o. A person referred to in subsection 139N(1) shall not refuse to disclose any information or document—

- (a) which the contributor, or his personal representative, has given permission in writing to disclose;
- (b) in the case where the contributor is declared a bankrupt within or outside Malaysia;
- (c) for the purpose of instituting, or in the course of, any civil proceedings—
 - (i) relating to the account of a contributor in a private retirement scheme; and
 - (ii) where a private retirement scheme administrator, a private retirement scheme provider, a contributor or an employer contributing on behalf of a contributor, is a party to the civil proceedings,

provided that where a contributor is not a party to the civil proceedings, his prior written consent has been obtained;

- (d) to any person duly authorized to investigate into any offence under any law and such disclosure being, in any case, limited to the affairs or the account of the contributor suspected of the offence;
- (e) for the purpose of enabling or assisting the Commission in the discharge of its function under the securities laws;

- (f) for the purpose of enabling or assisting auditors of a private retirement scheme administrator to discharge their function; or
- (g) in a summary or collection of information, framed in such a way so as not to enable the identity of any contributor, to whom the information relates, to be ascertained.

Subdivision 2 – Private retirement scheme provider

Requirement for approval to establish, offer or provide a private retirement scheme

139p. (1) A person shall not establish, offer or provide a private retirement scheme or hold himself out as establishing, offering or providing a private retirement scheme unless the Commission approves—

- (a) the person as a private retirement scheme provider under section 139Q;
- (b) the private retirement scheme under section 139v; and
- (c) the scheme trustee under section 139zc.

(2) A person shall not take or use or adopt the name or title “private retirement scheme” or “retirement scheme” in relation to its business or make any representation to such effect in any manner unless—

- (a) it is a scheme approved under section 139v;
- (b) it is a pension fund approved under section 150 of the Income Tax Act 1967;
- (c) it is a retirement scheme or retirement fund established or provided by the Federal Government, State Government or any statutory body established by an Act of Parliament or a State law; or
- (d) it is a scheme prescribed by the Minister not to be a private retirement scheme for the purposes of this Part.

(3) A person shall not take or use or by inference adopt the name or title “retirement plan” or “retirement product” or make any representation to such effect in any manner without the approval of the Commission.

(4) Subsection (3) shall not apply to any person solely under the supervision or oversight of Bank Negara.

(5) A person who contravenes this section commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to a fine not exceeding ten million ringgit.

Application for approval

139Q. (1) An application for approval as a private retirement scheme provider shall be made to the Commission in such form and manner as may be specified by the Commission and shall be accompanied by a prescribed application fee.

(2) The Commission may require an applicant to furnish the Commission with such information or documents as the Commission considers necessary for the purpose of the application.

(3) The Commission may approve an application under this section, subject to any conditions or restrictions as the Commission thinks fit.

(4) The Commission may vary, add to or remove any conditions or restrictions imposed under subsection (3) at any time as the Commission deems necessary.

(5) Any person who contravenes any conditions or restrictions imposed under subsection (3) or (4) commits an offence.

Refusal to approve

139R. Where an application is made under section 139Q, the Commission may refuse the application on any of the following grounds:

- (a) the applicant is not a holder of a Capital Markets Services Licence who carries on the business of fund management;

- (b) the application was not made in accordance with section 139Q;
- (c) the applicant has failed to comply with any requirement of this Act or any guidelines made under this Act;
- (d) any information or document that is furnished by the applicant to the Commission is false or misleading or from which there is a material omission;
- (e) the applicant is in the course of being wound up or otherwise dissolved;
- (f) execution against the applicant in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (g) a receiver, a receiver and manager or an equivalent person has been appointed within or outside Malaysia, or in respect of any property of the applicant;
- (h) the applicant has, whether within or outside Malaysia, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation; or
- (i) the Commission has reason to believe that the applicant or any of its principal officer will not be able to act in the interest of the public or the members.

Withdrawal of approval

139s. (1) The Commission may withdraw an approval granted to an approved private retirement scheme provider where the Commission is satisfied that—

- (a) the approved private retirement scheme provider ceases to hold a Capital Markets Services Licence who carries on the business of fund management;
- (b) there exists a ground on which the Commission may refuse an application under section 139R;
- (c) the approved private retirement scheme provider fails to launch the approved private retirement scheme within six months from the date the private retirement scheme is approved;

- (d) the approved private retirement scheme provider or any of its principal officers—
- (i) has contravened any conditions or restrictions imposed by the Commission;
 - (ii) has failed to comply with any direction issued by the Commission under this Act;
 - (iii) has failed to provide assistance to the Commission or to a person acting on behalf of or with the authority of the Commission as required under subsection 139ZL(2); or
 - (iv) has not acted efficiently, honestly or fairly; or
- (e) the conduct of the approved private retirement scheme provider has had an adverse effect on—
- (i) the financial soundness of the approved private retirement scheme; or
 - (ii) the interest of the members.

(2) Subject to subsection (3), the Commission may withdraw an approval upon a request in writing made to the Commission by an approved private retirement scheme provider to cease operating as a private retirement scheme provider.

(3) Where an approved private retirement scheme provider made a request under subsection (2), the Commission may refuse to withdraw the approval where the Commission considers that—

- (a) it is in the interest of the public or the members that any matter concerning the approved private retirement scheme provider should be investigated before the approval is withdrawn under subsection (2); or
- (b) the withdrawal of the approval would not be in the interest of the public or the members.

(4) Notwithstanding the withdrawal of an approval, the Commission may require the private retirement scheme provider to continue to carry on such activities affected

by the withdrawal as the Commission may specify, on or after the date on which the withdrawal takes effect, for the purposes of—

- (a) closing down the operations of the approved private retirement scheme provider; or
- (b) protecting the interest of the public or the members.

(5) Where the Commission requires a private retirement scheme provider to continue its activities under subsection (4), the private retirement scheme provider shall not, by reason of its carrying on the activities, be regarded as having contravened section 139p.

(6) The Commission shall not take any action under subsection (1) without giving the private retirement scheme provider an opportunity to be heard.

Effect of withdrawal

139r. Any withdrawal issued under section 139s shall not operate so as to—

- (a) avoid or affect any agreement, transaction or arrangement relating to the private retirement scheme entered into by the private retirement scheme provider where—
 - (i) the agreement, transaction or arrangement was entered into before the withdrawal of approval; or
 - (ii) the agreement, transaction or arrangement was entered into after the withdrawal of approval under the circumstances provided under subsection 139s(4); or
- (b) affect any right, obligation or liability arising under the agreement, transaction or arrangement referred to in paragraph (a).

Notification of disqualifying event

139u. (1) An approved private retirement scheme provider shall, immediately after the happening of an event under section 139s, give to the Commission written notice setting out the particulars of the event.

(2) A person who contravenes subsection (1) commits an offence.

*Subdivision 3 – Private retirement scheme***Application for approval of a private retirement scheme**

139v. (1) An application for approval of a private retirement scheme shall be made to the Commission in such form and manner as may be specified by the Commission and shall be accompanied by a prescribed application fee.

(2) The Commission may require an applicant to furnish the Commission with such information or documents as the Commission considers necessary for the purpose of the application.

(3) In granting an approval under this section, the Commission may, where it considers appropriate—

(a) approves the private retirement scheme subject to such terms and conditions as it thinks fit; or

(b) approves the private retirement scheme with such revisions and subject to such terms and conditions as it thinks fit.

(4) The Commission may vary, add to or remove any terms and conditions imposed under subsection (3) at any time as the Commission deems necessary.

(5) A person who contravenes any term or condition imposed under subsection (3) or (4) commits an offence.

Refusal to approve

139w. Where an application is made under section 139v, the Commission may refuse the application on any of the following grounds:

- (a) the applicant is not an approved private retirement scheme provider;
- (b) the application is not made in accordance with section 139v;
- (c) the private retirement scheme does not comply with any requirement of this Act or any guidelines made under this Act;
- (d) any information or document furnished to the Commission in respect of a private retirement scheme is false or misleading or from which there is a material omission; or
- (e) the Commission has reason to believe that the approval will not be in the interest of the public or the members of any private retirement scheme.

Withdrawal of approval

139x. (1) The Commission may withdraw an approval granted to an approved private retirement scheme where the Commission is satisfied that—

- (a) there exists a ground on which the Commission may refuse an application under section 139w;
- (b) the approved private retirement scheme is not launched within six months from the date of approval;
- (c) the approved private retirement scheme provider has failed to comply with any of the terms and conditions imposed in relation to the private retirement scheme or any direction issued by the Commission under this Act; or
- (d) it is necessary in order to protect the interest of the public or the members.

(2) Subject to subsection (3), the Commission may, upon a request in writing made to the Commission by the private retirement scheme provider, withdraw an approval granted to the approved private retirement scheme.

(3) Where a request in writing is made to the Commission under subsection (2), the Commission may refuse to withdraw the approval where the Commission considers that—

- (a) it is in the interest of the public or the members that any matter concerning the approved private retirement scheme should be investigated before the approval is withdrawn under subsection (2); or
- (b) the withdrawal of the approval would not be in the interest of the public or the members.

(4) The Commission shall not take any action under subsection (1) without giving the approved private retirement scheme provider an opportunity to be heard.

Contributions to vest in member as accrued benefits

139Y. (1) A contribution in respect of a member of an approved private retirement scheme shall vest in the member as accrued benefits as soon as it is paid to either the approved private retirement scheme provider or the scheme trustee, whichever is earlier.

(2) Income or profits derived from the investment of accrued benefits of a member of an approved private retirement scheme, after taking into account any loss arising from any such investment, shall also vest in the member as accrued benefits as soon as they are received by either the approved private scheme provider or the scheme trustee, whichever is earlier.

(3) Notwithstanding subsections (1) and (2), the Commission may specify the manner in which accrued benefits will be accounted for and vested in a member.

Preservation of accrued benefits

139z. For the purpose of preserving accrued benefits in an approved private retirement scheme, no private retirement scheme provider or scheme trustee shall pay or otherwise dispose of any part of the accrued benefits to any member or any other person except in the manner as may be specified by the Commission.

Protection of accrued benefits

139zA. No part of any accrued benefits in an approved private retirement scheme in respect of a member shall be taken in execution of a judgment debt or be the subject of any charge, pledge, lien, mortgage, transfer, assignment or alienation by or on behalf of the member and any purported disposition contrary to this section is void.

Effect of withdrawal

139zB. (1) A withdrawal of an approval to a private retirement scheme under section 139x shall not affect any right of a member in respect of accrued benefits that the member is entitled to as provided under section 139y.

(2) Where the Commission withdraws an approval under section 139x, the Commission may, by issuing a written direction, direct the private retirement scheme provider or the scheme trustee to transfer the accrued benefits to another approved private retirement scheme.

Subdivision 4 – Scheme trustee

Approval of scheme trustee

139zc. (1) A person shall not act or be appointed to act as a scheme trustee in relation to a private retirement scheme without the approval of the Commission.

(2) An application to be a scheme trustee shall be made to the Commission in such form and manner as may be specified by the Commission and shall be accompanied by a prescribed application fee.

(3) The Commission may approve the application under this section, subject to any terms and conditions as the Commission thinks fit.

(4) The Commission may vary, add to or remove any terms and conditions imposed under subsection (3) at any time as the Commission deems necessary.

(5) A scheme trustee who contravenes subsection (1) or any terms or conditions imposed under subsection (3) or (4) commits an offence.

Refusal to approve

139zd. (1) Where an application is made under section 139zc, the Commission may refuse the application on any of the following grounds:

(a) the applicant—

(i) is a shareholder who beneficially holds shares in the private retirement scheme provider;

(ii) is beneficially entitled to monies owed by the private retirement scheme provider to it; or

(iii) is a related corporation of—

(A) the persons referred to in subparagraphs (i) and (ii); or

(B) the private retirement scheme provider;

(b) the application was not made in accordance with section 139zc;

(c) the applicant has failed to comply with any requirements of this Act or any guidelines made under this Act;

(d) any information or document that is furnished by the applicant to the Commission is false or misleading or from which there is a material omission; or

- (e) the Commission has reason to believe that the applicant will not be able to act in the interest of the public or the members.
- (2) Notwithstanding paragraph (1)(a), a person is not prevented from being appointed or from acting, as a scheme trustee by reason only that—
- (a) the monies that the private retirements scheme provider owes to the scheme trustee or any related corporation of the scheme trustee are monies to which the scheme trustee or any related corporation of the scheme trustee is entitled to as scheme trustee, in accordance with the provisions or covenants of the deed; or
 - (b) the scheme trustee or a related corporation of a scheme trustee, despite being a beneficial owner in the shares of the private retirement scheme provider, does not have the right to exercise more than one-twentieth of the voting power at any general meeting of the private retirement scheme provider.

Withdrawal of approval

139ZE. The Commission may withdraw an approval granted to an approved scheme trustee where the Commission is satisfied that—

- (a) there exists a ground on which the Commission may refuse an application under section 139ZD;
- (b) the scheme trustee has contravened any term or condition imposed by the Commission;
- (c) the scheme trustee has failed or refused to act in accordance with the provisions or covenants of the deed;
- (d) the scheme trustee has failed to comply with any direction issued by the Commission under this Act; or
- (e) the scheme trustee has failed to provide assistance to the Commission or to a person acting on behalf of or with the authority of the Commission as required under subsection 139ZL(2).

Division 3

Trustee for employer-sponsored retirement scheme

Approval of employer trustee

139ZF. (1) A person shall not act or be appointed to act as an employer trustee in relation to an employer-sponsored retirement scheme without the approval of the Commission.

(2) An application to be an employer trustee shall be made to the Commission in such form and manner as may be specified by the Commission and shall be accompanied by a prescribed application fee.

(3) The Commission may approve the application under this section, subject to any terms and conditions as the Commission thinks fit.

(4) The Commission may vary, add to or remove any terms and conditions imposed under subsection (3) at any time as the Commission deems necessary.

(5) An employer trustee who contravenes subsection (1) or any terms or conditions imposed under subsection (3) or (4) commits an offence.

Refusal to approve

139ZG. Where an application is made under section 139ZF, the Commission may refuse the application on any of the following grounds:

- (a) the application was not made in accordance with section 139ZF;
- (b) the applicant has failed to comply with any requirement of this Act or any guidelines made under this Act;
- (c) any information or document that is furnished by the applicant to the Commission is false or misleading or from which there is a material omission; or
- (d) the Commission has reason to believe that the applicant will not be able to act in accordance with the provisions and the covenants of the trust deed.

Withdrawal of approval

139ZH. The Commission may withdraw an approval granted to an approved employer trustee where the Commission is satisfied that—

- (a) there exists a ground on which the Commission may refuse an application under section 139ZG;
- (b) the employer trustee has contravened any terms or conditions imposed by the Commission;
- (c) the employer trustee has failed or refused to act in accordance with the provisions or covenants of the deed;
- (d) the employer trustee has failed to comply with any direction issued by the Commission under this Act;
or
- (e) the employer trustee has failed to provide assistance to the Commission or to a person acting on behalf of or with the authority of the Commission as required under subsection 139ZL(2).

Division 4

General

Power to make regulations

139ZI. The Commission may, with the approval of the Minister, make any regulations—

- (a) concerning all matters relating to the private retirement scheme administrator, private retirement scheme provider, private retirement scheme, scheme trustee and employer trustee under this Part; or
- (b) concerning duties, standards and conduct of persons involved in a private retirement scheme.

Fee payable

139zj. (1) The following persons under this Part—

- (a) a private retirement scheme administrator;
- (b) an approved private retirement scheme provider;
- (c) a scheme trustee of an approved private retirement scheme; or
- (d) an employer trustee of an employer-sponsored retirement scheme,

shall pay the fees as set out under regulations made under this Act.

(2) Any fee paid to the Commission under this Part shall be paid into the Fund established under section 23 of the Securities Commission Act 1993.

False or misleading statement

139zk. (1) For the purposes of this Part, any person who makes or submits to the Commission any statement or information that is false or misleading or wilfully omits to state any matter or thing without which the statement or information is misleading in a material aspect, commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to a fine not exceeding three million ringgit.

(2) Where a statement or information under subsection (1) has been submitted or provided to the Commission and a person becomes aware before the private retirement scheme is launched that the statement or information may be false or misleading, that person shall forthwith notify the Commission and shall take such action as the Commission may require.

Power to issue directions, etc.

139zl. (1) Without prejudice to sections 125, 354, 355 and 356, where the Commission—

- (a) is satisfied that there exists a ground for withdrawal of approval under section 139F, 139s, 139x, 139ze or 139zh;

- (b) becomes aware that a statement or information provided or submitted to it under this Part is false or misleading or from which there is a material omission; or
- (c) is satisfied that the interest of the members are likely to be jeopardised, or are jeopardised,

the Commission may issue a direction in writing to any person to take such steps as may be specified in the direction to—

- (A) comply with, observe, enforce or give effect to—
 - (i) any requirement or provision of this Act or any securities laws;
 - (ii) any guidelines or written notice issued by the Commission; or
 - (iii) any term, condition or restriction imposed under or pursuant to this Act; or
- (B) take such steps to remedy a breach or to mitigate the effect of such breach.

(2) Any person referred to under this Part shall provide assistance to the Commission, or to a person acting on behalf of or with the authority of the Commission, including the furnishing of such returns, and the provision of such information relating to its operations or any other information as the Commission or the person acting on behalf of or with the authority of the Commission may require for the proper administration of securities laws.

(3) A person who fails to comply with any direction issued under subsection (1) or fails to provide assistance under subsection (2) commits an offence.

Disclosure of information to the Commission

139ZM. (1) For the purposes of this Part, the Commission may request the following person to submit to the Commission any information or document which the Commission requires for the effective regulation or supervision of the private retirement scheme industry:

- (a) a private retirement scheme provider;

- (b) a partner or an associate of the private retirement scheme provider; or
- (c) any person who provides outsourcing services to persons mentioned in paragraph (a) or (b).

(2) For the purposes of subsection (1), where the person under paragraph (1)(b) or (c) is solely under the supervision or oversight of Bank Negara, the Commission shall make such request through Bank Negara.”.

Amendment of section 140

46. Section 140 of the principal Act is amended—

- (a) by inserting after the definition of “fidelity fund” the following definition:

“relevant derivatives exchange”, in relation to fidelity fund, means the derivatives exchange which established the fidelity fund under section 159;”;
and

- (b) by deleting the definition of “relevant futures exchange”.

Amendment of section 160

47. Paragraph 160(b) of the principal Act is amended by substituting for the words “trading in futures contracts” the words “dealing in derivatives who are affiliates of the relevant derivatives exchange”.

Amendment of section 164

48. Section 164 of the principal Act is amended—

- (a) in subsection (1), by substituting for the words “trading in futures contracts” the words “dealing in derivatives who is an affiliate of a relevant derivatives exchange”;
and
- (b) in subsection (3), by substituting for the words “trading in futures contracts” the words “dealing in derivatives who are affiliates of the relevant derivatives exchange”.

Amendment of section 167

49. Paragraph 167(2)(b) of the principal Act is amended by substituting for the words “trading in futures contracts” the words “dealing in derivatives who is an affiliate of the relevant derivatives exchange”.

Amendment of section 169

50. Section 169 of the principal Act is amended by substituting for the words “trading in futures contracts” the words “dealing in derivatives who is an affiliate of the relevant derivatives exchange” wherever it appears in the section.

Amendment of section 208

51. Section 208 of the principal Act is amended by substituting for the word “trading” the word “dealing” wherever it appears in the section.

Amendment of section 232

52. Subsection 232(1) of the principal Act is amended by inserting after the words “to subscribe for or purchase” the words “, securities”.

Amendment of section 317A

53. Subsection 317A(3) of the principal Act is amended by inserting after the word “term” the words “which shall not be less than two years but”.

Amendment of section 320

54. Section 320 of the principal Act is amended by inserting after subsection (6) the following subsection:

“(7) For the purposes of this section, “auditor” has the same meaning as defined under section 31A of the Securities Commission Act 1993.”.

Amendment of section 320A

55. Subsection 320A(2) of the principal Act is amended by inserting after the word “term” the words “which shall not be less than two years but”.

New Part IXA

56. The principal Act is amended by inserting after Part IX the following Part:

“PART IXA

MANAGEMENT OF SYSTEMIC RISK IN THE CAPITAL MARKET

Interpretation

346A. For the purposes of this Part—

“market participant” includes an investor, issuer, intermediary, capital market service provider, exchange holding company, stock exchange, derivatives exchange, central depository and clearing facility;

“systemic risk in the capital market” means a situation when one or more of the following events occurs or is likely to occur:

- (a) financial distress in a significant market participant or in a number of market participants;
- (b) an impairment in the orderly functioning of the capital market; or
- (c) an erosion of public confidence in the integrity of the capital market.

Information for purpose of systemic risk

346B. (1) The Commission may, notwithstanding any provision under the securities laws, by notice in writing request any person to submit to the Commission any information or document—

- (a) which the Commission considers necessary for the purposes of monitoring, mitigating and managing systemic risks in the capital market; or

(b) where the Commission receives a request from Bank Negara under section 30 of the Central Bank of Malaysia Act 2009.

(2) For the purposes of subsection (1), where the person concerned is solely under the supervision or oversight of Bank Negara, the notice shall be issued through Bank Negara.

(3) Any person who is required to submit any information or document under this section shall provide such information or document notwithstanding any obligation under any contract, agreement or arrangement whether express or implied to the contrary.

(4) Any person who fails to comply with a notice issued under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding ten years or to both.

Power of Commission to issue directive for systemic risk

346c. (1) Where the Commission considers it necessary in the interest of monitoring, mitigating or managing systemic risk in the capital market, the Commission may issue a directive in writing requiring any person to take such measures as the Commission may consider necessary.

(2) In exercising its power under subsection (1), the Commission shall take into consideration the interest of financial stability.

(3) For the purposes of subsection (1), where the person concerned is solely under the supervision or oversight of Bank Negara, the Commission shall make a recommendation to Bank Negara to issue such directive.

(4) Before issuing a directive under subsection (1), the Commission shall give the person an opportunity to be heard.

(5) Notwithstanding subsection (4), the Commission may issue a directive under subsection (1) without first giving the person an opportunity to be heard if any delay in issuing such directive would aggravate systemic risk in the capital market.

(6) Where a directive is issued pursuant to subsection (5) the person shall be given an opportunity to be heard after the directive has been issued.

(7) When a person is given an opportunity to be heard under subsection (6), a directive issued under subsection (1) may be amended or modified.

(8) Any person who fails to comply with a directive issued under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding ten years or to both.

Arrangements with other supervisory authorities

346D. (1) Notwithstanding any provision in the securities laws, the Commission may for the purposes of monitoring, mitigating and managing systemic risk in the capital market or contributing towards financial stability—

- (a) provide assistance to any supervisory authority or Government agency responsible for promoting financial stability;
- (b) obtain any information or document from, or share any information or document with, any supervisory authority or Government agency responsible for promoting financial stability if the Commission considers it necessary that such information or document be so obtained or shared in managing systemic risk in the capital market or promoting financial stability; or
- (c) enter into arrangements to co-operate with other supervisory authorities and co-ordinate stability measures with such supervisory authorities.

(2) Where the Commission shares any information or document under paragraph (1)(b)—

(a) with any supervisory authority or Government agency responsible for promoting financial stability in Malaysia, such information or document shall not be disclosed to any person except with the written consent of the Commission; or

(b) with any supervisory authority outside Malaysia, such supervisory authority shall give an appropriate undertaking for protecting the confidentiality of such information or document and the purposes for which the information or document may be used.

(3) For the purposes of this section, “supervisory authority” means any authority, body, agency or entity—

(a) responsible for monitoring, mitigating and managing systemic risk in the capital market or promoting financial stability; or

(b) responsible for the supervision or oversight of capital market intermediaries or participants.”.

Amendment of section 353

57. Subsection 353(1) of the principal Act is amended by substituting for the words “whether or not the dealing or trading” the words “whether or not the dealing”.

Amendment of section 354

58. Section 354 of the principal Act is amended by deleting subsection (6).

Amendment of section 355

59. Section 355 of the principal Act is amended—

(a) in paragraph (2)(h), by substituting for the word “trading” the word “dealing”; and

(b) by deleting subsection (6).

Amendment of section 356

60. Section 356 of the principal Act is amended by deleting subsection (5).

New section 362A

61. The principal Act is amended by inserting after section 362 the following section:

“Derivatives not gaming or wagering contract

362A. Notwithstanding any written law, a derivative shall not be taken to be a gaming or wagering contract.”.

Amendment of section 368

62. Subsection 368(2) of the principal Act is amended by substituting for the words “shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both” the words “shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to a fine not exceeding one million ringgit”.

Amendment of section 369

63. Section 369 of the principal Act is amended—

- (a) in paragraph (A), by substituting for the words “trading in futures contracts” the word “derivatives”; and
- (b) by substituting for the words “shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both” the words “shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to a fine not exceeding three million ringgit”.

Amendment of section 371

64. Section 371 of the principal Act is amended by substituting for the words “shall, on conviction, be liable to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding ten years or to both” the words “shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to a fine not exceeding ten million ringgit”.

Substitution of section 378

65. The principal Act is amended by substituting for section 378 the following section:

“Power to make regulations

378. (1) The Commission may, with the approval of the Minister, make such regulations as may be necessary or expedient for—

- (a) giving full effect to the provisions of this Act;
- (b) carrying out or achieving the objects and purposes of this Act; or
- (c) the further, better or convenient implementation of the provisions of this Act.

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

- (a) forms for the purposes of this Act;
- (b) fees to be paid for the purposes of this Act;
- (c) the regulation of the purchase and sales of capital market products;
- (d) the standards with respect to the qualification, experience and training of licensed person and directors of public listed corporations;
- (e) the conduct of business on a stock exchange, derivatives exchange or approved clearing house; or
- (f) the exemption of any specified person or any person who is a member of a specified class of persons from any of the provisions of this Act, subject to terms and conditions.”.

New section 378A

66. The principal Act is amended by inserting after section 378 the following section:

“Power to enter into arrangements

378A. The Commission shall enter into arrangements with the relevant authority referred to in subsection 76(11) to co-ordinate the regulation of markets for over-the-counter derivatives and financial instruments in the money market.”.

Deletion of Schedule 10

67. The principal Act is amended by deleting Schedule 10.

Savings and transitions in respect of futures contracts

68. In respect of futures contracts—

- (a) (i) all regulations, orders, directions, notifications, exemptions and other subsidiary legislation; and
- (ii) all approvals, directions, decisions, notifications, exemptions and other executive acts,

made, given, or done shall be deemed to have been made, given, or done in respect of derivatives as amended under this Act, and shall continue to remain in full force and effect in relation to the persons to whom they applied until amended, repealed, rescinded, revoked or replaced under, in accordance with, or by virtue of, the principal Act;

- (b) all directions, notices, guidelines, circulars, guidance notes or practice notes issued by the Commission or the Minister before the date of coming into operation of this Act (referred to in this section as the “effective date”) and in force immediately before the effective date, shall be deemed to be done in respect of derivatives as amended under this Act and shall remain in full force and effect until it is amended, rescinded or repealed under the principal Act;

- (c) any application for an approval or consent, or for any other purpose, or any appeal, made by any person to the Minister or to the Commission before the effective date and pending immediately before the effective date, shall be deemed to be done in respect of derivatives as amended under this Act; and
- (d) all transactions or dealings lawfully executed or entered into, and all business lawfully done, by a person holding a Capital Markets Services Licence or a Capital Markets Services Representative's Licence shall be deemed to have been lawfully and validly executed, entered into, or done, and accordingly, any right or liability under such transaction, dealing or business existing immediately before the effective date shall be deemed to continue to be lawful and valid.

Deemed approved exchanges and approved clearing house

69. (1) Without prejudice to the generality of section 68, a futures exchange and an approved clearing house for the futures market under the principal Act are deemed to be approved as a derivatives exchange and approved clearing house for the derivatives market respectively.

(2) Any condition or restriction imposed by the Minister or the Commission on any of the entities referred to in subsection (1) and in force immediately before the date of coming into operation of this Act shall be deemed to continue to be lawful and valid.

Savings in respect of the licenses issued in relation to futures contracts

70. (1) Without prejudice to the generality of section 68, a person who holds a Capital Markets Services Licence or Capital Markets Services Representative's Licence, immediately before the date of coming into operation of this Act (referred to in this section as the "effective date") shall, in relation to—

- (a) trading in futures contract, be deemed to hold such licence for the regulated activity of dealing in derivatives;
- (b) fund management in respect of futures contract, be deemed to hold such licence for the regulated activity of fund management in respect of derivatives; and

- (c) investment advice in respect of futures contract, be deemed to hold such licence for the regulated activity of investment advice in respect of derivatives.

(2) Any condition or restriction to which any licence referred to in subsection (1) was subject immediately before the effective date, shall be deemed to continue to be lawful and valid.

Pending applications for licences

71. Unless otherwise notified in writing by the Commission, an application for a new licence or to vary an existing licence in relation to futures contract that is pending immediately before the date of coming into operation of this Act shall be deemed to be an application for a new licence or to vary an existing licence in relation to derivatives.

Modifications to construction of other written laws

72. Where in any written law, any reference is made to—

- (a) “futures exchange”, such reference shall be construed as a reference to “derivatives exchange”;
- (b) “futures market”, such reference shall be construed as a reference to “derivatives market”;
- (c) “futures contracts”, such reference shall be construed as a reference to “derivatives”; and
- (d) “trading in futures contract”, such reference shall be construed as a reference to “trading in derivatives” or “dealing in derivatives” as the context may require.

Continuance of other rights or liabilities in relation to futures contract

73. (1) Nothing in this Act shall affect any person’s liability to be prosecuted or punished for offences or breaches committed in relation to futures contracts before the date of coming into operation of this Act or any proceeding brought, sentence imposed or action taken before that day in respect of such offence or breach.

(2) Any right, privilege, obligation or liability acquired, accrued or incurred before the date of coming into operation of this Act or any legal proceedings, remedy or investigation in respect of such right, privilege, obligation or liability shall not be affected by this Act and shall continue to remain in force as if this Act had not been made.

Transitional provision for Part IIIA

74. (1) Subject to such terms and conditions as may be specified by the Commission, any person who carries out the functions of an employer trustee before or at the date of coming into operation of this Act is allowed to continue to carry out the functions of an employer trustee without being approved by the Commission for a period of three years from the date of coming into operation of this Act.

(2) Any person who uses the words “private retirement scheme” or “retirement scheme” in contravention of subsection 139P(2) before the date of coming into operation of this Act shall within one year from the date of coming into operation of this Act comply with subsection 139P(2).

Prevention of anomalies

75. (1) Where any difficulty arises with respect to the application of any one or more of the provisions introduced or amended by this Act and the savings and transitional provisions, the Minister may, by order published in the *Gazette*, make such modifications in any one or more of those provisions as may appear to him to be necessary to give full effect to the provisions of this Act or to prevent anomalies.

(2) The Minister shall not exercise the power conferred under subsection (1) after the expiration of two years from the effective date.

(3) In this section—

“effective date” means the relevant date or dates on which this Act or any of its provisions comes into operation; and

“modifications” means amendments, additions, deletions and substitutions of any provision of this Act.

SCHEDULE

[Section 2]

| (1) Nature of amendment | (2) Provisions amended |
|--|--|
| 1. The words “trading in futures contracts” or “trading in futures contract” wherever they appear in the provisions specified in column (2) of this item is substituted with the words “dealing in derivatives”; | Section 2 (in the definition of “client”), section 3, section 8, section 11, section 29, section 106, section 116, section 117 (in the definitions of “a holder of a Capital Markets Services Licence” and “relevant liabilities”), section 118, section 119, section 128, paragraph 167(1)(a), paragraph 167(1)(b), section 168, section 206, section 208, section 348, section 352, section 353, section 360 and section 379; |
| 2. The words “trade in futures contracts” wherever they appear in the provisions specified in column (2) of this item is substituted with the words “deal in derivatives”; | Section 117 (in the definition of “client”) and section 123; |
| 3. The words “futures contracts” wherever they appear in the provisions specified in column (2) of this item is substituted with the word “derivatives”; | Section 1, section 2 (in the definitions of “clearing facilities”, “instrument”, “prescribed”, “specify” and “unit trust scheme”), section 5, section 6, section 7, section 8, section 9, section 11, section 12, section 18, section 21, section 28, section 33, section 38, section 39, section 52, section 92, section 106, subsubheading of Subdivision 3 of Division 4 of Part III, section 119, section 120, section 174, subheading of Division 2 of Part V, section 202, section 204, section 205, section 348, section 352, section 353, section 355 and section 360; |
| 4. The words “futures contract” wherever they appear in the provisions specified in column (2) of this item is substituted with the word “derivative”; | Section 2 (in the definitions of “close out”, “Islamic capital market business or transaction” and “prescribed”), section 5, section 6, section 33, section 98, section 117 (in the definition of “settling”), section 203, section 204, section 205, section 207, section 208, section 352, section 355 and section 360; |

| (1) Nature of amendment | (2) Provisions amended |
|--|--|
| <p>5. The word “futures” wherever it appear in the provisions specified in column (2) of this item is substituted with the word “derivatives”;</p> | <p>Section 2 (in the definitions of “affiliate”, “clearing facilities”, “exchange holding company”, “Islamic capital market business or transaction”, “participant”, “public interest directors”, “rules” and “Specified Exchange”), heading of Part II, section 7, section 8, section 9, section 10, section 11, section 12, section 13, section 15, section 16, section 17, section 18, section 21, section 23, section 24, section 27, section 28, section 29, section 30, section 31, section 33, section 37, section 38, section 41 (in the definition of “exchange”), section 67, section 72, section 98, section 106, section 118, section 126, section 128, section 137, section 159, section 160, section 161, section 162, section 163, section 164, section 165, section 166, section 167, section 168, section 169, section 170, section 171, section 172, section 173, section 202, section 203, section 205, section 316E, section 316G, section 323, section 328, section 334, section 348, section 352, section 355, section 360, section 361, section 362, section 363, section 368, section 369, section 371, section 376 and section 379.</p> |