

LAWS OF GUYANA

SECURITIES INDUSTRY ACT

CHAPTER 73:04

Act

21 of 1998

Amended by

7 of 2006

Current Authorised Pages

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This Act repealed the Capital Issue (Control) Act No. 12 of 1995 and Part III, Division D of the Companies Act No. 29 of 1991.

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SECURITIES INDUSTRY ACT

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AN ACT to provide for the registration of securities brokers and dealers, certain self-regulatory organizations, and certain issuers of securities; and for the regulation of securities issuances; with the purpose of encouraging capital formation and the growth of efficient securities markets, while protecting purchasers of securities and promoting ethical behaviour in the securities industry.

[31st December, 1998]

**PART I
PRELIMINARY**

Short title.

1. This Act may be cited as the Securities Industry Act.

Interpretation.

2. In this Act—

- (a) an "affiliate" of, or person "affiliated" with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under

common control with, the specified person, whether through the ownership of voting securities, by contract or arrangement, or otherwise;

- (b) an issuer is "affiliated" with another issuer, and they are "affiliates" of each other, if one of them is the subsidiary of the other, or both are subsidiaries of the same body corporate, or each of them is controlled by the same person; and
- (c) if two issuers are affiliated with the same body corporate at the same time, they are affiliated with each other;

"associate," where used to indicate a relationship with any person, means—

- (a) an issuer of which the person beneficially owns or controls, directly or indirectly, voting securities entitling him to more than ten per cent of the voting rights attached to outstanding securities of the issuer—
 - (i) under all circumstances; or
 - (ii) by reason of the occurrence of an event that has occurred and is continuing;

- (b) a partner of the person acting on behalf of the partnership of which they are partners;
- (c) a trust or estate in which the person has a beneficial interest of more than ten percent of the entire beneficial interest or in respect of which he serves as a trustee or in a similar capacity;
- (d) a spouse or child of the person; and
- (e) any other relative of the person or his spouse if that relative has the same residence as the person;

"association of securities companies and intermediaries" means an organization of securities companies and securities intermediaries that—

- (a) supervises its members to ensure compliance with this Act;
- (b) regulates the conduct of its members or of any other person in the securities market; or
- (c) regulates the entry of any person into, or the prices for services in, the securities market;

"Bank of Guyana" means the Bank of Guyana established

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under the Bank of Guyana Act;

"beneficial ownership" includes ownership through a trustee, legal representative, agent, nominee or other intermediary;

"broker" means a person engaged in the business of effecting transactions in securities for the account of others;

"call" means an option to demand delivery of a specified number or amount of securities at a fixed price within a specified time, but does not include an option or right to acquire the issuer's securities from the issuer, or from an affiliate of the issuer, that granted the option or the right to acquire;

"clearing agency" means a person that—

- (a) maintains records of trades of securities for the purpose of settling claims for money and securities;
- (b) maintains records of transfers and pledges of securities for the purpose of permitting securities to be transferred by record entry;
- (c) holds security certificates deposited with it for the purpose of permitting securities to be transferred by record entry;
- (d) performs any combination of two or more functions

referred to in paragraphs (a) to (c), but does not include a securities company or financial institution acting exclusively in the ordinary course of its customary business unless the Council prescribes otherwise;

"collective investment scheme" means any arrangement with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements, whether by becoming owners of the property or any part of it or otherwise, to participate in or receive profits or income from the acquisition, holding, management or disposal of property or sums paid out of such income;

"control" in relation to an issuer means the power of a person, or persons acting in concert by virtue of an agreement, arrangement, commitment or understanding, to secure by means of—

- (a) the holding of shares or the possession of voting power in or in relation to that issuer; or
- (b) any other power conferred by the articles of incorporation or other document regulating the issuer, that the business affairs of the issuer are conducted in accordance with the wishes of such person or persons;

"Council" means the Guyana Securities Council established under section 4;

"Court" means the High Court;

"dealer" means a person engaged in the business of buying and selling securities for his own account who holds himself out, at all normal times, as willing to buy and sell securities at prices specified by him;

"distribution," where used in relation to trading in securities, means—

- (a) a sale of a security by or on behalf of the issuer of the security that has not been previously issued;
- (b) a sale of a previously issued security purchased from the issuer or an underwriter of the security, other than a security of a reporting issuer that was purchased by a seller less than one hundred and eighty days before the sale, or such other period as the Council may prescribe;
- (c) a sale of a previously issued security from the holdings of a person or prescribed group of persons if the aggregate holding of the securities of that class by that person or group;
 - (i) enables the person or group to exercise control over the management and policies of the issuer in any manner; or
 - (ii) exceeds twenty per cent of the outstanding voting

securities of the issuer;

- (d) a sale of previously issued securities from the holdings of a sophisticated purchaser as defined in section 59(2)(d) or of a prescribed group of persons if the aggregate number or amount of securities exceeds the number or amount prescribed by the Council,

and includes a trade involving a purchase and sale, or repurchase and resale, of a security in the course of, or incidental to, a sale of securities mentioned in paragraphs (a) to (d);

"equity security" means any stock or similar security and includes a right, other than a call, to acquire such a security;

"expert" means a lawyer, engineer, accountant, valuator or any other person whose profession or reputation gives authority to a statement made by him-,

"file" means file with the Council;

"filing" means the submission of a document or instrument to the Council pursuant to a requirement of this Act, other than the submission of a document or instrument pursuant to an investigation;

"financial institution" means a company licensed under the Financial Institutions Act;

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"free capital" means capital which is unencumbered and which is separately held in such form, and only for such purposes, as the Council may prescribe,

"insider" means—

- (i) an issuer in respect of its securities;
- (ii) an affiliate of an issuer;
- (iii) a director or officer of an issuer;
- (iv) an employee of an issuer having such responsibilities and duties as the Council may prescribe;
- (v) a person who beneficially owns more than ten per cent of the equity securities of an issuer or who exercises control or direction over more than ten per cent of the votes attached to the securities of an issuer;
- (vi) and other person whose relationship to the issuer gives him access to a material confidential fact; and
- (vii) a person who is informed of a material confidential fact by a person described in paragraphs (i) to (vi) and who knows or reasonably ought to know that the informant is an insider;

"investment adviser" means a person engaging in, or holding himself out as engaging in, the business of advising another with respect to investment in, or the purchase or sale of, securities;

"issuer" means a person that has securities outstanding or issues or proposes to issue, a security;

"market participant" means a person required to be registered under section 47;

"material change," where used in relation to the affairs of an issuer, means a change in the business operations, assets or ownership of the issuer that could reasonably be expected to have a significant effect on the market price or value of the securities of the issuer and includes, without limitation, a decision to implement such a change made by the directors of the issuer;

"Minister" means the Minister responsible for Finance;

"misrepresentation" includes—

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

"offer to the public" in relation to any security, means any offer to the public at large or to any section of the public, whether selected as clients of persons issuing the prospectus or in any other manner by way of advertisement or other form of solicitation, but does not include an offer by an offer or who is not a reporting issuer under this Act where the offer is made to fewer than fifty persons and the offer can be regarded as not being calculated to result directly or indirectly in the

securities becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or as being other than a matter of domestic concern of the persons making and receiving it;

"order" means, unless a contrary intention appears, an order of the Council or a self-regulatory organization;

"participant" means a person who receives services from a clearing agency other than exclusively—

- (a) through another person who is a participant; or
- (b) as a—
 - (i) pledgee;
 - (ii) judgment creditor; or
 - (iii) beneficial owner;

for whom a blocked account has been established.

"prescribed" means prescribed by regulations of the Council;

"public company" means a company—

- (a) any of whose issued shares or debentures are or were part of a distribution, or an offer, to the public; or
- (b) that is the issuer of a security that is beneficially owned by more than fifty persons;

"purchase" includes—

- (a) any purchase or acquisition of a security for consideration, whether the terms of payment are, on margin, installment or otherwise;
- (b) any act, advertisement, conduct or negotiation directly or indirectly in furtherance of any of the foregoing, but does not include a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a *bona fide* debt;

"records" means—

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

"registrant" means a registered securities company or registered securities intermediary;

"regulation" means a regulation made by the Council under section 126;

"relative," in relation to a person, means—

- (a) a spouse or child;
- (b) a parent, grandparent, brother, sister or the spouse of each such person,
- (c) a son-in-law or a daughter-in-law; or
- (d) a step-child;

"reporting issuer" means an issuer that has filed a registration statement under section 56 and has not been the subject of an order of the Council altering its status as a reporting issuer;

"right to acquire a security" means—

- (a) a security currently convertible into another security;
- (b) a security carrying a warrant or right to acquire another security; or
- (c) a currently exercisable option, warrant or right to acquire another security or security specified in paragraph (i) or (ii);

"sale" includes—

- (a) any sale or disposition of a security for consideration, whether the terms of payment are on margin, installment, or otherwise;
- (b) any act, advertisement, conduct or negotiation directly or indirectly in furtherance of any of the foregoing, but does not include a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a bona fide debt,

"Secretary" means the Secretary appointed under section 24;

"securities company" means a company which carries on a business of trading in securities on behalf of others and, without limiting the generality of the foregoing, includes a company which carries on business as—

- (a) a broker;
- (b) a dealer;
- (c) an underwriter;
- (d) an investment adviser; or
- (e) any combination of two or more of the foregoing;

"securities exchange" means a person who maintains or provides—

- (a) physical facilities where persons may meet to execute trades in securities; or
- (b) a mechanical, electronic or other system that facilitates execution of trades in securities by matching offers of purchase and sale;

"securities intermediary" means a natural person who, as an individual or in partnership, carries on the business of acting as—

- (a) a broker;
- (b) a dealer;
- (c) a trader;
- (d) an underwriter;
- (e) an investment adviser; or
- (f) any combination of two or more of the foregoing.

"securities register" means a record or records maintained by or on behalf of an issuer in which the securities issued by it are recorded showing with respect to each class or series of securities—

- (a) the name and address of each security holder of the issuer;
- (b) the number of securities held by each security holder; and
- (c) the date and particulars of the

issue and transfer of each security;

"security" means any document or record evidencing ownership or any interest in the capital or debt, property, profits, earning or royalties of any enterprise or proposed enterprise and, without limiting the generality of the foregoing, includes any —

- (a) bond, debenture, note or other evidence of indebtedness;
- (b) share, stock, unit, unit certificate, participation certificate or certificate of share or interest;
- (c) instrument commonly known as a security;
- (d) instrument or document constituting evidence of or any interest or participation in—
 - (i) a profit sharing agreement;
 - (ii) a trust; or
 - (iii) an oil, natural gas or mining lease, claim or royalty or other mineral right,
- (e) units in collective investment schemes, including shares in or securities of an open-ended investment company; or

- (f) the right to acquire or dispose of anything Specified in paragraphs (a) to (e), but does not include –
 - (i) currency;
 - (ii) a cheque, bill of exchange or bank letter of credit,
 - (iii) a certificate or document constituting evidence of any interest in a deposit account with –
 - (A) a financial institution;
 - (B) a credit union; or
 - (C) an insurance company within the meaning of the Insurance Act; or
- (g) a contract of insurance issued by an issuer;

"self-regulatory organization" means an association of securities companies and intermediaries, a clearing, agency or a securities exchange;

"senior officer" means—

- (a) the chairman or vice-chairman of the board of directors, the managing director, the deputy managing director, the president, the vice-president, the secretary, the treasurer, the financial controller, the general manager or the deputy general manager of a company or any other individual who performs functions for an issuer similar to those normally performed by an individual occupying any such office; and
- (b) each of the five highest paid employees of an issuer, including any individual referred to in paragraph (i);

"sophisticated purchaser" means a sophisticated purchaser as defined in section 59(2)(d);

"subsidiary" means an issuer that is owned or controlled by another issuer;

"take-over bid" means a take-over bid as defined in section 113 (4);

"trade" or "trading" includes—

- (a) any sale or purchase of a security;
- (b) any participation as a dealer,

trader, broker, underwriter or agent in any transaction in a security;

- (iii) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any activity referred to in paragraphs (i) to (ii);

"trader" means a natural person who carries on the business of trading or who is employed by another person for the purpose of carrying on such business;

"underwriter" means a person who—

- (a) as principal, agrees to purchase a security for the purpose of a distribution,
- (b) as agent, offers for sale or sells -a security in connection with a distribution; or
- (c) participates directly or indirectly in a distribution described in paragraph (i) or (ii) for consideration, but does not include—
 - (i) a person whose interest in the transaction is limited to receiving the usual and customary distribution or sales commission payable by an underwriter or issuer; or
 - (ii) a company that purchases shares of its own issue and resells them.

"voting security" means a security carrying voting rights—

- (a) under all circumstances; or

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

and includes a right, other than a call, to acquire such security.

PART II THE SECURITIES COUNCIL

Division I – Establishment, Function and Powers

Establishment
of the Council.

4. There is hereby established a body corporate to be known as the Guyana Securities Council.

Functions of
the
Council.

5. The functions of the Council are to—

- (a) advise the Minister on all matters relating to securities;
- (b) maintain surveillance over the securities markets and ensure orderly, fair and equitable dealing in securities;
- (c) register, authorize or regulate, in accordance with this Act, self-regulatory organizations, securities companies, securities intermediaries, brokers, dealers, traders, underwriters, issuers and investment advisers and control and supervise their activities with a view to maintaining proper standards of conduct and professionalism in the securities business;
- (d) protect the integrity of the securities

markets against abuses arising from the practice of insider trading;

- (e) create and promote such conditions in the securities markets as may seem to it necessary, advisable or appropriate to ensure the orderly growth and development of the capital market.

Powers of the Council.

6. For the purpose of the discharge of its functions the Council has power, subject to this Act, to—

- (a) deal with such matters as may be referred to it by any person registered with the Council under this Act, from time to time;
- (b) formulate principles for the guidance of the securities industry;
- (c) monitor the solvency of registrants and take measures to protect the interest of customers where the solvency of any such registrant is in doubt;
- (d) adopt measures to supervise and minimize any conflict of interests that may arise in the case of brokers or dealers;
- (e) review, approve and regulate take-overs, amalgamations and all forms of business combinations in accordance with this Act or with other written law in all cases in which it considers it expedient or appropriate to do so;

- (f) review the contents of prospectuses, offering circulars or any form of solicitation, advertisement or announcement by which securities are offered for sale to the public;
- (g) take action against persons registered or required to be registered under this Act for failing to comply there- with;
- (h) undertake such other activities, including the making of regulations, as are necessary or expedient for giving full effect to this Act;
- (i) do all things which may be necessary or expedient or are incidental or conducive to the discharge of any of its functions and powers under this Act.

(2) Where the Council takes any disciplinary action against a financial institution or an employee of any such institution, the Council shall forthwith inform the Bank of Guyana of the disciplinary action so taken.

Delegation of powers.

7. (1) The Council may, by order, delegate any power or function conferred on it by this Act except the powers to make regulations and to hear appeals, to any self regulatory organization registered with the Council under this Act or to any senior officer of the Council.

(2) A delegation pursuant to subsection (1) shall be revocable and shall not preclude the exercise by the Council of any power, duty, function or responsibility so delegated.

(3) All decisions made and minutes of all meetings

held, by a delegates under subsection (1) shall be recorded in writing.

(4) A delegatee shall forthwith notify the Council of every decision made by him.

(5) The Council may, on its own motion, review a decision made by a delegatee and where it intends to do so, the Council shall, within thirty days of the decision, notify the delegates and the person directly affected by the decision of the date, time and venue of the hearing to review the decision.

(6) A person aggrieved by a decision of a delegatee may, within fourteen days of the decision, apply to the Council for a review of that decision.

(7) Within seven days of the receipt of an application under subsection (6), the Council shall notify the applicant and the delegatee of the date, time and venue of the hearing to review the decision.

(8) Pending the review of a decision, the Council may, on the application *exparte* of the applicant, grant a stay of the decision under review and shall notify forthwith the delegatee of any stay so granted.

(9) Upon reviewing the decision, the Council may vary or confirm the decision under review or make such other decision as it considers proper.

Custody and
use of seal.

8. (1) The seal of the Council shall be kept in the custody of the Chairman or the Secretary, as the Council may determine, and may be affixed to instruments in the presence of the Chairman or the Secretary.

(2) The seal of the Council shall be attested by the signatures (which may be facsimile signatures) of the Chairman and the Secretary.

(3) All documents, other than those required by law to be under seal, made by and all orders and decisions of the Council may be signified under the hand of the Chairman or the Secretary.

(4) Service upon the Council of any notice, order or other document shall be effected by delivering the same, or by sending it by registered post addressed, to the Secretary at the office of the tile Council.

(5) Subject to section 9(4), the functions of the Chairman under this section may, in the event of his absence or inability, be performed by any Member of the Council authorized by the Council to act in that behalf.

Division 2—Membership

Membership of
the Council.

9. (1) The Council shall consist of not more than five nor less than three individuals (hereafter referred to as "Members"), who shall be appointed by the Minister.

(2) The Members shall be selected from among persons who appear to the Minister to have wide experience and ability in legal, financial, business or administrative matters, one of whom shall be an attorney-at-law of at least ten years standing, and one of whom shall be an officer of the Bank of Guyana.

(3) Upon the commencement of this Part, the Minister shall appoint all of the Members, and shall also appoint one of their number, other than the Member from the Bank of Guyana, to be its Chairman.

(4) Where a Member is by reason of illness, absence from the country or otherwise, unable to perform his functions as a Member, or where an office of Member is vacant, the Minister may appoint a temporary Member to act

in place of that Member during his illness, absence or incapability, or until the office is filled, as the case may be.

(5) A temporary Member shall have qualifications similar to those of the Member for whom he is appointed to act.

Disqualifi-
cation for
appointment.

10. (1) A person shall not be appointed or continue as Member if directly or indirectly, as owner, security holder, director, officer, partner, employee or otherwise, he—

- (a) is engaged in the securities business;
or
- (b) has a material pecuniary or proprietary interest in—
 - (i) a securities company; or
 - (ii) a self-regulatory organization.

(2) If an interest mentioned in subsection (1)(b) vests in a Member by gift or will or succession for his own benefit, he shall forthwith disclose the interest to the Chairman and shall within three months thereafter absolutely dispose of the interest.

(3) A person who is appointed a Member or General Manager under this Act shall, forthwith after the appointment, declare every interest he has in any security and thereafter he shall not, while holding office as a Member or General Manager, as the case may be—

- (a) in the case of the General Manager, engage in any other business, vocation or employment other than that of serving as General Manager-,
or

- (b) participate, directly or indirectly, in any stock market operation or transaction in which he has a material interest and which is subject to regulation by the Council pursuant to this Act.

(4) A person who contravenes subsection (3) is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for six months.

Term of office.

11. (1) Subject to this section, the Chairman and the other Members shall hold office for three years but shall be eligible for reappointment.

(2) The Chairman of the Council may resign as a Member by notice in writing addressed to the Minister.

(3) A Member other than the Chairman, may at any time resign as a Member by notice in writing addressed to the Minister and transmitted through the Chairman.

(4) A Member may be removed from membership of the Council by the Minister where he—

- (a) becomes a person of unsound mind;
- (b) is absent from three consecutive meetings of the Council without the permission of the Chairman or the Minister or reasonable cause;
- (c) is guilty of misconduct in relation to his duties as a Member;
- (d) is sentenced to imprisonment or is convicted of an offence involving fraud or dishonesty;

- (e) is declared bankrupt in accordance with the law of Guyana or any other country;
- (f) in the case of a person possessed of professional qualifications, is disqualified or suspended, otherwise than at his own request, from practicing his profession in Guyana or in any other country by an order of any competent authority made in respect of him personally;
- (g) is unable to perform his functions because of illness or for any other reason;
- (h) contravenes this Act or any regulation.

Remuneration
of Members.

12. A Member shall be paid such remuneration and allowances in respect of his office as the Minister may determine from time to time.

Protection of
Members,
employees or
agents.

13. No action or other proceeding for damages shall be instituted against a Member or an employee or agent of the Council for an act done in good faith in the performance of a duty or in the exercise of a power under this Act.

Confidentiality.

14. (1) No Member and no person employed or retained by the Council shall make use of any confidential information obtained as a result of his relationship with the Council for his own benefit or advantage.

(2) No person specified in subsection (1) shall disclose confidential information obtained as a result of his relationship with the Council to any person other than—

- (a) an official or employee of the Government of Guyana; or
- (b) the duly authorized representative of the government of another country, in connection with the enforcement of this Act or similar legislation.

(3) A person who receives confidential information from a person specified in subsection (1) is subject to the provisions of this section as if he were a person specified in subsection (1).

(4) A person who contravenes subsection (1) or (2) is guilty of an offence and liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for one year.

Division 3—Proceedings of the Council

Meetings.

15. (1) The Council shall ordinarily meet for dispatch of business at such times and places as the Chairman may decide but shall meet at least once in every two months.

(2) The Chairman shall at the request in writing of not less than two Members, one of whom may be the Chairman, call an extraordinary meeting of the Council within seven days of receipt of such request.

(3) Subject to subsection (4), the Chairman shall preside at every meeting of the Council and in his absence any Member designated by the Chairman shall preside at the meeting.

(4) Where no Member is so designated, the other Members of the Council present shall elect one of their number to preside at the meeting.

(5) The quorum at every meeting of the Council

shall be there.

(6) All questions proposed at a meeting of the Council shall be determined by a simple majority of the Members present and voting and where the votes are equal the Chairman or the Member presiding shall have a second or casting vote.

(7) The Council may request the attendance of any person to act as adviser at any of its meetings but such person shall not vote on any matter for decision by the Council 16.

Committees.

16. (1) Subject to subsection (3), where under this Act or any other written law the Council is empowered or required to perform any function, the Council may by resolution appoint, for the purpose of doing anything required or deemed expedient or necessary for the purpose of performing such function, a committee consisting of at least two Members of the Council, and the performance by the committee of any such thing shall be deemed to be done and performance by the entire Council.

(2) Without prejudice to the generality of subsection (1) and subject to subsection (3), where any function which requires an investigation, hearing, adjudication or decision which might lead to the taking of any disciplinary measure against any person or the imposition of any penalty or order for the payment of any money by or to any person, is by this Act assigned to the Council, such investigation or hearing may be conducted by a committee appointed under this section and shall be fully, duly and validly conducted as if conducted by the entire Council.

(3) A committee appointed under this section shall, upon the completion of the function for which it was so appointed, report in writing to the Council thereon and the performance by the committee and any act or thing done by it in relation thereto shall be complete and shall be a decision or due exercise by the Council of the function in question when, and not before, the Council by resolution

adopts the recommendation or the decisions by the committee, whereupon that function shall be deemed to have been performed by the Council itself.

Minutes.

17. (1) Minutes, in proper form, of each meeting of the Council, or a committee thereof, shall be kept under the direction of the Secretary.

(2) All decisions, resolutions, orders, rules and regulations made by the Council or a committee thereof, as the case may be, shall be recorded in the minutes.

(3) The minutes shall be confirmed at the next meeting of the Council or the committee, as the case may be, and a copy of the minutes both when prepared and confirmed shall, in the case of a committee, be forwarded to the Council.

(4) The Minister is entitled, upon request, to have access to the minutes of the Council or a committee hereof, and to receive from the Council a copy of any of those minutes.

Declaration of interest.

18. (1) A Member who is in any way, whether directly or indirectly interested in a matter before the Council shall declare his interest to the Council.

(2) The Council, excluding the Member whose interest is being considered, shall determine whether this interest is sufficiently material as to constitute a conflict of interest.

(3) In the event that the Council finds that the interest is such as to constitute a conflict of interest the Member shall not take part in any deliberations on that matter, and shall leave the room during such deliberations.

(4) For the purposes of this section, a Member shall be deemed to have an interest in a matter if he, or his spouse, or his nominee, is a shareholder or partner in, or an officer of,

a company or other body of persons an interest or being involved in a matter before the Council.

(5) Any person who fails to comply with subsection (1) is liable on summary conviction to a fine of fifty thousand dollars, unless he proves that he did not know that he had an interest in the matter which was the subject of consideration at the meeting.

Consultation
with Bank of
Guyana and
other agencies.

19. (1) The Council shall consult and co-operate with the Bank of Guyana or any other agency that exercises regulatory authority under a written law over a financial institution, insurance company or other body in order to minimize duplication of effort and to maximize the protection of investors.

(2) The Council may co-operate with an agency of a foreign government in connection with the investigation of a contravention of this Act or any similar written law whether the activities in question occurred in or outside of Guyana.

(3) The Council may co-operate in the work of national, regional or international organizations dealing with the regulation of securities markets.

Annual Report.

20. (1) The Council shall within four months of the end of each financial year send an annual report to the Minister who shall cause it to be laid in the National Assembly within thirty days after he receives it.

(2) Copies of an annual report shall be available to the public on or before the expiration of fourteen days after it is required to be laid in the National Assembly under subsection (1).

Regulation of
business.

21. The Council may, subject to the approval of the Minister, make rules—

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- (a) respecting the calling of and conduct of business at meetings of the Council;
 - (b) respecting procedures for the initiation and holding of hearings by the Council;
 - (c) prescribing the procedure for appeals and review of orders of its delegates and self-regulatory organizations;
 - (d) with the approval of the Minister, establishing a code of conduct governing the activities of Members and the officers and employees of the Council in order to avoid conflicts of interest and other practices that the Council considers undesirable;
 - (e) respecting any other matter, whether or not required by this Act, relating to the organization, procedure, administration or practice of the Council.

Division 4—Staff

Appointment
of General
Manager and
Chief Executive
Officer.

22. (1) The Council shall appoint a General Manager who shall hold office on such terms and conditions as the Minister shall approve.

(2) The Council may, with the approval of the Minister, appoint the Chairman of the General Manager as its Chief Executive Officer.

Appointment
of experts.

23. (1) The Council may appoint, on such terms and conditions as the Minister shall approve, an expert to assist it in any manner that it considers necessary.

(2) Where the Council appoints an expert to advise it on the development of specific policies, regulations or other regulatory proposals of the Council or a self regulatory organization, the expert shall formulate and report his views to the Council in writing and the Council may, if it thinks fit, make that report available to the public.

Appointment
of other staff.

24. The Council may appoint, at such remuneration and on such terms and conditions as the Minister shall approve, a Secretary and such other officers and employees as it considers necessary or appropriate for the efficient performance of its functions.

Superannu-
ation benefits.

25. (1) Section 28 of the Public Corporations Act shall mutatis mutandis apply to public officers, persons (not being public officers) holding appointments in the public service, and teachers, referred to therein, who are seconded, temporarily transferred or transferred to the Council, as if the Council were a public corporation.

(2) The Council may, with the approval of the Minister, make such provisions as it deems appropriate for the payment of pension, gratuity or other allowances in respect of the service of its officers and other employees on their retirement from their employment with the Council.

Division 5—Financial Provisions

Funds and
resources of the
Council.

26. The funds and resources of the Council shall consist of—

- (a) such sums as may be appropriated by Parliament;
- (b) all fees and other sums from time to

time failing due to the Council in respect of its operations;

- (c) all other sums or property that may in any manner become payable in any matter incidental to its functions and powers.

Financial powers.

27. For the purpose of carrying out its functions, the Council may, with the prior approval, in writing, of the Minister—

- (a) charge fees for any service provided; or
- (b) charge registration fees; or
- (c) charge fees for transactions effected on a self-regulatory organization.

Application of funds.

28. The funds of the Council shall be applied in defraying the following expenditures—

- (a) the remuneration, fees and allowances of the Members of the Council;
- (b) the salaries, fees, allowances, advances, loans, gratuities, pensions and other payments to the General Manager, Chief Executive Officer, Secretary and other staff of the Council;
- (c) the capital and operating expenses, including maintenance and insurance of any property of the Council;

- (d) any other expenditure authorized by the Council in the discharge of its functions and contractual obligations.

Cash deposits
and payments.

29. (1) All monies of the Council accruing from its operations under the Act shall be paid into a bank appointed by the Council, and such money shall as far as practicable be paid into the bank from day to day.

(2) All payments made out of the funds of the Council shall be made by the person or persons authorized so to do by rules made under section 21.

Accounts and
Audit.

30. (1) The Council shall keep proper books of accounts of—

- (a) all monies received and expended by the Council and shall record the matters in respect of which such monies have been received and expended; and
- (b) the assets and liabilities of the Council.

(2) Where assets are held upon any special trust, the receipts and expenditures relating to such trust shall be kept in an account separate and apart from all other receipts and expenditures.

(3) All accounts shall be kept in the principal office of the Council for a period of six years after the last entry therein, and shall be open to inspection by the Members, the Minister and by the auditor appointed by the Council.

(4) Within four months after the end of each financial year, the Council shall cause to be prepared in respect of that year, financial statements which include—

-
- (a) an account of the revenue and expenditures of the Council;
 - (b) a balance sheet;
 - (c) a report setting out the activities of the Council; and
 - (d) such other accounts as the Council may require.

(5) Accounts prepared in accordance with this section shall—

- (a) be audited by an auditor who is a member of, and in good standing with, the Institute of Chartered Accountants of Guyana and who is appointed by the Council with the approval of the Minister; and
- (b) be signed by the Chairman and not less than two other Members.

(6) The Secretary shall cause copies of the signed accounts to be sent to every Member of the Council, the auditor and the Minister and the Minister shall cause copies thereof to be laid before Parliament.

(7) The Minister may at any time request the Council to provide him with information concerning any aspect of its administration of this Act, and the Council shall provide the information requested within fourteen days.

(8) The Auditor General may carry out periodic inspections to ensure that sums appropriated by Parliament are utilized as provided for.

PART III
SELF-REGULATORY ORGANIZATIONS

Registration of self-regulatory organisation.

31. (1) No person shall carry on business as a securities exchange or clearing agency or carry on activities as an association of securities companies and intermediaries unless registered as a self-regulatory organization under this Act.

(2) Application for registration pursuant to subsection (1) shall be made to the Council in such form as may be prescribed.

Characteristics of self-regulatory organization.

32. A person shall not be registered as a self-regulatory organization unless that person—

- (a) proposes to engage in the securities business;
- (b) is a body corporate;
- (c) is incorporated in Guyana or incorporated in any other State and registered in Guyana;
- (d) has a body of rules for the governance of its members.

Processing of applications.

33. (1) Forthwith after receipt of an application for registration, the Council shall publish in the Gazette and in a daily newspaper circulating in Guyana, on three consecutive Saturdays, a notice inviting any interested person to submit written comments on the application, and the cost of the publication shall be borne by the applicant.

(2) Written comments of interested persons shall be submitted to the Council within fourteen days of the third publication of the notice referred to in subsection (1).

(3) Subject to subsections (4) and (5), the Council may grant an application for registration subject to the approval of the Minister.

(4) Subject to subsection (6), the Council shall refuse an application for registration where—

- (a) the applicant is not organized in a manner or does not have the capacity and resources that enable it to comply with this Act and to enforce compliance by its members and their employees with its rules; or
- (b) the rules of the applicant do not comply with section 34.

(5) The Council may refuse an application for registration if the applicant or a director or officer of the applicant would be refused registration as a market participant under Part IV of this Act.

(6) Where the Council, subject to the approval of the Minister, grants an application for registration, it may require a change in the rules of the applicant to ensure its fair administration or to make the rules conform to the requirements of, or otherwise further the purposes of, this Act.

(7) In considering whether, subject to the approval of the Minister, to grant an application for registration, the Council shall, in particular, take into account the rules of the applicant that relate to—

- (a) prices, fees or rates charged by members of the applicant for services;
- (b) conditions of entry into the

securities market through membership in the applicant or otherwise;

- (c) the structure or form of a member or participant;
- (d) the quantity or quality of services furnished by a member or participant; and
- (e) any type of restraint on competition.

(8) The Council may, subject to any conditions it may impose, accept a voluntary surrender of a registration.

Obligatory rules.

34. (1) The rules of an applicant for registration shall contain provisions—

- (a) for the protection of investors and the public interest;
- (b) for fostering cooperation and coordination among persons who clear, settle, regulate, process information about and facilitate trades in securities;
- (c) ensuring fair representation of its members in the administration of its affairs;
- (d) for an equitable allocation of reasonable fees and charges among persons who use its facilities;
- (e) relating to the disciplining of a member or employee of a member who contravenes its rules or this Act

and without prejudice to the generality of the foregoing, may provide for censure, fine, suspension, expulsion, limitation of activities, functions or operations, suspension of or exclusion from employment; and

- (f) specifying the procedure required by section 38 for disciplinary proceedings, denial of membership, exclusion from employment or denial or limitation of access to services furnished by it or its members.

(2) Without prejudice to subsection (1), the rules of an applicant for registration as securities exchange or association of securities companies and intermediaries shall contain provisions designed—

- (a) to prevent deceptive and manipulative acts and practices and to promote fair trading practices and to facilitate an efficient market; and
- (b) to provide, subject to sections 33(3) and 38, that a securities company or securities intermediary may become a member of the exchange or association.

(3) The rules of an applicant for registration as a clearing agency shall contain provisions designed—

- (a) to develop and operate a prompt and accurate clearance and settlement system;

- (b) to safeguard money and securities in its custody or under its control or for which it is responsible; and
- (c) to provide, subject to sections 33(3) and 38, that a securities company or securities intermediary, a financial institution, another clearing agency or a person or class of persons designated by the Council may become a participant in the clearing agency.

(4) The rules of an applicant for registration shall not—

- (a) permit unfair discrimination among persons who use its facilities; or
- (b) restrain competition to an extent not necessary to achieve the objectives specified in subsections (1) to (3).

Procedure on proposed amendment to rules.

35. (1) Where a self-regulatory organization proposes to amend its rules, it shall file with the Council a copy of the proposed amendment and a concise statement of its substance and purpose.

(2) Forthwith after receipt of a proposed amendment under subsection (1), the Council shall, subject to subsection (6), publish in the Gazette and in a daily newspaper circulating in Guyana, on three consecutive Saturdays, a notice inviting any interested person to submit written comments on the amendment, and the cost of the publication shall be borne by the self-regulatory organization.

(3) Written comments of interested persons shall be submitted to the Council within fourteen days of the

third publication of the notice referred to in subsection (2).

(4) Subject to subsection (5), the Council may make an order approving a proposed amendment to the rules of a self-regulatory organization.

(5) The Council may make an order refusing a proposed amendment to the rules of a self-regulatory organization if—

- (a) the organization is not organized in a manner and would not have the capacity and resources to enforce compliance with its rules as amended;
- (b) the amended rules would not comply with section 34; or
- (c) the amended rules would be inconsistent with this Act.

(6) Where the Council determines that a proposed amendment filed pursuant to subsection (1)—

- (a) makes no material substantive change in an existing rule; or
- (b) relates exclusively to the administration of the organization, it may approve the amendment without providing an opportunity for a hearing pursuant to section 129.

Powers of Council to require change in rules.

36. (1) The Council may make an order requiring a change in the rules of a self-regulatory organization to ensure its fair administration or to make the rules conform to the requirements of, or otherwise further the purposes of, this

Act.

(2) Where the Council proposes to make an order pursuant to subsection (1), it shall publish and send to the organization a notice that complies with the applicable provisions of section 129.

Control of
commissions
and fees.

37. (1) A self-regulatory organization shall not require its members to comply with a schedule of commissions or other fees for their services or limit in any way a member's income.

(2) Nothing in this section shall prevent a self-regulatory organization from issuing, from time to time, a notice to its members indicating what, in its opinion, is the market price, fee or rate charged for any particular service.

Conditions for
membership.

38. (1) Subject to subsections (2) and (3), a self-regulatory organization shall grant an application for membership.

(2) A self-regulatory organisation may refuse membership, or impose conditions on membership, or prohibit or limit access to services furnished by it or by its members, to a person who —

- (a) lacks the financial responsibility or operational capacity required by its rules;
- (b) does not meet the criteria for membership specified in its rules; or
- (c) does not carry on the type of business that its rules require a member to carry on;

but it shall not refuse membership or impose conditions on membership to a person who carries on the type of business

required by its rules on the basis of the volume of the required business or any other lawful business that the person carries on.

(3) A self-regulatory organisation may refuse membership to, impose conditions of membership on, prohibit or limit access to services furnished by it or its members to, or impose conditions on employment by a member of, a person who—

- (a) lacks the training, experience or competence required by its rules; or
- (b) contravenes this Act or any other law or a rule of a self-regulatory organisation registered under this Act or any other law.

(4) A self-regulatory organisation shall, before refusing membership or imposing conditions on such membership or imposing conditions on employment by a member and before disciplining a member or an employee of a member, complying with the procedures specified for orders under section 129 (1), (4) to (7) and (8) (a) and (b).

(5) A self-regulatory organization may, but need not, publish a decision disciplining a member or an employee of a member unless the Council directs otherwise.

(6) Subject to subsection (7), a self-regulatory organization may, without holding a hearing as required by subsection (4)—

- (a) suspend—
 - (i) a member who has been expelled or is under suspension

from;

- (ii) an employee of a member who has been excluded or is under suspension from employment by the member by, another self-regulatory organization that is registered under this Act or another similar statute;
- (b) suspend a member if the organization reasonably believes it necessary for the protection of investors, creditors, members or the organization because of financial or operational difficulties of the member;
- (c) suspend a participant who is in default of delivery of money or securities to a registered clearing agency; and
- (d) prohibit or limit access to services furnished by it or its members to a person—
 - (i) to whom paragraph (a), (b) or (c) applies;
 - (ii) who does not meet the criteria for access specified in its rules; or
 - (iii) where such action is necessary for the protection of investors, creditors, members or the organization.

(7) Where a self-regulatory organisation acts in accordance with subsection (6), the organisation shall provide an opportunity for such a hearing within seven days of its decision and the suspension, prohibition or limitation shall remain in effect until the hearing is completed.

Filing of copy
of decision
with Council.

39. (1) Where a self-regulatory organisation makes a decision under section 38 refusing membership or imposing conditions on membership or imposing conditions on the employment by a member, it shall at once file with the Council a copy of the decision, the reasons therefor and any other information prescribed by the Council.

(2) On an appeal or review of a decision made pursuant to section 38(2) or (3), the Council shall affirm the decision if it finds that—

- (a) the decision is in accordance with the rules of the organization and this Act; and
- (b) the rules or this Act were applied in a manner that furthers the objectives specified in section 34, but if it does not so find or finds that the decision restrains competition to an extent not necessary to achieve the objectives specified in section 34(1) to (3), it may set aside the decision or require the organization to –
 - (i) admit the person affected to membership,
 - (ii) permit the person to be employed in the desired capacity by a member;
 - (iii) grant the person access to services furnished by it or its

members-, or

- (iv) take any other action not inconsistent with the objectives specified in section 34.

(3) On an appeal or review of a decision of a self-regulatory organization disciplining a member or an employee of a member, the Council may –

- (a) affirm or modify the sanction imposed if it finds that the person disciplined contravened the rules of the organization or this Act; or
- (b) set aside the sanction imposed if it does not so find; and
- (c) remand the matter to the organization for further proceedings.

(4) On an appeal or review referred to in subsection (3), the Council may set aside or modify the sanction imposed if it finds that it restrains competition to an extent not necessary to achieve the objectives specified in section 34(1) to (3).

(5) An order made by the Council under subsection (3) or (4) setting aside or modifying a sanction does not affect the validity of any action taken by the organization as a result of the sanction before the order was made, unless the action contravened this Act or the rules of the organization.

Delisting of securities.

40. (1) No self-regulatory organization shall delist a security admitted for quotation by it, unless it obtains an order from the Council authorizing the delisting and imposing, for the protection of investors, such conditions, if any, as it thinks fit.

(2) The Council shall not refuse to authorize the

delisting of a security, unless the delisting is in breach of—

- (a) the rules of the self-regulatory organization; or
- (b) an agreement entered into by the issuer of the security.

Appointment
of Auditor.

41. (1) A self-regulatory organisation shall, subject to the approval of the Council, appoint an auditor to audit its financial affairs.

(2) A self-regulatory organization shall require each of its members to appoint an auditor who shall—

- (a) examine the member's financial affairs in accordance with the rules of the organization; and
- (b) report the results of the examination to the auditor of the organization.

(3) An auditor appointed under subsection (1) or (2) shall be a member, in good standing, of the Institute of Chartered Accountants of Guyana.

(4) The auditor of a self-regulatory organization shall furnish to the Council on request a copy of a report received by him under subsection (2).

Keeping and
inspection of
records, etc.

42. (1) A self-regulatory organization shall—

- (a) make and keep such records in such form and for such periods as the Council may prescribe;
- (b) file with the Council any prescribed

report in the prescribed form; or

- (c) disseminate to the public a report referred to in paragraph (b), and shall upon request, in writing, furnish the Council with a copy of, or an extract from, any prescribed record.

(2) The Council may at any time authorize a person in writing to—

- (a) inspect the records of a self-regulatory organization and to examine the financial affairs of the organization or any of its members;
- (b) prepare such financial or other reports as the Council requires.

(3) A self-regulatory organization shall—

- (a) produce and furnish a person authorized by the Council under subsection (2) with a copy of any record referred to in subsection (1) or any other record that he reasonably requests; and
- (b) answer any question he asks concerning those records.

Sanctions *re*
rules.

43. (1) Where a self-regulatory organization—

- (a) contravenes its rules or this Act;
- (b) is unable to comply with its rules or this Act;

-
- (c) fails or is unable to enforce its rules or a provision of this Act that it is required to administer or enforce, or fails to comply with an order of the Council under section 36(1);
 - (d) fails to observe standards of solvency prescribed by the Council; or
 - (e) any of the members of which is guilty of gross negligence of fraud, the Council may make an order—
 - (f) censuring the organization;
 - (g) limiting its activities, functions or operations; or
 - (h) suspending or revoking its registration.

(2) Where a director, officer or employee of a self-regulatory organization contravenes the rules of the organization or this Act, the Council may make an order censuring him or suspending or removing him from office or employment with the organization.

Complaints.

44. (1) Subject to subsection (3)—

- (a) any person who is aggrieved by an act or dealing by a member of a self-regulatory organization or by any other market participant registered under Part IV may lodge a complaint in respect thereof to the Council in writing addressed to the Chairman;
- (b) the Council may investigate and

adjudicate upon the complaint, and

- (c) section 133 shall have effect in relation to such investigation and adjudication.

(2) The Council may upon such adjudication make such order as it thinks just, including an order for the payment by the member of the self-regulatory organization or the registrant, as the case may be, of any sum by way of restitution or as compensation for any loss suffered by the complainant.

(3) Subject to subsection (4). Where a person aggrieved as mentioned in subsection (1)(a) makes any complaint against a member of a self-regulatory organization or registrant he shall, if the Council proceeds to an adjudication upon it, abide by the outcome of such adjudication.

Disputes
between
member
companies.

45. (1) Where a dispute involving transactions in securities arises between members of a self-regulatory organization, such dispute shall be referred to the board of directors or similar governing body (the "board") of the self-regulatory organization, and the board shall investigate the dispute, and shall make such order for the resolution of the dispute as it thinks fit.

(2) It shall be the duty of each of the parties to the dispute forthwith to inform the Council in writing of the existence of the dispute and to deliver or cause to be delivered to the other party or parties to the dispute, within twenty-four hours of such notice to the Council, a copy of the notice given to the Council of the dispute.

(3) Where a member is aggrieved by the decision of the board under subsection (1), the member may, within fourteen days of the receipt of such decision, appeal to the Council.

(4) Where the Council adjudicates in a matter referred to it under subsection (3), the decision of the Council shall be final and no appeal shall be brought in respect thereof.

(5) The Council may, by any adjudication under this section, order the payment by any party to the dispute of any sum of money, including a sum to cover costs, as the justice of the case may in the opinion of the Council require.

PART IV REGISTRATION OF MARKET PARTICIPANTS

Registration required for membership or licensing.

46. No self-regulatory organization registered under this Act may admit to or continue in membership, or grant a licence to, any person unless such person has applied for and not been refused registration by the Council or unless such person is registered with the Council under this Act.

Registration to carry on business.
[7 of 2006]

47. (1) Subject to this Act, no person shall carry on business, or hold himself out, as –

- (a) a broker;
- (b) a dealer;
- (c) a trader;
- (d) an underwriter;
- (e) an investment adviser;
- (f) a securities intermediary; or
- (g) a securities company;

unless such person is registered as such with the Council in accordance with this Act and, except in the case of an underwriter or an investment adviser, that person is the holder of a valid license by a self-regulatory organisation.

(2) Where an applicant—

- (a) is considered by the Council to be suitable for registration in the capacity applied for; and
- (b) pays the prescribed fee, the Council shall register the applicant and issue him a certificate of registration in the prescribed form.

(3) In this Part, a person possessing "basic qualifications" shall—

- (a) if an individual, be at least twenty-one years of age, resident in Guyana, a citizen of Guyana or his spouse or is a national of a Member State and of good character;
- (b) if a company, be incorporated in Guyana or incorporated in any other State and be registered in Guyana;
- (c) not have had a receiving or bankruptcy order made against him which remains undischarged;
- (d) if a company, not have a receiver or receiver manager appointed in respect of its undertaking;
- (e) not have interests direct or indirect which may conflict with or be likely to affect the conduct and integrity of

his business in securities;

- (f) not be a person who has been suspended from dealing on or expelled from any stock exchange or self-regulatory organization;
- (g) if an individual, have such experience in the securities industry and such other qualification as the Council may from time to time prescribe;
- (h) if a company, have as a director or in its full time employment an individual who—
 - (i) has been awarded a degree or professional qualification in economics, banking, law, accountancy, business administration or chartered secretaryship from a university or other educational institution within or without of Guyana recognized by the Council; or
 - (ii) has such experience in the securities industry and such other qualification as the Council may from time to time prescribe.

(4) In this section—

“Member State” has the same meaning assigned to it in the Revised Treaty of Chaguaramas establishing the Caribbean Community (CARICOM), including the

CARICOM Single Market and Economy signed at Nassua, The Bahamas, on 5th July, 2001;

“national” means a person who—

- (a) is a citizen of a Member State; or
- (b) has a connection with a Member State of a kind which entitles him to be regarded as belonging to or, if it be so expressed, as being a native or resident of the State for the purposes of the laws thereof relating to immigration;

(5) The Council may suspend or revoke the registration of a person for the following reasons—

- (a) if he ceases to carry on the business for which he registered;
- (b) if he obtained or maintains registration by the concealment or misrepresentation of any fact which is, in the opinion of the Council, material to his application for registration or to his suitability to be registered;
- (c) if his registration has been made by mistake. however such mistake arose;
- (d) if he had defaulted in the payment of any moneys due to a self-regulatory organization, the Council, or to any other market participant;
- (e) if a levy of execution in respect of him has not been satisfied;

- (f) if he is convicted of an offence involving fraud or dishonesty;
- (g) if he contravenes, or fails to comply with, any condition or restriction applicable in respect of his registration or this Act;
- (h) if he fails adequately to supervise or to conduct the activities of any person acting on his instructions or on his behalf;
- (i) if he ceases to meet a requirement of subsection (3) regarding his basic qualifications.

(6) The Council shall not refuse to register an applicant without giving the applicant an opportunity to be heard, and where the Council refuses to register an applicant, it shall notify the applicant in writing of the reasons for so doing.

(7) The Council shall maintain a register of all persons registered with the Council.

(8) The Council shall—

- (a) by the 31st March of every year prepare a list of all valid registrants, by class of registration, which shall be published in the Gazette and in a daily newspaper circulating in Guyana;
- (b) permit any person upon the payment of the prescribed fee, to inspect and to make extracts of any entry in the

register referred to in subsection (6) during normal business hours.

c. 85:01 (9) Notwithstanding any other provision of this Part to the contrary, but subject to the provisions of this Act relating to the discipline of a registrant, persons who immediately before the commencement of this Act were licensed to conduct a "financial business" as provided in section 3 of the Financial Institutions Act are deemed to be registered as securities companies under this Act.

(10) A person who is deemed to be registered under subsection (8) shall, within six months of the commencement of this Part, comply with the requirements of this Act and upon failure to do so shall cease to be registered, but shall be entitled to apply for registration whenever he is able to meet those requirements.

(11) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for two years.

Application for registration as securities intermediary.

48. (1) Every application for registration as a securities intermediary shall be made to the Council in the prescribed form and shall be accompanied by such fees as are prescribed.

(2) Every applicant for registration as a securities intermediary shall have the basic qualifications mentioned in section 47(3).

(3) Where an applicant wishes to be registered as a securities intermediary, other than solely as a trader, in respect of—

- (a) equity securities only, he shall have such minimum paid up capital as may be prescribed by the Council; or

- (b) equity securities and other securities, or, as the case may be, other securities only, he shall have such minimum paid up capital as may be prescribed by the Council.

(4) In addition to the provisions of subsections (1) to (3)—

- (a) every application for registration as a trader in securities shall be signed jointly by the applicant and by a broker of the securities company under whose direction and supervision it is proposed that the applicant operate as a trader; and
- (b) the Council may decline to register any person as a trader unless it is satisfied that he is a fit and proper person to be registered and may make such inquiries and require the applicant and the broker who joins with him in making the application to produce such information as it may deem necessary for the purpose.

Suspension on revocation of registration as securities company.

49. The Council may suspend or revoke the registration of a securities intermediary for any reason mentioned in section 47(4).

Exemption from registration for certain investment

50. (1) So long as the performance of services as an investment adviser is solely incidental to its or his principal business or occupation as mentioned in this subsection, the following persons may act as investment advisers without registration as an investment adviser under this Part—

- c. 91:01 (a) an insurance company, registered under the Insurance Act;
- c. 85:01 (b) a financial institution licensed under the Financial Institutions Act;
- (c) an attorney-at-law or an accountant;
- (d) a publisher of, or writer for, a bona fide newspaper, news magazine, or business or financial publication that is of general and regular paid circulation, distributed only to subscribers to it for value or to purchasers of it, who—
- (i) gives advice as an adviser either as such publisher or writer only or as such publisher or writer and as an attorney-at-law or an accountant;
- (ii) discloses in the publication any direct or indirect interest which he has in any of the securities in respect of which he gives advice; and
- (iii) receives no commission or other consideration for giving the advice other than for acting in his capacity as a publisher or writer; or
- (e) a person or class of persons prescribed.

(2) For the purposes of this section, "accountant" means an individual who is a member in good

standing of the Institute of Chartered Accountants of Guyana.

Application for
registration as
Securities
Company.

51. (1) Every application for registration as a securities company shall—

- (a) be made to the Council in the prescribed form;
- (b) clearly indicate the class or classes of business to be undertaken by the company; and
- (c) be accompanied by such fees as are prescribed.

(2) Every applicant for registration as a securities company shall have the basic qualifications set forth in section 47(3).

(3) Where an applicant wishes to be registered as a securities company in respect of—

- (a) equity securities only, it shall have such minimum paid up capital as may be prescribed by the Council, or
- (b) equity securities and other securities, or, as the case may be, other securities only, it shall have such minimum paid up capital as may be prescribed by the Council.

(4) Where a company is registered as a securities company, an individual mentioned in paragraph (h) of section 47(3) shall be responsible for the discharge of the obligations of the securities company in relation to each class of business for which it is registered.

Suspension or revocation of registration as securities company.

52. The Council may suspend or revoke the registration of a securities company for any reason mentioned in section 47(4).

Suspension of registration on prosecution of market participant.

53. Where any registered market participant is prosecuted for breach of this Act, the Council may suspend the registration of such market participant from the date of the institution of such prosecution or at any time thereafter, but such suspension shall automatically cease upon the dismissal of the charge or the withdrawal thereof or, if there is more than one charge, upon the dismissal or withdrawal of all the charges.

Effect of cancellation suspension or revocation.

54. Where the Council has cancelled, suspended or revoked the registration of any person, that person shall forthwith cease activities in the area of activity for which he was registered, and any license issued by a self-regulatory organization or membership in any such organization shall forthwith become invalid.

Indemnity insurance.

55. Every securities company registered under this Part shall obtain policies of insurance on terms prescribed by the Council for the purpose of indemnifying such registrant against any liability that may be incurred as a result of any act or omission of the registrant or any of its officers or employees.

PART V REGISTRATION OF ISSUERS AND SECURITIES

Registration statements of issuers.

56. (1) From the date of commencement of this Part, all public companies shall become reporting issuers and shall, within ninety days from that date, file with the Council a registration statement in the prescribed form.

(2) A person who proposes to issue securities to the public shall register with the Council as a reporting issuer and file a registration statement in the prescribed

form and within the prescribed time.

(3) A reporting issuer shall amend its registration statement annually so that the information contained therein is current as of the end of its most recent financial year.

(4) An issuer in its registration statement shall omit or amend any information that is of a type prohibited by regulation.

(5) An issuer may include in its registration statement any information that is not of a type prohibited by regulation.

(6) Where a reporting issuer ceases to be a public company, the Council may on its own motion or on application by the issuer or another interested person make an order declaring, subject to such conditions as it considers appropriate, that the issuer is no longer a reporting issuer.

(7) This section shall not apply to any issuer which is a government entity.

(8) In subsection (7) and in section 57(3) (b), "government entity" means the Government of Guyana, the Bank of Guyana and municipal corporations.

Registration of securities.

57. (1) Subject to subsection (2), no security shall be offered to the public or listed with any self-regulatory organization unless it is registered with the Council by means of a registration statement that has become effective.

(2) A unit issued by a unit trust scheme, or a mutual fund, in accordance with the terms of a prospectus for which a receipt has been issued by the Council, is deemed to be registered with the Council.

(3) Any security may be registered with the

Council by filing a registration statement signed—

- (a) by the principal executive officer of the issuer and at least two members of the board of directors of the issuer; or
- (b) in the case of a government entity, by the underwriter or designated agent.

(4) Signatures appearing on the registration statements shall be presumed to have been affixed to that statement by authority of the person whose signature is so affixed unless the contrary is proved by the person denying the validity of the signature.

(5) A registration statement shall be deemed effective only as to the securities specified therein as proposed to be offered or listed, as the cases may be.

(6) At the time of filing a registration statement pursuant to subsection (3) the application shall pay to the Council such fees as may be prescribed by the Council.

(7) The filing with the Council of a registration statement or any amendment thereto under this section shall be deemed to have taken place upon receipt thereof, but the filing of a registration statement shall not be deemed to have taken place unless accompanied by the amount of the fee required under subsection (6).

(8) The information contained in or filed with any registration statement shall be made available to the public in such manner as may be prescribed.

(9) The effective date of a registration statement shall be determined by the Council.

Annual
Reports.

58. (1) A reporting issuer shall, within four months after the end of its financial year—

- (a) file with the Council a copy of its annual report containing the information prescribed by the Council and any other information that is not of a type prohibited by regulations;
- (b) send to each of its security holders such financial statements as the Council may prescribe.

(2) A reporting issuer shall file such other reports in such form as may be prescribed.

(3) Subject to subsection (41), where a material change occurs in the affairs of a reporting issuer, the reporting issuer shall, as soon as practicable but in any event no later than seven days after the change occurs, file with the Council and issue a press release authorized by a senior officer that discloses the nature and substance of the change.

(4) Subject to subsection (5), subsection (3) shall not apply where—

- (a) the reporting issuer is of the opinion that the disclosure required by subsection (3) would be unduly detrimental to its interests and advises the Council in writing within seven days of the change and the reasons why it is of the opinion that there should not be a press release; or
- (b) the material change in the affairs of the reporting issuer consists of a

decision to implement a change made by the directors of the issuer and the directors and senior management of the issuer have no reason to believe that any person with knowledge of the material change has made or intends to make use of that knowledge in purchasing or selling securities of the issuer.

(5) Where the Council is of the opinion that the disclosure of the material change would not be unduly detrimental to the interests of a reporting issuer, it may, after giving the reporting issuer an opportunity to be heard, require disclosure to the public of the material change.

PART VI DISTRIBUTION

Definition and construction.

59. (1) For the purpose of this Part, an advertisement offers securities if—

- (a) it invites a person to enter into an agreement for or with a view to subscribing for or otherwise acquiring or underwriting any securities; or
- (b) it contains information calculated to lead directly or indirectly to a person entering into such an agreement.

(2) In this Part—

- (a) "distribution" in relation to any securities includes an offer to sell securities;
- (b) "offer to sell" includes an attempt or offer to dispose of or any solicitation

of an offer to buy a security;

- (c) "person engaged in the distribution" in relation to any securities, means the issuer, a registrant or any other person who issues or is to issue securities or is engaged in a distribution to which this Part applies;
- (d) "sophisticated purchaser" means—
- (i) a person who participates as principal in any trade the consideration of which is no less than five hundred thousand dollars;
 - (ii) a person who—
 - (A) has access to substantially the same information concerning the issuer that is required in a prospectus under section 64(1) and (2); and
 - (B) is able to evaluate a security as an investment on the basis of information provided to him by the seller by virtue of his net worth and advice which may be available to him from an investment adviser who receives no remuneration from the issuer or selling

security holder in
connection with the
distribution; or

- (iii) an officer or director of the issuer or his spouse, parent, brother, sister or child.

Block
distribution
circular.

60. In this Part, "block distribution circular" means a prospectus required in connection with a distribution of previously issued securities acquired under a distribution exempted from the prospectus requirements under section 67(2).

Prospectus
required.

61. Subject to section 62, no person shall distribute a security unless a prospectus or a block distribution circular has been filed with and a receipt therefor has been issued by the Council.

Offers to sell a
security.

62. (1) No person shall offer to sell a security in connection with a distribution unless the offer is made by means of—

- (a) a prospectus or block distribution circular for which a receipt has been issued by the Council; or
- (b) an advertisement—
- (i) identifying the security distributed, a person from whom a document specified in paragraph (a) may be obtained, and a person through whom orders will be executed; and
- (ii) containing whatever other information the Council

permits or may prescribe.

(2) Notwithstanding subsection (1), a person engage in the distribution may solicit expressions of interest from prospective purchasers with respect to a proposed distribution if he notifies the Council in writing that he intends to do so and identifies the issuer, the class of persons to whom the security is to be offered and the security proposed to be distributed.

Delivery of a prospectus.

63. (1) No person engaged in the distribution shall sell a security of a class that is the subject of a filing pursuant to section 61 and for which a receipt has been issued by the Council, within ninety days of the date of the receipt, unless he sends or delivers to the purchaser of the security a prospectus or block distribution circular within two business days after the agreement of sale is made.

(2) The Council may, in respect of reporting issuers, prescribe a shorter period than that specified in subsection (1).

(3) An agreement referred to in subsection (1) is not binding on the purchaser if the person engaged in the distribution receives not later than two business days after the purchaser received the prospectus or block distribution circular written notice that the purchaser intends not to be bound by the agreement.

(4) A person who files a prospectus or block distribution circular pursuant to section 69 shall provide copies during the period specified in subsection (1) upon request of a person engaged in the distribution and shall furnish to that person a reasonable number of copies of it without charge.

(5) For the purposes of this section, the receipt of a prospectus or block distribution circular by a person who acts

solely as agent of the purchaser with respect to the purchase of a security., referred to in subsection (1) is deemed to be a receipt by the purchaser as of the date on which the agent received the prospectus or block distribution circular.

Contents of
prospectus.
c. 89:01

64. (1) A prospectus shall contain such information and comply with such other requirements as may be prescribed, and in the absence of regulations made by the Council, the First Schedule under Part 111, Division D of the Companies Act shall govern the contents of any prospectus.

(2) In addition to the information required to be included in a prospectus by virtue of subsection (1), a prospectus shall contain such information as investors and their professional advisers would reasonably require, and reasonably expect to find there, for the purpose of making an informed assessment of—

- (a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the securities; and
- (b) the rights attaching to those securities,

Being information which is within the knowledge of any person responsible for the prospectus or which it would be reasonable for him to obtain by making enquiries.

(3) In determining- what information is required to be included in a prospectus by virtue of this section regard shall be had also—

- (a) to the nature of the securities and the issuer of the securities;
- (b) to the nature of the persons likely to consider their acquisition;

- (c) to the fact that certain matters may reasonably be expected to be within the knowledge of professional advisers of any kind whom those persons may reasonably be expected to consult; and
- (d) to any information available to investors or their professional advisers by virtue of any written law or by virtue of requirements imposed by the Council.

Supplementary
prospectus.

65. (1) Where a prospectus has been filed under section 61 in respect of any proposed distribution or any offer of securities and at any time during which an agreement in respect of those securities can be entered into in pursuance of that offer—

- (a) there is a material change affecting any matter contained in the prospectus the inclusion of information in respect of which is required by virtue of section 64(1) and (2),
- (b) a material fact occurs the inclusion of information in respect of which would have been so required if it had arisen when the prospectus was prepared, then the person who delivered the prospectus for registration to the Council shall deliver to it for registration a supplementary prospectus containing particulars of that material change or fact as the case may be.

(2) Where a supplementary prospectus is required to be delivered, no offers and sales in reliance on the original prospectus may be made until the supplementary prospectus has been delivered to the Council for registration and a receipt issued therefor, and every prospectus thereafter sent or delivered to any person shall be accompanied by the supplementary prospectus.

(3) In lieu of a supplementary prospectus, the person who delivered the original prospectus may deliver to the Council for registration, and upon issue of a receipt therefor use, an amended prospectus as provided in section 70, and the provisions of this Part applicable to a supplementary prospectus shall apply to an amended prospectus.

(4) Where the person who delivered the prospectus for registration is not aware of the material change or fact in question he shall not be under any duty to comply with subsection (1) unless he is notified of it by a person responsible for the prospectus, but any person responsible for the prospectus who is aware of that material change or fact shall be under a duty to give him notice of it.

(5) Section 63(1) applies also as respects matters contained in a supplementary prospectus filed under this Part in respect of the securities in question.

Expert's
consent.

66. (1) A prospectus that invites subscriptions for or the purchase of securities as an issuer, and that includes a statement purporting to be made by an expert, shall not be issued unless—

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

and

- (b) there appears in the prospectus a statement that the expert has given and has not withdrawn his consent, and accordingly, a person is not to be deemed to have authorized or caused the issue of a prospectus by reason only of his having given the consent required by paragraph (a) to the inclusion in the prospectus of a statement purporting to be made as an expert.

Exemptions.

67. (1) Sections 61 to 63 do not apply to a distribution—

- (a) by an issuer where the purchaser is an issuer acting as principal;
- (b) where the purchaser is an underwriter of the security being distributed;
- (c) by an issuer of a security that is distributed to holders of its securities as a dividend;
- (d) by an issuer of a security to holders of its securities as incidental to a reorganization, winding up or distribution of its assets for the purpose of winding up its affairs;
- (e) by an issuer of a security pursuant to the exercise of a right to acquire the security, which right was previously granted by the issuer, if no

commission or other remuneration is paid or given in respect of the distribution except of administrative or professional services or for services, other than the solicitation of investors, performed by a registrant;

- (f) by an issuer of a right, transferable or otherwise, granted by it to holders of its securities to purchase additional securities of its own issue, and of securities pursuant to the exercise of such a right—
 - (i) if the issuer files with the Council a notice in the prescribed form that is to be sent to its security holders; and
 - (ii) the Council does not inform the issuer in writing within fourteen days of the filing that it objects to the offer; or
 - (iii) the issuer files with the Council and sends to its security holders information relating to the securities that is satisfactory to the Council;
- (g) by an issuer of a security that is exchanged by or for the account of the issuer with another issuer or the security holders of another issuer pursuant to—
 - (i) a statutory amalgamation or arrangement; or
 - (ii) a statutory procedure by which

one issuer takes title to the assets of another issuer that loses its existence by operation of law or by which the existing issuers merge into a new issuer.

- (h) by in offeror pursuant to a take-over bid;
- (i) by or for the issuer or owner by means of an isolated sale that is not made in the course of continued or successive sales of the same security;
- (j) by an issuer of securities of its own or an associate's issue to its employees. If—
 - (i) the employees are not induced to purchase the securities by expectation of employment or continued employment with the issuer; and
 - (ii) no commission or other remuneration is paid or given in respect of the distribution except for professional services or for services other than the solicitation of employees, performed by an issuer;
- (k) where the Council makes an order declaring that the cost of providing a prospectus outweighs the resulting protection to investors, but in such circumstances the Council may make the order subject to any conditions it

considers appropriate including conditions determining the standards of civil liability applicable to the offer;

- (l) issued or guaranteed by the Government of Guyana, the Bank of Guyana or a municipal corporation or statutory body in Guyana;
- (m) by a person declared an exempt purchaser by order of the Council who purchases as principal or as trustee for accounts fully managed by it; or
- (n) in such other circumstances as the Council may prescribe.

(2) Sections 61 to 63 do not apply to a distribution to not more than fifty purchasers, each of whom is a sophisticated purchaser if—

- (a) the distribution is previously notified in writing to the Council and is not accompanied by an advertisement other than an announcement, as prescribed by the Council, of its completion; and
- (b) no selling or promotional expenses are paid or incurred in connection with the distribution except for professional services or services performed by an issuer.

(3) Sections 61 to 63 do not apply to a limited offering.

(4) For the purposes of this section, "limited offering" means an offer within such time as may be

prescribed by the Council to not more than fifty purchasers of the securities distributed where—

- (a) the issuer or selling security holder obtains an agreement from each purchaser that is filed with the Council under which each purchaser agrees to file or cause to be filed with the Council a prospectus with respect to the securities if a sale of the securities purchased by him results in there being more than fifty owners of the distributed securities within two years of the completion of the distribution or such other time as the Council prescribes; and
- (b) no selling or promotional expenses are paid or incurred in connection with the distribution except for professional services or services other than the solicitation of investors by an issuer.

(5) For the purposes of this Act, a person who purchases a security pursuant to an exemption under subsection (3) from a person whom he knows to have acquired the security in a trade referred to in this section is in the same position as his seller for the remainder of the period specified in the definition of a limited offering with regard to the security.

(6) The Council may seek an order of the Court against any person who has entered into any such agreement as is referred to in subsection (4)(a) and upon proof of the filing of such agreement with the Council, shall be entitled to an order accordingly.

(7) The Council may prescribe—

- (a) further conditions for a limited offering;
- (b) that such statement as it thinks fit shall be printed on a certificate for a security sold pursuant to this section; and
- (c) that a person who makes a limited offering and a purchaser of a security of such an offering shall file such report as it thinks fit.

(8) Sections 61 to 63 do not apply to a trading transaction.

(9) For the purposes of this section, "trading transaction" means a distribution of a security of a reporting issuer executed through a registrant where—

- (a) the issuer has been registered under Part V for at least one year, or such other period as the Council may prescribe, immediately preceding the distribution and the issuer has complied with the filing requirements of this Act;
- (b) no selling or promotional expenses are incurred in connection with the distribution except for services customarily performed by a registrant in connection with a trade in the market; and
- (c) the sales by or on behalf of the issuer or selling security holder do not during a prescribed period exceed—

-
- (i) an amount in dollars,
 - (ii) a percentage of trading volume;
 - (iii) a percentage of outstanding securities of the class; or
 - (iv) any combination of the limits referred to in subparagraphs (i) to (iii), prescribed by the Council.

(10) Where trades made pursuant to this section result in an increase in the trading activity of securities of an issuer, the Council may make an order—

- (a) requiring the issuer to file and disseminate such information as it believes necessary for the protection of investors; and
- (b) reducing the number of securities of the issuer that may be distributed in trading transactions during a period prescribed pursuant to subsection (9)(c).

(11) A person who sells a security pursuant to an exemption under this section shall file a report in the prescribed form with the Council within fourteen days of the completion of the sale.

Receipt for
prospectus.

68. (1) Subject to subsections (2), (3) and (5), the Council shall issue a receipt for a prospectus within a reasonable time after the date of the original filing of a prospectus filed pursuant to section 61 or 69(1).

(2) The Council may refuse to issue a receipt for a prospectus—

- (a) if it appears to the Council that—
 - (i) the prospectus contains a misrepresentation;
 - (ii) the prospectus fails to disclose any material fact which may be required under this Part; or
 - (iii) the distribution in connection with which the prospectus is filed is deceptive;
- (b) if an unconscionable consideration or illegal commission has been or is intended to be given for promotional purposes or for the acquisition of the security;
- (c) if it appears to the Council that the past conduct of the issuer or of a person who exercises or is reasonably considered by the Council likely to exercise influence over its management or policies suggests to the Council that the business of the issuer is likely to be conducted in a manner that is not honest or financially responsible or that may, be unfair to holders of its securities;
- (d) if the proceeds that the issuer will receive from the distribution together with its other resources, do not appear sufficient to accomplish the purpose of the distribution stated in the prospectus;

-
- (e) if an expert who has prepared or certified a part of the prospectus or report used in connection with it is not acceptable to the Council; or
 - (f) if the Council considers that the distribution would be prejudicial to the public interest.

(3) The Council may refuse to issue a receipt for a block distribution circular in the circumstances specified in sub-section (2)(a) to (d) or (f).

(4) If the Council refuses to issue a receipt for a prospectus and the person who filed the prospectus so requests, the Council shall give him an opportunity to be heard.

(5) The Council may impose on a distribution in connection with which it Issues a receipt for a prospectus any condition which in the opinion of the Council is necessary for the protection of investors including, without limiting the generality of the foregoing—

- (a) a condition that outstanding securities of the issuer be held in escrow upon such terms as the Council may specify;
- (b) a condition that the proceeds of a distribution which are payable to the issuer may be held in trust until such amount-as may be specified is received for the issuer;
- (c) a condition that no sales pursuant to the distribution may be completed before such time as may be specified

by the Council.

Cessation of
distribtion.

69. (1) Where a distribution of securities does not commence within ninety days of the date on which a receipt for the prospectus is issued by the Council, the distribution shall cease until such time as a new prospectus is filed with a receipt therefor issued by the Council.

(2) For the purposes of this section, a distribution commences when twenty-five per cent of the securities proposed to be distributed are sold and paid for.

(3) Subject to subsections (4) and (5), a distribution shall not continue longer than one year and twenty days from the date of the receipt for the prospectus or block distribution circular relating to it unless the Council issues a new receipt for a current prospectus or block distribution circular, in which case the period runs from the date of the latter receipt.

(4) The Council may prescribe that the period specified in subsection (3) shall be reduced to not less than six months.

(5) Subsection (3) does not apply to a distribution by a unit trust scheme or a mutual fund.

Amendment of
prospectus.

70. Where a material fact relates to an issuer or to a security being, issued occurs while a distribution is in progress and a supplementary prospectus has not been filed, an amendment to the prospectus shall be filed forthwith with the Council and every prospectus thereafter sent or delivered to any person shall include the amendment.

PART VII MARKET CONDUCT AND REGULATION

No stamp duty.

71. No stamp duty shall be payable in respect of the transfer of any security in accordance with the rules of any

self-regulatory organization.

Market rigging transactions.

72. No person shall, directly or indirectly, effect a series of transactions in any security on any securities market thereby creating actual or apparent active trading in such security for the purpose of inducing the purchase or sale of such security by others.

Inducement to purchase or sell securities by dissemination of information.

73. No member of a self-regulatory organization or dealer or person who is selling or offering for sale, or purchasing or offering to purchase, any security in consideration or anticipation of any reward or benefit or otherwise, shall induce a purchase or sale of such security on any securities market by the circulation or dissemination, in the ordinary course of business, of information to the effect that the price of any such security will or is likely to rise or fall because of market operation by any one or more persons, conducted for the purpose of raising or depressing the price of such security.

Employment of deceptive device etc.

74. No person shall, directly or indirectly, in connection with the purchase or sale of any security—

- (a) employ any device, scheme or artifice with the intention to defraud;
- (b) engage in any act, practice or course of business which operates or would operate as a fraud or deceit on any person,
- (c) make any untrue statement of a material fact or omit to state a material fact with the intention to mislead.

Restriction on recommenda-

75. (1) A registrant shall not recommend a trade in a

tion. security to a customer unless he has reasonable grounds to believe that the recommendation is suitable for the customer on the basis of—

- (a) information furnished by the customer after reasonable inquiry as to his investment objectives, financial situation and needs; and
- (b) any other information known to the registrant.

(2) Subsection (1) does not apply to a registrant in respect of the—

- (a) execution of an unsolicited order for a customer; or
- (b) publication of a research report that recommends generally a trade in a security.

Excessive trading.

76. (1) No registrant or employee of a registrant shall effect trades that are excessive in volume or frequency with or for a customer in respect of whose trading he is in a position to exercise determinative influence by reason of the customer's willingness to accept his recommendations.

(2) No person who has discretionary authority over or is a trustee for an account of another shall effect trades that are excessive in volume and frequency.

(3) For the purposes of this section, whether trades are excessive in volume or frequency shall be determined on the basis of such factors as the amount of profits or commissions of the registrant, employee or other person in relation to the size of the customer's account, the needs and objectives of the customer as ascertained on reasonable inquiry and the pattern of trading in the account.

Council may prescribe standard of conduct for registrant.

77. (1) The Council may prescribe standards for the conduct of a registrant in relation to a customer to prevent—

- (a) a conflict of interest; or
- (b) any other conduct that would enable a registrant to treat a customer unfairly.

(2) The Council may prescribe standards for the conduct of a registrant in relation to the custody or lending of any money or security held for a customer.

Disclosure of interest by registrant.

78. A registrant who recommends in writing a trade in a specific security shall include with the recommendation a prescribed statement of any direct or indirect financial or other interest in the security or a trade in the security, held by the registrant.

Disclosure of policies and practices.

79. The Council may prescribe that a registrant who exercises investment discretion with respect to a customer's account shall make such disclosure as may be prescribed to the customer as to his policies and practices relating to the payment of commissions for trades in securities.

Trust accounts.

80. A securities company, or a securities intermediary who is not acting in the employment of a securities company, shall establish and keep in a financial institution in Guyana one or more trust accounts designated as such into which it shall pay—

- (a) all amounts (less any commission and other proper charges) that are received from or on account of any person, other than another securities company or securities intermediary, for the purchase of

securities not delivered to the securities company or securities intermediary, within such time as prescribed by the Council;

- (b) all amounts (less any commission and other proper charges) that are received on account of any person, other than a securities company or securities intermediary, from the sale of securities and not paid to that person or as that person directs, within such time after receipt of such amounts as may be prescribed by the Council.

(2) No money shall be withdrawn from a trust account established under subsection (1), except for the purpose of making payment on behalf of or to the person lawfully entitled thereto or for any other purpose duly authorized by law.

(3) Nothing in this section shall be construed as affecting in any way any lawful claim or lien which any person may have against or upon any monies held in a trust account, or against or upon any monies received for the purchase of securities, or from the sale of securities before such monies are paid into a trust account.

(4) Every director of a securities company, and every securities intermediary that fails to comply with, or contravenes, any of the provisions of this section is guilty of an offence and is liable, on summary conviction, to a fine of one hundred thousand dollars and to imprisonment for one year.

Registrant to
send
documents to

81. (1) Where securities of an issuer are registered in the name of, but not beneficially owned by, a registrant or his nominee, the registrant shall send to the beneficial owner of

beneficial
owner.

the securities a copy of any document sent to him or his nominee as registered security holder forthwith after receipt thereof, unless the beneficial owner instructs him in writing that the document, or documents generally described, need not be sent.

(2) A person who sends a document to registered security holders pursuant to this Act shall furnish to a registrant forthwith upon request sufficient copies of the document to enable him to comply with subsection (1) and, subject to having been informed of the number of beneficial owners for whom the registrant is the representative, shall indemnify him for the reasonable costs of doing so.

Confirmation
to be sent to
customer.

82. (1) Subject to subsection (2), a registrant who trades in security with or for a customer shall send him immediately after the completion of the trade a written confirmation containing the information prescribed by the Council.

(2) The Council may prescribe that a registrant who provides a service of a continuous nature may send, instead of a confirmation as referred to in subsection (1), a periodic statement at such times and containing such information as may be prescribed.

(3) Notwithstanding subsection (2), the registrant shall record the names of any or all customers for whom the registrant has executed a transaction immediately upon its completion.

Records of
transactions.

83. (1) Every securities exchange or other self-regulatory organization shall keep a record of each trade made through its facilities and of each trade reported to it by its members, showing the time when it took place and any other information prescribed by the Council.

(2) On the request of a person who produces a

written confirmation of a trade executed through its facilities, a self-regulatory organization shall furnish to him –

- (a) forthwith, if the trade was executed within thirty days of the request; and
- (b) within a reasonable time if the trade was executed more than thirty days before the request, details of when the trade took place and of any other matter contained in the confirmation of which the self-regulatory organization acquired knowledge in the ordinary course of its business.

Notification to Council.

84. A registrant who has acted in connection with a trade in a security shall on the request of the Council disclose to it the name of the person with or through whom the security was traded.

Restriction on trading at residence.

85. (1) In this section, "residence" includes a building or part of a building in which the occupant resides permanently or temporarily and any appurtenant premises.

(2) No person shall—

- (a) attend at any residence without being invited by an occupant of the residence or
- (b) make an unsolicited telephone call to any residence within Guyana, for the purpose of trading in a security.

(3) Subsection (2) shall not apply where the person calls at or telephones the residence—

- (a) of a close personal friend, business

associate or a client with whom or on whose behalf the person calling or telephoning has been in the habit of trading securities; or

- (b) of a person who has received a copy of a prospectus filed under this Act and has requested that information respecting a security offered in that prospectus be furnished to him by the person calling or telephoning.

Control of
advertisements

86. (1) The Council may make an order requiring a registrant to send to it a copy of each advertisement that he proposes to use in connection with a trade in a security at least seven days before it is used, if the Council reasonably believes that the registrant's past conduct in connection with such advertisement makes review of them by it necessary for the protection of investors.

(2) The Council may make an order prohibiting the use of an advertisement sent to it pursuant to subsection (1) or requiring that it be altered before it is used if the Council is of the view that the advertisement is likely to mislead the public.

(3) In this section, advertisement includes any material designed to make a sales presentation to a purchaser whether or not it is published or presented to a purchaser but does not include a prospectus or block distribution circular

Seller of
security to
declare non-
ownership.

87. A person who places an order with a registrant to sell a security that he does not own or, if acting as agent, that he knows his principal does not own shall, when he places the order, declare that he or his principal, as the case may be, does not own the security.

Declaration as to short position.

88. (1) A person who places an order for the sale of a registered security through a registered securities company or securities intermediary broker acting on his behalf and who –

- (a) does not own the security; or
- (b) If he acting as agent, knows his principal does not own the security,

shall at the time of placing the order to sell, declare to the registered securities company or securities intermediary that he or his principal, as the case may be, does not own the security, and that fact shall be disclosed by the securities company or securities intermediary in the written confirmation of sale.

(2) Subject to this Act and the regulations, for the purposes of subsection (1), a security which is not owned by a person includes, but is not limited to, a security that –

- (a) has been borrowed by that person;
- (b) is subject to a any restriction on its sale, including a resale agreement to a third party;
- (c) may be acquired by that person on the exercise of a right to acquire the security by purchase conversion, exchange or any other means; or
- (d) is deemed not to be owned by that person pursuant to regulations.

Standards of conduct for unlicensed persons.

89. (1) The Council may prescribe standards for the conduct of a registrant who is not a member of a self-regulatory organization.

(2) The Council may prescribe that a registrant shall keep a record of all trade executed by him other than through the facilities of a securities exchange or other self-regulatory organization and shall file with it a report of the trades in the prescribed form.

(3) The Council may prescribe standards governing trading in a security that has been distributed and is not listed for quotation on or with a self-regulatory organization.

Information to be filed with the Council.

90. (1) The Council may prescribe that a registrant shall—

- (a) file with it such information about a missing, lost, counterfeit or stolen security as may be prescribed; and
- (b) submit an inquiry to it for information filed pursuant to paragraph (a) in relation to a security—
 - (i) which is in the registrant's custody or control;
 - (ii) for which he is responsible; or
 - (iii) in respect of which he is effecting, clearing or settling a trade.

(2) Information filed with the Council pursuant to subsection (1) (a) shall be made available forthwith on request to a registrant, financial institution or other prescribed person.

(3) A failure to comply with subsection (1)(b) does not affect a person's status as a bona fide purchaser of a security.

Prohibition on use of name of another registrant.

91. A registrant shall not use the name of another registrant on letterheads, forms, advertisements or signs, as a correspondent or otherwise, unless he is a partner, officer or agent of, or is authorized in writing by, the other registrant.

Representation as to registration.

92. A person shall not represent that he or any other person is registered under this Act unless—

- (a) the representation is true, and
- (b) in making the representation, he specifies his or the other person's category of registration and class of business under this Act.

Holding out by nregistered person.

93. A person who is not registered shall not, directly or indirectly, hold himself out as being registered.

Prohibited characterization of actions by Council.

94. A person shall not represent, orally or in writing, that the Council or a person authorized by the Council, has in any way approved the financial standing, fitness or conduct of any registrant or evaluated the merits of any security or issuer.

PART VIII SIMPLIFIED CLEARING FACILITIES

Application of part.

95. Notwithstanding any other written law, this Part shall have effect in relation to securities registered with the Council.

Definitions.

96. In this Part—

(1) "blocked account" means an account of a participant over which a person other than the participant exercises control pursuant to procedures established under section 100,

(2) "interested person" means a person who has an interest in a security in an account of a participant in a clearing agency,

(3) "in writing" includes production in machine readable form;

(4) "pledge" means a contractual interest in a security that is delivered to, retained by or deemed to be in the possession of a creditor to secure payment of a debt or other obligation and includes a mortgage or mortgage and pledge of a security.

(5) "registered owner" means a person who is or is presumed to be shown on the securities register of an issuer as the owner of a Security certificate issued by it: and

(6) "security certificate" means an instrument issued by or on behalf of an issuer that is evidence of a security.

Use of clearing agency as registered owner of security.

97. (1) On the issue of a security, an issuer may deliver a security certificate directly to a clearing as registered owner of, the security if—

- (a) the issuer has written authorization signed by or on behalf of the beneficial owner and the clearing agency; and
- (b) the delivery of the certificate is evidenced by a written confirmation signed by the clearing agency and sent not more than three days after receipt of the certificate to the beneficial owner or his agent.

(2) On the issue of a security, an issuer may, instead of delivering a security certificate, issue a security to a

registered clearing agency as registered owner by means of record entries if—

- (a) the issuer has written authorization signed by or on behalf of the beneficial owner of the security;
- (b) the issue is further evidenced by a written confirmation executed by the clearing agency and sent not more than three days after issuance, to the beneficial owner of the security or his agent; and
- (c) the issue is recorded as of the effective date of issuance in the securities register of the issuer and the records of the clearing agency.

(3) A written confirmation referred to in subsection (1) (b) or (2) (b) is, in the absence of evidence to the contrary, proof that the person named in the confirmation is the beneficial owner of the securities described therein.

(4) A clearing agency shall not make an entry in its records under this section respect of a security that is not fully paid.

Transfer of securities through clearing agency.

98. (1) Immediately after receipt of a security certificate from a participant, a clearing agency shall deliver the certificate to the issuer and request the transfer of the securities evidenced by the certificate to the clearing agency.

(2) Where a clearing agency presents a security certificate in proper form to an issuer and requests a transfer to it of the securities evidenced by the certificate, the issuer shall, if it has a duty to register the transfer, immediately enter the transfer in its securities register and deliver to the clearing agency a security certificate representing the securities and showing the clearing agency as registered

owner.

(3) An issuer may, instead of issuing a security certificate under subsection (2), transfer a security to a clearing agency as the registered owner by means of record entries if—

- (a) the issuer has written authorization signed by or on behalf of the beneficial owner of the security,
- (b) the transfer is further evidenced by a written confirmation executed by the clearing agency and sent not more than three days after issuance to the beneficial owner, of the security or his agent; and
- (c) the transfer is recorded as of the effective date of issuance in the securities register of the issuer and the records of the clearing agency.

(4) A written confirmation referred to in subsection (3) (b) is, in the absence of evidence to the contrary, proof that the person named in the confirmation of the securities described therein.

Transfer by
record entry.

99. On receipt of instructions in writing from a participant and, if the participant's account is blocked, from the person who exercises control over it, a clearing agency shall in accordance with those instructions, effect a transfer of a security from the participant to another participant by an entry in its records.

Blocked
accounts.

100. (1) A clearing agency shall establish a procedure whereby it or an interested person may exercise control over a participant's account in the clearing agency where—

- (a) the interested person is in relation to a security in the participant's account, a beneficial owner, a pledge, or a judgement creditor of the beneficial owner; or
- (b) a security in the participant's account is subject to a lien in favour of its issuer or to a restriction or constrain on its transfer.

(2) Subject to section 109 (3) , a clearing agency shall not transfer, deliver or otherwise deal with a security in a blocked account without instructions in writing from the person who exercises control over it.

Effecting
pledge by
record entry.

101. (1) On receipt of instructions in writing from a participant and if the participant's account is blocked from the person who exercises control over it, a clearing agency shall in accordance with the instructions effect a transfer by way of pledge of a security from the participant to a pledge by making an entry in its records to block an account in the name of the participant in favour of the pledgee for the amount of the debt or other obligation or by the number of securities pledged.

(2) On receipt of instructions in writing from a pledgee in whose favour an account is blocked under subsection (1) stating that he is entitled to realize the securities in the blocked account, a clearing agency shall in accordance with the instructions transfer the securities unless—

- (a) it knows that the pledgee is not entitled to realize the securities; or
- (b) its procedure established pursuant to section 100(1) specifies otherwise.

(3) A clearing agency is not liable for any loss resulting from compliance with the instructions of a pledgee under subsection (2) unless the clearing agency knows before the transfer that the pledgee is not entitled to the securities.

Effecting
blocked
accounts by
record of entry.

102. On receipt of instructions in writing from a participant and a beneficial owner of a security, a clearing agency may in accordance with the instructions make an entry in its records to block an account in the name of the participant in favour of the beneficial owner or in favour of a person who acts on his behalf.

Security
subject to
restriction.

103. (1) A clearing agency may refuse to open an account in respect of a security that is subject to—

- (a) a lien in favour of its issuer; or
- (b) a restriction of constraint on its transfer.

(2) A clearing agency may, with respect to a security referred to in subsection (1), make an entry in its records to block an account in the name of a participant in favour of the clearing agency or an interested person.

Blocking
account by
court order.

104. (1) On the application of a creditor who has a judgment against a beneficial owner of a security held by a clearing agency, the Court may order the clearing agency to make an entry in its records to block an account in the name of the beneficial owner or his agent in favour of the judgment creditor for the amount or number of securities mentioned in the order.

(2) On receipt of an order of, or instructions in writing from the Court or an officer thereof stating that a judgment creditor in whose favour an account is blocked under subsection (1) is entitled to realize a security in the blocked account, a clearing agency shall transfer the security

in accordance with the order or instructions.

(3) On the application of a person who in an action or an application under section 111 claims to be entitled to a security held for a beneficial owner in a clearing agency, the Court may order the clearing agency to make an entry in its records to block the account in the name of the beneficial owner or his agent in favour of the claimant for the amount or number of securities mentioned in the order.

(4) A clearing agency is not liable for any loss resulting from compliance with an order or instructions received under subsections (1) to (3).

Limitation on rights of participant.

105. A participant has no right to pledge, transfer or otherwise deal with a security held for him by a clearing agency except through the facilities of the clearing agency.

Withdrawal of security.

106. (1) On the receipt of a demand in writing from a participant for whom security is held other than in a blocked account, for withdrawal of that security, a clearing agency shall within a reasonable time, subject to any proceedings under section 111 obtain and deliver to the participant a security certificate in his name or a name designated by him evidencing the security.

(2) On receipt of instructions in writing from a clearing agency that is the registered owner of securities to deliver a security certificate to it, the issuer of the security shall immediately deliver the certificate to the clearing agency in accordance with its instructions.

Issuer's duty to request list of participants.

107. (1) Where a clearing agency holds a class of securities of an issuer that proposes to close its securities register or fix a record date in respect of the class for the purpose of determining security holders entitled –

- (a) to receive notice of or to vote at a meeting of security- holders;

- (b) to receive payment of a dividend or interest; or
- (c) to participate in a liquidation distribution, or for any other purpose

the issuer shall give the clearing agency such notice as may be prescribed of its intention to close its securities register or fix a record date.

(2) The notice referred to in subsection (1) shall request from the clearing agency a list of the names of the participants for whom the clearing agency holds securities of the class mentioned in that subsection made up as of the date on which it proposes to close its register or fix a record date.

(3) On receipt of a demand in writing from an issuer for a list of the names of participants for whom it holds securities of a class issued by the issuer, a clearing agency shall within seven days provide the issuer with a list setting out—

- (a) the names and addresses of, and
- (b) the number or amount of securities of the class held for,

each such participant made up as of the date specified in the demand.

(4) On receipt of a demand from an issuer under subsection (3), a clearing agency shall send notice of the demand to each participant that is a securities company.

(5) A participant that receives a notice sent pursuant to subsection (4) may—

- (a) furnish to the clearing agency or

the issuer a list containing the name and address of all beneficial owners for whom the participant holds the securities and the number or amount of securities of the class so held; and

- (b) instruct the clearing agency to furnish the list to the issuer or inform the clearing agency that it has done so itself.

(6) Where a participant that receives a notice sent pursuant to subsection (4) does not provide a clearing agency or the issuer with a list of all the beneficial owners for whom it holds securities referred to in the notice, the participant shall at its own expense obtain from the issuer and send to each such beneficial owner, who is not included in the list and who has not instructed it otherwise in writing, any dividend or interest or any document that the issuer wishes to send to its security holders.

(7) A clearing agency that receives lists of beneficial owners under subsection (5) shall, before it furnishes the lists to the issuer, consolidate them into one list in a form that does not permit association of a beneficial owner with a participant, and the clearing agency may charge participants a reasonable fee for the consolidation.

(8) A clearing agency shall treat as confidential any non-public information it receives under subsection (5) concerning the beneficial ownership of securities.

(9) After receipt of a demand in writing from an issuer that has received a list of participants under subsection (3), a clearing agency shall provide the issuer with a current list made up as of a date subsequent to the demand showing any change in respect of the securities held for a participant since the date as of which the list under

subsection (3) was made up.

(10) An issuer is entitled to obtain free of charge from a clearing agency in any one calendar year four lists of participants under subsection (3) with respect to each class of securities held by the clearing agency, and the issuer shall pay the clearing agency a reasonable amount for—

- (a) any additional cost attributable to a demand for a list made after the date when the issuer closed its securities register or fixed a record date; or
- (b) any additional list.

(11) An issuer is entitled to presume conclusively that a person named in a list obtained under this section is the owner of the securities of the issuer referred to in the list.

Access to
clearing agency
records.

108. (1) After submitting a request in writing to a clearing agency, a beneficial owner of a security of an issuer and the owner's agent may during normal business hours examine a list of the records of the clearing agency that relate to any securities of the issuer held by it and may also make extracts therefrom without charge, and any other person may do so upon payment of reasonable fee.

(2) A list referred to in subsection (1) shall be made up as of a specific date within a reasonable time after submission of the request.

Incorrect entry
by clearing
agency.

109. (1) Subject to subsection (3), an incorrect entry made in the records of a clearing agency in connection with a transfer or pledge of a security by reason of its error has the same effect as a correct entry.

(2) Subject to subsection (3), a clearing agency is liable to compensate a person who incurs a loss

as a result of an incorrect entry made in its records by reason of its error.

(3) Where a clearing agency by reason of its error makes an incorrect entry in its records transferring a particular class of security to a participant's account, the clearing agency may, to the extent that there are securities of that class in the account, correct the entry in whole or in part without the participant's consent.

Liability in extraordinary circumstances.

110. Where a clearing agency is unable to effect a pledge or transfer of a security on its records because of an extraordinary event, it is not liable to compensate a person who incurs a loss as a result of a delay in effecting the pledge or transfer to the extent that it proves that it took reasonable corrective action.

Application to court to rectify records.

111. (1) Where an entry is alleged to have been incorrectly made or retained in or omitted or deleted from the records of a clearing agency, other than in the circumstance outlined in section 109(3), the clearing agency or an interested person may apply to the Court for an order that the records be rectified.

(2) On an application under subsection (1), the Court may make any order it thinks fit including, without limiting the generality of the foregoing, an order—

- (a) determining who is an interested person and the notice to be given to such a person;
- (b) dispensing with notice to any person;
- (c) determining the right to of a party to the proceedings to have his name entered or retained in or deleted or omitted from the records of a clearing agency;

- (d) directing that the records of a clearing agency be rectified;
- (e) directing that a clearing agency make an entry in its records to block an account; or
- (f) compensating any person.

Participation
by financial
institutions.

112. (1) A clearing agency may hold securities for a financial institution that is authorized under the law applicable to it, to deliver or transfer any securities held by it into the custody of a clearing agency.

(2) The Council may prescribe that a corporation incorporated by or under an Act of Parliament may deliver or transfer any securities held by it into the custody of a clearing agency.

(3) The Council may make an order approving any aspect of the operating system of a clearing agency that is not inconsistent with this Part.

PART IX DEALINGS BY PERSONS CONNECTED WITH ISSUERS

Meaning of
price sensitive
information.

113. (1) Any reference in this Act to "price sensitive information" in relation to any securities of an issuer is a reference to specific unpublished information which, if generally known, might reasonably be expected to affect materially the price or value of the securities.

(2) For the purpose of this Act, a person is connected with an issuer only if—

- (a) he is a director of that issuer or a related issuer, or

- (b) he occupies a position as an officer (other than a director) or employee of that issuer or a related company or a position involving a professional or business relationship between himself (or his employer or a company of which he is a director) and that issuer or a related company which, in either case, may reasonably be expected to give him access to information which, in relation to securities of that issuer or a related company, is price sensitive information.

(3) In this section, "related company" in relation to a company, means a body corporate which is the subsidiary or holding company of that company or the subsidiary of that company's holding company.

(4) In this Part, "take-over bid" means an offer made by an offeror to shareholders of an offeree company to acquire a sufficient number of shares of any class of issued shares of the offeree company to obtain or consolidate control of that company, and includes every offer by an issuer to repurchase its own shares.

Prohibition of buying or selling of securities by certain persons.

114. (1) Subject to section 119, a person who is or at any time in the previous six months has been knowingly connected with an issuer shall not buy, sell or participate in any transaction on any securities exchange or other self-regulatory organization relating to securities of that issuer if he has information which—

- (a) he holds by virtue of being connected with that issuer; and
- (b) he knows his price sensitive information in relation to those

securities.

(2) Subject to section 119, an individual who is, or at any time in the preceding six months has been knowingly connected with an issuer shall not buy, sell or participate in any transaction on a securities exchange or any other registered self regulatory organization in securities of any other issuer if he has information which -

- (a) he holds by virtue of being connected with the first mentioned issuer,
- (b) he knows is price sensitive information in relation to those securities of that other issuer; and
- (c) relates to any transaction (actual or contemplated) involving both the first issuer and that other issuer, or involving one of them and the securities of the other, or to the fact that any such transaction is no longer contemplated.

(3) Subsection (4) shall apply where a person (hereafter in this section referred to as "the recipient") has information which he knowingly obtained, directly or indirectly, from another person who—

- (a) is connected with a particular issuer, or was at any time in the six months preceding the obtaining of the information so connected; and
- (b) the first mentioned person knows or has cause to believe that, because of the latter's connection and position, it

would be reasonable to expect him not to disclose the information except for the proper performance of the functions attaching to that position.

(4) Subject to section 119, the recipient—

- (a) shall not buy, sell or participate in any transaction on any securities exchange or any other self-regulatory organization in securities of that issuer if he knows that the information is price sensitive information in relation to those securities;
- (b) shall not buy, sell or participate in any transaction on any securities exchange or any other self-regulatory organization in securities of any other issuer if he knows that the information is price sensitive information in relation to any transaction, actual or contemplated, involving the first mentioned issuer and the other issuer, or in relation to the fact that any such transaction is no longer contemplated.

(5) Subject to section 119, where a person is contemplating, or has contemplated, making (whether with or without another person) a take-over bid for an issuer in a particular capacity, that person shall not buy, sell or participate in any transaction on any securities exchange or any other self-regulatory organization in another capacity if he knows that information that the offer is contemplated, or is no longer contemplated, is price sensitive information in relation to those securities.

(6) Subject to section 119, where a person who knowingly obtained, directly or indirectly, from a person to whom subsection (5) applies, information that the offer referred to in that subsection is being contemplated or is no longer contemplated, the first mentioned person shall not himself buy, sell or participate in any transaction on any securities exchange or any other self-regulatory organization in securities of that issuer if he knows that the information is price sensitive information in relation to those securities.

(7) Subject to section 119, a person who is for the time being prohibited by this section from buying, selling or participating in any transaction on any securities exchange or any other self-regulatory organization in any securities shall not counsel or procure any other person to buy, sell or participate in any transaction in those securities, knowing or having reasonable cause to believe that the other person would buy, sell or participate in a transaction in them on any securities exchange or any other self-regulatory organization.

(8) Subject to section 119, a person who is for the time being prohibited pursuant to this section from buying, selling or participating in any transaction on any securities exchange or any other self-regulatory organization in any securities by reason of his having- any information, shall not communicate that information to any other person if he knows or has reasonable cause to believe that that person or some other person will make use of the information for the purpose of buying, selling or participating in any transaction on any securities exchange or any other self-regulatory organization in those securities.

Disclosure of
beneficial
interest in
share capital.

115. (1) An issuer may by notice in writing require any registered owner of capital stock of the issuer within Such reasonable time as is specified in the notice—

- (a) to indicate in writing the capacity in which he holds any shares of issued

and outstanding capital stock of the issuer; and

- (c) if he holds them otherwise than as beneficial owner, to indicate in writing so far as it lies within his knowledge, the person who has an interest in them (either by name and address or by other particulars sufficient to enable that person to be identified) and the nature of that person's interest.

(2) Where an issuer is informed pursuant to a notice given to any person under subsection (1) that any other person has an interest in any shares of issued and outstanding capital stock of the issuer, the issuer may by notice in writing require that other person within such reasonable time as specified in the notice—

- (a) to indicate in writing the capacity in which he holds that interest; and
- (b) if he holds it otherwise than as beneficial owner, to indicate in writing so far as it lies within his knowledge, the person who has an interest in it (either by name and address or by other particulars sufficient to enable him to be identified) and the nature of that person's interest.

(3) Any issuer may by notice in writing require any registered owner of capital stock of the issuer to indicate in writing, within such reasonable time as is specified in the notice, whether any of the voting rights carried by any shares of issued and outstanding capital stock of the issuer held by him are the subject of an agreement or arrangement

under which another person is entitled to control his exercise of those rights and, if so, to give so far as it lies within his knowledge written particulars of the agreement or arrangement and the parties to it.

(4) Where an issuer is informed pursuant to a notice given to any person under subsection (3) or this subsection that any other person is a party to such agreement or arrangement as is mentioned in subsection (3), the issuer may by notice in writing require that other person within such reasonable time as is specified in the notice to give, so far as it lies within his knowledge, written particulars of the agreement or arrangement and the parties to it.

(5) Whenever an issuer receives information from a person pursuant to a requirement imposed on him under this section it shall inscribe in the prescribed record—

- (a) the fact that the requirement was imposed and the date on which it was imposed; and
- (b) the information received in pursuance of the requirement.

(6) For the purpose of this section, the expression "registered owner of capital stock" means a person who is or is presumed to be shown on the securities register of an issuer as the owner of a security certificate issued by it evidencing capital stock.

Public disclosure of beneficial ownership in certain cases.

116. (1) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a reporting issuer, is directly or indirectly the beneficial owner of more than such percentage of the outstanding shares of such equity security as the Council shall prescribe, shall, within ten days after such acquisition, send to the issuer of

such security at its principal executive office, and to each self-regulatory organization on which such security is listed or regularly traded, and file with the Council, a statement containing such of the following information, and such additional information, as the Council may prescribe as necessary or appropriate in the public interest or for the protection of investors—

- (a) the background, identity, residence and citizenship of, and the nature of such beneficial ownership by, such person and all other persons by whom or on whose behalf the purchases have been or will be effected;
- (b) the source and amount of funds or other consideration used or to be used in making the purchase, and if any part of the purchase price or proposed purchase price is or will be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding or trading such security, a description of the transaction and the name of the parties thereto;
- (c) if the purpose of the purchases or prospective purchases is to acquire control of the business of the issuer of the securities, any plans or proposals which such persons may have to liquidate such issuer, to sell its assets to or merge it with any other person, or to make any other major change in its business or corporate structure;
- (d) the number of shares of such security which are beneficially

owned, and the number of shares concerning which there is a right to acquire, directly or indirectly, by –

- (i) such person, and
 - (ii) each associate of such person, giving the back-ground, identity, residence and citizenship of each such associate; and
- (e) information as to any contracts, arrangements, or understandings with any person with respect to any securities of the issuer, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements or understandings have been entered into, and giving the details thereof.

(2) If any material change occurs in the facts set forth in the statements required by subsection (1), an amendment shall be promptly sent to the issuer and the self regulatory organization and shall be promptly filed with the Council, in accordance with such regulations as the Council may prescribe.

(3) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding or disposing

of securities of an issuer, such syndicate or group shall be deemed a "person" for purposes of this section.

(4) In determining, for purposes of this section, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer of a subsidiary of the issuer.

(5) The provisions of this section shall not apply to—

- (a) any acquisition of the beneficial ownership of a security which, together with all other acquisitions by the same person of securities of the same class during the preceding twelve months, does not exceed two per cent of that class;
- (b) any acquisition of an equity security by the issuer of such security;
- (c) any acquisition or proposed acquisition of a security that the Council, by regulation or order, shall exempt from the provisions of this section as not entered into for the purpose of, and not having the effect of, changing or influencing the control of the issuer or otherwise as not comprehended within the purposes of this section.

Take-over bids.

117. (1) No person shall, directly or indirectly, make a take-over bid for, or a request or invitation for tenders of, any equity security of a reporting issuer if, after consummation thereof, such person would, directly or indirectly, be the beneficial owner of more than such

percentage of the outstanding shares of such equity security as the Council shall prescribe, unless, at the time copies of the offer, request or invitation are first published or first sent or given to security holders, such person has filed with the Council a statement containing such of the information specified in section 116, and such additional information, as the Council may prescribe.

(2) All requests or invitations for tenders or advertisements making a take-over bid or requesting or inviting tenders of such a security, and all additional material soliciting or requesting such tenders subsequent to the initial solicitation or request, shall contain such information as the Council may prescribe, and shall be filed with the Council as a part of the statement required by subsection (1) and sent to the issuer, in each case not later than the date such material is first published or first sent or given to any security holder.

(3) Securities deposited pursuant to a take-over bid or request or invitation for tenders may be withdrawn by or on behalf of the depositor at any time until the expiration of seven days, or such other period as the Council may prescribe, after the time definitive copies of the offer or request or invitation are first published or first sent or given to security holders, and at any time after sixty days' or such other period as the Council may prescribe, from the date of the original take-over bid or request or invitation for tenders.

(4) Where any person makes a take-over bid, or request or invitation for tenders, for less than all the outstanding securities of a class, and where a greater number of securities is deposited pursuant thereto within ten days, or such other period as the Council may prescribe, after copies of the offer or requestor invitation are first published or first sent or given to security holders than such person is bound or willing to take up and pay for, the securities taken up shall be taken up as nearly as may be' pro rata, according to the number of securities deposited by each

depositor.

(5) The provisions of subsection (4) shall apply to securities deposited within ten days, or such other period as the Council may prescribe, after notice of an increase in the consideration offered to security holders, as described in subsection (6), is first published or first sent or given to security holders.

(6) Where any person varies the terms of a take-over bid or request or invitation for tenders before the expiration date thereof by increasing the consideration offered to holders of such securities, such person shall pay the increased consideration to each security holder whose securities are taken up and paid for pursuant to the take-over bid or request or solicitation for tenders whether or not such securities have been taken up by such person before the variation of the take-over bid or request or invitation.

(7) The provisions of section 74 and sections 116(3), (4) and (5) shall apply to takeover bids.

Offences.

118. Any person who commits, a breach of any section in this Part, other than section 114, or who, in complying with any other section, makes a statement which he knows to be false, or recklessly makes a statement which is false, or fails to supply any particulars which he is required to supply shall be guilty of an offence and liable—

- (a) on summary conviction to a fine of twenty thousand dollars and to imprisonment for three months;
- (b) on conviction on indictment to a fine of forty thousand dollars and to imprisonment for six months.

Exceptions to section 114.

119. (1) Section 114 does not prohibit a person by reason of his having any information from—

- (a) doing any particular thing, other than with a view to the making of a profit or the avoidance of a loss, whether for himself or another person, by the use of that information;
- (b) entering into a transaction in the course of the exercise in good faith of his functions as liquidator, receiver or trustee in bankruptcy;
- (c) doing any particular thing, if the information –
 - (i) was lawfully obtained by him in the course of business as a securities intermediary in which he was engaged or employed; and
 - (iii) was of a description which it would be reasonable to expect him to obtain in the ordinary course of that business, and he does that thing in good faith in the course of that business; or
- (d) acquiring shares, stocks, unit certificates, participation certificates or certificates of shares of interest through employee profit sharing plans and employee stock ownership plans established to provide for the ownership of such securities by all permanent employees.

(2) A person is not, by reason only of his having

information relating to any particular transaction prohibited –

- (a) by section 114(2), (4)(b), (5) or (6) from buying or selling or participating in any transaction on any securities exchange or on any other self regulatory organization in any securities; or
- (b) by section 114 (7) or (8) from doing any other thing in relation to securities which he is prohibited from buying or selling or causing to be traded on any securities exchange or any other self-regulatory organization by any of the provisions mentioned in paragraph (a), if he does that thing solely in order to facilitate the completion or carrying out of the transaction.

Defence not available.

120. Where a person is accused of an offence under section 114, it shall not be a defence to the charge that the information in respect of which the purchase, sale or participation in any transaction has been made came to his knowledge without having been solicited by him or that he made no effort to procure such information.

Application to trustees and personal representatives .

121. (1) Where a person referred to in subsection (2) buys, sells or participates in any transaction in any securities or counsels or procures any other person to buy, sell or participate in any transaction on any securities exchange or any other self regulatory organization, he is presumed to have acted with propriety if he acted on the advice of a person who—

- (a) appeared to him to be an appropriate person from whom to seek such advice; and

- (b) did not appear to him to be prohibited by section 114 from buying, selling or participating in any transaction on any securities exchange or any self regulatory organization in those securities.

(2) Subsection (1) applies to a person who is a trustee or personal representative or, where a trustee or personal representative is a body corporate, a person acting on behalf of that trustee or personal representative who, apart from section 119 (1) (a), would be prohibited by section 114 from buying, selling or participating in any transaction on any securities exchange or any other, self-regulatory organization or counselling or procuring any other person to buy, sell or participate in any transaction on any securities exchange or any other self-regulatory organization.

(3) In subsection (1) "with propriety" means other than with a view to making a profit or the avoidance of a loss, whether for himself or another person, by the use of the information in question.

Penalties.

122. (1) A person who contravenes section 114 is liable—

- (a) on conviction on indictment to a fine of one million dollars and to imprisonment for two years; and
- (b) on summary conviction to a fine of five hundred thousand dollars and to imprisonment for six months.

(2) No transaction is void or voidable solely by reason that it was entered into in contravention of section 114.

PART X
CIVIL LIABILITY

Persons liable
for damage
etc., in
prospectus.

123. (1) Subject to this section, each of the following designated persons is, for any loss or damage sustained by other persons who, on the faith of a prospectus, subscribe for, or purchase any securities, liable for any loss or damage sustained by those other persons by reason of any untrue statement in the prospectus, or by reason of the wilful non-disclosure in the prospectus of any matter of which the designated person had knowledge and that he knew to be material, namely—

- (a) a person who is a director of an issuer at the time of the issue of the prospectus;
- (b) a person who authorized or caused himself to be named, and is named, in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time; or
- (c) a person who authorized or caused the issue of the prospectus.

(2) Notwithstanding subsection (1), where the consent of an expert is required to the issue of a prospectus and he has given that consent, he is not, by reason only of the consent, liable as a person who has authorized or cause the issue of the prospectus, except in respect of an untrue statement purporting to be made by him as an expert; and the inclusion in the prospectus of a name of a person as a trustee for debenture holders, auditor, banker, attorney-at-law, transfer agent or stockbroker may not, for that reason alone, be taken as an authorization by him of the issue of the prospectus.

(3) No person is liable under subsection (1)—

- (a) who, having consented to become a director of the issuer, withdrew his consent before the issue of the prospectus and the prospectus was issued without his authority or consent;
- (b) who, when the prospectus was issued without his knowledge or consent, gave reasonable public notice of that fact forthwith after he became aware of its issue;
- (c) who, after the issue of the prospectus and before allotment or sale under it, became aware of an untrue statement in it and withdrew his consent, and gave reasonable public notice of the withdrawal of his consent; or
- (d) who, as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, had reasonable ground to believe and did, up to the time of the allotment or sale of the securities, believe that the statement was true.

(4) No person is liable under subsection (1)—

- (a) if, as regards every untrue statement purporting to be a statement made by an expert or to be based on a statement made by an expert, the untrue statement fairly represented

was a correct and fair copy of, or extract from, the report or valuation and that person had reasonable grounds to believe and did, up to the time of the issue of the prospectus, believe, that the expert making the statement was competent to make it, and had given his consent as required under section 66 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration, nor had the expert, to the person's knowledge, withdrawn that consent before allotment or sale under the prospectus; or

- (c) if, as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of, or extract from, a public official document, the untrue statement was a correct and fair representation of the statement or a copy of, or extract from, the document.

(5) Subsections (3) and (4) do not apply in the case of a person liable, by reason of his having given a consent required of him by section 66, as a person who has authorized or caused the issue of the prospectus in respect of an untrue statement purporting to have been made by him as an expert.

(6) A person who, apart from this subsection, would be liable under subsection (1), by reason of his having given a consent required of him by section 66, as a person who has authorized or caused the issue of a prospectus in

respect of an untrue statement purporting to be made by him as an expert, is not liable—

- (a) if, having given his consent under that section to the issue of the prospectus, he withdrew his consent in writing before a copy of the prospectus was filed with the Council;
- (b) if, after a copy of the prospectus was filed with the Council and before allotment or sale under the prospectus, he, on becoming aware' of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal; or
- (c) if he was competent to make the statement and had reasonable grounds to believe, and did, up to the time of the allotment or sale of the shares or debentures, believe that the statement was true.

(7) When—

- (a) a prospectus contains the name of a person as a director of the issuer, or as having agreed to become a director, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus and has not authorized or consented to its issue; or
- (b) the consent of a person is required under section 66 to the issue of a

prospectus and he either has not given the consent or has withdrawn it before the issue of the prospectus, any person who authorized or caused the issue of the prospectus and the directors of the issuer, other than those directors without whose knowledge or consent the prospectus was issued, are liable to indemnify the person so named, or whose consent was so required, against all damages, costs and expenses to which he might be liable by reason of his name having been inserted in the prospectus, or of the inclusion of a statement purporting to be made by him as an expert, or in defending himself against any action or legal proceedings brought against him in respect thereof.

(8) The liability of all persons referred to in subsection (1) is joint and several as between themselves with respect to the same cause of action.

(9) A defendant who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person who is jointly and severally liable under this section to make the same payment in the same cause of action unless, in all the circumstances of the case, the Court is satisfied that it would not be just and equitable.

Action by security holders for recession of allotments or repayment of issue price.

124. (1) A security holder may bring against an issuer that has allotted securities under a prospectus, an action for the recession of the allotment and the repayment to him of the whole or part of the issue price that has been paid in respect of the security, if—

(a) the prospectus contained a material

statement, promise or forecast that was intentionally false, deceptive or misleading; or

- (b) the prospectus did not contain a statement, report or account required under this Act or the regulations to be contained in it, and such omission was material.

(2) In this section "security holder" means a holder of any of the securities allotted under the prospectus, whether the original allottee or a person deriving title under him.

(3) For the purposes of this section—

- (a) a prospectus contains a material statement, promise or forecast if the statement, promise or forecast was made in such a manner or context, or in such circumstances, as to be likely to influence a reasonable man in deciding whether to invest in the securities offered for subscription; and
- (b) a statement, report or account is omitted from a prospectus if it is omitted entirely, or if it does not contain all the information required by this Act or the regulations to be given in the statement, report or account.

(4) In an action brought under this section, the plaintiff need not prove that he, or the person to whom the securities he holds were- allotted, was in fact influenced by the statement, promise or forecast that he alleges to be

intentionally false, deceptive or misleading, or by the omission of any report, statement or account required to be contained in the prospectus.

(5) No action may be brought under this section more than two years after the first issue of the prospectus under which securities were allotted to the plaintiff or the person under whom the plaintiff derives title.

(6) Subject to subsection (9), it is a defence to an action under this section for the issuer to prove that—

- (a) the plaintiff was the allottee of the securities in right of which the action was brought and that at the time they were allotted to him he knew that the statement, promise or forecast of which his complains was intentionally false, deceptive or misleading, or that he knew of the omission from the prospectus of the matter of which he complains, or
- (b) the plaintiff has received a dividend or payment of interest, or has voted at a meeting of shareholders or debenture holders, since he discovered that the statement, promise or forecast of which he complains was intentionally false, deceptive or misleading, or since he discovered the omission from the prospectus of the matter of which he complains.

(7) An action may not be dismissed if there are several plaintiffs, when the issuer proves that it has a defence under subsection (6) against each of them; and in any case in which the issuer proves that it has a defence against the

plaintiff or all the plaintiffs, the Court may, instead of dismissing the action, substitute some other security holder of the same class as plaintiff.

(8) Where an issuer would have a defence under subsection (6) but for the fact that the allottee of the securities in right of which the action is brought has transferred or renounced them, the issuer may bring an action against the allottee for an indemnity against any sum that the Court orders it to pay to the plaintiff in the action.

(9) This section applies to securities allotted pursuant to an underwriting contract as if they had been allotted under the prospectus.

(10) This section applies to securities issued under a prospectus that offers them for subscription in consideration of the transfer or surrender of other securities, whether with or without the payment of cash by or to the issuer, as though the issue price of the securities offered for subscription were the fair value, as ascertained by the Court, of the securities to be transferred or surrendered, plus the amount of cash, if any, to be paid by the issuer.

(11) The right of action for damages conferred by section 123 is in addition to and not in derogation of any other right the purchaser may have.

Council may seek leave to bring action or appear or intervene in an action.

125. (1) The Council may apply to a Judge of the Court for leave to bring an action under this Part in the name and on behalf of an issuer and the Judge may grant leave on any terms as to security for costs or otherwise that he considers proper if he is satisfied that—

- (a) the Council has reasonable grounds for believing that a cause of action exists under this Part; and

- (b) the Council gave reasonable notice to the issuer who refused or failed to commence an action.

(2) The Council may apply to a Judge of the Court for leave to bring an action under this Part in the name and on behalf of a security holder and the Judge may grant leave on any terms as to security for cost or otherwise that he considers proper if he is satisfied that—

- (a) the Council has reasonable grounds for believing that a cause of action exists under this Part; and
- (b) the security holder has failed or is unable to commence the action.

(3) The Council may apply to a Judge of the Court for leave to appear or intervene in an action under this Part and the Judge may grant leave on such terms as he considers appropriate.

(4) The Council may publish a summary of the terms of any settlement of an action commenced or intervened in by it in the Gazette, and in a periodical published by a self-regulatory organization with a material interest in the settlement or in a daily newspaper circulating in Guyana.

PART XI ENFORCEMENT

Divisions 1 - Regulations

Regulations.

126. (1) The Council may make regulations—

- (a) classifying persons, securities, trades, distributions, registrations under Part 111, IV or V, filings,

- applications and other matters and prescribing requirements appropriate to each class;
- (b) respecting registration under this Act, including but not limited to prescribing conditions to be met by persons registered in each category;
 - (c) prescribing the method of record keeping and the type and form of records to be kept by each category of person registered under this Act,
 - (d) prescribing the format and contents of filings and applications and the filing of copies of documents filed with any government agency;
 - (e) prescribing the accounting principles and standards used in the preparation of financial statements;
 - (f) requiring examination of and reporting on financial statements by independent accountants;
 - (g) establishing standards of independence for accountants in relation to financial statements,
 - (h) prescribing the form and content of an independent accountant's report;
 - (i) prescribing, fees for any filing with or other application to the Council;

- (j) governing conflicts of interests for Members of the Council, the General Manager and other employee of the Council to and other persons engaged by the Council to act as advisers or to perform duties under this Act;
- (k) prescribing any matter or thing required by this Act to be prescribed; and
- (l) respecting any other matter authorized by or required to carry out the purposes of this Act.

(2) The Council may make regulations governing take-over in respect of public companies.

(3) Regulations under this Part shall be subject to negative resolution of the National Assembly.

(4) Without prejudice to the generality of subsection (2), regulations made thereunder shall include—

- (a) the level of acquisition of voting rights by a person or persons acting, in concert at which an offer to all shareholders of the relevant shares shall become mandatory and the conditions applying to such offers,
- (b) the requirements of the offeror and offeree companies in respect of information to be disclosed to shareholders of both companies;
- (c) the requirements as regards equitable treatment of shareholders

of the same class or cash alternatives in offers or both;

- (d) the timing of offer procedures and circulation of documentation;
- (e) conditions observable in the dealing of shares by the offeror or by persons in concert during the offer period and the reporting to the Council of dealings in the shares of the offeree company during the take-over period;
- (f) the minimum period within which an unsuccessful offer may not be renewed;
- (g) the requirements to protect minority interests.

(5) The Council may establish a committee to administer the regulations made under subsection (2) and may make rules for the conduct of the business of that committee.

(6) Regulations may provide that a contravention thereof shall be punishable on summary conviction by a fine of two hundred and fifty thousand dollars and imprisonment for two years.

(7) Notwithstanding subsections (1) and (2), the first regulations made under each of those subsections may be made by the Minister without the recommendation of the Council and for the purposes of this subsection, section 127 shall not apply.

Publication of
proposed
regulations.

127. (1) The Council shall publish in the Gazette and in a daily newspaper circulating in Guyana, on three consecutive Saturdays, the first such newspaper publication

to occur at least sixty days before the proposed effective date thereof –

- (a) a copy of any regulation that it proposes to make;
- (b) a concise statement of the substance and purpose of the proposed regulation, and the proposed effective date; and
- (c) a reference to the authority under which the regulation is proposed.

(2) After a proposed regulation is published in accordance with subsection (1), the Council shall afford a reasonable opportunity to interested persons to make representations in writing, to be submitted to the Council within fourteen days of the third publication of the notice referred to in subsection (2), with respect to the proposed regulation.

(3) The Council, where it considers it necessary, may convene a hearing for the presentation of oral argument or the submission of evidence orally and may permit cross-examination by interested persons in order to determine an issue of specific fact that is material to its consideration of a proposed regulation.

(4) The Council is not required to comply with subsections (1) and (2) if –

- (a) all persons who will be subject to the regulation are named and the information that would be subject to publication is sent to each of them;
- (b) the regulation only grants an exemption or relieves a restriction

and is not likely to have a substantial impact on the interests of persons other than those who benefit under it;

- (c) the regulation makes no material substantive change in an existing regulations; or
- (d) the Council for good cause finds that compliance with subsections (1) and (2) is impracticable or unnecessary and publishes the finding and a concise statement of the reasons for it.

(5) Any person may petition the Council to recommend the making, the amendment or revocation of a regulation.

Division 2 – Order of Council

Powers to
make orders.

128. (1) The Council may make an order on its own motion or on application by an interested person –

- (a) classifying a person, security, trade, distribution, registration under Part III, IV or V, filing, application or other matter and imposing requirements appropriate to the class;
- (b) permitting or requiring in a filing or application the filing of copies of documents filed with another government agency; and
- (c) respecting any other matter authorized by or required to carry out the purposes of this Act.

(2) A declaratory order or an order gaining an exemption is effective against all persons, but the Council shall make an order revoking or modifying, such an order when it finds that a determination reflected in it is no longer consistent with the facts.

Conduct of
hearings.

129. (1) The Council shall, before making a final order, provide a reasonable opportunity for a hearing to each person directly affected and shall give not less than fourteen days' notice to each person and to any interested self-regulatory organisation including—

- (a) a statement of the time, place and purpose of the hearing;
- (b) a reference to the authority under which the hearing is to be held;
- (c) a concise statement of the allegations of fact and law; and
- (d) a statement that if the person fails to attend at the hearing, the Council may proceed without giving him further notice.

(2) The Council may—

- (a) issue a subpoena or other request or summons requiring a person to attend at a hearing, to testify to all matters relating to the subject of the hearing and to produce all records relating to the subject of the hearing that are in his possession or under his control, whether they are located in or outside Guyana; and

- (b) compel a person to give evidence on oath, affirmation or otherwise as it thinks necessary, orally or in writing.

(3) Notwithstanding subsection(2), no person giving evidence before the Council shall be compelled to incriminate himself, and every such person shall, in respect of any evidence given by him before the Council, be entitled to all privileges to which a witness giving evidence before the Court is entitled in respect of evidence given by him before such Court.

(4) A hearing under subsection (1) shall be open to the public unless the Council directs otherwise in order to protect the interests of the persons affected, but if all persons directly affected and appearing so request, a hearing shall be open to the public.

(5) A person who is entitled to notice of a hearing under subsection (1) may be represented by counsel and, subject to the rules made by the Council for the conduct of its business, may present evidence and argument and may cross examine witnesses at the hearing.

(6) A witness at a hearing under subsection (1) may be advised by counsel.

(7) The Council may admit as evidence at a hearing any oral testimony or documentary exhibit that it considers relevant to the subject matter of the proceedings and may take notice of any, fact that may be judicially noticed and of any generally recognized scientific or technical fact, information or opinion within its area of expertise.

(8) The Council shall make provision for all oral evidence presented at a hearing under subsection (1) to be transcribed.

(9) The Council shall—

- (a) make a final order in writing and state the findings of fact on which it is based and the reasons for it;
- (b) send a copy of the order and reasons to each person entitled to notice under subsection (1) and to each person who appeared at the hearing; and
- (c) publish a copy of the order and reasons or a summary thereof in the *Gazette*, and in a periodical published by a self-regulatory organization with a material interest in the order or in a daily newspaper circulating in Guyana, but the Council may omit the name of an affected person from an order so published.

(10) Subsection (1) does not apply to an order that—

- (a) is made under section 133(1) or 134(1);
- (b) is essentially procedural;
- (c) does not adversely affect the rights or interests of any person.

Division 3 - Appeals

Appeals for
review *re*
section 7 or 38.

130. (1) A person directly affected by a final order made pursuant to authority delegated by the Council under section 7, or by an order of a self-regulatory organization under section 38, may appeal the order to the Council.

(2) The Council may of its own motion review an

order made pursuant to authority delegated by the Council under section 7 or made by a self-regulatory organization under section 38 and shall provide a reasonable opportunity for a hearing and give not less than fourteen days' notice to each person, including a self-regulatory organization, directly affected by the order.

(3) On an appeal or review under this section the Council may, subject to section 39, confirm the order or make such orders as it considers appropriate.

(4) An order that is subject to appeal or review under this section takes effect immediately, but the Council or the person who made the order may grant a stay pending the decision of the Council.

Appeal to
court against
final order.

131. (1) A person directly affected by a final order of the Council may appeal the order to the Court.

(2) No appeal may be made under this section unless the person affected has taken all reasonable steps available to appeal or obtain review of the order pursuant to section 130.

(3) An order that is subject to appeal under this section takes effect immediately, but the Council or the Court may grant a stay pending the hearing of the appeal.

(4) The Council is entitled to appear and be heard on the merits on an appeal under this section or on any other application to the Court relating to the exercise by the Council of its powers.

(5) On an appeal under this section, the Court may make or may direct the Council to make any order that the Council is authorized to make and which the Court considers proper, or it may remand the case to the Council for further proceedings subject to any conditions which that Court thinks

fit.

(6) On an appeal under this section against a cease trading order under section 136 or an order under section 137, the Court may confirm the order or may, if the order is arbitrary, capricious or an abuse of discretion, revoke it.

Appeal to
court against
regulation.

132. (1) A person affected by a regulation of the Council may appear to the Court against the application of that regulation to him.

(2) A regulation that is subject to appeal under this section takes effect at the time specified by the Council, but the Council or the Court may grant a stay pending review.

(3) The Council is entitled to appear and be heard on the merits of an appeal under this section.

(4) On an appeal under this section, the Court may confirm or revoke a regulation or may remand the matter to the Council for further proceedings subject to any conditions that Court considers proper, but the Court may revoke a regulation only if—

- (a) it is arbitrary, capricious or an abuse of discretion;
- (b) it is in excess of the Council's jurisdiction;
- (c) it was made in contravention of section 127, or
- (d) a specific material fact found by the Council after an evidentiary hearing convened pursuant to section 127(3) is not supported by the evidence.

(5) For the purposes of this section, an order of the

Council under section 40 or 41 is a regulation.

Division 4—Investigations

Investigation
of
contraventions

133. (1) The Council may appoint a person to conduct an investigation' to ascertain whether any person has contravened, is contravening or is about to contravene this Act.

(2) A person appointed by the Council pursuant to subsection (1) may issue a subpoena or other request or summons requiring a person to attend at a specified time and place, to testify to all matters relating to the subject of an investigation and to produce all records relating to the subject of the investigation that are in his possession or under his control.

(3) A person appointed by the Council pursuant to subsection (1) may compel a person to give evidence on oath, affirmation or otherwise as he thinks necessary, orally or in writing, and may administer an oath or affirmation at any place.

(4) Where a person who is required by the Council to give evidence or attend a hearing in the course of an investigation fails or refuses to—

- (a) attend; or
- (b) give evidence on oath, or with affirmation, the Council may make an application to the Court to so compel the person.

(5) An investigation under this section shall be held in camera.

(6) A person appointed by the Council pursuant to subsection (1) shall provide the Council with a full and

complete report of the investigation including any transcript of evidence and any material in his possession relating to the investigation.

(7) The Council may publish a report or other information concerning an investigation under this section, but if it intends to do so it shall—

- (a) provide a person against whom an adverse finding is to be made with fourteen days' notice of the finding and an opportunity to be heard in person or by counsel- and
- (b) if practicable, provide a person who is likely to receive adverse publicity with advance notice of the publication and a reasonable opportunity to prepare a response prior to publication.

Conduct of inquiry re proposed regulations.

134. (1) The Council may conduct an inquiry to aid in the preparation of regulations under this Act or to obtain information as a basis for recommending legislation relating to the Act or its subject matter.

(2) The Council may exercise the powers specified in section 133 (2) and (3) in relation to an inquiry under this section.

(3) A person who gives evidence in an inquiry under this section may be represented by counsel.

(4) An inquiry under this section may be conducted in public, but person who is likely to receive adverse publicity as a result of the inquiry being public shall be afforded, if practicable, a reasonable opportunity to state his position for the record in the inquiry.

(5) The Council may publish a report or other

information concerning an inquiry under this section, but a person who is likely to receive adverse publicity as a result of such publication shall be afforded, if practicable, advance notice of the publication and a reasonable opportunity to prepare a response prior to publication.

Investigation
of financial
affairs of
registrant.

135. (1) The Council may at any time, where it is of the view that a registrant may be in breach of this Act, appoint a person in writing to examine the records and financial affairs of a registrant and to prepare such financial or other reports as the Council requires.

(2) Where, upon the application *ex parte* of the Council, the Court is satisfied that a person other than a registrant may be in breach of this Act, the Court may make an order authorizing the Council to examine the records and financial affairs of that person.

(3) A person appointed by the Council pursuant to subsection (1) or (2) may examine all the records, books of account, securities, cash, bank accounts and other data of the registrant or person whose affairs are to be examined.

(4) No person shall withhold, conceal, destroy or refuse to produce any information reasonably required for the purpose of the examination by a person appointed pursuant to subsection (1) or (2).

(5) The Council may charge a registrant a prescribed fee for an examination made under this section.

Power to order
cessation of
trading.

136. (1) Where the Council considers that –

- (a) a security is being traded in connection with a distribution contrary to this Act;
- (b) a prospectus, block distribution

circular or any other document used in connection with a distribution contains a misrepresentation or omits a material fact required to be included;

- (c) any of the circumstances specified in section 68(2) as the basis for a refusal to issue a receipt for a prospectus exists; or
- (d) an issuer, selling security holder or underwriter has failed to provide information, including financial statements relating to the issuer or the distribution, that is reasonably requested by the Council, the Council may order that all trading in connection with the distribution cease.

(2) Where the Council considers that—

- (a) a material fact relating to an issuer of a security has not been disclosed and become public;
- (b) trading in a security or fluctuations in the price of a security require explanation; or
- (c) it is otherwise in the public interest or necessary, for the protection of investors, the Council may order, subject to such conditions as it considers appropriate, that trading cease in respect of any security for a period specified by it.

(3) Where the Council considers that it is in the public interest or necessary for the protection of investors, it may make an order prohibiting, subject to such conditions as it considers appropriate, a person who contravenes this Act from trading in securities or from trading a specified security for a period specified by it.

(4) The Council may make an order under subsection (1) or (3) without holding a hearing as required by section 129, but it shall provide an opportunity for such a hearing within seven days of the making of the order and the order remains in effect until the hearing is completed.

(5) The Council may make an order under subsection without holding a hearing as required by section 129, but it shall provide an opportunity for such a hearing within seven days of the making of the order and the order remains in effect until the hearing is completed, unless the order was made pursuant to subsection (2)(a), in which case the Council may extend it until the material fact is disclosed and becomes public.

(6) The Council shall forthwith give notice of an order under this section to—

- (a) each person named in the order;
- (b) the issuer of a security specified in the order;
- (c) any other person the Council believes is directly affected by the order; and
- (d) if the order is made pursuant to subsection (1) or (2), every person registered under Parts IV and V,

and shall include notice of the order in the Gazette, and in a

periodical published by a self-regulatory organization with a material interest in the order or in a daily newspaper circulating in Guyana.

(7) No person shall trade in contravention of an order under this section.

Power to order
additional
relief.

137. (1) Where the Council, after a hearing, considers it to be in the public interest, it may order—

- (a) that a person comply with or cease contravening, and that the directors and senior officers of the person cause the person to comply with or cease contravening—
 - (i) this Act or the regulations;
 - (ii) an order of the Council;
 - (iii) a rule, direction, decision or order made under a rule of a self-regulatory organization;
- (b) that a person resign any position that the person holds as a director or officer of a registrant or issuer;
- (c) that a registrant or issuer—
 - (i) is prohibited from disseminating to the public, or authorizing the dissemination to the public of, any information or record of any kind described in the order;
 - (ii) is required to disseminate to the public, by the method

described in the order, any information or record relating to the affairs of the registrant or issuer that the Council considers must be disseminated;

- (iii) is required to amend, in the manner specified in the order, any information or record of any kind described in the order before disseminating the information or record to the public or authorizing its dissemination to the public; or
- (d) that a registrant or issuer be reprimanded or that person's registration be suspended, cancelled or restricted.

(2) The Council shall send written notice of every order made under this section to any person that is directly affected by the order.

Order for
penalty.

138. (1) Where the Council after a hearing determines that a person has contravened this Act or any-regulation or an order of the Council and considers it to be in the public interest to make the order, the Council may order the person to pay to the State a penalty of not more than one hundred and fifty thousand dollars.

(2) Where the Council makes an order under subsection (1), the Council shall file in the registry of the Court a copy of the order certified by the Chairman of the Council, and on being filed the order shall have the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the Court, unless an appeal has been

filed pursuant to section 131.

(3) Every penalty imposed by the Council in the exercise of its powers under this Act shall be payable into the general revenue and may be recovered by the State as a civil debt, and for the purposes of the proof of such debt a certificate under the hand of the Chairman of the Council shall be receivable in evidence as sufficient proof of such debt.

Division 5 - Orders of Court

Court orders
for enforcing
compliance.

139. (1) Where the Council considers that a person has failed to comply with or is contravening this Act or any regulation or an order, the Council may, in addition to any other powers it may have, apply to the Court for a permanent or temporary injunction directing—

- (a) the person to comply with or to cease contravening this Act, the regulation or the order; and
- (b) the directors and senior officers of the person to cause the person to comply with or to cease contravening this Act, the regulation or the order.

(2) On application under subsection (1), the Court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing –

- (a) an order requiring restitution or disgorgement of profits;
- (b) an order restraining the conduct complained of;
- (c) an order requiring compliance with this Act or the regulations or an order;
- (d) an order requiring disclosure of any information;

- (e) an order setting aside a transaction relating to trading in securities; or
- (f) an order requiring the issuance or cancellation of a security or the purchase, disposition or exchange of a security.

(3) An order may be made under this section notwithstanding that a penalty has already been imposed on that person in respect of the same non-compliance or contravention.

Appointment
of receiver, etc.

140. (1) Where the Council considers that it is necessary in the public interest or for the protection of investors to prevent—

- (a) a person who has contravened this Act or any regulation; or
- (b) a person whose registration under this Act has been suspended or revoked, from dealing with property under his control or direction, it may apply to the Court, and the Court may appoint a receiver or receiver-manager of the property if it is satisfied that it is in the interest of investors or persons whose property is controlled by, or creditors, security holders or members of, that person to do so.

(2) Where the Council intends to apply to the Court to appoint a receiver or receiver-manager in respect of the property of a financial institution, the Council shall, before making the application, consult with the Bank of

Guyana with regard to the proposed application.

(3) The Court may make an order under subsection (1) on an *ex parte* application by the Council for a period not exceeding seven days.

(4) The provisions of Part 111, Division C of the Companies Act shall apply, to a receiver or receiver-manager appointed under this section.

Disqualifica-
tion of
directors.

141. (1) When, on the application of the Council, the Court is satisfied that an individual is unfit to be concerned in the management of an issuer, the Court may order that that individual shall not, without the prior leave of the Court, be a director of the issuer, or be in any way, directly or indirectly, concerned with the management of the issuer for such period—

- (a) beginning—
 - (i) with the date of the order; or
 - (ii) if the individual is undergoing, or is to undergo a term of imprisonment and the Court so directs, with the date on which he completes that term of imprisonment or is otherwise released from prison; and
- (b) not exceeding five years, as may be specified in the order.

(2) In determining whether or not to make an order under subsection (1), the Court shall have regard to all the circumstances that it considers relevant, including any previous convictions of the individual in Guyana or elsewhere for an offence involving fraud or dishonesty or in connection with the promotion, formation or management of

anybody corporate.

(3) Before making an application under this section in relation to any individual, the Council shall give that individual not less than fourteen days' notice of its intention to make the application.

(4) On the hearing of an application made by the Council under this section or an application for leave under this section, the Council and any individual concerned with the application may appear and call attention to any matters that are relevant, and may give evidence, call witnesses and be represented by an attorney-at-law.

Division 6 – Offences

Offences.

142. (1) A person who –

- (a) knowingly or recklessly makes a misrepresentation in contravention of this Act or any regulation,
- (b) knowingly or recklessly makes a misrepresentation to any person appointed to conduct an investigation under section 133 or to the Council in connection with an inquiry under section 134; or
- (c) knowingly or recklessly contravenes section 31, 46, 47, 56, 57 or 6 1, is guilty of an indictable offence and is liable to a fine of three hundred thousand dollars and to imprisonment for two years.

(2) A person who knowingly or recklessly contravenes a provision of this Act or any regulation that is

not specified in subsection (1) or an order of the Council, is guilty of an offence and is liable on summary conviction to a fine of one hundred fifty thousand dollars and to imprisonment for one year.

(3) A person who fails without reasonable excuse to comply with an order of the Council or a subpoena or other request or summons under section 133 (2) or (3), 134 (2) or 135 (4) or to permit entry under section 42 (3) or 136 (4) is guilty of an offence and is liable on summary conviction to a fine of seventy-five thousand dollars and to imprisonment for three months.

(4) Reasonable reliance, including reliance on advice of counsel, in good faith upon a statement of the law contained in—

- (a) this Act or any regulation;
- (b) a judicial judgment or opinion; or
- (c) an order or official release of the Council, is a defence in a proceeding under this section.

Liability of
directors, etc.

143. (1) Where a person has been convicted of an offence under section 142, then any director, officer or supervisor or the person who knowingly or recklessly authorized, permitted or acquiesced in the offence is also guilty of the offence and liable to the penalty specified for it.

(2) Wherever in this Act it is provided that any act or omission of any person is unlawful or is an offence and no penalty or sanction is specified in respect of that offence, that act or omission shall be punishable on summary conviction by a fine not exceeding two hundred thousand dollars and three months' imprisonment, and when the person accused in respect of such act or omission is an issuer, the issuer shall be liable to such fine.

(3) A person convicted of an offence against this Act or any regulation is liable, after the review and filing of a certificate under this section, for the costs of the investigation of the offence.

(4) The Council may prepare a certificate setting out the costs of the investigation of an offence, including the time spent by its staff and any fees paid to an expert, investigator or witness.

(5) The Council may apply to a master or registrar of the Court to review the certificate under the rules of the Court as if the certificate were a bill of costs, and the master or registrar shall review the cost and may vary them if he considers them unreasonable or not related to the investigation.

(6) After review, the certificate may be filed in the Court and may be enforced against the person convicted as if it were an order of the Court.

Prosecution of
summary
offenses.

144. Notwithstanding any other written law, an officer of the Council may, in relation to any offence under this Act or any regulation, institute and conduct criminal proceedings in a court of summary jurisdiction thereof.

PART XII TRANSITIONAL PROVISIONS

145. [OMITTED]

Overriding
effect of this
Act.
c. 73:01

146. The Financial Institutions Act shall, to the extent to which any provision thereof is inconsistent with any provision of this Act, be construed as amended and modified by this Act.

SUBSIDIARY LEGISLATION

Reg. 4 of 2002

**SECURITIES INDUSTRY (REGISTRATION OF
MARKET PARTICIPANTS) REGULATIONS**

made under sections 48(1), 126(1) and 126(7)

ARRANGEMENT OF REGULATIONS

REGULATION

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2. Interpretation.
3. Registration of securities company.
4. Application for registration as a securities company.
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8. Application for registration as a representative.
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10. Power of Council to impose conditions.
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14. Notification of change of particulars in register.
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18. General conditions.
19. Display of certificate of registration.
20. Change of principal by representative.
21. Registration fees.

FIRST SCHEDULE – FORMS

SECOND SCHEDULE – REGISTRATION FEES

Citation. 1. These Regulations may be cited as the Securities Industry (Registration of Market Participants) Regulations.

Interpretation. 2. In these Regulations—

First Schedule "Form" means a Form in the First Schedule;

"free capital" means capital which is unencumbered and which is separately held in such form, and only for such purposes, as the Council may determine;

"registered person" means a person registered by the Council under section 47 of the Act;

"representative" means the representative of a securities company or of a securities intermediary, as the case may be;

"securities company's representative" means an individual, by whatever name described, in the direct employment of, or acting for, or by arrangement with, a securities company, who performs for that securities company any of the functions of a securities company (other than work ordinarily performed by accountants, clerks or cashiers) whether the remuneration is by way of salary, wages, commission or otherwise; and includes any director or officer of a body corporate who performs any of those functions for the body corporate;

"securities intermediary's representative" means an individual, by whatever name described, in the direct employment of , or acting for, or by arrangement with, a securities intermediary, who performs for that securities intermediary any of

the functions of a securities intermediary (other than work ordinarily performed by accountants, clerks or cashier) whether the remuneration is by way of salary, wages, commission or otherwise; and includes any director or officer of a body corporate who performs any of those functions for the body corporate .

Registration of a securities company.

3. (1) The Council may register a securities company which makes an application for such registration in accordance with the provisions of regulation 4.

(2) A certificate of registration granted under this regulation shall specify the securities business activity or activities that the securities company is permitted to undertake and it shall be restricted to such business as so specified.

(3) The Council shall refuse to register a securities company unless the applicant—

- (a) is a company incorporated or registered in Guyana;
- (b) employs at least one individual who is registered as a representative under regulation 7;
- (c) in the case of a company that carries on business as a broker, and is registered in respect of equity securities only, has a minimum paid-up capital of one million five hundred thousand dollars;

- (d) in the case of a company that carries on business as a broker, and is registered in respect of equity securities and other securities, or, as the case may be, other securities only, has a minimum paid-up capital of one hundred and fifty million dollars;
- (e) in the case of a company that carries on business as a dealer, and is registered in respect of equity securities only, has a minimum paid-up capital of thirty million dollars;
- (f) in the case of a company that carries on business as a dealer, and is registered in respect of equity securities and other securities, or, as the case may be, other securities only, has a minimum paid-up capital of one hundred and fifty million dollars;
- (g) in the case of a company that carries on business as an underwriter, has a minimum paid-up capital of one hundred and fifty million dollars;
- (h) in the case of a company that carries on business as an investment adviser, has a minimum paid-up capital of one million five hundred

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thousand dollars;

- (i) in the case of a securities company, has a minimum paid-up capital of two hundred million dollars;
- (j) complies with the indemnity insurance requirement under section 55 of the Act;
- (k) satisfies the Council that it is a fit and proper body to be registered as a securities company;
- (l) will be able, if registered, to comply with any financial resources regulations that may apply to it;
- (m) has specified premises under regulation 4(1)(c) that are suitable for keeping records or other documents.

(4) In considering whether an applicant is a fit and proper person to be registered, the Council—

- (a) shall have regard to, in respect of each of its directors and officers—
 - (i) his or her financial status;
 - (ii) his or her educational or other qualifications or

experience having regard to the nature of his or her application;

(iii) his or her ability to perform his or her proposed function efficiently, honestly and fairly; and

(iv) his or her reputation, character, financial integrity and reliability; and

(b) may take into account any matter relating to—

(i) any person who is or is to be employed by, or associated with, the applicant for the purposes of the business to which the application relates;

(ii) any person who will be acting as a principal or representative in relation to such business; and

(iii) any substantial shareholder, director or officer of the company in the same group of companies or to any director or officer of any such company.

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(5) For the purposes of this regulation, the Council may have regard to any information in its possession whether or not furnished by the applicant.

(6) In paragraph (4)(b)(iii), "substantial shareholder", in relation to a company, means a person who has an interest in shares in the company —

- (a) equal to or more than five per cent of the issued share capital of the company; or
- (b) which entitles the person to exercise or control the exercise of five per cent or more of the voting power at a general meeting of the company.

(7) The Council—

- (a) shall not refuse an application for registration without first giving the applicant an opportunity of being heard; and
- (b) if it refuses the application, shall notify the applicant in writing of the refusal and the reasons for the refusal.

Application for registration as a securities company. Form 1 Second Schedule

4. (1) An application for registration as a securities company shall be made in Form 1 accompanied by the fee specified for the purpose in the Second Schedule, and the applicant shall —

- (a) give the Council information it

reasonably requires—

- (i) concerning the services which the applicant will hold itself out as being able to provide if the application is approved;
 - (ii) concerning the business which the applicant proposes to carry on and to which the application relates, and concerning any person whom the applicant proposes to employ or with whom the applicant intends to be associated in the course of carrying on the business; and
 - (iii) to enable the Council to consider the matters referred to in regulation 3;
- (b) nominate as a principal at least one individual who will actively participate in, and who will be responsible for the supervision of, the applicant's business; and
 - (c) specify the location of all premises at which the records or other documents of the business for which the application is made are to be kept.

Registration as a securities intermediary.

5. (1) The Council may register an individual as a securities intermediary who makes an application for such registration in accordance with the provisions of regulation 6.

(2) A certificate of registration issued under this regulation shall specify the securities business activity or activities that the securities intermediary is permitted to undertake and that individual shall be restricted to such business as so specified.

(3) The Council shall refuse to register a securities intermediary unless the applicant—

- (a) is an individual;
- (b) in the case of a broker who is registered in respect of equity securities only, has a minimum free capital of one million five hundred thousand dollars;
- (c) in the case of a broker who is registered in respect of equity securities and other securities, or, as the case may be, other securities only, has a minimum free capital of one hundred and fifty million dollars;
- (d) in the case of a dealer who is registered in respect of equity securities only, has a minimum free capital of thirty million dollars;
- (e) in the case of a dealer who is

registered in respect of equity securities and other securities, or, as the case may be, other securities only, has a minimum free capital of one hundred and fifty million dollars;

- (f) in the case of an underwriter, has a minimum free capital of one hundred and fifty million dollars;
- (g) in the case of an investment adviser, has a minimum free capital of one million five hundred thousand dollars;
- (h) satisfies the Council that he or she—
 - (i) has sufficient educational or other qualifications or experience;
 - (ii) is a fit and proper person,

to be registered as a securities intermediary;

- (i) supplies the Council with the information that it requires to assess whether he or she is a fit and proper person; and
- (j) has specified premises as required by regulation 6(1)(b) that are suitable for keeping

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records or other documents.

(4) In considering whether an applicant is a fit and proper person to be registered the Council—

- (a) shall have regard to the applicant's—
 - (i) financial status;
 - (ii) educational or other qualifications or experience having regard to the nature of his application;
 - (iii) ability to perform the proposed function efficiently, honestly and fairly;
 - (iv) reputation, character, financial integrity and reliability; and
 - (v) satisfactory completion of any examination requirements prescribed by the Council.
- (b) may take into account any matter relating to—
 - (i) any person who or is to be employed by, or associated with, the applicant for the purposes of the business

to which the application relates; or

- (ii) any person who will be acting as a principal or representative in relation to such business.

(5) For the purposes of this regulation, the Council may have regard to any information in its possession whether or not the information has been furnished by the applicant.

(6) The Council—

- (a) shall not refuse an application for registration without first giving the applicant an opportunity of being heard; and
- (b) if it refuses the application, shall notify the applicant in writing of the refusal and the reasons for the refusal.

Application for registration as a securities intermediary.
Form 2
Second
Schedule

6. (1) An application for registration as a securities intermediary shall be made in Form / and accompanied by the fee specified for the purpose in the Second Schedule, and the applicant shall—

- (a) give the Council the information it reasonably requires—
 - (i) concerning the services which the applicant will hold himself or herself

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out as being able to provide if the application is approved;

- (ii) concerning the business which the applicant proposes to carry on and to which the application relates, and concerning any person whom the applicant proposes to employ or with whom the applicant intends to be associated in the course of carrying on the business; and

- (iii) to enable the Council to consider the matters referred to in regulation 5;

- (b) specify the location of all premises at which the records or other documents of the business for which the application is made are to be kept.

(2) The Council may require an applicant to provide it with such additional information as the Council thinks necessary.

Registration of a representative

7. (1) The Council may register a representative who makes an application for such registration in accordance with the provisions of regulation 8.

(2) The Council shall refuse to register a representative unless the applicant—

- (a) is an individual;
- (b) in the opinion of the Council, has sufficient educational or other qualifications or experience;
- (c) satisfies the Council that the applicant is a fit and proper person to be registered as a representative;
- (d) supplies the Council with the information that it requires to assess whether the applicant is a fit and proper person.

(3) In considering whether an applicant is a fit and proper person to be registered the Council shall have regard to the applicant's—

- (a) financial status;
- (b) educational or other qualifications or experience having regard to the nature of the application;
- (c) ability to perform his or her proposed function efficiently, honestly and fairly;
- (d) reputation, character, financial-integrity and reliability; and
- (e) satisfactory completion of any examination requirements prescribed by the Council.

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(4) For the purposes of this regulation, the Council may have regard to any information in its possession whether or not the information has been furnished by the applicant.

(5) The Council—

- (a) shall not refuse an application for registration without first giving the applicant an opportunity of being heard; and
- (b) if it refuses the application, shall notify the applicant in writing of the refusal and the reasons for the refusal.

Application for registration as a representative.

8. (1) An application for registration as a representation shall be made in Form 3 and accompanied by the fee specified for the purpose in the Second Schedule, and the applicant shall—

- (a) give the Council information it reasonably requires—
 - (i) concerning the services which the applicant will hold himself or herself out as being able to provide if the application is allowed;
 - (ii) concerning the business which the applicant's principal proposes to carry on and to which the application relates;

and

- (iii) to enable the Council to consider the matters referred to in regulation 7;

The Council may require an applicant to provide it with such further information as the Council thinks necessary.

Accreditation of
representatives

9. (1) A representative is accredited to a securities company or securities intermediary for the purposes of these Regulations only if—

- (a) the certificate of registration of the representative states that he or she is accredited to the securities company or intermediary ; and
- (b) the representative is recorded as being accredited in the register maintained under regulation 13.

(2) The Council shall not register a representative unless the representative and his or her principal have notified the Council in writing that he or she is, or is to be, accredited.

(3) If a principal or representative notifies the Council in writing that the accreditation of the representative has been terminated—

- (a) the Council shall alter the register of registered persons accordingly; and

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- (b) the representative shall return his or her certificate of registration to the Council within seven days of the Council requiring him to do so.

(4) Where the accreditation of a representative is terminated under paragraph (3) for reasons other than revocation or suspension of his or her registration, the representative may be accredited to another principal without further application for registration provided that such accreditation is notified to the Council not later than three months after the date of the original termination.

Power of Council to impose conditions.

10. (1) A certificate of registration issued by the Council may contain such reasonable conditions it considers necessary.

(2) Conditions may be of general or special application and may make different provision for different cases or classes of case.

(3) In the case of a condition of special application to a particular registered person the condition shall be for a specified period of time.

(4) The Council may, by written notice served on the registered person, amend or cancel any of the conditions or attach new conditions provided that, in the case of proposed new conditions, the Council shall not impose them without first giving the registered person an opportunity of being heard.

(5) A registered person shall not, when conducting business for which registration is required, use a name other than the name specified in the

certificate of registration.

Effect of
revocation or
suspension.

11. (1) A person whose registration is revoked or suspended under the Act shall be notified accordingly by the Council and shall, for the purpose of the Act, be deemed not to be registered from the date of notification of revocation or suspension, as the case may be.

(2) The suspension or revocation of registration does not operate so as to—

- (a) avoid or affect any agreement, transaction or arrangement relating to a dealing in securities entered into by the person whose certificate of registration has been suspended or revoked, whether the agreement, transaction or arrangement was entered into before or after the suspension or revocation of the certificate of registration, except that the registered person shall not be allowed to retain any benefits charged or payable thereto; or
- (b) affect any right, obligation, or liability arising under any such agreement, transaction or arrangement.

Power of Council
to issue
directions to
registered
persons.

12. (1) The Council may by notice in writing give a registered person a direction under this regulation where it appears to the Council that—

- (a) it is desirable for the protection

of investors; or

- (b) the registered person is contravening, has contravened or is about to contravene, or has failed to comply with any provision of or requirement under the Act or regulations made under the Act, or, in purported compliance with any such provision or requirement has furnished the Council with necessary.

(5) A registered person who fails to comply with a direction of the Council commits an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars.

(6) The Council may, by written notice either of its own motion or on the application of a registered person on whom a prohibition or requirement has been imposed under this regulation, rescind or vary the prohibition or requirement if it appears to the Council that it is no longer necessary for the prohibition or requirement to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.

Register of registered persons.

13. (1) The Council shall maintain a register of persons registered under these Regulations in the form it considers most appropriate.

(2) For each registered person other than a registered representative, the register shall record—

- (a) the name and address of the registered person;

When mandatory offer required.

- (b) the date on which the certificate of registration was granted;
 - (c) the type of securities business permitted by the certificate of registration;
 - (d) any conditions attached to the certificate of registration;
 - (e) the name and address of every accredited representative;
 - (f) the name and address of every manager and officer;
 - (g) the location of the premises at which the records or other documents of the registered business are kept;
 - (h) in the case of a company, the name of each director and of the secretary of the company, and the names and respective shareholdings of each shareholder;
 - (i) any order of revocation or suspension; and
 - (j) such other particulars as the Council considers necessary in the interest of the investing or general public.
- (3) For each registered representative, the

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register shall record—

- (a) his or her name and address;
- (b) the date on which the certificate of registration was granted;
- (c) the name and address of the principal to whom he or she is accredited;
- (d) any order of revocation or suspension; and
- (e) such other particulars as the Council considers desirable in the interest of the investing or general public.

(4) The register shall, during usual office hours, be open to inspection free of charge by members of the public.

Notification of change of particulars in register.

14. (1) Where —

- (a) a securities company or securities intermediary ceases to carry on the business to which the certificate of registration relates;
- (b) a representative ceases to be a representative of the registered person to whom he or she is accredited; or
- (c) a change occurs in any matter particulars of which are

required by regulation 13 to be entered in the register of registered persons,

the registered person shall as soon as is practicable but within seven days give to the Council notice in writing of the event concerned.

(2) A registered person who fails to comply with paragraph (1) commits an offence and is liable on summary conviction to fine of two hundred and fifty thousand dollars.

Directions in Forms.

15. A Form shall be completed in accordance with any directions specified in that Form.

Manner of application for registration

16. (1) An application for a registration in the form prescribed together with any relevant annexures shall be enclosed in a sealed envelope and filed with the Council.

(2) Each application for registration shall be accompanied by a detailed statement of the applicant's assets and liabilities signed by the applicant, or, in the case of an applicant which is a company —

- (a) copies certified by a director of the company to be true copies of the last balance sheet and of the last profit and loss account (if any), incorporating the results of the last financial year, and which have respectively been audited by the company's auditors (including every document required by law to be annexed or attached thereto); and

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(b) a copy of the report of the auditors thereon (certified as aforesaid); and

(c) a copy of its articles of incorporation and bylaws.

(3) The Council may refuse to accept any application made under these Regulations if it is not accompanied by the registration fee prescribed.

Alteration of facts disclosed in application.

17. An applicant for a registration shall forthwith give written notice to the Council of—

- (a) any proposed alteration to, or
- (b) the occurrence of any event which the applicant knows affects or may affect in a material respect, information supplied by the applicant to the Council in relation to the application, being a proposal or event made or occurring while a decision by the Council on the application is pending.

General conditions

18. It shall be condition of every certificate of registration that—

- (a) the registration shall be personal to the applicant and shall not be transferable;
- (b) the registered person shall forthwith give written notice to the Council of—
 - (i) any proposed alteration to, or

- (ii) the occurrence of any event which the registered person knows affects or may affect in any material respect,

any matter in respect of which the registered person was required to supply information to the Council in the course of the application for registration;

- (c) the consent of the Council shall be obtained prior to—
 - (i) the implementation of any alteration of the kind referred to in subparagraph (b) (i); and
 - (ii) the taking of action resulting from any event of the kind referred to in subparagraph (b) (ii); and
- (d) a registered person shall not carry on, nor hold himself or herself out as carrying on, any securities business other than that permitted by the certificate of registration and from any premises specified in the certificate of registration.

Display of certificate of registration.

19. (1) Every person to whom a certificate of registration has been issued under the Act shall display the certificate at all premises in which that person transacts with the public the securities business authorised by the registration.

(2) The requirement in paragraph (1) shall not be satisfied unless the registration is displayed in such a manner as to be readily visible to the public.

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Change of
principal by
representative
Form 4

20. A representative shall not change his or her principal in relation to which his or her registration was issued unless the representative has deposited a notice in Form 4 with the Council.

Registrations
fees.
Second
Schedule

21. The registration fees specified in the Second Schedule shall be payable to the Council for the purpose of registration as a securities company, securities intermediary or representative, as the case may be.

FIRST SCHEDULE

reg. 4

FORM 1

SECURITIES INDUSTRY (REGISTRATION OF MARKET PARTICIPANTS) REGULATIONS 2002

Application for registration as a securities company

Application is hereby made for registration as a securities company under the Securities Industry Act 1998 and the following statements are made in respect thereof:

Notes:

- (1) If space is insufficient to provide details, please attach annexure(s). Any such annexure should be identified as such and signed by the signatory to this application.
- (2) This application must be accompanied by the last audited balance sheet and profit and loss ... [words indecipherable].

Part 1

Information on the applicant

1. (a) Name of applicant:

(b) Registered office:

(c) Full address, telephone and fax number of the principal place at which the business of the applicant is to be carried on:

(d) The authorised and paid-up capital of the applicant, including the types of shares issued:

(e) Details of shareholders of the applicant, including the name, address, amount of shares being held and date of acquisition:

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<u>Name</u>	<u>Address</u>	<u>Amount of Shares</u>	<u>Date of Acquisition</u>
1.			
2.			
3.			
4.			

(g) Set out as an annexure hereto details of each director and principal showing full name, residential address, date of birth, office held and date of appointment:

2. State the nature of the principal business of the applicant:

3. (a) State in detail the activity and the manner in which the applicant proposes to conduct the business for which the applicant requires to be registered:

(b) The type of clients with whom the applicant proposes to do business:

(c) Describe in detail the organisational structure and internal control procedures which the applicant has adopted or proposes to adopt for the applicant's proposed business:

4. Set out the name and address of each person who, directly or indirectly, exercises or has power to exercise a controlling influence over the management and policies of the applicant other than those shown as directors:

<i>Name</i>	<i>Address</i>
1. _____	_____ _____ _____
2. _____	_____ _____ _____
3. _____	_____ _____ _____
4. _____	_____ _____ _____

5. Is any director or principal of the applicant a director of any other company?

Using an annexure, answer "Yes" or "No" for each person; if "Yes", give details of:

- (a) names of companies;
- (b) places of incorporation; and
- (c) dates of appointment.

(For questions 6 to 8, answer "Yes" or "No" in space provided. If "Yes", attach annexures giving all relevant particulars.)

6. Has the applicant or any director, principal or

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representative of the applicant within the past 10 years -

Answer

(a) been licensed or registered in any place under any law which requires licensing or registration in relation to securities business

(b) been licensed, registered or otherwise authorised by law to carry on any trade, business or profession in any place?

(c) been refused the right or restricted in the right to carry on any trade, business or profession for which a specific registration, registration or other authority is required by law in any place?

7. Has any director, principal or representative of the applicant within the past 10 years -

Answer

(a) been a member or partner in a member firm of any securities exchange?

(b) been suspended from membership of any securities exchange or otherwise disciplined by a securities exchange?

(c) been refused membership of any securities exchange?

(d) been known by any name other than the name or names shown in this application?

(e) been convicted of any offence other than a traffic offence in Guyana or elsewhere or are there any proceedings now pending which may lead to such a conviction?

(f) had judgement including findings in relation to fraud, misrepresentation or dishonesty been given against him in any civil proceedings, in Guyana or elsewhere? (If "Yes", using an annexure, give full details, including whether judgement is unsatisfied.)

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(g) been declared bankrupt or compounded with or made an arrangement for the benefit of his creditors, in Guyana or elsewhere?

(h) been engaged in the management of any company other than those referred to in answer to question 5?

(i) been refused a fidelity or surety bond in Guyana or elsewhere?

(j) been disqualified as a director, or been director of a company that has gone into receivership or liquidation, in Guyana or elsewhere?

8. Has any director, principal or representative of the applicant had any experience in performing the functions in relation to the proposed activity of the applicant referred to in question 3?

9. In relation to each director, principal or representative of the applicant, set out below details of the officer's employment and business activities, during the previous 10 years:

<i>Name of Director, principal or representative</i>	<i>Name and address of principal (if self-employed, so state)</i>	<i>Nature of business</i>	<i>Description of duties in relation to the employment or activity</i>	<i>Period of employment or activity (give exact date)</i>

10. Set out any additional information (including any formal qualifications or training of the directors, principal and representative of the applicant and the name of the institution that conducted the course) considered relevant to this application.

11. Set out below details of two persons with whom each director of the applicant has had regular contact over the past 5 years and of whom the Council may enquire regarding their character and reputation.

	<i>Name of Character Referee</i>	<i>Address of Character Referee</i>	<i>Occupation of Character Referee</i>	<i>Name of Director, principal or representative in respect of whom enquiries may be made</i>
1				
2				

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Part 2

Miscellaneous

We declare that all information given in this application and in the attached annexures (if any) are true and correct.

Dated this _____ day of _____ 200

◆Signature Signature

(Name of Director) (Name of Director)

*This application is to be signed by two directors.

reg. 6

FORM 2

SECURITIES INDUSTRY (REGISTRATION OF
MARKET PARTICIPANTS) REGULATIONS 2002

Application for registration as a securities
intermediary

Application is hereby made for registration as a securities intermediary under the Securities Industry Act 1998 and the following statements are made in respect thereof:

Note:

- (1) If space is insufficient to provide details, please attach annexure(s). Any such annexure should be

identified as such and signed by the signatory to this application.

- (2) This application shall be accompanied by a detailed statement of the applicant's assets and liabilities and shall be signed by the applicant.

1. Personal particulars of the applicant

(a) Name of applicant:

(b) Full address, _____
telephone and fax
number of the
principal place at
which the business of
the applicant is/is to
be carried on:

(c) Residential address: _____

2. (a) indicate area of proposed business for which the applicant requires to be registered as a securities intermediary .

(b) For each indicated area of proposed business, state in detail the manner in which the business will be conducted and the experience of the applicant and his management staff in that business.

(c) Describe in detail the organisational structure and internal control procedures which the applicant has adopted or proposes to adopt in the conduct of his business.

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3. The type of clients with whom the applicant proposes to do business.

4. Is the applicant a director of any company in Guyana or elsewhere? (Answer "Yes" or "No".) If "Yes", using an annexure, give details of -

- (a) names of the companies;
- (b) places of incorporation; and
- (c) the relevant interests.

(Answer questions "Yes" or "No" in space provided. If "Yes", attach annexures giving all relevant particulars.)

5. Has the applicant within the past 10 years -
Answer

(a) been licensed registered or registered in any place under any law which requires licensing or registration in relation to dealing in securities or acting as investment adviser?

(b) been licensed, registered or otherwise authorised by law to carry on any trade, business or profession in any place?

(c) been refused the right or restricted in his right to carry

on any trade, business or profession for which a specific registration, registration or other authority is required by law in any place?

- (d) been a member or partner in a member firm of a securities exchange?

- (e) been suspended from membership of any securities exchange or otherwise disciplined by a securities exchange?

- (f) been refused membership of any securities exchange?

- (g) carried on business under any name other than the name or names shown in this application?

- (h) been convicted of any offence other than a traffic offence in Guyana or elsewhere or are there any proceedings now pending which may lead to such a conviction? (If "Yes" attach annexure giving full details of the conviction(s) or proceeding(s).)

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(i) had judgement including findings in relation to fraud, misrepresentation or dishonesty been given against him in any civil proceedings, in Guyana or elsewhere? (If "Yes" attach annexure giving full details, including whether judgement is unsatisfied.)

(j) been censured or disciplined by any professional body, society or association of which he was or is a member? (If "Yes", attach annexure giving full details, including name of the professional body, society or association.)

(k) been declared bankrupt or compounded with or made an assignment for the benefit of his creditors in Guyana or elsewhere?

(h) been engaged in the management of any companies other than those referred to in answer to question 6?

(i) been refused a fidelity or surety bond in Guyana or elsewhere?

- (j) been disqualified as a director, or been a director of a company that has gone into receivership or liquidation, in Guyana or elsewhere?

6. Set out below details of the applicant's employment and business activities during the previous 10 years.

	<u>Name and address of principal (if self-employed, so state)</u>	<u>Nature of Business</u>	<u>Description of duties in relation to the employment or activity</u>	<u>Period of employment (give exact dates)</u>
1				
2				
3				
4				

7. Set out below details of two persons (who shall not be related to the applicant, and neither of whom shall have any interest in the success or otherwise of this application) with whom the applicant has had regular contact over the past 5 years and of whom the Council may enquire regarding the applicant's character and reputation.

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	<u>Name</u>	<u>Address</u>	<u>Occupation</u>
1			
2			

8. Set out any additional information (including any formal qualifications or training and the name of the institution that conducted the course) considered relevant to this application:

9. I declare that all information given in this application and in the attached annexures (if any) are true and correct.

Dated this ____ day of _____ 20__

Signature

reg.8

FORM 3

SECURITIES INDUSTRY (REGISTRATION OF MARKET PARTICIPANTS) 2002

Application for registration as a representative

Application is hereby made for registration as a representative under the Securities Industry Act 1998 and the following statements are made in respect of the

application.

1. (a) Applicant's name	Other names
(b) Residential address	Telephone No.
(c) Date of birth	Place of birth
(d) No. of years applicant has resided in Guyana	Nationality
(e) Occupation for which registration is sought:	
(f) Full name of principal:	
(g) The full address at which the business of the principal is to be carried on:	Telephone No.
(h) Nature of Business of the principal	
(i) Address of place at which Register under regulation 13 will be kept	
(j) Present remuneration arrangement with principal: salary, Council or both	
(k) Directorship in companies in Guyana or elsewhere	

2. (Answer "Yes" or "No" in space provided. If "Yes" attach annexures giving all relevant particulars.)

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Has the applicant within the past 10 years –

- (a) been licenced or registered in any place under any law which requires licensing or registration to deal or trade in securities or act as investment adviser?

- (b) been licensed, registered, or otherwise authorised by law to carry on any trade, business or profession in any place?

- (c) been refused the right or restricted in his right to carry on any trade, business or profession for which a specific registration, registration or other authority is required by law in any place?

- (d) been a shareholder in a member firm of any securities exchange?

- (e) been suspended from membership of any securities exchange or otherwise disciplined by a securities exchange?

(f) been refused membership of any securities exchange?

(g) carried on business under any name other than the name or names shown in this application in paragraph 1 (a)?

(h) been convicted of any offence, other than a traffic offence, in Guyana or elsewhere or are there any proceedings now pending which may lead to such a conviction?

(i) had judgement including findings in relation to fraud, misrepresentation, or dishonesty been given against him in any civil proceedings, in Guyana or elsewhere? (If "Yes", attach annexure giving full details, including whether judgement is unsatisfied)

(j) been refused a fidelity or surety bond, in Guyana or elsewhere?

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(k) been declared a bankrupt or compounded with or made an assignment for the benefit of his creditors in Guyana or elsewhere?

(l) been disqualified as a director of a company, or been a director of a company that has gone into receivership or liquidation, in Guyana or elsewhere?

3. Has the applicant had any experience in performing the functions of a representative? (Answer "Yes" or "No") If "Yes" attach annexures giving all relevant particulars.

4. Set out below details of the applicant's employment and business activities during the previous 10 years:

<u>Name and address of principal (if self-employed, so state)</u>	<u>Nature of business</u>	<u>Description of duties in relation to the employment or activity</u>	<u>Period of employment or activity (give exact dates)</u>

5. Set out below details of two persons (who shall not be related to the applicant, and neither of whom shall have any interest in the success or otherwise of this

application) with whom the applicant has had regular contact over the past 5 years and of whom the Council may enquire regarding the applicant's character and reputation:

<u>Name</u>	<u>Address</u>	<u>Occupation</u>

6. Does the applicant have an interest in one or more shares in any company, the shares of which are quoted on a securities exchange, the aggregate of the nominal amount of which constitutes not less than 5per cent of the aggregate of the nominal amount of all issued shares of the company? (Answer "Yes" or "No". If "Yes", give full details of such interest including names of companies and percentage of interest).

7. Set out any additional information (including any formal qualifications or training of the applicant and the name of the institution that conducted the course) considered relevant to this application.

8. I declare that all information given in this application and in the attached annexure (if any) are true and correct.

Dated this _____ day of _____ 20__

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Signature _____
(Signed by Applicant)

NOTE: (a) This application should be accompanied by a certificate in or to the effect of the following form:

To the Council:

On the basis of due and diligent enquiry made of the background of the applicant named in this form who is in my direct employment or acting for or on behalf of me, and other information available, I believe him or her to be of good character and reputation and to have the competence and experience to perform the function of a representative.

Dated this _____ day of _____ 200__

Signature _____

Name _____

Capacity _____

(b) The certificate should be signed by each registered person by whom the applicant is to be employed or for or by arrangement with whom he or she is to act.

1. Name of registered person:

2. Type of registration held and registration number:

3. Residential Address:

4. Notice is hereby given that on the__day of_____20 the registered person will cease to be a representative of_____ and that from the ___day of _____20 ___the registered person will be a representative of _____whose principal place of business is at _____

Dated this ___day of _____200__

Signature _____

Name _____

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SECOND SCHEDULE

REGISTRATION FEES

Securities Intermediary

On every application for a registration as a securities intermediary to carry on business as a -

- (a) broker.....\$100,000
- (b) dealer.....\$100,000
- (c) trader.....\$100,000
- (d) underwriter.....\$200,000
- (e) investment adviser\$150,000

Securities Company

On every application for a registration as a securities company to carry on business as a -

- (a) broker.....\$100,000
- (b) dealer.....\$100,000
- (c) underwriter.....\$200,000
- (d) investment adviser.....\$150,000

Representative

On every application for a registration as a -

- (a) securities intermediary's representative.....\$20,000
- (b) securities company's representative.....\$20,000

Reg. 21 of 1998

**THE SECURITIES INDUSTRY ACT
(CONDUCT OF BUSINESS)
REGULATIONS**

made under section 126(1) and 126(7)

ARRANGEMENT OF REGULATIONS

REGULATION

PRELIMINARY

1. Citation.
2. Interpretation.

CODE OF BUSINESS CONDUCT

3. Independence.
4. Material interest.
5. Inducements.
6. Fair and clear communication.
7. Customers' understanding of risk.
8. Information about the registered person.
9. Charges.
10. Customer agreements.
11. Where customer agreement required.
12. Customers' rights.
13. Suitability.
14. Contract notes.
15. Periodic information.
16. Customer order priority.
17. Timely execution.
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19. Timely allocation.
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21. Front running.
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23. Insider dealing.
24. Safeguarding of customer investments.
25. Complaints.
26. Customer confidentiality.
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CUSTOMER MONEY

29. Application.
30. Customer money.
31. Customer bank accounts.
32. Accounting for and use of customer money.
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AUDITORS

34. Appointment of auditor.
35. Powers and duties of auditors.
36. Notification to Council.
37. Resignation or removal of auditors.

THE SECURITIES INDUSTRY ACT (CONDUCT OF BUSINESS) REGULATIONS

PRELIMINARY

Citation.

1. These Regulations may be cited as the Securities Industry (Conduct of Business) Regulations.

Interpretation.

2. In these Regulations –

"approved bank" means a bank licensed under the Financial Institutions Act and which is approved by the Council for the purposes of these Regulations;

"customer bank account" means a bank account established for the purposes of regulation 31;

"discretionary management" means the management of a portfolio of securities where the manager has been granted discretionary powers to select investments and buy and sell them without the prior consent of the company;

"money" includes any form of money, whether represented by a cheque or other payable order, or otherwise.

Independence.

CODE OF BUSINESS CONDUCT

3. Where a registered person is advising or acting for a customer the registered person shall ensure that any claim made as to the independence or impartiality of the registered person adequately includes any limitation that there may be on either.

Material interest.

4. Where a registered person has a material interest in a transaction to be entered into with or for a customer, or a relationship which gives rise to a conflict of interest in relation to such a transaction, the registered person shall not knowingly either advise, or deal in the exercise of a discretion, in relation to that transaction unless the registered person has —

(a) disclosed that material interest or relationship, as the case may be, to the customer; or

(b) taken reasonable steps to ensure that neither the material interest nor relationship adversely affects the interests of the customer.

Inducements

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[Subsidiary] *Securities Industry (Conduct of Business) Regulations*

Fair and clear communication 5. A registered person must take reasonable steps to ensure that neither the registered person nor any of the registered person's employees or agents either offers or gives, or solicits or accepts, any inducement that is likely to conflict with any duties owed to customers.

Customers' understanding of risk. 6. A registered person shall take reasonable steps to ensure that any agreement, written communication, notification or information that the registered person gives or sends to customers to whom the registered person provides securities investment services is presented fairly and clearly.

7. A registered person shall not —

(a) recommend a transaction to a customer, or effect a transaction with or for the customer, unless the registered person has taken all reasonable steps to enable the customer to understand the risks involved;

Information about the registered person. (b) knowingly mislead a customer as to any advantages or disadvantages of a contemplated transaction; or

(c) promise a return unless such return is contractually guaranteed.

Charges. 8. A registered person shall take reasonable steps to ensure that a customer to whom the registered person provides services is given adequate information about the registered person's address and the identity and status, within the registered person's firm, of employees and other relevant representatives with whom the customer has contact.

9. (1) A registered person's charges shall not be unfair in their incidence or unreasonable in their amount having regard to all relevant circumstances.

Customer agreements.

(2) Before a registered person provides securities services to a customer the registered person shall disclose to the customer the basis or amount of the registered person's charges for the provision of those services and the nature of and amount of any other remuneration receivable by the registered person and attributable to them.

10. (1) Where a registered person provides securities investment services to a customer on written contractual terms (whether pursuant to regulation 11 or otherwise), the agreement shall set out in adequate detail the basis on which those services are provided.

Where customer agreement required.

(2) A court of competent jurisdiction may, if the court considers it just and equitable to do so, by order set aside or vary an agreement entered into in contravention of this regulation, but no such order shall affect any dealing or transaction entered into or carried out by the registered person on behalf of the customer.

11. (1) No registered person shall undertake —

- (a) the discretionary management of a portfolio;
- (b) transactions in futures and options; or
- (c) any other type of business that is prescribed by the Council,

except under a written agreement between the

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registered person and the customer duly signed by the customer and returned to the registered person.

Customers'
rights

(2) The Council may from time to time prescribe special procedures relating to the operation of discretionary accounts and every registered person shall follow such special procedures or shall ensure that such special procedures are followed.

12. (1) A registered person shall not, in any written communication or agreement, seek to exclude or restrict —

- (a) any duty or liability to a customer which the registered person has under any law or under any rules made by the Council;
- (b) any other duty to act with skill, care and diligence that is owed to a customer in connection with the provision to the customer of securities services;
- (c) any liability owed to a customer for failure to exercise the degree of skill, care and diligence that may reasonably be expected of the registered person in the provision of securities services.

Suitability

(2) A purported exclusion or restriction prohibited by this regulation shall be void and of no effect.

Contract notes.

13. A registered person shall take all reasonable steps to ensure that the registered person does not give securities investment business advice to, nor effect a transaction with or for, a customer unless that advice or transaction is suitable for the customer having regard to the facts disclosed by that customer and other relevant facts about the customer of which the registered person is or ought reasonably to be aware.

14. (1) A registered person shall, in respect of every contract for the purchase, sale or exchange of securities entered into by the registered person (whether as principal or agent), not later than the end of the next trading day after the contract was entered into, make out a contract note which complies with the requirements of paragraph (2) and-

- (a) where the contract was entered into by the registered person as agent, deliver the original contract note to the person on whose behalf the registered person entered into the contract; or
- (b) where the contract was entered into by the registered person as principal, retain the contract note for itself.

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

- (a) the name of the registered person and the address of the principal place at which the registered person carries on

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business;

- (b) where the registered person is acting as principal, a statement that the registered person is so acting;
- (c) the name and address of the person (if any) to whom the registered person is required to give the contract note and (where different) the name of the person for whom the transaction was undertaken;
- (d) the date of the contract, and the date on which the contract note is made out;
- (e) the quantity and description of the securities the subject of the contract;
- (f) the price per unit of the securities;
- (g) the amount of consideration payable under the contract or, in the case of an exchange, sufficient particulars of the securities exchanged to identify them;
- (h) the rate or amount of commission payable in respect of the contract;
- (i) the amount of stamp duty (if

any), payable in connection with the contract and, where applicable, in respect of the transfer;

- (j) the date of settlement; and
- (k) such other information as may be prescribed by the Council to ensure that there shall be a complete audit trail in respect of the execution of customer instructions and the settlement of market transactions.

Periodic information.

15. Where a registered person acts as an investment manager for a customer, the registered person shall ensure that the customer is sent at suitable intervals a report stating the value of the portfolio or account at the beginning and end of the period, its composition at the end and, in the case of a discretionary portfolio or account, changes in its composition between those dates.

Customer order priority.

Timely execution.

16. A registered person shall always give priority to outstanding customer orders.

Best execution.

17. Where a customer order has been received, or a registered person has decided in its discretion to effect a customer order, the registered person shall effect the execution of the order without delay.

Timely allocation.

18. Where a registered person deals for a customer, the registered person shall deal on the terms which are the best available to the customer.

Fair allocation.

19. A registered person shall ensure that a transaction the registered person executes is allocated

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forthwith.

20. Where a registered person has aggregated an order for a customer transaction with an order for an own account transaction, or with an order for another customer transaction, then in the subsequent allocation –

- Front running.
- (a) the registered person shall not give unfair preference to the registered person or to any of those for whom the registered person dealt; and
 - (b) if all orders cannot be satisfied, the registered person shall give priority to satisfying orders for customer transaction

Churning.

21. Where a registered person has a large customer order to execute, or where the registered person intends to publish to customers a price-sensitive recommendation or research or analysis, the registered person shall not knowingly effect an own account transaction in the investment concerned or in any related investment until the large order has been executed or until the customers for whom the publication was principally intended have had, or are likely to have had, a reasonable opportunity to react to it.

22. A registered person shall not –

- (a) deal or arrange a deal in the exercise of the registered person's discretion for any customer; or
 - (b) advise a customer to deal,
- Insider dealing.

if the dealing could in the circumstances reasonably be regarded as too frequent or too large.

Safeguarding of
customer
investments.

23. A registered person shall take reasonable steps to ascertain if any of the registered person's customers is an insider and maintain records accordingly to assist in the monitoring of insider dealing.

24. A registered person who has custody of a customer's securities in connection with or with a view to effecting securities business shall—

(a) keep safe, or arrange for the safekeeping of, every document of title, or document evidencing title, relating to them; and

(b) ensure that any security that the registered person buys or holds for a customer are properly registered in the name of the customer or, with the consent of the customer, in the name of an appropriate nominee.

Complaints

Customer
confidentiality.

25. A registered person shall establish internal procedures to ensure the proper handling of complaints from customers and to ensure that any appropriate remedial action relating to those complaints is promptly taken.

26. (1) Subject to paragraph (2), all information in the possession of a registered person relating to a customer shall be kept confidential by the registered person.

Unsolicited calls.

(2) A registered person may disclose information relating to a customer when duly required to do so by the Council, or if the registered person is

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ordered to do so by a court of competent jurisdiction.

Cessation of
business.

27. (1) Subject to paragraph (2), no person shall, for the purposes of soliciting securities business, make an unsolicited telephone call, or attend at any address without first being invited by an occupant.

(2) Paragraph (1) does not apply in relation to existing customers.

28. Where a registered person decides to cease to carry on securities business the registered person shall—

- (a) forthwith notify the Council and each of the registered person's customers of such decision;
- (b) ensure to the satisfaction of the Council that any such business which is outstanding is properly completed or transferred to another registered person.

Application.

CUSTOMER MONEY

29. (1) These Regulations shall apply to any customer money held or received by a registered person in the course of carrying on the registered person's securities business.

Customer
money.

(2) For the purpose of these Regulations, "customer money" is money of any currency which, in the course of carrying on a registered person's securities business, the registered person holds or receives on behalf of a customer or which the registered person owes to a customer.

30. (1) Customer money shall be held by the registered person on trust for and on behalf of the respective customers for whom that customer money is received or held according to their respective shares in it.

Customer bank accounts.

(2) Customer money shall not form part of the assets of the registered person for any purpose and shall not be available in any circumstances for payment of any debt of the registered person.

31. (1) A registered person who receives or holds customer money shall open one or more customer bank accounts with an approved bank.

(2) A customer bank account shall be kept segregated from any account holding money belonging to the registered person.

(3) A registered person shall forthwith pay into a customer bank account all customer money coming into the registered person's hands for or from a customer.

(4) A registered person shall keep records of—

- (a) all amounts paid into a customer bank account kept by the registered person, specifying the persons on whose behalf the amounts are held they were paid into the account;
- (b) all withdrawals from a customer bank account, the dates of those withdrawals, and

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the names of the persons on whose behalf the withdrawal is made; and

Accounting for and use of customer money.

(c) such other particulars as may be required by the Council.

32. A registered person shall promptly for customer money and, in particular, shall ensure that—

- (a) customer money and other money do not become mixed;
- (b) the registered person can at all times mount of customer money standing to the credit of each customer; and

Payment out of a customer bank account.

(c) money belonging to a customer is not used for another customer.

33. (1) Subject to paragraph (2), money may be withdrawn from a customer bank account only if—

- (a) it is not customer money;
- (b) it is properly required for payment to or on behalf of a customer; or
- (c) it is properly transferred to another customer bank account or into a bank account in the name of the customer.

(2) a registered person may withdraw money from a customer bank account for or towards payment of the registered person's own fees or commission only if the fees or commissions accord

Appointment of auditor. with the arrangements agreed with the customer.

AUDITORS

34. A registered person shall ensure that the auditor appointed under the Securities Industry (Accounting and Financial Statements) Regulations 2002 has the powers reified in regulation 35 and that—

- (a) those powers and duties are set out in a letter of appointment;
 - (b) the letter of appointment is signed by the registered person and the auditor; and
 - (c) the registered person retains a copy of the letter of appointment.
- Powers and duties of auditors.

35. (1) An auditor shall have—

- (a) a right of access at all reasonable times to the accounting and other records of the registered person and all other documents relating to the registered person's business; and
- (b) a right to require from the registered person such information and explanations as the auditor thinks necessary for the performance of the auditor's duties.

(2) An auditor shall submit a report to the Council on the annual financial statements in

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accordance with these Regulations and the report shall state the matters specified in regulation 18 of the Securities Industry (Accounting and Financial Statements) Regulations 2002.

(3) In preparing an auditor's report for the purposes of these Regulations, the auditors shall carry out such investigations as will enable the auditor to form an opinion on the matters requires by regulation 18 of the Securities Industry (Accounting and Financial Statements) Regulations 2002 to be stated in the auditor's report.

Notification to Council.

Resignation or removal of auditors.

36. A registered person shall, within seven days, give a written notice to the Council of the appointment, removal or resignation of an auditor.

37. (1) Where an auditor resigns or is removed by a registered person, a notice to that effect sent to the Council under regulation 36 shall contain either —

- (a) a statement signed by the auditor to the effect that there are no circumstances connected with the auditor's resignation or removal which the auditor considers should be brought to the attention of the Council; or
- (b) a statement signed by the auditor of such circumstance as are mentioned in subparagraph (a).

(2) Where a registered person fails to appoint an auditor at the end of the auditor's term of office, the Council is authorised to appoint an auditor.

No. 6 of 2002

**THE SECURITIES INDUSTRY ACT
(ACCOUNTING AND FINANCIAL
STATEMENTS) REGULATIONS**

made under sections 126(1) and 126 (7)

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REGULATION

- 18. Contents of auditor's report.
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PRELIMINARY

Citation. 1. These Regulations may be cited as the Securities Industry (Accounting and Financial Statements) Regulations.

Application. 2. These Regulations shall apply to all registered persons who carry on business as brokers or dealers.

Interpretation. 3. In these Regulations—

(a) "Financial year" means—

- (i) the period of twelve months beginning with the day on which the registered person commences to carry on the business in respect of which the licence has been granted; and
- (ii) each subsequent period of twelve months beginning with the day following the day with reference to which an annual balance sheet of the registered person is prepared for the purposes of these Regulations;

(b) "registered person" means a registrant who carries on business as a broker or dealer.

ACCOUNTING RECORDS

Duty to keep accounting records. 4. (1) A registered person shall keep accounting records which are sufficient to show and explain the registered person's securities transactions (whether effected

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on the registered person's own behalf or on behalf of others) and which shall—

- (a) disclose with reasonable accuracy, at any time, the financial position of the registered person at that time; and
- (b) enable the registered person to prepare a balance sheet and a profit and loss account as at any time and which comply with the requirements of these Regulations.

(2) The accounting records shall in particular contain—

- (a) entries from day to day of all sums of money received and expended by the registered person, and the matters in respect of which the receipt and expenditure took place;
- (b) a record of all assets and liabilities of the registered person including any commitments or contingent liabilities;
- (c) entries from day to day of all purchases and sales of securities by the registered person distinguishing those which are made by the registered person on the registered person's own account and those which are made by the registered person on behalf of others;
- (d) entries from day to day of the receipt and dispatch of documents of title, or documents evidencing title, to

securities which are in the possession or control of the registered person;

- (e) entries from day to day of-
 - (i) all customer money which is paid into or out of a customer bank account maintained for the purposes of these Regulations;
 - (ii) receipts and payments of customer money not passed through such a customer bank account, identifying the persons to whom each such receipt or payment relates;
- (f) a record of—
 - (i) aggregate balances on customer bank accounts;
 - (ii) individual customers balances stating the name of each customer and the amount held or received for that customer;
- (g) details of any credit extended or loans made in respect of margin or otherwise; and
- (h) details of all securities—
 - (i) which are the property of the registered person, showing by whom they are held and whether, if held otherwise than by the registered person, they

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are so held as collateral against loans or advances; and

- (ii) which are not the property of the registered person but for which the registered person is accountable, showing by whom and for whom they are held distinguishing those which are deposited with a third party whether as security for loans or advances made to the registered person or any related person or for any other purpose.

Records to be up to date.

5. The obligations under these Regulations are continuing obligations and continuous performance of them is required so as to ensure that records are updated daily.

Audit trail.

6. (1) Information required to be recorded by these Regulations shall be recorded in such a way as to enable a particular transaction to be identified at any time and traced through from initiation of the order to final settlement.

(2) All records shall be arranged, filed, indexed and cross referenced so as to permit prompt access to any particular record.

Conformity with accounting standards.

7. The accounting records required to be kept by 2 registered person shall conform with the requirements of International Accounting Standards.

Retention of records.

8. A registered person shall preserve the accounting records, which the registered person is required to keep under regulation 4, for six years from the date on which they are made.

Inspection of records.

9. Accounting records which are required to be kept under regulation 4 shall, at any time during the period in which they are required to be preserved, be produced to the Council, or to any person authorised by the Council, on demand at such reasonable time and place as may be specified by the Council or that person.

Securities market may impose additional requirements on members.

10. Nothing in these Regulations shall prevent a securities exchange from imposing on registered persons who are members of the exchange any additional obligations or requirements which it thinks necessary with respect to—

- (a) the keeping of accounts, books and records;
- (b) the making of periodic financial reports to the exchange in the form and manner required by the exchange;
- (c) the audit of accounts;
- (d) the provision of an appropriate trail;
- (e) the information to be given in reports by auditors; or
- (f) spot order checks.

FINANCIAL STATEMENTS AND RETURNS

Duty to prepare annual financial statements.

11. A registered person shall prepare for each financial year annual financial statements which shall consist of—

- (a) a balance sheet as at the last day of the financial year; and
- (b) a profit and loss account for the financial year.

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Balance sheet to give a true and fair view. **12.** The balance sheet shall give a true and fair view of the state of affairs of the registered person as at the end of the financial year.

Profit and loss account to give a true and fair view. **13.** The profit and loss account shall give a true and fair view of the profit or loss of the registered person for the financial year.

Form and content of financial statements. **14.** The financial statements of a registered person shall comply with the requirements of the International Accounting Standards.

Council may require returns. **15.** (1) The Council may by written notice require registered persons to submit to the Council such periodic returns as the Council may specify.

(2) In addition to any periodic returns required under paragraph (1), the Council may by written notice require registered persons, either generally or in a particular case or class of case, to submit to the Council such further returns as the Council may specify.

Registered person to obtain auditor's report etc. **16.** A registered person shall submit, within one month after the end of each financial year, the registered person's annual financial statements to the registered person's auditor for audit and shall obtain an auditor's report thereon which report shall comply with the requirements of regulation 18.

Annual financial statements to be submitted to Council. **17.** (1) A registered person shall submit, within three months after the end of each financial year, the auditor's report to the Council together with—

(a) the registered person's annual financial statements ; and

(b) confirmation in writing that the

registered person has complied with each of these Regulations with which the registered person is required to comply and such additional information or confirmation as the Council may require from time to time.

(2) Where the auditor's report is qualified on the grounds of the auditor's uncertainty as to the completeness or accuracy of the accounting records, that report shall when submitted by the registered person to the Council be accompanied by a written document signed by the securities intermediary or, in the case of a securities company, by two directors stating—

- (a) whether all the accounting records of the registered person have been made available to the auditor for the purposes of be audit;
- (b) whether all transactions undertaken by the registered person have been properly reflected and recorded in its accounting records; and
- (c) whether all other records of the registered person and related information have been made available to the auditor.

Contents of
auditor's
report.

18. (1) The auditor's report shall state whether the annual report' financial statements of the registered person have been audited in accordance with approved auditing standards.

(2) The auditor's report shall also state whether in the opinion of the auditor—

- (a) the annual financial statements of the registered person have been properly prepared in accordance with these Regulations;
- (b) in the case of the balance sheet, a true and fair view is given of the financial state of affairs of the registered person at the end of the financial year;
- (c) in the case of the profit and loss account, a true and fair view is given of the profit or loss of the registered person for the financial year;
- (d) the registered person has, throughout the financial year, kept proper accounting records in accordance with the requirements of these Regulations;
- (e) the registered person has kept customer money properly segregated in accordance with regulation 31 of the Securities Industry (Conduct of Business) Regulation 2002;
- (f) the balance sheet and the profit and loss account are in agreement with the registered person's accounting records;
- (g) the auditor has obtained all the information and explanations which, to the best of the auditor's knowledge and belief, are necessary for the purposes of his audit;

- (h) the registered person has maintained throughout the financial year systems adequate to enable the auditor to identify documents to title, or documents evidencing title, to securities held in safekeeping for the registered person's customers in accordance with regulation 24 of the Securities Industry (Conduct of Business) Regulations 2002; and
- (i) the registered person was in compliance with the requirements of regulation 24 of the Securities Industry (Conduct of Business) Regulations 2002 as at the date on which the balance sheet was prepared.

Qualified reports.

19. (1) the auditor is of the opinion that one or more of the requirements of regulation 18 have not been met, the auditor shall state that fact in the audit report and specify the relevant requirements and the in which they have not been met.

(2) If the auditor fails to obtain all the information and explanations which, to the best of the auditor's knowledge and belief, are necessary for the purposes of the audit, the auditor shall state that fact in the report.

(3) If the auditor is unable to form an opinion whether one or more of the requirements of regulation 18 have been met, the auditor shall state that fact in the report and shall specify those requirements and give tie reasons why the auditor has been unable to form an opinion.

Reg. 7 /2002

**THE SECURITIES INDUSTRY ACT
(ADVERTISEMENTS) REGULATIONS***made under section 126(1) and 126(7)*

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation.
2. Interpretation.
3. Restrictions on advertising.
4. Exceptions from restrictions on advertising.
5. Advertisements to comply with Schedule.
6. Advertisement directions
7. Advertisements to be copied to the Council.
8. Contravention.

SCHEDULE

Citation. **1.** These Regulations may be cited as the Securities Industry (Advertisements) Regulations 2002.

Interpretation. **2.** (1) In these Regulations—

(a) advertisement" includes every form of public notice, whether in a publication, brochure, handout, or letter-head, or by the display of notices, or by means of circulars or other documents, or by an exhibition of photographs or cinematography films or videos, or by way of sound broadcasting or television, or by computer screen display or printout, or by the distribution of recordings or

in any other manner;

- (b) "registered person" means a person registered by the Council under section 47 of the Act;
- (c) "securities advertisement" means an advertisement offering securities within the meaning of section 59(1) of the Act.

(2) For the purposes of these Regulations an advertisement issued outside Guyana shall be treated as issued in Guyana if—

- (a) it is directed at persons in Guyana; or
- (b) it is made available to persons in Guyana otherwise than in a newspaper, journal, magazine or other periodical publication published and circulating principally outside Guyana or in a sound or television broadcast transmitted principally for reception outside Guyana.

Restrictions on advertising.

3. Subject to regulation 4 securities advertisement shall only be issued or caused to be issued in Guyana—

- (a) by registered persons;
- (b) by persons specifically authorized by the Council to issue securities advertisement;
- (c) by any other person where the securities advertisement has been previously approved in writing by a registered person.

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Exceptions from restrictions on advertising.

4. Regulation 3 does not apply to—

- (a) a securities advertisement issued or caused to be issued by, and relating only to securities issued by—
 - (i) the Government or the government of any other country or territory; or
 - (ii) the central bank of any country or territory;
- (b) an advertisement which is a prospectus required to be submitted to the Council under the Act; or
- (c) an advertisement issued in accordance with the Securities Industry (Take-Overs) Regulations 2002.

Advertisements to comply with Schedule.

5. No person shall issue or cause to be issued a securities advertisement unless the provisions of the Schedule are complied with in relation to that advertisement.

Advertisement directions.

6. (1) If the Council considers that any securities advertisement issued, caused to be issued or proposed to be issued by any person is misleading, the Council may by notice in writing give that person a direction under this regulation.

(2) A direction under this regulation may contain all of the following prohibitions or requirements—

- (a) a prohibition on the issue of advertisements of a specified kind;
- (b) a requirement that advertisements of a particular description shall be

modified in a specified manner;

- (c) a prohibition on the issue of any advertisement which is, wholly or substantially, repetitious of an advertisement which has been issued or is proposed to be issued and which is identified in the direction;
- (d) a requirement to take all practical steps to withdraw from display in any place or from circulation any advertisement or any advertisements of a particular description specified in the direction;
- (e) a requirement, in respect of a particular advertisement, that a correction be published in the manner and form specified by the Council.

Advertisement directions.

7. A copy of every proposed securities advertisement shall be submitted to the Council not less than [two] working days before the advertisement is first published.

Contravention.

8. Any person who issues, causes to be issued or publishes in Guyana a securities advertisement in contravention of regulation 3, or which does not comply with regulation 5, commits an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars and imprisonment for two years.

reg. 5

SCHEDULE

Prominence of required statements.

1. The significance of any statement or other matter required by the provisions of this Schedule to be included in a securities advertisement shall not be disguised either through

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lack of prominence in relation to the remainder of the advertisement or by the inclusion of matter calculated to minimise the significance of the statement or the other matter required to be included.

Advertisements to be clear and not misleading.

2. (1) The content of a securities advertisement and the manner of its presentation shall be such that the advertisement is not likely to be misunderstood.

(2) A securities advertisement shall not contain any statement, promise or forecast unless the person issuing it has taken all reasonable steps to ensure that each such statement, promise or forecast is not misleading in the form or context in which it appears.

(3) A securities advertisement shall not contain any statement purporting to be a statement of fact that the person issuing it does not reasonably believe at the time, on the basis of evidence of which it has a record in its possession, to be true.

(4) If the security to which the advertisement relates is available in limited quantities, or for a limited period or on special terms for a limited period, the advertisement may indicate so but, if that is not the case, the advertisement shall not contain any statement or matter that implies it is so.

Advertisements to be distinguished from other matter.

3. (1) The terms of a securities advertisement and the manner of its presentation shall be such that it appears to be an advertisement issued with the object of promoting the securities investment, securities business or person to which it relates.

(2) Where the medium in which the advertisement is carried contains or presents other matter the advertisement shall be distinguished from that other matter so that the part that is an advertisement clearly appears as such.

Promotions to
be genuine.

4. No securities advertisement shall be issued with the intention not of persuading persons who respond to the advertisement but, with the intention instead, of persuading them to enter into an agreement, or use business services, of a description not mentioned in the advertisement.

Advertisements
not to imply
approval of
Government or
Council.

5. A securities advertisement shall not contain any matter that states or implies that the securities investment or securities business which is the subject of the advertisement or any matter in the advertisement has the approval of any Government department or of the Council.

6. A securities advertisement that states only some of the rights and obligations attaching to an investment in securities or only some of the terms and conditions of an agreement relating to securities investment shall –

- (a) state sufficient of them to give a fair view of the nature if the investment in securities, of the financial commitment undertaken by an investor in acquiring the investment in securities and of the risks involved; and
- (b) state the procedure for obtaining a written statement of all of them.

Comparison
with other
investments or
services.

7. A securities advertisement shall not compare or contrast one investment in securities with an alternative investment, or one securities service with an alternative securities service, unless the comparisons and contrasts are fair in relation to what is promoted and to the alternative having regard to what is not stated as well as to what is stated.

Taxation,

8. (1) A securities advertisement that refers to taxation shall contain a warning that the levels and bases of taxation can change.

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(2) A securities advertisement that contains any matter based on an assumed rate of taxation shall state that rate.

(3) A securities advertisement that refers to reliefs from taxation -

(a) shall state that the reliefs are those that currently apply; and

(b) shall contain a statement that the value of a relief from taxation depends upon the circumstances of the tax payer.

(4) A securities advertisement that refers to taxation shall state that any person in doubt as to that person's status should consult a professional adviser.

Past
performance.

9. A securities advertisement shall not contain information about the past performance of securities investments of any description unless—

(a) it is relevant to the performance of the securities investment the subject of the advertisement;

(b) the source of the information is stated;

(c) if the full information is not set out—

(i) what is included is not unrepresentative, unfair or otherwise misleading; and

(ii) the exclusion of what is excluded does not have the effect of exaggerating the success or performance over the period to which the information that

is included elates;

- (d) if the information is presented in the form of a graph or chart, no part of the omitted so as to give an impression of the rate at which variable quantities or amounts have changed;
- (e) the period in which is selected as illustrating past performance is a period of not less than [three] years which period must end no more than [one] month before the date of the issue of the advertisement provided that where the securities investment has been available for less than [three] years, the whole of its period of availability shall be covered;
- (f) the advertisement contains a warning that the past is not necessarily a guide to the future.

Indication of the scale of business activities.

10. (1) A securities advertisement shall not contain any statement indicating the scale of the activities or the extent of the resources of the advertiser, or of any group of which the advertiser's obligations are greater than they are.

(2) Statements which relate to resources of members of a group other than the advertiser shall clearly state that fact.

Risk warnings.

11. (1) A securities advertisement shall, in accordance with this paragraph, contain a statement in the nature of a warning about the risks involved in acquiring or holding the securities the subject of the advertisement.

(2) Where the advertisement relates to a security that can fluctuate in value in money terms, the statement shall

draw attention to that fact and to the fact that the investor may not recover the amount he has invested.

(3) The statement shall, other than in the case of fixed income securities, where the advertisement offers a security as likely to yield a high income or as suitable for an investor particularly seeking income from his investment, draw attention to the fact that income from the investment may fluctuate in value in money terms and that the income may fluctuate in value in real terms due to inflation.

(4) Where the advertisement relates to a security denominated in a currency other than that of the country in which the advertisement is issued, the advertisement shall draw attention to the fact that changes in rates of exchange between currencies may cause the value of the security to diminish or to increase.

(5) Where the advertisement contemplates the investor entering into a transaction the nature of which is such that the investor may not only lose what the investor pays at the outset but may incur a liability to pay unspecified additional amounts later, the statement shall draw attention to the fact that may be, must pay accordingly a transaction in that security can lose the investor more than the first payment made.

(6) Where there is no established securities market for the security or the security is traded on an established market only irregularly or infrequently, so that it may be difficult for an investor to sell the security, or to obtain reliable information concerning the value or the extent of the risks to which it is exposed, the statement shall draw attention to that fact.

Guaranteed,
etc. returns.

12. A securities advertisement shall not describe a prospective investment return as being in any way guaranteed, secured, assured or promised, either expressly or

impliedly, unless the advertisement has been approved in writing by the Council prior to its issue.

Dating.

13. (1) A securities advertisement published in a newspaper shall state in the bottom right hand corner of the advertisement the date on which it was first issued.

(2) A securities advertisement in the form of a brochure, handout or similar marketing literature shall state the date on which it was first issued on the outside of the front cover page.

(3) A securities advertisement by way of cinematography film, video or television broadcast shall bear the date on which it was first issued prominently at the beginning or end of the advertising material.

Identification
of advertisers.

14. A securities advertisement shall identify the person who issues or causes the advertisement to be issued, and where the advertisement is issued or caused to be issued by a person other than the advertiser, it shall identify the advertiser on whose behalf the advertisement is published.

Reg. 8 of 2002

**THE SECURITIES INDUSTRY ACT
(DISCLOSURE BY REPORTING ISSUERS)
REGULATIONS**

made under section 126(1) and 126(7)

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**THE SECURITIES INDUSTRY ACT
(DISCLOSURE BY REPORTING ISSUERS)
REGULATIONS****PRELIMINARY**

Citation.

1. These Regulations may be cited as the Securities Industry (Disclosure by Reporting Issuers) Regulations 2002.

Interpretation.

2. In these Regulations—

- (a) "associate" in relation to any director or chief executive means—
- (i) the spouse;
 - (ii) any son, daughter, step son or step daughter, or adopted son or daughter, under the age of eighteen years of the director or chief executive or of the spouse of such director or chief executive;
 - (iii) any company of which the director or chief executive is a substantial shareholder, and the holding company or subsidiary of the company of which the director or chief executive is a substantial shareholder;
- (b) "chief executive" means a person employed by an issuer who either alone or together with one or more other persons is or will be responsible under the immediate authority of the board of directors for the conduct of the business of the issuer;
- (c) "director occupies the whatever name includes any person who position of a director, by whatever name called;
- (d) "financial year" means the period in respect of which any profit and loss account of an issuer laid before its members in general meeting is made up, whether that period is a year or not;
- (e) "principal activity" in relation to an issuer and its

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subsidiaries, means an activity which in the financial year contributes more than ten percent of –

- (i) the aggregate turnover; or
- (ii) the aggregate results of all activities that-
 - (ai) showed profits; or
 - (aai) showed losses;
- (f) "securities exchange" means the securities exchange (if any) on which the reporting issuer's securities are listed or otherwise admitted to dealing;
- (g) "substantial shareholder", in relation to an issuer, means a person entitles to exercise, or control the exercise of, five percent or more of the voting power at any general meeting of the issuer;
- (h) "transaction" includes two or more related transactions.

Application.

3. These Regulations shall apply to all reporting issuers of securities which are shares, warrants or corporate debt securities.

DISCLOSURE OBLIGATIONS

General obligation.

4. (1) An issuer shall, generally and apart from complying with all the requirements of these regulations, notify the securities exchange, the Council, and its members and other holders of its securities without delay of any major new developments in its sphere of activity which are not public knowledge and which information –

- (a) is necessary to enable them and the public to appraise the financial position of the issuer and its

subsidiaries;

- (b) is necessary to avoid the establishment of a false market in its securities; or
- (c) would be likely to bring about a material change in the price of its securities.

(2) Paragraph (1) shall not apply with regard to information about impending developments or matters in the course of negotiation where the securities exchange is satisfied by the issuer that disclosure to the public of such information might prejudice the issuer's legitimate interests and the securities exchange grants a dispensation from the requirement of paragraph (1).

- (a) the securities exchange;
- (b) the Council;
- (c) every member of the issuer; and
- (d) every holder of securities issued by the issuer,

a copy of the issuer's annual accounts, auditor's report and directors' report for the previous financial year of the issuer, not less than twenty-one days before the date of the issuer's annual general meeting nor more than six months after the end of that financial year.

Information to accompany directors' report.

6. The issuer shall include in or with the directors' annual report—

- (a) a description of the principal activities of the issuer and its subsidiaries and, where two or

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- more such activities are so described a statement giving in respect of each such activity the turnover and contribution to operating profit;
- (b) a geographical analysis of consolidated turnover and contribution to trading results of trading operations carried on by the issuer and its subsidiaries outside Guyana;
- (c) a statement showing—
- (i) the name of every subsidiary, its principal country of operation, its country of incorporation and its main business;
 - (ii) particulars of the issued share capital and debt securities of every subsidiary, provided that if, in the opinion of the directors of the issuer, the number of subsidiaries is such that compliance with this paragraph would result in particulars of excessive length being given, compliance shall not be required except in the case of subsidiaries carrying on a business the results of which, in the opinion of the directors, materially affected the amount of the profit or loss of the issuer or the amount of the assets of the issuer; and
 - (iii) the financial year of a subsidiary where this is different to that of the issuer;
- (d) a statement as at the end of the relevant

financial year showing—

- (i) the interests of each director and chief executive of the issuer in the equity or debt securities of the issuer or any subsidiary, and of the associates of such director and chief executive in so far as is known or may be ascertained by reasonable enquiry; and
 - (ii) the details of any right to subscribe for equity or debt securities of the issuer granted to any director or chief executive of the issuer, and of the associates of such director and chief executive in so far as is known or may be ascertained by reasonable enquiry, and of the exercise of any such right;
- (e) the statement required by paragraph (d) must—
- (i) distinguish between beneficial and non-beneficial interests; and
 - (ii) specify the company in which securities are held, the class to which those securities belong and the number of such securities held.
- (f) in the event of operating results shown by the accounts for the period under review differing materially from any published forecast made by the issuer, an explanation for the difference;
- (g) a statement by the directors as to the reasons for any significant departure from

- applicable stand accounting practices in Guyana;
- (h) a statement as at the end of the financial year showing as regards, first bank loans and overdrafts and, secondly, other borrowings of the issuer and its subsidiaries, the aggregate amounts repayable—
 - (i) on demand or within a period not exceeding one year;
 - (ii) within a period of more than one year but not exceeding two years;
 - (iii) within a period of more than two years but not exceeding three years;
 - (iv) within a period of more than three years;
 - (i) in respect of the financial year, a statement of the amount of interest capitalised by the issuer and its subsidiaries during the year;
 - (j) a statement as to the unexpired period of any service contract, which is not determinable by the employer within one year without payment of compensation (other than any statutory compensation), of any director proposed for election at the forthcoming annual general meeting or, if there are no service contracts, a statement of that fact;
 - (k) summary particulars of any contract of significance subsisting during or at the end of the financial year in which a director of

the issuer is or was materially interested, either directly or indirectly, or if there has been no such contract, a statement of that fact;

- (1) summary particulars of any contract of significance between the issuer, or one of its subsidiary companies, and a controlling shareholder or any of its subsidiaries;
- (m) summary particulars of any contract of significance for the provision of services to the issuer and its subsidiaries by a controlling shareholder or any of its subsidiaries;
- (n) with effect from 1st January, 2002 a summary, in the form of a comparative table, of the financial results and of the assets and liabilities of the issuer and its subsidiaries, for the last [two] financial years, with any necessary explanations or adjustments for changes in capital to make the figures fully comparable one year with another.

Interim reports.

7. (1) The issuer shall prepare in respect of the first six months of each financial year of the issuer, unless that financial year is less than six months, an interim report containing the information required by paragraph (2) and, not later than four months after the end of that period of six months, the issuer shall—

- (a) publish in at least two daily newspapers an announcement containing the information required by paragraph (2) to be contained in the interim report, the day after

approval by or on behalf of its board of directors;

- (b) send to the Council a copy of the interim report immediately on publication with the names of the relevant newspapers and the date of the publication; and
- (c) as soon as reasonably practicable after such publication, send to the securities exchange and to every member and holder of its securities a copy of the interim report.

(2) Each interim report referred to in paragraph (1) shall include the following information, in respect of the issuer and its subsidiaries, on—

- (a) turnover;
- (b) interest paid and received;
- (c) profit (or loss) before taxation and extraordinary items with separate disclosure of any items included which are exceptional because of size or incidence;
- (d) taxation on profits (Guyana and foreign), in each case indicating the basis of computation;
- (e) profit attributable to minority interests;
- (f) profit attributable to shareholders before extraordinary items;

- (g) extraordinary items (net of taxation);
- (h) exceptional items (net of tax);
- (i) profit attributable to shareholders;
- (j) amount of dividend paid or proposed on each class of shares (with particulars of each such class) and the amounts absorbed thereby (or an appropriate negative statement);
- (k) transfers to and from reserves; (1) earnings per share calculated on the basis of profits before extraordinary items;
- (m) comparative figures of the matters specified in subparagraph (a) to (j) inclusive for the corresponding previous period; and
- (n) a statement as at the end of the six monthly period showing the interests of each director and chief executive of the issuer, and of their associates in so far as is known or may be ascertained after reasonable enquiry, in the share capital of the issuer and its subsidiaries; the statement shall distinguish between beneficial and non-beneficial interests, and specify the company in which shares are held and the number of such shares.

(3) Where the accounting information given in an interim report has not been audited that fact must be stated; if

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the accounting information contained in an interim report has been audited by the issuer's auditor, his report including any qualifications shall be set out in the interim report.

(4) Any preliminary announcement of results for the full year shall also contain the information required by paragraph (2).

Acquisition or disposal of assets.

8. (1) In the case of—

- (a) any acquisition or disposal of assets by the issuer or any of its subsidiaries where—
 - (i) the assets being acquired or disposed of represent an amount in excess of fifteen per cent of the value of the issuer's assets or consolidated assets, as the case may be, as disclosed in the last audited accounts;
 - (ii) the assets are acquired from or disposed of to any of the issuer's or its subsidiaries' directors or chief executive, or any associate of any such director or chief executive; or
 - (iii) the assets being acquired or disposed of are an interest in any company of which a substantial shareholder is a director or chief executive of the issuer or any subsidiary, or any associate of such director or chief executive;

- (b) any disposal of assets by the issuer or any of its subsidiaries where the net profit before taxation earned by the assets which are the subject of the disposal is in excess of fifteen per cent of the issuer's consolidated pre-tax profit disclosed in the last audited accounts,

the issuer shall comply with the disclosure requirements of paragraph (2).

(2) Where paragraph (1) applies, the issuer shall notify the securities exchange, the Council and every and holder of its securities without delay of transaction including the following details—

- (a) the date of the transaction and the parties;
- (b) a general description of the nature of the assets and, if these are shares in whole or part, the name and general description of the activities of the company in which the shares are or were held;
- (c) the total consideration and other material terms;
- (d) in the case of a transaction referred to in paragraph (1)(a)(i) or 1(b) –
 - (i) the basis of the valuation placed on the assets at the time of acquisition or disposal; and
 - (ii) in the case of a disposal, the excess or deficit of the proceeds

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over or under the book value;

- (e) in the case of a transaction referred to in paragraph (1)(a)(ii) or (iii), the name of the director, or chief executive or associate concerned and—
- (i) in the case of a director or chief executive, the office held;
- (ii) in the case of an associate of a director or the chief executive, the nature of the relationship and the name of that director or chief executive and the office held.

Transactions with related companies where the issuer is a subsidiary.

9. (1) Where a transaction specified in paragraph (2) takes place between—

- (a) the issuer and its holding company;
- (b) the issuer and any subsidiary of its holding company other than a subsidiary of the issuer;
- (c) a subsidiary of the issuer, and the holding company of the issuer; or
- (d) a subsidiary of the issuer and any subsidiary of its holding company other than the issuer or any of its subsidiaries,

the issuer shall comply with the disclosure requirements of paragraph (3).

(2) For the purpose of this regulation, "transaction" means—

- (a) an arrangement or agreement whereby the issuer directly or indirectly grants a loan or gives other financial assistance;
- (b) an arrangement or agreement whereby the issuer provides security, whether guarantee or otherwise, for the discharge of any obligation; or
- (c) any transaction other than in the ordinary course of business.

(3) The issuer shall, where paragraph (1) applies, notify the securities exchange, the Council and every member and holder of its securities without delay of the transaction including the following details—

- (a) the date of the transaction and the parties;
- (b) the general nature of the transaction and, where the transaction involves the making of an assistance or amount or value.

Prescribed information to shareholders.

10. An issuer shall ensure that all the necessary facilities and information are available to enable holders of its securities to exercise their rights and, in particular—

- (a) shall publish in at least two daily newspapers, notice of every general meeting;
- (b) inform holding of securities of the holding

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of meetings which they are entitled to attend;

- (c) enable them to exercise their right to vote, where applicable;
- (d) publish notices or distribute circulars giving information on—
 - (i) the allocation and payment of dividends and interest;
 - (ii) the issue of new securities, including arrangements for the allotment, subscription, renunciation, conversion or exchange of the securities; and
 - (iii) redemption or repayment of the securities.

Substantial
shareholdings.

11. An issuer shall notify the securities exchange, the Council and every member and holder of its securities without delay of any notification received by the issuer concerning substantial pursuant to section 126 and 127 of the Companies Act.

c. 89:01.

Meetings of the
board of
directors.

12. The date fixed for a meeting of the board of directors at which decisions on dividends, the annual results or the half-yearly report are expected to be made or at which any announcement of such matters is to be approved shall be notified to the securities exchange at least ten days in advance.

Decisions of the
board of
directors.

13. The issuer shall inform the securities exchange and the Council immediately after approval by or on behalf of its board of director—

- (a) a decision to declare, recommend or pay any

dividend or to make any other distribution on its securities, and the rate and amount thereof;

- (b) a decision not to declare, recommend or pay dividend which would otherwise have been expected to have been declared, recommended or paid in due course;
- (c) a preliminary announcement of profits or losses for any year, half-year or other period;
- (d) a proposed change in the capital structure, including in the capital structure, including any redemption of its convertible securities; and
- (e) a decision to change the general character or nature of the business of the issuer or its subsidiaries.

Council to be notified of certain decisions.

14. The issuer shall notify the securities exchange and the Council immediately of any decisions made in regard to—

- (a) an alteration of the issuer's constitution;
- (b) any proposed change in its capital structure including the structure of its debt securities;
- (c) a change in the rights attaching to any class of securities and any change in the rights attaching to any shares into which any debt securities are convertible or exchangeable; and
- (d) a change in its board of directors.

Basic allotment.

15. The issuer shall inform the securities exchange and

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the Council of the basis of allotment of securities offered to the public for subscription or sale and of the results of any rights issue and, if applicable, of the basis of acceptance of excess applications, not later than the morning of the business day next after the allotment letters or other relevant documents of title are posted.

Winding-up
and
liquidation.

16. (1) The issuer shall inform the securities exchange and the Council on the happening of any of the following events as soon as the same shall come to the attention of the issuer—

- (a) default on debt interest or repayment of principal;
- (b) the appointment of a receiver or administrator;
- (c) the presentation of any winding-up petition, or equivalent application in the country of incorporation or other establishment, or the making of any winding-up order or the appointment of a provisional liquidator in respect of the issuer, its holding company or any major subsidiary;
- (d) the passing of any resolution by the issuer, its holding company or any major subsidiary that it be wound-up by way of members' or creditors' voluntary winding-up;
- (e) the entry into possession of or the sale by any mortgagee of any of the issuer's assets; or
- (f) the making of any judgment,

declaration or order by any court or tribunal of competent jurisdiction whether on appeal or at first instance, which may adversely affect the issuer's enjoyment of any material part of its assets which in aggregate value represents an amount in excess of fifteen per cent of the consolidated net tangible assets of the group.

(2) For the purposes of paragraph (1) a "major subsidiary" means a subsidiary representing fifteen per cent or more of the consolidated net tangible assets or pre-tax profits of the group.

Council may
require
information.

17. (1) The Council may, at any time, require an issuer to—

- (a) provide to the Council such information in the form and within the time limits as the Council may require; and
- (b) publish that information in the form and within the time as the Council considers appropriate for the purpose of protecting investors and maintaining the smooth operation of the market.

(2) If an issuer fails to comply with a requirement to publish information, the Council may itself publish the information.

SANCTIONS

Actions against
an issuer.

18. (1) Where the Council considers that an issuer has contravened any of these Regulations, the Council may take

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Securities Industry (Disclosure by Reporting Issuers) Regulations

one or more of the following actions—

- (a) censure the issuer;
- (b) publish the fact that the issuer has been fined or censured for contravening these Regulations;
- (c) suspend trading in or discontinue the listing or admission to dealing of the issuer's securities.

(2) In the event of contravention of these Regulations by an issuer, the issuer commits an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars and imprisonment for two years.

Action against
a director.

19. (1) Where the Council considers that a contravention of these Regulations by an issuer is due to a failure by all or any of its directors to discharge their responsibilities, the Council may, in addition to any action it may take against an issuer under regulation 18, take one or more of the following actions –

- (a) privately censure the relevant directors;
- (b) publish the fact that these directors have been fined or censured;
- (c) in the case of wilful or persistent failure to discharge his or her responsibilities, state publicly that in its opinion the retention of office by the director is prejudicial to the interests of investor;
- (d) if the director remains in office

following a public censure by the Council under sub paragraph (c), suspend trading in or discontinue the listing or admission to dealing of the issuer's securities.

(2) In the event a contravention of these Regulations by a director, the director commits an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars and imprisonment for two years.

Notification of
sanction.

20. Unless the Council considers that maintenance of an orderly market, or the protection of investors otherwise requires, where the Council proposes to take any action under regulation 18 or 19, the Council shall, in relation to the party concerned—

- (a) give advance notice of the Council's proposed action;
 - (b) invite the making of representations to the Council either in writing or in person;
 - (c) advise of the decision as soon as practicable after it is made; and
 - (d) advise in writing of the reasons for any decision that is unfavourable.
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Securities Industry (Prospectus) Regulations

[No. 9 of 2002]

**THE SECURITIES INDUSTRY (PROSPECTUS)
REGULATIONS**

made under sections 126(1) and 126(7)

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation.
2. Interpretation
3. Content of prospectus.
4. Exceptions.
5. Advertisements in connection with public offer.

SCHEDULE – Content of prospectus.

Citation.

1. These Regulations may be cited as the Securities Industry (Prospectus) Regulations 2002.

Interpretation.

2. (1) In these Regulations—

- (a) "director" includes any person who occupies the position of a director, by whatever name called;
- (b) "securities exchange" means a securities exchange registered by the Council on which the securities the subject of the prospectus are listed or admitted to dealing.

(2) For the purpose of these Regulations reference to a "prospectus" shall be deemed to include reference to a "block distribution circular" and these Regulations shall apply to such circular.

Content of prospectus.

3. (1) A prospectus shall contain all such information as investors and their professional advisors would reasonably

require, and reasonably expect to be contained therein, for the purpose of making an informed assessment of –

- (a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the securities; and
- (b) the rights attached to those securities.

(2) In particular a prospectus shall contain, subject to regulation 4 and to paragraphs (4) and (5), such information as is required to be furnished under the Schedule.

Schedule

(3) The information in a prospectus shall be presented in a form which is easily analysable and comprehensible.

(4) Where, on the occasion of their listing or admission to dealing on a securities exchange, shares are offered on a pre-emptive basis to some or all of the existing shareholders, the Council may authorise the omission from a prospectus of information which is required to be furnished under the Schedule provided that up-to-date information equivalent to that which would otherwise be required by this regulation is available as a result of the requirements of that market.

Schedule.

(5) Where a person—

- (a) makes an offer to the public in Guyana of securities which he proposes to issue; and
- (a) has, within the twelve months preceding the date on which the offer is first made, published a full prospectus relating to a different class

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Securities Industry (Prospectus) Regulations

of securities which he has issued, or to an earlier issue of the same class of securities,

he may publish, instead of a full prospectus, a prospectus which co which have arisen sin prospectus and which value of the securities is accompanied by that full prospectus

(6) For the purpose of paragraph (5), a "full prospectus" is one which contains the information specified in the Schedule (other than information the omission of which is authorised by the Council by or under paragraph (4) or regulation 4).

(7) The format of a prospectus shall be as required by the Council.

Exceptions.

4. (1) The Council may, upon application made by the issuer or offeror, authorise the omission from a prospectus of information the inclusion of which otherwise be required by these Regulations if the Council is satisfied that –

- (a) disclosure of that information would be contrary to the public interest;
- (b) the information is of minor importance only, and is not likely to influence assessment of the issuer's assets and liabilities, financial position, profits and losses and prospectus, or
- (c) disclosure of that information would be seriously detrimental to the issuer.

(2) An offeror may omit from a prospectus information with respect to an issuer the inclusion of would

otherwise be required by these Regulations if –

- (a) he is neither the issuer, nor acting in pursuance of an agreement with the issuer;
- (b) the information is not available to him because he is not the issuer; and
- (c) he has been unable, despite making such efforts information.

Advertisements
in connection
with public
offer.

5. An advertisement announcing a public offer of securities for which a prospectus is required under these Regulations shall not be issued to the public in Guyana by the person proposing to make the offer, unless the advertisement states that –

- (a) the Council has approved the prospectus relating to the public offer; and
- (b) the prospectus is or will be published, as the case may be, and gives an address in Guyana where such prospectus can be obtained or obtainable.

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SCHEDULE

CONTENT OF PROSPECTUS

PART 1

GENERAL REQUIREMENTS

1. The name of the issuer, the address of its registered office and the date and place of incorporation.

2. If different, the name and address of the person

offering the securities.

3. The names and functions of the directors of the issuer.

4. The date of publication of the prospectus.

5. A statement that the prospectus has been delivered to the Council for approval in accordance with these Regulations.

6. A statement that the prospectus has been drawn up in accordance with these Regulations.

7. The following words, "If you are in any doubt about the contents of this document you should consult a person licensed under the Act who specialises in advising on the acquisition of shares and other securities", or words to the like effect.

PART II THE PERSONS RESPONSIBLE FOR THE PROSPECTUS AND ADVISERS

8. The names, addresses (home or business), occupation and functions of those persons responsible for the prospectus or any part of the prospectus, specifying such part.

9. A declaration by the directors of the issuer (or, if the offeror is not the issuer, by the directors of the offeror) that to the best of their knowledge the information contained in the prospectus is in accordance with the facts and that the prospectus does not omit any information which is likely to affect the import of such information.

PART III
THE SECURITIES TO WHICH THE PROSPECTUS
RELATES AND THE OFFER

10. A description of the securities being offered, including the class to which they belong and a description of the rights attached to them including (where applicable) –

- (a) if the securities are shares, rights as regards -
 - (i) voting;
 - (ii) dividends;
 - (iii) return of capital on the winding up of the issuer;
 - (iv) redemption, and a summary of the consents necessary for the variation of any of those rights;
- (b) if the securities are debentures, rights as regards
 - (i) interest payable;
 - (ii) repayment of principal.
- (c) any conversion rights or option warrants.

The dividend policy of the issuer, and in dividends within the last five years (and if so, how much and when), and whether the issuer expects to pay dividends over the next two years.

12. The date(s) (if any) on which entitlement to dividends arises.

13. The date(s) (if any) on which entitlement to

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interest arises.

14. The procedure for the exercise of any right to the securities.

15. (1) A statement as to whether—

(a) the securities being offered have been listed or admitted to dealing on a securities exchange; or

(b) an application for such admission has been made.

(2) Where no such application for listing or dealing has been made, or such an application has been made and refused, a statement as to whether or not there are, or are intended to be, any other arrangements for there to be dealings in the securities and, if there are, a brief description of such arrangements.

16. The purpose for which the securities are being issued, together with details as to the use of the proceeds of the issue and in particular their use for capital expenditure, debt reduction, acquisitions, working or other capital.

17. The number of securities being issued and offered and, in the case of shares, earnings per share, net asset value per share and net tangible assets per share.

18. The authority for the issue and offer of the securities.

19. The total proceeds which it is expected will be raised by the offer and the expected net proceeds, after deduction of the expenses, of the offer, stating the amount or the estimated amount of the expenses of the offer and by whom they are payable, including a statement as to any

commission payable by issuer to any person in consideration of his agreeing to subscribe for securities to which the prospectus relates or of his procuring or agreeing to procure subscriptions for such securities.

20. Where the prospectus relates to securities which are offered for subscription, particulars as to—

- (a) the minimum amount which, in the opinion of the directors of the issuer, must be raised by the issue of those securities in order to provide the sums (or, if any part of them is to be defrayed in any other manner, the balance of the sums) required to be provided in respect of each of the following—
 - (i) the purchase price of any property purchased, or to be purchased, which is to be defrayed in whole or in part out of the proceeds of the issue; and
 - (ii) any preliminary expenses payable by the issuer and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any securities of the issuer;
- (b) the amounts to be provided in respect of the matters mentioned otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

21. The names of persons underwriting or guaranteeing the offer.

22. The name and address of any paying, transfer or registration agent.

23. The period during which the offer of the securities is open.

24. The price at which the securities are offered or, if appropriate, the procedure, method and timetable for fixing the price.

25. The arrangements for payment for the securities being offered and the arrangements and timetable for their delivery.

26. The arrangements during the period prior to the delivery of the securities being offered relating to the moneys received from applicants including the arrangements for the return of moneys to applicants where their applications are not accepted in whole or in part and the timetable for the return of such moneys.

PART IV GENERAL INFORMATION ABOUT THE ISSUER AND ITS CAPITAL

27. The date and place of incorporation of the issuer. In the case of an issuer not incorporated in Guyana, the address of its principal place of business in Guyana.

28. The legal form of the issuer, the legislation under which it was formed and (if different) the legislation now applicable to it.

29. A summary of the issuer's aims and objectives.

30. The amount of the issuer's authorised share capital and any limit on the duration of the authorisation to issue

such share capital.

31. The amount of the issuer's issued share capital and, in the case of a debt issue, any borrowing limits prescribed by the issuer's by-laws.

32. The number and particulars of any listed and unlisted securities issued by the issuer not representing share capital.

33. The number of shares of each class making up each of the authorised and issued share capital, the issue price of such shares and, in the case of the issued share capital, the amount paid up on the shares.

34. If the issuer is a member of a group, a brief description of the group and of the issuer's position in it, stating, where the issuer is controlled by another company, the name of its controlling company.

35. In so far as the offeror has the information, an indication of the persons, who, directly or indirectly, jointly or severally, exercise or could exercise control over the issuer and particulars of the proportion of the issuer's voting capital held by such persons.

PART V THE ISSUER'S PRINCIPAL ACTIVITIES

36. A description of the issuer's principal activities and of any exceptional factors which have influenced its activities.

37. A statement of any dependence of the issuer on particular customers or suppliers, or on patents or other intellectual property rights, licences or particular contracts, where any of these are of fundamental importance to the issuer's business.

36. With regard to risk factors, list in order of importance the factors which the issuer considers to be the most substantial risks to an investor in this offering (e.g. untested products, cash-flow or liquidity problems, dependence upon a key supplier or customer, management inexperience, nature of business, absence of a trading market, etc.) and which constitute the greatest threat that an investment may be lost in whole or part, or not provide an adequate return.

39. Information regarding capital expenditure items in progress or authorised by the directors where they are significant.

40. Information on any legal or arbitration proceedings, active, pending or threatened against, or being brought by, the issuer or any member of its group which are having or may have a significant effect on the issuer's financial position.

PART VI

THE ISSUER'S FINANCIAL POSITION

41. Subject to paragraph 43, the issuer's annual accounts (balance sheet and profit and loss account) for the last three years together with -

(a) a statement by the directors of the issuer that the accounts have been prepared in accordance with the Act, and that they accept responsibility for them, or a statement why they are unable to make such a statement;

(b) the name and address of the auditors of the accounts;

(c) a copy of the auditors' reports on the account;
and

(d) a statement by the auditors that they consent, to the inclusion of their reports in the prospectus and accept responsibility for them, and have not become aware, since the date of any report, of any matter affecting the validity of that report at that date; or a statement why they are unable to make such a statement.

42. (1) Where more than nine months have elapsed at the date on which the offer is first made since the end of the last financial year in respect of which accounts are required to be included in the prospectus by paragraph 41, there shall also be included in the prospectus a report by a person qualified to act as an auditor, covering the period referred to in subparagraph (2), with respect to the state of affairs and profit or loss of the issuer together with the name and address of the person responsible for preparing the report, and a statement that he or she consents to the inclusion of the report in the prospectus and accepts responsibility for it; or a statement why he or she is unable to make such a statement.

(2) The period to be covered by the report is the period beginning at the end of the last financial year in respect of which accounts are required to be included in the prospectus by paragraph 41 and ending on the latest practicable date before (but not in any event more than three months before) the date on which the offer is first made.

43. If an issuer has not been in existence for the whole of the last three years, the prospectus shall contain a report by a person qualified to act as an auditor which includes -

(a) details of the profit or loss of the issuer in respect of the period beginning with the date of its formation and ending on the latest practicable date before (but not in any event more than three months before) the date on which the offer is first made, and of its state of affairs at that latest practicable date; and

(b) a statement by the person responsible for the

report that in the opinion of that person it gives a true and fair view of the state of affairs and profit or loss of the issuer and that he or she consents to the inclusion of his or her report in the prospectus and accepts responsibility for it; or a statement why he is unable to make such a statement.

44. If the issuer is a parent company, the requirements of paragraphs 41 and 43 shall apply to each of its subsidiaries.

PART VII

RECENT DEVELOPMENTS IN THE ISSUER'S BUSINESS AND PROSPECTS

45. The significant recent trends concerning the development of the issuer's business since the end of the last completed financial year of the issuer.

46. Information on the issuer's financial and trading prospects for at least the current financial year of the issuer.

47. The dates of and parties to all current material contracts (not being contracts entered into in the ordinary course of business) entered into by the issuer and its subsidiaries together with a summary of the principal contents of such contracts.

48. Where a profit forecast appears in the prospectus the principal assumptions, including commercial assumptions, upon which it is based must be stated.

PART VIII

THE ISSUER'S ADMINISTRATION AND MANAGEMENT

49. A concise description of the directors' existing or proposed service contracts with the issuer or any subsidiary of the issuer, excluding contracts expiring, or determinable by

the employing company without payment of compensation within one year, or an appropriate negative statement.

50. The aggregate remuneration paid and benefits in kind granted to the directors of the issuer during the last completed financial year of the issuer, together with an estimate of the aggregate amount payable and benefits in kind to be granted to the directors, and proposed directors, for the current financial year under the arrangements in force at the date on which the offer is first made.

51. The interests of each director of the issuer in the share capital of the issuer, distinguishing between beneficial and non-beneficial interests, or an appropriate negative statement.

52. Full particulars of any contract or arrangement existing at the date of the prospectus in which a director of the issuer is materially interested, or an appropriate negative statement.

53 (1) A description (being his or her qualification or area of expertise or responsibility) of every, director or proposed director (or any other person who performs an important administrative, management or supervisory function) and particulars of the principal functions performed by each.

(2) A brief account of the business experience of each of these persons during the last five years.

(3) The nature of any family relationship between the persons mentioned in subparagraph (1).

(4) Indicate any other directorships held by each director or proposed director.

[Subsidiary] Securities Industry (Registration of Issuer and Securities) Regulations

Reg. 10/2002

THE SECURITIES INDUSTRY (REGISTRATION OF ISSUER AND SECURITIES) REGULATIONS

made under sections 126(1) and 126(7)

ARRANGEMENT OF REGULATIONS

Citation.

1. These Regulations may be cited as the Securities Industry (Registration of Issuers and Securities) Regulations

Registration statement of issuer. First Schedule.

2. (1) A registration statement required to be filed by a reporting issuer with the Council under section 56(1) or (2) of the Act shall be in the Form set out in the First Schedule.

(2) A registration statement filed by a reporting issuer under paragraph (1) shall be accompanied by –

- (a) a copy of its articles of incorporation and by-laws;
- (b) copies certified by a director of the reporting issuer to be true copies of its last balance sheet and last profit and loss account; and
- (c) a copy of the auditors' report on the \financial statements referred to in subparagraph (b).

(3) For the purposes of section 56(2) of the Act the registration statement shall be filed at least twenty eight days prior to the date of issue of the securities.

Registration statements of securities. Second

3. (1) A registration statement required to be filed with the Council under section 57(1) of the Act in respect of a public issue of securities, or the listing of securities with any self-regulatory organization, shall be in the form set out in the

Schedule. Second Schedule.

(2) In the case of a registration statement filed by a reporting issuer under paragraph (1), the registration statement shall be accompanied by—

- (a) a copy of its articles of incorporation and by-laws;
- (b) copies certified by a director of the company to be true copies of the last balance sheet and the last profit and loss account;
- (c) a copy of the auditors' report on the financial statements referred to in subparagraph (c);
- (d) the prescribed fee; and
- (e) in the case of a reporting issuer who proposes to issue securities to the public, a prospectus conforming with the requirements of Part IV of the Act.

Registration fees.

4. The following registration fees shall be paid to the Council on the filing of a registration statement under section 57—

- (a) in the case of the registration statement of existing securities which are to be listed with a self-regulatory organization, the sum of one hundred thousand dollars;
- (b) in the case of the registration statement of securities where the securities are to be issued by a reporting issuer pursuant to a prospectus in connection with a public offer,

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at the rate of zero point one per cent of the total capital to be raised subject to a minimum payment of five hundred thousand dollars and to a maximum payment of five million dollars; or

- (c) in the case of the registration statement of securities where the securities are to be issued by a Government entity, at the rate of zero point zero five per cent of the total capital to be raised subject to a minimum payment of two hundred and fifty thousand dollars and to a maximum payment of two million five hundred thousand dollars.

Public inspection.

5. The information contained in or filed with a registration statement shall be open to inspection by members of the public during usual office hours at the Office of the Council on payment of the fee of five hundred dollars.

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FIRST SCHEDULE

REGISTRATION STATEMENT OF REPORTING ISSUER

- 1. Name of reporting issuer as stated in its Articles of Incorporation.....
- 2. Registered Company No.....
- 3. Names and addresses of members of the board of directors of the reporting issuer.....
- 4. Address and telephone number of reporting issuer's principal place of business.....
- 5. Type of securities issued by reporting issuer.....

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6. Amount or value of each type of security as at the date of this Registration Statement.....

7. If securities are proposed to be issued to the public-

(a) the type of security.....

(b) the proposed maximum offering price per unit of security.....

(c) the proposed maximum aggregate offering price.....

(d) the approximate date of commencement of proposed sale to the public.....

8. Name, address and telephone number of agent for service of documentation.....

9. Any other information.....

10. Dated

11. Signed

(to be signed by the principal executive officer and at least one director of the reporting issuer)

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SECOND SCHEDULE

REGISTRATION STATEMENT OF SECURITIES

1. Name of issuer as stated in its Articles of Incorporation/Constituent instrument.....

2. Registered Company No. (if applicable).....

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3. Names and addresses of members of the governing board of the issuer.....

4. Address and telephone number of issuer's principal place of business

5. In the case of existing securities proposed to be listed with a self-regulatory organisation, the type, and the amount or value of each type, of security issued as at the date of this Registration Statement and to be listed.....

6. In the case of securities proposed to be issued to the public –

(a) the type of security.....

(b) the proposed maximum offering price per unit of security.....

(c) the proposed maximum aggregate offering price.....

(d) the approximate date of commencement of proposed sale to the public.....

7. Name, address and telephone number of agent for service of documentation.....

8. Amount of registration fee.....

9. Any other information.....

10. Dated.....

11. Signed.....

(to be signed by the principal executive officer and at least two directors in the case of a reporting issuer, and by the underwriter or designated agent in the case of a Government entity)
